



Western Australia

Iron Ore (Mount Goldsworthy) Agreement Act 1964

Compare between:

[11 Dec 2010, 01-e0-01] and [15 Dec 2011, 01-f0-03]

Iron Ore (Mount Goldsworthy) Agreement Act 1964

An Act in substitution for, and for the repeal of, the *Iron Ore (Mount Goldsworthy) Agreement Act 1962*, to approve an agreement relating to iron ore at Mount Goldsworthy iron ore deposits and for incidental and other purposes.

1. Short title

This Act may be cited as the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*¹.

2. Repeal

- (1) The *Iron Ore (Mount Goldsworthy) Agreement Act 1962*, and the *Iron Ore (Mount Goldsworthy) Agreement Act Amendment Act 1963*, are repealed.
- (2) The provisions of sections 15 and 16 of the *Interpretation Act 1918*², apply in respect of the repeals effected by subsection (1), but this express inclusion of the application of those sections does not exclude the application to this Act of the other provisions of that Act.

3. Interpretation

In this Act, unless the contrary intention appears —

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

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

the first Variation Agreement means the agreement a copy of which is set out in the Second Schedule;

the second Variation Agreement means the agreement a copy of which is set out in the Third Schedule;

the third Variation Agreement means the agreement a copy of which is set out in the Fourth Schedule;

the fourth Variation Agreement means the agreement a copy of which is set out in the Fifth Schedule;

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

[Section 3 amended by No. 58 of 1971 s. 2; No. 29 of 1994 s. 4; No. 57 of 2000 s. 16; No. 34 of 2010 s. 15; No. 61 of 2010 s. ~~31~~³¹; No. 62 of 2011 s. 8.]

4. Agreement approved and provisions to take effect

- (1) The Agreement is approved.
- (2) Notwithstanding any other Act or law, and without limiting the effect of subsection (1), —
 - (a) the Joint Venturers shall be permitted to enter upon the lands mentioned in paragraph (c) of clause 2 of the Agreement, to the extent, and for the purposes, by that paragraph provided; and
 - (b) the provision 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*³, do not apply to any renewal of the rights of occupancy granted pursuant to paragraph (a) of clause 2 of the Agreement.

4A. First Variation Agreement approved

The first Variation Agreement is approved.

[Section 4A inserted by No. 58 of 1971 s. 3.]

4B. Second Variation Agreement

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

[Section 4B inserted by No. 29 of 1994 s. 5.]

4C. Third Variation Agreement

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

[Section 4C inserted by No. 57 of 2000 s. 17.]

5A. Variation of Agreement to increase rates of royalty

- (1) In this section —
the Agreement means the agreement a copy of which is set out in the First Schedule —
 - (a) as varied from time to time in accordance with its provisions; and

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- (b) as varied by these agreements —
 - (i) the first Variation Agreement;
 - (ii) the second Variation Agreement;
 - (iii) the third Variation Agreement.
- (2) Clause 9(2)(j) of the Agreement is varied —
 - (a) in subparagraph (ii) by deleting “3.75%” and inserting —

5.625%
 - (b) in subparagraph (iia)(B) by deleting “3.75%” and inserting —

5.625%
 - (c) in subparagraph (iii) by deleting “3.25%” and inserting —

5%
- (3) Clause 9(2)(j)(ii), (iia)(B) and (iii) of the Agreement as varied by subsection (2) operate and take effect despite —
 - (a) any other provision of the Agreement; and
 - (b) any other agreement or instrument; and
 - (c) any other Act or law.
- (4) Nothing in this section affects the amount of royalty payable under clause 9 of the Agreement in respect of any period before the commencement of the *Iron Ore Agreements Legislation Amendment Act 2010* Part 7.

[Section 5A inserted by No. 34 of 2010 s. 16.]

5B. Fourth Variation Agreement

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

[Section 5B inserted by No. 61 of 2010 s. 32.]

5C. State empowered under clause 9E(9)(a)

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

[Section 5C inserted by No. 61 of 2010 s. 32.]

5D. Fifth Variation Agreement

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

[Section 5D inserted by No. 62 of 2011 s. 9.]

5. By-laws

- (1) The Governor may make 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*;

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- (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; and
- (d) are not subject to the provisions of section 36 of the *Interpretation Act 1918*², but shall be laid before each House of Parliament within 6 sitting days of such House next following the publication of the by-laws in the *Government Gazette*.

[Section 5 amended by No. 113 of 1965 s. 8(1).]

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

**First Schedule — Iron Ore (Mount Goldsworthy)
Agreement**

[s. 3]

*[Heading inserted by No. 58 of 1971 s. 4; amended by No. 19 of 2010
s. 4.]*

THIS AGREEMENT made the fifteenth day of October One thousand nine hundred and sixty-four BETWEEN THE HONOURABLE DAVID BRAND M.L.A., Premier and Treasurer of the State of Western Australia, acting for and on behalf of the said State and Instrumentalities thereof from time to time (hereinafter called “the State”) of the one part and CONSOLIDATED GOLD FIELDS (AUSTRALIA) PTY. LIMITED a Company incorporated under the Companies Ordinances of the Australian Capital Territory and having its executive office at A.M.P. Building Circular Quay, Sydney in the State of New South Wales and its registered office in the State of Western Australia (hereinafter referred to as “the said State”) at London House Saint George’s Terrace Perth CYPRUS MINES CORPORATION a Corporation incorporated in the State of New York in the United States of America and having its executive offices situate at 1234 Pacific Mutual Building 523 West Sixth Street Los Angeles California in the said United States of America and UTAH CONSTRUCTION & MINING CO. a Corporation incorporated in the State of Delaware in the United States of America and having its executive offices situate at 550 California Street San Francisco in the said United States of America (hereinafter called “the Joint Venturers” in which term shall be included the Joint Venturers and each of them and their and each of their respective successors and assigns) of the other part.

WHEREAS: —

- (a) Pursuant to an agreement made between the parties and approved by the *Iron Ore (Mount Goldsworthy) Agreement Act 1962* the Joint Venturers at a total cost in excess of the sum mentioned in clause 3(1) of that Agreement proceeded to the carrying out of the work in that subclause mentioned in relation to the export of iron ore both from Depuch Island and from elsewhere.

- (b) The Joint venturers firstly are satisfied that the mining area defined in Clause 1 of the said Agreement (being mining area A as defined in Clause 1 of this Agreement) contains iron ore of tonnages and grades sufficient to warrant economic recovery and marketing secondly have carried out certain investigations relating to the mining from that mining area of iron ore and the transport by rail and shipment of that ore thirdly desire to enter into a contract or contracts for the export sale of that ore based on export from a port or place other than Depuch Island and fourthly desire to have certain rights as hereinafter mentioned with respect to the mining areas defined as mining area B and mining area C in Clause 1 hereof.
- (c) The Joint Venturers agree to investigate in due course the feasibility of the beneficiation of ore from the mining areas hereinafter mentioned and of establishing within the State of Western Australia an industry for additional upgrading of such beneficiated ore and to review this matter from time to time with a view to their being in a position to submit to the State proposals for such establishment as hereinafter provided.

NOW THIS AGREEMENT WITNESSETH: —

Interpretation ⁴

1. In this Agreement subject to the context —

“associated company” means —

- (a) any company having a paid-up capital of not less than one million pounds (£1,000,000) notified in writing by the Joint Venturers or any of them to the Minister which is incorporated in the United Kingdom the United States of America or the Commonwealth of Australia and which —
 - (i) is promoted by the Joint Venturers or any of them for all or any of the purposes of this Agreement and in which the Joint Venturers or any of them hold not less than twenty per cent. (20%) of the issued ordinary share capital; or
 - (ii) is related within the meaning of the term subsidiary in section 6 of the *Companies Act 1961* to any company in which the Joint Venturers or any of them hold not less

than twenty per cent. (20%) of the issued ordinary share capital, and

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

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

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

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

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

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

- (a) the date or extended date if any referred to in clause 9(1) of this Agreement;
- (b) the date when the Joint Venturers first export iron ore hereunder (other than iron ore shipped solely for testing purposes);

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

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

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

“f.o.b. revenue” means the price for iron ore from the mineral lease the subject of any shipment or sale and payable by the purchaser thereof to the Joint Venturers or an associated company 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 Joint Venturers from the time the ore shall be placed on ship at the Joint Venturers' wharf to the time the same is delivered and accepted by the purchaser including —

- (1) ocean freight;
- (2) marine insurance;
- (3) port and handling charges at the port of discharge;
- (4) all costs properly incurred in delivering the 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 Joint Venturers' wharf; and
- (7) all import taxes by the country of the port of discharge;

“harbour” means the port or harbour at or near Port Hedland or such other port or place mutually agreed on and serving the Joint Venturers' wharf;

“industry for additional upgrading of beneficiated ore” means an industry for the additional refining of beneficiated ore by some form of semi reduction direct reduction or other mutually agreed process;

“iron ore contracts” means the contract or contracts referred to in clause 5(2)(b) hereof;

“Joint Venturers' wharf” means the wharf to be constructed by the Joint Venturers pursuant to this Agreement for the shipment of iron ore from the mineral lease or (except for the purposes of the definition of “harbour”) other the temporary wharf for the time being approved by the Minister as the Joint Venturers' wharf for the purposes hereof during the period to which such approval relates;

“Land Act” means the *Land Act 1933*;

“mineral lease” means the mineral lease referred to in clause 8(1) hereof or 8(2)(a) hereof and includes any renewal thereof and where the context so permits shall extend to and be deemed to include a mineral lease

granted under the provisions of clause 11(6) hereof and any renewal thereof;

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

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

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

“mining area “C” means the area delineated and coloured green on the plan marked “C” initialled by or on behalf of the parties hereto for the purposes of identification;

“Minister” means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the administration of the Ratifying Act and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Joint Venturers and includes the successors in office of the Minister;

“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“port townsite” means the townsite to be established pursuant to this Agreement near the harbour;

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

“special lease” means a special lease or license to be granted in terms of this Agreement under the Ratifying Act the Land Act or the *Jetties Act 1925* and include any renewal thereof;

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

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

“townsite” in relation to the townsite to be established near the harbour means a townsite (whether or not constituted and defined under section 10 of the Land Act) primarily to facilitate the Joint Venturers’ operations in and near the harbour and for employees of the Joint Venturers and in relation to mining area “A” mining area “B” and mining area “C” means such a townsite or townsites which is or are established by the Joint Venturers for the purposes of their operations and employees on or near mining area “A” mining area “B” and mining area “C” or any one or more of them in lieu of a townsite or townsites constituted and defined under section 10 of the Land Act;

“wharf” includes any jetty structure;

“year 1” means the year next following the export 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 therefore 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 24 hereof to extend any period or date shall be without prejudice to the power of the Minister under the said clause 24;

marginal notes shall not affect the interpretation or construction hereof⁴.

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

the phases in which it is contemplated that this Agreement will operate are as follows —

- (a) Phase 1 — the period from the execution hereof by the parties hereto until the commencement date;
- (b) Phase 2 — the period from the commencement date until a plant for secondary processing or an industry for additional upgrading of beneficiated ore is established by the joint venturers hereunder or by another company or party as referred to in clause 12 or clause 13 hereof whichever first occurs;
- (c) Phase 3 — (operative if the Joint Venturers commence secondary processing before establishing an industry for additional upgrading of beneficiated ore hereunder) — the period from the commencement of secondary processing by the Joint Venturers hereunder until the Joint Venturers have established an industry for additional upgrading of beneficiated ore hereunder which period shall include a continuation of Phase 2 operations; and
- (d) Phase 4 — the period after the Joint Venturers have established an industry for additional upgrading of beneficiated ore hereunder which period shall include a continuation of Phase 2 operations.

Obligations of the State during Phase 1 ⁴

2. The State shall —

- (a) upon application by the Joint Venturers at any time prior to the 31st day of March, 1965 (and surrender of the then existing rights of occupancy already granted in respect of any portions of mining area “A”) cause to be granted to the Joint Venturers and to the Joint Venturers 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 mining area “A” under section 276 of the Mining Act at a rental at the rate of four pounds (£4) per square mile per annum payable quarterly in advance for the period expiring on the 31st December, 1965 and shall then and thereafter subject to the continuance of this Agreement cause to be granted to the Joint Venturers as may be necessary successive renewals of such last-mentioned rights of occupancy (each renewal for a period of twelve (12) months at the same rental and on the same terms) the last of which renewals notwithstanding its currency shall expire —

- (i) on the date of application for a mineral lease by the Joint Venturers under either clause 8(1) or clause 8(2)(a) hereof;
 - (ii) at the expiration of one month from the commencement date;
 - (iii) on the determination of this Agreement pursuant to its terms; or
 - (iv) on the day of the receipt by the State of a notice from the Joint Venturers to the effect that the Joint Venturers abandon and cancel this Agreement,
- whichever shall first happen;
- (b) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage prior to the 15th day of December, 1964;
 - (c) to the extent reasonably necessary for the purposes of clauses 4, 5 and 11 hereof allow the Joint Venturers to enter upon Crown lands (including land the subject of a pastoral lease) and survey possible sites for a harbour wharf railway townsite (both in or near the harbour and on or near mining area "A" mining area "B" and mining area "C") stockpiling processing and other areas required for the purposes of this Agreement; and
 - (d) at the request and cost of the Joint Venturers co-operate with the Joint Venturers in the discharge of their obligations under clause 4(1)(a) hereof.

