



Western Australia

Iron Ore (Mount Bruce) Agreement Act 1972

Compare between:

[11 Dec 2010, 01-e0-01] and [15 Dec 2011, 01-f0-01]

Iron Ore (Mount Bruce) Agreement Act 1972

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

1. Short title

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

2. Definitions

In this Act —

the Agreement means the agreement of which a copy is set forth in the First Schedule, and if that agreement is varied, from time to time, in accordance with the provisions of the Agreement includes the Agreement as so varied from time to time, and, except in section 3(1), also includes the Agreement as altered by the 1976 Variation Agreement, the 1987 Variation Agreement, the *Iron Ore Agreements Legislation Amendment Act 2010* Part 6, [the 2010 Variation Agreement](#) and the ~~2010~~ [2011](#) Variation Agreement;

the Company has the same meaning as it has in, and for the purposes of, the Agreement;

the 1976 Variation Agreement means the agreement a copy of which is set forth in the Second Schedule;

the 1987 Variation Agreement means the agreement a copy of which is set forth in the Third Schedule;

the 2010 Variation Agreement means the agreement a copy of which is set forth in the Fourth Schedule;

the 2011 Variation Agreement means the agreement a copy of which is set forth in the Fifth Schedule.

[Section 2 amended by No. 94 of 1976 s. 2; No. 26 of 1987 s. 4; No. 61 of 2010 s. 12; No. 61 of 2011 s. 12.]

3. Ratification of the Agreement

- (1) The Agreement is ratified.
- (2) Notwithstanding any other Act or law, and without limiting the effect of subsection (1) —
 - (a) the Company shall be allowed to enter upon the Crown lands mentioned in paragraph (b) of clause 2 of the Agreement, to the extent and for the purposes provided in that paragraph;
 - (b) the provisions of subclause (2) of clause 3 of the Agreement shall take effect.
- (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 subclause (1) of clause 4 of the Agreement.

3A. Ratification of the Variation Agreement

The 1976 Variation Agreement is ratified.

[Section 3A inserted by No. 94 of 1976 s. 3; amended by No. 26 of 1987 s. 5.]

3B. 1987 Variation Agreement

- (1) The 1987 Variation Agreement is ratified and its implementation is authorised.
- (2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the 1987 Variation

Agreement shall operate and take effect notwithstanding any other Act or law.

[Section 3B inserted by No. 26 of 1987 s. 6.]

4A. Variation of Agreement to increase rates of royalty

- (1) Clause 12(1)(h) of the Agreement is varied —
 - (a) in subparagraph (ii) by deleting “three and three quarter per centum (3¾%)” and inserting —

5.625%
 - (b) in subparagraph (iii) by deleting “fifteen (15) cents per ton;” and inserting —

5.625% of the f.o.b. revenue (computed as aforesaid);
 - (c) in subparagraph (iv) by deleting “fifteen (15) cents per ton;” and inserting —

5% of the f.o.b. revenue (computed as aforesaid);
- (2) Clause 12(1)(h)(ii), (iii) and (iv) of the Agreement as varied by subsection (1) 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.
- (3) Nothing in this section affects the amount of royalty payable under clause 12 of the Agreement in respect of any period before the commencement of the *Iron Ore Agreements Legislation Amendment Act 2010* Part 6.

[Section 4A inserted by No. 34 of 2010 s. 13.]

s. 4B

4B. 2010 Variation Agreement

- (1) The 2010 Variation Agreement is ratified and its implementation is authorised.
- (2) Without limiting or otherwise affecting the *Government Agreements Act 1979*, the 2010 Variation Agreement is to operate and take effect despite any other Act or law.

[Section 4B inserted by No. 61 of 2010 s. 13.]

4C. State empowered under clause 20E(9)(a)

The State has power in accordance with clause 20E(9)(a) of the Agreement.

[Section 4C inserted by No. 61 of 2010 s. 13.]

4D. 2011 Variation Agreement

- (1) The 2011 Variation Agreement is ratified and its implementation is authorised.
- (2) Without limiting or otherwise affecting the *Government Agreements Act 1979*, the 2011 Variation Agreement is to operate and take effect despite any other Act or law.

[Section 4D inserted by No. 61 of 2011 s. 13.]

4. By-laws

- (1) The Governor may upon the recommendation of the Company make, alter and repeal by-laws for the purposes of, and in accordance with, the Agreement.
- (2) By-laws made pursuant to this section —
 - (a) shall be published in the *Government Gazette*;
 - (b) take effect and have the force of law from the date they are so published or from such later date as is fixed by the by-laws;

- (c) may prescribe penalties not exceeding \$100 for breach of any of the by-laws; and
- (d) are not subject to the provisions of section 36 of the *Interpretation Act 1918*³, but the by-laws shall be laid before each House of Parliament within 6 sitting days of the House next following the publication of the by-laws in the *Government Gazette*.

[Heading deleted by No. 19 of 2010 s. 42(2).]

First Schedule — Iron Ore (Mount Bruce) Agreement

[s. 2]

[Heading amended by No. 19 of 2010 s. 4.]

THIS AGREEMENT under Seal made the 10th day of March One thousand nine hundred and seventy-two BETWEEN THE HONOURABLE JOHN TREZISE TONKIN, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and Instrumentalities thereof from time to time (hereinafter called “the State”) of the one part and MOUNT BRUCE MINING PTY. LIMITED a company incorporated under the *Companies Act 1961* of the said State and having its registered office at 191 St. George’s Terrace Perth (hereinafter called “the Company” which expression will include the successors and assigns of the Company) of the other part.

WHEREAS —

- (a) The Company and Hamersley are satisfied from investigations which prior to 1971 cost over three million dollars (\$3,000,000), that the mining areas defined in clause 1 hereof contain iron ore of tonnages and grades sufficient to warrant economic recovery and marketing;
- (b) The Company agrees that investigations should be made with a view to the establishment of a plant for the production of metallised agglomerates or a plant for the production of steel with a view to its being in a position to submit to the State proposals for such establishment as are hereinafter provided.

NOW THIS AGREEMENT WITNESSETH —

1. In this Agreement subject to the context —

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

“associated company” means —

- (a) any company notified in writing by the Company to the Minister which is incorporated in the United Kingdom the United States of America or the Commonwealth of Australia and which is —

- (i) a subsidiary of the Company within the meaning of the term “subsidiary” in section 6 of the *Companies Act 1961*;
 - (ii) promoted by the Company for all or any of the purposes of this Agreement and in which the Company holds not less than two million dollars (\$2,000,000) of the issued ordinary share capital;
 - (iii) a company in which the Company or Hamersley holds not less than twenty per cent (20%) of the issued ordinary share capital; or
 - (iv) a company which is related within the meaning of that term in the aforesaid section to the Company or to any company in which the Company holds not less than twenty per cent (20%) of the issued ordinary share capital; and
- (b) any company approved in writing by the Minister for the purposes of this Agreement which is associated directly or indirectly with the Company in its business or operations hereunder;

“associated company of Hamersley” means —

- (a) a company defined as an “associated company” within the meaning of the Agreement a copy of which is set out in the First Schedule to the *Iron Ore (Hamersley Range) Agreement Act 1963-1968*; or
- (b) any company approved in writing by the Minister as an associated company of Hamersley for the purposes of this Agreement;

“the commencement date” means the 30th day of June, 1972.

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

“Company’s wharf” means any wharf constructed by or on behalf of the Company pursuant to this Agreement for the shipment of ore from the mineral lease any wharf established by Hamersley at Dampier in the said State or any temporary wharf for the time

being approved by the Minister as the Company's wharf for the purposes hereof during the period to which such approval relates;

"Dampier" includes East Intercourse Island;

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

"financial year" means a year commencing on and including the 1st day of July;

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

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

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

- (1) ocean freight;
- (2) marine insurance;
- (3) port and handling charges at the port of discharge;
- (4) costs of delivering the ore from port of discharge to the smelter;
- (5) weighing, sampling, assaying, inspection and representation costs incurred on discharge or delivery;
- (6) shipping agency charges;

- (7) import taxes by the country of the port of discharge;
and
- (8) such other costs and charges at the Minister may in his discretion consider reasonable in respect of any shipment or sale.

For the purposes of this definition —

- (a) The Minister may (in respect of costs or charges as set out in items (1) to (7) inclusive of this definition) notify the Company in writing that in respect of any shipment or sale he does not regard a cost or charge as having been properly incurred and in such case the Company may refer the matter to arbitration hereunder and unless and until such matter is resolved in favour of the Company, such cost or charge shall not be deemed to have been properly incurred.
- (b) Notwithstanding anything contained in this definition to the contrary, a cost or charge as set out in items (1) to (7) inclusive of this definition shall not (unless the Minister so determines in accordance with the provisions of paragraph (c) of this definition) be deemed to be properly incurred if such charge is directly or indirectly imposed upon or incurred by the Company or an associated company pursuant to an arrangement entered into between the Company and the State.
- (c) Costs or charges other than those set out in items (1) to (7) inclusive of this definition and costs and charges to which paragraph (b) of this definition applies shall be deemed to be properly incurred if the Minister in his discretion so determines and in making his determination the Minister shall have regard to such matters as the parties to and the *bona fide* nature of the transaction resulting in the cost or charge.

“Hamersley” means Hamersley Iron Pty. Limited a company incorporated under the *Companies Act 1961* of the State of Victoria;

“integrated iron and steel industry” means an industry for the manufacture of iron and steel or for the manufacture of steel from iron ore by a process which does not necessarily involve the production of pig iron or basic iron in the production of steel;

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

“Land Act” means the *Land Act 1933*;

“mineral lease” means the mineral lease referred to in sub-clause (2) of clause 4 hereof and includes any renewal thereof;

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

“mining areas” means the areas delineated and coloured red on the plan marked “A” initialled by or on behalf of the parties hereto for the purpose 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 Company and includes the successors in office of the Minister;

“metallised agglomerates” means products resulting from the reduction of iron ore or iron ore concentrates by any method whatsoever and having an iron content of not less than eighty-five percent (85%);

“month” means calendar month;

“notice” means notice in writing;

“ore” means iron ore;

“person” or “persons” includes bodies corporate;

“port” means the port or harbour developed or to be developed pursuant to this Agreement and shall include such adjacent land area to serve the Company’s wharf but shall not include the port established by Hamersley at Dampier nor such adjacent land as is leased by Hamersley to serve that port;

“port townsite” means the townsite determined pursuant to this Agreement to be expanded and developed near the port;

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

“said State” means the State of Western Australia;

“secondary processing” means concentration or other beneficiation of iron ore other than by crushing or screening and includes thermal electrostatic magnetic and gravity processing and pelletisation and the production of metallised agglomerates;

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

“steel” means steel in the form of steel billets or manufactured steel products;

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

“townsite” means a townsite or townsites established by the Company on or near the mining areas pursuant to this Agreement;

“wharf” includes any jetty structure;

“year 1” means the year next following the commencement date and “year” followed immediately by any other numeral has a corresponding meaning;

reference in this Agreement to an Act shall include the amendments to such Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;

power given under any clause of this Agreement other than clause 52 hereof to extend any period or date shall be without prejudice to the power of the Minister under the said Clause 52;

marginal notes shall not affect the interpretation or construction hereof⁴;

Initial Obligations of State⁴

2. 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;
 - (b) to the extent reasonably necessary for the purposes of this Agreement allow the Company to enter upon Crown lands (including land the subject of a pastoral lease) and survey possible sites for a port, wharf, railways, townsites, plants for the production or iron ore concentrates, metallised agglomerates, pig iron, foundry iron and steel, an integrated iron and steel industry, and stockpiling, processing and other areas required for the purposes of this Agreement.

Ratification and Operation⁴

3. (1) Sub-clause (2) of clause 3 hereof and the subsequent clauses (other than clauses 52, 54 and 55) of this Agreement shall not operate unless and until —
- (a) the Bill to ratify this Agreement as referred to in paragraph (a) of clause 2 hereof is passed as an Act before the 30th day of June 1972 or such later date if any as the parties hereto may mutually agree upon; and
 - (b) Bills to ratify each of the agreements referred to in the First Schedule hereto are passed as Acts before the 30th day of June 1972 or such later date if any as the parties hereto may mutually agree upon.

If the said Bills are not passed before that date or later date or dates (as the case may be) this Agreement will then cease and determine and 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 save as provided in clause 22 of this Agreement.

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

- (a) the provisions of clauses 4 and 7, the proviso to paragraph (a) of sub-clause (1) of clause 12, sub-clause (2) of clause 12, clauses 15, 16, 17, 18, 24, 25, 26, 27, 29, 44, 46, 47, 51, 52, 53, 54 and 55;
- (b) subject to paragraph (a) of this subclause the State and the Minister respectively shall have all the powers discretions and authorities necessary or requisite to enable them to carry out and perform the powers discretions authorities and obligations conferred or imposed upon their respectively hereunder;
- (c) no future Act of the said State will operate to increase the Company's liabilities or obligations hereunder with respect to rents or royalties; and
- (d) the State may, as for a public work under the *Public Works Act 1902*, resume any land or any estate or interest in land required for the purpose of this Agreement and may lease or otherwise dispose of the same to the Company.

Obligation of State Rights of Occupancy⁴

4. (1) The State shall forthwith (subject to the surrender of the rights of occupancy as referred to in sub-clause (2) of clause 2 of the Agreement firstly referred to in the First Schedule hereto) cause to be granted to the Company and to the Company alone rights of occupancy for the purposes of this Agreement (including the sole right to search and prospect for iron ore) over the whole of the mining areas under Section 276 of the Mining Act at a rental at a rate of eight dollars (\$8) per square mile per annum payable quarterly in advance for the period expiring on the 31st day of December, 1972, and shall then and thereafter subject to the continuance of this Agreement cause to be granted to the Company as may be necessary successive renewals of such last mentioned rights of occupancy (each renewal for a period of twelve (12) months at the same rental and on the same terms) the last of which renewals shall notwithstanding its currency expire —

- (i) on the date of grant of a mineral lease to the Company under subclause (2) of this clause; or

- (ii) on the determination of this Agreement pursuant to its terms whichever shall first happen.

Mineral lease⁴

(2) The Company may at any time after the grant to it of the said rights of occupancy and before the end of year 2 apply for a mineral lease of any part or parts (not exceeding in total area three hundred (300) square miles and in the shape of a rectangular parallelogram or rectangular parallelograms or as near thereto as is practicable) of the mining areas and thereupon the State shall 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 Company on demand after completion of the survey) and shall cause to be granted to the Company a mineral lease of the land so applied for (notwithstanding the survey in respect thereof has not been completed but subject to such corrections as may be necessary to accord with the survey when completed) for iron ore in the form of the Second Schedule hereto for a term which subject to the payment of rents and royalties hereinafter mentioned and to the performance and observance by the Company of its obligations under the mineral lease and otherwise under this Agreement shall be for a period of twenty-one (21) years therefor with rights to successive renewals of twenty-one (21) years upon the same terms and conditions but subject to earlier determination upon the cessation or determination of this Agreement PROVIDED HOWEVER that the Company may from time to time (without abatement of any rent then paid or payable in advance) surrender to the State any portion or portions (of reasonable size and shape) of the mineral lease.

(3) If by the end of year 2 the Company has not applied for a mineral lease as hereinbefore provided this Agreement shall cease and determine subject however to the provisions of sub-clause (13) of clause 5 and clause 22 hereof.

Proposals of the Company⁴

5. (1) The Company's obligations to submit proposals under sub-clause (3) of this clause and its obligations under clause 6 paragraph (n) of sub-clause (1) of clause 12 and clause 13 hereof shall all be subject to the condition precedent that hereafter either of the following events occurs, namely —

- (a) that at least fifty-one per cent (51%) of the issued ordinary share capital of the Company ceases to be held by any one or more of Hamersley, an associated company of Hamersley or

associated companies of Hamersley at a time when the Company is the holder of the rights of occupancy required to be granted under sub-clause (1) of clause 4 hereof or (after a mineral lease has been granted under sub-clause (2) of the said clause 4) at a time when the Company is the holder of the said mineral lease; or

- (b) the said rights of occupancy cease to be held by the Company or any one or more of Hamersley, an associated company of Hamersley or associated companies of Hamersley (otherwise than by reason of the expiry thereof) or (after the said mineral lease has been granted as aforesaid) the said mineral lease ceases to be held by the Company or any one or more of Hamersley, an associated company of Hamersley or associated companies of Hamersley.

(2) If hereafter either of the events mentioned in sub-clause (1) of this clause occurs then —

- (a) Insofar as has not already been done to the satisfaction of the Minister the Company will commence forthwith and carry out at its expense (with the assistance of experienced consultants where appropriate) —
 - (i) a reconnaissance of sites of proposed operations pursuant to the Agreement together with the preparation of suitable maps and drawings;
 - (ii) an engineering investigation of the route for a railway from the mining areas to the port or to connect with Hamersley's existing railway (as the case may be);
 - (iii) a study of the technical and economic feasibility of the mining transporting handling and shipping of ore from the mining areas;
 - (iv) the planning of a suitable townsite and the development of the port townsite in consultation with the State and having due regard for use by others as well as the Company;

- (v) the investigation, in areas approved by the Minister of suitable water supplies for mining industrial and townsite purposes;
- (vi) metallurgical and market research.
- (b) The Company shall collaborate with and keep the State fully informed with quarterly reports as to the progress and results of the Company's operations under paragraph (a) of this sub-clause. The Company shall furnish the Minister with copies of all reports received by it from consultants in connection with the matters referred to in paragraph (a) of this sub-clause and with copies of all findings made and reports prepared by it.
- (c) If the State concurrently carries out its own investigations and reconnaissances in regard to all or any of the matters mentioned in paragraph (a) of this sub-clause or any port site the Company shall co-operate with the State therein and so far as reasonably practicable will consult with the representatives or officers of the State and make full disclosures and expressions of opinion regarding matters referred to in this sub-paragraph.
- (d) The Company will employ or retain or ensure that experienced consultant engineers (approved by the Minister) are employed or retained to investigate report upon and make recommendations in regard to the sites reasonably required by the Company under this Agreement for the overall development of a suitable port if necessary for the Company's operations hereunder (including the Company's wharf, areas for installations, stockpiling and other purposes in the port) but in such regard the Company will require such engineers to have full regard for the general development of the port with a view to the reasonable use by others of the port and the Company will furnish to the State copies of such report and recommendations. When submitting to the Minister detailed proposals as referred to in sub-clause (3) of this clause hereof in regard to the matters mentioned in this paragraph the Company will so far as reasonably practicable ensure that the detailed proposals —

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

(3) If hereafter either of the events mentioned in sub-clause (1) of this clause occurs but subject to the provisions of sub-clause (10) of this clause the Company shall by the end of the period of three (3) years after the occurrence of that event (or such extended date if any as the Minister may approve) and subject to the provisions of this Agreement unless and to the extent otherwise agreed by the Minister submit to the Minister to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect to the mining by the Company of iron ore from the mining areas (or so much thereof as shall be comprised within the mineral lease) with a view to the transport and shipment of the iron ore mined including (where applicable) the location area layout design number materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters namely —

- (a) (i) if the Company proposes initially to utilise for the shipment of iron ore the port established by Hamersley at Dampier aforesaid, provisions for expansion of that port if necessary; or
- (ii) if the Company proposes initially to utilise for the shipment of iron ore some other port provision for the port and port development including dredging and depositing of spoil the provision of navigational aids the Company's wharf (the plans and specifications for which wharf shall be submitted to and be subject to the approval of the State) the berth and swinging basin for the Company's use and port installations facilities and services all of which shall permit of adaptation so as to enable the use of the Company's wharf by vessels having an ore carrying capacity of not less than sixty thousand (60,000) tons;

- (b) the railway from the mining areas to the port of to connect with Hamersley's existing railway (as the case may be) and its proposed operation including joint user conditions (if any) fencing (if any) crossing places and grade separation (where appropriate) or other forms of acceptable protection at intersections with public roads;
- (c) townsite and port townsite development and services and facilities in relation thereto;
- (d) housing;
- (e) water supply;
- (f) generation transmission and distribution of electricity;
- (g) roads;
- (h) mining crushing screening handling transport and storage of ore;
- (i) air fields;
- (j) any leases licences or other tenures of land required form the State;
- (k) disposal of waste materials;
- (l) drainage;
- (m) dust control; and
- (n) any other works services or facilities proposed or desired by the Company.

(4) The Company shall have the right to submit to the Minister its detailed proposals aforesaid in regard to a matter or matters the subject of any of the sub-paragraphs numbered (a) to (n) inclusive of sub-clause (3) of this clause as and when the detailed proposals become finalised by the Company PROVIDED THAT where any such matter is the subject of any one of those provisions which refer to more than one subject matter the detailed proposals will relate to and cover each of the matters mentioned in that provision.

(5) If the Company proposes initially to utilise for the shipment of iron ore some port other than the said port established by Hamersley it shall

notwithstanding sub-clause (4) of this clause submit as its first proposals proposals for the site for that port and the Minister will within two (2) months after receipt of the proposals give to the Company notice of his approval thereof or otherwise. If the Minister does not approve the proposals then he shall within three (3) months after the giving of his notice submit alternative proposals for another site for the port. If the said site proposed by the Minister is not within two (2) months accepted by the Company by notice to the State the State shall as hereinafter provided permit the development and use (*inter alia*) for the purpose of this Agreement of a port at Legendre and the Company may within three (3) months after the expiration of the period of two (2) months last mentioned submit to the Minister proposals for the development an use of a port at Legendre as aforesaid (including proposals as to the matters mentioned in sub-paragraph (ii) of paragraph (a) of sub-clause (3) of this clause) and including proposals if required by the Minister or desired by the Company as to user of a port at Legendre in conjunction with others (including terms and conditions involving the participation in such development and use by another party or other parties nominated in the proposals). Within two (2) months after receipt of the proposals the Minister shall give to the Company notice of his approval or otherwise in respect thereof and shall be at liberty to specify in such notice such alterations to the proposals as are fair and reasonable having regard to the interests of the Company and any other party nominated as aforesaid (including alterations which are fair and reasonable as aforesaid and which involve the participation in such development and use by another party or other parties nominated by the Minister). If the Minister specifies any such alterations then the Company may subject to the provisions of sub-clause (6) of this clause elect by notice to the State to refer to arbitration and then two (2) months thereafter shall refer to arbitration as provided in clause 53 hereof any dispute as to whether the alterations specified by the Minister are fair and reasonable as aforesaid. If the Company refers to arbitration any such dispute but by the award on arbitration the question is decided in favour of the Minister the Company may if it considers and it can demonstrate to the reasonable satisfaction of the Minister who shall not act unreasonably that the alterations to the proposals found by the award to have been fair and reasonable nevertheless would render the Company's participation in the development and use of a port at Legendre not feasible from the point of view of the Company for any reason whatsoever (whether technical economic or otherwise) by notice to the State given within two (2) months after the award withdraw its said proposals and in that event the parties shall continue to negotiate with a view to agreeing upon a site for the port (either at Legendre or elsewhere) and the terms and conditions fair and reasonable for the development and use of the port. If the parties have

not reached agreement within three (3) months then either party can terminate the negotiations. If by the award on arbitration the dispute is decided in favour of the Company the Minister shall be deemed to have approved the Company's proposal without the alteration or alterations in question. Notwithstanding the foregoing the Company may at any time prior to the time —

- (i) agreement is reached as aforesaid as to a site for the port (other than at Legendre);
- (ii) proposals submitted as aforesaid in relation to a port at Legendre are approved without alteration or are deemed to have been so approved; or
- (iii) two (2) months after the Minister specifies alterations to proposals submitted as aforesaid in relation to Legendre (if the Company fails to refer to arbitration as aforesaid any dispute in relation thereto) or, the Company having referred such a dispute to arbitration, after the award on arbitration (as the case may be)

whichever is the earliest, elect by notice to the State to utilise for the shipment of iron ore the port established by Hamersley at Dampier aforesaid and thereupon but without prejudice to the provisions of sub-clause (9) of this clause sub-clauses (3) and (7) of this clause shall be read and construed as if the Company had initially proposed so to utilise the said port established by Hamersley and the Company shall submit to the Minister its detailed proposals as required pursuant to subclause (3) of this clause.

