



Western Australia

Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972

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Western Australia

Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972

An Act to ratify an agreement relating to the exploration for, and development of, iron ore in certain areas in the North West of the State, and for incidental and other purposes.

1. Short title

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

2. Interpretation

In this Act, unless the contrary intention appears —

the Agreement means the agreement of which a copy is set forth in Schedule 1, and if that agreement is added to or varied or any of its provisions are cancelled, in accordance with the provisions of the Agreement, includes the Agreement as so altered from time to time;

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

the Joint Venturers has the same meaning as that expression has in, and for the purposes of, the Agreement.

[Section 2 amended by No. 57 of 2000 s. 4.]

3. Ratification of the Agreement

- (1) The Agreement is ratified and the provisions thereof, subject to the Agreement, shall operate and take effect, notwithstanding the provisions of any other Act or law.
- (2) Notwithstanding any other Act or law, and without limiting the effect of subsection (1), the Joint Venturers shall be permitted to enter upon the Crown lands referred to in paragraph (b) of clause 3 of the Agreement to the extent, and for the purposes, provided in that paragraph.
- (3) The provisions of section 96 of the *Public Works Act 1902* do not apply to any railway constructed pursuant to the Agreement.
- (4) The provisions of section 277(5) of the *Mining Act 1904*² do not apply to any renewal of the rights of occupancy granted pursuant to the Agreement.

4. First Variation Agreement

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

[Section 4 inserted by No. 57 of 2000 s. 5.]

5. Variation of Agreement to increase rates of royalty

(1) In this section —

the Agreement means the agreement a copy of which is set out in Schedule 1 — ~~Agreement~~

(a) as varied from time to time in accordance with its provisions; and

(b) as varied by the First Variation Agreement.

(2) Clause 33(1) of the Agreement is varied —

(a) in subparagraph (ii) by deleting “3.75%” and inserting —

5.625%

(b) in subparagraph (iii) by deleting “3.25%” and inserting —

5%

(3) Clause 33(1)(ii) and (iii) of the Agreement as varied by subsection (2) operate and take effect despite —

(a) any other provision of the Agreement; and

(b) any other agreement or instrument; and

(c) any other Act or law.

(4) Nothing in this section affects the amount of royalty payable under clause 33 of the Agreement in respect of any period before the commencement of the *Iron Ore Agreements Legislation Amendment Act 2010 Part 2*.

[Section 5 inserted by No. 34 of 2010 s. 4.]

- (b) The Joint Venturers desire to expand their activities and the State has agreed to make available to them certain additional areas now the subject of the temporary reserves comprising mining area “D” and mining area “E” (as hereinafter defined) on the terms and conditions hereinafter set out.

NOW THIS AGREEMENT WITNESSETH —

Interpretation³

1. In this agreement subject to the context —

“apply”, “approve”, “approval”, “consent”, “certify”, “direct”, “notify”, “request”, or “require” means apply approve approval consent certify direct notify request or require 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 or any of them 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;

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“clause” means a clause of this agreement;

“commencement date” means the date referred to as the commencement date in clause 7(6);

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

“deposits’ townsite” means an existing townsite approved by the Minister or the townsite to be established on or near mining area “D” pursuant to this agreement and where the context so permits shall extend to and be deemed to include the townsite to be established on or near mining area “E”;

“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 or extended date if any referred to in clause 12;
- (b) the date when the Joint Venturers first export iron ore hereunder from mining area “D” (other than iron ore shipped solely for testing purposes);

“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 ore from the mineral lease the subject of any shipment or sale which is payable by the ultimate purchaser or the person smelting the ore to the Joint Venturers or an associated company, less all export duties and export taxes and

all costs and charges properly incurred and paid by the Joint Venturers to a third party after the departure of the ship on which the ore is loaded from the Joint Venturers' wharf to the time the same is delivered and accepted by the ultimate purchaser or the person smelting the ore, including —

- (1) ocean freight;
- (2) marine insurance;
- (3) port and handling charges at the port of discharge;
- (4) costs incurred in delivering the ore from the port of discharge to the ultimate purchaser or the person smelting the ore;
- (5) all weighing, sampling, assaying, inspection and representation costs at the port of discharge;
- (6) shipping agency charges;
- (7) all 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 expression “export duties and export taxes” shall refer to taxes payable by the Joint Venturers to the Commonwealth directly relating to the export of ore but excluding any State taxes, duties or charges and any taxes, duties or charges levied by the Commonwealth for or on behalf of the State;
- (b) a cost or charge shall be deemed to be properly incurred if the Minister in his discretion so determines and in making his determination the Minister may have regard to such matters as the parties to and the *bona fide* nature of the transaction, resulting in the cost or charge;

“Goldsworthy Agreement” means the agreement and variation thereof referred to in recital (a) hereof;

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“harbour” means the port or harbour serving the Joint Venturers’ wharf;

“Joint Venturers’ railway” means the railway constructed or now under construction in terms of the Goldsworthy Agreement;

“Joint Venturers’ wharf” means the wharf constructed by the Joint Venturers pursuant to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*;

“Land Act” means the *Land Act 1933*;

“locally used ore” means ore used by the Joint Venturers or an associated company both within the Commonwealth and within the limits referred to in clause 37 for secondary processing and includes ore used by any other person or company north of the twenty-sixth parallel of latitude in the said State for secondary processing;

“manganese ore” means an ore having a naturally combined metal content of iron and manganese, the latter exceeding 35%;

“manganiferous ore” means an ore having a naturally combined metal content of iron and manganese, the latter being not less than 2% and not more than 35%;

“mineral lease” means the mineral lease or mineral leases referred to in clause 9 and includes any renewal thereof and where the context so permits shall extend to and be deemed to include a mineral lease granted under the provisions of clause 25 and any renewal thereof;

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

“mining area ‘D’ ” means the area delineated and coloured red and blue on the plan marked “D” initialled by or on behalf of the parties hereto for the purposes of identification;

“mining area ‘E’ ” means the area delineated and coloured blue on the plan marked “E” 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 passing 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” means iron ore, manganiferous ore and manganese ore;

“person” or “persons” includes bodies corporate;

“port” means the port at or near Port Hedland;

“Ratifying Act” means the Act to ratify this agreement and referred to in clause 3(a);

“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;

“Sentinel” means Sentinel Mining Company Inc. a company incorporated 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* and having its registered office situate at 6th Floor Law Chambers Cathedral Square Perth;

“special lease” means a special lease or licence 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) lb. net dry weight;

marginal notes shall not affect the interpretation or construction of this agreement³;

monetary references in this agreement are to Australian currency;

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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;

power given under any clause other than clause 44 to extend any period or date shall be without prejudice to the power of the Minister under the said clause 44;

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.

Ratification and operation³

2. (1) The provisions of this agreement other than this clause and clauses 1, 3, 4, 5, 23, 25, 36 and 38 shall not come into operation until the Bill referred to in clause 3(a) has been passed by the Parliament of Western Australia and comes into operation as an Act.

(2) If before the 30th day of June, 1972 or such later date as may be agreed between the parties the said Bill is not passed this agreement will then cease and determine and neither of the parties hereto will have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this agreement.

(3) On the said Bill commencing to operate as an Act all provisions of this agreement shall operate and take effect notwithstanding the provisions of any Act or law.

Initial obligations of the State³

3. The State shall —

- (a) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this agreement and endeavour to secure its passage as an Act prior to the 30th day of June, 1972; and
- (b) to the extent reasonably necessary for the purposes of this agreement allow the Joint Venturers to enter upon Crown lands (including, if applicable, land the subject of a pastoral lease).

