



Western Australia

Iron Ore (Wittenoom) Agreement Act 1972

Compare between:

[14 May 2004, 01-a0-04] and [28 Jun 2010, 01-b0-01]



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Western Australia

Iron Ore (Wittenoom) Agreement Act 1972

An Act to ratify an agreement made between the State of Western Australia and Hancock Prospecting Pty. Ltd. and Wright Prospecting Pty. Ltd. relating to iron ore, and for incidental and other purposes.

1. Short title

This Act may be cited as the *Iron Ore (Wittenoom) Agreement Act 1972*¹.

2. Interpretation

In this Act, unless the contrary intention appears —

Joint Venturers has the same meaning as that expression has in the Agreement;

the Agreement means the agreement a copy of which is set out in Schedule 1, and if the Agreement is varied, from time to time, in accordance with the provisions of the Agreement includes the Agreement as so varied;

the Variation Agreement means the agreement a copy of which is set out in Schedule 2.

[Section 2 amended by No. 41 of 1992 s. 4.]

3. Ratification of Agreement

The Agreement is ratified.

s. 3A

3A. Variation Agreement

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

[Section 3A inserted by No. 41 of 1992 s. 5.]

4. Entry by Joint Venturers on certain Crown lands authorised

Notwithstanding any other Act or law and without limiting the effect of section 3, the Joint Venturers shall be allowed to enter upon the Crown lands referred to in paragraph (c) of subclause (1) of clause 2 of the Agreement to the extent and for the purposes provided in that paragraph.

5. Certain statutory provisions not to apply

- (1) Section 96 of the *Public Works Act 1902* does not apply to any railway that the Joint Venturers have agreed to construct under the Agreement.
- (2) Section 277(5) of the *Mining Act 1904*² does not apply to any renewal of the rights of occupancy granted or to be granted pursuant to clause 2 of the Agreement.

6. By-laws

- (1) The Governor may upon the recommendation of the Joint Venturers make, alter and repeal by-laws for the purposes of, and in accordance with, the Agreement.
- (2) By-laws made pursuant to this section —
 - (a) shall be published in the *Government Gazette*;

- (b) take effect and have the force of law from the date they are so published or from such later date as is fixed by the by-laws;
- (c) may prescribe penalties not exceeding \$100 for breach of any of the by-laws; and
- (d) are not subject to the provisions of section 36 of the *Interpretation Act 1918*³, but the by-laws shall be laid before each House of Parliament within 6 sitting days of the House next following the publication of the by-laws in the *Government Gazette*.

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[Heading amended by No. 41 of 1992 s. 6.]

THIS AGREEMENT made the 10th day of March One thousand nine hundred and seventy-two BETWEEN THE HONOURABLE JOHN TREZISE TONKIN, M.L.A., Premier 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 first part, and HANCOCK PROSPECTING PTY. LTD. and WRIGHT PROSPECTING PTY. LTD. companies incorporated in the State of Western Australia under the provisions of the *Companies Act 1943* and each having its registered office at 251 Adelaide Terrace, Perth in the said State and carrying on business under the style or firm name of “Hancock and Wright” (hereinafter called “the Joint Venturers” in which term shall be included the Joint Venturers and each of them and their and each of their respective successors and assigns) of the other part.

WHEREAS —

- (a) The Joint Venturers intend to make investigations as to the iron ore reserves in the mining areas defined in clause 1 hereof and to carry out certain investigations relating to the mining, transport by rail and shipment of iron ore from the mining areas with a view to entering into a contract or contracts for the export or sale of iron ore produced from the mining areas.

NOW THIS AGREEMENT WITNESSETH —

Interpretation⁴

1. In this Agreement subject to the context —

“approve” “approval” “consent” or “direct” means — approve, approval, consent or direct in writing as the case may be;

“associated company” means —

- (a) any company having a paid up capital of not less than two million dollars (\$2,000,000) notified in writing by the Joint Venturers to the Minister which is incorporated in the United Kingdom the United States of America or the Commonwealth of Australia and which —

- (i) is promoted by the Joint Venturers or any of them for all or any of the purposes of this Agreement and in

which the Joint Venturers or any of them hold not less than twenty per cent (20%) of the issued ordinary share capital; or

(ii) is related within the meaning of the term subsidiary in section 6 of the *Companies Act 1961* to any company in which the Joint Venturers or any of them hold 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 Joint Venturers or any of them in their business or operations hereunder;

“B.H.P.” means The Broken Hill Proprietary Company Limited or any subsidiary thereof;

“commencement date” means the date referred to as the commencement date in clause 7(3) hereof;

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

“deposits’ townsite” means the townsite established at Wittenoom or to be established elsewhere on or near the mining areas pursuant to this Agreement;

“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;

“export date” means the earlier of the following dates namely —

- (a) the date of expiration of the period referred to in clause 9(1) of this Agreement;
- (b) the date when the Joint Venturers first export ore hereunder (other than ore shipped solely for testing purposes);
- (c) the date the Joint Venturers first deliver any ore sold to Hamersley.

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“financial year” means a year commencing on and including the 1st 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;

“f.o.b. revenue” means the price for iron ore from the mineral lease the subject of any shipment or sale which is payable by the purchaser thereof to the Joint Venturers or an associated company, less all export duties and export taxes of all kinds whatsoever and less all costs and charges properly incurred and payable by the Joint Venturers to the State or a third party from the time the ore shall be placed on ship at the Joint Venturers’ wharf to the time the same is delivered and accepted by the purchaser, including —

- (1) ocean freight;
- (2) marine insurance;
- (3) port and handling charges at the port of discharge;
- (4) costs of delivering the ore from port of discharge to the smelter;
- (5) weighing, sampling, assaying, inspection and representation costs incurred on discharge or delivery;
- (6) shipping agency charges;
- (7) import taxes by the country of the port of discharge; and
- (8) such other costs and charges as the Minister may in his discretion consider reasonable in respect of any shipment or sale.

For the purposes of this definition —

- (a) the Minister may (in respect of costs or charges as set out in Items (1) to (7) inclusive of this definition) notify the Joint

Venturers in writing that in respect of any shipment or sale, he does not regard a cost or charge as having been properly incurred and in such case the Joint Venturers may refer the matter to arbitration hereunder and unless and until such matter is resolved in favour of the Joint Venturers, such cost or charge shall not be deemed to have been properly incurred;

- (b) Notwithstanding anything contained in this definition to the contrary, a cost or charge as set out in Items (1) to (7) inclusive of this definition shall not (unless the Minister so determines in accordance with the provisions of paragraph (c) of this definition) be deemed to be properly incurred if such charge is directly or indirectly imposed upon or incurred by the Joint Venturers or an associated company pursuant to an arrangement entered into between the Joint Venturers and the State;
- (c) Costs or charges other than those set out in Items (1) to (7) inclusive of this definition and costs and charges to which paragraph (b) of this definition applies shall be deemed to be properly incurred if the Minister in his discretion so determines and in making his determination the Minister shall have regard to such matters as the parties to and the *bona fide* nature of the transaction resulting in the cost or charge;

“Hamersley” means Hamersley Holdings Limited or any subsidiary thereof;

“iron” means the product such as pig iron resulting from the reduction of iron ore or iron ore concentrates by thermal or other means whereby the iron content is increased to not less than ninety per cent (90%) and the product at some stage in the process is in a molten castable form;

“iron ore concentrates” means products (whether in pellet or other form) resulting from secondary processing but does not include metallised agglomerates;

“Joint Ventures’ wharf” means the wharf to be constructed by the Joint Venturers pursuant to this Agreement for the shipment of ore from the mineral lease or (except for the purposes of the definition of “port”) the temporary wharf for the time being approved by the

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Minister as the Joint Venturers' wharf for the purposes hereof during the period to which such approval relates;

“Land Act” means the *Land Act 1933*;

“metallised agglomerates” means either —

- (a) products resulting from reduction of iron ore or iron ore concentrates by thermal or other means whereby the iron content is increased to not less than ninety per cent (90%); or
- (b) products resulting from some equivalent or more advanced form of metallising process approved by the Minister;

“mineral lease” means the mineral lease or mineral leases referred to in clause 8(1)(a) hereof and includes any renewal thereof;

“Mining Act” means the *Mining Act 1904*;

“mining areas” mean the areas delineated and coloured red on the plan marked “A” initialled by or on behalf of the parties hereto for the purposes of identification;

“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 passage of that Act means the Minister for the time being designated in a notice from the State to the Joint Venturers and includes the successors in office of the Minister;

“month” means calendar month;

“notice” means notice in writing;

“ore” or “iron ore” means iron ore from the mineral lease;

“person” or “persons” includes bodies corporate;

“port” means the port or harbour and adjacent industrial area approved by the Minister hereunder;

“port townsite” means the townsite approved by the Minister hereunder to be expanded and developed near the port;

“Ratifying Act” means the Act to ratify this Agreement and referred to in clause 3 hereof;

“said State” means the State of Western Australia;

“secondary processing” means concentration or other beneficiation of ore other than by crushing or screening and includes thermal electrostatic magnetic and gravity processing and agglomeration pelletisation or comparable changes in the physical character of ore;

“special lease” means a special lease or license to be granted in terms of this Agreement under the Ratifying Act the Land Act or the *Jetties Act 1926* and includes any renewal thereof;

“this Agreement” “hereof” and “hereunder” includes 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) lbs. net dry weight;

“wharf” includes any jetty structure;

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;

power given under any clause of this Agreement other than clause 38 hereof to extend any period or date shall be without prejudice to the power of the Minister under the said clause 38;

marginal notes shall not affect the interpretation or construction hereof⁴;

any covenant or agreement on the part of the Joint Venturers hereunder will be deemed to be a joint and several covenant or agreement as the case may be.

Initial Obligations of the State⁴

2. (1) The State shall —
 - (a) forthwith (subject to the surrender of the rights of occupancy as referred to in sub-clause (2) of this clause) cause to be granted to the Joint Venturers and to the Joint Venturers alone rights of occupancy for this purposes of this Agreement (including the sole right to search and prospect for iron ore) over the whole of mining areas under Section 276 of the Mining Act at a rental at

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the rate of eight dollars (\$8) per square mile per annum payable quarterly in advance for the period expiring on the 31st December, 1972 and shall then and thereafter subject to the continuance of this Agreement cause to be granted to the Joint Venturers as may be necessary successive renewals of such last mentioned rights of occupancy (each renewal for a period of twelve (12) months at the same rental and on the same terms) the last of which renewals notwithstanding its currency shall expire —

- (i) on the date of application for a mineral lease to the Joint Venturers under clause 8(1)(a) hereof;
- (ii) at the expiration of one (1) month from the commencement date;
- (iii) on the determination of this Agreement pursuant to its terms; or
- (iv) on the day of the receipt by the State of a notice from the Joint Venturers to the effect that the Joint Venturers abandon and cancel this Agreement

whichever shall first happen;

- (b) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage;
- (c) to the extent reasonably necessary for the purposes of clauses 4 and 5 hereof allow the Joint Venturers to enter upon Crown lands (including land the subject of a pastoral lease) and survey possible sites for a port, the Joint Venturers' wharf, a railway, the deposits' townsite and for stockpiling and other areas required for the purposes of this Agreement; and
- (d) at the request and cost of the Joint Venturers co-operate with the Joint Venturers in the discharge of their obligations under clause 4(1)(a) hereof.