Ratification and operation ⁴

3. (1) Clauses 8, 9, 10 (other than paragraphs (d) and (1) thereof) 12-22 both inclusive and 24 of this agreement shall not operate unless and until the Bill to ratify this Agreement as referred to in clause 2(b) hereof is passed as an Act before the 31st day of December, 1964, or such later date if any as the parties hereto may mutually agree upon. If the Bill is not so passed before that date or later date (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 except as hereinafter provided in clause 10(d) hereof.

(2) If the Bill to ratify this Agreement is passed as an Act before the date or later date if any referred to in sub-clause (1) of this clause the following provisions of this clause shall notwithstanding the provisions of any Act or law thereupon operate and take effect namely —

- (a) the provisions of clause 8 the proviso to paragraph (a) of subclause (2) of clause 9 subclause (3) of clause 9 paragraphs (a) (f) (g) (h) (i) (k) and (m) of clause 10 and clauses 21, 23, 24, and 27 shall take effect as though the same had been brought into force and had been enacted by the Ratifying Act;
- (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 them respectively hereunder;
- (c) no future Act of the said State will operate to increase the Joint Venturers' 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 purposes of this Agreement and may lease or otherwise dispose of the same to the Joint Venturers;
- (e) on the coming into operation of the Ratifying Act the said recited agreement approved by the *Iron Ore (Mount Goldsworthy) Agreement Act 1962*, is cancelled except as to any antecedent liability accrued thereunder and undischarged.

Obligations of Joint Venturers during Phase 1 ⁴

4. (1) The Joint Venturers (having at a total cost in excess of one million pounds (£1,000,000) as from the 27th day of February 1962 been continuously engaged in the matters hereinafter in this subclause mentioned) shall prior to the 31st day of December 1964 (or such extended date if any the Minister may approve or as may be determined by arbitration in manner hereinafter provided) complete the matters hereinafter in this subclause mentioned and everything necessary to enable them to finalise and to submit to the Minister the detailed proposals and other matters referred to in clause 5(2)(a) hereof. The matters first referred to in this subclause are —

- (a) a thorough geological and (as necessary) geophysical investigation of the iron ore deposits in mining area "A" and the testing and sampling of such deposits;
- (b) a general reconnaissance of the various sites of proposed operations pursuant to the Agreement;

- (c) an engineering investigation of the route for a railway from the mining area "A" to the harbour and wharf installation for the export of the iron ore;
- (d) an engineering investigation of a harbour site at or near Port Hedland or such other port or place mutually agreed on and a wharf site therein for the purposes of the Joint Venturers but having regard to the proper development use and capacity of the harbour as a whole by persons and corporations other than the Joint Venturers;
- (e) an investigation of suitable water supplies for the townsites and harbour or port services;
- (f) the planning of suitable townsites in consultation with the State but having due regard to the general development of the port townsite and (if and to the extent applicable) the deposits townsite for use by others as well as the Joint Venturers; and
- (g) metallurgical and market research.

(2) The Joint venturers shall keep the State fully informed at least quarterly commencing within one (1) quarter after the execution hereof as to the progress and results of the Joint Venturer's operations under subclause (1) of this clause.

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

(4) The Joint Venturers will employ and retain expert consultant engineers to investigate report upon and make recommendations in regard to the sites for and design of the Joint Venturers' wharf (including areas for installations stockpiling and other purposes in the harbour area) reasonably required by the Joint Venturers under this Agreement but in such regard the Joint Venturers will require the consultant engineers to have full regard to the general development of the harbour area and the dredging thereof and of approaches thereto with a view to the reasonable use by others of the harbour area and approaches and the Joint Venturers will furnish to the State copies of such report and recommendations. When submitting to the Minister detailed proposals as referred to in clause 5(2)(a) hereof in regard to the matters

mentioned in this subclause the Joint Venturers will so far as reasonably practicable ensure that the detailed proposals —

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

Joint Venturers to submit proposals ⁴

5. (1) The Joint Venturers having submitted to the Minister their proposals for the location of a site for the harbour the Minister will within one month after execution of this Agreement notify the Joint Venturers of his approval or otherwise or may submit an alternative proposal.

(2) Subject to agreement (as to which the provisions of clause 25 do not apply) being reached as to the site for the harbour then by the 31st day of December 1964 or such extended date if any as the Minister may approve or as may be determined by arbitration as aforesaid the Joint Venturers will where not already done submit to the Minister —

- (a) to the fullest extent reasonably practicable their detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect so far as relevant —
 - (A) to the mining area "A" (or so much thereof as shall be comprised within the mineral lease) by the Joint Venturers during the three (3) years next following the commencement of such mining with a view to the transport and shipment of the iron ore mined and their outline proposals with respect to such mining during the next following seven (7) years; and
 - (B) to the transport and shipment of iron ore to be mined by the Joint Venturers hereunder during the operation of Phase 2 of this Agreement —

and including the location area lay-out design number materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters namely —

- (i) the harbour and harbour development including dredging the depositing of spoil the provision of navigational aids the Joint Venturers' wharf (the plans and specifications for which wharf shall be submitted to and be subject to the approval of the State) the berth and swinging basin for the Joint Venturers' use and harbour installations facilities and services all of which shall permit of adaptation so as to enable initially the use of the harbour and wharf by vessels having an ore carrying capacity of not less than thirty thousand (30,000) tons and thereafter to progressively develop the harbour installation facilities and services so as to enable within the next three (3) years the use of the harbour and wharf by vessels having an ore-carrying capacity of not less than forty thousand (40,000) tons;
 - (ii) the railway between mining area "A" and the Joint Venturers' wharf and works ancillary to or connected with the railway and its proposed operation including fencing (if any) and crossing places;
 - (iii) townsites on mining area "A" and near the harbour and development services and facilities in relation thereto;
 - (iv) housing;
 - (v) water supply;
 - (vi) roads (including details of roads in respect of which it is not intended that the provisions of clause 9(2)(b) shall operate); and
 - (vii) any other works services or facilities proposed or desired by the Joint Venturers;
- and
- (b) (subject to the provisions of subclause (4) of this clause) satisfactory evidence firstly of the making or likelihood of making a suitable contract or suitable contracts or the sale by the Joint Venturers hereunder and shipment from the Joint Venturers' wharf of not less than ten million (10,000,000) tons of iron ore (and/or processed iron ore) from the mineral lease including not less than two million (2,000,000) tons in the aggregate in the first two (2) years next following the export date and not less than one million (1,000,000)

tons per year in each and every year of each succeeding year thereafter secondly of the availability of finance necessary for the fulfilment of the Joint Venturers' proposals hereunder relating to the iron ore export project the subject of Phase 2 of this Agreement and thirdly of any necessary license to the Joint Venturers from the Commonwealth to export hereunder iron ore the subject of the iron ore contracts in the quantities at the rate or rates and in the years stated in the contracts.

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

(4) If the Joint Venturers should in writing and within the time later in this subclause mentioned request the Minister to grant an extension or any further extension of time beyond the 31st day of December, 1964 (or such later date if any previously granted or approved by the Minister) within which to make the iron ore contracts and then demonstrates to the satisfaction of the Minister that the Joint Venturers have duly complied with their other obligations hereunder have genuinely and actively but unsuccessfully endeavoured to make the iron ore contracts on a competitive basis and reasonably require an additional period for the purpose of making iron ore contracts the Minister will grant such extension as is warranted in the circumstances as follows —

- (a) for up to six (6) months on request made within one month of the 31st day of December, 1964;
- (b) if an extension is granted under paragraph (a) of this subclause then further for up to three (3) years on request made within one month of the expiration of the period of extension granted under the said paragraph (a);

- (c) if an extension is granted under paragraph (b) of this subclause then further for up to two (2) years on request made within one month of the expiration of the period of extension granted under the said paragraph (b) unless the Minister shows to the Joint Venturers satisfactory evidence that some third party is able and willing if made the lessee of the mineral lease to obtain and duly fulfil that party's obligations under contracts or the sale of iron ore (or processed iron ore) from the leased land which contracts are comparable with iron ore contracts under this Agreement on terms from the State not more favourable on the whole (having regard *inter alia* to initial expenditure) to that party than those applicable to the Joint Venturers hereunder;

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

Consideration of other proposals under clause 5(2) ⁴

6. (1) Within two (2) months after receipt of the detailed proposals of the Joint Venturers in regard to any of the matters mentioned in clause 5(2)(a) hereof the Minister shall give to the Joint Venturers notice either his approval of the proposals or of alterations desired thereto and in the latter case shall afford to the Joint Venturers opportunity to consult with and to submit new proposals to the Minister. The Minister may make such reasonable alterations to or impose such reasonable conditions on the proposals or new proposals (as the case may be) as he shall think fit having regard to the circumstances including the overall development and use (subject to the provisions of clause 8(5)(a) and (b) hereof) by others as well as the Joint Venturers but the Minister shall in any notice to the Joint Venturers disclose his reasons for any such alteration or condition. Within two (2) months of the receipt of the notice the Joint Venturers may elect by notice to the State to refer to arbitration and within two (2) months thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Joint Venturers then unless the Joint Venturers within three (3) months after delivery the award satisfy and obtain the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period of three (3) months cease and determine (save as provided in clause 10(d) hereof) but if the question is decided in favour of the Joint Venturers the decision will take effect

as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

(2) Within two (2) months after receipt of evidence from the Joint Venturers with regard to the matters mentioned in clause 5(2)(b) hereof to the reasonable satisfaction of the Minister the State will give to the Joint Venturers notice either that it is satisfied with such evidence (in which case the proposals in relation to those matters will be deemed approved) or not in which case the State shall afford the Joint Venturers an opportunity to consult with and to submit further evidence to the Minister. If within thirty (30) days of receipt of such notice further evidence has not been submitted to the Minister's reasonable satisfaction and his approval obtained thereto the Joint Venturers may within a further period of thirty (30) days elect by notice to the State to refer to arbitration as hereinafter provided and will within two (2) months thereafter refer to arbitration any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the dispute is decided against the Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period cease and determine (save as provided in clause 10(d) hereof) but if the question is decided in favour of the Joint Venturers the decision will take effect as a notice by the Minister that he is so satisfied with and has approved the matter or matters the subject of the arbitration.

Extension of time ⁴

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

(2) Notwithstanding that under clause 6 hereof any detailed proposals of the Joint Venturers are approved by the State or the Minister or determined by arbitration award unless each and every such proposal and matter is so approved or determined by the 28th day of February, 1965 or by such extended date if any as the Joint Venturers shall be entitled to or shall be granted pursuant to the provisions hereof then at any time after the said 28th day of February, 1965 or if any extension or extensions should be granted under clause 5(4) hereof or any

other provision of this Agreement then on or after the expiration of the last of such extensions the Minister may give to the Joint Venturers twelve (12) months notice of intention to determine this Agreement and unless before the expiration of the said twelve (12) months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of clause 10(d) hereof.

Commencement date ⁴

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

(4) If under any arbitration under clause 6 hereof the dispute is decided against the Joint Venturers and subsequently but before the commencement date this Agreement ceases and determines the State will not for a period of three (3) years after such determination enter into a contract with any other party for the mining transport and shipment of iron ore from mining area "A" on terms more favourable on the whole to the other party than those which would have applied to the Joint Venturers hereunder if the question had been determined in favour of the Joint Venturers.

Mineral lease before commencement date ⁴

8. (1) As soon as conveniently may be before the commencement date the State shall after application is made by the Joint Venturers for a mineral lease of any part or parts (not exceeding in total area 300 square miles and in the shape of a parallelogram or parallelograms) of mining area "A" cause any necessary survey to be made of the lands applied for (the cost of which survey shall be recouped or repaid to the State by the Joint Venturers on demand after completion of the survey) and shall cause to be granted to the Joint Venturers as tenants in common in equal shares a mineral lease thereof for iron ore in the form of the Schedule hereto for a term which subject to the payment of rental hereinafter mentioned and to the performance and observance by the Joint Venturers of their obligations under the mineral lease and otherwise under this Agreement shall be for a period commencing from the date of issue of the mineral lease and expiring on the commencement date but subject to earlier determination upon the cessation or determination of this Agreement.