Grant of rights of occupancy of mining area “D”³

4. The State shall, upon application by the Joint Venturers cause to be granted to the Joint Venturers the sole and exclusive right to search and prospect for ore over all or any part of mining area “D” by granting to the Joint Venturers and to the Joint Venturers alone rights of occupancy pursuant to section 276 of the Mining Act of the areas now the subject of the temporary reserves comprising mining area “D” (or such other prospecting licence right or concession as may be appropriate in terms of the Mining Act for the time being in force) subject to such terms and conditions as the Minister for Mines may require at a rental at the rate of twenty-six dollars (\$26) per square mile per annum payable quarterly in advance for a period of twelve (12) months and shall then and thereafter subject to the continuance of this agreement maintain such exclusive rights as aforesaid for the benefit of the Joint Venturers and cause to be granted to the Joint Venturers as may be necessary such renewals of the rights of occupancy of the said temporary reserves or other the exploration licence or concession then in force (each renewal to be for a period of twelve (12) months at the same rental and upon the same terms) the last of which renewals notwithstanding its currency to expire —

- (i) in the case of that part of mining area “D” coloured red, on the date of grant of a mineral lease to the Joint Venturers under clause 9(1); and in the case of that part of mining area “D” coloured blue, on the date of grant of a mineral lease to the Joint Venturers under clause 9(2);
- (ii) in the case of that part of mining area “D” coloured red, at the expiration of three (3) months from the commencement date; and in the case of that part of mining area “D” coloured blue, on the expiration of the period of two (2) years from the commencement date as specified in clause 9(2);
- (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 PROVIDED ALWAYS that the Joint Venturers may at any time relinquish their rights of occupancy to the area the subject of any temporary reserve or any part thereof by notice in writing in that behalf to the State.

Initial obligations of Joint Venturers³

5. (1) Insofar as has not already been done to the satisfaction of the Minister the Joint Venturers shall 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 ore deposits in mining area “D” 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 and/or road from mining area “D” to connect with the Joint Venturers’ railway;
- (d) a study of the technical and economic feasibility of the mining transporting processing and shipping of ore from mining area “D”;
- (e) the planning of a suitable deposits’ townsite in consultation with the State for use by others (if and to the extent applicable) as well as the Joint Venturers;
- (f) the investigation, as and when approved by the Minister, of suitable water supplies for mining industrial and townsite purposes; and
- (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 subclause (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 subclause (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 subclause (1) of this clause 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 subclause.

Joint Venturers to submit proposals³

6. (1) On or before the 31st day of December, 1972 (or thereafter within such extended time as the Minister may allow as hereinafter provided) the Joint Venturers shall submit to the Minister —

(a) to the fullest extent reasonably practicable the Joint Venturers' detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister and measures to be taken for the protection of the environment) so far as is relevant to mining area "D" (or so much thereof as shall be comprised within the mineral lease) relating to the transport and shipment of ore to be mined and including the location, area, layout, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely —

- (i) the use of the Joint Venturers' existing facilities;
- (ii) the railway or road or other appropriate form of transport from mining area "D" to connect with the Joint Venturers railway or other appropriate form of transport and their proposed operation including fencing (if any) and as circumstances may reasonably require such crossing places including in the case of a road or other appropriate form of transport either over-passes or under-passes where level crossings are inadequate for reasonable safety or other reasonable requirements;
- (iii) deposits' townsite in connection with mining area "D" and development services and facilities in relation thereto;
- (iv) housing;
- (v) water supply;

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- (vi) roads (including details of roads in respect of which it is not intended that the provisions of clause 15(3) shall operate);
 - (vii) mining crushing screening handling transport and storage of ore;
 - (viii) airfields;
 - (ix) any leases licences or other tenures of land required from the State; and
 - (x) any other works, services or facilities proposed or desired by the Joint Venturers; and
- (b) (subject to the provisions of subclause (3) of this clause) satisfactory evidence —
- firstly* of the making or the likelihood of making suitable contracts for the sale and shipment by the Joint Venturers of ore from the mineral lease;
 - secondly* of the availability of finance necessary for the fulfilment of the Joint Venturers' proposals under this clause; and
 - thirdly* of any necessary licence to the Joint Venturers from the Commonwealth to export hereunder ore the subject of the ore contracts referred to in this paragraph in the quantities at the rate or rates and in the years stated in the contracts.

(2) 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 subparagraphs numbered (i)-(x) inclusive of paragraph (a) of subclause (1) 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 subparagraph which refers to more than one subject matter the detailed proposals will relate to and cover each of the matters mentioned in the subparagraphs PROVIDED FURTHER that the first detailed proposals submitted to the Minister relate to and cover the matters mentioned in subparagraph (i) of the said paragraph (a) of the said subclause (1) and that the

last two detailed proposals submitted to the Minister relate to and cover the ore contracts and the finance necessary for the ore export project.

(3) If the Joint Venturers should in writing and within the time later in this subclause mentioned request the Minister to grant an extension or any further extension of time beyond the 31st day of December 1972 (or such later date if any previously granted or approved by the Minister) within which to make the ore contracts referred to in paragraph (b) of subclause (1) of this clause 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 such ore contracts on a competitive basis and reasonably require an additional period for the purpose of making such 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 31st day of December 1972;
- (b) if an extension is granted under paragraph (a) of this subclause 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 subclause 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 ore (or processed ore) from the leased land which contracts are comparable with ore contracts referred to in paragraph (b) of subclause (1) of this clause 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 Venturers 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 proposals under clause 6³

7. (1) In considering the proposals of the Joint Venturers submitted pursuant to this agreement the Minister shall have regard to the approved proposals of the Joint Venturers and to the implementation of such proposals under the Goldsworthy Agreement and any further amendment or variation thereof.

(2) Within two (2) months after receipt of the detailed proposals of the Joint Venturers in regard to any of the matters mentioned in clause 6(1)(a) 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 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 9(7) and clause 32(2)) by others as well as the Joint Venturers of the Joint Venturers' facilities and services but the Minister shall in any notice to the Joint Venturers disclose his reasons for any such alteration or condition. 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 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 36) 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.

(3) Within two (2) months after receipt of evidence from the Joint Venturers with regard to the matters mentioned in clause 6(1)(b) to the reasonable satisfaction of the Minister the State shall 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 shall 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 clause 36) 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.

Extension of time³

(4) The arbitrator, arbitrators or umpire (as the case may be) of any submission to arbitration under this clause is hereby empowered upon application by either party hereto to grant any interim extension of time or date referred to in this clause 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.

(5) Notwithstanding that under this clause 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 28th day of February 1973 or by such extended date if any as the Joint Venturers shall be entitled to or shall be granted pursuant to the provisions of this clause then at any time after the said 28th day of February 1973 or if any extension or extensions should be granted under clause 6(3) 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 clause 36.

Commencement date³

(6) 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 6(1) the date upon which the last of those proposals

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of the Joint Venturers shall have been so approved or determined shall be the commencement date for the purposes of this agreement.

(7) If under any arbitration under this clause 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 mining area "D" 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 proposals³

8. Notwithstanding the final approval pursuant to clause 7 or clause 25 of the Joint Venturers' proposals, in the event that the Joint Venturers desire at any time during the currency hereof to expand their activities beyond those specified in the Joint Venturers' proposals as approved hereunder the Joint Venturers shall submit to the Minister further or additional proposals relating to such expansion in which case the provisions of clauses 6 and 7 so far as applicable shall apply thereto *mutatis mutandis*.

Mineral lease of mining area "D"³

9. (1) As soon as conveniently may be after the commencement date the State shall 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 parallelogram or parallelograms) of that part of mining area "D" coloured red in conformity with the Joint Venturers' detailed proposals under clause 6 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 subject to compliance with the provisions of clause 10(1) cause to be granted to the Joint Venturers as tenants in common in equal shares a mineral lease thereof for iron ore at rentals specified from time to time in the Mining Act such mineral lease to be granted under and except as otherwise provided in this agreement subject to the Mining Act but in the form of the schedule hereto.

