



Western Australia

**Iron Ore (The Broken Hill Proprietary
Company Limited) Agreement Act 1964**

Compare between:

[23 Dec 1964, 00-a0-02] and [15 Dec 2003, 00-b0-06]

Western Australia

Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act 1964

An Act relating to an Agreement between the State of Western Australia and The Broken Proprietary Company Limited with respect to certain iron ore deposits, and for other purposes.

[Assented to 23 December 1964.]

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows: —

1. Short title

This Act may be cited as the *Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act 1964*.

2. Interpretation

In this Act, unless the contrary intention appears —

“the Agreement” means the Agreement a copy of which is set out in the Schedule to this Act, and if that Agreement is altered in accordance with its provisions, includes the Agreement as so altered from time to time;

“the Company” has the same meaning as it has in the Agreement.

3. Approval of Agreement

The Agreement is approved.

4. Declaration as to entry on Crown lands

It is hereby declared that —

- (a) notwithstanding any other Act or law, the Company may enter upon the Crown lands referred to in paragraph (b) of clause 2 of the Agreement in accordance with and for the purpose therein mentioned;
- (b) the Agreement set out in the Schedule to The Broken Hill Proprietary Company's Integrated Steel Works Agreement Act 1960 is amended as provided in clause 24 of the Agreement;
- (c) subsection (5) of section two hundred and seventy-seven of the Mining Act 1904, does not apply to any renewal of the rights of occupancy granted pursuant to clause 7 of the Agreement;
- (d) section ninety-six of the Public Works Act 1902, does not apply to any railway agreed to be constructed under the Agreement; and
- (e) the Governor may, on the recommendation of the Company, make, alter and repeal by-laws in accordance with and for the purposes referred to in clause 21 of the Agreement, and the by-laws —
 - (i) shall be published in the *Gazette*;
 - (ii) shall take effect and have the force of law from the date they are so published, or from a later date fixed by the order making the by-laws;
 - (iii) may prescribe penalties not exceeding fifty pounds for a breach of any of the by-laws; and
 - (iv) are not subject to section thirty-six of the Interpretation Act 1918, but shall be laid before each House of Parliament within the six sitting

days of such House next following the
publication of the by-laws in the *Gazette*.

Schedule

[Section 2]

THIS AGREEMENT under seal made the twenty-fourth day of November One thousand nine hundred and sixty four BETWEEN THE HONOURABLE DAVID BRAND M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called “the State”) of the one part and THE BROKEN HILL PROPRIETARY COMPANY LIMITED a Company duly incorporated under the Companies Statute of the State of Victoria and having its registered office in the State of Western Australia at 37 Saint George’s Terrace Perth (hereinafter referred to as “the Company” which term shall include its successors and permitted assigns) of the other part.

WHEREAS: —

(a) The Company desires to take a mineral lease of the new leased areas as hereinafter mentioned in this Agreement and is prepared in return for the granting of such lease and certain rights in regard to the export of iron ore to undertake by the construction of port and railway facilities and otherwise the development of the said new leased areas the construction and establishment within the said State of plant for the secondary processing of iron ore the enlargement of the capacity of the blast furnace which it undertook to construct and establish by the terms of the 1963 Agreement and the construction and establishment of steel making plant of agreed capacity.

(b) The State acknowledges that prior to the 22nd day of October 1964 an agreement was entered into between the Company and the State whereby (subject to the provisions of this agreement relating to the submission of detailed proposals and matters referred to in subclause (1) of clause 18 hereof) the State had agreed to make the grants of lands referred to in subclause (1) of clause 23 of this Agreement and that prior to such date the State had consented to the Company making the improvements set out in clause 11 hereof on the land comprised in any lease granted by the State to the Company pursuant to this Agreement.

NOW THIS AGREEMENT WITNESSETH

Interpretation

1. In this Agreement unless the context shall otherwise require the following terms shall have the following meanings: —

“associated company” means: —

- (a) any company having a paid-up capital of not less than ONE MILLION POUNDS (£1M.) notified in writing by the company to the Minister which is incorporated in the United Kingdom the United States of America or the Commonwealth and which —
 - (i) is a subsidiary of the Company within the meaning of the term “subsidiary” in section 6 of the Companies Act 1961-1962;
 - (ii) hold directly or indirectly not less than twenty per cent (20%) of the issued ordinary share capital of the Company;
 - (iii) is promoted by the Company or by any company that holds directly or indirectly not less than twenty per cent (20%) of the issued ordinary share capital of the Company for all or any of the purposes of this agreement and in which the company or such other company holds not less than twenty per cent (20%) of the issued ordinary share capital; or
 - (iv) is related within the meaning of that term in the aforesaid section to the Company or to any company in which the Company holds not less than twenty per cent (20%) of the issued ordinary share capital; and

- (b) any company approved in writing by the Minister for the purposes of this Agreement which is associated directly or indirectly with the Company in its business or operations hereunder;

“basic pig iron” means the product of a blast furnace suitable for processing into steel;

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

“Company’s wharf” means the wharf to be constructed by the Company pursuant to this Agreement for the shipment of iron ore or iron ore concentrates from the new leased areas;

“direct shipping ore” means iron ore which has an average pure iron content of not less than sixty per cent (60%) which will not pass through a one half (½) inch mesh screen and which is sold without concentration or other beneficiation other than crushing and screening;

“financial year” means a year commencing on and including the first day of July;

“fine ore” means iron ore which has an average pure iron content of not less than sixty per cent. (60%) which will pass through a one half (½) inch mesh screen and which is sold without concentration or other beneficiation other than crushing and screening;

“fines” means iron ore (not being direct shipping ore or fine ore) which will pass through a one half (½) inch mesh screen;

“finished product” means finished product as defined in the 1960 Agreement;

“f.o.b. revenue” means the price for iron ore from any mineral lease held by the Company in the said State the subject of any shipment or sale and payable by the purchaser thereof to the Company or an associated company less all export duties and export taxes payable to the Commonwealth on export of the iron ore and all costs and charges properly incurred and payable by the Company from the time the ore shall be placed on ship to the time the same is delivered and accepted by the purchaser including —

- (a) ocean freight;
- (b) marine insurance;
- (c) port and handling charges at the port of discharge;
- (d) all costs properly incurred in delivering the ore from port of discharge to the smelter and evidenced by relevant invoices;
- (e) all weighing sampling assaying inspection and representation costs;
- (f) all shipping agency charges after loading on and departure of ship; and
- (g) all import taxes by the country of the port of discharge;

“harbour” means the harbour to be established hereunder by the Company for the purpose of shipping iron ore or iron ore concentrates from the new leased areas;

“iron ore concentrates” includes any product of “secondary processing” as hereinafter defined;

“iron ore pellets” means iron ore in pellet or other form produced by pelletisation or more advanced reduction or other more advanced

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treatment process from iron-bearing material mined from the new leased areas;

“Land Act” means the Land Act 1933;

“Mining Act” means the Mining Act 1904;

“Minister” means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the administration of the ratifying Act 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;

“new leased areas” means the areas covered by the mineral lease referred to in Clause 8 hereof and any renewal thereof;

“notice” and “notify” means notification in writing;

“person” or “persons” includes bodies corporate;

“processed material” means the product of “secondary processing” “basic pig iron” steel and “finished product”;

“Ratifying Act” means the Act to ratify this Agreement and referred to in clause 2 hereof;

“said State” means the State of Western Australia;

“secondary processing” means concentration or other beneficiation of iron ore other than by crushing or screening and includes thermal electrostatic magnetic and gravity processing and agglomeration

pelletization or comparable changes in the physical character of iron ore;

“the 1952 Agreement” means the agreement a copy of which is set forth in the schedule to the Broken Hill Proprietary Steel Industry Agreement Act 1952 (Act No. 46 of 1952);

“the 1960 Agreement” means the agreement a copy of which is set forth in the schedule to the Broken Hill Proprietary Company’s Integrated Steel Works Agreement Act 1960 (Act No. 67 of 1960);

“this Agreement” “hereof” and “hereunder” include this Agreement as from time to time added to varied or amended;

“ton” means a ton of two thousand two hundred and forty (2,240) pounds net dry weight.

Reference in this Agreement to an Act shall include the amendments to such 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.

Marginal notes shall not affect the interpretation or construction hereof.

Ratification

2. The State shall: —

- (a) introduce and sponsor a Bill in the Parliament of the said State to ratify this Agreement and endeavour to secure its passage prior to the 31st day of December 1964;
- (b) allow the Company to enter upon Crown Lands (including land the subject of a pastoral lease) and survey possible sites for a harbour

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wharf railway townsites stockpiling processing and other areas
required for the purposes of this Agreement.

Operation of Agreement

3. This Agreement except for this clause shall not come into operation unless the Parliament of the said State passes a Bill to ratify this Agreement before the 31st day of December 1964 or such later date as the parties may mutually agree.

4. If the Bill to ratify this Agreement is so passed as an Act the following provisions of this clause shall notwithstanding the provisions of any Act or law thereupon operate and take effect: —

- (a) the provisions of this Agreement shall take effect as though the same had been brought into force and had been enacted by the ratifying Act so that the only provisions hereof to come into immediate effect shall be those contained in Clauses 5 7 and 16 hereof;
- (b) the State and the Minister respectively shall have all the powers discretions and authorities necessary or requisite to enable them to carry out and perform the powers discretions authorities and obligations conferred or imposed upon them respectively hereunder;
- (c) the State may as for a public work under the Public Works Act 1902 resume any land or any estate or interest in land required for the purposes of this Agreement and may lease or otherwise dispose of the same to the Company.