Surrender of rights of occupancy⁴

(2) The Joint Venturers shall forthwith surrender all the rights of occupancy granted to the Joint Venturers under clause 2 of the Agreement made

between the State and the Joint Venturers a copy of which is set out in the First Schedule of the *Iron Ore (Hanwright) Agreement Act 1967-1968* which were not surrendered pursuant to subclause (2) of clause 4 of the Agreement made between the State the Joint Venturers and Mount Bruce Mining a copy of which is set out in the Second Schedule of the *Iron Ore (Hanwright) Agreement Act 1967-1968*.

Ratification and Operation⁴

3. (1) Paragraph (a) of sub-clause (1) of clause 2, sub-clause (2) of clause 2, sub-clause (2) of this clause and the subsequent clauses (other than clauses 38 and 41 of this Agreement) shall not operate unless and until —

- (a) the Bill to ratify this Agreement as referred to in paragraph (b) of clause 2 hereof is passed as an Act before the 30th day of June, 1972 or such later date if any as the parties hereto may mutually agree upon;
- (b) Bills to ratify each of the agreements referred to in the First Schedule hereto are passed as Acts before the 30th day of June, 1972 or such later date if any as the parties hereto may mutually agree upon.

If the said Bills are not passed before that date or later date or dates (as the case may be) this Agreement will then cease and determine and none of the parties hereto will have any claim against any other of them with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement except as hereinafter provided in clause 20 hereof.

(2) The following provisions of the Agreement shall notwithstanding the provisions of any Act or law operate and take effect namely —

- (a) the provisions of paragraph (a) of clause 2, clause 8, the proviso to paragraph (a) of sub-clause (2) of clause 9 and clauses 14, 15, 16, 22, 23, 24, 25, 27, 28, 32, 33, 34, 37, 38, 39, 40 and 41;
- (b) subject to paragraph (a) of this sub-clause 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; and
- (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

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required for the purposes of this Agreement and may lease or otherwise dispose of the same to the Joint Venturers; and

- (d) no future Act of the said State will operate to increase the Joint Venturers' liabilities or obligations hereunder with respect to rents or royalties.

4. (1) Insofar as has not already been done to the satisfaction of the Minister the Joint Venturers will commence forthwith and carry out at their expense (with the assistance of experienced consultants where appropriate) —

- (a) a thorough geological and (as necessary) geophysical investigation of the iron ore deposits in the mining areas and the testing and sampling of such deposits;
- (b) a general reconnaissance of the various sites of proposed operations pursuant to the Agreement together with the preparation of suitable maps and drawings;
- (c) an engineering investigation of the route for a railway from the mining areas to the port and wharf installation for the export of ore;
- (d) a study of the technical and economic feasibility of the mining transporting processing and shipping of ore from the mining areas;
- (e) the planning of suitable townsites in consultation with the State but having due regard to the general development of any port townsite and (if and to the extent applicable) the deposits' townsites for use by others as well as the Joint Venturers;
- (f) the investigation in areas approved by the Minister of suitable water supplies for mining industrial and townsite purposes;
- (g) metallurgical and market research.

(2) The Joint Venturers shall collaborate with and keep the State fully informed at least quarterly commencing within one (1) quarter after the execution hereof as to the progress and results of the Joint Venturers' operations under sub-clause (1) of this clause. The Joint Venturers shall furnish the Minister with copies of all reports received by them from consultants in connection with the matters referred to under sub-clause (1) of this clause and with copies of all findings made and reports prepared by them.

(3) If the State concurrently carries out its own investigations and reconnaissances in regard to all or any of the matters mentioned in sub-clause (1) of this clause or any alternative port site the Joint Venturers 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 sub-clause.

(4) The Joint Venturers will employ or retain or ensure that experienced consultant engineers (approved by the Minister) are employed or retained to investigate report upon and make recommendations in regard to the sites reasonably required by the Joint Venturers under this Agreement for the overall development of a suitable port if necessary for the Joint Venturers' operations hereunder (including the Joint Venturers' wharf, areas for installations, stockpiling and other purposes in the port) but in such regard the Joint Venturers will require such engineers to have full regard for the general development of the port with a view to the reasonable use by others of the port and the Joint Venturers will furnish to the State copies of such report and recommendations. When submitting to the Minister detailed proposals as referred to in clause (5)(2)(a) hereof in regard to the matters mentioned in this sub-clause the Joint Venturers will so far as reasonably practicable ensure that the detailed proposals —

- (a) do not materially depart from the report and recommendation of such engineers;
- (b) provide for the best overall development of the port so far as the same relates to the Joint Venturers' activities; and
- (c) disclose any conditions of user and where alternative proposals are submitted the Joint Venturers preferences in regard thereto.

Joint Venturers to submit proposals⁴

5. (1) As soon as possible after the execution of this Agreement the Joint Venturers will submit to the Minister their proposals for the location and an outline of the proposed development of the port and the Minister will within one (1) month after such submission notify the Joint Venturers of his approval or otherwise or may submit an alternative proposal PROVIDED THAT in dealing with the Joint Venturers' proposals for the location and development of the port as provided in this sub-clause the Minister shall take into consideration the possible future requirements of others who may or could be concerned in the

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area and no priority shall be given to the Joint Venturers for the reason that their proposals were first in time.

(2) Subject to agreement being reached as to the location and development of the port then by the 30th day of June, 1973 or if the Joint Venturers satisfy the Minister that they are performing their obligations pursuant to clause 4(1) hereof and have requested an extension to the 31st day of December, 1973 then by that date or such further extended date if any as the Minister may approve or as may be determined by arbitration as hereinafter mentioned the Joint Venturers will where not already done submit subject to the provisions of this Agreement to the Minister —

- (a) to the fullest extent reasonably practicable their detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect so far as relevant to the mining areas (or so much thereof as shall be comprised within the mineral lease) by the Joint Venturers during the three (3) years next following the commencement of such mining with a view to the transport and shipment of the iron ore mined and their outline proposals with respect to such mining and production during the next following seven (7) years and including the location area layout design number materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters namely —
 - (i) the port and port development including dredging and depositing of spoil the provision of navigational aids the Joint Venturers' wharf (the plans and specifications for which wharf shall be submitted to and be subject to the approval of the State) the berth and swinging basin for the Joint Venturers' use and port installations facilities and services all of which shall permit of adaptation so as to enable the use of the Joint Venturers' wharf by vessels having an ore carrying capacity of not less than sixty thousand (60,000) tons;
 - (ii) the railway between the mining areas and the Joint Venturers' wharf and works ancillary to or connected with the railway and their proposed operation including joint user conditions fencing (if any) crossing places

- and grade separation or other form of acceptable protection at intersections with public roads;
- (iii) deposits' townsite and port townsite development and services and facilities in relation thereto;
 - (iv) housing;
 - (v) water supply;
 - (vi) generation transmission and distribution of electricity;
 - (vii) roads;
 - (viii) mining crushing screening handling transport and storage of ore;
 - (ix) air fields;
 - (x) any leases licenses or other tenures of land required from the State;
 - (xi) disposal of waste materials;
 - (xii) drainage;
 - (xiii) dust control; and
 - (xiv) any other works services or facilities proposed or desired by the Joint Venturers and

PROVIDED THAT such proposals may with the consent of the Minister and the consent of Hamersley provide for the use by the Joint Venturers of the Hamersley railway between Tom Price and Dampier and such Hamersley facilities at Dampier as Hamersley agrees to allow the Joint Venturers to use, upon reasonable terms and conditions determined by Hamersley to export six million (6,000,000) tons of iron ore during a period of four (4) years, at a rate not exceeding two million (2,000,000) tons in any one (1) year, commencing not earlier than the first day of July, 1972 and not later than the thirty-first day of December, 1972 or as may otherwise be agreed between the Joint Venturers and Hamersley and subject to final approval or determination of such proposals under clause 6 hereof the obligations of the Joint Venturers under this clause shall be modified accordingly;

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(b) (subject to the provisions of sub-clause (4) of this clause) satisfactory evidence firstly of the making or likelihood of making a suitable contract or suitable contracts for the sale by the Joint Venturers hereunder and shipment from the Joint Venturers' wharf of not less than twenty million (20,000,000) tons of iron ore over a period of ten (10) years from the export date from the mineral lease including not less than two million (2,000,000) tons in the aggregate in the first two (2) years next following the export date and not less than two million two hundred and fifty thousand (2,250,000) tons per year in each and every year of each succeeding year thereafter secondly of the availability of finance necessary for the fulfilment of the Joint Venturers' proposals under this clause and thirdly of any necessary license to the Joint Venturers from the Commonwealth to export hereunder iron ore the subject of the iron ore contracts in the quantities at the rate or rates and in the years stated in the contracts PROVIDED THAT the Joint Venturers shall not have to comply with the foregoing provisions of this paragraph relating to the export of ore if they secure a firm order for the supply of forty-five million (45,000,000) tons of ore to Hamersley (or some substitute tonnage approved by the Minister) and also secure additional orders totalling not less than twenty million (20,000,000) tons from Hamersley and/or any other company established within the Commonwealth and approved by the Minister.

(3) The Joint Venturers shall have the right to submit to the Minister their detailed proposals aforesaid in regard to a matter or matters the subject of any of the sub-paragraphs numbered (i) to (xiv) inclusive of paragraph (a) of sub-clause (2) of this clause as and when the detailed proposals become finalised by the Joint Venturers PROVIDED THAT where any such matter is the subject of a sub-paragraph which refers to more than one subject matter the detailed proposals will relate to and cover each of the matters mentioned in the sub-paragraph PROVIDED FURTHER that the first detailed proposals submitted to the Minister relate to and cover the matters mentioned in sub-paragraph (i) of paragraph (a) of sub-clause (2) of this clause and that the last two detailed proposals submitted to the Minister relate to and cover the iron ore contracts and the finance necessary for the iron ore export project.

(4) If the Joint Venturers should in writing and within the time later in this sub-clause mentioned request the Minister to grant an extension or any further

extension of time beyond the 30th day of June, 1973 or 31st day of December, 1973 as the case may be (or such later date if any previously granted or approved by the Minister) within which to make the iron ore contracts and then demonstrate to the satisfaction of the Minister that the Joint Venturers have duly complied with their other obligations hereunder have genuinely and actively but unsuccessfully endeavoured to make the iron ore contracts on a competitive basis and reasonably require an additional period for the purpose of making iron ore contracts the Minister will grant such extension as is warranted in the circumstances as follows: —

- (a) for up to six (6) months on request made within one (1) month of the 30th day of June, 1973 or 31st day of December, 1973 as the case may be;
- (b) if an extension is granted under paragraph (a) of this sub-clause then further for up to three (3) years on request made within one (1) month of the expiration of the period of extension granted under the said paragraph (a);
- (c) if an extension is granted under paragraph (b) of this sub-clause then further for up to two (2) years on request made within one (1) month of the expiration of the period of extension granted under the said paragraph (b) unless the Minister shows to the Joint Venturers satisfactory evidence that some third party is able and willing if made the lessee of the mineral lease to obtain and duly fulfil that party's obligations under contracts for the sale of iron ore from the leased land which contracts are comparable with iron ore contracts under this Agreement on terms from the State not more favourable on the whole (having regard *inter alia* to initial expenditure) to that party than those applicable to the Joint Venturer's hereunder;

subject always and in every case to the condition that the Joint Venturers duly comply (or comply to the satisfaction of the Minister) with their other obligations hereunder.