(2) Subject to compliance by the Joint Venturers with the provisions of clause 10(1) the Joint Venturers shall within a period of two (2) years from the commencement date have the right subject to six (6) months prior notice to the

State to make application for a mineral lease of any part or parts (not exceeding in total area two hundred (200) square miles and in the shape of a parallelogram or parallelograms) of that part of mining area "D" coloured blue on the same terms and conditions as the mineral lease granted under subclause (1) of this clause.

(3) Subject to the performance and observance by the Joint Venturers of their obligations under this agreement and the Mining Act and notwithstanding any provisions of the Mining Act to the contrary, the term of any mineral lease granted pursuant to this clause shall be for a period of twenty-one (21) years commencing from the commencement date with rights to successive renewals of twenty-one (21) years upon the same terms and conditions but subject to earlier determination upon the cessation or determination of this agreement PROVIDED HOWEVER that the 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.

Labour conditions³

(4) The State shall ensure that during the currency of this agreement and subject to compliance with their 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 any mineral lease granted pursuant to this agreement.

Access through mining areas³

(5) The Joint Venturers shall allow the State and third parties to have access (with or without stock vehicles and rolling stock) over any mineral lease granted pursuant to this agreement (by separate route road or railway) PROVIDED THAT such access over shall not unduly prejudice or interfere with the Joint Venturers' operations hereunder.

Rights to other minerals³

(6) The State 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 other minerals reasonably required by the Joint Venturers for their purposes under this agreement.

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Other mining tenements³

(7) The State 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.

Payment towards previous exploration expenditure³

10. (1) The Joint Venturers shall pay to or to the order of Sentinel the sum of two million dollars (\$2,000,000) by way of compensation towards expenditure previously incurred by Sentinel in the exploration of land within mining area "D" and mining area "E". Such amount shall be payable by three (3) equal consecutive annual instalments, free of interest, the first such instalment being due within seven (7) days of the date this agreement is ratified by the Parliament of Western Australia. The Joint Venturers acknowledge the receipt of such information as they required from Sentinel relating to Sentinel's exploration of the land within mining area "D" and mining area "E".

Additional payments to Sentinel³

(2) In addition to the payments referred to in subclause (1) of this clause the Joint Venturers shall pay to or to the order of Sentinel by way of compensation towards expenditure previously incurred by Sentinel in the exploration of land within mining area "D" and mining area "E" —

- (a) not later than six (6) months after the date of the notice referred to in subclause (2) of clause 9 the sum of one million and fifty thousand two hundred and thirty dollars (\$1,050,230);
- (b) not later than twelve (12) months after the due date of the payment referred to in paragraph (a) of this subclause the sum of one million and fifty thousand two hundred and thirty dollars (\$1,050,230);
- (c) not later than twelve (12) months after the due date of the payment referred to in paragraph (b) of this subclause the sum

of one million and fifty thousand two hundred and twenty dollars (\$1,050,220).

Lands³

11. (1) The State shall, in accordance with the Joint Venturers' proposals as finally approved or determined under clause 7 grant to the Joint Venturers as tenants in common in equal shares or to a company nominated by the Joint Venturers and approved by the Minister (referred to in this clause as "the nominated company") in fee simple or for such terms or periods and on such terms and conditions (including renewal rights) as subject to the proposals (as finally approved or determined as aforesaid) shall be reasonable having regard to the requirements of the Joint Venturers hereunder and to the overall development of the harbour and access to and use by others of lands the subject of any grant to the Joint Venturers and of services and facilities provided by the Joint Venturers —

- (i) for nominal consideration — townsite lots;
- (ii) at a rental to be determined by the State — special leases of Crown lands within the harbour area;
- (iii) at peppercorn rental — land for townsites and railways; and
- (iv) at rentals as prescribed by law or are otherwise reasonable — leases rights mining tenements easements reserves and licences in on or under Crown lands

under the Mining Act, the *Jetties Act 1926* or under the provisions of the Land Act as modified by subclause (5) of this clause (as the case may require) as the Joint Venturers reasonably require for their works and operations hereunder.

(2) The Joint Venturers hereby covenant with the State that the Joint Venturers will duly and punctually observe perform and comply with all the covenants agreements and obligations to be performed or observed by the nominated company contained in any lease licence reserve and tenement and any renewal thereof granted pursuant to the provisions of subclause (1) of this clause to the intent that the same shall be binding upon the Joint Venturers in the same manner and to the same extent as if the Joint Venturers were expressly named therein severally with the nominated company and the Joint Venturers acknowledge that a default by the nominated company in the due performance or observance of any such covenant agreement or obligation shall be or be deemed to be a default under clause 35 by the Joint Venturers in the due

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performance or observance of that covenant agreement or obligation and that default entitles the State to exercise against the Joint Venturers its rights powers and remedies under and in conformity with that clause.

(3) From and after the fifteenth anniversary of the export date or the twentieth anniversary of the date of ratification of this agreement 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 6(3)) the Joint Venturers shall in addition to the rentals already referred to in this clause pay to the State during the currency of this agreement after such anniversary as aforesaid a rental equal to twenty-five (25) cents per ton on all ore in respect of which royalty is payable under clause 33 in any financial year and such additional rental to be paid at the same times as the said royalty SO NEVERTHELESS that the additional rental to be paid under this proviso shall not be less than three hundred thousand dollars (\$300,000) in respect of any such year.

Other rights³

(4) The State shall on application by the Joint Venturers cause to be granted to them as tenants in common in equal shares or to the nominated company, should the Joint Venturers so require, such machinery and tailings leases (including leases for the dumping of overburden) and such other leases licences reserves and tenements under the Mining Act or under the provisions of the Land Act as modified by subclause (5) of this clause as the Joint Venturers may reasonably require for their purposes under this agreement on or near the mineral lease.

(5) For the purposes of subclause (1) of this clause the Land Act shall be deemed to be modified by —

- (a) the substitution for subsection (2) of section 45A of the following subsection: —
 - (2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased;
- (b) the deletion of the proviso to section 116;
- (c) the deletion of section 135;
- (d) the deletion of section 143,

- (e) the inclusion of a power to offer for sale or leasing land designated for use as a townsite in terms of the Joint Venturers' proposals as finally approved or determined under clause 7 notwithstanding that the townsite has not been constituted a townsite under section 10; and
- (f) the inclusion of a power to offer for sale or grant leases or licences 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 or the nominated company in forms consistent as aforesaid in lieu of in the forms referred to in the Act.

(6) The provisions of subclause (5) of this clause shall not operate so as to prejudice the rights of the State to determine any lease licence or other right or title in accordance with the other provisions of this agreement.

Improvements on leases³

(7) The State shall as and when required by the Joint Venturers or the nominated company (but without prejudice to the foregoing provisions of this agreement relating to the detailed proposals and matters referred to in clause 6) consent to the Joint Venturers or the nominated company making improvements reasonably necessary or desirable for the purposes of this agreement on the land comprised in any lease granted by the State to the Joint Venturers or the nominated company pursuant to this agreement PROVIDED THAT the Joint Venturers or the nominated company shall also obtain any other consents legally required in relation to such improvements.

(8) The Joint Venturers or the nominated company shall not have any tenant rights in improvements made by the Joint Venturers or the nominated company on the land comprised in any lease granted by the State to the Joint Venturers or the nominated company pursuant to this agreement in any case where pursuant to clause 34 such improvements will remain or become the absolute property of the State.