Investigations by Company

5. (1) On the ratification of this Agreement in the manner provided in, Clause 3 hereof the Company will actively continue its investigations into the feasibility and economics of developing the iron ore deposits the subject of this

Agreement and will within two (2) years of such ratification notify the State whether it will proceed with such development or whether in its judgment such development is technically or economically unjustified.

(2) If the Company notifies the State that it desires to proceed with such development then from the date such notification is received by the State the whole of the provisions of this Agreement which are not already in operation shall come into operation and be binding on the parties hereto.

(3) If the Company notifies the State that in its judgment such development is not justified (the reasons for which decision it shall notify the State and shall support such notification with reasonably detailed data as to such technical or economic factors involved as are relevant and pertain to the new leased areas) then from the date of such notification this Agreement shall be deemed to have been determined except as to any antecedent liability accrued and undischarged but so that in the event of such determination nothing herein contained shall affect the respective rights or obligations of the parties under the 1952 Agreement or under the 1960 Agreement which shall remain in full force and effect in all respects.

Derogating legislation

6. Without in any way derogating from the rights or remedies of the Company in respect of a breach of this Agreement if the Parliament of the said State should at any time enact legislation which modifies the rights or increases the obligations of the Company under the ratifying Act or under this Agreement the Company shall have the right to terminate this Agreement by notice to the State PROVIDED that where the modification or increase is capable of remedy within the next succeeding period of twelve (12) months the notice shall not take effect until the State has been given the opportunity to remedy the modification or increase within that period and has failed to do so.

Rights of occupancy

7. The Company shall have the right to continue until the 31st day of March 1965 the existing rights of occupancy granted to it in respect of Temporary Reserves Nos. 2030H, 2031H 2033H 2037H 2115H 2300H 2301H 2302H 2303H 2304H 2305H 2346H and 2348H under the Mining Act and the State shall subject to the continuance of this Agreement cause to be granted to the Company renewals of the said rights of occupancy at the same rental and on the same terms for successive periods of twelve (12) months the last of which renewals shall expire (notwithstanding its currency)

- (i) on the date a mineral lease under Clause 8 hereof is granted to the Company; or
- (ii) on the date the Company shall give to the State notice that it does not intend to proceed hereunder; or
- (iii) this Agreement shall otherwise cease and determine;

whichever shall first occur.

Mineral lease

8. As soon as conveniently may be after all the proposals mentioned in Clause 18 hereof have been finally approved or determined the State shall after application is made by the Company for a mineral lease of any part or parts (not exceeding in total area three hundred (300) square miles) of the Temporary Reserves referred to in Clause 7 hereof cause any necessary survey to be made of the land so applied for (the cost of which survey to the State will be paid to the State by the Company on demand after completion of the survey) and shall cause to be granted to the Company a mineral lease thereof for iron ore in the form of the Schedule hereto for a term which subject to the payment of rents and royalties hereunder and to the performance and observance by the Company of its obligations under the mineral lease shall be for a period of twenty-one (21) years from the date of such grant with rights to successive renewals of twenty-one (21) years upon the same terms and conditions but subject to earlier determination upon the cessation or determination of this Agreement provided however that the Company may from time to time (without abatement of any rent then paid or

payable in advance) surrender to the State all or any portion or portions of the new leased areas.

Rental for new leased areas

9. Having regard to the obligations of the Company under the 1952 Agreement and the 1960 Agreement the Company shall by way of rent for the new leased areas pay to the State annually in advance an annual rent equal to

- (a) 2/- per acre if the area is not more than one hundred (100) square miles;
- (b) 2/6 per acre if the area is over one hundred (100) square miles but not more than one hundred and fifty (150) square miles;
- (c) 3/- per acre if the area is over one hundred and fifty (150) square miles and not more than two hundred (200) square miles; and
- (d) 3/6 per acre if the area is over two hundred (200) square miles;

such rentals to commence on and accrue from the date the mineral lease is granted to the Company.

Royalty

10. (1) The Company will pay to the State royalty on all iron ore from the new leased areas (other than ore shipped solely for testing purposes) as follows: —

- (a) on direct shipping ore (not being locally used ore) at the rate of seven and one half per centum (7%) of the f.o.b. revenue (computed at the rate of exchange prevailing on the date of receipt by the Company of the purchase price in respect of ore shipped or sold

hereunder) PROVIDED NEVERTHELESS that such royalty shall not be less than six shillings (6/-) per ton (subject to paragraph (h) of this subclause) in respect of ore the subject of any shipment or sale;

- (b) on fine ore (not being locally used ore) at the rate of three and three quarter per centum (3 3/4%) of the f.o.b. revenue (computed as aforesaid) PROVIDED NEVERTHELESS that such royalty shall not be less than three shillings (3/-) per ton (subject to paragraph (i) of this subclause) in respect of ore the subject of any shipment or sale;
- (c) on fines (not being locally used ore) at the rate of one shilling and sixpence (1/6d.) per ton;
- (d) on iron ore concentrates (other than iron ore pellets) produced from locally used ore by secondary processing and on locally used ore (not being iron ore used for producing iron ore concentrates subject to royalty hereunder) at the rate of one shilling and sixpence (1/6d.) per ton;
- (e) on iron ore pellets produced in, the said State north of the 26th parallel of latitude from iron ore with a combined average iron content of less than 60% at the rate of:
 - (i) one shilling (1/-) per ton for all iron ore pellets shipped over the Company's wharf or used before the 30th day of June 1990;
 - (ii) one shilling and threepence (1/3d.) per ton for all iron ore pellets shipped over the Company's wharf or used between the 1st day of July 1990 and the 30th day of June 2000;
 - (iii) one shilling and sixpence (1/6d.) per ton for all iron ore pellets shipped over the Company's wharf or used after the 30th day of June 2000;

- (f) on iron ore pellets produced in the said State north of the 26th parallel of latitude from iron ore with a combined average iron ore content of 60% or more and shipped over the Company's wharf or used at the rate of one shilling and sixpence (1/6d.) per ton;
- (g) on all other iron ore (not being locally used ore) at the rate of seven and one half per centum (7½%) of the f.o.b. revenue (computed as aforesaid) without any minimum royalty;
- (h) (for averaging purposes) if the amount ascertained by multiplying the total tonnage of direct shipping ore shipped or sold (and liable to royalty under paragraph (a) of this sub-clause) in any financial year by six shillings (6/-) is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that paragraph then that proviso shall not apply in respect of direct shipping ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made accordingly;
- (i) (for averaging purposes) if the amount ascertained by multiplying the total tonnage of fine ore shipped or sold (and liable to royalty under paragraph (b) of this subclause) in any financial year by three shillings (3/-) is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that paragraph then that proviso shall not apply in respect of fine ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made accordingly;
- (j) the royalty referred to in paragraphs (c) (d) and (f) of this subclause shall be adjusted up or down (as the case may be) as at the first day of January 1969 and as at the beginning of every fifth year thereafter proportionately to the variation of the average of the prices payable for foundry pig iron f.o.b. Adelaide during the last full calendar year preceding the date at which the adjustment is to be made as compared with the average of those prices during the calendar year 1963; and
- (k) The respective royalties referred to in paragraph (e) of this subclause shall be adjusted up or down (as the case may be) as at the first day

of January 1970 and as at the beginning of every fifth year thereafter proportionately to the variation of the average of the prices payable for foundry pig iron f.o.b. Adelaide during the last full calendar year preceding the date at which the adjustment is to be made as compared with the average of those prices during the calendar year 1968.

For the purposes of this clause “locally used ore” means iron ore used (“used” for this purpose only shall include iron ore shipped for intended use and subsequently used) within the Commonwealth by the Company or by any associated company for secondary processing or for further manufacture into iron or steel and includes iron ore so used by any other person or company north of the twenty sixth parallel of latitude in the said State.

(2) Within fourteen (14) days after the quarter days (the last days of March June September and December in each year) commencing with the quarter day next following the first commercial shipment of iron ore from the Company’s wharf the Company will furnish to the Minister a return showing the quantity of all iron ore or iron ore concentrates the subject of royalty hereunder and shipped sold used or produced (as the case may be) during the quarter immediately preceding the due date of the return and shall not later than two (2) months after such due date pay to the Minister the royalty payable in respect of iron ore concentrates produced or shipped or used or in respect of iron ore used and in respect of all iron ore shipped or sold pay to the Minister on account of the royalty payable hereunder a sum calculated on the basis of invoices or provisional invoices (as the case may be) rendered by the Company to the purchaser (which invoices the Company shall render without delay simultaneously furnishing copies thereof to the Minister) of such iron ore and shall from time to time in the next following appropriate return and payment make (by the return and by cash) all such necessary adjustments (and give to the Minister full details thereof) when the f.o.b. revenue realised in respect of the shipments shall have been ascertained PROVIDED that copies of invoices shall not be required by the State in those cases to which paragraphs (c) (d) (e) and (f) of subclause (1) of this clause apply.