Consideration of proposals⁴

6. (1) Within two (2) months after receipt of the detailed proposals of the Joint Venturers in regard to any of the matters mentioned in clause 5(2)(a) hereof the Minister shall give to the Joint Venturers notice either of his approval of the proposals or of alterations desired thereto and in the latter case shall afford to the

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Joint Venturers opportunity to consult with and to 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 having regard to the circumstances including the overall development and use (subject to the provisions of clause 8(4)(a) and (b) hereof) by others as well as the Joint Venturers but the Minister shall in any notice to the Joint Venturers disclose his reasons for any such alterations or conditions. Within two (2) months of the receipt of the notice the Joint Venturers 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 Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain 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 20 hereof) but if the question is decided in favour of the Joint Venturers 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.

(2) Within two (2) months after receipt of evidence from the Joint Venturers with regard to the matters mentioned in clause 5(2)(b) hereof to the reasonable satisfaction of the Minister the State will give to the Joint Venturers notice either that it is satisfied with such evidence (in which case the proposals in relation to those matters will be deemed approved) or not in which case the State shall afford the Joint Venturers an opportunity to consult with and to submit further evidence to the Minister. If within thirty (30) days of receipt of such notice further evidence has not been submitted to the Minister's reasonable satisfaction and his approval obtained thereto the Joint Venturers may within a further period of thirty (30) days elect by notice to the State to refer to arbitration as hereinafter provided and will within two (2) months thereafter refer to arbitration any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the dispute is decided against the Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain 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 cease and determine (save as provided in sub-clause 4 of clause 7 and clause 20 hereof) but if the question is decided in favour of the Joint Venturers the decision will take effect as a notice by the Minister that he is so satisfied with and has approved the matter or matters the subject of the arbitration.

(3) The Joint Venturers shall take no steps whatsoever to implement all or any of their proposals submitted pursuant to clause 5 hereof, unless and until the same have been approved by the Minister.

(4) Notwithstanding anything contained in this Agreement the State's determination in respect of the Joint Venturers' proposals relating to the location of the port and the proposals relating to the development of the port (insofar as such development proposals concern the development of the port for use by or in conjunction with others) and the location of the port townsite shall be final and no such determination shall be referred to arbitration by the Joint Venturers.

Extension of time⁴

7. (1) 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 Joint Venturers may in the name of the Minister grant any further extension of time for that purpose.

(2) Notwithstanding that under clause 6 hereof any detailed proposals of the Joint Venturers are approved by the State or the Minister or determined by arbitration award unless each and every such proposal and matter is so approved or determined by the 31st day of August, 1973 or by such extended date if any as the Joint Venturers shall be entitled to or shall be granted pursuant to the provisions hereof then at any time after the said 31st day of August, 1973 or if any extension or extensions should be granted under clause 5(4) hereof or any other provision of this Agreement then on or after the expiration of the last of such extensions the Minister may give to the Joint Venturers twelve (12) months notice of intention to determine this Agreement and unless before the expiration of the said twelve (12) months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of sub-clause (4) of this clause and clause 20 hereof.

Commencement date⁴

(3) Subject to the approval by the Minister or determination by arbitration as herein provided of each and every of the detailed proposals and matters referred to in clause 5(2) hereof the date upon which the last of those proposals of the Joint Venturers shall have been so approved or determined shall be the commencement date for the purposes of this Agreement.

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(4) If under any arbitration under clause 6 hereof the dispute is decided against the Joint Venturers and subsequently but before the commencement date 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 transport and shipment of iron ore from the mining areas on terms more favourable on the whole to the other party than those which would have applied to the Joint Venturers hereunder if the question had been determined in favour of the Joint Venturers.

Further obligations of State⁴

8. (1) As soon as conveniently may be after the commencement date the State shall —

Mineral lease after commencement date⁴

- (a) after application is made by the Joint Venturers for a mineral lease of any part or parts (not exceeding in total area one hundred (100) square miles and in the shape of a rectangular parallelogram or rectangular parallelograms or as near thereto as is practicable) of the mining areas in conformity with the Joint Venturers' detailed proposals under clause 5(2)(a) hereof as finally approved or determined cause any necessary survey to be made of the land so applied for (the cost of which survey to the State will be recouped or repaid to the State by the Joint Venturers on demand after completion of the survey) and shall cause to be granted to the Joint Venturers a mineral lease or mineral leases of the land so applied for (notwithstanding the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed) for iron ore in the form of the Schedule hereto for a term which subject to the payment of rents and royalties hereinafter mentioned and to the performance and observance by the Joint Venturers of their obligations under the mineral lease or mineral leases and otherwise under this Agreement shall be for a period of twenty-one (21) years commencing from the commencement date with rights to two (2) successive renewals of twenty-one (21) years upon the same terms and conditions (but without right to further renewal) but subject to earlier determination upon the cessation or determination of this Agreement PROVIDED HOWEVER that the Joint Venturers

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 reasonable size and shape) of the mineral lease or mineral leases PROVIDED FURTHER that on or before the expiration of the term of the lease or any renewal thereof the Joint Venturers may confer with the State with a view to negotiating a further extension or extensions of the term of the lease on such conditions as may be mutually agreed but the provisions of clause 39 hereof shall not apply to this proviso. The Joint Venturers shall in any event be entitled to continue their operations beyond the expiration of the term of the lease or any renewal thereof for a period sufficient to enable the Joint Venturers to fulfil any outstanding contracts approved in writing by the State for the sale of iron ore;

- (b) in accordance with the Joint Venturers' proposals as finally approved or determined under clause 6 hereof and on written application by the Joint Venturers grant to the Joint Venturers a lease or leases under the Mining Act or if mutually agreed a lease or leases under the Land Act (notwithstanding any of the provisions of those Acts) of such area of land for the Joint Venturers' railway as the Joint Venturers shall require and the Minister may approve at a peppercorn rental and for such term or period and on such terms and conditions (including renewal rights) as shall be reasonable having regard to the requirements of the Joint Venturers hereunder and to the provisions of this Agreement. The Mining Act shall be deemed to be so amended varied and modified as to enable such lease or leases to be granted;
- (c) in accordance with the Joint Venturers' proposals as finally approved or determined under clause 6 hereof and to the extent that such proposals require the State to accept obligations —

Lands⁴

- (i) grant to the Joint Venturers 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) shall be reasonable having regard to the requirements of the Joint Venturers hereunder and to the overall development of the port and

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access to and use by others of lands the subject of any grant to the Joint Venturers and of services and facilities provided by the Joint Venturers at peppercorn rental — special leases of Crown lands within the port area the townsites and the railway; and 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 sub-clause (2) of this clause provided (as the case may require) as the Joint Venturers reasonably require for their works and operations hereunder including the construction or provision of the railway the Joint Venturers' wharf roads airfields water supplies and stone and soil for construction purposes; and

Services and facilities⁴

- (ii) provide any services or facilities (including any expanded services or facilities which from time to time are considered to be reasonably necessary by the Minister) subject to the Joint Venturers bearing and paying the capital cost involved if reasonably attributable to or resulting from the Joint Venturers' project and operations hereunder and reasonable charges 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 PROVIDED THAT from and after the fifteenth anniversary of the export date or the twentieth anniversary of the date hereof whichever shall first occur (provided that the said twentieth anniversary shall be extended one (1) year for each year this Agreement has been continued in force and effect under clause 5(4) hereof) the Joint Venturers will in addition to the rentals already referred to in this paragraph pay to the State during the currency of this Agreement after such anniversary as aforesaid a rental (which if the Joint Venturers so request shall be allocated in respect of such one or more of the

special leases or other leases granted to the Joint Venturers hereunder and remaining current) equal to twenty-five (25) cents per ton on all ore in respect of which royalty is payable under clause 9(2)(h) hereof in any financial year such additional rental to be paid within three (3) months after shipment sale or use as the case may be of the ore SO NEVERTHELESS that the additional rental to be paid under this proviso shall be not less than three hundred thousand dollars (\$300,000) in respect of any such year and the Joint Venturers will within three (3) months after expiration of that year pay to the State as further rental the difference between three hundred thousand dollars (\$300,000) and the additional rental actually paid in respect of that year but any amount so paid in respect of any financial year in excess of the rental payable for that year at the rate of twenty-five (25) cents per ton as aforesaid shall be offset by the Joint Venturers against any amount payable by them to the State above the minimum amounts payable to the State under this paragraph in respect of the two (2) financial years immediately following the financial year in respect of which the said minimum sum was paid; and

Other rights⁴

- (d) on application by the Joint Venturers cause to be granted to them such machinery and tailings leases (including leases for the dumping of overburden) and such other leases licenses reserves and tenements under the Mining Act or under the provisions of the Land Act modified as in sub-clause (2) of this clause provided as the Joint Venturers may reasonably require and request for their purposes under this Agreement on or near the mineral lease.

(2) For the purposes of sub-paragraph (i) of paragraph (c) and paragraph (d) of sub-clause (1) of this clause section 81D of the *Transfer of Land Act 1893* shall not apply and 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 leased;

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- (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 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 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 for the terms or periods and upon the terms and conditions and in the forms referred to in the Act and upon application by the Joint Venturers in forms consistent as aforesaid in lieu of or in the forms referred to in the Act.

(3) The provisions of sub-clause (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 Joint Venturers that the State —

Non-interference with Joint Venturers' rights⁴

- (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 by which any person other than the Joint Venturers or an associated 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 1967*) within the mineral lease unless the Minister reasonably determines that it is not likely to unduly prejudice or to interfere with the operations of the Joint Venturers hereunder assuming the taking by the Joint Venturers of all reasonable steps to avoid the interference;

No resumption⁴

- (b) subject to the performance by the Joint Venturers of their obligations under this Agreement shall not during the currency hereof without the consent of the Joint Venturers 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 Joint Venturers 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 Joint Venturers 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 Joint Venturers' operations hereunder;

Labour requirements⁴

- (c) shall if so requested by the Joint Venturers and so far as its powers and administrative arrangements permit use reasonable endeavours to assist the Joint Venturers 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;

No discriminatory rates⁴

- (d) except as provided in this Agreement shall not impose nor permit nor authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Joint Venturers in the conduct of the Joint Venturers' 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 Joint Venturers of full enjoyment of the rights granted and intended to be granted under this Agreement;

Rights to other Minerals⁴

- (e) shall where and to the extent reasonably practicable on application by the Joint Venturers from time to time grant or assist in obtaining the grant to the Joint Venturers of prospecting rights and mining leases with respect to limestone dolomite and

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other minerals reasonably required by the Joint Venturers for their purposes under this Agreement; and

Consents to improvements on leases⁴

- (f) shall as and when required by the Joint Venturers (but without prejudice to the foregoing provisions of this Agreement relating to the detailed proposals and matters referred to in clause 5(2) hereof) consent in writing where and to the extent that the Minister considers to be reasonably justified to the Joint Venturers making improvements for the purposes of this Agreement on the land comprised in any lease granted by the State to the Joint Venturers pursuant to this Agreement PROVIDED THAT the Joint Venturers shall also obtain any other consents legally required in relation to such improvements.

(5) The Joint Venturers shall not have any tenant rights in improvements made by the Joint Venturers on the land comprised in any lease granted by the State to the Joint Venturers pursuant to this Agreement in any case where pursuant to clause 19 hereof such improvements will remain or become the absolute property of the State.