Phase 2 obligations of State⁴

(2) As soon as conveniently may be after the commencement date the State shall —

Mineral lease after commencement date⁴

- (a) after application is made by the Joint Venturers for a mineral lease of any part or parts (not exceeding in total area three hundred (300) square miles and in the shape of a parallelogram or parallelograms) of mining area “A” in conformity with the Joint Venturers’ detailed proposals under clause 5(2)(a)(A) hereof as finally approved or determined cause any necessary survey to be made of the land so applied for (the cost of which survey to the State will be recouped or repaid to the State by the Joint Ventures on demand after completion of the survey) and shall cause to be granted to the Joint Venturers as tenants in common in equal shares a mineral lease thereof for iron ore in the form of the Schedule hereto for a term which subject to the payment of rents and royalties hereinafter mentioned and to the performance and observance by the Joint Venturers of their obligations under the mineral lease and otherwise under this Agreement shall be for a period of twenty-one (21) years commencing from the commencement date with rights to successive renewals of twenty-one (21) years upon the same terms and conditions but subject to earlier determination upon the cessation or determination of this Agreement PROVIDED HOWEVER that the Joint Venturers may from time to time (without abatement of any rent then paid or payable in advance) surrender to the State all or any portion or portions (of reasonable size and shape) of the mineral lease;

Under Joint Venturers’ proposals⁴

- (b) in accordance with the Joint Venturers’ proposals as finally approved or determined under clause 6 hereof and as require the State to accept obligations —

Lands⁴

- (i) grant to the Joint Venturers as tenants in common in equal shares in fee simple or for such terms or periods and on such terms and conditions (including renewal rights) as subject to the proposals (as finally approved or determined as aforesaid) shall be reasonable having regard to the requirements of the

Joint Venturers hereunder and to the overall development of the harbour and access to and use by others of lands the subject of any grant to the Joint Venturers and of services and facilities provided by the Joint Venturers —

for nominal consideration — townsite lots;

at peppercorn rental — special leases of Crown lands within the harbour area the townsites and the railways; and

at rentals as prescribed by law or are otherwise reasonable — leases rights mining tenements easements reserves and licenses in on or under Crown lands

under the Mining Act the *Jetties Act 1926* or under the provisions of the Land Act modified as in subclause (2) of this clause provided (as the case may require) as the Joint Venturers reasonably require for their works and operations hereunder including the construction or provision of the railway wharf roads airstrip water supplies and stone and soil for construction purposes; and

Services and facilities ⁴

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

subject to such terms and conditions as may be finally approved or determined as aforesaid PROVIDED THAT from and after the fifteenth anniversary of the export date or the twentieth anniversary of the date hereof whichever shall first occur (provided that the said twentieth anniversary shall be extended one (1) year for each year this Agreement has been continued in force and effect under clause 5(4) hereof) the Joint Venturers will in addition to the rentals already referred to in this paragraph pay to the State during the currency of this Agreement after such anniversary as aforesaid a

rental (which subject to its being payable by the Joint Venturers to the State may from time to time at the option of the Joint Venturers be payable in respect of such one or more of the special leases or other leases granted to the Joint Venturers under this paragraph and remaining current) equal to two shillings and sixpence (2s. 6d.) per ton on all iron ore and iron ore concentrates in respect of which royalty is payable under clause 9(2)(j) hereof in any financial year such additional rental to be paid within three (3) months after shipment sale use or production as the case may be of the iron ore or iron ore concentrates SO NEVERTHELESS that the additional rental to be paid under this proviso shall not be less than seventy-five thousand pounds (£75,000) in respect of any such year and if a mineral lease of mining area "B" and mining area "C" or of any part or parts thereof respectively has been granted to the Joint Venturers under clause 11(6) hereof the additional rental to be paid as aforesaid shall thereafter be not less than one hundred and fifty thousand pounds (£150,000) in respect of any such year and the Joint Venturers will within three (3) months after expiration of that year pay to the State as further rental the difference between seventy-five thousand pounds (£75,000) or one hundred and fifty thousand pounds (£150,000) (whichever is applicable as aforesaid) 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 two shillings and six-pence (2s. 6d.) per ton as aforesaid shall be offset by the Joint Venturers against any amount payable by them to the State above the minimum amounts payable to the State under this paragraph in respect of the two (2) financial years immediately following the financial year in respect of which the said minimum sum was paid; and

Other rights ⁴

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

(3) For the purposes of subparagraph (i) of paragraph (b) and paragraph (c) of subclause (1) of this clause the Land Act shall be deemed to be modified by —

(a) the substitution for subsection (2) of section 45A of the following subsection:

(2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased;

(b) the deletion of the proviso to section 116;

(c) the deletion of section 135;

(d) the deletion of section 143;

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

(f) the inclusion of a power to offer for sale or grant leases or licenses for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of for the terms or periods and upon the terms and conditions and in the forms referred to in the Act and upon application by the Joint Venturers in forms consistent as aforesaid in lieu of in the forms referred to in the Act.

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

(5) The State further covenants with the Joint Venturers' that the State —

Non-interference with Joint Venturers' rights⁴

(a) shall not during the currency of this Agreement register any claim or grant any lease or other mining tenement under the Mining Act or otherwise by which any person other than the Joint Venturers or an associated company will obtain under the laws relating to mining or otherwise any rights to mine or take the natural substances (other than petroleum as defined in the *Petroleum Act 1936*) within the mineral lease unless the Minister reasonably determines that it is not likely to unduly prejudice or to interfere with the operations of the

Joint Venturers hereunder assuming the taking by the Joint Venturers of all reasonable steps to avoid the interference;

No resumption ⁴

- (b) subject to the performance by the Joint Venturers of their obligations under this Agreement shall not during the currency hereof without the consent of the Joint Venturers resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the said State any of the works installations plant equipment or other property for the time being belonging to the Joint Venturers and the subject of or used for the purposes of this Agreement nor any of the lands the subject of any lease or license granted to the Joint Venturers in terms of this Agreement AND without such consent (which shall not be unreasonably withheld) the State will not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road right-of-way or easement of any nature or kind whatsoever over or in respect of any such lands, which may unduly prejudice or interfere with the Joint Venturers' operations hereunder;

Labour requirements ⁴

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

No discriminatory rates ⁴

- (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 operation of the Joint Venturers in the conduct of the Joint Venturers' business hereunder nor will the State take or permit to be taken any such State authority any other discriminatory action which would deprive the Joint Venturers of full enjoyment of the rights granted and intended to be granted under this Agreement.

Rights to other minerals ⁴

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

Consents to improvements on leases ⁴

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

(6) The Joint Venturers shall not have any tenant rights in improvements made by the Joint Venturers on the land comprised in any lease granted by the State to the Joint Venturers pursuant to this Agreement in any case where pursuant to clause 10(e) hereof such improvements will remain or become the absolute property of the State.

Phase 2 obligations of the Joint Venturers to construct ⁴

9. (1) The Joint Venturers shall within three (3) years next following the commencement date (or within such extended period not exceeding a further two years as the Joint Venturers may satisfy the Minister that the Joint Venturers reasonably require and the Minister approves), and at a cost of not less than twenty million pounds (£20,000,000) (inclusive of the said recited costs of one million pounds (£1,000,000)) construct install provide and do all things necessary to enable them to mine from the mineral lease to transport by rail to the Joint Venturers' 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 Joint Venturers shall within the aforesaid period or extended period as the case may be —

On mining areas ⁴

- (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 power house workshop and other things of a design and capacity adequate to enable the Joint Venturers to meet and discharge their obligations hereunder and under the iron ore contracts and to mine handle load and deal with not less than three thousand (3,000) tons of iron ore per diem such capacity to be built up progressively to not less than six thousand (6,000) tons of iron ore per diem within three (3) years next following the export date;

To commence exports ⁴

- (b) actually commence to mine transport by rail and ship from the Joint Venturers' wharf iron ore from the mineral lease so that the average annual rate during the first two years shall not be less than one million (1,000,000) tons;

To construct railway ⁴

- (c) subject to the State having assured to the Joint Venturers all necessary rights in or over Crown lands available for the purpose construct in a proper and workmanlike manner and in accordance with recognised standards of railways of a similar nature operating under similar conditions and along a route approved or determined under clause 6 hereof (but subject to the provisions of the *Public Works Act 1902* to the extent that they are applicable) a four feet eight and one-half inches (4' 8½") gauge railway (with all necessary signalling switch and other gear and all proper or usual works) from mining area "A" to the Joint Venturers' wharf and will provide for crossing places and the running of 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 to the Joint Venturers' wharf or as required for the purposes of this Agreement;

To make roads ⁴

- (d) subject to the State having assured to the Joint Venturers all necessary rights in or over Crown lands or reserves available for the purpose construct by the said date such new roads as the Joint

Venturers reasonably require for their purposes hereunder of such widths with such materials gates crossings and passovers for cattle and for sheep and along such routes as the parties hereto shall mutually agree after discussion with the respective shire councils through whose districts any such roads may pass and subject to prior agreement with the appropriate controlling authority (being a shire council or the Commissioner of Main Roads) as to terms and conditions the Joint Venturers may at their own expense and risk except as otherwise so agreed upgrade or realign any existing road;

To construct wharf ⁴

- (e) construct the Joint Venturers' wharf in accordance with plans and specifications for the construction thereof previously approved or determined under clause 6 hereof on the site previously approved or determined for the purpose; and

To carry out proposals ⁴

- (f) in accordance with the Joint Venturers' proposals as finally approved or determined under clause 6 hereof and as require the Joint Venturers to accept obligations —
 - (i) dredge the berth at the Joint Venturers' wharf and the channel and approaches thereto and any necessary swinging basin;
 - (ii) lay out and develop the townsites and provide adequate and suitable housing recreational and other facilities and services;
 - (iii) construct and provide roads housing school water and power supplies and other amenities and services; and
 - (iv) construct and provide other works (if any) including an airstrip.

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

Operation of railway ⁴

- (a) operate their railway in a safe and proper manner and where and to the extent that they can do so without unduly prejudicing or interfering with their operations hereunder 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 subclause (3) 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 Joint Venturers) PROVIDED THAT in relation to their use of the said railway the Joint Venturers shall not be deemed to be a common carrier at common law or otherwise;

Use of roads by others ⁴

- (b) except to the extent that the Joint Venturers' proposals as finally approved or determined under clause 6 hereof otherwise provide allow the public to use free of charge any roads (to the extent that it is reasonable and practicable so to do) constructed or upgraded under this clause PROVIDED THAT such use shall not unduly prejudice or interfere with the Joint Venturers' operations hereunder;

Compliance with laws ⁴

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

Maintenance ⁴

- (d) at all times keep and maintain in good repair and working order and condition and where necessary replace all such works installations plant machinery and equipment and the railway wharf roads (other than the public roads referred to in clause 10(b) hereof) dredging and water and power supplies for the time being the subject of this Agreement;

Shipment of and price for ore ⁴

- (e) ship from the Joint Venturers' wharf all iron ore mined from the mineral lease and sold and use their best endeavours to obtain therefor the best price possible having regard to market conditions from time to time prevailing PROVIDED THAT this paragraph shall not apply to iron ore used for secondary processing or for the

industry for additional upgrading of beneficiated ore in any part of the said State lying north of the twenty-sixth parallel of latitude;

Use of wharf and facilities ⁴

- (f) subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made and altered as provided in subclause (3) 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 Joint Venturers) allow the State and third parties to use the Joint Venturers' wharf and harbour installations wharf machinery and equipment and wharf and harbour services and (subject to subclause (4) of this clause) harbour facilities PROVIDED THAT such use shall not unduly prejudice or interfere with the Joint Venturers' operations hereunder and that the entire control and all personnel for or in respect of such use shall be provided by or with the approval of the Joint Venturers;

Access through mining areas ⁴

- (g) 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 Joint Venturers' operations hereunder;

Protection for inhabitants ⁴

- (h) subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made and altered as provided in subclause (3) 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 Joint Venturers) allow the inhabitants for the time being of the port townsite being employees licensees or agents of the Joint Venturers or persons engaged in providing a legitimate and normal service to or for the Joint Venturers or those employees licensees or agents to make use of the water power recreational health and other services or facilities provided or controlled by the Joint Venturers;

Use of local labour and materials ⁴

- (i) so far as reasonably and economically practicable use labour materials plant equipment and supplies available within the said State where it is not prejudicial to the interest of the Joint Venturers so to do;

Royalties ⁴

- (j) pay to the State royalty on all iron ore from the mineral lease shipped or sold (other than ore shipped solely for testing purposes) or (in the circumstances mentioned in subparagraph (iv) of this paragraph) on iron ore concentrates produced from iron ore from the mineral lease or on other ore from the mineral lease used as mentioned in subparagraph (iv) of this paragraph as follows —
 - (i) on direct shipping ore (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 Joint Venturers of the purchase price in respect of ore shipped or sold hereunder) PROVIDED NEVERTHELESS that such royalty shall not be less than six shillings (6/-) per ton (subject to subparagraph (vi) of this paragraph) in respect of ore the subject of any shipment or sale;
 - (ii) on fine ore (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 three shillings (3/-) per ton (subject to subparagraph (vii) of this paragraph) in respect of ore the subject of any shipment or sale;
 - (iii) on fines (not being locally used ore) at the rate of one shilling and sixpence (1s. 6d.) per ton;
 - (iv) on iron ore concentrates produced from locally used ore by secondary processing and on locally used ore (not being iron ore used for producing iron ore concentrates subject to royalty hereunder) at the rate of one shilling and sixpence (1s. 6d.) 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) (for averaging purposes) if the amount ascertained by multiplying the total tonnage of direct shipping ore shipped or sold (and liable to royalty under subparagraph (i) of this paragraph) in any financial year by six shillings (6/-d.) 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 direct shipping ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made accordingly;
- (vii) (for averaging purposes) if the amount ascertained by multiplying the total tonnage of fine ore shipped or sold (and liable to royalty under subparagraph (ii) of this paragraph) in any financial year by three shillings (3/-d.) 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 in that year and at the expiration of that year any necessary adjustments shall be made accordingly; and
- (viii) the royalty at the rate of one shilling and sixpence (1/6d.) per ton referred to in subparagraphs (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 proportionately to the variation of the average of the prices payable for foundry pig iron f.o.b. Adelaide during the last full calendar year preceding the date at which the adjustment is to be made as compared with the average of those prices during the calendar year 1963.