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

Consideration of Company's Proposals⁴

(7) Within two (2) months after receipt of any of the detailed proposals required to be submitted by the Company pursuant to sub-clause (3) of this clause (other than a proposal of the kind mentioned in subclause (5) of this clause) the Minister shall give to the Company notice either of his approval of the proposals submitted or of alterations desired thereto and in the latter case

shall afford to the Company opportunity to consult with and to submit new proposals to the Minister. Within two (2) months of the receipt of the notice the Company may elect by notice to the State to refer to arbitration and within two (2) months thereafter shall refer to arbitration as provided in clause 53 hereof any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the dispute is decided against the Company then unless the Company within three (3) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period of three (3) months cease and determine (save as provided in sub-clause (13) of clause 5 and clause 22 hereof) but if the question is decided in favour of the Company the decision will take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

Extension of time⁴

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

(9) Notwithstanding that under the preceding provisions of this clause any detailed proposals submitted by the Company pursuant to sub-clause (3) of this clause are approved by the Minister or determined by arbitration award unless each and every such proposal is so approved or determined by the end of a period of three (3) years and five (5) months after the occurrence of either of the events mentioned in sub-clause (1) of this clause or by such extended date if any as shall be granted pursuant to the provisions hereof then at any time after the end of the said period or last such extended date as the case may be the Minister may give to the Company twelve (12) months notice of intention to determine this Agreement and unless before the expiration of the said twelve (12) months period all such proposals are so approved or determined this Agreement shall cease and determine subject however to the provisions of sub-clause (13) of clause 5 and clause 22 hereof.

(10) If the Company desires to mine transport and ship iron ore from the mining areas prior to the occurrence of either of the events mentioned in sub-clause (1) of this clause the Company shall submit to the Minister detailed proposals as aforesaid as to all of the matters mentioned in sub-clause (3) of this

clause and its time schedule for the implementation thereof and the provisions of sub-clause (5) and sub-clause (7) of this clause shall *mutatis mutandis* apply to the approval or determination of those proposals provided that if agreement is not reached as to any matter submitted as mentioned in the said sub-clause (5) and sub-clause (7) and the Company is not entitled to or fails to refer to arbitration any dispute in relation thereto or does so refer the dispute but by the award on arbitration the question is decided in favour of the Minister and if within two (2) months after the decision of the Minister or the award on arbitration the Company notifies the Minister that it does not accept the decision or award then the proposals shall be deemed not to have been approved, or determined and this Agreement shall continue as if the Company had never submitted any proposals under this sub-clause (without prejudice to the Company's right to submit further proposals under this sub-clause). To the extent to which the company submits proposals under this sub-clause and those proposals are approved or determined as aforesaid the Company shall be relieved from the obligations it might hereafter have under the said sub-clause (3) to submit proposals to the Minister and to the extent to which the Company complies with those proposals it shall be relieved from the obligation it might thereafter have under clause 6 hereof.

(11) The Company may at any time after it has submitted proposals (either in compliance with its obligations under sub-clause (3) of this clause or pursuant to sub-clause (10) of this clause) which have been approved or determined under this clause and under which the Company proposes initially to utilise for the shipment of iron ore the port established by Hamersley at Dampier aforesaid submit to the Minister detailed proposals as aforesaid for the utilisation for the shipment of iron ore of some other port including proposals as to the matters mentioned in sub-paragraph (ii) of paragraph (a) of the said sub-clause (3) the provisions of sub-clause (5) of this clause (other than the last sentence thereof) and the provisions of sub-clause (7) of this clause (in both cases as modified by the proviso to the first sentence of sub-clause (10) of this clause) shall *mutatis mutandis* apply to the approval or determination of those proposals.

(12) The Company shall (except to the extent agreed with the Minister) comply with proposals submitted under sub-clause (10) or sub-clause (11) of this clause and approved or determined aforesaid.

(13) Notwithstanding the preceding provisions of this clause, if under any arbitration under sub-clause (7) of this clause the dispute is decided against the Company and subsequently this Agreement ceases and determines pursuant

to the said sub-clause (7) or to sub-clause (9) of this clause the State will not for a period of three (3) years after such determination enter into a contract with any other party for the mining transport and shipment of iron ore from the mining areas on terms more favourable on the whole to the other party than those which would have applied to the Company hereunder if the question had been determined in favour of the Company.

6. Subject to the provisions of sub-clause (10) of clause 5 hereof the Company shall by the end of the period of two (2) years after the last of the proposals submitted under sub-clause (3) of clause 5 hereof is approved or determined as aforesaid and in accordance therewith but subject to any variation approved pursuant to clause 47 hereof and at a cost of not less than fifty million dollars (\$50,000,000) construct install provide and do all things necessary to enable it to mine from the mineral lease and to transport by rail to the Company's wharf and to commence shipment therefrom in commercial quantities at an annual rate of not less than one million (1,000,000) tons of iron ore and without lessening the generality of this provision the Company shall be the end of the said period of two (2) years —

- (a) construct install and provide upon the mineral lease or in the vicinity thereof mining plant and equipment crushing screening stockpiling and car loading plant and facilities a power house a workshop and other things of a design and capacity adequate to enable the Company to mine handle load and deal with not less than three thousand (3,000) tons of iron ore per day;
- (b) actually commence to mine and transport by rail iron ore from the mineral lease so that the average annual rate during the first two (2) years shall not be less than one million (1,000,000) tons;
- (c) subject to the State having assured to the Company all necessary rights in or over Crown lands available for the purpose construct in a proper and workmanlike manner and in accordance with recognised standards of railways of a similar nature operating under similar conditions and along a route approved or determined under this clause (but subject to the provisions of the *Public Works Act 1902* to the extent that they are applicable) the railway the subject of proposals determined or approved under this clause having a four feet

eight and one-half inch (4ft. 8½in.) gauge and including *inter alia* any necessary deviations, loops, spurs, sidings, crossings, points, bridges, signalling switches and other works and appurtenances and shall provide for crossing places grade separation (where appropriate) or other protective devices including flashing lights and boom gates at major road crossings or intersections with existing railways and operate such railway with sufficient and adequate locomotives freight cars and other railway stock and equipment to haul at least one million (1,000,000) tons of iron ore per annum; and

- (d) carry out such other works as are proposed to be carried out under the proposals as approved or determined under clause 5 hereof.

Further Obligations of State⁴

7. (1) As soon as conveniently may be after any proposals have been approved or determined under this Agreement the State shall in accordance with such of those proposals as require the State to accept obligations —

- (a) grant to the Company a lease or leases under the Mining Act or if mutually agreed a lease or leases under the Land Act (notwithstanding any of the provisions of those Acts) of such area of land for any railway proposed to be constructed under the proposals as the Company shall require at a peppercorn rental and for such term or period and on such terms and conditions (including renewal rights) as shall be reasonable having regard to the requirements of the Company hereunder and to the provisions of this Agreement (the Mining Act being deemed to be so amended varied and modified as to enable such lease or leases to be granted);

Lands⁴

- (b) grant to the Company for such terms or periods and on such terms and conditions (including renewal rights) as subject to the proposals shall be reasonable having regard to the requirements of the Company hereunder and to the overall development and access to and use by others of lands the

subject of any grant to the Company and of services and facilities provided by the Company —

at peppercorn rental — special leases of Crown lands for the purposes of the townsite or railway proposed to be constructed or provided under the proposals;

and

at rentals as prescribed by law or as are otherwise reasonable — leases rights mining tenements 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 modified as in sub-clause (3) of this clause provided (as the case may require) as the Company reasonably requires for its works and operations hereunder including the construction or provision of railways wharves plants for the production of iron ore concentrates, metallised agglomerates, pig iron foundry iron and steel, an intergrated iron and steel industry, airstrips, roads water supplies and stone and soil for construction purposes; and

Services and Facilities⁴

- (c) provide any services or facilities subject to the Company bearing and paying the capital cost involved if reasonably attributable to or resulting from the Company's project and operations hereunder and reasonable charges for maintenance and operation except operation charges in respect of education hospital and police services and except where and to the extent that the State otherwise agrees —

subject to such terms and conditions as may be approved or determined as aforesaid PROVIDED THAT from and after the twentieth anniversary of the date hereof the Company will in addition to the rentals already referred to in this paragraph pay to the State during the currency of this Agreement after such anniversary as aforesaid a rental (which if the Company so requests shall be allocated in respect of such one or more of the special leases or other leases granted to the Company hereunder and remaining current) equal to twenty-five (25) cents per ton on all iron ore and iron ore concentrates in respect of which royalty is payable under paragraph (h) of sub-clause (1) of clause 12 hereof in any financial year such additional rental to be paid within three (3) months after shipment sale or use as the case may be of the iron ore and iron ore concentrates SO NEVERTHELESS that the additional rental to be paid under this proviso shall be not less than three hundred thousand dollars (\$300,000) in respect of

any such year and the Company will within three (3) months after expiration of that year pay to the State as further rental the difference between three hundred thousand dollars (\$300,000) and the additional rental actually paid in respect of that year but any amount so paid in respect of any financial year in excess of the rental payable for that year at the rate of twenty-five (25) cents per ton as aforesaid shall be offset by the Company against any amount payable by them to the State above the minimum amounts payable to the State under this paragraph in respect of the two (2) financial years immediately following the financial year in respect of which the said minimum sum was paid.

Other Rights⁴

(2) The State shall on application by the Company cause to be granted to it 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 modified as in sub-clause (3) of this clause provided as the Company may reasonably require and request for its purposes under this Agreement on or near the mineral lease.

(3) For the purposes of paragraph (b) of sub-clause (1) and sub-clause (2) of this clause section 81D of the *Transfer of Land Act 1893* shall not apply and the Land Act shall be deemed to be modified by —

- (a) the substitution for sub-section (2) of section 45A of the following sub-section:
 - (2) Upon the Governor signifying approval pursuant to sub-section (1) of this section in respect of any such land the same may subject to this section be 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 leasing land within or in the vicinity of any townsite notwithstanding that the townsite has not been constituted a townsite under section 10; and
- (f) the inclusion of a power to grant leases or 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 Company in forms consistent as aforesaid in lieu of the forms referred to in the Act.

(4) The provisions of sub-clause (3) of this clause shall not operate so as to prejudice the right of the State to determine any lease licence or other right or title in accordance with the other provisions of this Agreement.

(5) The State further covenants with the Company that the State —

Non-interference with Company's rights⁴

(a) shall not during the currency of this Agreement register any claim or grant any lease or other mining tenement under the Mining Act or otherwise by which any person other than the Company 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 company hereunder assuming the taking by the Company of all reasonable steps to avoid the interference;

No resumption⁴

(b) subject to the provisions of sub-clause (2) of clause 18 hereof and subject to the performance by the Company of its obligations under this Agreement shall not during the currency hereof without the consent of the Company resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the said State any of the works installations plant equipment or other property for the time being belonging to the Company and the subject of or used for the purposes of this Agreement nor any of the lands the subject of any lease or licence granted to the Company in terms of this Agreement AND without such consent (which shall not be unreasonably withheld) the State will not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as

aforesaid any road right-of-way or easement of any nature or kind whatsoever over or in respect of any such lands, which may unduly prejudice or interfere with the Company's operations hereunder;

Labour requirements⁴

- (c) shall if so requested by the Company and so far as its powers and administrative arrangements permit use reasonable endeavours to assist the Company to obtain adequate and suitable labour for the construction and the carrying out of the works and operations referred to in this Agreement including suitable immigrants for that purpose;

No discriminatory rates⁴

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

Rights to other minerals⁴

- (e) shall where and to the extent reasonably practicable on application by the Company from time to time grant or assist in obtaining the grant to the Company of prospecting rights and mining leases with respect to limestone dolomite and other minerals reasonably required by the Company for its purposes under this Agreement; and

Consents to improvements on leases⁴

- (f) shall as and when required by the Company (but without prejudice to the foregoing provisions of this Agreement relating to the approval or determination of proposals

submitted hereunder) consent in writing where and to the extent that the Minister considers to be reasonably justified to the Company making improvements for the purpose of this Agreement on the land comprised in any lease granted by the State to the Company pursuant to this Agreement PROVIDED THAT the Company shall also obtain any other consents legally required in relation to such improvements.

(6) The Company shall not have any tenant rights in improvements made by the Company on the land comprised in any lease granted by the State to the Company pursuant to this Agreement in any case where pursuant to clause 23 hereof such improvements will remain or become the absolute property of the State.

Iron Ore Concentrates⁴

8. (1) The Company shall before the end of year 4 (or within such extended period not exceeding a further two (2) years as the Company satisfies the Minister that the Company reasonably requires and the Minister approves and such further or other extended period as may be determined by arbitration as hereinafter provided) —

- (a) submit to the Minister detailed proposals for the establishment within the said State of a plant for the production of iron ore concentrates;
- (b) in accordance with those proposals as finally approved or determined as hereinafter in this clause provided complete the construction of that plant at a total cost of not less than forty million dollars (\$40,000,000); and
- (c) actually commence to produce iron ore concentrates from that plant and export those iron ore concentrates over the Company's wharf at an average annual rate during the two (2) years next following the date on which the Company first exports such iron ore concentrates in commercial quantities of not less than one million (1,000,000) tons and

the Company will by the end of year 9 (or by the end of such extension of that period as is equal to the aggregate of any extension approved by the Minister pursuant to the preceding provisions of this sub-clause and any extension determined by arbitration as hereinbefore mentioned in this sub-clause) increase

the productive capacity of such plant to a minimum to three million (3,000,000) tons or iron ore concentrates per annum.

(2) The Minister shall within two (2) months of the receipt of such proposals give to the Company notice either of his approval of the proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford to the Company an opportunity to consult with and to submit new proposals to the Minister. If within two (2) months of receipt of such notice agreement is not reached as to the proposals the Company may within a further period of two (2) months elect by notice to the State to refer to arbitration as hereinafter provided any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have then approved the proposals of the Company.

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

(4) The Company may at any time notify the Minister that it desires to reduce or limit the capacity of the plant hereinbefore referred to in this clause to a capacity of five hundred thousand (500,000) tons of iron ore concentrates per annum and upon the Company so notifying the Minister —

- (a) sub-clause (1) of this clause shall be read construed and take effect as if the words and figures “forty million (\$40,000,000)” and “one million (1,000,000)” (where firstly and secondly appearing) therein were “twenty-five million dollars (\$25,000,000)” and “five hundred thousand (500,000)” respectively and as if the words and figures “and the Company will by the end of year 9 (or by the end of such extension of that period as is equal to the aggregate of any extension approved by the Minister pursuant to the proceeding provisions of this sub-clause and any extension determined by arbitration as hereinbefore mentioned in this sub-clause) increase the productive capacity of such plant to a minimum of three million (3,000,000) tons of iron ore concentrates per annum” were deleted therefrom; and

- (b) any proposals in relation to the said plant submitted and/or approved or determined pursuant to this clause prior to the Company so notifying the Minister shall be read construed and take effect as if they were correspondingly amended; and
- (c) clause 10 hereof shall come into operation.

(5) Notwithstanding anything hereinbefore contained in this clause if the Company can demonstrate to the satisfaction of the Minister that it is able to construct the said plant for the production of iron ore concentrates in accordance with proposals submitted pursuant to this clause as approved or determined for a sum less than forty million dollars (\$40,000,000) or if the Company has notified the Minister pursuant to sub-clause (4) of this clause for a sum less than twenty-five million dollars (\$25,000,000) the Minister may in his discretion approve a lesser sum which shall then be substituted for the sum of forty million dollars (\$40,000,000) or the sum of twenty-five million dollars (\$25,000,000) as the case may be.

(6) Notwithstanding anything to the contrary contained or implied in this Agreement if the capacity of Hamersley's existing pelletising plant is, or from time to time hereafter increases beyond two million (2,000,000) tons per annum —

- (a) each of the capacities mentioned in sub-clause (1) and sub-clause (4) of this clause shall from time to time be reduced by the amount of the excess above two million (2,000,000) tons to the intent (*inter alia*) that —
 - (i) if prior to the end of the period first mentioned in sub-clause (1) of this clause (as extended as therein provided) the capacity of Hamersley's said plant is or hereafter increases to at least two million five hundred thousand (2,500,000) tons per annum and (whether before or after such increase) the Company notifies the Minister pursuant to the said sub-clause (4) the Company shall not have any obligation whatsoever under this clause;
 - (ii) if prior to the end of the period last mentioned in sub-clause (1) of this clause (as extended as therein provided) the capacity of Hamersley's said plant is

or hereafter increases to at least three million (3,000,000) tons per annum but not to five million (5,000,000) tons per annum but the Company does not notify the Minister pursuant to the said sub-clause (4) the only obligation of the Company under this clause will be to complete, within the said State and by the end of the said period (extended as aforesaid) the construction of a plant for the production of iron ore concentrates having a productive capacity equal to the difference between the annual capacity of Hamersley's said plant as increased from time to time and five million (5,000,000) tons per annum; and

(iii) if prior to the end of the period last mentioned in sub-clause (1) of this clause (as extended as therein provided) the capacity of Hamersley's said plant is or hereafter increases to at least five million (5,000,000) tons per annum then the Company will not have any obligation whatsoever under this clause notwithstanding that it does not notify the Minister pursuant to the said sub-clause (4);

(b) each of the amounts of forty million dollars (\$40,000,000) and twenty-five million (\$25,000,000) previously mentioned in this clause shall be reduced by such amount as is mutually agreed or failing agreement, as is determined by arbitration pursuant to clause 53 hereof;

and this clause shall be read construed and take effect accordingly.

Company may make use of certain plant and facilities established by Hamersley⁴

9. Notwithstanding anything to the contrary contained or implied in this Agreement any proposals submitted pursuant to clause 5 hereof may be proposals involving (as may be agreed by the Company with Hamersley) the use of all or any of the following, namely, the port established by Hamersley at Dampier in the said State, the channel, wharf, berth, swinging basin, port installations, airstrip, townsite, road, facilities and services established or to be established by Hamersley at Dampier, the whole or part of Hamersley's existing railway from Tom Price to Dampier (including any extension thereof from Tom

Price to Paraburdoo) and any locomotives, freight cars and other railway stock or equipment now or thereafter provided by Hamersley and subject to approval or determination of such proposals under clause 5 hereof, the obligations of the Company under the said clause 5 shall be modified accordingly.

Substitution of 1,000,000 tons metallised agglomerates capacity for 2,500,000 tons iron ore concentrates capacity⁴

10. If the Company gives notice to the Minister as provided in sub-clause (4) of clause 8 hereof then —

- (1) The Company will before the end of year 6 (or such extended date if any as the Minister may approve) submit to the Minister detailed proposals for the establishment within the said State of plant for the production of metallised agglomerates containing provision that such plant will by the end of year 8 (or by the end of such extension of that period approved by the Minister pursuant to the preceding provision of this sub-clause) have the capacity to produce not less than one million (1,000,000) tons of metallised agglomerates annually. Such capacity shall be additional to the respective capacities in respect of which the Company may be obliged to submit proposals pursuant to clause 32 hereof.
- (2) The Minister shall within two (2) months of receipt of proposals pursuant to sub-clause (1) of this clause give to the company notice either of his approval of those proposals (which approval shall not unreasonably be withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford the Company an opportunity to consult with and to submit new proposals to the Minister. If within two (2) months of receipt of such notice, agreement is not reached as to the proposals the Company may within a further period of two (2) months elect by notice to the State to refer to arbitration as provided in clause 53 of this Agreement any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have approved of the proposals of the Company.
- (3) The Company will (except to the extent otherwise agreed with the Minister and subject always to clause 33 hereof) before the end of the time specified in sub-clause (1) of this clause complete the

construction of plant in accordance with the Company's proposals as finally approved or determined under this clause.

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

Additional Proposals⁴

11. (1) In the event that the Company desires —
- (a) to expand its activities beyond those specified in the Company's proposals as approved pursuant to clause 5 hereof; or
 - (b) to undertake secondary processing; or
 - (c) to undertake the production of steel,

the Company shall so notify the Minister who may, consequent upon the outcome of the negotiations of the parties pursuant to sub-clause (2) of this clause, require the Company to submit proposals in respect of all or any of the matters referred to in paragraphs (a) to (n) of sub-clause (3) of clause 5 hereof and in clauses 19 and 20 hereof and the Company shall to the extent of such requirement submit such proposals. The provisions of clauses 5, 19 and 20 hereof shall, so far as they are applicable, apply to such proposals *mutatis mutandis*.

(2) The extent to which the Company will be required to provide or contribute towards the capital costs of services and facilities and the maintenance thereof pursuant to clauses 19 and 20 hereof in consequence of such proposed expansion or undertaking shall be determined by the Minister following negotiations on such matters and in making his determination the Minister shall have regard *inter alia* to the current and anticipated composition of the town and the extent to which the ordinary responsibilities of the State with respect to the provision of the capital cost of such services and facilities are to be assumed by it in the light of the State's then current capital resources.

Obligations of Company⁴

12. (1) Throughout the continuance of this Agreement the Company shall —

Operation of railway⁴

- (a) operate any railway constructed by it in a safe and proper manner and where and to the extent that it can do so without unduly prejudicing or interfering with its operations hereunder allow crossing places for roads stock and other railways and also transport the passengers and carry the freight of the State and of third parties on the railway subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made altered and repealed as provided in sub-clause (2) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost of the railway to the Company) PROVIDED THAT in relation to its use of the railway the Company shall not be deemed to be a common carrier at common law or otherwise;

Compliance with Laws⁴

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

Maintenance⁴

- (c) at all times keep and maintain in good repair and working order and condition and where necessary replace all such works installations plant machinery and equipment and any railway the Company's wharf roads (other than the public roads referred to in clause 15 hereof) and water and power supplies for the time being the subject of this Agreement;

Shipment of and price for ore⁴

- (d) subject to the provisions of this Agreement ship from the company's wharf all ore mined from the mineral lease and sold and use its best endeavours to obtain therefor the best price possible having regard to market conditions from time to time prevailing and will not sell any direct shipping ore as fine ore or fines PROVIDED THAT this paragraph shall not apply to ore used for the production of iron ore concentrates or in a plant for the production of metallised agglomerates or steel in any part of the said State lying north of the twenty-sixth parallel of latitude;

Access through mining areas⁴

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

Protection for inhabitants⁴

- (f) subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made and altered as provided in sub-clause (2) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Company) allow the inhabitants for the time being of the townsite being employees licencees or agents of the Company or persons engaged in providing a legitimate and normal service to or for the company or its employees licencees or agents to make use of the water power recreational health and other services or facilities provided or controlled by the Company;

Use of local labour and materials⁴

- (g) so far as reasonably and economically practicable use labour available within the said State and give preference to *bona fide* Western Australian manufacturers and contractors in the placement of orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere. In calling tenders and/or

letting contracts for works material plant equipment and supplies required by the Company, the Company will so call tender quotations or by other methods of procurement make provision that *bona fide* Western Australian manufacturers and contractors are given reasonable opportunity to tender quote or otherwise be properly considered for such works materials plant equipment and supplies;

Royalties⁴

- (h) pay to the State royalty on all iron ore from the mineral lease shipped or sold (other than iron ore shipped solely for testing purposes) or (in the circumstances mentioned in sub-paragraph (iv) of this paragraph) on iron ore concentrates produced from iron ore from the mineral lease or on other iron ore from the mineral lease used as mentioned in sub-paragraph (iv) of this paragraph 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 ore) at the rate of seven and one half per centum (7½%) of the f.o.b. revenue (computed at the rate of exchange prevailing on date of receipt by the Company of the purchase price in respect of ore shipped or sold hereunder) PROVIDED NEVERTHELESS that such royalty shall not be less than sixty (60) cents per ton (subject to sub-paragraph (vi) of this paragraph) in respect of 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 three and three quarter per centum (3¾%) of the f.o.b. revenue (computed as aforesaid) PROVIDED NEVERTHELESS that such royalty shall not be less than thirty (30) cents per ton (subject to sub-paragraph (vii) of this paragraph) in respect of 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 fifteen (15) cents per ton;

- (iv) on locally used ore (not being iron ore used for producing iron ore concentrates) and on iron ore concentrates produced from locally used ore and shipped or sold or used in plant for the production of steel or in an integrated iron and steel industry or in plant for the production of metallised agglomerates (other than iron ore concentrates shipped solely for testing purposes) at the rate of fifteen (15) cents per ton;
- (v) on all other iron ore (not being locally used ore) at the rate of seven and one half per centum (7½%) of the f.o.b. revenue (computed as aforesaid) without any minimum royalty;
- (vi) if the amount ascertained by multiplying the total tonnage of direct shipping ore shipped or sold (and liable to royalty under sub-paragraph (i) of this paragraph) in any financial year by sixty (60) cents is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that sub-paragraph then that proviso shall not apply in respect of direct shipping ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made accordingly;
- (vii) if the amount ascertained by multiplying the total tonnage of fine ore shipped or sold separately as such (and liable to royalty under sub-paragraph (ii) of this paragraph) in any financial year by thirty (30) 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 subparagraph then that proviso shall not apply in respect of fine ore shipped or sold separately as such in that year and at the expiration of that year any necessary adjustments shall be made accordingly;
- (viii) the royalty at the rate of fifteen (15) cents per ton referred to in sub-paragraphs (iii) and (iv) of this paragraph shall be adjusted up or down (as the case may be) as at the first day of January 1969 and as at the beginning of every fifth year 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;