(6) Notwithstanding the provisions of section 82 of the Mining Act and of regulations 192 and 193 made thereunder and of section 81D of the *Transfer of Land Act 1933* in so far as the same or any of them may apply —

- (a) no mortgage or charge in a form commonly known as a floating charge made or given pursuant to clause 31 hereof over any lease, license, reserve or tenement granted hereunder or pursuant hereto by the Joint Venturers or any assignee or appointee who has executed and is for the time being bound by deed of covenant made pursuant to clause 31 hereof;
- (b) no transfer or assignment made or given at any time in exercise of any power of sale contained in any such mortgage or charge;

shall require any approval or consent (other than such consent as may be necessary under clause 31 hereof) and no such mortgage or charge shall be rendered ineffectual as an equitable charge by the absence of any approval or consent (otherwise than as required by clause 31 hereof) or because the same is not registered under the provisions of the Mining Act.

Obligations of the Joint Venturers to construct⁴

9. (1) The Joint Venturers shall within a period of three (3) years next following the commencement date at a total cost (inclusive of the cost of any rail extensions between the mining areas and the port as may be constructed at any time but subject to any reduction of costs resulting from the application of the proviso to clause 5(2)(a) hereof) of not less than fifty million dollars (\$50,000,000) construct (and shall actually commence construction within the first three (3) months next following the commencement date and shall progressively continue the construction in accordance with the reasonable requirements of the Minister having regard to the obligation of the Joint Venturers to complete the construction within the period specified in this sub-clause) install provide and do all things necessary to enable them to carry out their proposals under clause 5(2) hereof as approved by the Minister but subject to any variation approved pursuant to clause 33 hereof and to enable them to mine ore from the mineral lease to transport the same by rail to the Joint Venturers' wharf and to commence shipment therefrom in commercial quantities in accordance with their obligations under paragraph (b) of sub-clause (2) of clause 5 hereof and without lessening the generality of this provision the Joint Venturers shall within the aforesaid period of three (3) years (and in accordance with their approved proposals) —

On mining areas⁴

- (a) except where already provided to the Minister's reasonable satisfaction construct install and provide upon the mineral lease or in the vicinity thereof 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 Joint Venturers to meet and discharge their obligations hereunder and under the iron ore contracts and to mine handle load and deal with not less than three thousand (3,000) tons of iron ore per diem such capacity to be built up progressively to not less than ten thousand (10,000) tons of iron ore per diem within three (3) years next following the export date;

To commence exports⁴

- (b) actually commence to mine transport by rail and ship from the Joint Venturers' wharf iron ore from the mineral lease so that

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the average annual rate during the first two (2) years shall not be less than one million (1,000,000) tons;

To construct railway⁴

- (c) subject to the State having assured to the Joint Venturers 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 under Clause 6 hereof (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 inches (4 ft. 8½ ins.) gauge railway (including *inter alia* any necessary deviations, loops, spurs, sidings, crossings, points, bridges, signalling, switches and other works and appurtenances) from the mineral lease to the Joint Venturers' wharf and shall provide for crossing places grade separation (where appropriate) or other protective devices including flashing lights and boom gates at major road crossings or intersections with existing railways and operate such railway with sufficient and adequate locomotive freight cars and other railway stock and equipment to haul at least an average of one million (1,000,000) tons of iron ore per annum for the first two (2) years and thereafter at least three million (3,000,000) tons per annum to the Joint Venturers' wharf or as required for the purposes of this Agreement.

- (2) Throughout the continuance of this Agreement the Joint Venturers shall —

Operation of railway⁴

- (a) operate their railway in a safe and proper manner and where and to the extent that they can do so without unduly prejudicing or interfering with their operations hereunder carry freight and transport the passengers 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 pursuant to this Agreement and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the

cost of the railway to the Joint Venturers) PROVIDED THAT in relation to their use of the said railway the Joint Venturers shall not be deemed to be a common carrier at common law or otherwise;

Compliance with laws⁴

- (b) in the construction operation and maintenance and use of any work installation plant machinery equipment service or facility provided or controlled by the Joint Venturers comply with and observe the provisions hereof and subject thereto the laws for the time being in force in the said State;

Maintenance⁴

- (c) 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 the Joint Venturers' wharf roads (other than the public roads referred to in clause 13 hereof) dredging and water and power supplies for the time being the subject of this Agreement;

Shipment of and price for ore⁴

- (d) subject to the provisions of this Agreement ship from the Joint Venturers' wharf all ore mined from the mineral lease and sold or supplied to any other party and use their best endeavours to obtain therefor the best price possible having regard to market conditions from time to time prevailing and will not sell any direct shipping ore as fine ore or fines PROVIDED THAT the provisions of this paragraph shall not apply to the sale of iron ore to Hamersley but limited however to a quantity not exceeding in all forty-five million (45,000,000) tons;

Access through mining areas⁴

- (e) allow the State and third parties to have access (with or without stock vehicles and rolling stock) over the mineral lease (by separate route road or railway) PROVIDED THAT such access shall not unduly prejudice or interfere with the Joint Venturers' operations hereunder;

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Protection for inhabitants⁴

- (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 pursuant to this Agreement or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Joint Venturers) allow the inhabitants for the time being of the deposits' townsite being employees licensees or agents of the Joint Venturers or persons engaged in providing a legitimate and normal service to or for the Joint Venturers or their employees licensees or agents to make use of the water power recreational health and other services or facilities provided or controlled by the Joint Venturers;

Use of local labour and materials⁴

- (g) so far as reasonably and economically practicable use labour available within the said State and give preference to *bona fide* Western Australian manufacturers and contractors in the placement of orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere. In calling tenders and/or letting contracts for works materials plant equipment and supplies required by them the Joint Venturers will so call tenders quotations or by other methods of procurement make provision that *bona fide* Western Australian manufacturers and contractors are given reasonable opportunity to tender quote or otherwise be properly considered for such works materials plant equipment and supplies;

Royalties⁴

- (h) pay to the State royalty on all ore from the mineral lease shipped or sold or used (other than ore shipped solely for testing purposes) as follows —
- (i) on direct shipping ore and on fine ore and fines where such fine ore or fines are not sold or shipped separately as such (not being locally used direct shipping ore fine ore or fines) at the rate of seven and one-half per centum (7½%) of the f.o.b. revenue (computed at the rate of

exchange prevailing on date of receipt by the Joint Venturers of the purchase price in respect of iron ore shipped or sold hereunder) PROVIDED NEVERTHELESS that such royalty shall not be less than sixty (60) cents per ton (subject to sub-paragraph (vi) of this paragraph) in respect of iron ore the subject of any shipment or sale;

- (ii) on fine ore sold or shipped separately as such (not being locally used fine ore) at the rate of three and three-quarters per centum ($3\frac{3}{4}\%$) of the f.o.b. revenue (computed as aforesaid) PROVIDED NEVERTHELESS that such royalty shall not be less than thirty (30) cents per ton (subject to sub-paragraph (vii) of this paragraph) in respect of iron ore the subject of any shipment or sale;
- (iii) on fines sold or shipped separately as such (not being locally used fines) at the rate of fifteen (15) cents per ton;
- (iv) on all other iron ore (not being locally used iron ore) at the rate of seven and one-half per centum ($7\frac{1}{2}\%$) of the f.o.b. revenue (computed as aforesaid) without any minimum royalty;
- (v) on all locally used iron ore at the rate of fifteen (15) cents per ton;
- (vi) if the amount ascertained by multiplying the total tonnage of ore shipped or sold and which is liable to royalty under sub-paragraph (i) of this paragraph in any financial year by sixty (60) cents is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that sub-paragraph then that proviso shall not apply in respect of that ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made accordingly;
- (vii) if the amount ascertained by multiplying the total tonnage of fine ore shipped or sold separately as such and which is liable to royalty under sub-paragraph (ii) of this paragraph in any financial year by thirty (30) cents is less

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than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that sub-paragraph then that proviso shall not apply in respect of fine ore shipped or sold separately as such in that year and at the expiration of that year any necessary adjustments shall be made accordingly;

- (viii) on iron ore sold to Hamersley (none of which shall be deemed to be locally used iron ore) at the rate of seven and one-half per centum (7½%) of a f.o.b. revenue to be agreed. The f.o.b. revenue to be established shall unless the Joint Venturers otherwise satisfy the Minister be not less than the average f.o.b. revenue used for royalty calculation in respect of all other exports of comparable ore from the Pilbara region at that time PROVIDED NEVERTHELESS that such royalty shall not be less than sixty (60) cents per ton and PROVIDED FURTHER that the provisions of clause 39 of this Agreement shall not apply in respect of this sub-paragraph AND PROVIDED FURTHER that Hamersley shall not be required to pay any further royalties in respect of iron ore sold to it by the Joint Venturers;
- (ix) the royalty at the rate of fifteen (15) cents per ton referred to in sub-paragraph (iii) of this paragraph and the royalty on locally used iron ore and the royalty of sixty (60) cents per ton referred to in sub-paragraph (viii) of this paragraph 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 in accordance with any variation in the average of the basic prices of foundry pig iron c.i.f. Australian capital city ports as announced by B.H.P. from time to time during the calendar year immediately preceding the date at which the adjustment is required to be made as compared with such average for the calendar year, 1963;

For the purposes of this paragraph “locally used iron ore” means —

- (i) iron ore used by the Joint Venturers or an associated company within the said State for the production of

pellets or for secondary processing or in a plant for the production of metallised agglomerates iron or steel; and

- (ii) iron ore used by any other person or company north of the twenty-sixth parallel of latitude in the said State for the production of pellets or for secondary processing or in a plant for the production of metallised agglomerates iron or steel;

Payment of Royalties⁴

- (i) 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 ore from the Joint Venturers' wharf furnish to the Minister a return showing the quantity of all ore the subject of royalty hereunder and shipped sold or used (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 ore used and in respect of all 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 Joint Venturers to the purchaser (which invoices the Joint Venturers shall render without delay simultaneously furnishing copies thereof to the Minister) of such 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;

Rent for mineral lease⁴

- (j) by way of rent for the mineral lease pay to the State annually in advance a sum equal to thirty-five (35) cents per acre of the area for the time being the subject of the mineral lease commencing on and accruing from the commencement date;

Other rentals⁴

- (k) pay to the State the rental referred to in the proviso to clause 8(1)(c) hereof if and when such rental shall become payable;

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Inspection⁴

- (l) permit the Minister or his nominee to inspect at all reasonable times the books of account and records of the Joint Venturers relative to any shipment sale or use of ore hereunder, including sale contracts and to take copies or extracts therefrom and for the purposes of determining the royalty payable hereunder or the f.o.b. revenue payable in respect of any shipment of ore hereunder the Joint Venturers 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 ore which may affect the amount of royalty payable hereunder; and

Export to places outside the Commonwealth⁴

- (m) ensure that unless with the prior written approval of the Minister to do otherwise all ore shipped pursuant to this Agreement will be off-loaded at a place outside the Commonwealth and if they fail so to ensure the Joint Venturers will subject to the provisions of this paragraph be in default hereunder. Where any such shipment is off-loaded within the Commonwealth without such prior written approval the Joint Venturers shall forthwith on becoming aware thereof give to the State notice of the fact and pay to the State in respect of the ore the subject of the shipment such further and additional rental calculated at a rate not exceeding one dollar (\$1) per ton of the ore as the Minister shall demand without prejudice however to any other rights and remedies of the State hereunder arising from the breach by the Joint Venturers of the provisions hereof. If ore is shipped and such ore is off-loaded in the Commonwealth the Joint Venturers will not be deemed to be in default hereunder if they take appropriate action to prevent a recurrence of such an off-loading PROVIDED FURTHER that the foregoing provisions of this paragraph shall not apply —
 - (i) in any case (including any unforeseeable diversion of the vessel for necessary repairs or arising from force majeure or otherwise) where the Joint Venturers could not

reasonably have been expected to take steps to prevent that particular off-loading; and

- (ii) where such ore as aforesaid is processed into metallised agglomerates iron or steel at a place within the Commonwealth;

Protection of National Park Reserve⁴

- (n) so conduct their operations hereunder as to meet the reasonable requirements of the State in preserving and protecting National Park Reserve No. 30082;

Port townsite air field⁴

- (o) pay to the State or local authority concerned a sum or sums towards the cost of expanding the capacity of any existing air field near the port townsite to cater for the additional air traffic resulting from the implementation of the Joint Venturers' proposals hereunder;

Other works and facilities⁴

- (p) provide any other works service facilities buildings or equipment necessary for carrying out the Joint Venturers' obligations hereunder.