Obligations of the Joint Venturers to construct³

12. The Joint Venturers shall within five (5) years next following the commencement date (or within such extended period not exceeding a further

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two (2) years as the Joint Venturers may satisfy the Minister that the Joint Venturers reasonably require and the Minister approves), and at a cost of not less than five million dollars (\$5,000,000) construct install provide and do all things necessary to enable them to mine from the land in the mineral lease granted to the Joint Venturers pursuant to clause 9 to transport by rail or road or other appropriate form of transport to the Joint Venturers' wharf and to ship ore therefrom and without lessening the generality of this provision the Joint Venturers shall within the aforesaid period or extended period as the case may be —

- (a) construct install and provide upon the land in 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 ore contracts and to mine handle load and deal with not less than three thousand (3,000) tons of ore per day such capacity to be built up progressively to not less than five thousand (5,000) tons of ore per day within three (3) years next following the export date; and

To commence exports³

- (b) commence to mine transport by rail road or other appropriate form of transport and ship from the Joint Venturers' wharf ore from the land in the mineral lease so that the average annual rate during the first three (3) years next following the export date shall not be less than one and one half million (1,500,000) tons.

Shipment of and price for ore³

13. During the currency of this agreement the Joint Venturers shall ship from the Joint Venturers' wharf all ore mined from the mineral lease and sold save only and excluding locally used ore. In every case, whether the ore be locally used or otherwise, the Joint Venturers shall use their best endeavours to obtain therefor the best price possible having regard to market conditions from time to time prevailing.

Construction of railway or road³

14. Subject to the State having assured to the Joint Venturers all necessary rights in or over Crown lands available for the purpose the Joint Venturers shall 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 7 (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' 8½") gauge railway (with all necessary signalling switch and other gear and all proper or usual works) from mining area "D" to connect with the Joint Venturers' railway 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 the running of such railway with sufficient and adequate locomotives freight cars and other railway stock and equipment to haul at least one and one half million (1,500,000) tons of ore per annum to the Joint Venturers' wharf or as required for the purposes of this agreement or in lieu thereof in accordance with the Joint Venturers' proposals as finally approved or determined under clause 7 construct and equip in the manner provided in clause 15(1) a road along such route aforesaid and shall provide sufficient road trucks or other appropriate forms of transport to enable the annual tonnage aforesaid to be hauled from mining area "D" to the Joint Venturers' railway.

Construction of roads³

15. (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 within three (3) years of the commencement date 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, crossings (level or grade separated) and passovers 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.

Operation of roads³

(2) Throughout the continuance of this agreement the Joint Venturers shall operate the roads referred to in subclause (1) of this clause in a safe and

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proper manner and where and to the extent that they can do so without unduly prejudicing or interfering with their operations hereunder allow crossing places for roads stock and railways.

Use of roads by others³

(3) Except to the extent that the Joint Venturers' proposals as finally approved or determined under clause 7 otherwise provide allow the public to use free of charge any roads (to the extent that it is reasonable and practicable so to do) constructed or upgraded under this clause PROVIDED THAT such use shall not unduly prejudice or interfere with the Joint Venturers' operations hereunder.

Use of public roads³

(4) The Joint Venturers shall have the right to use any public road 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 shall 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 the authority having control of such road the cost of preventing or making good such damage or deterioration or of upgrading the road to a standard commensurate with the increased traffic.

(5) If required by the Joint Venturers the State shall at the Joint Venturers' cost and expense (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or any part of the cost) widen upgrade or re-align 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.

Liability of Joint Venturers³

(6) (a) For the purposes of determining whether and 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; and

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

(7) In the event that the implementation of approved proposals submitted by the Joint Venturers pursuant to this agreement imposes an obligation upon the State to provide additional services works equipment and facilities for the projected populations at Shay Gap, Goldsworthy, Finucane Island-South Hedland and Port Hedland the Joint Venturers shall bear the cost of establishing or extending such services works equipment and facilities to a standard normally adopted by the State in similar circumstances.

Deposits’ townsite³

16. (1) Unless the Minister otherwise determines the Joint Venturers shall collaborate with the State in the planning, location and development of the deposits’ townsite and shall employ a skilled and 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 a proposal pursuant to clause 6.

(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

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sewerage reticulation and treatment works, water supply works, main drainage works and social, cultural 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 provide equipment for the buildings referred to in subclause (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 as may be reasonably required by the State from time to time provide at their cost adequate housing accommodation for married and single staff directly connected with the educational hospital medical and police services referred to in subclause (2)(ii) of this clause.

Deposits' townsite air field³

(5) The Joint Venturers shall if so required by the State construct an air field near the deposits' townsite at the Joint Venturers' expense to the standard required by the Director General of Civil Aviation and in accordance with the relevant approved proposal of the Joint Venturers hereunder.

Water³

17. (1) 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 deposits' townsite and within the mineral lease to implement their proposals hereunder (which amounts or such other amounts as shall be agreed between the parties hereto are hereinafter called "the Joint Venturers' water requirements").

(2) The Joint Venturers shall in collaboration with the State search for and make investigations to establish the availability of suitable artesian or non-artesian subterranean water sources within the mineral lease or at other locations approved by the State and shall employ and retain experienced ground water consultants where appropriate and shall 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.

(3) The Joint Venturers shall make application to the State for a licence to draw water from suitable artesian or non-artesian subterranean water sources identified pursuant to the investigations referred to in subclause (2) of this clause from which the State considers that adequate supplies are available to meet the Joint Venturers' water requirements and the State shall grant to the Joint Venturers such licence PROVIDED HOWEVER that the State may stipulate a limit to the amount of water which may be taken at any one time or from time to time under such licence and may for water conservation or water management purposes reduce the amount of water which may be drawn from sources licensed to the Joint Venturers.

(4) The Joint Venturers shall provide and construct at their own expense to standards and in accordance with designs approved by the State and in accordance with their relevant proposals as approved 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.

(5) 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 saline water may be used therein.

(6) 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' water requirements. The Joint Venturers shall 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 needed to supply the Joint Venturers' water requirements and in that event the Joint Venturers' contribution shall be limited to a fair and reasonable proportion of the total cost of constructing such water storage dam or dams and reticulation facilities having regard to the Joint Venturers' water requirements.

(7) (a) If during the currency of a licence granted under the provisions of this clause the Minister is of the opinion that it would be desirable for water conservation purposes or water management purposes that sources of water licensed to the Joint Venturers be

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controlled and operated by the State as part of a regional water supply scheme, the Minister may on giving six (6) months prior notice to the Joint Venturers of his intention, revoke the licence and take over the Joint Venturers' water supply facilities in each case without payment of compensation.

- (b) In the event of the revocation of a licence pursuant to the provisions of paragraph (a) of this subclause the State shall subject to the continued availability of water from the sources previously licensed to the Joint Venturers supply sufficient water to meet the Joint Venturers' water requirements.

(8) The State may in its discretion develop any district or regional water supply or construct any works to a greater capacity than that required to supply the Joint Venturers' water requirements but in that event the cost of the system as so enlarged shall be shared by the parties hereto in such manner as may be agreed to be fair in all the circumstances.

(9) 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*.

(10) Any reference in this clause to a licence is a reference to a licence under the *Rights in Water and Irrigation Act 1914* and the provisions of that Act relating to water rights and licences shall apply to any water sources developed for the Joint Venturers' purpose under this agreement.

Electricity³

18. (1) The Joint Venturers shall subject to the provisions of the *Electricity Act 1945* and the *State Electricity Commission Act 1945* and 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 (12) 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 at a price to be agreed between the parties and the Joint Venturers shall take all such steps as may be necessary to give effect to the acquisition.