(3) The Company will permit the Minister or his nominee to respect at all reasonable times the books of account and records of the Company relative to any shipment or sale of iron ore hereunder and to take copies or extracts therefrom and for the purpose of determining the f.o.b. revenue payable in respect or any shipment of iron ore hereunder the Company will take reasonable steps to

satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the Minister's reasonable satisfaction as to all relevant weights and analyses and will give due regard to any objection or representation made by the Minister or his nominee as to any particular weight or assay of iron ore which may affect the amount of royalty payable hereunder.

Company obligations

11. Subject to the provisions of Clauses 30 and 31 hereof the Company will by the 30th day of June 1975 —

- (a) construct install and provide upon the new leased areas mining plant and equipment crushing screening stockpiling and car loading plant and facilities power house workshop and other things of a design and capacity adequate to enable the Company to carry out its proposals submitted as hereinafter provided;
- (b) develop and have ready for operation a port at some point on the coast line of the said State as approved in the manner hereinafter provided for the purpose of shipping ore from the new leased areas such port (including the dredged areas berth swinging basin navigational aids wharf railway terminal areas for installations stockpiling railways and other purposes) to be constructed in accordance with the proposals submitted by the Company as hereinafter provided or with such proposals as altered in accordance with the provisions as hereinafter provided as the case may be;
- (c) subject to the State having assured to the Company all necessary rights in or over Crown lands available for the purpose construct in a proper and workmanlike manner and in accordance with recognised standards of railways of a similar nature operating under similar conditions and along a route approved or determined as hereinafter provided (but subject to the provisions of the Public Works Act 1902 to the extent that they are applicable) a four feet eight and one half inch (4 ft. 8½ in.) gauge railway (with all necessary signalling, switch and other gear and all proper or usual works) from the new leased areas to the port as referred to in paragraph (b) of this clause

and will provide for crossing places and the running of much railway with sufficient and adequate locomotives freight cars and other railway stock and equipment as shall be necessary for the Company's purposes;

- (d) subject to the State having assured to the Company all necessary rights in, or over Crown lands or reserves available for the purpose construct by the said date such new roads as the Company reasonably requires for its purposes hereunder of such widths with such materials gates crossings and passovers for cattle and for sheep and along such routes as the parties hereto shall mutually agree after discussion with the respective Shire Councils through whose districts any such roads may pass and subject to prior agreement with the appropriate controlling authority (being a Shire Council or the Commissioner of Main Roads) as to terms and conditions the Company may at its own expense and risk except as otherwise so agreed upgrade or realign any existing road;
- (e) in accordance with the Company's proposals under clause 18 hereof as finally approved or determined and as require the Company to accept obligations —
 - (i) lay out and develop the townsites and provide adequate and suitable housing recreational and other facilities and services;
 - (ii) construct and provide roads housing schools water and power supplies and other amenities and services; and
 - (iii) construct and provide any other works provided by such proposals;
- (f) subject to the provisions of Clauses 30 and 31 hereof by the 30th day of June 1970 commence construction of at least one of the projects mentioned in paragraphs (a) (b) (c) (d) and (e) of this clause and thereafter the work necessary for the completion of the said projects shall be carried on continuously and so that the overall development is ready for operation before the 30th day of June 1975;

- (g) establish on the works site referred to in the 1960 Agreement or on the leased areas referred to in that Agreement or elsewhere in the said State as the Company reasonably determines a plant for the secondary processing of iron ore and having a capacity to produce not less than five hundred thousand (500,000) tons of secondary processed product per annum.

Increase in secondary processing

12. By the 30th day of June 1980 the Company will increase to one million (1,000,000) tons per annum the production capacity of its secondary processing plant in the said State either by enlarging the plant established pursuant to the obligation mentioned in, paragraph (g) of clause 11 hereof or by constructing and establishing another such plant at some place within the said State as may be reasonably determined by the Company.

Expenditure by the Company

13. (1) In providing the works and facilities mentioned in clauses 11 and 12 hereof the Company shall expend a sum of not less than twenty-five million pounds (£25,000,000) and such sum shall not include any expenditure incurred by the Company in relation to the operation or maintenance of any of the said works or facilities. The Company will on request as early as practicable after the end of each financial year from the 30th day of June 1970 or from such earlier date on which work actually commences and until the said sum of twenty-five million pounds (£25,000,000) has been expended by the Company as aforesaid supply to the Under Treasurer of the said State a summary audited by the Company's auditors of its expenditure on such works and facilities during such financial year.

(2) If at any time during the construction and establishment of the works and facilities mentioned in clauses 11 and 12 hereof the Company shall suffer delay from any cause mentioned in Clause 30 hereof the dates aforesaid for the completion of the said works and facilities and for the expending of twenty-five million pounds (£25,000,000) shall respectively be postponed by a period equal to the period of delay and any further delay necessarily consequent thereon and due thereto such period to be calculated from the date upon which notice of delay or

consequential delay shall have been given by the Company to the State after the commencement of the delay. Any delay or consequential delay of which no such notice has been given shall not be treated as delay for the purpose of this clause.

Additional obligations under 1960 Agreement

14. Without derogating from any provision of the 1960 Agreement the Company agrees —

- (a) by the 31st day of December 1978 to increase the capacity (as therein defined) of the blast furnace referred to in the said agreement to not less than 500,000 tons per annum;
- (b) by the 31st day of December 1978 to increase the capacity of steel making facilities referred to in the said agreement so that such facilities shall be capable of producing not less than 500,000 tons per annum of finished product as therein defined; and
- (c) by the 30th day of June 1985 whether on the works site or elsewhere within the said State to install plant capable of producing in the aggregate (including plant to be provided pursuant to the 1960 Agreement and otherwise by this Agreement) at least three million (3,000,000) tons of processed material per annum.

Investigations by the Company for proposals

15. (1) The Company from the coming into operation of this Agreement will diligently pursue such matters as are necessary to enable it to submit proposals to the State under Clauses 16 and 18 hereof.

(2) The Company shall from time to time and upon request by the State advise the State in reasonable detail as to the progress of such matters.

(3) If the State concurrently carries out its own investigations and reconnaissances in regard to all or any of the matters referred to in subclause (1) of this clause the Company shall co-operate with the State therein and so far as reasonably practicable will consult with the representatives or officers of the State and make full disclosures and expressions of opinion regarding matters referred to in this subclause.

(4) When submitting to the Minister the proposals as referred to in Clauses 16 and 18 hereof the Company will so far as is reasonably practicable ensure that such proposals —

- (a) provide for the best overall development of the harbour area; and
- (b) disclose any conditions of user then in contemplation and where alternative proposals are submitted the Company's preferences in regard thereto.

Port location proposal

16. (1) As soon as the Company is ready to do so and in any event not later than the 30th day of June 1969 the Company will submit to the Minister its proposal for the location of a port and the sites for and general design of the Company's wharf and railway terminal (including areas for installations stockpiling railways and other purposes in the harbour area). In preparing such proposal the Company will have regard for the general development of the harbour area and the dredging thereof and of approaches thereto with a view to the reasonable use thereof by others.

(2) (a) At any time prior to the 31st December 1965 the Company may give notice to the State that it reasonably requires the reservation until the 31st December 1966 of an area or areas of Crown Land and/or land the subject of a pastoral lease at or near Onslow for possible development by the Company for a plant site (for secondary processing) the Company's wharf and harbour and road and rail access thereto from the new leased areas.

(b) Until the 31st December 1965 (or if such notice is given until the 31st December 1966) the State (unless the Company otherwise agrees) shall take all practicable administrative steps to prevent any development at Onslow which would be likely to interfere with the development by the Company of the plant site wharf harbour and road and rail access thereto under the terms of this Agreement.

(c) If the Company shall desire to establish the Company's wharf at Onslow it will consult with a company to be nominated by the State (hereinafter in this and the next succeeding subclause called "the nominated company") and (subject to paragraph (f) of this subclause) will not without the consent of the nominated company submit proposals in regard thereto without providing and ensuring therein —

- (i) that a plant site suitable for a pelletising plant and ancillary facilities capable of producing not less than four million (4,000,000) tons of iron ore pellets per annum for shipment from the Company's wharf remains available to the nominated company provided that this does not unduly prejudice the selection of a site by the Company;
- (ii) that suitable road and rail access from the nominated company's mining area to its plant site and from the plant site to the Company's wharf remains available to the nominated company provided that this does not unduly prejudice the selection of road and rail access by the Company;
- (iii) that the Company's wharf and associated facilities will be so constructed as to cater for the berthing of ships having a carrying capacity of forty thousand (40,000) tons of iron ore and also make suitable provision for inward cargo;

and unless otherwise agreed by the Minister the Company in developing the Onslow area will ensure that effect is given to the factors in this paragraph mentioned.

(d) If at any time after the 31st day of December 1966 no agreement has been reached between the Company and the nominated company as to the matters mentioned in paragraph (c) preceding and the Company has not submitted

proposals in accordance with the requirements of such paragraph and the nominated company submits proposals to the Minister for the construction of a wharf and associated facilities at Onslow then subject to the next succeeding paragraphs and provided this Agreement is still in force the Minister shall require that such proposals provide and ensure —

- (i) that there remains available to the Company a plant site suitable for a pelletising plant and ancillary facilities capable of producing not less than four million (4,000,000) tons of iron ore pellets per annum for shipment from the wharf to be constructed by the nominated company provided this does not unduly prejudice the selection of a site by the nominated company;
- (ii) that there remains available to the Company suitable road and rail access from the new leased areas to such plant site and from the plant site to the wharf of the nominated company provided that this does not unduly prejudice the selection of road and rail access by the nominated company;
- (iii) that the wharf and associated facilities of the nominated company will be so constructed as to cater for the berthing of ships having a carrying capacity of four thousand (4,000) tons of iron ore and so as to make suitable provision for inward cargo.