By-laws⁴

(3) The Governor in Executive Council may upon recommendation by the Joint Venturers make alter and repeal by-laws for the purpose of enabling the Joint Venturers to fulfil the obligations under paragraph (a) of sub-clause (1) of this clause and under clause 11 hereof and (unless and until the port townsite is declared a townsite pursuant to section 10 of the Land Act) under paragraph (f) of sub-clause (1) of this clause and under clauses 14 and 15 hereof upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Joint Venturers) 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 Joint Venturers 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.

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Port and Joint Venturers' Wharf⁴

10. (1) The Joint Venturers shall develop the port, construct the Joint Venturers' wharf and carry out all necessary dredging of approach channels, swinging basin and berth at the Joint Venturers' wharf and provide all necessary buoys, beacons, markers, navigational aids, lighting equipment and services and facilities in accordance with the Joint Venturers' relevant approved proposal hereunder.

(2) Notwithstanding the provisions of sub-clause (1) of this clause, the parties recognise that it may be advantageous for the State to provide all or any of the works thereunder mentioned and in such case the parties hereto shall together with other users and potential users of the port confer as to the manner in and the conditions upon which the State should provide such works to the mutual advantage of all. The Joint Venturers shall pay to the State a sum or sums to be agreed (not exceeding the amount that would have been payable had the Joint Venturers carried out the said works) towards the cost of the said works provided by the State.

Use of Wharf and Facilities⁴

11. (1) The Joint Venturers shall 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 sub-clause (3) of clause 9 hereof and subject thereto, or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Joint Venturers) allow the State and third parties to use the Joint Venturers' wharf and port installations wharf machinery and equipment and wharf and port services and port facilities constructed or provided by it PROVIDED THAT such use shall not unduly prejudice or interfere with the Joint Venturers' operations hereunder and that such use shall be subject to the prior approval of the Joint Venturers.

(2) Subject to the provisions of clause 22 hereof nothing in this Agreement shall be construed to limit the application of the *Shipping and Pilotage Act 1967*.

Harbour Channel approach provisions⁴

12. (a) The parties hereto acknowledge that some party other than the Joint Venturers (which party is hereinafter in this clause 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 mining areas and that it may be further agreed or determined that such export will be from the port. 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 port shall be dredged to serve the interests of the Joint Venturers and of the other party as well as of other users of the port 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 Joint Venturers 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 Joint Venturers 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 Joint Venturers and the other party should incur the whole or the greater capital outlay (as the case may be) for the dredging or should be responsible for the operation and maintenance of the channel approach (insofar as it is or is intended to be used by the other of them) should in the event of such use occurring within a period of seven (7) years from the commencement date 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 the *Arbitration Act 1895* 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 paragraph (b) of this clause the other party is the party to be re-imbursed then the Joint Venturers hereby agree 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 clause the Joint Venturers are the party to be re-imbursed then during a period not

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exceeding seven (7) years from the commencement date the State agrees not to permit vessels of the other party of which notice is given to the State by the Joint Venturers to enter the port 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 Joint Venturers (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 or to be incurred by the Joint Venturers as aforesaid or for the payment of a fair and reasonable charge;

- (e) the State acknowledges and agrees with the Joint Venturers that in the event of the Joint Venturers incurring the whole or the greater capital outlay or operation and maintenance costs as aforesaid then vessels (other than vessels employed for the Joint Venturers' or other party's purposes) using the channel approach for the export from the port of more than half a million tons a year of bulk commodities (or such lesser tonnages as the Minister may direct from time to time either generally or in any particular case) should during a period not exceeding seven (7) years from the commencement date be required to pay to the Joint Venturers (or the State should be required to pay to the Joint Venturers 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 port the rate of export and the capital outlay and operation and maintenance costs incurred and/or to be incurred by the Joint Venturers;
- (f) the Joint Venturers acknowledge and hereby agree with the State that the Joint Venturers 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 clause 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 Joint Venturers also agree with the State that notwithstanding any lease granted to them 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 Joint Venturers deepen or widen the channel approach for which purpose the Joint Venturers 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 Joint Venturers will be entitled to a reasonable time within which to complete any firm contract for the dredging of the channel approach actually made by them (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.

Roads⁴

13. (1) The Joint Venturers shall subject to the State having assured to the Joint Venturers all necessary rights in or over Crown lands or reserves available for the purpose at their own cost and expense and in accordance with their proposals as approved hereunder construct such new roads as the Joint Venturers may reasonably require for the purposes of this Agreement, such roads to be of such widths, of such materials, with such gates and warning devices, crossings (level or grade separated where warranted) and pass-overs for cattle and for sheep and along such routes as the parties hereto shall agree after consideration of the requirements of the respective shire councils through whose districts any such roads may pass and after prior consultation with the Minister. Except to the extent that the Joint Venturers' relevant proposal as finally approved or determined under clause 6 hereof otherwise provides, the Joint Venturers shall allow the public to use free of charge any roads constructed or up-graded under this sub-clause PROVIDED THAT such use shall not unduly prejudice or interfere with the Joint Venturers' operations hereunder.

(2) The Joint Venturers shall have the right to use any public roads that may from time to time exist in the area of their operations under this Agreement both prior to the commencement date and also in the course of the Joint Venturers' operations hereunder. If the exercise by the Joint Venturers of such right results in or is likely to result in intensive use of any public road whereby excessive damage or deterioration is caused thereto or whereby that road becomes inadequate for use by the Joint Venturers and the public, the Joint Venturers will upon demand (except where and to the extent that the Commissioner of Main Roads or the local or other authority agrees to bear the whole or part of such cost) pay to the State or the local authority concerned or other authority having control of such road the cost of preventing or making good such damage or deterioration or of up-grading the road to a standard commensurate with the increased traffic.

(3) If required by the Joint Venturers the State shall at the Joint Venturers' cost and expense (except where and to the extent that the

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Commissioner of Main Roads agrees to bear the whole or any part of the cost) widen up-grade or realign any public road existing from time to time which the Joint Venturers desire to use for their operations hereunder over which the State has control subject to the prior approval of the Commissioner of Main Roads to the proposed work.

Water⁴

14. (1) The Joint Venturers shall give to the State not less than two (2) years notice of their estimated water consumption at the port and port townsite (which amounts or such other amounts as shall be agreed between the parties hereto are hereinafter called "the Joint Venturers' coastal water requirements").

(2) Upon receipt of such notice the State shall in collaboration with the Joint Venturers and in accordance with a mutually agreed programme and budget at the expense of the Joint Venturers search for suitable subterranean water sources in areas agreed to by the parties hereto.

(3) In the event that the search referred to in sub-clause (2) of this clause identifies and proves subterranean water sources which are mutually agreed to be adequate to supply the Joint Venturers' coastal water requirements the State shall, in accordance with a mutually agreed programme and budget, construct or arrange to have constructed at the Joint Venturers' expense all bores, valves, pipelines, meters, tanks, equipment and appurtenances necessary to supply the Joint Venturers' coastal water requirements.

(4) If, within six months of the commencement of the respective negotiations between the parties pursuant to sub-clause (2) and sub-clause (3) of this clause towards agreeing a programme and budget, the parties have not reached agreement, then the latest proposal of the State with respect to such programme and budget shall be deemed to be mutually agreed for the purposes of this clause PROVIDED such agreement shall not prejudice the Joint Venturers' right to require the State to undertake supplementary water studies in the areas agreed pursuant to sub-clause (2) of this clause, as the Joint Venturers may require and at the Joint Venturers' expense.

(5) The State may in its discretion construct the water supply facilities or any related works or appurtenances mentioned in sub-clause (3) of this clause to achieve a capacity greater than that needed to meet the Joint Venturers' coastal water requirements and in that event the Joint Venturers shall pay to the State a sum or sums to be agreed between the parties hereto as being the Joint

Venturers' fair share of the cost of providing the said facilities works or appurtenances.

(6) The State shall supply to the Joint Venturers from sources developed by the State pursuant to sub-clauses (3) and (5) of this clause water up to an amount and at a rate not less than that set forth in the notice given pursuant to sub-clause (1) of this clause PROVIDED HOWEVER that should such sources prove hydrologically inadequate to meet the Joint Venturers' coastal water requirements the State may limit the amount of water which may be taken from such sources at any one time or from time to time to the maximum which such sources are hydrologically capable of meeting as aforesaid.

(7) The Joint Venturers shall give to the State not less than six (6) months notice in respect of their requirements of water both at the townsite and within the mineral lease to implement their obligations hereunder (which amounts or such other amounts as shall be agreed between the parties hereto are hereinafter called "the Joint Venturers' inland water requirements").

(8) The Joint Venturers shall in collaboration with the State search for and make investigations to establish the availability of suitable subterranean water sources within the mineral lease or at other locations approved by the State and will employ and retain experienced ground water consultants where appropriate and will furnish the Minister with copies of the consultants' reports or alternatively if so requested by the Joint Venturers the State shall carry out the said search and investigations at the Joint Venturers' expense.

(9) The Joint Venturers shall provide and construct at their expense to standards and in accordance with designs approved by the State in accordance with their relevant proposals all necessary bores valves pipelines meters tanks equipment and appurtenances necessary to draw transport use and dispose of water drawn from sources licensed to the Joint Venturers.

(10) The Joint Venturers shall make application to the State for a license to draw water up to an amount and at a rate not less than that set forth in the notice given pursuant to sub-clause (7) hereof from suitable subterranean water sources identified pursuant to the search and investigation referred to in sub-clause (8) of this clause and as are agreed to be adequate and the State shall grant to the Joint Venturers such license PROVIDED HOWEVER that should such sources prove hydrologically inadequate to meet the Joint Venturers' inland water requirements, the State may limit the amount of water which may be taken from such sources at any one time or from time to time to the maximum which such sources are hydrologically capable of meeting as aforesaid.