(3) In the event of the State acquiring the Joint Venturers' facilities or any of them as provided by subclause (2) of this clause the State shall supply the Joint Venturers' electricity requirements for the time being and in so doing shall afford the Joint Venturers first priority over the electricity requirements of any other user or potential user of electricity from such facilities to the extent of the capacity of such facilities as at the date of the State's acquisition pursuant to subclause (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 from time to time applying 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.

Maintenance³

19. The Joint Venturers shall at all times keep and maintain in good repair and working order and condition and where necessary replace at their expense all works installations plant machinery equipment service or facility provided or controlled by the Joint Venturers for the purposes of this agreement the continued use whereof is requisite or necessary within the scope of the Joint Venturers' activities hereunder and excluding any works installations plant machinery equipment service or facility appropriated or otherwise acquired by the State.

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Compliance with laws³

20. The Joint Venturers shall in the construction operation maintenance and use of any work installation plant machinery equipment service or facility provided or controlled by the Joint Venturers for the purposes of this agreement comply with and observe the provisions hereof and subject thereto the laws for the time being in force in the said State.

Drainage³

21. (1) The Joint Venturers shall drain all land and related facilities used by the Joint Venturers for their operations hereunder and dispose of the drainage in accordance with plans and specifications approved by the Minister.

Disposal of waste materials³

(2) The Joint Venturers shall dispose of all waste materials generated within mining area "D", mining area "E" the port and the deposits' townsite in such manner as to prevent the pollution of the sea, rivers, ground water and underground water and shall comply with all reasonable directions that the Minister may give with regard to any such waste materials.

Dust nuisance³

22. The Joint Venturers shall so design construct and maintain their mining crushing handling transportation storage and reclaiming facilities and maintain their ship-loading facilities as to minimise dust nuisance and shall comply with such reasonable directions as the Minister may give with regard to any dust nuisance arising directly or indirectly from the Joint Venturers' operations hereunder.

Environmental protection³

23. 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 by the State or by any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act from time to time in force.

Use of local labour and materials³

24. The Joint Venturers shall for the purposes of this agreement so far as reasonably and economically practicable use labour available within the State and give preference to *bona fide* Western Australian contractors and manufacturers 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 and in calling tenders and letting contracts for works materials plant equipment and supplies required by them they shall ensure *bona fide* Western Australian contractors and manufacturers are given reasonable opportunity to tender or quote or otherwise be properly considered for such works materials plant equipment and supplies.

Mining area “E” Grant of rights of occupancy³

25. (1) The State shall on application by the Joint Venturers cause to be granted to the Joint Venturers the sole and exclusive right to search and prospect for ore over the whole of mining area “E” by granting to the Joint Venturers and to the Joint Venturers alone rights of occupancy pursuant to section 276 of the Mining Act of the areas now the subject of the temporary reserves comprising mining area “E” (or such other prospecting licence right or concession as may be appropriate in terms of the Mining Act for the time being in force) subject to such terms and conditions as the Minister for Mines may require at a rental at the rate of twenty-six dollars (\$26) per square mile per annum payable quarterly in advance for a period of twelve (12) months and shall then and thereafter subject to the continuance of this agreement maintain such exclusive rights as aforesaid for the benefit of the Joint Venturers and cause to be granted to the Joint Venturers as may be necessary such renewals of the rights of occupancy of the said temporary reserves or other the exploration licence or concession then in force (each renewal to be for a period of twelve (12) months at the same rental and upon the same terms) the last of which renewals notwithstanding its currency to expire —

- (i) on the date of grant of the mineral lease (referred to as “the second mineral lease” in this clause) to the Joint Venturers under this clause; or
- (ii) at the expiration of one (1) month from the date on which the detailed proposals and matters referred to in subclause (3) of this clause shall have been approved by the Minister or deemed to have been approved by decision of arbitration; or

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- (iii) at the expiration of the time within which the detailed proposals and matters referred to in subclause (3) of this clause must be required to be submitted by the Joint Venturers to the Minister;
or
- (iv) on the determination of this agreement pursuant to its terms; or
- (v) 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 PROVIDED ALWAYS that the Joint Venturers may at any time relinquish their rights of occupancy to the area the subject of any temporary reserve or any part thereof by notice in writing in that behalf to the State.

Joint Venturers may submit proposals in respect of mining area “E”³

(2) From the date of grant of the rights of occupancy or other the exploration licence or concession referred to in subclause (1) of this clause the Joint Venturers shall with all reasonable diligence continue their preliminary exploration and investigation preparatory to making a complete and thorough geological and (as necessary) geophysical investigation of mining area “E” and within two (2) years next following the date of ratification of this agreement the Joint Venturers shall complete their geological and (as necessary) geophysical exploration and investigation with a view to proving ore deposits in mining area “E” and testing and sampling such deposits. Such investigations shall include a general reconnaissance of mining area “E” with a view to the establishment of various sites for the operations pursuant to this agreement and a feasibility study relating to the establishment of a plant for the secondary processing of ore from mining area “E”. The Joint Venturers shall keep the State fully informed at least quarterly commencing within one quarter after the date of grant of the rights of occupancy or other licence or concession aforesaid as to the progress and results of the Joint Venturers’ operations under this subclause.

(3) Within five (5) years from the commencement date the Joint Venturers having complied with all their obligations pursuant to subclause (2) of this clause and subject to the Joint Venturers having become bound to pay Sentinel all the monies referred to in clause 10 may apply for the second mineral lease in respect of any part or parts of mining area “E” (not exceeding in total area three hundred (300) square miles and in the shape of a

parallelogram or parallelograms) and shall with such application submit to the Minister —

- (a) to the fullest extent reasonably practicable the Joint Venturers' detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister and measures to be taken for the protection of the environment) so far as is relevant to mining area "E" (or so much thereof as shall be comprised within the land in the second mineral lease) relating to the establishment of a plant for the secondary processing of the ore with provision for expansion of such plant when economically feasible and for the transport and shipment of ore to be mined and of ore to be the subject of secondary processing and including the location, area, layout, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely —
 - (i) the use of the Joint Venturers' existing facilities;
 - (ii) the railway or road or other appropriate form of transport from mining area "E" to connect with the Joint Venturers' existing railway or other appropriate form of transport and their proposed operation including fencing (if any) and as circumstances may reasonably require such crossing places including in the case of a road or other appropriate form of transport either over-passes or under-passes where level crossings are inadequate for reasonable safety or other reasonable requirements;
 - (iii) deposits' townsite in connection with mining area "E" and development services and facilities in relation thereto;
 - (iv) housing;
 - (v) water supply;
 - (vi) roads (including details of roads in respect of which it is not intended that the provisions of clause 15(3) shall operate);

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- (vii) mining crushing screening handling transport and storage of ore;
 - (viii) secondary processing;
 - (ix) airfields;
 - (x) any leases licences or other tenures of land required from the State; and
 - (xi) any other works, services or facilities proposed or desired by the Joint Venturers; and
- (b) (subject to the provisions of subclause (4) of this clause) satisfactory evidence —
- firstly* of the making or the likelihood of making suitable contracts for the sale and shipment by the Joint Venturers of ore from the second mineral lease,
 - secondly* of the availability of finance necessary for the fulfilment of the Joint Venturers' proposals under this clause, and
 - thirdly* of any necessary licence to the Joint Venturers from the Commonwealth to export hereunder ore the subject of the ore contracts referred to in this paragraph in the quantities at the rate or rates and in the years stated in the contracts.