- (ix) for the purpose of this paragraph “locally used ore” means iron ore used by the Company or an associated company both within the Commonwealth and within the limits referred to in paragraph (m) of this clause for secondary processing or in an integrated iron and steel industry or in plant for the production of steel and includes iron ore used by any other person or company north of the twenty-sixth parallel of latitude in the said State for secondary processing or in an integrated iron and steel industry or in plant for the production of steel; and
- (x) where iron ore concentrates are produced from an admixture of iron ore from the mineral lease and other iron ore a portion (and a portion only) of the iron ore concentrates so produced being equal to the proportion which the amount of iron in the iron ore from the mineral lease used in the production of those iron ore concentrates bears to the total amount of iron in the iron ore so used shall be deemed to be produced from iron ore from the mineral lease;

Payment of Royalties⁴

- (i) within fourteen (14) days after the quarter days the last days of March June September and December in each year furnish to the Minister a return showing the quantity of all iron ore and/or iron ore concentrates 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 iron ore and/or iron ore concentrates used and in respect of all iron ore

and/or iron ore concentrates shipped or sold pay to the Minister on account of the royalty payable hereunder a sum calculated on the bases of invoices or provisional invoices (as the case may be) rendered by the Company to the purchaser (which invoices the Company shall render without delay simultaneously furnishing copies thereof to the Minister) of such iron ore and/or iron ore concentrates and shall from time to time in the next following appropriate return and payment make (by the return and by cash) all such necessary adjustments (and give to the Minister full details thereof) when the f.o.b. revenue realised in respect of the shipments shall have been ascertained;

Rent for Mineral Lease⁴

- (j) by way of rent for the mineral lease pay to the State annually in advance a sum equal to thirty-five (35) cents per acre of the area for the time being the subject of the mineral lease commencing on and accruing from the commencement of its term PROVIDED THAT after production is commenced in commercial quantities within the said State from a plant constructed by the Company for secondary processing or for iron and steel manufacture or steel manufacture (whichever is first constructed pursuant to this Agreement) if and during the period that the total area for the time being comprised within the mineral lease —
 - (i) is not more than one hundred (100) square miles the annual rent shall be twenty (20) cents per acre;
 - (ii) is over one hundred (100) square miles but not more than one hundred and fifty (150) square miles the annual rent shall be twenty-five (25) cents per acre; and
 - (iii) is over one hundred and fifty (150) square miles but not more than two hundred (200) square miles the annual rent shall be thirty (30) cents per acre;

Other rentals⁴

- (k) pay to the State the rental referred to in the proviso to sub-clause (1) of clause 7 hereof if and when such rental shall become payable;

Inspection⁴

- (l) permit the Minister or his nominee to inspect at all reasonable times the books of account and records of the Company relative to any shipment sale or use of ore hereunder including sale contracts and to take copies or extracts therefrom and for the purposes of determining the f.o.b. revenue payable in respect of any shipment of ore hereunder the Company will take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the Minister's reasonable satisfaction as to all relevant weights and analyses and will give due regard to any objection or representation made by the Minister or his nominee as to any particular weight or assay of ore which may affect the amount of royalty payable hereunder; and

Export to places outside the Commonwealth⁴

- (m) ensure that unless with the prior written approval of the Minister to do otherwise all ore from the mineral lease shipped pursuant to this Agreement will be off-loaded at a place outside the Commonwealth without such prior written approval the Company 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 Company of the provisions hereof. If ore is shipped in a vessel not owned by the Company or an associated company or any other company in which the Company has a controlling interest and such ore is off-loaded in the Commonwealth the Company will not be or be deemed to be in default hereunder if it takes appropriate action to prevent a recurrence of such an off-loading PROVIDED FURTHER that the foregoing provisions of this paragraph 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 Company could not reasonably have been expected to take steps to prevent that particular off-loading PROVIDED ALSO that the provisions of this paragraph shall not apply —

- (i) to ore used in secondary processing or in an integrated iron and steel industry or in plant for the production of steel by the Company or an associated company within the said State;
- (ii) to ore so used by the Company 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 or in an integrated iron and steel industry or in plant for the production of steel by the Company or an associated company within the State; or
- (iii) to ore so used by the Company 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 or in an integrated iron and steel industry or in plant for the production of steel by the Company or an associated company within the said State with the prior approval of the Minister as aforesaid.

Port townsite air field⁴

- (n) pay to the State or local authority concerned a sum or sums to be agreed as a fair and reasonable proportion of the cost of expanding the capacity of any existing air field near the port townsite to cater for the additional air traffic resulting from the implementation of the Company's proposals hereunder.

Other works and facilities⁴

- (o) in accordance with the Company's approved proposals and as may be further required pursuant to clause 11 hereof provide any other works services facilities building or

equipment necessary for carrying out the Company's obligations hereunder.

By-laws⁴

(2) The Governor in Executive Council may upon recommendation by the Company make alter and repeal by-laws for the purpose of enabling the Company to fulfil the obligations under paragraph (a) of sub-clause (1) of this clause and under clause 14 hereof and (unless and until the port townsite is declared a townsite pursuant to section 10 of the Land Act) under paragraph (f) of sub-clause (1) of this clause and under clauses 17 and 18 hereof upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Company) as set out in such by-laws consistent with the provisions hereof. Should the State at any time consider that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Company shall recommend such alteration or repeal thereof as the State may reasonably require or (in the event of there being any dispute as to the reasonableness of such requirement) then as may be decided by arbitration hereunder.

Port and Company's Wharf⁴

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

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

Use of Wharf and Facilities⁴

14. (1) The Company shall subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made and altered as provided in sub-clause (2) of clause 12 hereof and subject thereto, or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Company) allow the State and third parties to use the Company's wharf and port installations wharf machinery and equipment and wharf and port services and port facilities constructed or provided by it PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder and that such use shall be subject to the prior approval of the Company.

(2) Subject to the provisions of clause 24 hereof nothing in this Agreement shall be construed to limit the application of the *Shipping and Pilotage Act 1967*.

Roads⁴

15. (1) The Company shall subject to the State having assured to the Company all necessary rights in or over Crown lands or reserves available for the purpose at its own cost and expense and in accordance with its proposals as approved hereunder construct such new roads as the Company may reasonably require for the purposes of this Agreement, such roads to be of such widths, of such materials, with such gates and warning devices, crossings (level or grade separated where warranted) and pass-overs for cattle and for sheep and along such routes as the parties hereto shall agree after consideration of the requirements of the respective shire councils through whose districts any such roads may pass and after prior consultation with the Minister. Except to the extent that the Company's relevant proposal as finally approved or determined under clause 5 hereof otherwise provides, the Company shall allow the public to use free of charge any roads constructed or upgraded under this sub-clause PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder.

(2) The Company shall have the right to use any public roads that may from time to time exist in the area of its operations under this Agreement both prior to the commencement date and also in the course of the Company's operations hereunder. If the exercise by the Company 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 Company and the public, the Company will upon demand (except where and to the extent that the Commissioner of Main Roads or the local or

other authority agrees to bear the whole or part of such cost) pay to the State or the local authority concerned or other authority having control of such road the cost of preventing or making good such damage or deterioration or of upgrading the road to a standard commensurate with the increased traffic.

(3) If required by the Company the State shall at the Company's 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 Company desires to use for its 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 Company⁴

16. It is hereby agreed and declared that —

- (a) for the purposes of determining whether and to the extent to which —
 - (i) the Company is 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 Company is responsible hereunder and for no other purpose the Company shall be deemed to be a municipality and the said roads shall be deemed to be streets under the care control and management of the Company;

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

Water⁴

17. (1) The Company shall give to the State not less than two (2) years notice of its estimated water consumption at the port and port townsite (which

amounts or such other amounts as shall be agreed between the parties hereto are hereinafter called “the Company’s coastal water requirements”).

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

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

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

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

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

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

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

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

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

(11) 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 Company be 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 Company of his intention, revoke the licence and take over the Company’s water supply facilities in each case without payment of compensation. Immediately from the revocation of such licence the State shall, subject only to the continued hydrological availability of water from such sources, commence and thereafter continue to supply water to an amount and at a rate required by the Company being the amount and rate to which the

Company was entitled under such revoked licence and the proviso of sub-clause (10) of this clause shall in like manner apply to this sub-clause.

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

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

(14) The Company shall pay to the State for water supplied by it pursuant to sub-clause (6) and sub-clause (11) of this clause a fair price to be negotiated between the parties hereto having regard to the actual cost of operating and maintaining the supply and provision for replacement of the water supply facilities. Notwithstanding the foregoing in respect of water supplied by the State to the Company as aforesaid for domestic purposes the Company shall pay to the State therefor charges as levied from time to time pursuant to the provisions of the *Country Areas Water Supply Act 1947*.

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

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

Company's requirements shall be reduced in such proportion as may be agreed.

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

(17) 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 except where inconsistent with the provisions of this Agreement apply to any water sources developed for the Company's purposes under this Agreement.

Electricity⁴

18. (1) The Company shall in accordance with its proposals as approved construct without cost or expense to the State facilities for the generation and transmission of electricity needed to enable the Company to carry out its obligations hereunder and design and construct its 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 Company twelve months' notice of its intention to acquire and may thereafter acquire the Company's electrical generation plant equipment and transmission system or any of them up to the first point of voltage breakdown or such other appropriate point as may be agreed, at a price to be agreed between the parties and the Company will take all such steps as may be necessary to give effect to the acquisition. The State undertakes that in such event the Company shall have first priority for its purposes hereunder on the power generated by such plant and equipment or

capable of being transmitted along such systems and the State guarantees subject only to its inability to supply power for any of the reasons set forth in clause 51 hereof to supply the Company with power for all its purposes hereunder up to the normal continuous full load capacity of such plant and equipment and the State undertakes that in the event of such inability to supply power the State shall take all possible steps to restore such supply regardless of the time or day when such inability to supply power arises and may call upon the Company to provide employees for that purpose.

(3) In the event of the State acquiring the Company's facilities or any of them as provided by sub-clause (2) of this clause the Company shall pay to the State Electricity Commission the cost of all electricity supplied to the Company by the Commission at a rate equal to the standard tariff applying from time to time to the Commission's system less the difference (if any) between the Commission's standard tariff in force at the time of the State's acquisition of the facilities pursuant to sub-clause (2) of this clause and the Company's 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 Company shall pay for all electricity supplied to it by the Commission in excess of such amount at the Commission's standard tariff applicable from time to time.

Townsite⁴

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

(2) The Company shall, at its cost in accordance with the relevant approved proposal, provide and maintain at the townsite and make available —

- (i) at such prices, rentals or charges and upon such terms and conditions as are fair and reasonable under the circumstances, housing accommodation, services and works including sewerage reticulation and treatment works, water supply works, main drainage works and civic facilities; and

- (ii) without charge public roads and buildings and other works and equipment required for educational, hospital, medical, police, recreation, fire or other services,

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

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

(4) The Company shall provide at its cost adequate housing, accommodation for married and single staff directly connected with the educational, hospital, medical and police services referred to in sub-clause (2)(ii) of this clause.

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

Existing Towns⁴

20. The Company shall as the occasion may require enter into negotiations with the State with a view to achieving the assimilation into a suitable existing coastal town of such of the Company's work force at the port or any other workers employed by the Company (including the dependants of such persons) as shall reside at or near or shall frequent the port. Subject to the provisions of clause 11 hereof the Company shall pay to the State or the appropriate authority the capital cost of establishing and providing additional services and facilities and associated equipment including sewerage and water supply schemes, main drains, education, police and hospital services to the extent to which those additional works and services are made necessary in that town as a result of the operations of the Company. The additional services, works and associated equipment referred to in this clause shall be provided by the State to a standard normally adopted by the State in providing new services works and associated equipment in similar cases in comparable towns.

Determination of Agreement⁴

21. In any of the following events namely if the Company shall make default in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sub-lease licence or other title or document granted or assigned under this Agreement on its part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to it by the State (or if the alleged default is contested by the Company and promptly submitted to arbitration within a reasonable time fixed by the arbitration award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration) if the Company shall abandon or repudiate its operations under this Agreement or if the Company shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and the rights of the Company hereunder and under any lease licence easement or right granted hereunder or pursuant hereto or if the Company shall surrender the entire mineral lease as permitted under sub-clause (2) of clause 4 hereof this Agreement and the rights of the Company hereunder and under any lease licence easement or right granted hereunder or pursuant hereto shall thereupon determine; PROVIDED HOWEVER that if the Company shall fail to remedy and default (other than any default under any of clauses 8, 10, 32, 33, 34 and 35 hereof) after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

Effect of determination of Agreement⁴

22. On the cessation or determination of this Agreement —
- (i) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement and the rights of the Company or of any assignee of the Company or any mortgagee to in or under the mineral lease and any other lease 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;

- (ii) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
- (iii) the Company shall forthwith furnish to the State complete factual statements of the investigations referred to in recital (a) hereof and of any work research surveys and reconnaissances carried out by the Company pursuant to the provisions of this Agreement if and insofar as such statements may not have been furnished provided that the Company shall not be obliged to supply technical information of a confidential nature with respect to processes that have been developed by the Company alone or with others or acquired from other sources and that is not generally available to the iron ore industry, or financial and economic information of a confidential nature that if, disclosed, could unduly prejudice the contractual or commercial arrangements between the Company and third parties;
- (iv) save as aforesaid and as provided in sub-clause (13) of clause 5 hereof and in clause 23 hereof neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.

Effect on determination of lease⁴

23. On the cessation or determination of any lease licence or easement granted hereunder by the State to the company or (except as otherwise agreed by the Minister) to an associated company or other assignee of the Company under clause 43 hereof of land for any wharf port installation railway or housing at any townsite near any such port constructed or established by the Company pursuant to this Agreement the improvements and things other than plant equipment and removable buildings erected on the relevant land and provided for in connection therewith shall remain or become the absolute property of the State without compensation and freed and discharged from all mortgages and encumbrances and the Company will do and execute such documents and things (including surrenders) as the State may reasonably require to give effect to this provision. In the event of the Company immediately prior to such expiration or determination or subsequent thereto deciding to remove locomotives, rolling stock plant equipment and removable buildings owned by the Company or any of them from any land it shall not do so without first notifying the State in

writing of its decision and thereby granting to the State the right or option exercisable within three (3) months thereafter to purchase at valuation *in situ* the said plant equipment and removable buildings or any of them. Such valuation shall be mutually agreed or in default of agreement shall be made by such competent valuer as the parties may appoint or failing agreement as to such appointment then by two competent valuers one to be appointed by each party or by an umpire appointed by such valuers should they fail to agree.

No charge for the handling of cargoes⁴

24. The State covenants that subject to the Company at its own expense providing all works buildings dredging and things of a capital nature reasonably required for its operations hereunder at or in the vicinity of the port no charge or levy shall be made by the State or by any State authority in relation to the loading of outward or the unloading of inward cargoes from the Company's wharf whether such cargoes shall be the property of the Company or of any other person or corporation but the State accepts no obligations 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 Company's wharf ordinary light conservancy and tonnage dues.

Zoning⁴

25. The State covenants that the mineral lease and the lands the subject of any lease licence or easement granted to the Company under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State by any State agency or instrumentality or by any local or other authority of the State on the ground that such operations are contrary to any zoning by-law regulation.

Rentals and Evictions⁴

26. The State covenants that any State legislation for the time being in force in the said State relating to the fixation of rentals shall not apply to any houses belonging to the Company in the port townsite and the townsite and that in relation to each such house the Company shall have the right to include as a condition of its letting thereof that the Company may take proceedings for

eviction of the occupant if the latter shall fail to abide by and observe the terms and conditions of occupancy or if the occupant shall cease to be employed by the Company.

Labour conditions⁴

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

Subcontracting⁴

28. Without affecting the liabilities of the parties under this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portions of the operations which it is authorised or obliged to carry out hereunder.

Rating⁴

29. 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 transportation shipment and processing of ore and products derived therefrom, which excepted parts shall be subject to the provisions of the Local Government Act) shall for rating purposes be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate, PROVIDED THAT nothing in this clause shall prevent the Company making the election provided for by Section 533B of the *Local Government Act 1960*.

Environmental Protection⁴

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

Company to elect whether to produce metallised agglomerates or steel⁴

31. Before the end of year 6 (or such extended date if any as the Minister may approve) the Company shall either —

- (a) give to the Minister notice that it proposes to comply with the provisions of clause 32 hereof; or
- (b) give to the Minister notice that it proposes to comply with the provisions of clause 34 hereof.

Metallised agglomerates⁴

32. If pursuant to clause 31 hereof the Company gives to the Minister notice that it proposes to comply with the provisions of this clause then —

- (1) the company will —
 - (a) before the end of year 6 (or such extended date if any as the Minister may approve) submit to the Minister detailed proposals for the establishment within the said State of plant for the production of metallised agglomerates containing provision that such plant will by the end of year 8 (or such extended date if any as the Minister may approve) have the capacity to produce not less than one million (1,000,000) tons of metallised agglomerates annually;
 - (b) before the end of year 8 (or such extended date if any as the Minister may approve) submit to the Minister detailed proposals for the expansion of the productive capacity of such plant to not less than two million (2,000,000) tons of metallised agglomerates annually by the end of year 10 (or such extended date if any as the Minister may approve); and
 - (c) before the end of year 10 (or such extended date if any as the Minister may approve) submit to the Minister detailed proposals for the further expansion of the productive capacity of such plant to not less than three million (3,000,000) tons of metallised agglomerates annually by the end of year 12 (or such extended date if any as the Minister may approve).

If Minister gives notice clauses 35 to 39 and 41 to operate⁴

(2) The Minister may at any time after receipt of the notice referred to in clause 31(a) hereof and before the expiration of two (2) months after the receipt of any proposals submitted pursuant to sub-clause (1) of this clause give to the Company notice that notwithstanding the Company's proposal to comply with the provisions of this clause the State requires the provisions of clauses 35, 36, 37, 39 and 41 hereof to apply and upon the giving of such notice —

- (a) the provisions of sub-clauses (1), (3), (4) and (5) of this clause shall cease to operate and neither the Company nor the Minister shall have any further or continuing obligation thereunder; and
- (b) the provisions of clauses 35, 36, 37, 39 and 41 hereof shall come into operation.

(3) If the Minister does not give to the Company notice pursuant to sub-clause (2) of this clause then the Minister shall within two (2) months of the receipt of each of the proposals referred to in sub-clause (1) of this clause give to the Company notice either of his approval of those proposals (which approval shall not unreasonably be withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford the Company an opportunity to consult with and to submit new proposals to the Minister. If within two (2) months of receipt of such notice, agreement is not reached as to the proposals the Company may within a further period of two (2) months elect by notice to the State to refer to arbitration as provided in clause 53 of this Agreement any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have approved the proposals of the Company.

(4) The Company will (except to the extent otherwise agreed with the Minister and subject always to clause 33 hereof) within the respective times specified in paragraphs (a), (b) and (c) of sub-clause (1) of this clause complete the construction of plant in accordance with such proposals as finally approved or determined under this clause.

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

If metallised agglomerates not feasible ⁴

33. (1) If the Company at any time considers that the construction of plant for the production of metallised agglomerates as required to be proposed under clause 9 or clause 32 hereof or as required pursuant to any proposals finally approved or determined under those clauses (hereinafter called “the metallising operation”) is for any technical, economic and/or other reason not feasible then the Company may (without prejudice to its rights (if any) under clause 51 of this Agreement) submit to the Minister the reasons why it considers the metallising operation is not feasible, together with supporting data and other information.

(2) Within two (2) months after receipt of a submission from the Company under sub-clause (1) of this clause the Minister shall notify the Company whether or not he agrees with its submission.

(3) If the Minister notifies the Company that he does not agree with its submission then at the request of the Company made within two (2) months after receipt by the Company of the notification from the Minister, the Minister will appoint a tribunal (hereinafter called “the Tribunal”) of three persons (one of whom shall be a Judge of the Supreme Court of Western Australia or failing him a Commissioner appointed pursuant to section 49 of the *Supreme Court Act 1935* and the others of whom shall have appropriate technical or economic qualifications) to decide whether or not the metallising operation is feasible and the Tribunal in reaching its decision shall take into account (*inter alia*) the Company’s submission, the amount of capital required for the metallising operation, the availability of that capital at that time on reasonable terms and conditions, the likelihood of the Company being able to sell metallised agglomerates at sufficient prices and in sufficient quantities and for a sufficient period to justify the metallising operation having regard to the amount and rate of return on total funds that would be involved in or in connection with the production and sale of metallised agglomerates by the Company and the comparable amount and rate of return on total funds employed in comparable metallurgical processes in Australia.

(4) If the Minister notifies the Company that he agrees with its submission of if on reference to the Tribunal the Tribunal decides that the metallising operation is not feasible then —

- (a) the Company will not have any obligation or further obligation to submit proposals in respect of the metallising operation as provided in clause 10 or clause 32 hereof or to

carry out such proposals in respect thereof as may have been finally approved or determined pursuant to those clauses;

- (b) the Minister and the Company will forthwith confer with a view to agreeing on the substitution for the Company's obligations in respect of the metallising operation the obligation to carry out some other feasible operation (related directly to the mining and metallurgical industry) representing an economic development within the said State approximately equivalent to the metallising operation.

(5) If within two (2) months after the Minister notifies the Company that he agrees with its submission or (as the case may be) within two (2) months after the Tribunal has announced its decision that the metallising operation is not feasible the Minister and the Company have not reached agreement under subclause (4)(b) of this clause then the Minister will instruct the Tribunal to decide whether any and if so what other feasible operation of the kind referred to in that subclause is capable of being and should be undertaken by the Company and the Tribunal in reaching its decision thereon shall have regard to any submissions made to it by the Minister and by the Company and also (*inter alia*) to the amount of capital required for such other operation, the availability of that capital at that time on reasonable terms and conditions, the likelihood of the Company being able to sell the product of such operation at sufficient prices and in sufficient quantities and for a sufficient period to justify the same having regard to the amount and rate of return on total capital that would be involved in or in connection with that other operation and the comparable amount and rate of return on total funds employed in comparable processes in Australia.

(6) If the Minister and the Company reach agreement under subclause (4)(b) of this clause or if on reference to the Tribunal under sub-clause (5) of this clause the Tribunal decides that some other feasible operation is capable of being and should be undertaken by the Company then this Agreement shall be altered to give effect to that agreement or as the case may be that decision and the Company shall be obliged to comply with the obligations imposed on it as a result of such alteration.

(7) If the Company makes a submission to the Minister under sub-clause (1) of this clause then the period from the time of making that submission to the time when the Minister notifies the Company that he does not agree with its submission or (if the Company requests the Minister as provided in subclause (3) of this clause) to the time (if any) when the Tribunal decides that the metallising operation is feasible shall be added to the respective times

by which the Company is required to comply with any of its obligations under clause 10 or as the case may be under clause 32 hereof.

(8) The Company may invoke the foregoing provision of this clause at any time and from time to time in respect of all or any of its obligations arising under clause 10 or clause 32 hereof and the references to the metallising operation in those provisions shall as the case may require be read and construed as referring to the one or more of those obligations in respect of which those provisions are invoked by the Company. PROVIDED THAT the Company may not without the consent of the Minister invoke the foregoing provisions of this clause in respect of its obligations under clause 32 hereof until it has pursuant to that clause constructed plant having the capacity to produce not less than one million (1,000,000) tons of metallised agglomerates annually. If the Minister does not give such consent within one (1) month after application therefor by the Company the provisions of sub-clause (2) of clause 32 hereof shall operate as if the Minister had given notice to the Company pursuant to that sub-clause and the Minister shall be deemed to have given such notice accordingly and the Company shall be released from any obligations pursuant to this clause and clause 32 hereof accordingly.

Production of steel if Company elects to produce steel ⁴

34. If pursuant to clause 31 hereof the Company gives to the Minister notice that it proposes to comply with the provisions of this clause then —

- (1) The Company will before the end of year 17 submit to the Minister detailed proposals for the establishment within the said State of plant for the production of steel containing provision that such plant will by the end of year 22 have the capacity to produce not less than five hundred thousand (500,000) tons of steel annually and will by the end of year 27 have the capacity to produce not less than one million (1,000,000) tons of steel annually.
- (2) The Minister shall within two (2) months of receipt of such proposals give to the Company notice of his approval of those proposals (which approval shall not unreasonably be withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford the Company an opportunity to consult with and to submit new proposals to the Minister. If within two (2) months of receipt of such notice, agreement is not reached as to the proposals the Company may within a further period of two (2) months elect by notice to the State to refer to arbitration as

provided in clause 53 of this Agreement any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have approved the proposals of the Company.

- (3) The Company will (except to the extent otherwise agreed with the Minister) before the end of the respective times specified in sub-clause (1) of this clause complete the construction of plant in accordance with the Company's proposals as finally approved or determined under this clause.
- (4) The arbitrator arbitrators or umpire (as the case may be) of any submission to arbitration hereunder is hereby empowered upon application by either party hereto to grant any interim extension of time or date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of either or both the parties hereunder and an award in favour of the Company may in the name of the Minister grant any further extension of time for that purpose.