For the purposes of this paragraph “locally used ore” means iron ore used by the Joint Venturers or an associated company both within the Commonwealth and within the limits referred to in paragraph (o) of this clause for secondary processing or in an industry for additional upgrading of beneficiated ore 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 industry for additional upgrading of beneficiated ore;

Payment of royalties ⁴

- (k) within fourteen days after the quarter days the last days of March June September and December in each year commencing with the quarter day next following the first commercial shipment of iron ore from the Joint Venturers' wharf furnish to the Minister a return showing the quantity of all iron ore or iron ore concentrates the subject of royalty hereunder and shipped sold used or produced (as the case may be) during the quarter immediately preceding the due date of the return and shall not later than two (2) months after such due date pay to the Minister the royalty payable in respect of iron ore concentrates produced or iron ore used and in respect of all iron ore shipped or sold pay to the Minister on account of the royalty payable hereunder a sum calculated on the basis of invoices or provisional invoices (as the case may be) rendered by the Joint Venturers to the purchaser (which invoices the Joint Venturers shall render without delay simultaneously furnishing copies thereof to the Minister) of such iron ore and shall from time to time in the next following appropriate return and payment make (by the return and by cash) all such necessary adjustments (and give to the Minister full details thereof) when the f.o.b. revenue realised in respect of the shipments shall have been ascertained;

Rent for mineral lease ⁴

- (l) by of rent for the mineral lease pay to the State annually in advance a sum equal to three shillings and sixpence (3s. 6d.) per acre of the area for the time being the subject of the mineral lease commencing on and accruing from the commencement date PROVIDED THAT after the Joint Venturers commence production in commercial quantities within the said State from a plant for secondary processing or for an industry for additional upgrading of beneficiated ore (whichever is first constructed) 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 two shillings (2s.) 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 two shillings and sixpence (2s. 6d.) 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 three shillings (3s.) per acre;

Other rentals ⁴

- (m) pay to the State the rental referred to in the proviso to clause 8(2)(b) hereof if and when such rental shall become payable;

Inspection ⁴

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

Export to places outside the Commonwealth ⁴

- (o) ensure that without the prior written approval of the Minister all iron ore shipped pursuant to this Agreement will be off-loaded at a place outside the Commonwealth and if they fail so to ensure the Joint Venturers will subject to the provisions of this paragraph be in default hereunder. Where any such shipment is off-loaded within the Commonwealth without such prior written approval the Joint Venturers shall forthwith on becoming aware thereof give to the State notice of the fact and pay to the State in respect of the iron ore the subject of the shipment such further and additional rental calculated at a rate not exceeding ten shillings (10s.) per ton of the iron ore as the Minister shall demand without prejudice however to any other rights and remedies of the State hereunder arising from the breach by the Joint Venturers of the provisions hereof. If ore is

shipped in a vessel not owned by the Joint Venturers or an associated company or any other company in which the Joint Venturers have a controlling interest and such ore is off-loaded in the Commonwealth the Joint Venturers will not be or be deemed to be in default hereunder if they take appropriate action to prevent a recurrence of such an off-loading PROVIDED FURTHER that the foregoing provisions of this 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 Joint Venturers 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 the subject of secondary processing or of an industry for the additional upgrading of beneficiated ore by the Joint Venturers or an associated company within the said State
- (ii) to ore processed by the Joint Venturers or an associated company within the Commonwealth but outside the said State to the extent that the tonnage of ore so processed does not in any year exceed fifty per centum (50%) of the total quantity of iron ore the subject of secondary processing and/or of an industry for the additional upgrading of beneficiated ore by the Joint Venturers or an associated Company; or
- (iii) to ore processed by the Joint Venturers or an associated company within the Commonwealth but outside the said State in excess of fifty per centum (50%) of the total quantity of ore the subject of secondary processing and/or of an industry for the additional upgrading of beneficiated ore by the Joint Venturers or an associated company within the said State with the prior approval of the Minister as aforesaid.

By-laws ⁴

(3) The Governor in Executive Council may upon recommendation by the Joint Venturers make alter and repeal by-laws for the purpose of enabling the Joint Venturers to fulfil their obligations under paragraphs (a) (b) and (f) of subclause (2) of this clause and (unless and until the port townsite is declared a townsite pursuant to section 10 of the Land Act) under paragraph (h) of

subclause (2) of this clause and under clause 10(a) hereof upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Joint Venturers) as set out in such by-laws consistent with the provisions hereof. Should the State at any time consider that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Joint Venturers shall recommend such alteration or repeal thereof as the State may reasonably require or (in the event of there being any dispute as to the reasonableness of such requirement) then as may be decided by arbitration hereunder.

Harbour channel approach provisions ⁴

(4) (a) The parties hereto acknowledge that some party other than the Joint Venturers (which party is hereinafter in this subclause referred to as “the other party”) may have already agreed or will agree with the State for the mining transport and export of iron ore from within an area or areas of the said State other than Mining Area “A”, Mining Area “B”, or Mining Area “C” and that it may be further agreed or determined that such export will be from the harbour. In this event and notwithstanding the approval or determination of all or any of the detailed proposals hereunder the parties hereto acknowledge that the State may require that only one channel approach to the harbour shall be dredged to serve the interests of the Joint Venturers and of the other party as well as of other users of the harbour but that it will depend upon circumstances (including the depth and width of the channel approach and the respective time programmes for the dredging as desired by the Joint Venturers and the other party under and for the purposes of their respective agreements with the State) whether that channel approach shall be dredged by the Joint Venturers or by the other party or partly by each or under some other arrangements with a view to the joint user of the whole or part of the channel approach.

(b) The parties hereto acknowledge the principle that whichever of the Joint Venturers and the other party should incur the whole or the greater capital outlay (as the case may be) for the dredging or should be responsible for the operation and maintenance of the channel approach (insofar as it is or is intended to be used by the other of them) should be reimbursed by the other of them such a fair and reasonable proportion of the capital outlay and operation and maintenance costs respectively for the use of the channel approach or otherwise a fair and reasonable charge for such use as may be determined by mutual agreement between the parties concerned or failing agreement by arbitration under the provisions of the *Arbitration Act 1895* if those parties

agree within a time to be fixed by the Minister to submit to arbitration and failing such agreement then as determined by the Minister.

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

(d) If in the circumstances referred to in paragraph (b) of this subclause the Joint Ventures are the party to be reimbursed then the State agrees not to permit vessels of the other party of which notice is given to the State by the Joint Venturers to enter the harbour through the channel approach and then to load iron ore in bulk unless and until the other party has made arrangements reasonably satisfactory to the Joint Venturers (to be determined by agreement arbitration or the Minister as aforesaid) for a fair and reasonable contribution to capital outlay and operation and maintenance costs incurred and/or to be incurred by the Joint Venturers as aforesaid or for the payment of a fair and reasonable charge.

(e) The State acknowledges and agrees with the Joint Venturers that in the event of the Joint Venturers incurring the whole or the greater capital outlay or operation and maintenance costs as aforesaid then vessels (other than vessels employed for the Joint Venturers' or other party's purposes) using the channel approach for the export from the harbour of more than half a million tons a year of bulk commodities should be required to pay to the Joint Venturers (or the State should be required to pay to the Joint Venturers from the moneys received from such vessels) fair and reasonable charges to be agreed by the parties hereto having regard to the circumstances including the aggregate tonnage of the commodities exported or to be exported from the harbour the rate of export and the capital outlay and operation and maintenance costs incurred and/or to be incurred by the Joint Venturers.

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

(g) The Joint Venturers also agree with the State that notwithstanding any lease granted to them by the State of the whole or part of the channel approach the State or the other party may at any time after notice to the Joint Venturers

deepen or widen the channel approach for which purpose the Joint Venturers will on request by the State surrender without compensation so much of the lease of the channel approach as may be required for the purpose PROVIDED HOWEVER that the Joint Venturers will be entitled to reasonable time within which to complete any firm contract for the dredging of the channel approach actually made by them (pursuant to the consent of the State or the determination by arbitration) but unfulfilled at the time of the giving of such notice in respect of the widening or deepening of the dredging of the channel approach.

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

Mutual covenants ⁴

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

Water and power supplies ⁴

- (a) that subject to and in accordance with proposals approved or determined under clause 6 hereof the Joint Venturers for their purposes hereunder and for domestic and other purposes in relation to a townsite may to the extent determined by the Minister but notwithstanding any Act bore for water construct catchment areas store (by dams or otherwise) take and charge for water from any Crown lands available for the purpose and generate transmit supply and charge for electrical energy and the Joint Venturers shall have all such powers and authorities with respect to water and electrical energy as are determined by the Minister for the purposes hereof which may include the powers of a water board under the *Water Boards Act 1904* and of a supply authority under the *Electricity Act 1945*;

Use of public roads ⁴

- (b) that the Joint Venturers may use any public roads which may from time to time exist in the area of their operations hereunder for the purpose of transportation of goods and materials in connection with such operations PROVIDED NEVERTHELESS that the Joint Venturers shall on demand pay to the State or the Shire council concerned the cost of making good any damage to such roads occasioned by —

- (i) such user by the Joint Venturers prior to the export date; and
- (ii) user by the Joint Venturers for the transportation of iron ore won from the mineral lease;

Upgrading of existing roads ⁴

- (c) that the State will at the request and cost of the Joint Venturers (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or part of the cost involved) widen upgrade or realign any public road over which the State has control subject to the prior approval of the said Commissioner to the proposed work;

Effect of determination of agreement ⁴

- (d) that on the cessation or determination of this Agreement —
 - (i) except as otherwise agreed by the Minister the rights of the Joint Venturers to in or under this Agreement and the rights of the Joint Venturers or of any assignee of the Joint Venturers or any mortgagee to in or under the mineral lease and any other lease license easement or right granted hereunder or pursuant hereto shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder AND the Joint Venturers will without further consideration but otherwise at the request and cost of the State transfer or surrender to the State or the Crown all land the subject of any Crown Grant issued under the Land Act pursuant to this Agreement;
 - (ii) the Joint Venturers shall forthwith pay to the State all moneys which may then have become payable or accrued due;
 - (iii) the Joint Venturers shall forthwith furnish to the State complete factual statements of the work research surveys and reconnaissances carried out pursuant to clause 4(1) hereof if and insofar as the statements may not have been so furnished; and
 - (iv) save as aforesaid and as provided in clause 7(4) hereof and in the next following paragraph neither of the parties hereto

shall have any claim against another of them with respect to any matter or thing in or arising out of this Agreement;

Effect of determination of lease ⁴

- (e) that on the cessation or determination of any lease license or easement granted hereunder by the State to the Joint Venturers or (except as otherwise agreed by the Minister) to an associated company or other assignee of the Joint Venturers under clause 20 hereof of land for the Joint Venturers' wharf for any installation within the harbour for the Joint Venturers' railway or for housing at the port or port townsite the improvements and things other than plant equipment and removable buildings erected on the relevant land and provided for in connection therewith shall remain or become the absolute property of the State without compensation and freed and discharged from all mortgages and encumbrances and the Joint Ventures will do and execute such documents and things (including surrenders) as the State may reasonably require to give effect to this provision. In the event of the Joint Venturers immediately prior to such expiration or determination or subsequent thereto deciding to remove their locomotives rolling stock plant equipment and removable buildings or any of them from any land they shall not do so without first notifying the State in writing of their decision and thereby granting to the State the right or option exercisable within three 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 cargoes ⁴

- (f) that subject to the Joint Venturers at their own expense providing all works buildings dredging and things of a capital nature reasonably required for their operations hereunder at or in the vicinity of the harbour no charge or levy shall be made by the State or by any State authority in relation to the loading of outward or the unloading of inward cargoes from the Joint Venturers' wharf whether such cargoes shall be the property of the Joint Venturers or of any other person or corporation but the State accepts no obligation to

undertake such loading or unloading and may make the usual charges from time to time prevailing in respect of services rendered by the State or by any State agency or instrumentality or other local or other authority of the State and may charge vessels using the Joint Venturers' wharf ordinary light conservancy and tonnage dues;

Zoning⁴

- (g) that the mineral lease and the lands the subject of any Crown Grant lease license or easement granted to the Joint Venturers under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Joint Venturers hereunder may be undertaken and carried out thereon without any interference or interruption by the State by any State agency or instrumentality or by any local or other authority of the State on the ground that such operations are contrary to any zoning by-law or regulation;

Rentals and evictions⁴

- (h) that any State legislation for the time being in force in the said State relating to the fixation of rentals shall not apply to any houses belonging to the Joint Venturers in any townsite and that in relation to each such house the Joint Venturers shall have the right to include as a condition of their letting thereof that the Joint Venturers may take proceedings for eviction of the occupant if the latter shall fail to abide by and observe the terms and conditions of occupancy or if the occupant shall cease to be employed by the Joint Venturers;

Labour conditions⁴

- (i) that during the currency of this Agreement and subject to compliance with their obligations hereunder the Joint Venturers shall not be required to comply with the labour conditions imposed by or under the Mining Act in regard to the mineral lease.