(4) If the Joint Venturers should in writing and within the time later in this subclause mentioned request the Minister to grant an extension or any further extension of time beyond the 31st day of December 1977 (or such later date if any previously granted or approved by the Minister) within which to make the ore contracts referred to in paragraph (b) of subclause (3) of this clause 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 such ore contracts on a competitive basis and reasonably require an additional period for the purpose of making such 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 31st day of December 1977;

- (b) if an extension is granted under paragraph (a) of this subclause 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 subclause 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 ore (or processed ore) from the leased land which contracts are comparable with ore contracts referred to in paragraph (b) of subclause (3) of this clause 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 Venturers 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.

(5) Within two (2) months after receipt of the detailed proposals of the Joint Venturers in regard to any of the matters mentioned in subclause (3)(a) of this clause 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 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 by others as well as the Joint Venturers of the Joint Venturers' facilities and services but the Minister shall in any notice to the Joint Venturers disclose his reasons for any such alteration or condition. 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

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the application for the second mineral lease shall on the expiration of that period of three (3) months cease and determine (save as provided in clause 36) 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.

(6) Within two (2) months after receipt of evidence from the Joint Venturers with regard to the matters mentioned in subclause 3(b) of this clause to the reasonable satisfaction of the Minister the State shall 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 shall 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 the application for the second mineral lease shall on the expiration of that period cease and determine (save as provided in clause 36) but if the question is decided in favour of the Joint Venturers the decision shall 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.

Effect of Joint Venturers applying for mineral lease in respect of mining area "E"³

(7) If the Joint Venturers shall have applied for the second mineral lease within five (5) years of the commencement date and shall have complied with their obligations in respect of such application and if the Minister shall have approved the Joint Venturers' proposals or be deemed to have approved the Joint Venturers' proposals by decision of arbitration then the Minister shall cause any necessary survey to be made of the land so applied for (the cost of the 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 the second mineral lease for ore in the form *mutatis mutandis* of the lease in the schedule hereto for a term which subject to the payments of rental and royalties hereinbefore mentioned and to the performance and

observance by the Joint Venturers of their obligations under the second mineral lease shall be for a period commencing from the date of issue of the second mineral lease for a period co-extensive with the residue of the term then unexpired of the mineral lease granted under clause 9(1) with rights to successive renewal for twenty-one (21) years upon the same terms and subject to earlier determination upon the cessation or determination of this agreement.

(8) If the Joint Venturers shall have applied for the second mineral lease within five (5) years of the commencement date and shall have complied with their obligations in respect of such application and the Minister shall have approved the Joint Venturers' proposals or be deemed to have approved the Joint Venturers' proposals by decision of arbitration all the provisions of this agreement shall apply *mutatis mutandis* and so far as the context admits in respect of the area the subject of the second mineral lease and the operations relating thereto in the same manner and to the same extent as they apply in respect of mining area "D" and the operations relating to that mining area.

(9) If the Joint Venturers' proposals made pursuant to this clause are not approved by the Minister or if by the award on arbitration pursuant to this clause the question is decided in favour of the Minister the State will not grant mining area "E" to any party other than the Joint Venturers until after ten (10) years from the commencement date on terms more favourable on the whole than those available to the Joint Venturers.

(10) The Joint Venturers shall not without the consent of the Minister in any three (3) year period commencing at the expiration of three (3) years after the Minister shall have approved or be deemed to have approved the Joint Venturers' proposals under this clause export from the Commonwealth a quantity of ore (other than processed ore) won from the second mineral lease which is more than four (4) times the quantity of locally used ore won from the second mineral lease during that period.

Effect of Joint Venturers not applying for mineral lease in respect of mining area "E"³

(11) If the Joint Venturers do not apply within five (5) years from the commencement date or cease to be entitled to apply for the second mineral lease the Joint Venturers shall cease to have any rights or interest to or in respect of mining area "E" or any part or parts thereof and this agreement with the exception of this clause will continue in force for twenty-one (21) years from the export date or until the Joint Venturers have mined all the available ore from

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the mineral lease in respect of mining area “D” (whichever later happens) or until this agreement is otherwise determined.

(12) Notwithstanding anything herein contained no failure by the Joint Venturers to submit to the Minister proposals under this clause nor any non approval by the Minister of such proposals shall constitute a breach of this agreement by the Joint Venturers and the only consequence arising from such failure or non approval (as the case may be) shall be those set out in the last preceding subclause and the cessation of the Joint Venturers’ right to apply for the second mineral lease.

Zoning³

26. The State shall ensure that the mineral lease and any lands the subject of any Crown Grant lease licence 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 the State on the ground that such operations are contrary to any zoning by-law or regulation.

No discriminatory taxes rates or charges³

27. Except as provided in this agreement the State 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.

Rating³

28. 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 1960*) 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*.

No charge for the handling of cargoes³

29. Subject to the Joint Venturers at their own 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 harbour no charge or levy shall be made by the State or by any State authority in relation to the loading of outward or the unloading of inward cargoes from the 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.

Rentals and evictions³

30. The State shall ensure that any State legislation for the time being in force in the State relating to the fixation of rentals shall not apply to any houses belonging to the Joint Venturers in the deposits' townsite and that in relation to each such house the Joint Venturers shall have the right to include as a condition of 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.

Subcontracting³

31. The State shall ensure that without affecting the liabilities of the parties to this agreement either party shall have the right from time to time to entrust to third persons the carrying out of any portions of the operations which that party is authorised or obliged to carry out hereunder.

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Resumptions³

32. (1) The State may as and for a public work under the *Public Works Act 1902* resume any land required for the purposes of this agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of the same to the Joint Venturers and the provisions of subsections (2) to (7) inclusive of section 17 and section 17A of that Act shall not apply to or in respect of that land or the resumption thereof. The Joint Venturers shall pay the State, as required the costs of and incidental to any land resumed on behalf of the Joint Venturers pursuant to this clause.

(2) Subject to the performance by the Joint Venturers of their obligations under this agreement the State 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 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 works on the lands the subject of any lease or licence granted to the Joint Venturers in terms of this agreement AND without such consent (which shall not be unreasonably withheld) the State shall not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road right-of-way water right or easement of any nature or kind whatsoever over or in respect of any such lands which may unduly prejudice or interfere with the Joint Venturers' operations hereunder.

Royalties³

33. (1) The Joint Venturers shall pay to the State royalty on all ore from the mineral lease shipped sold or locally 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) at the rate of eleven per centum (11%) 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 eighty-five (85) cents per ton (subject to paragraph (vii) of this clause) in respect of such ore the subject of any shipment or sale;

- (ii) on fine ore sold or shipped separately as such (not being locally used ore) at the rate of eleven per centum (11%) of the f.o.b. revenue (computed as aforesaid) PROVIDED NEVERTHELESS that such royalty shall not be less than fifty-five (55) cents per ton (subject to paragraph (viii) of this clause) in respect of such ore the subject of any shipment or sale;
- (iii) on fines sold or shipped separately as such (not being locally used ore) at the rate of eleven per centum (11%) of the f.o.b. revenue (computed as aforesaid) without any minimum royalty;
- (iv) on ore with an average pure iron content of less than sixty per cent (60%) but which would otherwise be within the meaning of the definitions of direct shipping ore or fine ore, at the rate of eleven per centum (11%) of the f.o.b. revenue (computed as aforesaid) without any minimum royalty;
- (v) on manganese ore fifteen (15) cents per ton which rate shall apply for a period of five (5) years after the commencement of production of manganese ore. Thereafter the royalty payable on manganese ore shall be as prescribed from time to time under or pursuant to the provisions of the Mining Act;
- (vi) on manganiferous ore and on all locally used ore at the rate of fifteen (15) cents per ton;
- (vii) if the amount ascertained by multiplying the total tonnage of ore shipped or sold and which is liable to royalty under paragraph (i) of this clause in any financial year by eighty-five (85) 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 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;
- (viii) if the amount ascertained by multiplying the total tonnage of fine ore shipped or sold as such and which is liable to royalty under paragraph (ii) of this subclause in any financial year by fifty-five (55) 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 paragraph then that proviso shall not apply in

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respect of fine ore shipped or sold as such in that year and at the expiration of that year any necessary adjustments shall be made accordingly;

- (ix) the royalty at the rate of fifteen (15) cents per ton referred to in paragraph (vi) of this clause shall be adjusted up or down (as the case may be) as at the first day of January, 1969 and as at the beginning of every fifth year thereafter 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 The Broken Hill Proprietary Company Limited or any subsidiary thereof 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.