Production of steel if Minister requires Company to produce steel ⁴

35. (1) The provisions of this clause and of clauses 36, 37, 38, 39 and 41 hereof shall not operate unless and until the Minister has given notice or is deemed to have given notice to the Company pursuant to sub-clause (2) of clause 32 hereof.

(2) The Company will in due course investigate the feasibility of establishing an integrated iron and steel industry within the said State and will from time to time review this matter with a view to its being in a position before the end of year 17 to submit to the Minister detailed proposals for such industry (capable ultimately of producing one million (1,000,000) tons of steel per annum) containing provision that —

- (a) by the end of year 22 productive capacity will be at an annual rate of not less than and during year 23 production will be not less than five hundred thousand (500,000) tons of pig iron foundry iron or steel (hereinafter together referred to as "product") of which not less than two hundred and fifty thousand (250,000) tons will be steel;

- (b) production will progressively increase so that by the end of year 26 productive capacity will be at an annual rate of not less than and during year 27 production will be not less than one million (1,000,000) tons of product (of which not less than five hundred thousand (500,000) tons will be steel) and by the end of year 28 productive capacity will be at an annual rate of not less than and during year 29 production will be not less than one million (1,000,000) tons of steel; and
- (c) the capital cost involved will be not less than eighty million dollars (\$80,000,000) unless the Company utilises a less expensive but at least equally satisfactory method of manufacture than any at present known to either party.

(3) If before the end of year 17 such proposals are submitted by the Company to the Minister the Minister shall within two (2) months of the receipt thereof give to the Company notice either of his approval of the proposals (which approval shall not unreasonably be withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford to the Company an opportunity to consult with and to submit new proposals to the Minister. If within thirty (30) days of receipt of such notice agreement is not reached as to the proposals the Company may within a further period of thirty (30) days elect by notice to the State to refer to arbitration as hereinafter provided any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have then approved the proposals of the Company.

(4) If such proposals are not submitted by the Company to the Minister before the end of year 17 or if such proposals are so submitted but are not approved by the Minister within two (2) months after receipt thereof then (subject to any extension of time granted under subclause (3) of clause 8 hereof) if by the end of year 20 (or extended date if any) the State gives to the Company notice that some other company or party (hereinafter referred to as "the Third Party") has agreed to establish an integrated iron and steel industry within the said State (using iron ore from the mineral lease) on terms not more favourable on the whole to the Third Party than those proposed by or available to the Company hereunder then this Agreement will (subject to the provisions of clauses 22 and 23 and clauses 38 and 41 hereof) cease and determine at the end of year 27 or at the date by which the Third Party has substantially established that industry whichever is the later.

(5) If by the end of year 20 (or extended date if any) the State has not given to the Company any such notice as is referred to in subclause (4) of this clause that sub-clause shall thereupon cease to have effect except that (to the extent that they can from time to time operate) the provisions of subclause (4) of this clause shall revive (for a period of three (3) years) at the end of year 30 and at the end of each successive period of thirteen (13) years thereafter in such a way that each year referred to in that subclause shall be read as the year (13) or (as the case may require) a multiple of thirteen (13) years thereafter (subject to extensions of dates if any as aforesaid).

(6) The Company may at any time after the end of year 17 submit proposals for an integrated iron and steel industry if at that time it has not received any notice under subclause (4) of this clause and the provisions of subclauses (2) and (3) of this clause shall apply to such proposals.

(7) Except as provided in subclause (4) of this clause this Agreement will continue in operation subject to compliance by the Company with its obligations hereunder and with such proposals by the Company as are approved by the Minister.

(8) Notwithstanding anything contained herein no failure by the Company to submit to the Minister proposals as aforesaid nor any non-approval by the Minister of such proposals shall constitute a breach of this Agreement by the Company and the only consequences arising from such failure or non-approval (as the case may be) will be those set out in subclause (4) of this clause.

“Substantial establishment”⁴

36. The Third Party shall have substantially established a plant for an integrated iron and steel industry when and not before that party’s integrated iron and steel industry has the capacity to produce one million (1,000,000) tons of steel per annum and the Minister has notified the Company that he is satisfied that that party will proceed *bona fide* to operate its plant or industry.

Terms “not more favourable”⁴

37. In deciding whether for the purposes of clause 35 hereof the terms granted by the State to some company or party are not more favourable on the whole than those proposed by or available to the Company regard shall be had *inter alia* to all the obligations that would have continued to devolve on the Company had it proceeded with iron and steel manufacture or steel manufacture

including its obligations in regard to secondary processing and its obligations to establish or construct works and facilities for the mining transportation by rail and shipment of iron ore and restrictions relating thereto and its obligations to pay rent additional rental and royalty and also to the need for the other company or party to pay on a fair and reasonable basis for or for the use of property accruing to the State under clause 23 hereof and made available by the State to that company or party but also to any additional or equivalent obligations to the State assumed by that company or party.

Supply of iron ore by others⁴

38. If at the date upon which this Agreement ceases and determines pursuant to clause 35 hereof the Company remains under any obligation for the supply of iron ore arising out of a contract or contracts entered into by the Company with the consent of the Minister the Company may give notice to the Minister that it desires the State to ensure that the Third Party is obligated to discharge such remaining obligations. Forthwith upon receipt of such notice the State will ensure that the Third Party is obligated to discharge such obligations in accordance with such contract or contracts on a basis that is fair and reasonable as between the Company and the Third Party or if desired to supply iron ore to the Company into ships on such fair and reasonable basis.

Supply of iron ore to others⁴

39. The Company covenants and agrees with the State that should the Company remain in possession of the mineral lease for any period during which the Third Party is operating or is ready to operate a plant for an integrated iron and steel industry and have available to it facilities for the purpose then during such period (whenever commencing) the Company will supply the Third Party with iron ore from the mineral lease (not exceeding in all five million (5,000,000) tons per annum unless otherwise agreed) —

- (i) at such rates and grade (as may reasonably be available and be required);
- (ii) at such points on the Company's railway;
- (iii) at such price; and
- (iv) on such other terms and conditions as may mutually be agreed between the Company and the State or failing agreement decided by arbitration between them PROVIDED ALWAYS

that the price shall unless otherwise agreed between them be equivalent to the total cost of production and transport incurred by the Company (including reasonable allowance for depreciation and all overhead expenses) plus ten per centum (10%) of such total cost.

Acceleration of Company's steel obligations ⁴

40. If before the first day of January 1977 the State gives to the Company notice that it is willing to supply the Company at all times from the commencement of the first day of January, 1986 and thereafter during the continuance in operation of this Agreement with all the Company's requirements for electrical power anywhere within a radius of thirty (30) miles from the Post Office at Dampier and anywhere within a radius of thirty (30) miles from the northernmost point of Cape Lambert in the said State (including all electrical power from time to time required by the Company for secondary processing, for the production of iron and/or steel and for all ancillary purposes including crushing, screening and loading, and the operation of any port or ports but not including electrical power from time to time required by the Company for any townsite or townsites established or to be established by the Company) at a total cost to the Company of six tenths of a cent (0.6c) per kilowatt hour and supplied by the State at points reasonably adjacent to the respective places at which it is from time to time required by the Company, then the State and the Company will forthwith enter into an agreement for the supply of such electrical power accordingly, and from and after the date when such agreement is entered into and so long as the State complies with all its obligations under the said agreement clauses 34 and 35 hereof shall be read construed and take effect as if each numeral appearing therein immediately after the word "year" were a numeral six (6) less than each such numeral.

41. If by the end of the year first referred to in sub-clause (2) of clause 35 hereof (or any later time to which that time has been extended by the Minister) detailed proposals for an integrated iron and steel industry as referred to in sub-clause (2) of clause 35 hereof are not submitted by the Company to the Minister then the Minister may at any time before the expiration of two (2) months after the end of that year (or as the case may be that later time) give to the Company notice that the provisions of clauses 35, 36, 37, 38 and 39 hereof are to cease to operate and upon the giving of such notice all those provisions will cease to operate and should any notice have by then been given by the Minister to the Company pursuant to sub-clause (4) of clause 35 hereof such last

mentioned notice shall cease to have and shall be deemed not to have had any force or effect.

Indemnity⁴

42. The Company will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by the Company pursuant to this Agreement or relating to its operations hereunder or arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of any wharf railway or other works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith and will also indemnify and keep indemnified the State against all actions suits compensation claims demands or costs by third parties under the Ratifying Act the *Public Works Act 1902* the Land Act or any other Act in respect of or as a consequence of the resumption or deprivation of the use of any land where such resumption or deprivation of the use of any land where such resumption or deprivation of use is made or done by the State for the purpose of granting to the Company a lease right mining tenement easement reserve or licence pursuant to sub-clause (2) of clause 4 and sub-clause (1) of clause 7 hereof.

Assignment⁴

43. (1) Subject to the provision of this clause the Company may at any time —
- (a) assign mortgage charge sublet or dispose of to an associated company or associated companies as of right and to any other company or companies or person or persons with the consent in writing of the Minister the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of any lease licence easement grant or other title) and of the obligations of the Company hereunder; and
 - (b) appoint as of right an associated company or associated companies or with the consent of the Minister any other company or companies or person or persons to exercise all or any of the powers functions and authorities which are or may be conferred on the Company hereunder;

subject however to the assignee or assignees or (as the case may be) the appointee or appointees executing in favour of the State a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with observed or performed in regard to the matter or matters so assigned or (as the case may be) the subject of the appointment.

(2) Notwithstanding anything contained in or anything done under or pursuant to sub-clause (1) of this clause the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained herein and in any lease licence easement grant or other title the subject of an assignment under the said sub-clause (1).

44. 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* insofar as the same or any of them may apply —

- (a) no mortgage or charge in a form commonly known as a floating charge made or given pursuant to clause 43 hereof over any lease licence reserve or tenement granted hereunder or pursuant hereto by the Company or any assignee or appointee who has executed, and if for the time being bound by a deed of covenant made pursuant to clause 43 hereof;
- (b) no transfer or assignment made or given at any time in exercise of any power of sale contained in any such mortgage or charge;

shall require any approval or consent (other than such consent as may be necessary under clause 43 hereof) and no such mortgage or charge shall be rendered ineffectual as an equitable charge by the absence of any approval or consent (otherwise that as required by clause 43 hereof) or because the same is not registered under the provisions of the Mining Act.

45. The Company may arrange for any obligation undertaken by the Company hereunder (including any obligation to erect a plant or plants for the production of or any obligation to produce iron ore concentrates metallised agglomerates, pig iron, foundry iron or steel and any obligation arising out of proposals being approved deemed to have been approved or determined under this Agreement to construct a railway and/or to provide locomotives freight cars and other railway stock and equipment therefor) to be undertaken either wholly

or partially by any associated company or associated companies or with the Minister's consent (which consent shall not be unreasonably withheld) by any other company or companies and fulfilment of any such obligation in whole or in part by such associated company or associated companies or by that other company or companies shall be deemed to be fulfilment (wholly or partially as the case may be) of that obligation by the Company hereunder. Where such associated company or associated companies or such other company or companies now has or at some future time has installed or provided a plant or plants for the production of iron ore concentrates, metallised agglomerates, pig iron foundry iron or steel, or a railway or other facilities any increase in the capacity of carried out under arrangements made by the Company with such associated company or associated companies or (with the prior consent of the Minister as aforesaid) with such other company or companies shall to the extent of the increase reduce or (as the case may be) extinguish any obligation of the Company to provide such capacity.

Variation⁴

46. (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 implementing or facilitating any of the objects of this Agreement.

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

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

Variation of Proposals⁴

47. The Minister may from time to time at the request of the Company approve variations in the detailed proposals relating to any railway or port site and/or port facilities or dredging programme or townsite or town planning or any other facilities or services or other plans specifications or proposals which

may have been approved pursuant to this Agreement and in considering such variation shall have regard to any changes consequent upon joint user proposals of any such works facilities or services and other relevant factors arising after the date hereof. Where the variation referred to in this clause constitutes a material or substantial alteration to the rights and/or obligations of either party as set out in this Agreement the provisions of clause 46 shall apply.

Joint user⁴

48. (1) The Company shall be entitled at any time and from time to time with the prior approval in writing of the Minister to enter into an agreement with any third party for the joint construction maintenance and user or for the joint user only of any work constructed or agreed to be constructed by the Company pursuant to the terms of this Agreement or by such other party pursuant to any agreement entered into by it with the State and in any such event any amount expended in or contributed to the cost of such construction by the Company shall for the purpose of the calculation of the sum agreed to be expended on that work by the Company under this Agreement and if so approved by the Minister be taken and accepted as an amount equal to the total amount expended (whether by the Company or the said third party or by them jointly) in the construction of such work.

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

Alteration of works⁴

49. It at any time the State finds it necessary to request the Company to alter the situation of any of the installations or other works (other than the Company's wharf) erected constructed or provided hereunder and gives to the Company notice of the request the Company 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 Company of any of its obligations hereunder) alter the situation thereof accordingly.

Export Licence⁴

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

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

(3) The Company shall be in default hereunder if at any time it fails to obtain any licence or licences under Commonwealth law for the export of ore as may be necessary for the purpose of enabling the Company to fulfil its 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 Company or to the Company not being *bona fide* in its application to the Commonwealth or otherwise having failed to use its 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 Company shall be withdrawn or suspended by the Commonwealth and so that as a result thereof the Company is not for the time being permitted to export at least the tonnage it has undertaken with the State it will export then the Company shall not be obliged 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 Company (and is hereby authorised by the Company 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.

Delays⁴

51. This Agreement shall be deemed to be made subject to any delays in the performance of obligations under this Agreement and to the temporary suspension of continuing obligations hereunder which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays or any such temporary suspension as aforesaid caused by or arising from Act of God force majeure floods storms tempests washaways fire (unless caused by the actual fault or privity of the Company) act of war act of public enemies riots civil commotion strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability (common in the iron ore export industry) to profitably sell iron ore, inability (common in the iron ore concentrates export industry) to profitably sell iron ore concentrates or inability to profitably sell metallised agglomerates 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 the occurrence.

Power to extend periods⁴

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

Arbitration⁴

53. Any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Agreement or any such amendment variation or addition or as to the rights duties or liabilities of either party thereunder or as to any matter to be agreed upon between the parties

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

Notices⁴

54. Any notice consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Public Service of the said State acting by the direction of the Minister and forwarded by prepaid post to the Company at its registered office for the time being in the said State and by the Company if signed on its behalf by a director manager or secretary of the Company or by any person or persons authorised by the Company in that behalf or by its solicitors as notified to the State from time to time and forwarded by prepaid post to the Minister and any such notice consent in writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

Exemption from stamp duty⁴

55. (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 Company or any permitted assignee of the Company any tenement lease easement licence or other right or interest;
- (c) any assignment sub-lease or disposition (other than by way of mortgage or charge) or any appointment made in conformity with the provisions of sub-clause (1) of clause 43 hereof; and

- (d) any assignment sub-lease or disposition (other than by way of mortgage or charge) or any appointment to or in favour of the Company or an associated company of any interest right obligation power function or authority which has already been the subject of an assignment sub-lease disposition or appointment executed pursuant to sub-clause (1) of clause 43 hereof;

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

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

Interpretation⁴

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

FIRST SCHEDULE

Firstly — The Agreement under seal of even date herewith between the Honourable John Trezise Tonkin, M.L.A., Premier of the State of Western Australia acting for and on behalf of the said State and Instrumentalities thereof of the first part HANCOCK PROSPECTING PTY. LTD. and WRIGHT PROSPECTING PTY. LTD. of the second part.

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

Second Schedule — 1976 Variation Agreement

[s. 2]

[Heading amended by No. 19 of 2010 s. 4.]

THIS AGREEMENT made the 5th day of October, 1976 BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A., Premier of the State of Western Australia acting for and on behalf of the said State and Instrumentalities thereof from time to time (hereinafter called “the State”) of the one part and MOUNT BRUCE MINING PTY. LIMITED a company incorporated under the Companies Act of the said State and having its registered office at 191 St. George’s Terrace, Perth (hereinafter called “the Company” which expression will include the successors and assigns of the Company) of the other part —

WHEREAS it is desired to amend the provisions of the principal Agreement (as hereinafter defined);

NOW THIS AGREEMENT WITNESSETH:

1. In this Agreement subject to the context —

“principal Agreement” means the Agreement of which a copy is set out in the Schedule to the *Iron Ore (Mount Bruce) Agreement Act 1972*;

words and phrases to which meanings are given under clause 1 of the principal Agreement (other than words or phrases to which meanings are given in the foregoing provisions of this clause) shall have the same respective meanings in this Agreement as are given to them under clause 1 of the principal Agreement.

2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.

3. The subsequent clauses of this Agreement shall not operate unless and until —

(1) The Bill to ratify this Agreement as referred to in clause 2 hereof is passed as an Act before the 30th day of November, 1976 or such later date if any as the parties hereto may mutually agree upon; and

(2) a Bill to ratify the Agreement referred to in the Schedule hereto is passed as an Act before the 30th day of November, 1976 or such later date if any as the parties hereto may mutually agree upon.

4. The principal Agreement is hereby varied as follows —

(1) as to clause 1 —

(a) by inserting after the definition of “Hamersley” the following definition —

“Hamersley Amending Agreement” means the agreement of which a copy is set out in the Third Schedule to the *Iron Ore (Hamersley Range) Agreement Act 1963-1972* as amended by the Agreement of which a copy is set out in the Fourth Schedule to that Act and as further amended by the Agreement dated the 5th day of October, 1976 between the State of the one part and Hamersley Iron Pty. Limited of the other part; and

(b) by inserting after the definition of “metallised agglomerates” the following definition —

“metallised agglomerate production commencement date” means the date upon which Hamersley pursuant to the provisions of clause 9 of the Hamersley Amendment Agreement first commences to produce metallised agglomerates in commercial quantities; ;

(2) by adding after clause 10 a new clause 10A as follows —

10A. If Hamersley pursuant to sub-clause (1) of clause 8A of the Hamersley Amending Agreement submits detailed proposals to the State for the establishment within the said State of a plant for the production of iron ore concentrates then the operation of clauses 8 and 10 hereof shall be suspended until either

(a) Hamersley complies with its obligations under sub-clauses (1) and (2) of the said

clause 8A in which event this Agreement shall thenceforth be read and construed as if the said clauses 8 and 10 were deleted herefrom; or

- (b) Hamersley commits a breach of its obligations under the said sub-clauses (1) and (2) in which event the said clauses 8 and 10 shall recommence to operate but thereafter shall be read and construed as if —
- (i) the reference “year 4” in sub-clause (1) of the said clause 8 read “year 8”;
 - (ii) the reference “year 9” wheresoever appearing in the said clause 8 read “year 13”; and
 - (iii) the reference “year 6” in sub-clause (1) of the said clause 10 read “year 10” and the reference “year 8” in that sub-clause read “year 12”. ;

(3) as to clause 31 by substitution for the passage “end of year 6” in line one, the passage “expiry of one (1) year from the metallised agglomerate production commencement date”;

(4) (a) as to subclause (1) of clause 32 —

- (i) by substituting for the passage “end of year 6” in line one, the passage “expiry of one (1) year from the metallised agglomerate production commencement date”; and
- (ii) by substituting for the passages “the end of year 8”, “the end of year 10”, and “the end of year 12” wheresoever appearing the passages “the expiry of three (3) years from the metallised agglomerate production commencement date”, “the expiry of five (5) years from the metallised

agglomerate production commencement date”,
and “the expiry of seven (7) years from the
metallised agglomerate production
commencement date”, respectively; and

(b) as to subclause (2) of clause 32 —

by adding after the words “pursuant to” in line four, the
passage “paragraph (a) of”.

THE SCHEDULE.

THE Agreement of even date herewith between THE HONOURABLE SIR
CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A., Premier of the
State of Western Australia acting for and on behalf of the said State and the
Instrumentalities thereof of the first part and HAMERSLEY IRON PTY.
LIMITED of the second part.

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

SIGNED by the said THE
HONOURABLE SIR CHARLES
WALTER MICHAEL COURT,
O.B.E., M.L.A. in the presence
of

} CHARLES COURT

}
}

ANDREW MENSAROS,
MINISTER FOR INDUSTRIAL
DEVELOPMENT

THE COMMON SEAL of
MOUNT BRUCE MINING
PTY. LIMITED was hereunto
affixed in the presence of

} [C.S.]
-
}
_

Director. DONALD S. STEWART,

Secretary. C. J. S. RENWICK,

[Second Schedule inserted by No. 94 of 1976 s. 5.]

Third Schedule — 1987 Variation Agreement

[s. 2]

[Heading amended by No. 19 of 2010 s. 4.]

THIS AGREEMENT is made the 28th day of May 1987 BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, 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 MOUNT BRUCE MINING PTY. LIMITED a company incorporated in Western Australia and having its registered office at 191 St. George’s Terrace, Perth (hereinafter called “the Company” which expression shall include the successors and assigns of the Company) of the other part.

WHEREAS:

- (a) the State and the Company are the parties to the agreement dated the 10th day of March, 1972 which agreement was ratified by and is scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972*, as varied by the agreement dated the 5th day of October, 1976 ratified by the *Iron Ore (Mount Bruce) Agreement Act Amendment Act 1976* (which agreement as so varied is referred to in this Agreement as “the Principal Agreement”);
- (b) the obligations of the Company under clauses 8 and 10 of the Principal Agreement have been satisfied pursuant to the provisions of paragraph (a) of clause 10A of the Principal Agreement by the construction by Hamersley Iron Pty. Limited of the plant for the production of iron ore concentrates referred to in that clause;
- (c) the Principal Agreement contains other provisions with regard to the secondary and further processing of iron ore intended, where feasible, to further the economic development of the State; and
- (d) the parties, consistent with the above intention but in the light of changed world circumstances with respect to the secondary and further processing of iron ore, have agreed to vary certain of the provisions of the Principal Agreement in relation thereto and to broaden the scope for substitution of alternative investments.

NOW THIS AGREEMENT WITNESSETH —

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.
3. The subsequent clauses of this Agreement shall not operate unless and until —
 - (a) the Bill to ratify this Agreement referred to in clause 2 hereof; and
 - (b) a Bill to ratify the Agreement referred to in the Schedule heretoare passed as Acts before the 30th day of June, 1987 or such later date if any as the parties may agree.
4. The Principal Agreement is hereby varied as follows —
 - (1) Clause 1 —
 - (a) by inserting, before the definition of “approve”, the following definition —

“ “alternative investments” means investments in the said State which are within the ability and competence of the Company or of corporations which are related to the Company for the purposes of the *Companies (Western Australia) Code* and which are approved by the Minister from time to time as alternative investments for the purpose of this Agreement (which approval shall not be unreasonably withheld in the case of an investment which would add value or facilitate the addition of value, beyond mining, to the mineral resources of the said State);”;
 - (b) in the definition of “associated company”, by deleting “section 6 of the *Companies Act 1961*” and substituting the following —

“section 7 of the *Companies (Western Australia) Code*”;
 - (c) by deleting the definitions of “Hamersley Amending Agreement” and “metallised agglomerate production commencement date”.

- (2) Clause 7 subclause (1) —
by deleting in the proviso “payable by them” and substituting the following —
“payable by it”.
- (3) By deleting clauses 8, 10 and 10A.
- (4) Clause 21 —
by deleting “(other than any default under any of clauses 8, 10, 32, 33, 34 and 35 hereof)” and substituting the following —
“(other than any default under clause 41A or clause 41B hereof)”
- (5) By deleting clauses 31 to 41 inclusive.
- (6) By inserting before clause 42 the following clauses —
- “41A. (1) (a) The Company shall subject to sub-clause (5) of this clause and to clause 41B of this Agreement on or before the 31st day of December, 1991 submit to the Minister detailed proposals for the establishment within the said State of plant for the production of steel containing provision that such plant will by the 31st day of December, 1994 have the capacity to produce not less than five hundred thousand (500,000) tons of steel annually and will by the 31st day of December, 1999 have the capacity to produce not less than one million (1,000,000) tons of steel annually.
- (b) If the Company reasonably requires an additional period for the purpose of submitting adequate proposals under this sub-clause or making a contract for the sale of steel products then the company may apply to the Minister before the 31st day of December, 1991 for an extension of time beyond that date in order to complete the preparation of its proposals and the Minister will grant such extension of time (being not less than twelve months) as he considers warranted in the circumstances.