(e) the proposals of the nominated company (insofar as they relate to the matters referred to in paragraph (d) preceding) shall before approval by the Minister be submitted by him to the Company to enable it to make such representations thereon as it sees fit either to the Minister or to the nominated company as to requiring the nominated company to —

- (i) extend or enlarge the wharf;
- (ii) make provision for facilities associated with the wharf in excess of the facilities stated by the nominated company in its proposals as desired for its purposes and for the wharf to be so constructed and with such facilities as may be required to handle additional inward cargoes for the Company;

but subject to the Company making arrangements which are mutually satisfactory with the nominated company for payment of the cost of such additional work. In the event of the Company and the nominated company being unable to agree on the basis for such payment the Minister shall determine the method of payment and the giving of security therefor. In the event of a dispute as to the cost of such additional work the matter shall be referred to arbitration. The Minister may require accordingly.

(f) If either company demonstrates to the State that at Onslow it would not be reasonably practicable for the proposals to include any of the matters referred to in paragraphs (c) (d) and (e) preceding the Minister shall by notice either waive compliance with the whole or part of such matters or shall submit alternative proposals for an equitable sharing of the harbour's capacity by both companies. The Company shall either accept such waiver or the alternative proposals (as the case may be) or refer the matter to arbitration in which last event the nominated company shall be entitled to join as a party to the arbitration provided that the Company in lieu of referring the matter to arbitration may determine the agreement by notice to the Minister or may similarly determine the agreement at any time within one month after the award on such arbitration has been delivered.

(3) (a) The Company may prior to 31st December 1966 with the consent of the nominated company submit proposals to the Minister for the establishment of a wharf at Cape Preston.

(b) If the nominated company desires to submit proposals to the Minister for the establishment of a wharf at Cape Preston the Minister shall require it to first consult with the Company and (subject to paragraph (e) of this subclause) not to submit proposals in regard thereto (without the consent of the Company) unless such proposals provide and ensure: —

- (i) that a plant site suitable for a pelletising plant and ancillary facilities capable of producing not less than four million (4,000,000) tons of iron ore pellets per annum for shipment from the wharf to be constructed by the nominated company remains available to the Company;

- (ii) that suitable road and rail access from the Company's new leased areas to such plant site and from the plant site to the nominated company's wharf remains available to the Company;
- (iii) that the nominated company's wharf and associated facilities will be so constructed that it will cater for the berthing of ships requiring at least forty-two feet (42') of water and will be adequate to handle the outward shipment of an aggregate of at least ten million (10,000,000) tons of iron ore and iron ore pellets per annum and make suitable provision for inward cargo as required for its purposes.

(c) If the Company shall after the 31st day of December 1966 desire to establish the Company's wharf at Cape Preston it shall first consult with the nominated company and will not without the consent of the nominated company submit proposals in regard thereto if the nominated company has previously submitted its own full and acceptable proposals to the State pursuant to an agreement with the State. If the nominated company has not so submitted proposals and no agreement is reached between the Company and the nominated company within three (3) months from the commencement of consultations the Company may submit to the State proposals for the construction of a wharf and associated facilities at Cape Preston but subject to paragraphs (d) and (e) succeeding any such proposals shall provide and ensure —

- (i) that a plant site suitable for a pelletising plant and ancillary facilities capable of producing not less than four million (4,000,000) tons of iron ore pellets per annum for shipment from the wharf to be constructed by the Company remains available to the nominated company;
- (ii) that suitable road and rail access from the nominated company's mining areas to such plant site and from the plant site to the Company's wharf remains available to the nominated company;
- (iii) that the Company's wharf and associated facilities will be so constructed as to cater for the berthing of ships requiring at least forty-two feet (42') of water and subject to paragraph (d) succeeding will be adequate to handle the outward shipment of an aggregate of

at least ten million (10,000,000) tons or iron ore and iron ore pellets per annum and make suitable provision for such inward cargo as required for its purposes.

(d) (i) The Minister shall in so far as they relate to paragraph (b) preceding refer the nominated Company's proposals before approval thereof to the Company to enable it to make such representations as it sees fit to the Minister as to requiring the nominated company to —

- (a) extend or enlarge the wharf so as to be adequate to handle a greater capacity than ten million (10,000,000) tons per annum;
- (b) make provision for facilities associated with the nominated company's wharf in excess of the facilities stated by the nominated company in its proposals as desired by it for its purposes and for the wharf to be so constructed and with such facilities as may be required to handle additional inward cargoes for the Company;

but subject to the Company paying to the nominated company the cost of such additional work and providing security acceptable to the nominated company for the payment of the cost of such additional work. In the event of a dispute as to the cost of such additional work the matter shall be referred to arbitration. The Minister may require accordingly.

(ii) The Minister shall in so far as they relate to paragraph (c) preceding refer the Company's proposals before approval thereof to the nominated company to enable it to make such representations as it sees fit to the Minister as to requiring the Company to —

- (a) extend or enlarge the wharf so as to be adequate to handle a greater capacity than ten million (10,000,000) tons per annum;
- (b) make provisions for facilities associated with the Company's wharf in excess of the facilities stated by the Company in its proposals as desired by it for its purposes and for the wharf to be so constructed and with such facilities as may be required to handle additional inward cargoes for the nominated company;

but subject to the nominated company paying to the Company the cost of such additional work and paying a deposit of Fifty Thousand Pounds (£50,000) at the time of making the representations and providing security acceptable to the Company for the payment of the cost of such additional work. In the event of a dispute as to the cost of such additional work the matter shall be referred to arbitration. The Minister may require accordingly.

(e) If either company demonstrates to the State that at Cape Preston it would not be reasonably practicable for the proposals to include any of the matters referred to in paragraphs (b) (c) and (d) preceding the Minister shall by notice either waive compliance with the whole or part of such matters or shall submit alternative proposals for an equitable sharing of the harbour's capacity by both companies. The Company shall either accept such waiver or the alternative proposals (as the case may be) or refer the matter to arbitration in which last event the nominated company shall be entitled to join as a party to the arbitration provided that the Company in lieu of referring the matter to arbitration may determine this agreement by notice to the Minister or may similarly determine the agreement at any time within one month after the award on such arbitration has been delivered.

Consideration by State of port proposals

17. (1) Within two (2) months after receipt of the proposal referred to in subclause (1) of Clause 16 hereof and subject to the provisions of subclauses (2) and (3) of clause 16 hereof the Minister will give notice to the Company either: —

- (a) that he approves the proposal in which event the parties hereto shall be bound thereby or
- (b) that he does not approve the proposal in which event he will in the notice state his reasons for not approving the same and submit an alternate proposal and at the same time demonstrate that (in relation only to the location of a site for the harbour) such alternate proposal would be both suitable for the Company's purposes under this Agreement and not less economical to the Company having regard

to both the Company's long term interests here-under and the relative costs of construction and subsequent operation.

(2) If following the receipt of such alternate proposal the parties agree upon a proposal then the parties shall be bound thereby.

(3) If the parties are unable to agree upon any proposal within a period of two (2) months of the receipt of the notice referred to in subclause (1) hereof the State will within one (1) month thereafter employ and retain at the cost of the State an independent consultant engineer (appointed from a panel of four consultant engineers already agreed upon by the parties and listed in a writing initialled on behalf of the parties for the purpose of identification) to make recommendations in regard to the respective proposals of the Company and the Minister.

(4) The consultant engineer in making such recommendations shall have regard for the suitability for the Company's purposes of the sites and general designs the relative economics to the Company of such proposals and the matters mentioned in Clause 16 hereof.

(5) On receipt of the recommendation of the consultant engineer the Minister shall furnish the Company with a copy thereof and within two (2) months of the receipt thereof the Company may accept the same or by agreement with the Minister any part thereof and insofar as such recommendation are not accepted by the Company the matters in issue shall be referred to arbitration under Clause 32 hereof.

Detailed proposals by Company

18. (1) Upon agreement being reached or a determination being made as to the Company's proposal under Clause 16 hereof the Company will proceed with the implementation of the proposal so agreed or determined and will from time to time submit to the Minister to the fullest extent reasonably practicable its detailed proposals (including plans and specifications) with respect to the following: —

- (a) the harbour and harbour development including dredging the depositing of spoil the provision of navigational aids the Company's wharf the berth and swinging basin and harbour installation facilities and services enabling (subject however to the provisions of subclauses (2) and (3) of Clause 16 hereof) the use of the harbour by vessels having a carrying capacity of not less than 30,000 tons of iron ore provided that if the State reasonably requires the Company will after the 30th day of June 1975 carry out any further dredging necessary to permit the use of the harbour by vessels having a carrying capacity of 40,000 tons of iron ore;
- (b) the railway between the new leased areas and the harbour area and works ancilliary thereto;
- (c) townsites on or near the new leased areas and near the harbour and development services and facilities in relation thereto;
- (d) housing;
- (e) water supply;
- (f) roads; and
- (g) any other works services or facilities proposed by the Company.