Subcontracting⁴

- (j) that without affecting the liabilities of the parties under this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portions of the operations which it is authorised or obliged to carry out hereunder;

Rating⁴

- (k) that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection therewith) shall for rating purposes be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate;

Determination of Agreement⁴

- (l) that in any of the following events namely if the Joint Venturers shall make default in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sublease license or other title or document granted or assigned under this Agreement on their part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to them by the State (or if the alleged default is contested by the Joint Venturers and promptly submitted to arbitration within a reasonable time fixed by the arbitration award where the question is decided against the Joint Venturers the arbitrator finding that there was a *bona fide* dispute and that the Joint Venturers had not been dilatory in pursuing the arbitration) or if the Joint Venturers shall abandon or repudiate their operations under this Agreement or if any of the Joint Venturers shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within three months from the date of such liquidation the others of the Joint Venturers acquire absolutely the share estate and interest of the Joint Venturer (in liquidation) in or under this agreement and in or under the mineral lease and any other lease license easement or right granted hereunder or pursuant hereto then and in any of such events the State may by notice to the Joint Venturers determine this Agreement and the rights of the Joint Venturers hereunder and under any lease license easement or right granted hereunder or pursuant hereto or if the Joint Venturers shall surrender the entire mineral lease as permitted under clause 8(2)(a) this Agreement and the rights of the Joint Venturers hereunder and under any lease license easement or right granted hereunder or pursuant hereto shall thereupon determine; PROVIDED HOWEVER that if the Joint Venturers shall fail to remedy any default after such notice or within the time fixed by the arbitration award as aforesaid

the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Joint Venturers and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Joint Venturers to the State on demand; and

(m) that —

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

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

(B) an action is maintainable by any such person or body corporate

in respect of the death or injury of any person or damage to any property arising out of the use of any of the roads for the maintenance of which the Joint Venturers are responsible hereunder and for no other purpose the Joint Venturers shall be deemed to be a municipality and the said roads shall be deemed to be streets under the care control and management of the Joint Venturers;

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

Company may submit proposals in respect of Mining Area “B” and Mining Area “C” ⁴

11. (1) From the commencement date the Joint Venturers shall with all reasonable diligence continue their preliminary exploration and investigation preparatory to making a complete and thorough geological and (as necessary) geophysical investigation of firstly mining area “B” and secondly of mining area “C” and within two years next following the commencement date shall intensify their exploration and investigation and within four years next following the commencement date the Joint Venturers shall complete their geological and (as necessary) geophysical exploration and investigation with a

view to proving iron ore deposits in those mining areas and testing and sampling such deposits. Such investigations shall include a general reconnaissance of those mining areas with a view to the establishment of various sites for the operations pursuant to this Agreement. The Joint Venturers shall keep the State fully informed at least quarterly commencing within one quarter after the commencement date as to the progress and results of the Joint Venturers' operations under this subclause.

(2) If within six (6) years from the commencement date the Joint Venturers having complied with all their obligations pursuant to subclause (1) hereof shall apply for a mineral lease in respect of mining area "B" or any part or parts thereof and of mining area "C" or any part or parts thereof the Joint Venturers shall within six months of any such application submit to the Minister —

- (a) to the fullest extent reasonably practicable their detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) and including the location area layout design number materials and time programme for the commencement and completion of construction or provision as the case may be of each of the following matters namely —
 - (i) such additional harbour development including dredging depositing of spoil the provision of navigational aids additions to the Joint Venturers' wharf (any plans and specifications for additions to the Joint Venturers' wharf shall be submitted to and be subject to the approval of the State) the berth and swinging basin for the Joint Venturers' use and harbour installations facilities and services to enable the use of the harbour and wharf by vessels having an ore carrying capacity of not less than 60,000 tons;
 - (ii) the railway or railways between those mining areas and the Joint Venturers' then existing railway from mineral lease granted under clause 8(2)(a) hereof to the Joint Venturers' wharf and all works ancillary to or connected with the railway or railways and its or their proposed operation including fencing (if any) and crossing places;
 - (iii) the town site on mining area "C" and development services and facilities in relation thereto;

- (iv) the townsite on mining area “B” and development services and facilities in relation thereto or provision for the extension of the existing townsite established on mine area “A”;
 - (v) housing on mining area “C”;
 - (vi) housing on mining area “B” or provision for the extension of existing housing accommodation established on mining area “A”;
 - (vii) roads from those mining areas to the then existing road developed by the Joint Venturers from mining area “A” to the Joint Venturers’ wharf (including details of roads in respect of which it is not intended that the provisions of clause (9)(2)(b) shall operate) and;
 - (viii) any other works services or facilities proposed or desired by the Joint Venturers; and
- (b) satisfactory evidence of firstly availability of finance necessary for the fulfilment of the Joint Venturers’ obligations if they undertake secondary processing under the provisions in that behalf contained in clause 12 hereof and secondly if the Minister so requires production of any necessary license to the Joint Venturers from the Commonwealth to export iron ore from mining area “B” and or mining area “C”

(3) The estimated cost of the works to be proposed under subclause 2 of this clause shall be not less than ten million pounds (£10,000,000) and the works shall be of such design and capacity as shall enable the Joint Venturers to mine and handle load and deal with six thousand (6,000) tons of iron ore per diem in addition to the requirements of clause 9(1)(a) hereof.

(4) Within two months after receipt of the detailed proposals of the Joint Venturers in regard to any of the matters mentioned in subclause 2(a) of this clause the Minister shall give to the Joint Venturers notice either of his approval of the proposals or of alterations desired thereto and in the latter case shall afford to the Joint Venturers opportunity to consult with and to submit new proposals to the Minister. The Minister may make such reasonable alterations to or impose such reasonable conditions on the proposals or new proposals (as the case may be) as he shall think fit having regard to the circumstances including the overall development and use by others as well as the Joint Venturers of the Joint Venturers’ wharf facilities and services but the Minister shall in any notice to the Joint Venturers disclose his reasons for any such alteration or condition.

Within two (2) months of the receipt of the notice the Joint Venturers may elect by notice to the State to refer to arbitration and within two (2) months thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain the approval of the Minister as to the matter or matters the subject of the arbitration the application for a lease of those mining areas or any part or parts thereof respectively shall on the expiration of that period of three (3) months cease and determine (save as provided in clause 10(d) hereof) but if the question is decided in favour of the Joint Venturers the decision will take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

(5) Within two (2) months after receipt of evidence from the Joint Venturers with regard to the matters mentioned in subclause (2)(b) of this clause to the reasonable satisfaction of the Minister the State will give to the Joint Venturers notice either that it is satisfied with such evidence (in which case the proposals in relation to those matters will be deemed approved) or not in which case the State shall afford the Joint Venturers an opportunity to consult with and to submit further evidence to the Minister. If within thirty (30) days of receipt of such notice further evidence has not been submitted to the Minister's reasonable satisfaction and his approval obtained thereto the Joint Venturers may within a further period of thirty (30) days elect by notice to the State to refer to arbitration as hereinafter provided and will within two (2) months thereafter refer to arbitration any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the dispute is decided against the Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain the approval of the Minister as to the matter or matters the subject of the arbitration the application for a lease of those mining areas or any part or parts thereof respectively shall on the expiration of that period cease and determine (save as provided in clause 10(d) hereof) but if the question is decided in favour of the Joint Venturers the decision will take effect as a notice by the Minister that he is so satisfied with and has approved the matter or matters the subject of the arbitration.

Effect of Joint Venturers applying for mineral lease in respect of Mining Area B and Mining Area C ⁴

(6) If the Joint Venturers shall have applied for a mineral lease of mining area "B" and mining area "C" or any part or parts thereof respectively within six

(6) years of the commencement date and shall have complied with their in obligations in respect of such application and if the Minister shall have approved the Joint Venturers' proposals or be deemed to have approved the Joint Venturer's proposals by decision of arbitration then the Minister shall cause any necessary survey to be made of the land so applied for (the cost of the survey to the State will be recouped or repaid to the State by the Joint Venturers on demand after completion of the survey) and shall cause to be granted to the Joint Venturers as tenants in common in equal shares a mineral lease thereof (hereinafter referred to as "the second mineral lease") for iron ore in the form of the lease in the Schedule hereto for a term which subject to the payments of rental and royalties hereinbefore mentioned and to the performance and observance by the Joint Venturers of their obligations under the mineral lease shall be for a period commencing from the date of issue of the second mineral lease for a period co-extensive with the residue of the term then unexpired of the original mineral lease granted under clause 8(2)(a) hereof with rights to successive renewal for 21 years upon the same terms and subject to earlier determination upon the cessation or determination of this agreement.

Effect of Joint Venturers not applying for mineral lease in respect of Mining Area B and Mining Area C ⁴

(7) If the Joint Venturers do not apply within six (6) years from the commencement date or cease to be entitled to apply for a mineral lease in respect of those mining areas being mining area "B" or mining area "C" or any part or parts thereof respectively the Joint Venturers will cease to have any rights or interests to or in respect of those mining areas or any of them or any part or parts thereof respectively and this agreement with the exception of Clauses 12-17 (inclusive) will continue in force for 21 years from the export date or until the Joint Venturers have mined all the available iron ore on mining area "A" (whichever later happens) or until this agreement is determined provided that if in any financial year after six years from the commencement date the tonnage of iron ore mined from the mineral lease and shipped for export is less than one million (1,000,000) tons then the State may within the period of six months next following the expiration of that financial year give to the Joint Venturers notice that it intends to invoke this clause and thereupon if in that financial year and the next two succeeding financial years the tonnage of iron ore so shipped is less than three million (3,000,000) tons then subject to Clause 23 hereof the State may by notice to the Joint Venturers given at any time during the period of twelve (12) months next following the expiration of the third of the three financial years above referred to in this proviso determine this agreement whereupon the rights of the Joint Venturers in this agreement

and under any lease license or mining tenement granted hereunder or pursuant hereto shall cease and determine subject however to the provisions of Clause 10(d) hereof but without prejudice to any liability on the part of the Joint Venturers for any antecedent breach of or liability under any of the provisions in this agreement PROVIDED FURTHER the Minister upon the application of the Joint Venturers may include in the existing mineral lease granted under clause 8(2)(a) hereof the whole or any part or parts of mining area "B" after survey by the State (the cost of which survey to the State will be recouped or repaid to the State by the Joint Venturers upon demand after completion of the survey). Where the whole of mining area "B" or any part or parts thereof is included in the existing mineral lease the area or areas shall be deemed to be included in the definition of mineral lease given in clause 1 hereof (so far as the same relates to Mining Area "A") and for all purposes of this agreement with the exception of clauses 12 to 17 (inclusive) where the context so permits.