Payment of royalties³

(2) The Joint Venturers shall 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 mineral lease 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.

Inspection³

(3) The Joint Venturers shall permit the Minister or his nominee to inspect at all reasonable times the books of account and records of the Joint Venturers relative to the Joint Venturers' operations under this agreement including contracts relative to the shipment or sale of ore hereunder and to take

copies or extracts therefrom. For the purpose of determining the f.o.b. revenue payable in respect of any shipment or sale of ore hereunder the Joint Venturers shall if required satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the Minister's satisfaction as to all relevant weights analyses and assays of the ore and the origin of the ore.

Mixed ore³

(4) In the event that ore from mining area "D" and/or mining area "E" is mixed with ore produced by the Joint Venturers pursuant to either the *Iron Ore (Mount Goldsworthy) Agreement Act 1964* or some subsequent arrangement entered into by the Joint Venturers with the State the royalty applicable in respect of that portion of the mixed ore which comes from the mineral lease hereunder shall notwithstanding any provision to the contrary in the agreement or in any other agreement be calculated at the applicable rate or rates set out in this clause.

Additional royalties³

(5) The Joint Venturers shall pay to the State in addition to the royalties payable under the foregoing subclauses of this clause —

- (a) a royalty amounting to the sum of Five hundred thousand dollars (\$500,000) within seven (7) days of the date this agreement is ratified by the Parliament of Western Australia PROVIDED that no such payment will be required if prior to that due date the Joint Venturers have elected to make and have made a gift of not less than Five hundred thousand dollars (\$500,000) to any one or more of the funds, authorities or institutions prescribed by section 78(1)(a) of the *Income Tax Assessment Act 1936-1971* and situate or resident in the said State; and
- (b) in the event of the grant of a mineral lease to the Joint Venturers over that part of mining area "D" coloured blue a royalty amounting to the sum of Three hundred and twenty-four thousand three hundred and twenty dollars (\$324,320) within seven (7) days of the date of such grant PROVIDED that no such payment will be required if prior to that due date the Joint Venturers have elected to make and have made a gift of not less than Three hundred and twenty-four thousand three hundred

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and twenty dollars (\$324,320) to any one or more of the funds, authorities or institutions prescribed by section 78(1)(a) of the *Income Tax Assessment Act 1936-1971* and situate or resident in the said State.

Effect of determination of lease³

34. On the cessation or determination of any lease licence 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 39 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 their 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.

Determination of agreement³

35. 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 sublease licence 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 then 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 any of the Joint Venturers shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within three (3) months from the date of such liquidation the other or others of the Joint Venturers acquire 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 licence 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 licence easement or right granted hereunder or pursuant hereto or if the Joint Venturers shall surrender the entire mineral lease as permitted under clause 9(3) then the rights of the Joint Venturers hereunder and under any lease licence 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 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 agreement ³

36. 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 licence easement or right granted hereunder or pursuant hereto shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this agreement or in respect of any indemnity given hereunder AND the Joint Venturers shall without further consideration but otherwise at the request and cost of the State transfer or surrender to the State or the Crown all land the subject of any Crown Grant issued under the Land Act pursuant to this agreement;

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- (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 5 if and insofar as the statements may not have been so furnished; and
- (d) save as aforesaid and as otherwise provided in this agreement neither of the parties hereto shall have any claim against another of them with respect to any matter or thing in or arising out of this agreement.

Export to places outside the Commonwealth³

37. The Joint Venturers shall ensure that unless with the prior written approval of the Minister to do otherwise all iron ore shipped pursuant to this agreement shall 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 clause 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 in a vessel not owned by the Joint Venturers or an associated company or any other company in which the Joint Venturers have a controlling interest and such ore is off-loaded in the Commonwealth the Joint Venturers will not be or 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 clause shall not apply 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 PROVIDED ALSO that the provisions of this clause shall not apply —

- (i) to ore used in secondary processing by the Joint Venturers or an associated company within the said State;

- (ii) to ore so used by the Joint Venturers or an associated company within the Commonwealth but outside the said State to the extent that the tonnage of ore so used does not in any year exceed fifty per centum (50%) of the total quantity of ore used in secondary processing by the Joint Venturers or an associated company within the State; or
- (iii) to ore so used by the Joint Venturers or an associated company within the Commonwealth but outside the said State in excess of fifty per centum (50%) of the total quantity of ore used in secondary processing by the Joint Venturers or an associated company within the said State with the prior approval of the Minister as aforesaid.

Indemnity³

38. The Joint Venturers shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the 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 the Joint Venturers' works or services the subject of this agreement or the plant apparatus or equipment installed in connection therewith.

Assignment³

39. (1) Subject to the provisions of this clause the Joint Venturers or any of them 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 licence 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

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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 subclause (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 agreements on their part contained herein and in any lease licence easement grant or other title the subject of an assignment under the said subclause (1).

(3) 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 1893* 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 this clause over any lease, licence, 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 this clause;
- (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 this clause) 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 this clause) or because the same is not registered under the provisions of the Mining Act.

Variation³

40. (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 licence 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 subclause (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 (12) sitting days of the date of its execution.

(3) If either House does not pass a resolution disallowing the agreement within twelve (12) 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 works³

41. Subject to the provisions of clause 40 —

- (1) The Minister may from time to time approve variations or require reasonable variations in the detailed proposals which may have been approved pursuant to this agreement and in considering such variations 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.

Alteration of works³

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

Export licence³

42. (1) On request by the Joint Venturers the State shall make representations to the Commonwealth for the grant to the Joint Venturers of a licence or licences 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 on terms not less favourable to the Joint Venturers (except as to rate or quantity) than the Commonwealth has given or intends to give in relation to such a licence or licences 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 licences in respect of the financial year next following and if they do not so intend will co-operate with the State in making representation to the Commonwealth with a view to some other producer in the said State being licensed by the Commonwealth to export such of the tonnage permitted by the Commonwealth in respect of that year as the 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 licence 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 licence or licences under Commonwealth law for the export of ore as may be necessary for the purpose of enabling the Joint Venturers to fulfil their obligations hereunder or if any such licence 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 application to the Commonwealth or otherwise having failed to use their best endeavours to have the licence granted or restored (as the case may be) but save as aforesaid if at any time any necessary licence is not granted or any licence 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 licence 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 licence or licences under Commonwealth law for the export of ore as may from time to time be necessary for the purposes of this agreement.

Delays³

43. 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 (whether partial or general) shortages or insufficient supply of labour or water 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 but in so doing that party shall not be obliged to settle any labour dispute or difference on unreasonably disadvantageous terms.

Power to extend periods³

44. 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.

Arbitration³

45. Except where otherwise specifically provided in this agreement 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

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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 provisions 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*, but this clause does not apply to any case where the State the Minister or any Minister is by this agreement given either expressly or impliedly a discretionary power.