- (2) The provisions of clause 51 hereof shall not apply to sub-clause (1) of this clause.
- (3) The Minister shall within two (2) months of receipt of such proposals give to the Company notice of his approval of those proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford the Company an opportunity to consult with and to submit new proposals to the Minister. If within two (2) months of receipt of such notice agreement is not reached as to the proposals, the Company may within a further period of two (2) months elect by notice to the State to refer to arbitration as provided in clause 53 of this Agreement any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have approved the proposals of the Company.
- (4) The Company shall (except to the extent otherwise agreed with the Minister) before the end of the respective times specified in sub-clause (1) of this clause complete the construction of plant in accordance with the Company's proposals as finally approved or determined under this clause.
- (5) (a) The Company may at any time before the time for submission of proposals pursuant to sub-clause (1) of this clause apply to the Minister for approval that the carrying out by the company of alternative investments be accepted by the State in lieu of all or some part of the Company's obligations in respect of the establishment of plant for the production of steel pursuant to this clause.

(b) Where the Minister approves a request under paragraph (a) of this sub-clause the Company shall implement the investments in accordance with that approval and upon completion thereof, or earlier with the agreement of the Minister,

the provisions of sub-clause (1) of this clause or that part of those provisions which pursuant to the said approval are to be satisfied by those investments shall cease to apply.

- 41B. (1) If the Company at any time considers that the establishment of plant for the production of steel or, as the case may be, the expansion of the productive capacity of such plant as required to proposed or as required pursuant to any proposals finally approved or determined pursuant to clause 41A hereof (hereinafter called "the steel operation") is for any technical, economic or other reason not feasible, whether in whole or in part, then the Company may submit to the Minister the reasons why it considers the steel operation is not feasible, together with supporting data and such other relevant information as the Minister may require.
- (2) Within two (2) months after receipt of a submission from the Company under sub-clause (1) of this Clause the Minister shall notify the Company whether or not he agrees with its submission.
- (3) (a) If the Minister notifies the company that he does not agree with its submission than at the request of the Company made within two (2) months after receipt by the Company of the notification from the Minister, the Minister will refer the matter to arbitration pursuant to clause 53 hereof to decide whether or not the steel operation is feasible.
- (b) If the Company does not request a reference to arbitration under paragraph (a) of this sub-clause or if on a reference to arbitration it is decided that the steel operation is feasible the Company shall comply with its obligations under clause 41A hereof provided that the period from the time that the Company made its submission under sub-clause (1) of this clause to the time when the Minister notified the

Company that he did not agree with its submission or the time when it was decided by arbitration that the steel operation was feasible as the case may be shall be added to the respective times by which the Company is required to comply with those obligations.

- (4) If the Minister notifies the Company that he agrees with its submission or if on reference to arbitration it is decided that all or part of the steel operation is not feasible, then —
- (a) The Company shall not have any obligation or further obligation to submit proposals in respect of so much of the steel operation as has been found not to be feasible or to carry out the relevant part of any proposals in respect thereof that may have been finally approved or determined pursuant to clause 41A hereof; and
 - (b) the Company shall thenceforth be obliged to identify and investigate potential alternative investments which would (either alone or in the aggregate with other alternative investments) represent economic development within the said State approximately equivalent to the steel operation (or relevant part thereof).
- (5) In carrying out its obligations under sub-clause (4)(b) of this clause the Company shall take account of and investigate, to the extent reasonable under the circumstances having regard, inter alia, to the expertise of the Company and related corporations, any potential alternative investments which are *prim facia* feasible and which are formally referred to the Company by the Minister from time to time.
- (6) The Company shall submit to the Minister in detail its programme for the identification and investigation of potential alternative investments pursuant to paragraph (b) of sub-clause (4) and sub-clause (5) of this clause not later than two (2) months after

receiving the notice from the Minister or the decision on arbitration as the case may be referred to in sub-clause (4) of this clause which programme shall specify the potential alternative investments it is investigating and any potential alternative investments it intends to investigate and shall set forth the Company's proposed timetable for its investigations of those investments and the feasibility thereof.

- (7) (a) Within two (2) months after receipt of a programme from the Company under sub-clause (6) of this clause the Minister shall notify the Company of any investments referred to in the programme which he would be prepared to approve as alternative investments and forthwith after such a notice the Company and the Minister shall meet to agree upon a programme (including timing) for studies by the Company into the feasibility of those investments.
- (b) The Company shall duly investigate the feasibility of any potential alternative investments referred to in paragraph (a) of this sub-clause and report to the Minister thereon in accordance with the programme agreed pursuant thereto or determined by arbitration hereunder.
- (c) Where any such potential alternative investment is accepted by the Minister as an alternative investment and agreed by the Company and the Minister or found on arbitration to be feasible the Company and the Minister shall forthwith meet to agree on a date by which the Company shall submit detailed proposals for that alternative investment.
- (d) The Company shall report to the Minister on its progress in performing its obligations under paragraphs (b) and (c) of this sub-clause at such intervals as the Minister may require but not more frequently, in respect of any such matter, than once in every three (3) months for

summary reports and once in every twelve (12) months for detailed written reports.

- (8) (a) The Company shall submit its detailed proposals for any alternative investment referred to in sub-clause (7)(c) of this clause not later than the date agreed pursuant to that sub-clause.
- (b) The provisions of sub-clause (3) of clause 41A hereof shall apply *mutatis mutandis* to the approval or determination of proposals made under this sub-clause. The Company shall implement proposals so approved or determined in accordance with the terms thereof.
- (9) (a) The obligations of the Company under sub-clause 4(b) of this clause shall continue until the parties agree or it is found on arbitration that alternative investments representing economic development within the said State approximately equivalent to the steel operation (or relevant part thereof) as provided for in that sub-clause have become the subject of proposals approved or determined in accordance with sub-clause (8) of this clause.
- (b) So long as the Company has continuing obligations under sub-clause (4)(b) of this clause the Company shall as and when it identified any potential alternative investment forthwith submit to the Minister a programme for the investigation of that investment and the feasibility thereof by the Company including its proposed timetable for the investigations.
- (c) The provisions of sub-clauses (7) and (8) of this clause shall *mutatis mutandis* apply to a programme submitted under paragraph (b) of this sub-clause as if it were a programme under sub-clause (6) of this clause.

(10) The Company may invoke the foregoing provisions of this clause at any time and from time to time in respect of all or any of its obligations arising under or pursuant to clause 41A hereof and the references to the steel operation in those provisions shall as the case may require be read and construed as referring to the one or more of those obligations in respect of which those provisions are invoked by the Company.”.

(7) Clause 51 —

by deleting “inability (common in the iron ore concentrates export industry) to profitably sell iron ore concentrates or inability to profitably sell metallised agglomerates” and substituting the following —

“inability to profitably sell steel or the product of any production facility required to be established pursuant to this Agreement”.

(8) Clause 53 —

(a) by inserting after the clause designation 53 the sub-clause designation (1);

(b) by deleting “the arbitration of two arbitrators one to be appointed by each party, the arbitrators to appoint their umpire before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the *Arbitration Act 1895* PROVIDED THAT” and substituting the following —

“and settled by arbitration under the provisions of the *Commercial Arbitration Act 1985* Provided That —

(a) notwithstanding sections 6 and 7 of that Act the matter, unless the parties agree on the appointment of a specific single arbitrator, shall be referred to and settled by arbitration under that Act by a tribunal of three (3) arbitrators of whom the State shall appoint one, the Company shall appoint one and those two arbitrators shall appoint the third; and

- (b) notwithstanding section 20(1) of that Act each party may be represented by a duly qualified legal practitioner or other representative
- and PROVIDED FURTHER THAT”;
- (c) by inserting the following sub-clauses —
- “(2) The arbitrator or arbitrators as the case may be determining any submission to arbitration under this Agreement shall have power upon application by either party to grant any interim extension of time or date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of either or both of the parties hereunder and an award in favour of the Company may in the name of the Minister grant any further extension of time for that purpose.
- (3) In deciding issues of economic feasibility the arbitrator or arbitrators as the case may be shall have regard to any submissions made by the Minister and by the Company and also (*inter alia*) to the amount of capital required for the investment, the availability of that capital at that time on reasonable terms and conditions, the likelihood of the investment being able to generate sufficient cash flow for a sufficient period to justify the same having regard to the amount and rate of return of total capital that would be involved in or in connection with the investment and the weighted average cost of capital to the Company.”.
- (9) Clause 54 —
- by deleting “in writing” and substituting the following —
- “or writing”

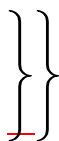
THE SCHEDULE.

The Agreement of even date with this Agreement between THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of

Western Australia, acting for and on behalf of the said State and its instrumentalities and HAMERSLEY IRON PTY. LIMITED.

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


SIGNED by the said THE
HONOURABLE BRIAN
THOMAS BURKE, M.L.A.
in the presence of:

A stylized signature of Brian Burke, consisting of a vertical line on the left and a bracket-like shape on the right, with a red horizontal line at the bottom left and a blue horizontal line at the bottom right.

BRIAN BURKE

D. PARKER
MINISTER FOR MINERALS
AND ENERGY

THE COMMON SEAL of
MOUNT BRUCE MINING
PTY. LIMITED was hereunto
affixed by authority of the
Directors in the presence of:

A stylized common seal, consisting of a vertical line on the left and a bracket-like shape on the right, with a red horizontal line at the bottom left and a blue horizontal line at the bottom right.

[C.S.]

Director T. BARLOW

Secretary G. B. BABON

[Third Schedule inserted by No. 26 of 1987 s. 7.]

Fourth Schedule — 2010 Variation Agreement

[s. 2]

[Heading inserted by No. 61 of 2010 s. 14.]

2010

**THE HONOURABLE COLIN JAMES BARNETT
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

AND

**MOUNT BRUCE MINING PTY. LTD.
ACN 008 714 010**

IRON ORE (MOUNT BRUCE) AGREEMENT 1972

RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 17th day of November 2010

BETWEEN

THE HONOURABLE COLIN JAMES BARNETT MLA., Premier of the State of Western Australia acting for and on behalf of the said State and instrumentalities thereof from time to time (**State**)

AND

MOUNT BRUCE MINING PTY. LIMITED ACN 008 714 010 of Level 22, Central Park, 152-158 St Georges Terrace, Perth, Western Australia (**Company**).

RECITALS

- A. The State and the Company are the parties to the agreement dated 10 March 1972 ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B. The State and the Company wish to vary the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and shall endeavour to secure its passage as an Act prior to 31 December 2010 or such later date as the parties may agree.
3. (a) Clause 4 does not come into operation unless or until an Act passed in accordance with clause 2 ratifies this Agreement.
(b) If by 30 June 2011, or such later date as may be agreed pursuant to clause 2, clause 4 has not come into operation then unless the parties hereto otherwise agree this Agreement shall cease and determine and neither party shall have any claim against the other party with respect to any matter or thing arising out of or done or

performed or omitted to be done or performed under this Agreement.

4. The Principal Agreement is hereby varied as follows:

(1) in clause 1:

- (a) by deleting the current definitions of "direct shipping ore", "fine ore", "fines" and f.o.b. revenue";
- (b) by inserting in the appropriate alphabetical positions the following new definitions:

"agreed or determined" means agreed between the Company and the Minister or, failing agreement within three months of the Minister giving notice to the Company that he requires the value of a quantity of iron ore to be agreed or determined, as determined by the Minister (following, if requested by the Company, consultation with the Company and its consultants in regard thereto) and in agreeing or determining a fair and reasonable market value of such iron ore assessed on an arm's length basis the Company and/or the Minister as the case may be shall have regard to:

- (i) in the case of iron ore initially sold at cost pursuant to paragraph (B) of the proviso to clause 12(1)(d), the prices for that type of iron ore prevailing at the time the price for such iron ore was agreed between the arm's length purchaser referred to in paragraph (B)(iii) of that proviso and the seller in relation to the type of sale and the relevant international seaborne iron ore market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value; and
- (ii) in any other case, the prices for that type of iron ore prevailing at the time the price for such iron ore was agreed between the Company and the purchaser in relation to the type of sale and the market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value;

"approved proposal" means a proposal approved or determined under this Agreement;

"beneficiated ore" means iron ore that has been concentrated or upgraded (otherwise than solely by crushing, screening, separating by hydrocycloning or a similar technology which uses primarily size as a criterion, washing, scrubbing, trommelling or drying or by a combination of 2 or more of those processes) by the Company in a plant constructed pursuant to a proposal approved pursuant to an Integration Agreement or in such other plant as is approved by the Minister after consultation with the Minister for Mines and "beneficiation" and "beneficiate" have corresponding meanings;

"deemed f.o.b. point" means on ship at the relevant loading port;

"deemed f.o.b. value" means an agreed or determined value of the iron ore as if the iron ore was sold f.o.b. at the deemed f.o.b. point as at:

- (a) in the case of iron ore the property of the Company which is shipped out of the said State, the date of shipment; and
- (b) in any other case, the date of sale, transfer of ownership, disposal or use as the case may be;

"EP Act" means the *Environmental Protection Act 1986* (WA);

"fine ore" means iron ore (not being beneficiated ore) which is screened and will pass through a 6.3 millimetre mesh screen;

"f.o.b. value" means:

- (i) subject to paragraph (ii), in the case of iron ore shipped and sold by the Company, the price which is payable for the iron ore by the purchaser thereof to the Company or an associated company or, where the Minister considers, following advice from the

appropriate Government department, that the price payable in respect of the iron ore does not represent a fair and reasonable market value for that type of iron ore assessed on an arm's length basis, such amount as is agreed or determined as representing such a fair and reasonable market value, less all export duties and export taxes payable to the Commonwealth on the export of the iron ore and all costs and charges properly incurred and payable by the Company from the time the iron ore shall be placed on ship at the relevant loading port to the time the same is delivered and accepted by the purchaser including:

- (1) ocean freight;
 - (2) marine insurance;
 - (3) port and handling charges at the port of discharge;
 - (4) all costs properly incurred in delivering the iron ore from port of discharge to the smelter and evidenced by relevant invoices;
 - (5) all weighing sampling assaying inspection and representation costs;
 - (6) all shipping agency charges after loading on and departure of ship from the relevant loading port;
 - (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;
- (ii) in the case of iron ore initially sold at cost pursuant to paragraph (B) of the proviso to clause 12(1)(d), the price which is payable for the iron ore by the arm's length purchaser as referred to in paragraph (B)(iii) of that proviso or, where the Minister considers,

following advice from the appropriate Government department, that the price payable in respect of the iron ore does not represent a fair and reasonable market value for that type of iron ore assessed on an arm's length basis in the relevant international seaborne iron ore market, such amount as is agreed or determined as representing such a fair and reasonable market value, less all duties, taxes, costs and charges referred to in paragraph (i) above;

(iii) in all other cases, the deemed f.o.b. value.

For the purpose of subparagraph (i) of this definition, it is acknowledged that the consideration payable in an arm's length transaction for iron ore sold solely for testing purposes may be less than the fair and reasonable market value for that iron ore and in this circumstance where the Minister in his discretion is satisfied such consideration represents the entire consideration payable, the Minister shall be taken to be satisfied that such entire consideration represents the fair and reasonable market value;

"Government agreement" has the meaning given in the *Government Agreements Act 1979*;

"Integration Agreement" means:

- (a) the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*, as from time to time added to, varied or amended; or
- (b) the agreement approved by and scheduled to the *Iron Ore (Robe River) Agreement Act 1964*, as from time to time added to, varied or amended; or
- (c) the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended; or
- (d) the agreement ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972*, as from time to time added to, varied or amended; or

- (e) the agreement ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended; or
- (f) the agreement ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996*, as from time to time added to, varied or amended; or
- (g) the agreement approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended; or
- (h) the agreement approved by and scheduled to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*, as from time to time added to, varied or amended; or
- (i) the agreement ratified by and scheduled to the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*, as from time to time added to, varied or amended; or
- (j) the agreement authorised by and as scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended; or
- (k) the agreement ratified by and scheduled to the *Iron Ore (Marillana Creek) Agreement Act 1991*, as from time to time added to, varied or amended;

"Integration Proponent" means in relation to an Integration Agreement, "the Company" or "the Joint Venturers" as the case may be as defined in, and for the purpose of, that Integration Agreement;

"iron ore" includes, without limitation, beneficiated ore;

"laws relating to native title" means laws applicable from time to time in the said State in respect of native title and includes the *Native Title Act 1993* (Commonwealth);

"loading port" means:

- (a) the Port of Dampier; or
- (b) Port Walcott; or

- (c) the Port of Port Hedland; or
- (d) any other port constructed after the variation date under an Integration Agreement; or
- (e) such other port approved by the Minister at the request of the Company from time to time for the shipment of iron ore from the mineral lease;

"lump ore" means iron ore (not being beneficiated ore) which is screened and will not pass through a 6.3 millimetre mesh screen;

"Minister for Mines" means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the administration of the *Mining Act 1978* (WA);

"Related Entity" means a company in which:

- (a) as at 21 June 2010; and
- (b) after 21 June 2010, with the approval of the Minister, a direct or (through a subsidiary or subsidiaries within the meaning of the *Corporations Act 2001* (Commonwealth)) indirect shareholding of 20% or more is held by:
 - (c) Rio Tinto Limited ABN 96 004 458 404; or
 - (d) BHP Billiton Limited ABN 49 004 028 077; or
 - (e) those companies referred to in paragraphs (c) and (d) in aggregate;

"variation date" means the date on which clause 4 of the variation agreement made on or about 17 November 2010 between the State and the Company comes into operation;

"washing" means a process of separation by water using only size as a criterion;

- (c) in the definition of "alternative investments" by deleting "or of corporations which are related to the Company for the purposes of the Companies (Western Australia) Code";

- (d) in the definition of "Company's wharf" by inserting "and in clauses 12(1)(d) and 14(1) also any additional wharf constructed by the Company pursuant to this Agreement";
- (e) in the definition of "metallised agglomerates" by deleting "or iron ore concentrates";
- (f) in the definition of "mineral lease" by inserting "and any areas added to it pursuant to clause 20B" before the semi colon;
- (g) in the definition of "secondary processing" by deleting "concentration or other beneficiation of iron ore other than by crushing or screening" and substituting "beneficiation of iron ore";
- (h) in the sentence beginning "marginal notes" by inserting "and clause headings" after "marginal notes; and
- (i) by inserting after that sentence the following new paragraphs:

"Nothing in this Agreement shall be construed:

- (a) to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made by or under the EP Act; or
 - (b) to exempt the State or the Company from compliance with or to require the State or the Company to do anything contrary to any laws relating to native title or any lawful obligation or requirement imposed on the State or the Company as the case may be pursuant to any laws relating to native title; or
 - (c) to exempt the Company from compliance with the provisions of the *Aboriginal Heritage Act 1972* (WA).";
- (2) by inserting after subclause (4) of clause 5 the following new subclauses:

- "(4a) A proposal may with the consent of the Minister (except in relation to an Integration Agreement) and that of any parties concerned (being in respect of an Integration Agreement the Integration Proponent for that agreement) provide for the use by the Company of any works installations or facilities constructed or established under a Government agreement.
- (4b) At the time when the Company submits the said proposals it shall submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with its reasons therefore and shall, if required by the Minister, consult with the Minister with respect thereto.";
- (3) in clause 5(5) by:
- (a) inserting "(or where required to be assessed under Part IV of the EP Act within 2 months after the service on him of an authority under section 45(7) of the EP Act)" after "(2) months after receipt of the proposals";
- (b) inserting ", subject to the EP Act," after "State shall as hereinafter permit";
- (c) deleting the fourth sentence and substituting the following new sentence:
- "The provisions of paragraphs (a)(except subparagraph (iv)), (b), (c) and the proviso to, and second sentence of, paragraph (d) of subclause (7) shall apply mutatis mutandis to such proposals provided that in his notice to the Company of his decision in respect of the proposals the Minister shall also be at liberty to specify in such notice such alterations to the proposals as are fair and reasonable having regard to the interests of the Company and any other party nominated as aforesaid (including participation in such development and use by another party or other parties nominated by the Minister).";

- (4) by deleting the heading to subclause (8) of clause 5 and renumbering that subclause as subclause (6a);
- (5) by deleting subclause (7) of clause 5 and substituting the following new subclause:

"(7) (a) In respect of each proposal pursuant to subclause (3) of this clause the Minister shall:

- (i) subject to the limitations set out below, refuse to approve the proposal (whether it requests the grant of new tenure or not) if the Minister is satisfied on reasonable grounds that it is not in the public interest for the proposal to be approved; or
- (ii) approve of the proposal without qualification or reservation; or
- (iii) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (3) not covered by the said proposal; or
- (iv) require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable, and in such a case the Minister shall disclose his reasons for such conditions,

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

In considering whether to refuse to approve a proposal the Minister is to assess whether or not the implementation of the proposal by itself, or together with any one or more of the other submitted proposals, will:

- (A) detrimentally affect economic and orderly development in the said State, including without limitation, infrastructure development in the said State; or
- (B) be contrary to or inconsistent with the planning and development policies and objectives of the State; or
- (C) detrimentally affect the rights and interests of third parties; or
- (D) detrimentally affect access to and use by others of the lands the subject of any grant or proposed grant to the Company.

The right to refuse to approve a proposal conferred by subparagraph (i) of paragraph (a) may only be exercised in respect of a proposal where the Minister is satisfied on reasonable grounds that a purpose of the proposal is the integrated use of works installations or facilities (as defined in subclause (7) of clause 20C for the purpose of that clause) as contemplated by clause 20C. It may not be so exercised in respect of a proposal if pursuant to clause 11B(5) the Minister, prior to the submission of the proposal, advised the Company in writing that the Minister has no public interest concerns (as defined in that clause) with the single preferred development (as referred to in clause 11B(5)(a)) the subject of the submitted proposals and those proposals are consistent (as to their substantive scope and content) with the information provided to the Minister pursuant to clause 11B(5) in respect of that single preferred development.

- (b) The Minister shall within 2 months after receipt of proposals pursuant to subclause (3) give notice to the Company of his decision in respect to the proposals, PROVIDED THAT where a proposal is to be assessed under Part IV of the EP Act the Minister shall only give notice to the Company of his decision in respect to the proposal within 2 months after service on him of an authority under section 45(7) of the EP Act.
- (c) If the decision of the Minister is as mentioned in either of subparagraphs (i), (iii) or (iv) of paragraph (a) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (d) If the decision of the Minister is as mentioned in either of subparagraphs (iii) or (iv) of paragraph (a) and the Company considers that the decision is unreasonable the Company within 2 months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to paragraph (a) shall not be referable to arbitration hereunder. A decision of the Minister under subparagraph (i) of paragraph (a) of this subclause shall not be referable to arbitration under the Agreement.
- (e) An award made on an arbitration pursuant to this subclause (7) shall (except as otherwise provided in subclause (5)) have the force and effect as follows:
 - (i) if by the award the dispute is decided against the Company then unless the Company within 3 months after delivery of the award gives notice to the Minister of its acceptance of the award this Agreement shall on the expiration of that period of 3 months cease and determine; and

- (ii) if by the award the dispute is decided in favour of the Company then decision shall 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) by inserting after subclause (13) of clause 5 the following new subclauses:
 - "(14) The Company shall implement the approved proposals in accordance with the terms thereof.
 - (15) Notwithstanding clause 46, the Minister may during the implementation of approved proposals approve variations to those proposals.";
- (7) in clause 7(1)(b) by:
 - (a) inserting "or cause to be granted" after "grant";
 - (b) inserting after the paragraph beginning "at peppercorn rental" the following new paragraph:

"at commercial rentals, licence or easement fees as applicable – leases, licences or easements within the port (as defined in clause 1 or other port within which the Company is permitted to construct works installations or facilities"
 - (c) inserting "the *Port Authorities Act 1999* (WA)" after "1926"; and
 - (d) inserting "installations or facilities" after "Company reasonably requires for its works";
- (8) by inserting after subclause (4) of clause 7 the following new subclause:
 - "(4a) The provisions of subclauses (1) and (2) of this clause shall not operate so as to require the State to grant or vary, or cause to be granted or varied, any lease licence or other right or title until all processes necessary under any laws relating to native title to enable that grant or variation to proceed, have been completed.";
- (9) in clause 11(1) by:

- (a) in paragraph (a) inserting "(other than under clause 20E)" after "activities beyond"; and
- (b) in the second sentence:
 - (i) inserting "subclauses (3) to (6) hereof and of" after "provisions"; and
 - (ii) inserting "11A", before "19";
- (10) by inserting after subclause (2) of clause 11 the following new subclauses:
 - "(3) A proposal may with the consent of the Minister (except in relation to an Integration Agreement) and that of any parties concerned (being in respect of an Integration Agreement the Integration Proponent for that agreement) provide for the use by the Company of any works installations or facilities constructed or established under a Government agreement.
 - (4) Each of the proposals pursuant to subclause (1) may with the approval of the Minister, or shall, if so required by the Minister, be submitted separately and in any order as to any matter or matters in respect of which such proposals are required to be submitted.
 - (5) At the time when the Company submits the said proposals it shall submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with its reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto.
 - (6) The Company may withdraw its proposals pursuant to subclause (1) at any time before approval thereof, or where any decision in respect thereof is referred to arbitration as referred to in clause 11A, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same.";

(11) by inserting after clause 11 the following new subclauses:

"Consideration of Company's proposals under clause 11

11A. (1) In respect of each proposal pursuant to subclause (1) of clause 11 the Minister shall:

- (a) subject to the limitations set out below, refuse to approve the proposal (whether it requests the grant of new tenure or not) if the Minister is satisfied on reasonable grounds that it is not in the public interest for the proposal to be approved; or
- (b) approve of the proposal without qualification or reservation; or
- (c) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in clause 11(1) not covered by the said proposal; or
- (d) require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable, and in such a case the Minister shall disclose his reasons for such conditions,

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

In considering whether to refuse to approve a proposal the Minister is to assess whether or not the

implementation of the proposal by itself, or together with any one or more of the other submitted proposals, will:

- (i) detrimentally affect economic and orderly development in the said State, including without limitation, infrastructure development in the said State; or
- (ii) be contrary to or inconsistent with the planning and development policies and objectives of the State; or
- (iii) detrimentally affect the rights and interests of third parties; or
- (iv) detrimentally affect access to and use by others of the lands the subject of any grant or proposed grant to the Company.