(2) The Company will from time to time inform the Minister of its general layout and planning in respect to mining from the new leased areas.

Consideration of detailed proposals

19. Within two (2) months after receipt of the detailed proposals of the Company in regard to any of the matters mentioned in clause 18 hereof the Minister shall give to the Company notice either of his approval of the proposals or of alterations desired thereto and in the latter case shall afford to the Company opportunity to consult with and submit new proposals to the Minister. The

Minister may make such reasonable alterations to or impose such reasonable conditions on the proposals or new proposals (as the case may be) as he shall think fit but the Minister shall in any notice to the Company disclose his reasons for any such alteration and condition AND PROVIDED THAT the Minister shall not make alterations to or impose conditions on the proposals or new proposals insofar as they relate to the site of mining operations or the mining methods selected by the Company or insofar as they relate to the location of the port site as previously determined. Within two (2) months of the receipt of the notice the Company may elect by notice to the State to refer to arbitration and within two (2) months thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Company then unless the Company within three (3) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period of three (3) months cease and determine (save as provided in clause 22 (d) hereof) but if the question is decided in favour of the Company the decision will take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

Export of iron ore under the 1952 and 1960 Agreements

20. (1) Notwithstanding anything to the contrary in the 1952 Agreement or the 1960 Agreement from and after the date that the Company discharges all the obligations imposed in the terms of paragraphs (a) (b) (c) (d) and (e) of Clause 11 hereof the State will permit the Company to export without limitation as to quantity iron ore or the products of secondary processing or iron ore from any of the deposits which it controls in the said State to anywhere in the Commonwealth or overseas.

(2) The Company shall pay to the State in respect of all iron ore from the mineral leases referred to in the 1952 Agreement and from the leased areas referred to in the 1960 Agreement which is exported from the Commonwealth as permitted under this Agreement royalty at the rates prescribed by paragraphs (a) (b) (c) (d) (g) (h) and (i) of subclause (1) of Clause 10 hereof as may be appropriate to the class of ore actually exported and the provisions of the 1952 Agreement and the 1960 Agreement shall be varied accordingly so that in respect of such export the royalty rates provided for by this subclause shall be substituted

for the respective royalty rates prescribed by the said agreements. The provisions of subclauses (2) and (3) of Clause 10 hereof shall apply so far as appropriate to the payment of such royalty but the provisions of Clause 23 hereof relating to the payment of additional rental shall not apply to any such iron ore from the said mineral leases or the said leased areas PROVIDED HOWEVER that in respect of iron ore and iron ore concentrates exported from the said mineral leases after the expiration of fifteen (15) years from the date of the first export therefrom the Company shall pay an additional rental of two shillings and sixpence (2/6d.) per ton such additional rental to be paid by the Company at the same times as royalty is payable under Clause 10 hereof.

Operation of railway

21. (1) Throughout the continuance of this Agreement the Company shall —
- (a) operate its railway in a safe and proper manner and where and to the extent that it can do so without unduly prejudicing or interfering with its operations hereunder allow crossing places for roads stock and other railways and also transport the passengers and carry the freight of the State and of third parties on the railway subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made altered and repealed as provided in sub-clause (2) of this clause and subject thereto or if no such by-laws are made or are in force then upon reasonable terms and at reasonable charges (having regard to the cost of the rail-way to the Company) PROVIDED THAT in relation to its use of the said railway the Company shall not be deemed to be a common carrier at common law or otherwise;
 - (b) except to the extent that the Company's proposals as finally approved or determined as hereinbefore provided otherwise provide allow the general public to use free of charge any roads (to the extent that it is reasonable and practicable so to do) constructed or upgraded by the Company PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder nor shall the Company be prevented in any particular case from making a reasonable charge for such use;

- (c) in the construction operation maintenance and use of any work installation plant machinery equipment service or facility provided or controlled by the Company comply with and observe the provisions hereof and subject there-to the laws for the time being in force in the said State;
- (d) at all times keep and maintain in good repair and working order and condition and where necessary replace all such works installations plant machinery and equipment and the railway wharf roads (other than the public roads referred to in sub-clause (b) of clause 22 hereof) dredging and water and power supplies for the time being the subject of this Agreement;
- (e) use its best endeavours to obtain the best price possible in relation to iron ore and iron ore concentrates sold for export;
- (f) subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made and altered as provided in subclause (2) of this clause and subject thereto or if no such by-laws are made or are in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Company) allow the State and third parties to use the Company's wharf and harbour installations wharf machinery and equipment and wharf and harbour services and (subject to subclause (3) of this clause) harbour facilities PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder and that the entire control and all personnel for or in respect of such use shall be provided by or with the approval of the Company;
- (g) allow the State and third parties to have access (with or without stock vehicles and rolling stock) over the new leased areas (by separate route road or railway) PROVIDED THAT such access over shall not unduly prejudice or interfere with the Company's operations hereunder;

- (h) subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made and altered as provided in subclause (2) of this clause and subject thereto or if no such by-laws are made or are in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Company) allow the inhabitants for the time being of the port townsite being employees licensees or agents of the Company or persons engaged in providing a legitimate and normal service to or for the Company or those employees licensees or agents to make use of the water power recreational health and other services or facilities provided or controlled by the Company;
- (i) so far as reasonably and economically practicable use labour materials plant equipment and supplies available within the said State where it is not prejudicial to the interests of the Company so to do.

(2) The Governor in Executive Council may upon recommendation by the Company make alter and repeal by-laws for the purpose of enabling the Company to fulfill its obligations under and of conferring upon the Company powers and authorities requisite for the control and management of the works referred to in paragraphs (a) (b) and (f) of sub-clause (1) of this clause and (unless and until the port townsite is declared a townsite pursuant to section 10 of the Land Act) under paragraph (h) of sub-clause (1) of this clause and under paragraph (a) of clause 22 hereof upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Company) as set out in such by-laws consistent with the provisions hereof. Should the State at any time consider that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Company shall recommend such alteration or repeal thereof as the State may reasonably require or in the event of there being any dispute as to the reasonableness of such requirement then as may be decided by arbitration hereunder.

(3) (a) The parties hereto acknowledge that some party other than the Company (which party is hereinafter in this subclause referred to as “the other party”) may have already agreed or will agree with the State for the mining transport and export of iron ore from within an area or areas of the said State other than the new leased areas and that it may be further agreed or determined that

such export will be from the harbour. In this event and notwithstanding the approval or determination of all or any of the detailed proposals hereunder the parties hereto acknowledge that the State may require that only one channel approach to the harbour shall be dredged to serve the interests of the Company and of the other party as well as of other users of the harbour but that it will depend upon circumstances (including the depth and width of the channel approach and the respective time programmes for the dredging as desired by the Company and the other party under and for the purposes of their respective agreements with the State) whether that channel approach shall be dredged by the Company or by the other party or partly by each or under some other arrangements with a view to the joint user of the whole or part of the channel approach.

(b) The parties hereto acknowledge the principle that whichever of the Company and the other party should incur the whole or the greater part of the capital outlay (as the case may be) for the dredging or should be responsible for the operation and maintenance of the channel approach (in so far as it is or is intended to be used by or for the purposes of the other of them) should be reimbursed by the other of them such a fair and reasonable proportion of the capital outlay and operation and maintenance costs respectively for the use of the channel approach or otherwise a fair and reasonable charge for such use as may be determined by mutual agreement between the parties concerned or failing agreement by arbitration under the provisions of this Agreement if those parties agree within a time to be fixed by the Minister to submit to arbitration and failing such agreement then as determined by the Minister.

(c) If in the circumstances referred to in the last preceding paragraph the other party is the party to be reimbursed then the Company agrees on demand made by the State to pay the amount of such reimbursement (determined as aforesaid) to the State for and on behalf of the other party.

(d) If in the circumstances referred to in paragraph (b) of this subclause the Company is the party to be reimbursed then the State agrees not to permit vessels of the other party or vessels engaged in any of its operations or for any of its purposes of which notice is given to the State by the Company to enter the harbour through the channel approach and then to load iron ore in bulk unless and until the other party has made arrangements reasonably satisfactory to the Company (to be determined by agreement arbitration or the Minister as aforesaid) for a fair and reasonable contribution to capital outlay and operation and

maintenance costs incurred and to be incurred by the Company as aforesaid or for the payment of a fair and reasonable charge PROVIDED THAT the Company shall have no right of action against the State by reason of its failure to discharge the duty placed upon it in this subclause.

(e) The State acknowledges and agrees with the Company that in the event of the Company incurring the whole or the greater part of the capital outlay or operation and maintenance costs as aforesaid then vessels (other than vessels employed for the Company's or other party's purposes) using the channel approach for the export from the harbour of more than two hundred and fifty thousand (250,000) tons a year of bulk commodities or the import through the harbour by or for any person carrying on operation in the area of a nature similar to the Company and in competition therewith of more than one hundred thousand (100,000) tons a year of bulk commodities should be required to pay to the Company (or the State should be required to pay to the Company from the moneys received from such vessels) fair and reasonable charges to be agreed by the parties hereto having regard to the circumstances including the aggregate tonnage of the commodities exported or to be exported from the harbour the rate of export and the capital outlay and operation and maintenance costs incurred and to be incurred by the Company.