Secondary processing ⁴

12. (1) The Joint Venturers having commenced already to investigate the feasibility of establishing a plant for the secondary processing by the Joint Venturers within the said State of iron ore from the mineral lease will from time to time review this matter with a view to their being in a position before the end of year eight to submit to the Minister detailed proposals for such plant (capable ultimately of treating not less than two million (2,000,000) tons of iron ore per annum) containing provision that —

- (a) the plant will by the end of year 10 have the capacity to process at an annual rate of and will during the year 11 process not less than five hundred thousand (500,000) tons of iron ore;
- (b) production will progressively increase so that the plant will by the end of year 12 have the capacity to process at an annual rate of and will during the year 13 process not less than one million (1,000,000) tons of iron ore and by the end of year 16 will have the capacity to process at an annual rate of not less than and will during the year 17 process not less than two million (2,000,000) tons of iron ore;
- (c) the capital cost involved (exclusive of the cost referred to in clause 9(1) hereof) will be not less than eight million pounds (£8,000,000) unless the Joint Venturers utilise a less expensive but at least equally satisfactory method of secondary processing than any at present known to either party.

PROVIDED THAT if the Joint Venturers satisfy the Minister that the Joint Venturers' mining operations are not producing quantities of iron ore suitable for treatment at a rate of two million (2,000,000) tons of iron ore per annum on an economic basis then the Minister may approve modified or altered proposals and reduce the figure of two million (2,000,000) tons to a figure the Minister considers appropriate having regard to the prevailing circumstances but to not less than one million (1,000,000) tons per annum with provision for progressive increase to two million (2,000,000) tons per annum of a revised programme and on approving such modified or altered proposals the Minister may approve corresponding variations of the provisions of paragraphs (a) (b) and/or (c) of this subclause.

(2) If before the end of the year eight such proposals are submitted by the Joint Venturers to the Minister the State shall within two months of the receipt thereof give to the Joint Venturers notice either of its approval of the proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto and in either of the latter cases shall afford the Joint Venturers an opportunity to consult with and to submit new proposals to the Minister. If within thirty days of receipt of such notice agreement is not reached as to the proposals the Joint Venturers may within a further period of thirty 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 Joint Venturers the Minister shall be deemed to have then approved the proposals of the Joint Venturers.

(3) If such proposals are not submitted by the Joint Venturers to the Minister before the end of year 8 or if the proposals are so submitted but are not approved by the Minister within two months of receipt thereof or if the Joint Venturers shall have had such proposals approved and shall not have complied with their obligations thereunder then (subject to any extension of time granted hereunder).

- (a) the Joint Venturers shall not after the end of the year 10 export iron ore hereunder at an annual rate in excess of three million (3,000,000) tons of direct shipping ore per annum unless prior to year 8 the Minister shall have approved the Joint Venturers entering into a contract or contracts for export of ore after year 10 at an annual rate in excess of three million (3,000,000) tons of direct shipping ore; and

- (b) if by the end of the year 11 (or extended date if any) the State gives to the Joint Venturers notice that some other Company or party (hereinafter referred to as “the third party”) has agreed to establish a plant for secondary processing within the said State of 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 Joint Venturers hereunder this agreement will (subject to the provisions of subclauses (d) and (e) of clause 10 and of clause 15 hereof) cease and determine at the end of year 21 or at the date by which the third party has substantially established the plant referred to in this subclause in accordance with the terms agreed upon by the State and the third party whichever is the later

PROVIDED THAT if by the end of the year 11 (or extended date if any) the State has not given to the Joint Venturers the notice referred to in this subclause paragraph (a) of this subclause shall cease to have any effect and PROVIDED FURTHER that the Joint Venturers may at any time after the end of year 8 submit proposals as aforesaid if at that time they had not received the notice aforesaid and the provisions of subclause (2) of this clause shall apply to such proposals but (subject to any extension of time as aforesaid) the Joint Venturers may not submit proposals as aforesaid after the end of year 8 and before the end of year 11 if the Joint Venturers have received a notice from the Minister that he is negotiating with the third party and such notice has not been withdrawn.

(4) Subject to the provisions of clause 13 hereof and except as provided in paragraph (b) of subclause (3) of this clause this Agreement will continue in operation subject to compliance by the Joint Venturers with their obligations hereunder and with such proposals by the Joint Venturers as are approved by the Minister.

(5) Notwithstanding anything contained herein no failure by the Joint Venturers 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 Joint Venturers and subject to the provisions of clause 13 hereof the only consequence arising from such failure or non-approval (as the case may be) will be those set out in subclause (3) of this clause.

Industry for additional upgrading of beneficiated ore ⁴

13. (1) The Joint Venturers will in due course investigate the feasibility of establishing within the said State an industry for additional upgrading of beneficiated ore from the mineral lease by some form of semi-reduction direct

reduction or other mutually agreed process (the product of such industry being hereinafter referred to as “upgraded ore”) and will from time to time review this matter with a view to their 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 upgraded ore per annum) containing provision that —

- (a) by the end of the year 18 productive capacity of the industry will be at an annual rate of not less than and during the year 19 will be not less than two hundred and fifty thousand (250,000) tons of upgraded ore;
- (b) production will progressively increase so that by the end of year 21 productive capacity will be at an annual rate of not less than and during the year 22 production will be not less than five hundred thousand (500,000) tons of upgraded ore and by the end of year 25 productive capacity will be at an annual rate of not less than and during year 26 production will be not less than one million (1,000,000) tons of upgraded ore; and
- (c) the capital cost involved (exclusive of the cost referred to in Clause 9(1) hereof) will not be less than twenty million pounds (£20,000,000) if the Company has previously proceeded with the establishment of a plant for secondary processing within the terms of Clause 12 hereof or if the Company has not previously proceeded with the establishment of a plant for secondary processing within the terms of Clause 12 hereof the capital cost involved will not be less than thirty million pounds (£30,000,000) unless the Company utilizes a less expensive but at least equally satisfactory method of manufacture than any at present known to either party

PROVIDED however that if and whenever the Joint Venturers satisfy the Minister that the Joint Venturers’ mining operations are not producing quantities of iron ore suitable for treatment in the industry at a rate of not less than one million (1,000,000) tons of iron ore per annum on an economic basis or that annual production of upgraded ore at the rate of one million (1,000,000) tons per annum cannot be sold in the available markets at that time or that an alternative processing of iron ore is proposed by the Joint Venturers and is practicable then and in any such case the Minister may approve modified or altered proposals and reduce the figure of one million (1,000,000) tons to a figure the Minister considers appropriate having regard to prevailing circumstances but to not less than five hundred thousand (500,000) tons per

annum with provision for progressive increase to one million (1,000,000) tons per annum on a revised programme and in approving such modified proposals the Minister may approve corresponding variations of the provisions of paragraphs (a) (b) and/or (c) of this subclause.

(2) If before the end of year 17 such proposals are submitted by the Joint Venturers to the Minister the State shall within two months of the receipt thereof give to the Joint Venturers notice either of its 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 the Joint Venturers an opportunity to consult with and to submit new proposals to the Minister. If within thirty days of receipt of such notice agreement is not reached as to the proposals the Joint Venturers may within a further period of thirty 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 Joint Venturers the Minister shall be deemed to have then approved the proposals of the Joint Venturers.

(3) If such proposals are not submitted by the Joint Venturers 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 months after receipt thereof or if the Joint Venturers shall have had such proposals approved and shall not have complied with their obligations thereunder then (subject to any extension of time granted hereunder) and subject to the next following subclause —

- (a) the Joint Venturers shall not after the end of the year 18 export iron ore hereunder at an annual rate in excess of five million (5,000,000) tons of direct shipping ore per annum unless prior to year 17 the Minister shall have approved the Joint Venturers entering into a contract or contracts for export of iron ore after year 18 at an annual rate in excess of five million (5,000,000) tons of direct shipping ore; and
- (b) the Joint Venturers shall not after the end of the year 21 export iron ore hereunder at an annual rate in excess of three million (3,000,000) tons of direct shipping ore per annum unless prior to year 18 the Minister shall have approved the Joint Venturers entering into a contract or contracts for export of direct shipping ore after year 21 at an annual rate in excess of three million (3,000,000) tons.

(4) If such proposals are not submitted by the Joint Venturers 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 months after receipt thereof then (subject to any extension of time granted hereunder) if by the end of year 20 (or extended date if any) the State gives to the Joint Venturers notice that some other Company or party (hereinafter referred to as “the Fourth Party”) has agreed to establish either —

- (a) a plant for secondary processing within the said State of iron ore from the mineral lease (if proposals by the Joint Venturers for the establishment of such a plant have not previously been submitted to and approved by the Minister) on terms not more favourable on the whole to the Fourth Party than those proposed by or available to the Joint Venturers hereunder; or
- (b) an industry for additional upgrading of beneficiated ore aforesaid within the said State (using iron ore from the mineral lease) on terms not more favourable on the whole to the Fourth Party than those proposed by or available to the Joint Venturers hereunder —

then and in either case this Agreement will (subject to the provisions of subclauses (d) and (e) of clause 10 hereof and clause 16 hereof) cease and determine —

- (i) in the case of the Fourth Party proceeding with secondary processing then when the Fourth Party has substantially established the plant referred to in paragraph (a) of this subclause;
- (ii) in the case of the Fourth Party proceeding with an industry for additional upgrading of beneficiated iron ore aforesaid then (if proposals by the Joint Venturers for a plant for secondary processing have previously been submitted to and approved by the Minister) at the end of year 24 or at the date by which the Fourth Party has substantially established that industry whichever is the later; and
- (iii) in the case of the Fourth Party proceeding with an industry for additional upgrading of beneficiated iron ore aforesaid (if proposals by the Joint Venturers for a plant for secondary processing have not previously been submitted to and approved by the Minister) at the date by which the Fourth Party has substantially established that industry.

(5) If by the end of year 20 (or extended date if any) the State has not given to the Joint Venturers any such notice as is referred to in subclause (4) of this clause that subclause shall thereupon cease to have effect except that (to the extent they can from time to time operate) the provisions of subclause (4) of this clause shall revive (for period of three years) at the end of year 24 and at the end of each successive period of thirteen years thereafter in such a way that each year referred to in that subclause shall be read as the year thirteen years or (as the case may require) a multiple of thirteen years thereafter (subject to extensions of dates if any as aforesaid).

(6) The Joint Venturers may at any time after the end of year 17 submit proposals for an industry for additional upgrading of beneficiated iron ore aforesaid if at that time they have not received any notice under subclause (4) of this clause and the provisions of subclauses (1) and (2) 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 Joint Venturers with their obligations hereunder and with such proposals by the Joint Venturers as are approved by the Minister.

(8) Notwithstanding anything contained herein no failure by the Joint Venturers 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 Joint Venturers 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

14. The Third Party or the Fourth Party shall have substantially established a plant for secondary processing or an industry for additional upgrading of beneficiated ore when and not before the party's secondary processing plant has a capacity to treat not less than two million (2,000,000) tons of iron ore per annum or (as the case may be) that party's industry for upgrading of beneficiated ore has the capacity to produce one million (1,000,000) tons of upgraded ore per annum and in either case the Minister has notified the Joint Venturers that he is satisfied that that party will proceed *bona fide* to operate its plant or industry.

Terms not more favourable ⁴

15. In deciding whether for the purposes of clause 12 or clause 13 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 Joint Venturers regard shall be had *inter alia* to all the obligations which would have continued to devolve on the Joint Venturers had they proceeded with secondary processing or (as the case may be) an industry for the additional upgrading of beneficiated ore including their obligations to mine transport by rail and ship iron ore and restrictions relating thereto to pay rent additional rental and royalty and (in case of secondary processing by a third party pursuant to clause 12 hereof) to termination of rights as provided in clause 13 hereof if proposals for the upgrading of beneficiated ore are not brought to fruition 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 paragraph (e) of clause 10 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 PROVIDED HOWEVER that if after the end of year 24 the Minister gives notice to the Joint Venturers under clause 13 hereof that another company or party has agreed to establish either secondary processing or an industry for additional upgrading of beneficiated ore but not both then the latter company or party need not have any obligation to establish both.

Supply of iron ore by others ⁴

16. If at the date upon which this Agreement ceases and determines pursuant to clauses 12 or 13 hereof the Joint Venturers remain under any obligation for the supply of iron ore arising out of a contract or contracts entered into by the Joint Venturers with the consent of the Minister the Joint Venturers may give notice to the Minister that they desire the State to ensure that the Third Party (or the Fourth Party as the case may be) is obligated to discharge such remaining obligations to supply iron ore or to supply iron ore to the Joint Venturers into ships to enable them to discharge such obligations. Forthwith upon receipt of such notice the State will ensure that the Third Party (or the Fourth Party as the case may be) is obligated to discharge such obligations in accordance with such contract or contracts on a basis which is fair and reasonable as between the Joint Venturers and the Third Party (or the Fourth Party as the case may be) or if desired to supply iron ore to the Joint Venturers into ships on such fair and reasonable basis.

Supply of iron ore to others ⁴

17. The Joint Venturers covenant and agree with the State that should the Joint Venturers remain in possession of the mineral lease for any period during which the Third Party or the Fourth Party is operating or is ready to operate a plant for secondary processing of iron ore or an industry for additional upgrading of beneficiated ore then during such period (whenever commencing) the Joint Venturers will supply the Third Party or the Fourth Party or both (as the case may be) 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 grades (as may reasonably be available and be required);
- (ii) at such points on the Joint Venturers' railway;
- (iii) at such price; and
- (iv) on such other terms and conditions

as may mutually be agreed between the Joint Venturers 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 Joint Venturers (including reasonable allowance for depreciation and all overhead expenses) plus ten per centum of such total cost.