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(11) If during the currency of a license granted under the provisions of this clause the Minister is of the opinion that it is desirable that the sources of water licensed to the Joint Venturers and the water supply facilities established by the Joint Venturers pursuant to sub-clause (9) of this clause be made available to the State for such purposes, *inter alia*, as water conservation, water management, utilisation of unused hydrological capacity, supply of water to third parties where such supply will not unduly prejudice the Joint Venturers' operations hereunder and establishment of a regional water supply system incorporating the area of operations of the Joint Venturers, the Minister shall, after first affording the Joint Venturers an opportunity to consult with the Minister, so notify the Joint Venturers and the Joint Venturers shall after the expiration of six (6) months from the date of such notice relinquish to the State the ownership control and operation of the said water supply facilities. The State shall thereupon assume the ownership control and operation of the said water supply facilities and shall revoke all relevant licenses previously issued to the Joint Venturers for the purpose of enabling them to draw subterranean water. The State shall not be liable to pay the Joint Venturers compensation in respect of the water supply facilities relinquished or the licenses revoked. Immediately after the revocation of such licenses the State shall, subject only to the continued hydrological availability of water from such sources previously licensed to the Joint Venturers, commence and thereafter continue to supply water to an amount and at a rate required by the Joint Venturers being the amount and rate to which the Joint Venturers were entitled under such revoked license and the proviso to sub-clause (10) of this clause shall in like manner apply to this sub-clause.

(12) The State may in its discretion develop any district or regional water supply and for the purposes thereof construct any works of the kind mentioned in sub-clause (9) of this clause to a greater capacity than that required to supply the Joint Venturers' inland water requirements but in that event the cost of the works as so enlarged shall be shared by the parties hereto in such manner as may be agreed to be fair in all the circumstances.

(13) The Joint Venturers shall design and construct their plant and facilities for the mining handling processing and transportation of ore so that as far as practicable non potable water may be used therein.

(14) The Joint Venturers shall pay to the State for water supplied by it pursuant to this clause a fair price to be negotiated between the parties hereto which shall be equal to the actual costs incurred by the State in supplying water to the Joint Venturers including operating maintenance and overhead costs and a provision for replacement of the water supply facilities. Notwithstanding the

foregoing in respect of water supplied by the State to the Joint Venturers for domestic purposes the Joint Venturers shall pay to the State therefor charges as levied from time to time pursuant to the provisions of the *Country Areas Water Supply Act 1947*.

(15) The State may grant to a third party rights to draw water from sources from which the Joint Venturers draw water always provided however that —

- (a) where the Joint Venturers have paid (in whole or in part) any moneys in respect of the investigation proving development and utilisation of such sources as provided pursuant to this clause, the State shall require as a condition of such grant that where such third party is or will be a substantial user of water that party shall re-imburse to the Joint Venturers a proportion of such moneys as the Minister determines is fair and reasonable having regard *inter alia* to the proportion which that party's actual or potential requirements for water bears to the total capacity of such sources; and
- (b) where the Joint Venturers draw from a source developed wholly at their expense pursuant to this clause, the State shall ensure that it is a condition of such grant to third parties that in the event that the capacity of the source is reduced, such reduction shall be first applied to such third parties and thereafter if further reduction is necessary the State's and the Joint Venturer's requirements shall be reduced in such proportion as may be agreed.

(16) Without prejudice to the provisions of sub-clause (10) of this clause the Joint Venturers shall collaborate with the State in an investigation of surface water, catchments and storage dams should water supplies from available underground sources prove insufficient to meet the Joint Venturers' coastal water requirements and the Joint Venturers' inland water requirements and the Joint Venturers shall if they propose to utilise such water catchments and/or storage dams pay to the State a sum or sums to be agreed towards the cost of such investigation and towards the cost of constructing any water storage dam or dams and reticulation facilities required PROVIDED THAT the State may in its sole discretion elect to construct a water storage dam or dams and reticulation facilities having a capacity in excess of that required to supply the Joint Venturers' needs and in that event the Joint Venturers' contribution shall be limited to a fair and

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reasonable proportion of the total cost of constructing such water storage dam or dams and reticulation facilities.

(17) Any reference in this clause to a license is a reference to a license under the *Rights in Water and Irrigation Act 1914* and the provisions of that Act relating to water rights and licenses shall except where inconsistent with the provisions of this Agreement apply to any water sources developed for the Joint Venturers' purposes under this Agreement.

Electricity⁴

15. (1) The Joint Venturers shall in accordance with their proposals as approved construct without cost or expense to the State facilities for the generation and transmission of electricity needed to enable the Joint Venturers to carry out their obligations hereunder. The Joint Venturers shall design and construct their electrical generation plant equipment and transmission system so as to facilitate the ultimate connection of such plant equipment and transmission system with facilities owned by the State Electricity Commission or other third parties.

(2) The State may at any time give to the Joint Venturers twelve months' notice of its intention to acquire and may thereafter acquire the Joint Venturers' electrical generation plant equipment and transmission system or any of them up to the first point of voltage breakdown or such other appropriate point as may be agreed, at a price to be agreed between the parties and the Joint Venturers will take all such steps as may be necessary to give effect to the acquisition. The State undertakes that in such event the Joint Venturers shall have first priority for their purposes hereunder on the power generated by such plant and equipment or capable of being transmitted along such systems and the State guarantees subject only to its inability to supply power for any of the reasons set forth in clause 37 hereof to supply the Joint Venturers with power for all their purposes hereunder up to the normal continuous full load capacity of such plant and equipment and the State undertakes that in the event of such inability to supply power the State shall take all possible steps to restore such supply regardless of the time or day when such inability to supply power arises and may call upon the Joint Venturers to provide employees for that purpose.

(3) In the event of the State acquiring the Joint Venturers' facilities or any of them as provided by sub-clause (2) of this clause the Joint Venturers shall pay to the State Electricity Commission the cost of all electricity supplied to the Joint Venturers by the Commission at a rate equal to the standard tariff applying from time to time to the Commission's system less the difference (if

any) between the Commission's standard tariff in force at the time of the State's acquisition of the facilities pursuant to subclause (2) of this clause and the Joint Venturers' costs of operating those facilities (including *inter alia* appropriate capital charges) at the time of the said acquisition. The Commission's rate for electricity calculated as aforesaid shall apply to an amount of electricity equal to the continuous full load capacity of the facilities so acquired and the Joint Venturers shall pay for all electricity supplied to them by the Commission in excess of such amount at the Commission's standard tariff applicable from time to time.

Deposits' Townsite⁴

16. (1) The Joint Venturers shall collaborate with the State in the planning, location and development of the deposits' townsite and shall employ an experienced town planner to prepare a town plan for initial and long-term town development which town plan shall be submitted by the Joint Venturers as part of proposals pursuant to clause 5(3)(c) hereof.

(2) The Joint Venturers shall, at their cost in accordance with the relevant approved proposal, provide and maintain at the deposits' townsite and make available —

- (i) at such prices, rentals or charges and upon such terms and conditions as are fair and reasonable under the circumstances, housing accommodation, services and works including sewerage reticulation and treatment works, water supply works, main drainage works and civic facilities; and
- (ii) without charge, public roads and buildings and other works and equipment required for educational, hospital, medical, police, recreation, fire or other services,

to the extent to which any of the foregoing are necessary to provide for the needs of persons and the dependants of such persons engaged in connection with the Joint Venturers' operations hereunder whether or not employed by the Joint Venturers.

(3) The Joint Venturers shall at their cost equip the buildings referred to in sub-clause (2) of this clause to a standard normally adopted by the State in similar types of buildings in comparable townsites.

(4) The Joint Venturers shall provide at their cost adequate housing accommodation for married and single staff directly connected with the

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educational, hospital, medical and police services referred to in sub-clause (2)(ii) of this clause.

(5) The extent of the obligations of the Joint Venturers pursuant to sub-clauses (3) and (4) of this clause shall be determined by the proportion which the Joint Venturers' contribution to the cost of the facilities and services set forth in subclause (2) of this clause bears to the total cost of such facilities and services.

Existing towns⁴

17. The Joint Venturers shall as the occasion may require enter into negotiations with the State with a view to achieving the assimilation into a suitable existing coastal town of such of the Joint Venturers' work force at the port or any other workers employed by the Joint Venturers (including the dependants of such persons) as shall reside at or near or shall frequent the port. Subject to the provisions of clause 18 hereof the Joint Venturers shall pay to the State or the appropriate authority the capital cost of establishing and providing additional services and facilities and associated equipment including sewerage and water supply schemes, main drains, education, police and hospital services to the extent to which those additional works and services are made necessary in that town as a result of the operations of the Joint Venturers. The additional services, works and associated equipment referred to in this clause shall be provided by the State to a standard normally adopted by the State in providing new services works and associated equipment in similar cases in comparable towns.

Additional Proposals⁴

18. (1) In the event that the Joint Venturers desire —
- (a) to expand their activities beyond those specified in the Joint Venturers' proposals as approved pursuant to clause 6 hereof; or
 - (b) to undertake secondary processing; or
 - (c) to undertake the production of steel,

the Joint Venturers shall so notify the Minister who may, consequent upon the outcome of the negotiations of the parties pursuant to subclause (2) of this clause, require the Joint Venturers to submit proposals in respect of all or any of the matters referred to in subparagraphs (i) to (xiv) of paragraph (a) of subclause (2) of clause 5 hereof and in clauses 16 and 17 hereof and the Joint Venturers shall to

the extent of such requirement submit such proposals. The provisions of clauses 5, 6, 16 and 17 hereof shall, so far as they are applicable, apply to such proposals *mutatis mutandis*.

(2) The extent to which the Joint Venturers will be required to provide or contribute towards the capital costs of services and facilities and the maintenance thereof pursuant to clauses 16 and 17 hereof in consequence of such proposed expansion or undertaking shall be determined by the Minister following negotiations on such matters and in making his determination the Minister shall have regard *inter alia* to the current and anticipated composition of the town and the extent to which the ordinary responsibilities of the State with respect to the provision of the capital cost of such services and facilities are to be assumed by it in the light of the State's then current capital resources.

Determination of Agreement⁴

19. In any of the following events namely if the Joint Venturers shall make default in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sub-lease license or other title or document granted or assigned under this Agreement on their part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to them by the State (or if the alleged default is contested by the Joint Venturers and promptly submitted to arbitration within a reasonable time fixed by the arbitration award where the question is decided against the Joint Venturers the arbitrator finding that there was a *bona fide* dispute and that the Joint Venturers had not been dilatory in pursuing the arbitration) or if the Joint Venturers shall abandon or repudiate their operations under this Agreement or if either of the Joint Venturers shall go into liquidation (other than a voluntary liquidation for the purposes of reconstruction) and unless within three months from the date of such liquidation the other Joint Venturer acquires absolutely the share estate and interest of the Joint Venturer (in liquidation) in or under this Agreement and in or under the mineral lease and any other lease license easement or right granted hereunder or pursuant hereto then and in any of such events the State may by notice to the Joint Venturers determine this Agreement and the rights of the Joint Venturers hereunder and under any lease license easement or right granted hereunder or pursuant hereto or if the Joint Venturers shall surrender the entire mineral lease as permitted under clause 8(1)(a) this Agreement and the rights of the Joint Venturers hereunder and under any lease license easement or right granted hereunder or pursuant hereto shall thereupon determine; PROVIDED HOWEVER that if the Joint Venturers shall fail to remedy any default after such notice or within the time fixed by the arbitration

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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 Joint Venturers 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 Joint Venturers to the State on demand.

Effect of determination of Agreement⁴

20. On the cessation or determination of this Agreement —

- (a) except as otherwise agreed by the Minister the rights of the Joint Venturers to in or under this Agreement and the rights of the Joint Venturers or of any assignee of the Joint Venturers 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;
- (b) the Joint Venturers shall forthwith pay to the State all moneys which may then have become payable or accrued due;
- (c) the Joint Venturers shall forthwith furnish to the State complete factual statements of the work research surveys and reconnaissances carried out pursuant to clause 4(1) hereof if and insofar as the statements may not have been so furnished; and
- (d) save as aforesaid and as provided in clause 7(4) hereof and in clause 21 hereof neither of 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.