(f) The Company acknowledges and hereby agrees with the State that the Company will not be entitled to the payment of any moneys in respect of the use of the channel approach by vessels other than those referred to in the foregoing provisions of this subclause but that in respect of such other vessels the State shall be entitled to retain all charges and other revenue received in respect of such use.

(g) The Company also agrees with the State that notwithstanding any lease granted to it by the State of the whole or part of the channel approach the State or the other party may at any time after notice to the Company deepen or widen the channel approach for which purpose the Company will on request by the State surrender without compensation so much of the lease of the channel approach as may be required for the purpose PROVIDED HOWEVER that the Company will be entitled to reasonable time within which to complete any firm contract for the dredging of the channel approach actually made by it (pursuant to the consent of the State or the determination by arbitration) but unfulfilled at the time of the giving of such notice in respect of the widening or deepening of the dredging of the channel approach.

(h) A lease of the channel approach by the State to the Company will be substantially (unless otherwise mutually agreed) in accordance with the form marked "B" and initialled by or on behalf of the parties hereto for the purposes of identification.

Mutual covenants

22. The parties hereto covenant and agree with each other as follows: —

- (a) that subject to and in accordance with the proposals approved or determined as hereinbefore provided the Company for its purposes hereunder and for domestic and other purposes in relation to a townsite may to the extent determined by the Minister but notwithstanding any Act bore for water construct catchment areas store (by dams or otherwise) take and charge for water from any Crown lands available for the purpose and generate transmit supply and charge for electrical energy and the Company shall have all such powers and authorities with respect to water and electrical energy as are determined by the Minister (and as are accepted by the Company) for the purposes hereof which may include the powers of a water board under the Water Boards Act 1904 and of a supply authority under the Electricity Act 1945;
- (b) that the Company may use any public roads which may from time to time exist in the area of its operations hereunder for the purpose of transportation of goods and materials in connection with such operations PROVIDED NEVERTHELESS that the Company shall on demand pay to the State or the Shire Council concerned the cost of making good any damage to such roads occasioned by the Company's use thereof prior to the commencement by it of the shipment of iron ore hereunder or occasioned by the use thereof by the Company for the transportation of iron ore;
- (c) that the State will at the request and cost of the Company (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or part of the cost involved) widen upgrade or

re-align any public road over which the State has control subject to the prior approval of the said Commissioner to the proposed work;

- (d) that on the cessation of or determination of this Agreement —
- (i) 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 the mineral lease and any other lease license easement or right granted hereunder or pursuant hereto shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder and the Company will without further consideration but otherwise at the request and cost of the State transfer or surrender to the State or the Crown all land the subject of any Crown grant issued under the Land Act pursuant to this Agreement;
 - (ii) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
 - (iii) the Company shall forthwith furnish to the State complete factual statements of the work research surveys and reconnaissances carried out pursuant to clause 15 hereof if and insofar as the statements may not have been so furnished; and
 - (iv) save as aforesaid and as provided in clause 33 hereof and in the next following paragraph neither or the parties hereto shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement;
- (e) that on the cessation or determination of any lease license or easement granted hereunder by the State to the Company or (except as otherwise agreed by the Minister) to an associated company or other assignee of the Company under Clause 27 hereof of land for the Company's wharf for any installation within the harbour for the Company's railway or for housing at the port or port townsite the

improvements and things other than plant equipment and removable buildings erected on the relevant land and provided for in connection therewith shall remain or become the absolute property of the State without compensation and freed and discharged from all mortgages and encumbrances and the Company will do and execute such documents and things (including surrenders) as the State may reasonably require to give effect to this provision. In the event of the Company immediately prior to such expiration or determination or subsequent thereto deciding to remove its locomotives rolling stock plant equipment and removable buildings or any of them from any land it shall not do so without first notifying the State of its decision and thereby granting to the State the right or option exercisable within three months thereafter to purchase at valuation in situ the said plant equipment and removable buildings or any of them. Such valuation shall be mutually agreed or in default of agreement shall be made by such competent valuer as the parties may appoint or failing agreement as to such appointment then by two competent valuers one to be appointed by each party or by an umpire appointed by such valuers should they fail to agree;

- (f) that subject to the Company at its own expense providing all works buildings dredging and things of a capital nature reasonably required for its operations hereunder at or in the vicinity of the harbour no charge or levy shall be made by the State or by any State authority in relation to the loading of outward or the unloading of inward cargoes from the Company's wharf whether such cargoes shall be the property of the Company or of any other person or corporation but the State accepts no obligation to undertake such loading or unloading and may make the usual charges from time to time prevailing in respect of services rendered by the State or by any State agency or instrumentality or local or other authority of the State and may charge vessels using the Company's wharf ordinary light conservancy and tonnage dues;
- (g) that the new leased areas and the lands the subject of any Crown grant lease license or easement 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 operations of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State by any State

agency or instrumentality or by any local or other authority of the State on the ground that such operations are contrary to any zoning by-law or regulation;

- (h) that any State legislation for the time being in force in the said State relating to the fixation of rentals shall not apply to any houses belonging to the Company in any townsite and that in relation to each such house the Company shall have the right to include as a condition of its letting thereof that the Company may take proceedings for eviction of the occupant if the latter shall fail to abide by and observe the terms and conditions of occupancy or if the occupant shall cease to be employed by the Company;
- (i) that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the labour conditions imposed by or under the Mining Act in regard to the new leased areas;
- (j) that without affecting the liabilities of the parties under this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portions of the operations which it is authorized or obliged to carry out hereunder;
- (k) that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection therewith) for rating purposes shall be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate;
- (l) that in any of the following events namely if the Company shall make default in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sublease license or other title or document granted or assigned under this Agreement on its part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to it by the State (or — if the alleged default is

contested by the Company and promptly submitted to arbitration — within a reasonable time fixed by the arbitration award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company shall abandon or repudiate its operations under this Agreement or if the Company shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and thereupon or if the Company shall surrender the entire new leased areas as permitted under Clause 8 of this Agreement the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto shall thereupon determine PROVIDED HOWEVER that if the Company shall fail to remedy any default after such notice 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 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; and

(m) that —

(i) for the purposes of determining whether and the extent to which —

(A) the Company is liable to any person or body corporate (other than the State); or

(B) an action is maintainable by any such person or body corporate in respect of the death or injury of any person or damage to any property arising out of the use of any of the roads for the maintenance of which the Company is responsible hereunder and for no other purpose the Company shall be deemed to be a municipality and the

said roads shall be deemed to be streets under the care control and management of the Company;

- (ii) for the purposes of this paragraph the terms “municipality” “street” and “care control and management” shall have the meanings which they respectively have in the Local Government Act 1960.

State’s obligations

23. (1) The State shall in accordance with the Company’s proposals as finally approved or determined as hereinbefore provided and as otherwise required by the Company to enable it to meet its obligations hereunder —

- (a) grant to the Company in fee simple or for such terms or periods and on such terms and conditions (including renewal rights) as subject to the proposals (as finally approved or determined as aforesaid) and other obligations of the Company hereunder shall be reasonable having regard to the requirements of the Company hereunder and to the overall development of the harbour and access to and use by others of lands the subject of any grant to the Company and of services and facilities provided by the Company —
 - (i) for nominal consideration — townsite lots;
 - (ii) at peppercorn rental — special leases of Crown land within the harbour area and the townsites and for the railway; and
 - (iii) at rentals as prescribed by law or are otherwise reasonable — leases rights mining tenements easements reserves and licenses in on or under Crown Lands

under the Mining Act the Jetties Act 1926 or under the provisions of the Land Act modified as in subclause (2) of this clause provided or under any other Act (as the case may require) as the Company reasonably requires for its works and operations hereunder including

the construction or provision of the railway wharf roads water supplies and stone and soil for construction purposes PROVIDED THAT from and after the expiration of fifteen years from the 30th day of June 1975 the Company will in addition to the rentals already referred to in this paragraph pay to the State during the currency of this Agreement a rental (which subject to its being payable by the Company to the State may from time to time at the option of the Company be payable in respect of such one or more of the special leases or other leases granted to the Company under this paragraph and remaining current as the Company may from time to time designate in a notice to the Minister) equal to two shillings and six pence (2/6d) per ton on all iron ore and iron ore concentrates from the new leased areas in respect of which royalty is payable under clause 10 hereof in any financial year such additional rental to be paid at the same times as the said royalty PROVIDED that no such additional rental shall be payable in respect of such iron ore or iron ore concentrates as aforesaid as are used or are to be used within the Commonwealth for manufacture into iron or steel;

- (b) on application by the Company cause to be granted to it such machinery and tailings leases (including leases for the dumping of over-burden) and such other leases licenses reserves and tenements under the Mining Act or where that Act does not provide for requisite tenures under the provisions of the Land Act (modified as in subclause (2) of this clause provided) or under any other Act as the Company may reasonably require and request for its purposes under this Agreement;
- (c) provide any services or facilities subject to the Company bearing and paying the capital cost involved if reasonably attributable to or resulting from the Company's project and operations hereunder and reasonable charge for maintenance and operation except operation charges in respect of education hospital and police services and except where and to the extent that the State otherwise agrees —

subject to such terms and conditions as may be finally approved or determined as aforesaid.