The right to refuse to approve a proposal conferred by paragraph (a) may only be exercised in respect of a proposal where the Minister is satisfied on reasonable grounds that a purpose of the proposal is the integrated use of works installations or facilities (as defined in subclause (7) of clause 20C for the

purpose of that clause) as contemplated by clause 20C. It may not be so exercised in respect of a proposal if pursuant to clause 11B(5) the Minister, prior to the submission of the proposal, advised the Company in writing that the Minister has no public interest concerns (as defined in that clause) with the single preferred development (as referred to in clause 11B(5)(a)) the subject of the submitted proposals and those proposals are consistent (as to their substantive scope and content) with the information provided to the Minister pursuant to clause 11B(5) in respect of that single preferred development.

- (2) The Minister shall within 2 months after receipt of proposals pursuant to clause 11(1) give notice to the Company of his decision in respect to the proposals,

PROVIDED THAT where a proposal is to be assessed under Part IV of the EP Act the Minister shall only give notice to the Company of his decision in respect to the proposal within 2 months after service on him of an authority under section 45(7) of the EP Act.

- (3) If the decision of the Minister is as mentioned in either of paragraphs (a), (c) or (d) of subclause (1) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (4) If the decision of the Minister is as mentioned in either of paragraphs (c) or (d) of subclause (1) and the Company considers that the decision is unreasonable the Company within 2 months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder. A decision of the Minister under paragraph (a) of subclause (1) shall not be referable to arbitration under this Agreement.
- (5) If by the award made on the arbitration pursuant to subclause (4) the dispute is decided in favour of the Company the decision shall 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) The Company shall implement the approved proposals in accordance with the terms thereof.
- (7) Notwithstanding clause 46, the Minister may during the implementation of approved proposals approve variations to those proposals.

Notification of possible proposals

- 11B. (1) If the Company, upon completion of a pre-feasibility study in respect of any matter that would require the submission and approval of proposals pursuant to this Agreement (being proposals which will have as their purpose, or one of their purposes, the integrated use of works installations or facilities as contemplated by clause 20C) for the matter to be undertaken, intends to further consider the matter with a view to possibly submitting such proposals it shall promptly notify the Minister in writing giving reasonable particulars of the relevant matter.
- (2) Within one (1) month after receiving the notification the Minister may, if the Minister so wishes, inform the Company of the Minister's views of the matter at that stage.
- (3) If the Company is informed of the Minister's views, it shall take them into account in deciding whether or not to proceed with its consideration of the matter and the submission of proposals.
- (4) Neither the Minister's response nor the Minister choosing not to respond shall in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.
- (4) (a) This subclause applies where the Company has settled upon a single preferred development a purpose of which is the integrated use of works installations or facilities (as defined in subclause (7) of clause 20C for the purpose of that clause) as contemplated by clause 20C.
- (b) For the purpose of this subclause "public interest concerns" means any concern that implementation of the single preferred development or any part of it will:

- (i) detrimentally affect economic and orderly development in the said State, including without limitation, infrastructure development in the said State; or
 - (ii) be contrary to or inconsistent with the planning and development policies and objectives of the State; or
 - (iii) detrimentally affect the rights and interests of third parties; or
 - (iv) detrimentally affect access to and use by others of lands the subject of any grant or proposed grant to the Company.
- (c) At any time prior to submission of proposals the Company may give to the Minister notice of its single preferred development and request the Minister to confirm that the Minister has no public interest concerns with that single preferred development.
- (d) The Company shall furnish to the Minister with its notice reasonable particulars of the single preferred development including, without limitation:
- (i) as to the matters that would be required to be addressed in submitted proposals; and
 - (ii) its progress in undertaking any feasibility or other studies or matters to be completed before submission of proposals; and
 - (iii) its timetable for obtaining required statutory and other approvals in relation to the submission and approval of proposals; and

- (iv) its tenure requirements.
 - (e) If so required by the Minister, the Company will provide to the Minister such further information regarding the single preferred development as the Minister may require from time to time for the purpose of considering the Company's request and also consult with the Minister or representatives or officers of the State in regard to the single preferred development.
 - (f) Within 2 months after receiving the notice (or if the Minister requests further information, within 2 months after the provision of that information) the Minister must advise the Company:
 - (i) that the Minister has no public interest concerns with the single preferred development; or
 - (ii) that he is not then in a position to advise that he has no public interest concerns with the single preferred development and the Minister's reasons in that regard.
 - (g) If the Minister gives the advice mentioned in paragraph (f)(ii) the Company may, should it so desire, give a further request to the Minister in respect of a revised or alternate single preferred development and the provisions of this subclause shall apply *mutatis mutandis* thereto.";
- (12) in clause 12(1) by deleting paragraph (d) and substituting the following new paragraphs:
- "(d) ship, or procure the shipment of, all iron ore mined from the mineral lease, and sold:
 - (i) from the Company's wharf; or

- (ii) from any other wharf in a loading port which wharf has been constructed under an Integration Agreement; or
- (iii) with the Minister's approval given before submission of proposals in that regard, from any other wharf in a loading port which wharf has been constructed under another Government agreement (excluding the Integration Agreements),

and use its best endeavours to obtain therefor the best price possible having regard to market conditions from time to time prevailing PROVIDED THAT:

- (A) this paragraph shall not apply to iron ore used for the production of iron ore concentrates or in a plant for the production of metallised agglomerates or steel in any part of the said State lying north of the twenty sixth parallel of latitude; and
- (B) iron ore from the mineral lease may be sold by the Company prior to or at the time of the shipment under this Agreement at a price equal to the production costs in respect of that iron ore up to the point of sale, if:
 - (i) the Minister is notified before the time of shipment that the sale is to be made at cost, providing details of the proposed sale; and
 - (ii) the Minister is notified of the proposed arm's length purchaser in the relevant international seaborne iron ore market of the iron ore the subject of the proposed sale at cost; and
 - (iii) there is included in the return lodged pursuant to clause 12(1)(i) particulars of the transaction in which the ore sold at cost was subsequently purchased in the relevant international seaborne iron ore market by an arm's length purchaser specifying the purchaser, the seller, the price and the date

when the sale was agreed between the arm's length purchaser and the seller; and

- (iv) the arm's length purchaser referred to in (iii) above is not then a designated purchaser as referred to in subclause (1)(da);

Designated purchaser

(da) if required by notice in writing from the Minister, provide the Minister within 30 days after receiving the notice with evidence that the transaction as included in the return pursuant to paragraph (B)(iii) of subclause (1)(d) was a sale in the relevant international seaborne iron ore market to an independent participant in that market. If no evidence is provided or the Minister is not so satisfied on the evidence provided or other information obtained, the Minister may by notice to the Company designate the purchaser to be a designated purchaser and that designation will remain in force unless and until lifted by further notice from the Minister to the Company. For the avoidance of doubt, the parties acknowledge that marketing entities forming part of the corporate group including the Company (or part of the parallel corporate group if the Company is part of a dual-listed corporate structure) are not independent participants for the purposes of this subclause;"

(13) in paragraph (h) of clause 12(1) by deleting all the words after "(solely for testing purposes)" and substituting the following:

- "(i) on lump ore and on fine ore not sold or shipped separately as such at the rate of 7.5% of the f.o.b. value;
- (ii) on fine ore sold or shipped separately as such at the rate of 5.625% of the f.o.b. value;
- (iii) on beneficiated ore at the rate of 5% of the f.o.b. value; and
- (iv) and on all other iron ore at the rate of 7.5% of the f.o.b. value.

Where beneficiated ore is produced from an admixture of iron ore from the mineral lease and other iron ore a portion (and a portion

only) of beneficiated ore so produced being equal to the proportion that the amount of iron in the iron ore from the mineral lease used in the production of beneficiated ore bears to the total amount of iron in the iron ore so used shall be deemed to be produced from iron ore from the mineral lease.

Where for the purpose of determining f.o.b. value it is necessary to convert an amount or price to Australian currency, the conversion is to be calculated using a rate (excluding forward hedge or similar contract rates) that has been approved by the Minister at the request of the Company and in the absence of such request as determined by the Minister to be a reasonable rate for the purpose.

The provisions of regulation 85AA (Effect of GST etc on royalties) of the *Mining Regulations 1981* (WA) shall apply mutatis mutandis to the calculation of royalties under this clause.";

(14) in clause 12(1)(i) by:

- (a) inserting "and also showing such other information in relation to the abovementioned iron ore as the Minister may from time to time reasonably require in regard to, and to assist in verifying, the calculation of royalties in accordance with paragraph (h)," after "due date of the return"; and
- (b) deleting all the words after "calculated on the basis of" and substituting a colon followed by:
 - "(i) in the case of iron ore initially sold at cost pursuant to paragraph (B) of the proviso to subclause (1)(d), at the price notified pursuant to paragraph (B)(iii) of that proviso;
 - (ii) in any other case, invoices or provisional invoices (as the case may be) rendered by the Company to the purchaser (which invoices the Company shall render without delay simultaneously furnishing copies thereof to the Minister) of such iron ore or on the basis of estimates as agreed or determined,

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. value shall have been finally calculated, agreed or determined;"

- (15) by deleting paragraph (l) of clause 12(1) and substituting the following new paragraph:

"(l) permit the Minister or his nominee to inspect at all reasonable times the books, records, accounts, documents (including contracts), data, and information of the Company stored by any means relating to any shipment or sale of iron ore the subject of royalty hereunder and to take copies or extracts (in whatever form) therefrom and for the purpose of determining the f.o.b. value in respect of any shipment sale transfer or other disposal or use or production of iron ore the subject of royalty hereunder the Company will take reasonable steps (i) to provide the Minister with current prices for iron ore and other details and information that may be required by the Minister for the purpose of agreeing or determining the f.o.b. value and (ii) to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the Minister's reasonable satisfaction as to all relevant weights and analyses and will give due regard to any objection or representation made by the Minister or the Minister's nominee as to any particular weight or assay of iron ore which may affect the amount of royalty payable hereunder;"

- (16) by in clause 12(1) deleting the full stop at the end of paragraph (o), substituting a semi colon and inserting the following new paragraph:

"Production of books etc in Perth

(p) shall cause to be produced in Perth in the said State all books, records, accounts, documents (including contracts), data and information of the kind referred to in paragraph (l) to enable the exercise of rights by the Minister or the Minister's nominee under paragraph (l), regardless of the location in which or by whom those books, records, accounts, documents (including contracts), data and information are stored from time to time."

- (17) by inserting after clause 20 the following new clauses:

"Blending of iron ore

20A. (1) The Company may blend iron ore mined from the mineral lease with any:

- (a) iron ore mined from a mining tenement or other mining title granted under, or pursuant to, an Integration Agreement; or
 - (b) iron ore mined from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement); or
 - (c) with the prior approval of the Minister, iron ore mined in, or proximate to, the Pilbara region of the said State under a Government agreement (excluding an Integration Agreement); or
 - (d) with the prior approval of the Minister, iron ore mined by a third party from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by an Integration Proponent from the third party.
- (2) The authority given under subclause (1) is subject to the Minister being reasonably satisfied that there are in place adequate systems and controls for the correct apportionment of the quantities of iron ore being blended as between each of the sources referred to in subclause (1), which systems and controls monitor production, processing, transportation, stockpiling and shipping of all such iron ore. If at any time the Minister ceases to be so satisfied he may, after consulting the Company and

provided the Company has not within three (3) months after the commencement of such consultation addressed the matters of concern to the Minister to his satisfaction, by notice in writing to the Company suspend the above authority in respect of the relevant blending arrangements until he is again satisfied in terms of this subclause (2).

- (3) If any blending of iron ore occurs as contemplated by this clause, then for the purposes of paragraphs (h) and (i) of clause 12(1), a portion of the iron ore so blended being equal to the proportion that the amount of iron ore from the mineral lease used in the admixture of iron ore bears to the total amount of iron ore so blended, shall be deemed to be produced from the mineral lease.

Additional areas

- 20B. (1) Notwithstanding the provisions of the Mining Act or the Mining Act 1978 the Company may from time to time during the currency of this Agreement apply to the Minister for areas held by the Company or an associated company under a mining tenement granted under the Mining Act 1978 to be included in the mineral lease but so that the total area of the mineral lease, any land that may be included in the mineral lease pursuant to this Agreement and of any other mineral lease or mining lease granted under or pursuant to this Agreement (as aggregated) shall not at any time exceed 777 square kilometres. The Minister shall confer with the Minister for Mines in regard to any such application and if they approve the application the Minister for Mines shall upon the surrender of the relevant mining tenement include the area the subject thereof in the mineral lease by endorsement subject to such of the conditions of the surrendered mining tenement as the Minister for Mines determines but otherwise subject to the same terms covenants and conditions as apply to the mineral lease (with such

apportionment of rents as is necessary) and notwithstanding that the survey of such additional land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.

- (2) The Minister may approve, upon application by the Company from time to time, for the total area referred to in subclause (1) to be increased up to a limit not exceeding 1,000 square kilometres.
- (3) The Company shall not mine or carry out other activities (other than exploration, bulk sampling and testing) on any area or areas added to the mineral lease pursuant to subclause (1) of this clause unless and until proposals with respect thereto are approved or determined pursuant to the subsequent provisions of this clause.
- (4) If the Company desires to commence mining of iron ore or to carry out any other activities (other than as aforesaid) on the said areas it shall give notice of such desire to the Minister and shall within 2 months of the date of such notice (or thereafter within such extended time as the Minister may allow as hereinafter provided) and subject to the provisions of this Agreement submit to the Minister to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister) with respect to such mining or other activities as additional proposals pursuant to clause 11.

Integrated use of works, installations or facilities under the Integration Agreements

- 20C. (1) Subject to subclauses (2) to (7) of this clause and to the other provisions of this Agreement, the Company may during the continuance of this Agreement:

- (a) use any existing or new works installations or facilities constructed or held:
 - (i) under this Agreement; or
 - (ii) under any other Integration Agreement which are made available for such use and during the continuance of such Integration Agreement; or
 - (iii) with the approval of the Minister, under a Government agreement (excluding an Integration Agreement) which are made available for such use and during the continuance of that agreement,

(wholly or in part) in the activities of the Company carried on by it pursuant to this Agreement including, without limitation, as part of those activities, transporting by railway and shipping from a loading port and undertaking any ancillary and incidental activities in doing so (including, without limitation, blending permitted by clause 20A) of:

- (A) iron ore mined from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement);
- (B) with the prior approval of the Minister, iron ore mined in, or proximate to, the Pilbara region of the said State under a Government

- agreement (excluding an Integration Agreement);
- (C) with the prior approval of the Minister, iron ore mined by a third party from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by the Company from the third party;
 - (D) iron ore mined under an Integration Agreement;
- (b) make any existing or new works installations or facilities constructed or held under this Agreement available for use (wholly or partly) by another Integration Proponent during the continuance of its Integration Agreement in the activities of that Integration Proponent carried on by it pursuant to its Integration Agreement including, without limitation, as part of those activities, transporting by railway and shipping from a loading port and undertaking any ancillary and incidental activities in doing so (including, without limitation, blending permitted by that Integration Agreement) of:
- (i) iron ore mined from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement);

- (ii) with the prior approval of the Minister (as defined in that Integration Agreement), iron ore mined in, or proximate to, the Pilbara region of the said State under a Government agreement (excluding an Integration Agreement);
 - (iii) with the prior approval of the Minister (as defined in that Integration Agreement), iron ore mined by a third party from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by that Integration Proponent from the third party;
 - (iv) iron ore mined under an Integration Agreement;
- (c) make any existing or new works installations or facilities constructed or held under this Agreement available for use (wholly or partly) in connection with operations under:
- (i) a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State, for iron ore, which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under a Government agreement); or
 - (ii) with the approval of the Minister, a Government agreement (other than an Integration Agreement) for the mining of iron ore in, or proximate to, the Pilbara region of the said State;

- (d) subject to subclause (2), under this Agreement and for the purpose of any use or making available for use referred to in paragraph (a), (b) or (c) connect any existing or new works installations or facilities constructed or held under this Agreement to any existing or new works installations or facilities constructed or held under another Integration Agreement;
- (e) subject to subclause (2), under this Agreement and for the purpose of any use or making available for use referred to in paragraph (a), (b) or (c) or making of any connection referred to in paragraph (d) construct new works installations or facilities and expand modify or otherwise vary any existing and new works installations or facilities constructed or held under this Agreement;
- (f) allow a railway or rail spur line (not being a railway or rail spur line constructed or held under an Integration Agreement) to be connected to a railway or rail spur line or other works installations or facilities constructed or held under this Agreement for the delivery of iron ore to an Integration Proponent for transport by railway and shipping from a loading port (together with any ancillary and incidental activities in doing so) as part of its activities under its Integration Agreement; and
- (g) allow an electricity transmission line (not being an electricity transmission line constructed or held under an Integration Agreement) to be connected to an electricity transmission line constructed or held under this Agreement for the supply of electricity

permitted to be made under an Integration Agreement.

- (2) (a) A connection referred to in clause (1)(d) or construction, expansion, modification or other variation referred to in subclause (1)(e) by the Company shall, to the extent not already authorised under this Agreement as at the variation date, be regarded as a significant modification expansion or other variation of the Company's activities carried on by it pursuant to this Agreement and may only be made in accordance with proposals submitted and approved or determined under this Agreement in accordance with clauses 11 and 11A or clause 20E as the case may require and otherwise in compliance with the provisions of this Agreement and the laws from time to time of the said State. For the avoidance of doubt, the parties acknowledge that any use or making available for use contemplated by subclause (1)(a), (1)(b) or (1)(c) shall not otherwise than as required by this paragraph (a) require the submission and approval of further proposals under this Agreement.
- (b) The Company shall not be entitled to:
- (i) submit proposals to develop a port or harbour otherwise than as permitted by clause 5 or to establish harbour or port works installations or facilities, or to expand modify or otherwise vary harbour or works installations or facilities other than within the boundaries of the port (as defined by clause 1) or as permitted by clause 5; or
 - (ii) generate and supply power, take and supply water or dispose of water

otherwise than in accordance with the other clauses of this Agreement and subject to any restrictions contained in those clauses; or

- (iii) without limiting subparagraphs (i) and (ii) submit proposals to construct or establish works installations or facilities of a type, or to make expansions, modifications or other variations of works installations or facilities of a type, which in the Minister's reasonable opinion this Agreement, immediately before the variation date, did not permit or contemplate the Company constructing, establishing or making as the case may be otherwise than for integration use as contemplated by subclauses (1)(a), (1)(b) or (1)(c) or as permitted by clause 20E; or
- (iv) submit proposals to make a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) otherwise than on tenure granted under or pursuant to this Agreement from time to time or held pursuant to this Agreement from time to time; or
- (v) submit proposals to make a connection referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) for the purpose of use as contemplated by subclause (1)(c)(i), if in the reasonable opinion of the Minister the activity which is the subject of

the proposals would give to the holder or holders of the relevant Mining Act 1978 mining lease the benefit of rights or powers granted to the Company under this Agreement, over and above the right of access to and use of the relevant works, installations or facilities; or

- (vi) submit proposals to make a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) for the purpose of use as contemplated by subclause (1)(c) and involving the grant of tenure without the prior approval of the Minister; or
 - (vii) submit proposals to assign, sublet, transfer or dispose of any works installations or facilities constructed or held under this Agreement or any leases, licences, easements or other titles under or pursuant to this Agreement for any purpose referred to in this clause.
- (c) Notwithstanding the provisions of clauses 11A and 20E, the Minister may defer consideration of, or a decision upon, a proposal submitted by the Company for a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e), for the purpose of use or making available for use as referred to in subclauses (1)(a) or (1)(b), until relevant corresponding proposals under the relevant Integration Agreement have been submitted and those proposals can be approved under that

Integration Agreement concurrently with the Minister's approval under this Agreement of the Company's proposal.

- (3) Any use or making available for use as referred to in subclause (1), or submission of proposals as referred to in subclause (2), in respect of a Related Entity shall be subject to the Company first confirming with the Minister that the Minister is satisfied that the relevant company is a Related Entity.
- (4) The Company shall give the Minister prior written notice of any significant change (other than a temporary one for maintenance or to respond to an emergency) proposed in its use, or in it making available for use, works, installations or facilities as referred to in this clause:
 - (a) from that authorised under this Agreement immediately before the variation date; and
 - (b) subsequently from that previously notified to the Minister under this subclause,

as soon as practicable before such change occurs.

The Company shall also keep the Minister fully informed with respect to any proposed connection as referred to in subclause (1)(f) or (1)(g) or request of the Company for such connection to be allowed.

- (5) Nothing in this Agreement shall be construed to:
 - (a) exempt another Integration Proponent from complying with, or the application of, the provisions of its Integration Agreement; or
 - (b) restrict the Company's rights under clause 43.

For the avoidance of doubt the approval of proposals under this Agreement shall not be construed as authorising another Integration

Proponent to undertake any activities under this Agreement or under another Integration Agreement.

- (6) Nothing in this clause shall be construed to exempt the Company from complying with, or the application of, the other provisions of this Agreement including, without limitation, clause 43 and of relevant laws from time to time of the said State.
- (7) For the purpose of this clause "works installations or facilities" means any:
- (a) harbour or port works installations or facilities including, without limitation, stockpiles, reclaimers, conveyors and wharves;
 - (b) railway or rail spur lines;
 - (c) track structures and systems associated with the operation and maintenance of a railway including, without limitation, sidings, train control and signalling systems, maintenance workshops and terminal yards;
 - (d) train loading and unloading works installations or facilities;
 - (e) conveyors;
 - (f) private roads;
 - (g) mine aerodrome and associated aerodrome works installations and facilities;
 - (h) iron ore mining, crushing, screening, beneficiation or other processing works installations or facilities;
 - (i) mine administration buildings including, without limitation, offices, workshops and medical facilities;
 - (j) borrow pits;

- (k) accommodation and ancillary facilities including, without limitation, construction camps and in townsites constructed pursuant to and held under any Integration Agreement;
- (l) water, sewerage, electricity, gas and telecommunications works installations and facilities including, without limitation, pipelines, transmission lines and cables; and
- (m) any other works installations or facilities approved of by the Minister for the purpose of this clause.

Transfer of rights to shared works installations or facilities

20D. (1) For the purposes of this clause "Relevant Infrastructure" means any works installations or facilities (as defined in clause 20C(7)):

- (a) constructed or held under another Integration Agreement;
- (b) which the Company is using in its activities pursuant to this Agreement;
- (c) which the Minister is satisfied (after consulting with the Company and the Integration Proponent for that other Integration Agreement):
 - (i) are no longer required by that other Integration Proponent to carry on its activities pursuant to its Integration Agreement because of the cessation of the Integration Proponent's mining operations in respect of which such Relevant Infrastructure was constructed or held or because of any other reason acceptable to the Minister; and

- (ii) are required by the Company to continue to carry on its activities pursuant to this Agreement; and
 - (d) in respect of which that other Integration Proponent has notified the Minister it consents to the Company submitting proposals as referred to in subclause (2).
- (2) The Company may as an additional proposal pursuant to clause 11 propose:
 - (a) that it be granted a lease licence or other title over the Relevant Infrastructure pursuant to this Agreement subject to and conditional upon the other Integration Proponent surrendering wholly or in part (and upon such terms as the Minister considers reasonable including any variation of terms to address environmental issues) its lease licence or other title over the Relevant Infrastructure; or
 - (b) that the other Integration Proponent's lease licence or other title (not being a mineral lease, mining lease or other right to mine title granted under a Government agreement, the Mining Act 1904 or the Mining Act 1978) to the Relevant Infrastructure be transferred to this Agreement (to be held by the Company pursuant to this Agreement) with such surrender of land from it and variations of its terms as the Minister considers reasonable for that title to be held under this Agreement including, without limitation, to address environmental issues and outstanding obligations of that other Integration Proponent under its Integration Agreement in respect of that Relevant Infrastructure.