Effect of determination of lease⁴

21. On the cessation or determination of any lease license or easement granted hereunder by the State to the Joint Venturers or (except as otherwise agreed by the Minister) to an associated company or other assignee of the Joint Venturers under clause 31 hereof of land for the Joint Venturers' wharf for any installation within the port for the Joint Venturers' 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 Joint Venturers 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 Joint Venturers 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 they shall not do so without first notifying the State in writing of their decision and thereby granting to the State the right or option exercisable within three (3) 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.

No charge for the handling of cargoes⁴

22. The State shall ensure that subject to the Joint Venturers at their expense providing all works buildings dredging and things of a capital nature reasonably required for their operations hereunder at or in the vicinity of the port 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 Joint Venturers' wharf whether such cargoes shall be the property of the Joint Venturers 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 other local or other authority of the State and may charge vessels using the Joint Venturers' wharf ordinary light conservancy and tonnage dues.

Zoning⁴

23. The State shall ensure that the mineral lease and the lands the subject of any lease license or easement granted to the Joint Venturers 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 Joint Venturers 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

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the State on the ground that such operations are contrary to any zoning by-law or regulation.

Rentals and evictions⁴

24. The State shall ensure 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 Joint Venturers in the port townsite and the deposits' townsite and that in relation to each such house the Joint Venturers shall have the right to include as a condition of its letting thereof that the Joint Venturers 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 Joint Venturers.

Labour conditions⁴

25. The State shall ensure that during the currency of this Agreement and subject to compliance with its obligations hereunder the Joint Venturers shall not be required to comply with the labour conditions imposed by or under the Mining Act in regard to the mineral lease.

Sub-contracting⁴

26. 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 or they are authorised or obliged to carry out hereunder.

Rating⁴

27. The State shall ensure 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 with that residence and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the mining treatment and processing of ore, which excepted parts shall be subject to the provisions of the Local Government Act) shall for rating purposes be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate, PROVIDED THAT nothing in this clause shall prevent the Joint Venturers making the election provided for by Section 533B of the *Local Government Act 1960*.

Liability of Joint Venturers⁴

28. It is hereby agreed and declared that —

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

(i) the Joint Venturers are liable to any person or body corporate (other than the State); or

(ii) 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 Joint Venturers are responsible hereunder and for no other purpose the Joint Venturers 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 Joint Venturers;

(b) 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*.

Environmental Protection⁴

29. Nothing in this Agreement shall be construed to exempt the Joint Venturers from compliance with any requirement in connection with the protection of the environment arising out of or incidental to the Joint Venturers’ operations hereunder that may be made pursuant to any Act from time to time in force by the State or by any State agency or instrumentality or any local or other authority or statutory body of the State.

Indemnity⁴

30. The Joint Venturers 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 any work carried out by the Joint Venturers pursuant to this Agreement or relating to their operations hereunder or arising out of or in connection with the construction maintenance or use by the Joint Venturers or their servants agents contractors or assignees of

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the Joint Venturers' wharf railway or other works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith and will also indemnify and keep indemnified the State against all actions suits compensation claims demands or costs by third parties under the Ratifying Act the *Public Works Act 1902* the Land Act or any other Act in respect of or as a consequence of the resumption or deprivation of the use of any land where such resumption or deprivation of use is made or done by the State for the purpose of granting to the Joint Venturers a lease right mining tenement easement reserve or license pursuant to clause 8(1) hereof.

Assignment⁴

31. (1) Subject to the provisions of this clause the Joint Venturers may at any time —

- (a) assign mortgage charge sublet or dispose of to an associated company as of right and to any other company or person with the consent in writing of the Minister the whole or any part of the rights of the Joint Venturers hereunder (including their rights to or as the holder of any lease license easement grant or other title) and of the obligations of the Joint Venturers hereunder; and
- (b) appoint as of right an associated company or with the consent of the Minister any other company or person to exercise all or any of the powers functions and authorities which are or may be conferred on the Joint Venturers 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 Joint Venturers 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 sub-clause (1) of this clause the Joint Venturers 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 agreement on their part contained herein and in any lease license easement grant or other title the subject of an assignment under the said sub-clause (1).

Variation⁴

32. (1) The parties hereto may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of any lease license easement or right granted hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

(2) Where in the opinion of the Minister an agreement made pursuant to sub-clause (1) of this clause would constitute a material or substantial alteration of the rights or obligations of either party hereto, the Agreement shall contain a provision to that effect and the Minister shall cause that Agreement to be laid on the table of each House of Parliament within twelve sitting days of the date of its execution.

(3) If either House does not pass a resolution disallowing the Agreement, within twelve sitting days of that House after the Agreement has been laid before it, the Agreement shall have effect, from and after the last day on which the Agreement might have been disallowed.

Variation of Proposals⁴

33. The Minister may from time to time at the request of the Joint Venturers approve variations in the detailed proposals relating to any railway or port site and/or port facilities or dredging programme or townsite or town planning of any other facilities or services or other plans specifications or proposals which may have been approved pursuant to this Agreement and in considering such variation shall have regard to any changes consequent upon joint user proposals of any such works facilities or services and other relevant factors arising after the date hereof. Where the variation referred to in this clause constitutes a material or substantial alteration to the rights and/or obligations of either party as set out in this Agreement the provisions of clause 32 shall apply.

Alteration of works⁴

34. If at any time the State finds it necessary to request the Joint Venturers to alter the situation of any of the installations or other works (other than the Joint Venturers' wharf) erected constructed or provided hereunder and gives to the Joint Venturers notice of the request the Joint Venturers shall within a reasonable time after receipt of the notice but at the expense in all things (including increased running costs) of the State (unless the alteration is rendered

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necessary by reason of a breach by the Joint Venturers of any of their obligations hereunder) alter the situation thereof accordingly.

Joint user⁴

35. (1) The Joint Venturers shall be entitled at any time and from time to time with the prior approval 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 Joint Venturers 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 Joint Venturers shall for the purpose of the calculation of the sum agreed to be expended on that work by the Joint Venturers under this Agreement and if so approved by the Minister be taken and accepted as an amount equal to the total amount expended (whether by the Joint Venturers or the said third party or by them jointly) in the construction of such work.

(2) When any agreement entered into by the Joint Venturers with some other company or person results in that other company or person discharging all or any of the obligations undertaken by the Joint Venturers under this Agreement or renders it unnecessary for the Joint Venturers to discharge any obligation undertaken by them hereunder the Minister will discharge or temporarily relieve the Joint Venturers from such part of their said obligations as is reasonable having regard to the extent of any period for which the other company or person actually effects the discharge of those obligations.

Export Licence⁴

36. (1) On request by the Joint Venturers the State shall make representations to the Commonwealth for the grant to the Joint Venturers of a license or licenses under Commonwealth law for the export of 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 Joint Venturers and to maximum tonnages of ore for the time being permitted by the Commonwealth for export from the said State and in a manner or terms not less favourable to the Joint Venturers (except as to rate or quantity) than the State has given or intends to give in relation to such a license or licenses to any other exporter of ore from the said State.

(2) If at any time the Commonwealth limits by export license the total permissible tonnage of ore for export from the said State then the Joint Venturers will at the request of the State and within three (3) months of such request inform

the State whether or not they intend to export to the limit of the tonnage permitted to them under Commonwealth licenses in respect of the financial year next following and if they do not so intend will co-operate with the State in making representations 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 Joint Venturers do 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 ore for export from the said State.

(3) The Joint Venturers shall be in default hereunder if at any time they fail to obtain any license or licenses under Commonwealth law for the export of iron ore as may be necessary for the purpose of enabling the Joint Venturers to fulfil their obligations hereunder or if any such license is withdrawn or suspended by the Commonwealth and such failure to obtain or such withdrawal or suspension (as the case may be) is due to some act or default by the Joint Venturers or to the Joint Venturers not being *bona fide* in their application to the Commonwealth or otherwise having failed to use their best endeavours to have the license granted or restored (as the case may be) but save as aforesaid if at any time any necessary license is not granted or any license granted to the Joint Venturers shall be withdrawn or suspended by the Commonwealth and so that as a result thereof the Joint Venturers are not for the time being permitted to export at least the tonnage they have undertaken with the State they will export then the Joint Venturers shall be relieved from the obligation to export that tonnage during the period such license is not granted or is withdrawn or suspended. The State shall at all times be entitled to apply on behalf of the Joint Venturers (and is hereby authorised by the Joint Venturers so to do) for any license or licenses under Commonwealth law for the export of ore as may from time to time be necessary for the purposes of this Agreement.

Delays⁴

37. 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 Joint Venturers) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts

Schedule 1

(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 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 minimise the effect of the said causes as soon as possible after their occurrence.

Power to extend periods⁴

38. The Minister may whether or not the period to be extended has expired or the date to be varied has passed at the request of the Joint Venturers from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such later date as the Minister thinks fit.

Arbitration⁴

39. 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 the arbitration of two arbitrators one to be appointed by each party, the arbitrators to appoint their umpire before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the *Arbitration Act 1895* PROVIDED THAT except where this Agreement makes express provision for arbitration hereunder this clause shall not apply to any case where the State the Minister or any Minister is by this Agreement given either expressly or impliedly a power or discretion to approve consent direct or otherwise act in any particular way.

Notices⁴

40. Any notice consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Public Service of the said State acting by the direction of the Minister and forwarded by prepaid post to the Joint Venturers at their registered offices for the time being in the said State and by the Joint Venturers if signed on their behalf by a director, manager or secretary of the Joint Venturers or any person or persons authorised by the Joint

Venturers in that behalf or by their 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 duty⁴

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

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Joint Venturers or any permitted assignee of the Joint Venturers any tenement lease easement license or other right or interest;
- (c) any assignment sub-lease or disposition (other than by way of mortgage or charge) or any appointment made in conformity with the provisions of clause 31 hereof; and
- (d) any assignment sub-lease or disposition (other than by way of mortgage or charge) or any appointment to or in favour of the Joint Venturers or an associated company of any interest right obligation power function or authority which has already been the subject of an assignment sub-lease disposition or appointment executed pursuant to clause 31 hereof;

PROVIDED THAT this clause shall not apply to any instrument or other document executed or made more than seven (7) years from the date hereof.

(2) If prior to the date on which the Bill referred to in clause 2(1)(b) 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 sub-clause (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.

Interpretation⁴

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

Schedule 1

Determination of previous agreements⁴

43. The agreement of which a copy is set out in the First Schedule to the *Iron Ore (Hanwright) Agreement Act 1967-1968* as amended by the agreement of which a copy is set out in the Second Schedule to that Act is hereby determined.

FIRST SCHEDULE

Firstly — The agreement under seal of even date herewith between the Honourable John Trezise Tonkin, M.L.A., Premier of the State of Western Australia acting for and on behalf of the said State and Instrumentalities thereof of the one part and Mount Bruce Mining of the other part.

Secondly — The agreement under seal of even date herewith between the Honourable John Trezise Tonkin, M.L.A., Premier of the State of Western Australia acting for and on behalf of the said State and Instrumentalities thereof of the one part and Hamersley of the other part.

SCHEDULE

WESTERN AUSTRALIA

IRON ORE (WITTENOOM) AGREEMENT ACT 1972

MINERAL LEASE

Lease No.