(2) For the purposes of paragraphs (a) and (b) of subclause (1) of this clause 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 Governor 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 deletion of the proviso to section 116;

(c) the deletion of section 135;

(d) the deletion of section 143;

(e) the inclusion of a power to offer for sale or leasing land within or in the vicinity of any townsite notwithstanding that the townsite has not been constituted a townsite under section 10; and

(f) the inclusion of a power to offer for sale or grant leases or licenses 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 in the forms referred to in the Act and upon application by the Company in forms consistent as aforesaid in lieu of the forms referred in the Act.

(3) The provisions of subclause (2) of this clause shall not operate so as to prejudice the rights of the State to determine any lease license or other right or title in accordance with the other provisions of this Agreement.

- (4) The State further covenants with the Company that the State —
- (a) shall not during the currency of this Agreement register any claim or grant any lease or other mining tenement under the Mining Act or otherwise: —
- (i) by which any person other than the Company will obtain under the laws relating to mining or otherwise any rights to mine or take iron ore within the new leased areas, or
- (ii) by which any person other than the Company will obtain under the laws relating to mining or otherwise any rights to mine or take the natural substances (other than petroleum as defined in the Petroleum Act 1936) within the new leased areas unless the Minister reasonably determines that it is not likely to unduly prejudice or to interfere with the operations of the Company hereunder assuming the taking by the Company of all reasonable steps to avoid the interference;
- (b) subject to the performance by the Company of its obligations under this Agreement shall not during the currency hereof without the consent of the Company resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the said 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 purposes of this Agreement nor any of the lands the subject of any lease or license granted to the Company in terms of this Agreement and without such consent (which shall not be unreasonably withheld) the State will 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 or easement of any nature or kind whatsoever over or in respect of any such lands which may unduly prejudice or interfere with the Company's operations hereunder;
- (c) shall if so requested by the Company and so far as its powers and administrative arrangements permit use reasonable endeavours to assist the Company to obtain adequate and suitable labour for the

construction and the carrying out of the works and operations referred to in this Agreement including suitable immigrants for that purpose;

- (d) except as provided in this Agreement shall not impose nor permit nor authorize 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 operations of the Company in the conduct of the Company's 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;
- (e) shall where and to the extent reasonably practicable on application by the Company from time to time grant or assist in obtaining the grant to the Company of prospecting rights and mineral leases with respect to limestone dolomite and other minerals reasonably required by the Company for its purposes under this Agreement;
- (f) shall as and when required by the Company (but without prejudice to the foregoing provisions of this Agreement relating to the detailed proposals and matters referred to in clause 18 hereof) consent in writing where and to the extent that the Minister considers to be reasonably justified to the Company making improvements for the purposes of this Agreement on the land comprised in any lease granted by the State to the Company pursuant to this Agreement PROVIDED THAT the Company shall also obtain any other consents legally required in relation to such improvements;
- (g) shall without charge reserve to the Company for a period of fifty (50) years from the date of the execution of this Agreement and thereafter until determined by the State on giving five years notice to the Company those areas at present contained in Temporary Reserves Nos. 2022H to 2029H both inclusive and 2351H to 2355H both inclusive but subject to later negotiation as to the conditions

under which the Company will be given rights over those areas with regard to the mining and disposal of the iron ore thereon;

- (h) shall unless otherwise mutually agreed between the parties hereto ensure that the terms covenants and conditions of all leases granted to the Company pursuant to the provisions of this Agreement shall during the currency thereof (including any renewal or renewals thereof) remain as at the date of the grant or renewal as the case may be;
- (i) shall subject to the due performance by the Company of its obligations under this Agreement ensure that during the currency of this Agreement the rights of the Company hereunder shall not in any way through any governmental or administrative act of the State be impaired restricted or prejudicially affected.

(5) The Company shall not have any tenant rights in improvements made by the Company on the land comprised in any lease license or easement granted by the State to the Company pursuant to this Agreement in any case where pursuant to sub-clause (e) of clause 22 hereof such improvements will remain or become the absolute property of the State.

Amendment of 1960 agreement

24. The 1960 Agreement is amended by adding after the words "*pro rata*" in the last line of paragraph (b) of subclause (7) of clause 13 the following:

“and subject to an additional reduction of two shillings (2/-) per ton for every 180,000 tons per annum of plant capacity for secondary processed product which the Company may instal on either the works site or the leased areas and pro rata.

For the purpose of this paragraph 'secondary processed product' means the product of concentration or other beneficiation of iron ore other than by crushing or screening including thermal electrostatic magnetic and

gravity processing and agglomeration pelletization or comparable changes in the physical character of iron ore.”

Alteration of

25. If at any time the State finds it necessary to request the Company to alter the situation of any of the installations or other works (other than the Company’s wharf) erected constructed or provided pursuant to the Company’s detailed proposals mentioned in Clause 18 hereof and gives to the Company notice of the request the Company shall within a reasonable time after its receipt of the notice but at the expense in all things (including increased operating costs) of the State (unless the alteration is rendered necessary by reason of a breach by the Company of any of its obligations hereunder) alter the situation thereof accordingly.

to State

26. The Company will 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 the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company’s wharf railway or other works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

Assignment

27. (1) The Company may at any time —
- (a) assign mortgage charge sublet or otherwise dispose of to Australian Iron & Steel Proprietary Limited as of right all or any of its rights under this Agreement or under the 1952 Agreement or under the 1960 Agreement respectively or any one or more of them;

- (b) assign mortgage charge sublet or otherwise dispose of as of right to any other associated company all or any of its rights hereunder;
- (c) with the consent in writing of the Minister assign mortgage charge sublet or otherwise dispose of to any other company or person all or any of its rights under this Agreement (including its rights to or as the holder of any lease license easement grant or other title) and of the obligations of the Company hereunder; and
- (d) with the consent in writing of the Minister appoint any other company or person to exercise all or any of the powers functions and authorities which are or may be conferred on the Company hereunder;

subject however to the assignee or (as the case may be) the appointee executing in favour of the State 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 so assigned or (as the case may be) the subject of the appointment.

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this clause 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 herein and in any lease license easement grant or other title the subject of an assignment under subclause (1) of this clause PROVIDED HOWEVER that the Minister may agree to release the Company from such liability where having regard to all the circumstances of any such assignment mortgaging charging subletting disposition or appointment as mentioned in subclause (1) of this clause he considers such release will not be contrary to the interest of the State hereunder.

Variation of agreement

28. (1) The parties hereto may from time to time by mutual agreement in writing add to cancel or vary all or any of the provisions of this Agreement or of any lease license easement or right granted hereunder or pursuant hereto for the

purpose of implementing or facilitating the carrying out of such provisions or for the purpose of facilitating the carrying out of some separate part or parts of the Company's operations hereunder by any other company with which the Company may have entered into association as a separate and distinct operation or for the establishment or development of any industry making use of the minerals within the new leased areas or such of the Company's works installations services or facilities the subject of this Agreement as shall have been provided by the Company in the course of work done hereunder.

(2) Notwithstanding the provisions of subclause (1) of this clause the Minister may with the consent of the Company from time to time add to cancel or vary any right or obligation relating to works for the transport or shipment of iron ore to the extent that the addition cancellation or variation implements or facilitates the method of achieving any of the purposes of iron ore shipment or secondary processing or for an industry for additional upgrading of beneficiated ore based on ore from the new leased areas.

(3) The Company shall be entitled at any time and from time to time with the prior approval in writing of the minister to enter into an agreement with any third party for the joint construction maintenance and user or for the joint user only of any work constructed or agreed to be constructed by the Company pursuant to the terms of this Agreement or by such other party pursuant to any agreement entered into by it with the State and in any such event any amount expended in or contributed to the cost of such construction by the Company shall for the purpose of the calculation of the said sum of twenty-five million pounds (£25,000,000) agreed to be expended by the Company under Clause 13 hereof so long as the processing capacity stipulated hereunder and under the other agreement of each and every category of processed material shall not be reduced and provided such construction is part of the constructions to which the said sum of twenty-five million pounds (£25,000,000) relates be taken and accepted as an amount equal to the total amount expended (whether by the Company or the said third party or by them jointly) in the construction of such work.

(4) When any arrangement entered into by the Company with some other company or person results in that other company or person discharging all or any of the obligations undertaken by the Company under this Agreement the minister will discharge the Company from such part of its said obligations as is reasonable having regard to the extent of and period for which the other company or person actually effects the discharge of those obligations.

Representations for export licenses

29. (1) On request by the Company the State shall make representations to the Commonwealth for the grant to the Company of a license or licenses under Commonwealth law for the export of iron ore in such quantities and at such rate or rates as shall be reasonable having regard to the terms of this Agreement the capabilities of the Company and to maximum tonnages of iron ore for the time being permitted by the Commonwealth for export from the said State and in a manner and on terms not less favourable to the Company (except as to rate or quantity) than the State has given or intends to give in relation to such license or licenses to any other exporter of iron ore from the said State.

(2) If at any time the Commonwealth limits by export license the total permissible tonnage of iron ore for export from the said State then the Company will at the request of the State and within three (3) months of such request notify the State whether or not it intends to export to the limit of the tonnage permitted to it under Commonwealth licenses in respect of the financial year next following and if it does not so intend will co-operate with the State in making representation to the Commonwealth with a view to some other producer in the said State being licensed by the Commonwealth to export such of the tonnage permitted by the Commonwealth in respect of that year as the Company does not require and such other producer may require. Such procedure shall continue to be followed year by year during such time as the Commonwealth limits by export license the total permissible tonnage of iron ore for export from the said State.