Notices³

46. Any notice consent or other writing authorised by 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 any senior officer of the Public Service of the State acting by the direction of the Minister and forwarded by prepaid post to the Joint Venturers at their respective registered offices for the time being in the State or to a corporation nominated by a Joint Venturer by notice in that behalf pursuant to this clause and at its registered office for the time being in the State or as otherwise designated in that notice and by the Joint Venturers if signed on their behalf by a director manager or secretary of the Joint Venturers or by any person or persons authorised by the Joint Venturers in that behalf or by their solicitors (which solicitors have been 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 duty³

47. (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 licence or other right or interest;
- (c) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment made in conformity with the provisions of subclause (1) of clause 39; and

- (d) any assignment sublease 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 sublease disposition or appointment executed pursuant to subclause (1) of clause 39;

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

Relevant law³

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

SCHEDULE.

WESTERN AUSTRALIA.

IRON ORE (GOLDSWORTHY-NIMINGARRA) AGREEMENT ACT 1972.

Mineral Lease

Lease No. Mineral Field

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 CONSOLIDATED GOLD FIELDS AUSTRALIA LIMITED, CYPRUS MINES CORPORATION and UTAH DEVELOPMENT COMPANY (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 and including where the context so admits the assignees of the Joint Venturers under clause 39

Schedule 1 Agreement

of the said agreement) of the other part the said State agreed to grant to the Joint Venturers a mineral lease of portion or portions of the lands referred to in the said agreement as mining area "D" AND WHEREAS the said agreement was ratified by the *Iron Ore (Goldsworthy-Nimingarra) 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 as tenants in common in equal shares subject to the said provisions ALL THOSE pieces and parcels of land situated in the Goldfield(s) containing by admeasurement be the same more or less and particularly described and delineated on the plan in the Schedule hereto and all those mines, veins, seams, lodes and deposits of iron ore in on or under the said land (hereinafter called "the said mine") together with all rights, liberties, easements, advantages and appurtenances thereto belonging or appertaining to a lessee of a mineral lease under the *Mining Act 1904* including all amendments thereof for the time being in force and all regulations made thereunder for the time being in force (which Act and regulations are hereinafter referred to as "the Mining Act") or to which the 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 (21) years from the day of 19 with the right to renew the same from time to time for further periods each of twenty-one (21) 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 mineral oil on or below the surface of the demised land is reserved to Her Majesty with the right to Her Majesty or any person claiming under her or lawfully authorised in that behalf to have access to the demised land for the purpose of searching for and for the operations of obtaining mineral oil in any part of the land under the provisions of the *Petroleum Act 1967*.

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

THE SCHEDULE ABOVE REFERRED TO:

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

SIGNED by the said THE HONOURABLE JOHN TREZISE TONKIN, M.L.A. in the presence of — } JOHN T. TONKIN

H. E. GRAHAM,
Minister for Development
and Decentralisation.

D. G. MAY,
Minister for Mines.

SIGNED SEALED AND DELIVERED for and on behalf of CONSOLIDATED GOLD FIELDS AUSTRALIA LIMITED by its duly authorised agent in the presence of — } B. C. RYAN

D. E. MOORE

Schedule 1 Agreement

SIGNED SEALED AND DELIVERED
for and on behalf of CYPRUS MINES
CORPORATION by its duly authorised
agent in the presence of —

}
}
}

B. C. RYAN

D. E. MOORE

SIGNED SEALED AND DELIVERED
for and on behalf of UTAH
DEVELOPMENT COMPANY by its
duly authorised agent in the presence
of —

}
}
}

B. C. RYAN

D. E. MOORE

_____ [Schedule 1 amended by No. 57 of 2000 s. 6.]

Schedule 2 — First Variation Agreement

[s. 4]

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

B E T W E E N

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

AND

BHP MINERALS PTY. LTD. ACN 008 694 782 a company incorporated in
the State of Western Australia and having its registered office at Level 18,
200 St George’s Terrace, Perth, **CI MINERALS AUSTRALIA PTY. LTD.**
ACN 009 256 259 a company incorporated in the State of Western Australia
and having its registered office at 22nd Floor, Forrest Centre, 221 St George’s
Terrace, Perth and **MITSUI IRON ORE CORPORATION PTY. LTD.**
ACN 050 157 456 a company incorporated in the State of Western Australia
and having its registered office at 24th Floor, Forrest Centre, 221 St George’s
Terrace, Perth (hereinafter called “the Joint Venturers”) of the other part.

W H E R E A S :

- (a) the State and the Joint Venturers (pursuant to certain assignments) are now the parties to the agreement approved by the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*, which agreement as amended from time to time is hereinafter called “the Principal Agreement”;
- (b) the State and the Joint Venturers wish to vary the Principal Agreement.

NOW THIS AGREEMENT WITNESSES —

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The State shall introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its

Schedule 2 First Variation Agreement

passage as an Act prior to 31 December 2000 or such later date as may be agreed between the parties hereto.

3. (1) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation unless and until —
- (a) the Bill to ratify this Agreement as referred to in Clause 2; and
 - (b) Bills to ratify the following agreements of even date herewith, namely: —
 - (i) an agreement between the State and BHP Direct Reduced Iron Pty. Ltd. to vary the Iron Ore Beneficiation (BHP) Agreement;
 - (ii) an agreement between the State and BHP Direct Reduced Iron Pty. Ltd. to vary the Iron Ore — Direct Reduced Iron (BHP) Agreement;
 - (iii) an agreement between the State and BHP Minerals Pty. Ltd., CI Minerals Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. to vary the Iron Ore (Marillana Creek) Agreement;
 - (iv) an agreement between the State and BHP Iron Ore (Jimblebar) Pty. Ltd. to vary the Iron Ore (McCamey's Monster) Agreement;
 - (v) an agreement between the State and BHP Minerals Pty. Ltd., Mitsui-Itochu Iron Pty. Ltd. and CI Minerals Australia Pty. Ltd. to vary the Iron Ore (Mount Newman) Agreement; and
 - (vi) an agreement between the State and BHP Minerals Pty. Ltd., CI Minerals Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. to vary the Iron Ore (Mount Goldsworthy) Agreement

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

- (2) If before 31 December 2000 or such later agreed date the said Bills have not commenced to operate as Acts then unless the parties

hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

- (3) On the said Bills commencing to operate as Acts all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.
4. The Principal Agreement is hereby varied in Clause 11 by inserting after subclause (1) the following subclause —
- “(1a) Notwithstanding any provision in this Agreement for the grant of titles hereunder to the Joint Venturers as tenants in common in equal shares, if the Joint Venturers hold their interests in this Agreement in other than equal shares, the grant of titles and the renewal of any leases hereunder shall be made to the Joint Venturers, if they so request the State, in accordance with their percentage interests in this Agreement.”.

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

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

} RICHARD COURT
—
}

COLIN BARNETT
MINISTER FOR RESOURCES DEVELOPMENT

THE COMMON SEAL of
BHP MINERALS PTY. LTD. was
hereunto affixed by authority
of the Directors —

} [C.S.]
—

Notes

- ¹ This ~~reprint~~ is a compilation ~~as at 5 September 2003~~ of the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

| Short title | Number and year | Assent | Commencement |
|---|-----------------------------------|------------------------------------|---|
| <i>Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972</i> | 30 of 1972 | 16 Jun 1972 | 16 Jun 1972 |
| <i>Acts Amendment (Iron Ore Agreements) Act 2000 Pt. 2</i> | 57 of 2000 | 7 Dec 2000 | 7 Dec 2000 (see s. 2) |
| Reprint 1: The <i>Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972</i> as at 5 Sep 2003 (includes amendments listed above) | | | |
| <u>Iron Ore Agreements Legislation Amendment Act 2010 Pt. 2</u> | <u>34 of 2010</u> | <u>26 Aug 2010</u> | <u>1 Jul 2010 (see s. 2(b)(ii))</u> |

- ² Repealed by the *Mining Act 1978*.
- ³ Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.