Goldfield

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 WHOM THESE PRESENTS shall come GREETINGS: KNOW YE that WHEREAS by an Agreement made the day of 1972 BETWEEN the State of Western Australia of the one part and (*inter alia*) Hancock Prospecting Pty. Ltd. and Wright Prospecting Pty. Ltd. (hereinafter called “the Joint Venturers” in which term shall be included the Joint Venturers and each of them jointly and severally and their and each of their successors and assigns and including where the context so admits the assignees of the Joint Venturers under clause 31 of the said Agreement) of the other part the said State agreed to grant to the Joint Venturers a mineral lease or leases of portion or portions of the lands referred to in the said Agreement as the mining areas AND WHEREAS the said Agreement was ratified by the *Iron Ore (Wittenoom) Agreement Act 1972* which said Act (*inter*

alia) authorised the grant of a mineral lease or leases to the Joint Venturers 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 Joint Venturers subject to the said provisions ALL THAT piece or parcel of land situated in the Goldfield(s) containing approximately acres and (subject to such corrections as may be necessary to accord with the survey when made) being the land shaded pink 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 Joint Venturers are 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 for two further successive periods, each of twenty-one years as provided in but subject to the said Agreement for the purposes but 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 Joint Venturers of the following covenants and conditions, that is to say:—

- (1) The Joint Venturers 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 Joint Venturers 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 petroleum 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 authorised in that behalf to have access to

[Schedule 1 amended by No. 41 of 1992 s. 6.]

Schedule 2

Schedule 2

THIS AGREEMENT is made this 20th day of May 1992

B E T W E E N :

THE HONOURABLE CARMEN MARY LAWRENCE, B.Psych., Ph.D., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the first part

HAMERSLEY IRON PTY. LIMITED A.C.N. 004 558 276 a company incorporated in Victoria and having its principal office in the State of Western Australia at 13th Floor, 191 St. George's Terrace, Perth and **HAMERSLEY RESOURCES LIMITED** A.C.N. 004 887 656 a company incorporated in Victoria and having its principal office in the State of Western Australia at 13th Floor, 191 St. George's Terrace, Perth (hereinafter called "the Joint Venturers" in which term shall be included the Joint Venturers and each of them and their and each of their respective successors and assigns) of the second part

AND

AUSTRALIAN MINING & SMELTING LIMITED A.C.N. 004 896 726 a company incorporated in Victoria and having its registered office at 31st Floor, 55 Collins Street, Melbourne (hereinafter called "the Guarantor") of the third part.

WHEREAS :

- (a) **THE HONOURABLE JOHN TREZISE TONKIN**, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and Instrumentalities thereof of the one part entered into an agreement dated the 10th day of March, 1972 with **HANCOCK PROSPECTING PTY. LTD.** and **WRIGHT PROSPECTING PTY. LTD.** of the other part (which agreement was ratified by and is scheduled to the *Iron Ore (Wittenoom) Agreement Act 1972* and is hereinafter referred to as "the 1972 Agreement");
- (b) by Deed of Assignment dated the 5th day of November, 1973 pursuant to the 1972 Agreement **HANCOCK PROSPECTING PTY. LTD.** and **WRIGHT PROSPECTING PTY. LTD.** assigned a 50% share in their right title and interest in and to the 1972 Agreement to **MARANDOO MINING CO. LTD.**, a company incorporated in the State of Delaware in

the United States of America and registered in the State of Western Australia as a foreign company under the provisions of the *Companies Act 1961*;

- (c) **MARANDOO MINING CO. LTD.** changed its name to **TEXASGULF MARANDOO LTD.** on the 20th day of December, 1974;
- (d) **HANCOCK PROSPECTING PTY. LTD.** changed its name to **HANCOCK PROSPECTING LIMITED** on the 8th day of April, 1976;
- (e) by Deed of Assignment dated the 29th day of December, 1976 pursuant to the 1972 Agreement **TEXASGULF MARANDOO LTD.** assigned all its right title and interest in and to the 1972 Agreement to **TEXASGULF AUSTRALIA LTD.**;
- (f) **HANCOCK PROSPECTING LIMITED** changed its name to **HANCOCK PROSPECTING PTY. LIMITED** on the 8th day of June, 1977;
- (g) the 1972 Agreement was in accordance with its provisions varied by agreement dated the 13th day of November, 1979 (which agreement is hereinafter included in the expression “the 1972 Agreement”);
- (h) by Deed of Assignment dated the 27th day of February, 1981 **TEXASGULF AUSTRALIA LTD.** assigned all its right title and interest, inter alia, in and to the 1972 Agreement to **NEW BROKEN HILL CONSOLIDATED LIMITED**;
- (i) by Deed of Covenant dated the 26th day of February, 1981 the Guarantor agreed with the State to guarantee the performance by **NEW BROKEN HILL CONSOLIDATED LIMITED** of its obligations under the 1972 Agreement;
- (j) the 1972 Agreement was in accordance with its provisions further varied by agreement dated the 15th day of September, 1982 and as so varied is hereinafter called “the Principal Agreement”;
- (k) **NEW BROKEN HILL CONSOLIDATED LIMITED** changed its name to **A M & S MINING LIMITED** on the 27th day of November, 1986;
- (l) by an agreement dated the 18th day of October, 1990 and made between Hancock Prospecting Pty. Limited, Wright Prospecting Pty. Ltd., Hamersley Iron Pty. Limited, A M & S Mining Limited, Pilbara Port Railroad and Resource Company Limited and The Hancock Memorial

Schedule 2

Foundation Limited, Hancock Prospecting Pty. Limited and Wright Prospecting Pty. Ltd. assigned all their right title and interest in and to the Principal Agreement to Hamersley Iron Pty. Limited effective as from and including the 28th February, 1991;

- (m) **A M & S MINING LIMITED** changed its name to **HAMERSLEY RESOURCES LIMITED** on the 26th day of February, 1992; and
- (n) the parties wish to vary the Principal Agreement.

NOW THIS DEED WITNESSETH —

1. Subject to the context the words and expressions used in this Agreement have the same meanings as they have in and for the purpose of the Principal Agreement.
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.
3. The subsequent clauses of this Agreement shall not operate unless and until —
 - (a) the Bill to ratify this Agreement as referred to in clause 2 hereof is passed as an Act before the 31st day of December, 1992 or such later date if any as the parties hereto may mutually agree upon; and
 - (b) a Bill to ratify an agreement of even date herewith between the State of the one part and Hamersley Iron Pty. Limited of the other part is passed as an Act before the 31st day of December, 1992 or such later date if any as the parties hereto may mutually agree upon.

If the said Bills are not passed before that date or later date or dates (as the case may be) this Agreement will then cease and determine and none of the parties hereto will have any claim against any other of them with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement.

4. The Principal Agreement is hereby varied as follows:
 - (1) Clause 1 —
 - (a) by substituting for the plan marked “X” referred to in clause 1 of the Principal Agreement, the plan marked “Y”

- initialled by or on behalf of the parties hereto for the purposes of identification;
- (b) in the definition of “export date”, by deleting “export ore hereunder” in paragraph (b) and substituting the following —
- “transport ore from the mineral lease”;
- (c) by substituting for the definition of “mining areas” the following definition —
- “ “mining areas” means the areas delineated and coloured red on the plan marked “Y”.”.
- (2) By deleting sub-clause (1A) of clause 2.
- (3) Clause 2(1B) —
- by deleting “and under sub-clause (1A)”.
- (4) Clause 8 —
- (a) subclause (1) paragraph (a) —
- by deleting “one hundred (100)” and substituting the following —
- “thirty-five (35)”;
- (b) subclause (2) paragraph (a) —
- by deleting “Governor” and substituting the following —
- “Minister”.
- (5) Clause 12 paragraph (b) —
- by deleting “*Arbitration Act 1895*” and substituting the following —
- “*Commercial Arbitration Act 1985* (and notwithstanding section 20(1) of that Act a party may be represented before the arbitrator by a duly qualified legal practitioner or other representative)”.
- (6) By deleting clause 18.

Schedule 2

(7) Clause 39 —

by deleting “*Arbitration Act 1895*” and substituting the following —

“*Commercial Arbitration Act 1985* (and notwithstanding section 20(1) of that Act a party may be represented before the arbitrators by a duly qualified legal practitioner or other representative)”.

4. The Guarantor consents to this Agreement.

IN WITNESS WHEREOF these presents have been executed the day and year first hereinbefore written.

SIGNED by the said)
THE HONOURABLE CARMEN) **CARMEN**
MARY LAWRENCE in the) **LAWRENCE**
presence of :)

I. TAYLOR,
MINISTER FOR STATE DEVELOPMENT

THE COMMON SEAL of)
HAMERSLEY IRON PTY.)
LIMITED was hereunto affixed by)
authority of the Directors in the)
presence of:)

I. J. WILLIAMS, Director

G. B. BABON, Secretary

THE COMMON SEAL of)
HAMERSLEY RESOURCES)
LIMITED was hereunto affixed by)
authority of the Directors in the)
presence of:)

I. J. WILLIAMS, Director

G. B. BABON, Secretary

SIGNED for and on behalf of)
AUSTRALIAN MINING &)
SMELTING LIMITED by its duly)
appointed attorney Ian James Williams)
under Power of Attorney dated)
6 May 1992 in the presence of:)

I. J. WILLIAMS, Director

V. M. PETHRICK, Secretary

[Schedule 2 inserted by No. 41 of 1992 s. 7.]

Notes

- ¹ This ~~reprint~~ is a compilation ~~as at 14 May 2004~~ of the *Iron Ore (Wittenoom) Agreement Act 1972* and includes the amendments made by the other written laws referred to in the following table^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Iron Ore (Wittenoom) Agreement Act 1972</i>	38 of 1972	16 Jun 1972	16 Jun 1972
<i>Iron Ore (Wittenoom) Agreement Amendment Act 1992</i>	41 of 1992	2 Oct 1992	2 Oct 1992 (see s. 2)

Reprint 1: The *Iron Ore (Wittenoom) Agreement Act 1972* as at 14 May 2004 (includes amendments listed above)

- ^{1a} [On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.](#)

Provisions that have not come into operation

<u>Short title</u>	<u>Number and year</u>	<u>Assent</u>	<u>Commencement</u>
Standardisation of Formatting Act 2010 s. 4 ⁵	19 of 2010	28 Jun 2010	To be proclaimed (see s. 2(b))

- ² Repealed by the *Mining Act 1978*.
- ³ Repealed by the *Interpretation Act 1984*.
- ⁴ Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.
- ⁵ [On the date as at which this compilation was prepared, the *Standardisation of Formatting Act 2010* s. 4 had not come into operation. It reads as follows:](#)

4. Schedule headings reformatted

(1) This section amends the Acts listed in the Table.

(2) In each Schedule listed in the Table:

(a) if there is a title set out in the Table for the Schedule — after the identifier for the Schedule insert that title;

(b) if there is a shoulder note set out in the Table for the Schedule — at the end of the heading to the Schedule insert that shoulder note;

(c) reformat the heading to the Schedule, as amended by paragraphs (a) and (b) if applicable, so that it is in the current format.

<u>Act</u>	<u>Identifier</u>	<u>Title</u>	<u>Shoulder note</u>
<u><i>Iron Ore (Wittenoom) Agreement Act 1972</i></u>	<u>Schedule 1</u>	<u>Iron Ore (Wittenoom) Agreement</u>	<u>[s. 2]</u>
	<u>Schedule 2</u>	<u>Variation Agreement</u>	<u>[s. 2]</u>