Alteration of works ⁴

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

Indemnity ⁴

19. The Joint Venturers will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with the construction maintenance or use by the Joint Venturers or their servants agents contractors or

assignees of the Joint Venturers' wharf railway or other works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

Assignment⁴

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

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

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

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

Variation⁴

21. (1) The parties hereto may from time to time by mutual agreement in writing add to cancel or vary all or any of the provisions of this Agreement or of any lease license easement or right granted hereunder or pursuant hereto for the purpose of implementing or facilitating the carrying out of such provisions or for the purpose of facilitating the carrying out of some separate part or parts of the Joint Venturers' operations hereunder by an associated company as a

separate and distinct operation or for the establishment or development of any industry making use of the minerals within the mineral lease or such of the Joint Venturers' works installations services or facilities the subject of this Agreement as shall have been provided by the Joint Venturers in the course of work done hereunder.

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

(3) Notwithstanding the foregoing provisions of this clause the Minister may from time to time approve variations or require reasonable variations in the detailed proposals relating to any railway or harbour 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 variations shall have regard to any changes consequent upon joint user proposals of any such works facilities or services and other relevant factors arising after the date hereof.

Export license ⁴

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

(2) If at any time the Commonwealth limits by export license the total permissible tonnage of iron ore for export from the said State then the Joint Venturers will at the request of the State and within three (3) months of such request inform the State whether or not they intend to export to the limit of the tonnage permitted to them under Commonwealth licenses in respect of the

financial year next following and if they do not so intend will co-operate with the State in making representation to the Commonwealth with a view to some other producer in the said State being licensed by the Commonwealth to export such of the tonnage permitted by the Commonwealth in respect of that year as the Joint Venturers do not require and such other producer may require. Such procedure shall continue to be followed year by year during such time as the Commonwealth limits by export license the total permissible tonnage of iron ore for export from the said State.

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

Delays ⁴

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

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

Power to extend periods ⁴

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

Arbitration ⁴

25. Any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Agreement or any such amendment variation or addition or as to the rights duties or liabilities of either party thereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the *Arbitration Act 1895*.

Notices ⁴

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

Exemption from Stamp Duty ⁴

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

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Joint Venturers or any permitted assignee of the Joint Venturers any tenement lease easement license or other right or interest;
- (c) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment made in conformity with the provisions of subclause (1) of clause 20 hereof; and
- (d) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment to or in favour of the Joint Venturers or an associated company of any interest right obligation power function or authority which has already been the subject of an assignment sublease disposition or appointment executed pursuant to subclause (1) or clause 20 hereof;

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

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

Interpretation ⁴

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

SCHEDULE

Western Australia

*IRON ORE (MOUNT GOLDSWORTHY) IRON ORE
DEPOSIT AGREEMENT ACT 1964 MINERAL LEASE*

paying therefor the rent and royalties as set out in the said Agreement. AND WE do hereby declare that this lease is subject to the observance and performance by the Joint Venturers of the following covenants and conditions, that is to say: —

1. The Joint Venturers shall and will use the land bona fide exclusively for the purposes of the said Agreement.
2. Subject to the provisions of the said Agreement the Joint Venturers shall and will observe, perform, and carry out the provisions of the *Mines Regulation Act 1846*, and all amendments thereof for the time being in force and the regulations for the time being in force made thereunder and subject to and also as modified by the said Agreement the Mining Act so far as the same affect or have reference to this lease.

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

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

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

THE SCHEDULE ABOVE REFERRED TO:

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

SIGNED SEALED AND DELIVERED by the said The HONOURABLE DAVID BRAND, M.L.A. in the presence of —	} } } }	DAVID BRAND [L.S.]
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C. W. Court
Minister for Industrial Development

Second Schedule — First Variation Agreement

[s. 3]

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

IRON ORE (MOUNT GOLDSWORTHY) AGREEMENT

THIS FIRST VARIATION AGREEMENT made this 26th day of August 1971 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 CONSOLIDATED GOLD FIELDS AUSTRALIA LIMITED a Company incorporated under the Companies Ordinances of the Australian Capital Territory and having its executive office at Gold Fields House, Sydney Cove in the State of New South Wales and its registered office in the State of Western Australia (hereinafter referred to as “the said State”) at 156 Saint George’s Terrace, Perth, CYPRUS MINES CORPORATION a Corporation incorporated in the State of New York in the United States of America and having its executive offices situate at 1234 Pacific Mutual Building, 523 West Sixth Street, Los Angeles California in the United States of America and UTAH DEVELOPMENT COMPANY a Corporation incorporated under the laws of the State of Nevada in the United States of America with its executive offices situate at 550 California Street, San Francisco in the said United States of America and having its registered office in the State of Queensland at Pearl Assurance House at the corner of Queen and Eagle Streets, Brisbane (hereinafter called “the Joint Venturers” in which term shall be included the Joint Venturers and each of them and their and each of their respective successors and assigns) of the other part.

WHEREAS: —

- (a) by an Agreement dated the 15th day of October, 1964 (hereinafter called “the Goldsworthy Agreement”) made between THE HONOURABLE DAVID BRAND, M.L.A., Premier and Treasurer of the State of Western Australia, acting for and on behalf of the said State and Instrumentalities thereof of the one part and CONSOLIDATED GOLD FIELDS (AUSTRALIA) PTY. LIMITED, CYPRUS MINES CORPORATION and UTAH CONSTRUCTION & MINING CO. of the other part CONSOLIDATED GOLD FIELDS (AUSTRALIA) PTY. LIMITED, CYPRUS MINES CORPORATION and UTAH

CONSTRUCTION & MINING CO. acquired upon the terms and conditions contained in the Goldsworthy Agreement certain rights interests and benefits and assumed certain obligations with respect to: —

- (i) the exploration for and development of iron ore deposits in the mining areas as therein defined and the mining transportation and shipment of iron ore therefrom; and
 - (ii) the investigation of the feasibility of establishing secondary processing operations and an industry for the additional upgrading of beneficiated ore.
- (b) the Goldsworthy Agreement was approved by the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*.
 - (c) by clause 21 of the Goldsworthy Agreement the parties thereto may from time to time by mutual agreement in writing (*inter alia*) add to cancel or vary all or any of the provisions of that Agreement or of any lease license easement or right granted thereunder or pursuant thereto for the purpose of implementing or facilitating the carrying out of such provisions.
 - (d) by assignment dated the 28th day of February, 1970 pursuant to the provisions of the Goldsworthy Agreement, Utah Construction & Mining Co. assigned to Utah Development Company all of its right title and interest in and to the Goldsworthy Agreement;
 - (e) Consolidated Gold Fields (Australia) Pty. Limited changed its name to Consolidated Gold Fields Australia Limited on the 28th day of September, 1966;
 - (f) pursuant to clause 21 of the Goldsworthy Agreement the parties hereto have agreed to vary the Goldsworthy Agreement in the manner hereinafter appearing.

NOW THIS AGREEMENT WITNESSETH: —

1. In this Agreement subject to the context words and phrases to which meanings are given under clause 1 of the Goldsworthy Agreement (other than words and phrases to which meanings are given in this Agreement) shall have the same respective meanings in this Agreement as are given to them under clause 1 of the Goldsworthy Agreement.

2. (1) The provisions of this Agreement other than subclause (2) of this clause shall not come into operation until the Bill referred to in that subclause has been passed by the Parliament of Western Australia and comes into operation as an Act;

(2) The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to the Thirtyfirst day of December, 1971;

(3) If the said Bill is not passed prior to the 31st day of December, 1971 this Agreement shall 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 permitted to be done or performed under this Agreement;

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

3. The Goldsworthy Agreement is hereby varied as follows: —

(1) by deleting from clause 1 the definition of “f.o.b. revenue” and substituting a new definition as follows: —

“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 ultimate purchaser or the person smelting the ore to the Joint Venturers or an associated company, less all export duties and export taxes and all costs and charges properly incurred and paid by the Joint Venturers to a third party after the departure of the ship on which the ore is loaded from the Joint Venturers’ wharf to the time the same is delivered and accepted by the ultimate purchaser or the person smelting the ore, including —

- (1) ocean freight;
- (2) marine insurance;
- (3) port and handling charges at the port of discharge;
- (4) costs incurred in delivering the ore from the port of discharge to the ultimate purchaser or the person smelting the ore;

- (5) all weighing, sampling, assaying, inspection and representation costs at the port of discharge;
- (6) shipping agency charges;
- (7) all import taxes by the country of the port of discharge; and
- (8) such other costs and charges as the Minister may in his discretion consider reasonable in respect of any shipment or sale.

For the purposes of this definition —

- (a) the expression “export duties and export taxes” shall refer to taxes payable by the Joint Venturers to the Commonwealth directly relating to the export of iron ore but excluding any State taxes, duties or charges and any taxes, duties or charges levied by the Commonwealth for or on behalf of the State.
 - (b) a cost or charge shall be deemed to be properly incurred if the Minister in his discretion so determines and in making his determination the Minister may have regard to such matters as the parties to and the bona fide nature of the transaction, resulting in the cost or charge.
- (2) by inserting in the definition of “mineral lease” after the word “hereof” in the penultimate line thereof the words “and any mineral lease granted under the provisions of clause 12(4) hereof” and after the word “thereof” at the end of such definition the word “respectively”;
 - (3) by deleting from the definition of “mining area “B” ” the words “blue on the plan marked “B” ” in the second line thereof and substituting the words “blue and yellow on the plan marked “B1” ”;
 - (4) by deleting from clause 11 —
 - (a) in the marginal note the words “and Mining Area “C” ”;
 - (b) in subclause (1) —
 - (i) in the fifth line the word “firstly” and the word “and”;
 - (ii) in the sixth line the words “secondly of mining area “C” ”, and

- (iii) in the twelfth and fourteenth lines the words “those mining areas” and substituting the words “that mining area”;
 - (c) in subclause (2) in the fifth and sixth lines the words “and of mining area “C” or any part or parts thereof”;
 - (d) in subclause (2)(a) —
 - (i) in the first and second lines of sub-paragraph (ii) the words “those mining areas” and substituting the words “mining area “B” ”;
 - (ii) sub-paragraphs (iii) and (v);
 - (iii) in the first line of sub-paragraph (vii) the words “those mining areas” and substituting the words “mining area “B” ”;
 - (iv) in paragraph (b) all words down to and including the word “secondly” in the fifth line and all words after the words “mining area “B” ” in the penultimate line;
 - (e) in subclause (4) in the twentysixth line the words “those mining areas or any part or parts thereof respectively” and substituting the words “mining area “B” or any part or parts thereof”;
 - (f) in subclause (5) in the twentysecond and twentythird lines the words “those mining areas or any part or parts thereof respectively” and substituting the words “mining area “B” or any part or parts thereof”;
 - (g) in subclause (6) in the second and third lines the words “and mining area “C” or any part or parts thereof respectively” and substituting the words “or any part or parts thereof (not exceeding in the aggregate area 300 square miles inclusive of the area of the original mineral lease granted under clause 8(2)(a) hereof and the area of any mineral lease to be granted under clause 12(4) hereof and in the shape of a parallelogram or parallelograms)”;
- (5) by inserting in subclause (6) of clause 11 in the fifteenth line after the passage “mineral lease”)” the passage “of the land so applied for (notwithstanding that 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”);

(6) by deleting from subclause (7) of clause 11 —

- (a) in the third, fourth and fifth lines the passage “those mining areas being mining area “B” or mining area “C” or any part or parts thereof respectively” and substituting the passage “mining area “B” or any part or parts thereof”;
- (b) in the sixth, seventh and eighth lines the passage “those mining areas or any of them or any part or parts thereof respectively” and substituting the passage “mining area “B” or any part or parts thereof”;

(7) by deleting clause 12 and inserting a new clause 12 as follows: —

“Mining Area C and Secondary Processing”⁴

12. (1) The Joint Venturers shall in respect of mining area “C” —

- (a) continue with an exploration and study programme satisfactory to the State and keep the State fully informed at three monthly intervals thereafter of progress in respect thereof and complete such programme by 31st December, 1972;
- (b) by 31st December, 1974 submit to the Minister detailed proposals for a plant for secondary processing of iron ore from Mining Area “C” together with detailed proposals for any works or services or further works or services as are necessary in connection therewith;
- (c) the detailed proposals for such plant shall be for a plant capable ultimately of treating not less than two million (2,000,000) tons of iron, ore per annum and shall contain provision that —
 - (i) the plant will by the end of the year 1976 have the capacity to process at an annual rate of and will during the year 1977 process not less than five hundred thousand (500,000) tons of iron ore;
 - (ii) production will progressively increase so that the plant will by the end of the year 1978 have the

capacity to process at an annual rate of and will during the year 1979 process not less than one million (1,000,000) tons of iron ore and by the end of the year 1982 will have the capacity to process at an annual rate of not less than and will during the year 1983 process not less than two million (2,000,000) tons of iron ore;

- (iii) the capital cost involved (exclusive of the cost referred to in clause 9(1) hereof) will be not less than sixteen million dollars (\$16,000,000) unless the Joint Venturers utilise a less expensive but at least equally satisfactory method of secondary processing than any at present known to either party.