The provisions of clause 11A shall mutatis mutandis apply to any such additional proposal. In addition the Company acknowledges that the Minister may require variations of the other Integration Agreement and/or proposals under it or of this Agreement in order to give effect to the matters contemplated by this clause.

- (3) This clause shall cease to apply in the event the State gives any notice of default to the Company pursuant to clause 21 and while such notice remains unsatisfied.

Miscellaneous Licences for Railways

20E. (1) In this clause subject to the context:

"Additional Infrastructure" means:

- (a) Train Loading Infrastructure;
- (b) Train Unloading Infrastructure;
- (c) a conveyor, train unloading and other infrastructure necessary for the transport of iron ore, freight goods or other products from the Railway (directly or indirectly) to port facilities within a loading port,

in each case located outside a Port;

"LAA" means the *Land Administration Act 1997* (WA);

"Lateral Access Roads" has the meaning given in subclause (3)(a)(iv));

"Lateral Access Road Licence" means a miscellaneous licence granted pursuant to subclause (6)(a)(ii) or subclause (6)(b) as the case may be and according to the requirements of the context describes the area of land from time to time the subject of that licence;

"Port" means any port the subject of the *Port Authorities Act 1999* (WA) or the *Shipping and Pilotage Act 1967* (WA);

"Private Roads" means Lateral Access Roads and the Company's access roads within a Railway Corridor;

"Rail Safety Act" means the *Rail Safety Act 1998* (WA);

"Railway" means a standard gauge heavy haul railway or railway spur line, located or to be located as the case may be in, or proximate to, the Pilbara region of the said State (but outside the boundaries of a Port) for the transport of iron ore, freight goods and other products together with all railway track, associated track structures including sidings, turning loops, over or under track structures, supports (including supports for equipment or items associated with the use of a railway) tunnels, bridges, train control systems, signalling systems, switch and other gear, communication systems, electric traction infrastructure, buildings (excluding office buildings, housing and freight centres), workshops and associated plant, machinery and equipment and including rolling stock maintenance facilities, terminal yards, depots, culverts and weigh bridges which railway is or is to be (as the case may be) the subject of approved proposals under subclause (4) and includes any expansion or extension thereof outside a Port which is the subject of additional proposals approved in accordance with subclause (5);

"Railway Corridor" means, prior to the grant of a Special Railway Licence, the land for the route of the Railway the subject of that licence, access roads (other than Lateral Access Roads), areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce, water bores and Additional

Infrastructure (if any) which is the subject of a subsisting agreement pursuant to subclause (3)(a) and after the grant of the Special Railway Licence the land from time to time the subject of that Special Railway Licence;

"Railway Operation" means the construction and operation under this Agreement of the relevant Railway and associated access roads and Additional Infrastructure (if any) within the relevant Railway Corridor and of the associated Lateral Access Roads, in accordance with approved proposals;

"Railway spur line" means a standard gauge heavy haul railway spur line located or to be located in, or proximate to, the Pilbara region of the said State (but outside a Port) connecting to a Railway for the transport of iron ore, freight goods and other products upon the Railway to (directly or indirectly) a loading port;

"Railway Operation Date" means the date of the first carriage of iron ore, freight goods or other products over the relevant Railway (other than for construction or commissioning purposes);

"Railway spur line Operation Date" means the date of the first carriage of iron ore, freight goods or other products over the relevant Railway spur line (other than for construction or commissioning purposes);

"Special Railway Licence" means the relevant miscellaneous licence for railway and, if applicable, other purposes, granted to the Company pursuant to subclause (6)(a)(i) as varied in accordance with subclause (6)(h) or subclause (6)(i) and according to the requirements of the context describes the area of land from time to time the subject of that licence;

"Train Loading Infrastructure" means conveyors, stockpile areas, blending and screening facilities,

stackers, re-claimers and other infrastructure reasonably required for the loading of iron ore, freight goods or other products onto the relevant Railway for transport (directly or indirectly) to a loading port; and

"Train Unloading Infrastructure" means train unloading infrastructure reasonably required for the unloading of iron ore from the Railway to be processed, or blended with other iron ore, at processing or blending facilities in the vicinity of that train unloading infrastructure and with the resulting iron ore products then loaded on to the Railway for transport (directly or indirectly) to a loading port.

Company to obtain prior Ministerial in-principle approval

- (2) (a) If the Company wishes, from time to time during the continuance of this Agreement, to proceed under this clause with a plan to develop a Railway it shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of its plan.
- (b) The Minister shall within one month of a notice under paragraph (a) advise the Company whether or not he approves in-principle the proposed plan. The Minister shall afford the Company full opportunity to consult with him in respect of any decision of the Minister under this paragraph.
- (c) The Minister's in-principle approval in respect of a proposed plan shall lapse if the Company has not submitted detailed proposals to the Minister in respect of that plan in accordance with this clause within 18 months of the Minister's in-principle approval.

Railway Corridor

- (3) (a) If the Minister gives in-principle approval to a plan of the Company to develop a Railway it shall consult with the Minister to seek the agreement of the Minister as to:
- (i) where the Railway will begin and end; and
 - (ii) a route for the Railway, access roads to be within the Railway Corridor and the land required for that route as well as Additional Infrastructure (if any) including, without limitation, areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce and water bores; and
 - (iii) in respect of Additional Infrastructure (if any) the nature and capacity of such Additional Infrastructure; and
 - (iv) the routes of, and the land required for, roads outside the Railway Corridor (and also outside a Port) for access to it to construct the Railway (such roads as agreed being "Lateral Access Roads").

In seeking such agreement, regard shall be had to achieving a balance between engineering matters including costs, the nature and use of any lands concerned and interests therein and the costs of acquiring the land (all of which shall be borne by the Company). The parties acknowledge the intention is for the Company to construct the Railway, the access roads for the construction and maintenance of the Railway which are to be within the Railway Corridor and the relevant Additional Infrastructure (if any)

along the centreline of the Railway Corridor subject to changes in that alignment to the extent necessary to avoid heritage, environmental or poor ground conditions that are not identified during preliminary investigation work, and recognise the width of the Railway Corridor may need to vary along its route to accommodate Additional Infrastructure (if any), access roads, areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce and water bores. The provisions of clause 53 shall not apply to this subclause.

- (b) If the date by which the Company must submit detailed proposals under subclause (4)(a) (as referred to in subclause (2)(c)) is extended or varied by the Minister pursuant to clause 52, any agreement made pursuant to paragraph (a) before such date is extended or varied shall unless the Minister notifies the Company otherwise be deemed to be at an end and neither party shall have any claim against the other in respect of it.
- (c) The Company acknowledges that it shall be responsible for liaising with every title holder in respect of the land affected and for obtaining in a form and substance acceptable to the Minister all unconditional and irrevocable consents of each such title holder to, and all statutory consents required in respect of the land affected for:
 - (i) the grant of the Special Railway Licence for the construction, operation and maintenance within the Railway Corridor of the Railway, access roads and Additional Infrastructure (if any) to be within the Railway Corridor; and

- (ii) the grant of Lateral Access Road Licences for the construction, use and maintenance of Lateral Access Roads over the routes for the Lateral Access Roads agreed pursuant to paragraph (a); and
- (iii) the inclusion of additional land in the Special Railway Licence as referred to in subclause (6)(h) or subclause (6)(i),

in accordance with this clause. For the purposes of this subclause (3)(c), "title holder" means a management body (as defined in the LAA) in respect of any part of the affected land, a person who holds a mining, petroleum or geothermal energy right (as defined in the LAA) in respect of any part of the affected land, a person who holds a lease or licence under the LAA in respect of any part of the affected land, a person who holds any other title granted under or pursuant to a Government agreement in respect of any part of the affected land, a person who holds a lease or licence in respect of any part of the affected land under any other Act applying in the said State and a person in whom any part of the affected land is vested, immediately before the provision of such consents to the Minister as referred to in subclause (4)(e)(ii) (including as applying pursuant to subclause 5(d)).

Company to submit proposals for Railway

- (4) (a) The Company shall, subject to the EP Act, the provisions of this Agreement, agreement at that time subsisting in respect of the matters required to be agreed pursuant to subclause 3(a), submit to the Minister by the latest date applying under subclause (2)(c) to the fullest extent reasonably practicable its detailed

proposals (including plans where practicable and specifications where reasonably required by the Minister and any other details normally required by a local government in whose area any works are to be situated) with respect to the undertaking of the relevant Railway Operation, which proposals shall include the location, area, layout, design, materials and time program for the commencement and completion of construction or the provision (as the case may be) of each of the following matters namely:

- (i) the Railway including fencing (if any) and crossing places within the Railway Corridor;
- (ii) Additional Infrastructure (if any) within the Railway Corridor;
- (iii) temporary accommodation and ancillary temporary facilities for the railway workforce on, or in the vicinity of, the Railway Corridor and housing and other appropriate facilities elsewhere for the Company's workforce;
- (iv) water supply;
- (v) energy supplies;
- (vi) access roads within the Railway Corridor and Lateral Access Roads both along the routes for those roads agreed between the Minister and the Company pursuant to subclause 3(a);
- (vii) any other works, services or facilities desired by the Company; and
- (viii) use of local labour, professional services, manufacturers, suppliers

contractors and materials and measures to be taken with respect to the engagement and training of employees by the Company, its agents and contractors.

- (b) Proposals pursuant to paragraph (a) must specify the matters agreed for the purpose pursuant to subclause (3)(a) and must not be contrary to or inconsistent with such agreed matters.
- (c) Each of the proposals pursuant to paragraph (a) may with the approval of the Minister, or must if so required by the Minister, be submitted separately and in any order as to the matter or matters mentioned in one or more of subparagraphs (i) to (viii) of paragraph (a) and until all of its proposals under this subclause have been approved the Company may withdraw and may resubmit any proposal but the withdrawal of any proposal shall not affect the obligations of the Company to submit a proposal under this subclause in respect of the subject matter of the withdrawn proposal.
- (d) The Company shall, whenever any of the following matters referred to in this subclause are proposed by the Company (whether before or during the submission of proposals under this subclause), submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia, together with its reasons therefor and shall, if required by the Minister consult with the Minister with respect thereto.

- (e) At the time when the Company submits the last of the said proposals pursuant to this subclause, it shall:
 - (i) furnish to the Minister's reasonable satisfaction evidence of all accreditations under the Rail Safety Act which are required to be held by the Company or any other person for the construction of the Railway; and
 - (ii) furnish to the Minister the written consents referred to in subclause (3)(c)(i) and (3)(c)(ii).
- (f) The provisions of clause 11A shall apply mutatis mutandis to detailed proposals submitted under this subclause.

Additional Railway Proposals

- (5) (a) If the Company at any time during the currency of a Special Railway Licence desires to construct a Railway spur line (connecting to the Railway the subject of that Special Railway Licence) or desires to significantly modify, expand or otherwise vary its activities within the land the subject of the Special Railway Licence that are the subject of this Agreement and that may be carried on by it pursuant to this Agreement (other than by the construction of a Railway spur line) beyond those activities specified in any approved proposals for that Railway, it shall give notice of such desire to the Minister and furnish to the Minister with that notice an outline of its proposals in respect thereto (including, without limitation, such matters mentioned in subclause (4)(a) as are relevant or as the Minister otherwise requires).

- (b) If the notice relates to a Railway spur line, or to the construction of Train Loading Infrastructure or Train Unloading Infrastructure on land outside the then Railway Corridor, the Minister shall within one month of receipt of such notice advise the Company whether or not he approves in-principle the proposed construction of such spur line, Train Loading Infrastructure or Train Unloading Infrastructure. If the Minister gives in-principle approval the Company may (but not otherwise) submit detailed proposals in respect thereof provided that the provisions of subclause (3) shall mutatis mutandis apply prior to submission of detailed proposals in respect thereof.
- (c) Subject to the EP Act, the provisions of this Agreement and agreement at that time subsisting in respect of any matters required to be agreed pursuant to subclause (3)(a) (as referred to in paragraph (b)), the Company shall submit to the Minister within a reasonable timeframe, as determined by the Minister after receipt of the notice referred to in paragraph (a) (or in the case of a notice referred to in paragraph (b) the giving of the Minister's in-principle consent as referred to in that paragraph), detailed proposals in respect of the proposed construction of such Railway spur line, Train Loading Infrastructure, Train Unloading Infrastructure or other proposed modification, expansion or variation of its activities including such of the matters mentioned in subclause (4)(a) as the Minister may require.
- (d) The provisions of subclause (4) (with the date for submission of proposals being read as the date or time determined by the Minister under paragraph (c) and the reference in subclause

(4)(e)(ii) to subclause (3)(c)(i) being read as a reference to subclause (3)(c)(iii)) and of clause 11A shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause.

Grant of Tenure

- (6) (a) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after all its proposals submitted pursuant to subclause (4)(a) have been approved or deemed to be approved and the Company has complied with the provisions of subclause (4)(e), the State notwithstanding the Mining Act 1978 shall cause to be granted to the Company:
- (i) a miscellaneous licence to conduct within the Railway Corridor and in accordance with its approved proposals all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce and, subject to the *Rights in Water and Irrigation Act 1914 (WA)*, the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance within the Railway Corridor of the Railway, access roads and Additional Infrastructure (if any) ("the Special Railway Licence") such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act 1978 in the form of the Third Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at a rental

calculated in accordance with the Mining Act 1978:

- (A) prior to the Railway Operation Date, as if the width of the Railway Corridor were 100 metres; and
 - (B) on and from the Railway Operation Date, at the rentals from time to time prescribed under the Mining Act 1978; and
- (ii) a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under subclause (3)(a) (each a "Lateral Access Road Licence"), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act 1978 in the form of the Fourth Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the Mining Act 1978.
- (b) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after its proposals submitted pursuant to subclause (5)(a) for the construction of Lateral Access Roads for access to the Railway Corridor to construct a Railway spur line have been approved or deemed to be approved and the Company has complied with the provisions of subclause (4)(e) (as applying pursuant to subclause (5)(d)), the State notwithstanding the Mining Act 1978 shall cause to be granted

to the Company a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under subclause (3)(a)) (as applying pursuant to subclause (5)(b)) (each a "Lateral Access Road Licence"), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act 1978 in the form of the Fifth Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the Mining Act 1978.

- (c) Notwithstanding the Mining Act 1978, the term of the Special Railway Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 50 years commencing on the date of grant thereof.
- (d) Notwithstanding the Mining Act 1978, the term of any Lateral Access Road Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 4 years commencing on the date of grant thereof.
- (e) Notwithstanding the Mining Act 1978, and except as required to do so by the terms of the Special Railway Licence, the Company shall not be entitled to surrender the Special Railway Licence or any Lateral Access Road Licence or any part or parts of them without the prior consent of the Minister.
- (f) (i) The Company may in accordance with approved proposals take stone, sand, clay and gravel from the Railway

Corridor for the construction, operation and maintenance of the Railway constructed within or approved for construction within the Railway Corridor.

- (ii) Notwithstanding the Mining Act 1978 no royalty shall be payable under the Mining Act in respect of stone, sand, clay and gravel which the Company is permitted by subparagraph (i) to obtain from the land the subject of the Special Railway Licence.
- (g) For the purposes of this Agreement and without limiting the operation of paragraphs (a) to (f) inclusive above, the application of the Mining Act 1978 and the regulations made thereunder are specifically modified;
 - (i) in section 91(1) by:
 - (A) deleting "the mining registrar or the warden, in accordance with section 42 (as read with section 92)" and substituting "the Minister";
 - (B) deleting "any person" and substituting "the Company (as defined in the agreement ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972*, as from time to time added to, varied or amended)";
 - (C) deleting "for any one or more of the purposes prescribed" and substituting "for the purpose specified in clause 20E(6)(a)(i), clause 20E(6)(a)(ii) or clause 20E(6)(b), of the agreement

ratified by and scheduled to the
Iron Ore (Mount Bruce)
Agreement Act 1972, as from
time to time added to, varied or
amended";

- (ii) in section 91(3)(a), by deleting "prescribed form" and substituting "form required by the agreement ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972*, as from time to time added to, varied or amended";
- (iii) by deleting sections 91(6), 91(9), 91(10) and 91B;
- (iv) in section 92, by deleting "Sections 41, 42, 44, 46, 46A, 47 and 52 apply," and inserting "Section 46A (excluding in subsection (2)(a) "the mining registrar, the warden or") applies," and by deleting "in those provisions" and inserting "in that provision";
- (v) by deleting the full stop at the end of the section 94(1) and inserting, "except to the extent otherwise provided in, or to the extent that such terms and conditions are inconsistent with, the agreement ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972*, as from time to time added to, varied or amended";
- (vi) by deleting sections 94(2), (3) and (4);
- (vii) in section 96(1), by inserting after "miscellaneous licence" the words "(not being a miscellaneous licence granted pursuant to the agreement ratified by and scheduled to the *Iron Ore (Mount*

Bruce) Agreement Act 1972, as from time to time added to, varied or amended";

- (viii) by deleting mining regulations 37(2), 37(3), 42 and 42A; and
 - (ix) by inserting at the beginning of mining regulations 41(c) and (f) the words "subject to the agreement ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972, as from time to time added to, varied or amended".*
- (h) If additional proposals are approved in accordance with subclause (5) for the construction of a Railway spur line outside the then Railway Corridor, the Minister for Mines shall include the area of land within which such construction is to occur in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.
- (i) If additional proposals are approved in accordance with subclause (5) for the construction of Train Loading Infrastructure or Train Unloading Infrastructure outside the then Railway Corridor, the Minister for Mines shall include the area of such land within which such infrastructure is approved for construction in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.

- (j) The provisions of this subclause shall not operate so as to require the State to cause a Special Railway Licence or a Lateral Access Road Licence to be granted or any land included in the Special Railway Licence as mentioned above until all processes necessary under any laws relating to native title to enable that grant or inclusion of land to proceed, have been completed.

Construction and operation of Railway

- (7) (a) Subject to and in accordance with approved proposals, the Rail Safety Act and the grant of the relevant Special Railway Licence and any associated Lateral Access Road Licences the Company shall in a proper and workmanlike manner and in accordance with recognised standards for railways of a similar nature operating under similar conditions construct the Railway and associated Additional Infrastructure and access roads within the Railway Corridor and shall also construct inter alia any necessary sidings, crossing points, bridges, signalling switches and other works and appurtenances and provide for crossings and (where appropriate and required by the Minister) grade separation or other protective devices including flashing lights and boom gates at places where the Railway crosses or intersects with major roads or existing railways.
 - (b) The Company shall while the holder of a Special Railway Licence:
 - (i) keep the Railway the subject of that licence in an operable state; and
 - (ii) ensure that the Railway the subject of that licence is operated in a safe and

proper manner in compliance with all applicable laws from time to time; and

- (iii) without limiting subparagraph (ii) ensure that the obligations imposed under the Rail Safety Act on an owner and an operator (as those terms are therein defined) are complied with in connection with the Railway the subject of that licence.

Nothing in this Agreement shall be construed to exempt the Company or any other person from compliance with the Rail Safety Act or limit its application to the Company's operations generally (except as otherwise may be provided in that Act or regulations made under it).

- (c) The Company shall provide crossings for livestock and also for any roads, other railways, conveyors, pipelines and other utilities which exist at the date of grant of the relevant Special Railway Licence or in respect of land subsequently included in it at the date of such inclusion and the Company shall on reasonable terms and conditions allow such crossings for roads, railways, conveyors, pipelines and other utilities which may be constructed for future needs and which may be required to cross a Railway constructed pursuant to this clause.
- (d) Subject to clause 20D, the Company shall at all times be the holder of Special Railway Licences and Lateral Access Road Licences granted pursuant to this clause and (without limiting clause 28 but subject to clause 20D) shall at all times own manage and control the use of each Railway the subject of a Special Railway Licence held by the Company.

- (e) The Company shall not be entitled to exclusive possession of the land the subject of a Special Railway Licence or Lateral Access Road Licence granted pursuant to this clause to the intent that the State, the Minister, the Minister for Mines and any persons authorised by any of them from time to time shall be entitled to enter upon the land or any part of it at all reasonable times and on reasonable notice with all necessary vehicles, plant and equipment and for purposes related to this Agreement or such other purposes as they think fit but in doing so shall be subject to the reasonable directions of the Company so as not to unreasonably interfere with the Company's operations.
- (f) The Company's ownership of a Railway constructed pursuant to this clause shall not give it an interest in the land underlying it.
- (g) The Company shall not at any time without the prior consent of the Minister dismantle, sell or otherwise dispose of any part or parts of any Railway constructed pursuant to this clause, or permit this to occur, other than for the purpose of maintenance, repair, upgrade or renewal.
- (h) The Company shall, subject to and in accordance with approved proposals, in a proper and workmanlike manner, construct any Additional Infrastructure, access roads, Lateral Access Roads and other works approved for construction under this clause.
- (i) The Company shall while the holder of a Special Railway Licence at all times keep and maintain in good repair and working order and condition (which obligation includes, where necessary, replacing or renewing all parts which are worn out or in need of

replacement or renewal due to their age or condition) the Railway, access roads and Additional Infrastructure (if any) the subject of that licence and all such other works installations plant machinery and equipment for the time being the subject of this Agreement and used in connection with the operation use and maintenance of that Railway, access roads and Additional Infrastructure (if any).

- (j) Subject to clause 20D, the Company shall:
- (i) be responsible for the cost of construction and maintenance of all Private Roads constructed pursuant to this clause; and
 - (ii) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles (other than those engaged upon the Company's activities and its invitees and licensees) from using the Private Roads; and
 - (iii) at any place where any Private Roads are constructed by the Company so as to cross any railways or public roads provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the Public Transport Authority as the case may be.
- (k) The provisions of clause 12(1)(a) and (2) as well as the provision to clause 12(1)(a) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to the clause except that the Company shall not be obliged to transport passengers upon any such Railway or Railway spur line.

Aboriginal Heritage Act 1972 (WA)

(8) For the purposes of this clause the *Aboriginal Heritage Act 1972 (WA)* applies as if it were modified by:

(a) the insertion before the full stop at the end of section 18(1) of the words:

"and the expression "the Company" means the persons from time to time comprising "the Company" in their capacity as such under the agreement ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972*, as from time to time added to, varied or amended in relation to the use or proposed use of land pursuant to clause 20E of that agreement after and in accordance with approved proposals under clause 20E of that agreement and in relation to the use of that land before any such approval of proposals where the Company has the requisite authority to enter upon and so use the land";

(b) the insertion in sections 18(2), 18(4), 18(5) and 18(7) of the words "or the Company as the case may be" after the words "owner of any land";

(c) the insertion in section 18(3) of the words "or the Company as the case may be" after the words "the owner";

(d) the insertion of the following sentences at the end of section 18(3):

"In relation to a notice from the Company the conditions that the Minister may specify can as appropriate include, among other conditions, a condition restricting the Company's use of the relevant land to after the approval or deemed approval as the case may be under the abovementioned agreement of all

of the Company's submitted initial proposals thereunder for the Railway Operation (as defined in clause 20E(1) of the abovementioned agreement), or in the case of additional proposals submitted or to be submitted by the Company to after the approval or deemed approval under that agreement of such additional proposals, and to the extent so approved. "; and

- (e) the insertion in sections 18(2) and 18(5) of the words "or it as the case may be" after the word "he".

The Company acknowledges that nothing in this subclause (8) nor the granting of any consents under section 18 of the *Aboriginal Heritage Act 1972* (WA) will constitute or is to be construed as constituting the approval of any proposals submitted or to be submitted by the Company under this Agreement or as the grant or promise of land tenure for the purposes of this Agreement.

Taking of land for the purposes of this clause

- (9) (a) The State is hereby empowered, as and for a public work under Parts 9 and 10 of the LAA, to take for the purposes of this clause any land (other than any part of a Port) which in the opinion of the Company is necessary for the relevant Railway Operation and which the Minister determines is appropriate to be taken for the relevant Railway Operation (except any land the taking of which would be contrary to the provisions of a Government agreement entered into before the submission of the proposals relating to the proposed taking) and notwithstanding any other provisions of that Act may license that land to the Company.

- (b) In applying Parts 9 and 10 of the LAA for the purposes of this clause:
- (i) "land" in that Act includes a legal or equitable estate or interest in land;
 - (ii) sections 170, 171, 172, 173, 174, 175 and 184 of that Act do not apply; and
 - (iii) that Act applies as if it were modified in section 177(2) by inserting -
 - (A) after "railway" the following -

"or land is being taken pursuant to a Government agreement as defined in section 2 of the *Government Agreements Act 1979* (WA)"; and
 - (B) after "that Act" the following -

"or that Agreement as the case may be".
- (c) The Company shall pay to the State on demand the costs of or incidental to any land taken at the request of and on behalf of the Company including but not limited to any compensation payable to any holder of native title or of native title rights and interests in the land.