Delays

30. This Agreement shall be deemed to be made subject to any delays in the performance of obligations under this Agreement and to the temporary suspension of continuing obligations hereunder which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays or any such temporary suspension as aforesaid caused by or arising from Act of God force majeure floods storms tempests washaways fire (unless caused by the actual fault or privity of the Company) act of war act of public enemies riots civil commotions

strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability (common in the iron ore export industry) to profitably sell ore or factors due to Australian or overall world economic conditions or factors which could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall use its best endeavours to minimise the effect of the said causes as soon as possible after their occurrence.

Extension of time

31. (1) Notwithstanding any provision hereof the Minister may at the request of the Company from time to time extend any period or date referred to in this Agreement for such period or to such later date as the Minister thinks fit and the extended period or later date when advised to the Company by notice from the Minister shall be deemed for all purposes hereof substituted for the period or date so extended.

(2) The State acknowledges that the dates referred to in Clause 11 hereof for the commencement and completion of the project covered by proposals referred to in Clauses 16 and 18 hereof have been agreed on the basis that each of such proposals would be determined within two (2) months of its submission. If such is not the case the Company shall be entitled to extend the dates for commencement and completion by such period as it shall demonstrate to be reasonable under the circumstances.

Arbitration

32. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Agreement or any such amendment variation or addition or as to the rights duties or liabilities of either party thereunder 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 Arbitration Act 1895.

(2) The arbitrator arbitrators or umpire (as the case may be) of any submission to arbitration hereunder is hereby empowered upon application by either party hereto to grant any interim extension of time or date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of either or both parties hereunder and an award in favour of the Company may in the name of the Minister grant any further extension of time for that purpose.

More favourable contract prohibited

33. If under arbitration pursuant to Clause 19 hereof the dispute is decided against the Company and subsequently but prior to all of the proposals under Clause 18 hereof having been agreed or determined this Agreement ceases and determines the State will not for a period of three (3) years after such determination enter into a contract with any other party for the mining shipment and transport of iron ore from the new leased areas on terms more favourable on the whole to the other party than those which would have applied to the Company hereunder if the question had been determined in favour of the Company.

Acknowledgment by State

34. The State acknowledges that the Company is entering into this Agreement after consideration of the provisions of other agreements which the State has entered into with other companies which are intending to mine and export iron ore from the said State and with which companies the Company will to a substantial extent be operating in competition and the State acknowledges the principle that unless there are special and *bona fide* circumstances warranting otherwise the State should not grant to any of the other companies rights or concessions or reduction of any obligations (including royalties and rentals) which would place such company or companies in a better competitive position unless similar rights concessions or reduction are granted to the Company.

Water from the sea

35. The Company and any associated company may without charge draw sea water from the sea for its or any of their operations under this Agreement and for this purpose may construct such works and use such portion of the sea bed as may be mutually agreed by the parties.

New processes

36. Nothing in this Agreement shall in any way prevent or limit the Company at its sole discretion from adopting for the discharge of its obligations hereunder new processes or equipment incorporating the latest technical developments from time to time available whether or not used by the Company elsewhere in its operations.

Notices

37. Any notice consent or other writing authorized 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 Civil Service of the said State acting by the direction of the Minister and forwarded by prepaid post to the Company at its registered office for the time being in the said State and by the Company if signed on its behalf by the Managing Director a Director a General Manager or a Secretary of the Company or by any person or persons authorized by the Company in that behalf or by its solicitors as notified to the State from time to time and forwarded by prepaid post to the Minister and 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.

Exemption from Stamp Duty

38. (1) The State shall exempt from any stamp duty which but for the operation of this clause would or might be chargeable on —

**Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act
1964
Schedule**

- (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 of the Company any tenement lease easement license or other right or interest;
- (c) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment made in conformity with the provisions of subclause (1) of clause 27 hereof;
- (d) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment to or in favour of the Company of any interest right obligation power function or authority which has already been the subject of an assignment sublease disposition or appointment executed pursuant to subclause (1) of clause 27 hereof;
- (e) any instrument executed by the Company for the purpose of re-organising any of its activities carried on pursuant to the 1952 Agreement or the 1960 Agreement PROVIDED THAT such re-organisation is part of an overall re-organisation of the Company's interests in the said State;

PROVIDED THAT this clause shall not apply to any instrument or other document executed or made more than seven years after the 31st day of December 1964.

(2) If prior to the date on which the Bill referred to in subclause (a) of clause 2 hereof to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) of this clause the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document to the person who paid the same.

Law of the Agreement

39. This Agreement shall be interpreted according to the law for the time being in force in the said State.

THE SCHEDULE HEREINBEFORE REFERRED TO:

WESTERN AUSTRALIA

IRON ORE (THE BROKEN HILL PROPRIETARY COMPANY
LIMITED) AGREEMENT ACT 1964

MINERAL LEASE

Lease No. Goldfield(s)
ELIZABETH THE SECOND by the Grace of God of the United Kingdom,
Australia and Her other Realms and Territories Queen, Head of the
Commonwealth, Defender of the Faith:

TO ALL TO WHOM THESE PRESENTS shall come GREETINGS: KNOW YE that WHEREAS by an Agreement made the day of November 1964 between the Honourable David Brand M.L.A. Premier and Treasurer of the State of Western Australia of the one part and The Broken Hill Proprietary Company Limited (hereinafter called "the Company" which expression will include the successors and assigns of the Company including where the context so admits the assignees of the Company under clause 27 of the said Agreement) of the other part the said State agreed to grant to the Company a mineral lease of the lands referred to in the said Agreement as "the new leased areas" AND WHEREAS the said Agreement was ratified by the Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act, 1964 which said Act (inter alia) authorized the grant of a mineral lease to the Company NOW WE in consideration of the rents and royalties reserved by and of the provisions of the said Agreement and in pursuance of the said Act DO BY THESE PRESENTS GRANT AND DEMISE unto the Company subject to the said provisions ALL THOSE pieces and parcels of land situated in the Pilbara, West Pilbara and Ashburton Goldfields particularly described and delineated on the plan in the Schedule hereto and all those mines, veins, seams, lodes and deposits of iron ore in on or under the said land

(hereinafter called “the said mine”) together with all rights, liberties, easements, advantages and appurtenances thereto belonging or appertaining to a lessee of a mineral lease under the Mining Act, 1904, including all amendments thereof for the time being in force and all regulations made thereunder for the time being in force (which Act and regulations are hereinafter referred to as “the mining Act”) or to which the Company is entitled under the said Agreement TO HOLD the said land and mine and all and singular the premises hereby demised for the full term of twenty-one years from the day of 19 with the right to renew the same from time to time for further periods each of twenty-one years as provided in but subject to the said Agreement for the purposes upon and subject to the terms covenants and conditions set out in the said Agreement and to the Mining Act (as modified by the said Agreement) YIELDING and paying therefor the rent and royalties as set out in the said Agreement. AND WE do hereby declare that this lease is subject to the observance and performance by the Company of the following covenants and conditions, that is to say: —

1. The Company shall and will use the land *bona fide* exclusively for the purposes of the said Agreement.
2. Subject to the provisions of the said Agreement the Company shall and will observe, perform, and carry out the provisions of the Mines Regulation Act, 1946, and all amendments thereof for the time being in force and the regulations for the time being in force made thereunder and subject to and also as modified by the said Agreement the Mining Act so far as the same affect or have reference to this lease.

PROVIDED THAT this lease and any renewal thereof shall not be determined or forfeited otherwise than under and in accordance with the provisions of the said Agreement.

PROVIDED FURTHER that all mineral oil on or below the surface of the demised land is reserved to Her Majesty with the right to Her Majesty or any person claiming under her or lawfully authorized in that behalf to have access to the demised land for the purpose of searching for and for the operations of obtaining mineral oil in any part of the land under the provisions of the Petroleum Act, 1936.

IN WITNESS whereof we have caused our Minister for Mines to affix his seal and set his hand hereto at Perth in our said State of Western Australia and the common seal of the Company has been affixed hereto this day of
19 .

THE SCHEDULE ABOVE REFERRED TO:

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

SIGNED SEALED AND DELIVERED
by the said THE HONOURABLE
DAVID BRAND M.L.A.
in the presence of: —

} DAVID BRAND
[L.S.]

C.W. Court,
Minister for Industrial Development

Arthur Griffith,
Minister for Mines.

SIGNED SEALED AND DELIVERED
for and on behalf of THE BROKEN
HILL PROPRIETARY COMPANY
LIMITED by its Attorney JAMES
CHARLES McNEILL
in the presence of: —

} J. C. McNEILL
[L.S.]

Donald Nairn

Notes

- ¹ This is a compilation of the *Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act 1964* and includes all amendments effected by the other Acts referred to in the following Table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act 1964</i>	103 of 1964	23 Dec 1964	23 Dec 1964

[This Act was repealed by the Statutes \(Repeals and Minor Amendments\) Act 2003 s. 7 \(No. 74 of 2003\) as at 15 Dec 2003 \(see s. 2\)](#)

N.B. *The Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act 1964* is affected by *The Broken Hill Proprietary Company Limited Agreements (Variation) Act 1980*, and *The Broken Hill Proprietary Company Limited (Export of Iron Ore) Act 1965*.