Notification of Railway Operation Date

- (10) (a) The Company shall from the date occurring 6 months before the date for completion of construction of a Railway specified in its time program for the commencement and completion of construction of that Railway submitted under subclause (4)(a), keep the Minister fully informed as to:

- (i) the progress of that construction and its likely completion and commissioning; and
 - (ii) the likely Railway Operation Date.
 - (b) The Company shall on the Railway Operation Date notify the Minister that the first carriage of iron ore, freight goods or other products as the case may be over the Railway (other than for construction or commissioning purposes) has occurred.
 - (c) The Company shall from the date occurring 6 months before the date for completion of construction of a Railway spur line specified in its time program for the commencement and completion of construction of that spur line submitted under subclause (5)(c) keep the Minister fully informed as to:
 - (i) the progress of that construction and its likely completion and commissioning; and
 - (ii) in respect of it, the likely Railway spur line Operation Date.
 - (d) The Company shall on the Railway spur line Operation Date in respect of any Railway spur line notify the Minister that the first carriage of iron ore, freight goods or other products as the case may be over such spur line (other than for construction or commissioning purposes) has occurred.";
- (18) in clause 21 by:
- (a) inserting "granted under or pursuant to this Agreement or held pursuant to this Agreement" after "licence or other title";

- (b) inserting "or held pursuant hereto" after the subsequent 2 references to "granted hereunder or pursuant hereto"; and
 - (c) deleting "occupied by the Company" and substituting "the subject of any lease licence easement or other title granted under or pursuant to this Agreement or held pursuant to this Agreement";
- (19) in clause 22(i) by inserting "or held pursuant hereto" after "granted hereunder or pursuant hereto";
- (20) in clause 23 by inserting "or pursuant hereto or held pursuant hereto" after "granted hereunder";
- (21) by deleting clause 30;
- (22) in clause 41(A)(1) by:
- (a) in paragraph (a):
 - (a) deleting "31st day of December 1991" and substituting "31 December 2012";
 - (b) deleting "31st day of December 1994" and substituting "31 December 2015"; and
 - (c) deleting "31st day of December 1999" and substituting "31 December 2020"; and
 - (b) in paragraph (b) deleting "31st day of December 1991" and substituting "31 December 2012".
- (23) in clause 41(A)(5) by:
- (a) in paragraph (a) deleting "by the company of alternative investments" and substituting "of an alternative project"; and
 - (b) in paragraph (b):
 - (i) deleting "the investments" and substituting ", or cause to be implemented, the alternative project"; and
 - (ii) deleting "those investments" and substituting "that alternative project";

(24) by inserting after subclause (5) of clause 41A the following new subclause:

"(6) For the purposes of subclause (5) "alternative project" means:

- (a) a project to establish and operate within the said State plant for the production of steel;
- (b) a project to establish and operate within the said State plant which processes and adds value to minerals mined in the said State; or
- (c) any other project within the said State which the Minister approves as providing to the State benefits equivalent to a project to establish and operate plant for the production of steel,

to be undertaken by:

- (d) the Company (excluding a project referred to in paragraph (a)): or
- (e) a related body corporate or related bodies corporate (within the meaning of the *Corporations Act 2001* (Cwth) of the Company solely or in conjunction with the Company; or
- (f) a joint venture in which the Company or its related body corporate has a majority participating interest; or
- (g) any other third person or persons which the Company and the Minister accept as having the requisite financial and technical capacity and expertise to undertake solely, or in conjunction with the Company, the relevant project referred to in paragraph (a), (b) or (c).";

(25) by inserting the following sentence at the end of clause 42:

"As a separate independent indemnity the Company will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any use, making

available for use or other activities of the Company as referred to in clause 20C.";

- (26) in clause 44 inserting "or held pursuant hereto" after "hereunder or pursuant hereto";
- (27) in clause 46 by inserting "or held pursuant hereto" after "granted hereunder or pursuant hereto"; and
- (28) inserting after the Second Schedule the following new schedules:

" THIRD SCHEDULE

WESTERN AUSTRALIA

IRON ORE (MOUNT BRUCE) AGREEMENT ACT 1972

MINING ACT 1978

**MISCELLANEOUS LICENCE FOR A RAILWAY AND OTHER
PURPOSES**

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called "the Company") a miscellaneous licence for the construction operation and maintenance of a Railway (as defined in clause 20E(1) of the Agreement and otherwise as provided in the Agreement) and, if applicable, other purposes AND WHEREAS the Company pursuant to clause 20E(6)(a) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Mount Bruce) Agreement Act 1972*, as from time to time added to, varied or amended, the Company is hereby granted by this licence authority to conduct on the land the subject of this licence as more particularly delineated and described from time to time in the Schedule hereto all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce in accordance with the Agreement and, subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance on

the land the subject of this licence of the Railway and Additional Infrastructure (as defined in clause 20E(1) of the Agreement) and access roads to be located on the land the subject of this licence in accordance with the provisions of the Agreement and proposals approved under the Agreement, for the term of 50 years from the date hereof (subject to the sooner determination of the term upon the determination of the Agreement) and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 20E(6)(a)(i) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

- If the Company be more than one the liability of the Company hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution thereof or in lieu thereof and to the regulations and by-laws of the time being in force thereunder.
- Reference to "the Agreement" means such agreement as from time to time added to, varied or amended.
- The terms "approved proposals", "Railway", "Railway Operation Date", and "Railway spur line" have the meanings given in the Agreement.

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.
2. The Company is permitted to, in accordance with approved proposals, take stone, sand, clay and gravel from the land the subject of this licence for the construction, operation and maintenance of the Railway

(including any Railway spur line) constructed within or approved for construction within the area of land the subject of this licence.

3. Notwithstanding the *Mining Act 1978*, no royalty shall be payable under the *Mining Act 1978* in respect of stone, sand, clay and gravel which the Company is permitted by the Agreement to obtain from the land the subject of this licence.
4. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

1.
 - (a) Except as provided in paragraph (b), the Company shall within 2 years after the Railway Operation Date surrender in accordance with the provisions of the *Mining Act 1978* the area of this licence down to a maximum of 100 metres width or as otherwise approved by the Minister (as defined in the Agreement) for the safe operation of the Railway then constructed or approved for construction under approved proposals.
 - (b) Paragraph (a) shall not apply to land the subject of this licence that was included in this licence pursuant to clause 20E(6)(h) or clause 20E(6)(i) of the Agreement.
2. The Company shall as soon as possible after the construction of a Railway spur line or of an expansion or extension thereof as the case may be surrender in accordance with the *Mining Act 1978* the land the subject of this licence that was included in this licence pursuant to clause 20E(6)(h) of the Agreement for the purpose of such construction down to a maximum of 100 metres in width or as otherwise approved by the Minister (as defined in the Agreement) for the safe operation of that Railway spur line or expansion or extension thereof as the case may be then constructed or approved for construction under approved proposals.
3. [Any further conditions which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of this licence including during the term of the Agreement.]

SCHEDULE

Land description

Locality:

Mineral Field

Area:

DATED at Perth this day of .

MINISTER FOR MINES

FOURTH SCHEDULE

WESTERN AUSTRALIA

IRON ORE (MOUNT BRUCE) AGREEMENT ACT 1972

MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called "the Company") a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 20E(6)(a)(ii) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Mount Bruce) Agreement Act 1972*, as from time to time added to, varied or amended, the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to

this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 20E(6)(a)(ii) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

- If the Company be more than one the liability of the Company hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution thereof or in lieu thereof and to the regulations and by-laws of the time being in force thereunder.
- Reference to "the Agreement" means such agreement as from time to time added to, varied or amended.

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.
2. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

[Such conditions which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of the licence, including during the term of the Agreement.]

SCHEDULE

Description of land

Locality:

Mineral Field:

Area:

DATED at Perth this day of .

MINISTER FOR MINES

FIFTH SCHEDULE

WESTERN AUSTRALIA

IRON ORE (MOUNT BRUCE) AGREEMENT ACT 1972

MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No. **MISCELLANEOUS LICENCE** []

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called "the Company") a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 20E(6)(b) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Mount Bruce) Agreement Act 1972*, as from time to time added to, varied or amended, the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter

endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 20E(6)(b) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

- If the Company be more than one the liability of the Company hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution thereof or in lieu thereof and to the regulations and by-laws of the time being in force thereunder.
- Reference to "the Agreement" means such agreement as from time to time added to, varied or amended.

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.
2. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

[Such conditions which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of the licence, including during the term of the Agreement.]

SCHEDULE

Description of land

Locality:

Mineral Field:

Area:

DATED at Perth this day of .

MINISTER FOR MINES "

EXECUTED as a deed.

SIGNED by **THE HONOURABLE**)
COLIN JAMES BARNETT) [Signature]
in the presence of:)

 [Signature]

STEPHEN WOOD

THE COMMON SEAL of **MOUNT**)
BRUCE MINING PTY. LIMITED ACN) [C.S.]
008 714 010 was hereunto affixed by)
authority of the Directors in the presence of:)

 [Signature]

Director

 ALAN DAVIES

 [Signature]

Secretary

 HELEN FERNIHOUGH

[Fourth Schedule inserted by No. 61 of 2010 s. 14.]

Fifth Schedule — 2011 Variation Agreement

[s. 2]

[Heading inserted by No. 61 of 2011 s. 14.]

2011

THE HONOURABLE COLIN JAMES BARNETT
PREMIER OF THE STATE OF WESTERN AUSTRALIA

AND

MOUNT BRUCE MINING PTY. LTD.

ACN 008 714 010

IRON ORE (MOUNT BRUCE) AGREEMENT 1972

RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 7th day of November 2011

BETWEEN

THE HONOURABLE COLIN JAMES BARNETT MLA., Premier of the State of Western Australia, acting for and on behalf of the said State and instrumentalities thereof from time to time (**State**)

AND

MOUNT BRUCE MINING PTY, LTD. ACN 008 714 010 of Level 22, Central Park, 152-158 St Georges Terrace, Perth, Western Australia (**Company**).

RECITALS:

- A. The State and the Company are the parties to the agreement dated 10 March 1972, ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B. The State and the Company wish to vary the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Interpretation

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. Ratification and Operation

- (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia prior to 31 December 2011 or such later date as may be agreed between the parties hereto to ratify this Agreement.

The State shall endeavour to secure the timely passage of such Bill as an Act.

(2) The provisions of this Agreement other than this clause and clause 1 will not come into operation until the day after the day on which the Bill referred to in subclause (1) has been passed by the State Parliament of Western Australia and commences to operate as an Act.

(3) If by 30 June 2012 the said Bill has not commenced to operate as an Act then, unless the parties hereto otherwise agree, this Agreement will then cease and determine and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

(4) On the day after the day on which the said Bill commences to operate as an Act all the provisions of this Agreement will operate and take effect despite any enactment or other law.

3. Variation of Principal Agreement

The Principal Agreement is varied as follows:

(1) in clause 1 by:

(a) inserting in the appropriate alphabetical positions the following new definitions:

"Eligible Existing Tenure" means:

(a) (i) a miscellaneous licence or general purpose lease granted to the Company under the Mining Act 1978; or

(ii) a lease or easement granted to the Company under the LAA,

and not clearly, to the satisfaction of the Minister, granted under or pursuant to or held pursuant to this Agreement; or

(b) an application by the Company for the grant to it of a tenement referred to in paragraph (a)(i) (which application has not clearly, to the satisfaction of the Minister, been made under or pursuant to this

Agreement) and as the context requires the tenement granted pursuant to such an application,

where that tenure was granted or that application was made (as the case may be) on or before 1 October 2011;

"LAA" means the *Land Administration Act 1997* (WA);

"Relevant Land", in relation to Eligible Existing Tenure or Special Advance Tenure, means the land which is the subject of that Eligible Existing Tenure or Special Advance Tenure, as the case may be;

"second variation date" means the date on which clause 3 of the variation agreement made on or about 7 November 2011 between the State and the Company comes into operation;

"Special Advance Tenure" means:

(a) a miscellaneous licence or general purpose lease requested under clause 7(3b) to be granted to the Company under the Mining Act 1978; or

(b) an easement or a lease requested under clause 7(3b) to be granted to the Company under the LAA,

and as the context requires such tenure if granted;

(b) inserting after the words "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" the words "(and for the avoidance of doubt this principle, subject to the context and without limitation to its application to other Acts, may apply in respect of references to the Land Act and the Mining Act notwithstanding references in this Agreement to the LAA and the Mining Act 1978)";

(2) in clause 7(1) by inserting after paragraph (c) the following new paragraph:

"Notwithstanding clause 20C(2)(b)(iv), detailed proposals may refer to activities on tenure which is proposed to be granted pursuant to this

subclause (1) as if that tenure was granted pursuant to this Agreement (but this does not limit the powers or discretions of the Minister under this Agreement or the Minister responsible for the administration of any relevant Act with respect to the grant of the tenure).";

(3) by inserting after clause 7(3) the following new subclauses:

"Application for Eligible Existing Tenure to be held pursuant to this Agreement

(3a) (a) The Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Eligible Existing Tenure becoming held pursuant to this Agreement on such conditions as the Minister sees fit (including, without limitation and notwithstanding the Mining Act 1978 and the LAA, as to the surrender of land, the submission of detailed proposals and the variation of the terms and conditions of the Eligible Existing Tenure (including for the Eligible Existing Tenure to be held pursuant to this Agreement and for the more efficient use of the Relevant Land)) and the Minister may from time to time vary such conditions in order to extend any specified time for the doing of any thing or otherwise with the agreement of the Company.

(b) Eligible Existing Tenure the subject of an approval by the Minister under this subclause will be held by the Company pursuant to this Agreement:

(i) if the Minister's approval was not given subject to conditions, on and from the date of the Minister's notice of approval;

(ii) unless paragraph (iii) applies, if the Minister's approval was given subject to conditions, on the date on which all such conditions have been satisfied; and

(iii) if the Minister's approval was given subject to a condition requiring that the Company submit detailed proposals in accordance

with this Agreement, on the later of the date on which the Minister approves proposals submitted in discharge of that specified condition and the date upon which all other specified conditions have been satisfied, but the Company is authorised to implement any approved proposal to the extent such implementation is consistent with the then terms and conditions of the Eligible Existing Tenure pending the satisfaction of any conditions relating to the variation of the terms or conditions of the Eligible Existing Tenure. Where this paragraph (iii) applies, prior to any approval of proposals and satisfaction of other conditions, the relevant tenure will be treated for (but only for) the purposes of clause 20C(2)(b)(iv) as tenure held pursuant to this Agreement.

Application for Special Advance Tenure to be granted pursuant to this Agreement

(3b) Without limiting clause 7(2), the Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Special Advance Tenure being granted to the Company pursuant to this Agreement if:

(a) the Company proposes to submit detailed proposals under this Agreement (other than under clause 20E) to construct works installations or facilities on the Relevant Land and the Company's request is so far as is practicable made, unless the Minister approves otherwise, no less than 6 months before the submission of those detailed proposals; and

(b) the Minister is satisfied that it is necessary and appropriate that Special Advance Tenure, rather than tenure granted under or pursuant to the other provisions of this Agreement, be used for the purposes of the proposed works installations or facilities on the Relevant Land.

and if the Minister does so approve:

(c) notwithstanding the Mining Act 1978 or the LAA, the appropriate authority or instrumentality of the State shall obtain the consent of the Minister to the form and substance of the Special Advance Tenure prior to its grant (which for the avoidance of doubt neither the State nor the Minister is obliged to cause) to the Company; and

(d) if the Company does not submit detailed proposals relating to construction of the relevant works installations or facilities on the Relevant Land within 24 months after the date of the Minister's approval or such later time subsequently allowed by the Minister, or if submitted the Minister does not approve such detailed proposals, the Special Advance Tenure (if then granted) shall be surrendered at the request of the Minister.

(3c) The decisions of the Minister under subclauses (3a) and (3b) shall not be referable to arbitration and any approval of the Minister under this clause shall not in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.";

(4) in clause 7 by:

(a) deleting in subclause (4) "subclause (3)" and substituting "subclauses (3), (3a) and (3b)"; and

(b) deleting in subclause (4a) "and (2)" and substituting ", (2), (3a) and (3b)";

(5) by inserting after clause 11B the following new clauses:

"Community development plan

11C. (1) In this clause, the term "community and social benefits" includes:

(a) assistance with skills development and training opportunities to promote work readiness and employment for persons living in the Pilbara region of the said State;

(b) regional development activities in the Pilbara region of the said State, including partnerships and sponsorships;

(c) contribution to any community projects, town services or facilities; and

(d) a regionally based workforce.

(2) The Company acknowledges the need for community and social benefits flowing from this Agreement.

(3) The Company agrees that:

(a) it shall prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with its activities under this Agreement; and

(b) the Company shall, not later than 3 months after the second variation date, submit to the Minister the plan prepared under paragraph (a) and confer with the Minister in respect of the plan.

(4) The Minister shall within 2 months after receipt of a plan submitted under subclause (3)(b), either notify the Company that the Minister approves the plan as submitted or notify the Company of changes which the Minister requires be made to the plan. If the Company is unwilling to accept the changes which the Minister requires it shall notify the Minister to that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes required by the Minister.

(5) The effect of an award made on an arbitration pursuant to subclause (4) shall be that the relevant plan submitted by the Company pursuant to subclause (3)(b) shall, with such changes required by the Minister under subclause (4) as the arbitrator determines to be reasonable (with or without modification by the arbitrator), be deemed to be the plan approved by the Minister under this clause.

(6) At least 3 months before the anticipated submission of proposals relating to a proposed development pursuant to any of clauses 5, 11 or 20E, the Company must, unless the Minister otherwise requires, give to the Minister information about how the proposed development may affect the plan approved or deemed to be approved by the Minister under this clause. This obligation operates in relation to all proposals submitted on or after the date that is 4 months after the date when a plan is first approved or deemed to be approved under this clause.

(7) The Company shall at least annually report to the Minister about the Company's implementation of the plan approved or deemed to be approved by the Minister under this clause.

(8) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan approved or deemed to be approved by the Minister under this clause and may agree to amendment of the plan or adoption of a new plan. Any such amended plan or new plan will be deemed to be the plan approved by the Minister under this clause in respect of the development to which it relates.

(9) During the currency of this Agreement, the Company shall implement the plan approved or deemed to be approved by the Minister under this clause.

Local participation plan

11D. (1) In this clause, the term "local industry participation benefits" means:

(a) the use and training of labour available within the said State;

(b) the use of the services of engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and contractors available within the said State; and

(c) the procurement of works, materials, plant, equipment and supplies from Western Australian suppliers, manufacturers and contractors.

(2) The Company acknowledges the need for local industry participation benefits flowing from this Agreement.

(3) The Company agrees that it shall, not later than 3 months after the second variation date, prepare and provide to the Minister a plan which contains:

(a) a clear statement on the strategies which the Company will use, and require a third party as referred to in subclause (7) to use, to maximise the uses and procurement referred to in subclause (1);

(b) detailed information on the procurement practices the Company will adopt, and require a third party as referred to in subclause (7) to adopt, in calling for tenders and letting contracts for works, materials, plant, equipment and supplies stages in relation to a proposed development and how such practices will provide fair and reasonable opportunity for suitably qualified Western Australian suppliers, manufacturers and contractors to tender or

quote for works, materials, plant, equipment and supplies;

(c) detailed information on the methods the Company will use, and require a third party as referred to in subclause (7) to use, to have their respective procurement officers promptly introduced to Western Australian suppliers, manufacturers and contractors seeking such introduction; and

(d) details of the communication strategies the Company will use, and require a third party as referred to in subclause (7) to use, to alert Western Australian engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and consultants and Western Australian suppliers, manufacturers and contractors to services opportunities and procurement opportunities respectively as referred to in subclause (1).

It is acknowledged by the Company that the strategies of the Company referred to in subclause (3)(a) will include strategies of the Company in relation to supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement.

(4) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.

(5) At least 6 months before the anticipated submission of proposals relating to a proposed development pursuant to any of clauses 5, 11 or 20E, the Company must, unless the Minister otherwise requires, give to the Minister information about the implementation of

the plan provided under this clause in relation to the proposed development. This obligation operates in relation to all proposals submitted on or after the date that is 7 months after the date when a plan is first provided under this clause.

(6) During the currency of this Agreement the Company shall implement the plan provided under this clause.

(7) The Company shall:

(a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this clause; and

(b) use reasonable endeavours to ensure that the third party complies with those provisions.";

(6) in clause 12(1) by:

(a) deleting in paragraph (a) "allow crossing places for roads stock and other railways and also";

(b) inserting after paragraph (a) the following new paragraph:

"Crossings over Railway

(aa) for the purposes of livestock and infrastructure such as roads, railways, conveyors, pipelines, transmission lines and other utilities proposed to cross the land the subject of the Company's railway the Company shall:

(i) if applicable, give its consent to, or otherwise facilitate the grant by the State or any agency, instrumentality or other

authority of the State of any lease, licence or other title over land the subject of the Company's railway so long as such grant does not in the Minister's opinion unduly prejudice or interfere with the activities of the Company under this Agreement; and

(ii) on reasonable terms and conditions allow access for the construction and operation of such crossings and associated infrastructure,

provided that in forming his opinion under this clause, the Minister must consult with the Company;"; and

(c) deleting paragraph (h)(ii) and substituting the following subparagraph:

"(ii) on fine ore sold or shipped separately as such at the rate of:

(A) 5.625% of the f.o.b. value, for ore shipped prior to or on 30 June 2012;

(B) 6.5% of the f.o.b. value, for ore shipped during the period from 1 July 2012 to 30 June 2013 (inclusive of both dates); and

(C) 7.5% of the f.o.b. value, for ore shipped on or after 1 July 2013;"; and

(7) in clause 20E by:

(a) deleting in subclause (1) "'LAA" means the Land Administration Act 1997 (WA)";

(b) inserting after subclause (3)(c) the following new paragraph:

"(d) Without limiting subclause (9), the Minister may waive the requirement under this clause for the Company to obtain and to furnish the consent of a title holder if the title holder has refused to give the required consent and the Minister is satisfied that:

(i) the title holder's affected land is or was subject to a miscellaneous licence granted under the Mining Act 1978 for the purpose of a railway to be constructed and operated in accordance with this Agreement; and

(ii) in the Minister's opinion, the title holder's refusal to give the required consent is not reasonable in all the circumstances including having regard to:

(A) the rights of the Company in relation to the affected land as the holders of the miscellaneous licence, relative to their rights as the holders of the sought Special Railway Licence or Lateral Access Road Licence (as the case may be); and

(B) the terms of any agreement between the Company and the title holder.";

(c) deleting in subclause (4)(a) the comma after "the provisions of this Agreement" and substituting "and"; and

(d) in subclause (7):

(i) deleting all words in paragraph (c) after "at the date of such inclusion"; and

(ii) inserting after paragraph (k) the following new paragraph:

"(l) The provisions of clause 12(1)(aa) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause."

EXECUTED as a deed.

SIGNED by the HONOURABLE)
COLIN JAMES BARNETT)
in the presence of:)

[Signature]

[Signature]

Signature of witness

Stephen Bombardieri

Name of witness

THE COMMON SEAL of MOUNT)
BRUCE MINING PTY. LIMITED)
ACN 008 714 010 was hereunto affixed) [C.S.]
by authority of the Directors in the)
presence of:)

[Signature]

Robert Paul Shannon

Director

[Signature]

Helen Fernihough

Secretary

[Fifth Schedule inserted by No. 61 of 2011 s. 14.]

Notes

- ¹ This is a compilation of the *Iron Ore (Mount Bruce) 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 (Mount Bruce) Agreement Act 1972</i>	37 of 1972	16 Jun 1972	16 Jun 1972
<i>Iron Ore (Mount Bruce) Agreement Act Amendment Act 1976</i>	94 of 1976	12 Nov 1976	12 Nov 1976
<i>Iron Ore (Mount Bruce) Agreement Amendment Act 1987</i>	26 of 1987	29 Jun 1987	29 Jun 1987 (see s. 2)
Reprint 1 as at 7 Feb 2003			
<i>Standardisation of Formatting Act 2010 s. 4 and 42(2)</i>	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Iron Ore Agreements Legislation Amendment Act 2010 Pt. 6</i>	34 of 2010	26 Aug 2010	1 Jul 2010 (see s. 2(b)(ii))
<i>Iron Ore Agreements Legislation Amendment Act (No. 2) 2010 Pt. 4</i>	61 of 2010	10 Dec 2010	11 Dec 2010 (see s. 2(c))
<u><i>Iron Ore Agreements Legislation Amendment Act 2011 Pt. 4</i></u>	<u>61 of 2011</u>	<u>14 Dec 2011</u>	<u>15 Dec 2011 (see s. 2(b))</u>

- ² Repealed by the *Mining Act 1978*.
- ³ Repealed by the *Interpretation Act 1984*.
- ⁴ Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.