PROVIDED THAT if the Joint Venturers satisfy the Minister that the Joint Venturers' mining operations are not producing quantities of iron ore suitable for treatment at a rate of two million (2,000,000) tons of iron ore per annum on an economic basis then the Minister may approve modified or altered proposals and reduce the figure of two million (2,000,000) tons to a figure the Minister considers appropriate having regard to the prevailing circumstances but to not less than one million (1,000,000) tons per annum with provision for progressive increase to two million (2,000,000) tons per annum on a revised programme and on approving such modified or altered proposals the Minister may approve corresponding variations of the provisions of sub-paragraphs (i) (ii) and/or (iii) of this paragraph.

(2) If by the 31st December, 1974 such proposals are submitted by the Joint Venturers to the Minister the State shall within two months of the receipt thereof give to the Joint Venturers notice either of its approval of the proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto and in either of the latter cases shall afford the Joint Venturers an opportunity to consult with and to submit new proposals to the Minister. If within thirty days of receipt of such notice agreement is not reached as to the proposals the Joint Venturers may within a further period of thirty 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 Joint Venturers the Minister shall be deemed to have then approved the proposals of the Joint Venturers.

(3) If such proposals are not approved by the Minister or if by the award on arbitration the question is decided in favour of the Minister the State will not grant mining area "C" to any party other than the Joint Venturers until after 31st December, 1975. Thereafter the State will not grant mining area "C" to any other party on terms more favourable on the whole than those available to the Joint Venturers until after the 31st December, 1979.

(4) If and when the Minister has approved or is deemed to have approved the Joint Venturers' proposals pursuant to this clause the Joint Venturers may apply for a mineral lease of mining area "C" or any part or parts thereof (not exceeding in aggregate area 300 square miles inclusive of the areas of the original mineral lease granted under clause 8(2)(a) hereof and the second mineral lease if granted under clause 11(6) hereof and in the shape of a parallelogram or parallelograms) and the Minister shall cause any necessary survey to be made of the land so applied for (the cost of the survey to the State to be recouped to the State by the Joint Venturers on demand after completion of the survey) and shall cause to be granted to the Joint Venturers as tenants in common in equal shares a mineral lease (hereafter referred to as "the third 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 lease in the Schedule hereto for a term which subject to the payment of rents and royalties hereinbefore mentioned and the performance and observance by the Joint Venturers of their obligations under the mineral lease shall be for a period commencing from the date of issue of the third mineral lease for a period co-extensive with the residue of the term then unexpired of the original mineral lease granted under clause 8(2)(a) hereof with rights to successive renewals of twenty-one (21) years upon the same terms and subject to earlier determination upon the cessation or determination of this Agreement.

(5) If and when such proposals are approved or deemed to have been approved by the Minister the Joint Venturers will as

soon as reasonably practicable thereafter commence the construction of the plant and of the other works and services and proceed progressively therewith and complete the same in accordance with the proposals and within the respective times specified herein.

(6) If the Joint Venturers' proposals as finally approved or as deemed to have been approved by the Minister require the State to provide any services or facilities (including any expanded services or facilities which from time to time are considered necessary by the Minister) the State will provide the same subject to the Joint Venturers bearing and paying the capital cost involved if reasonably attributable to or resulting from the Joint Venturers' project and operations hereunder and reasonable charges for maintenance and operation except operation charges in respect of education, hospital and police services, except where and to the extent the State otherwise agrees.

(7) If the Joint Venturers fail to comply with paragraph (a) of subclause (1) of this clause or if the proposals are not submitted by the Joint Venturers to the Minister by the 31st December, 1974 or if the proposals are so submitted but are not approved or deemed to have been approved by the Minister before 31st December, 1975 then subject to the provisions of subclause (3) of this clause the Joint Venturers shall cease to have any rights to mining area "C" and —

- (a) the Joint Venturers shall not after the 31st day of December, 1976 export iron ore won from the mineral lease and/or the second mineral lease at an annual rate in excess of three million (3,000,000) tons of direct shipping ore and two million (2,000,000) tons of fine ore, fines or other iron ore per annum unless prior to the 31st day of December, 1978 the Minister shall have approved in writing of the Joint Venturers entering into a contract or contracts for export of ore after the 31st day of December, 1980 at an annual rate in excess of three million (3,000,000) tons of direct shipping ore and two million (2,000,000) tons of fine ore, fines or other iron ore per annum provided that if the Joint Venturers have complied with paragraph (a) of subclause (1) of this clause and can demonstrate to the reasonable

satisfaction of the Minister that it is impracticable to submit proposals acceptable to the Minister which could be economically viable then the Minister may at his discretion permit the export of greater tonnages than those abovementioned in this paragraph;

- (b) if it is proved at any time hereafter that the iron ore deposits in the area of the second mineral lease (excluding for the purposes of this paragraph mineral lease 235 SA) are greater by twenty per cent in the aggregate for each of the forty-eight million (48,000,000) tons of high grade ore (sixty per cent (60%) and higher in FE content) and the seventy-nine million (79,000,000) tons of low grade ore (minus sixty per cent (60%) in FE content) now estimated to be available the conditions of this Agreement in relation to the future mining of iron ore from the mineral lease (including the second mineral lease) shall be renegotiated by the parties hereto with a view to increasing the obligations and commitments of the Joint Venturers to the State as determined by mutual agreement and failing agreement as shall be determined by arbitration. In determining the new conditions regard shall be had to the overall economies of mining, transporting, processing and marketing of the additional iron ore available. Additional obligations or commitments to be undertaken by the Joint Venturers as part of such new conditions may take the form of higher royalties, rents, wharfage and other charges (or a combination of such charges) or contributions for the purpose of providing additional works or services or of some form of processing iron ore or a combination of any of these. On the determination by agreement or by arbitration of such new conditions this Agreement shall be deemed to have been varied by mutual consent of the parties hereto and as so varied shall operate accordingly;”

- (8) by inserting in clause 13(1) —

- (a) in the fourth line after the word “the” the word “third”;

- (b) in the third line of the proviso after the word “operations” the words “on the third mineral lease”;
- (9) by inserting in clause 13(3) —
 - (a) in the second line of paragraph (a) in substitution for the word “hereunder” the words “won from the third mineral lease”;
 - (b) in the second line of paragraph (b) in substitution for the word “hereunder” the words “won from the third mineral lease”;
 - (c) in the seventh line of paragraph (b) after the word “ore” the words “won from the third mineral lease”;
- (10) by inserting in clause 13(4) —
 - (a) in the second line of paragraph (a) after the word “the” the word “third”;
 - (b) in the third line of paragraph (b) after the word “the” the word “third”;
 - (c) in the twenty-fourth line of the subclause after the word “Agreement” the words “but only as regards the third mineral lease and that lease itself”;
- (11) by inserting in clause 13(7) in the second line after the word “Agreement” the words “as regards the third mineral lease”;
- (12) by inserting in clause 15 in the sixth line after the word “Venturers” the passage “as regards the third mineral lease”;
- (13) by inserting in clause 16 —
 - (a) in the first line after the word “Agreement” the passage “as regards the third mineral lease”;
 - (b) in the fourth, ninth, tenth and eighteenth lines after the word “ore” the passage “won from the third mineral lease”;
- (14) by inserting in clause 17 —
 - (a) in the third line after the word “the” the word “third”;

- (b) in the fifth line after the word “ore” the passage “won from the third mineral lease”;
- (c) in the sixth line after the word “ore” the passage “(using iron ore won from the third mineral lease)”;
- (d) in the ninth line after the word “the” secondly occurring the word “third”;

(15) by substituting for the passage “on direct shipping ore (not being locally used ore)” in clause 9(2)(j)(i) thereof the passage “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)”;

(16) by substituting for the passage “on fine ore (not being locally used ore)” in clause 9(2)(j)(ii) thereof the passage “on fine ore sold or shipped separately as such (not being locally used ore)”;

(17) by substituting for the passage “on fines (not being locally used ore)” in clause 9(2)(j)(iii) thereof the passage “on fines sold or shipped separately as such (not being locally used ore)”;

(18) by substituting for subparagraph (iv) of clause 9(2)(j) thereof the following subparagraph —

“(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 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 cents (15c) per ton;”

(19) by deleting the words “(for averaging purposes)” in the first line of subparagraph (vi) and in the first line of subparagraph (vii) of clause 9(2)(j) thereof;

(20) by adding the words “separately as such” after the words “shipped or sold” where twice appearing in clause 9(2)(j)(vii) thereof;

(21) by substituting for the last seven lines of subparagraph (viii) of clause 9(2)(j) thereof the passage “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.”

(22) by adding the following paragraph after clause 9(2)(k) thereof —

“(kk) pay to the State in addition to the royalty payable under paragraph (j) of this subclause a royalty (hereinafter referred to as “the additional royalty”) on all iron ore from the mineral lease shipped or sold (other than iron ore shipped solely for testing purposes) at the rate of eight cents (8c) per ton as follows: —

- (i) the additional royalty shall be payable only in respect of the financial years commencing in 1970, 1971, 1972 and 1973 inclusive and shall aggregate not less than 1.9 million dollars; and
- (ii) the obligation of the Joint Venturers in respect of the additional royalty shall not exceed \$475,000 in any financial year and if the State so requires, this amount shall be paid at the commencement of each financial year in full satisfaction of the Joint Venturers’ liability to pay the additional royalty for that financial year.”

(23) by adding after clause 12 thereof a new clause 12A namely —

“Grant of Leases Licences Reserves and Tenements”⁴

12A. (1) As soon as conveniently may be after the proposals of the Joint Venturers under either clause 11 or clause 12 hereof have been approved or deemed to have been approved the State shall grant to the Joint Venturers or to a company nominated by the Joint Venturers and approved by the Minister (referred to in this clause as “the nominated

company”) such leases licenses reserves and tenements under the provisions of the Mining Act or the Land Act as the Joint Venturers may reasonably require and request for their purposes under such proposals respectively and the provisions of clause 8(2)(b) hereof shall apply thereto *mutatis mutandis*.

(2) The Joint Venturers hereby covenant with the State that the Joint Venturers will duly and punctually observe perform and comply with all the covenants agreements and obligations to be performed or observed by the nominated company contained in any lease license reserve and tenement and any renewal thereof granted pursuant to the provisions of subclause (1) of this clause to the intent that the same shall be binding upon the Joint Venturers in the same manner and to the same extent as if the Joint Venturers were expressly named therein severally with the nominated company and the Joint Venturers acknowledge that a default by the nominated company in the due performance or observance of any such covenant agreement or obligation shall be or be deemed to be a default under paragraph (1) of clause 10 hereof by the Joint Venturers in the due performance or observance of that covenant agreement or obligation and that default entitles the State to exercise against the Joint Venturers its rights powers and remedies under and in conformity with that paragraph.”

(24) by deleting clause 21 and inserting a new clause 21 as follows —

“Variation ⁴

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

(2) Where in the opinion of the Minister an agreement made pursuant to subclause (1) of this clause would constitute a material or substantial alteration of the rights or obligations of either party hereto, the agreement shall contain a provision to that effect and the Minister shall cause that agreement to be

laid on the table of each House of Parliament within twelve 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.

(4) Subject to the provisions of subclauses (1) (2) and (3) of this clause the Minister may with the consent of the Joint Venturers from time to time add to cancel or vary any right or obligation relating to works for the transport and/or export of iron ore to the extent that the addition cancellation or variation implements or facilitates the method of achieving any of the purposes of iron ore export, secondary processing, or for an industry for additional upgrading of beneficiated ore based on ore from the mineral lease.

(5) Subject to the provisions of subclauses (1) (2) and (3) of this clause the Minister may from time to time approve variations or require reasonable variations in the detailed proposals relating to any railway or harbour 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 variations shall have regard to any changes consequent upon joint user proposals of any such works facilities or services and other relevant factors arising after the date hereof.”

(25) by deleting clause 25 and inserting a new clause 25 as follows —

“Arbitration⁴

25. Except where otherwise specifically provided in this Agreement any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Agreement or any such amendment variation or addition or as to the rights duties or liabilities of either party 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*, but this clause does not apply to any case where the State the Minister or any Minister is by this Agreement given either expressly or impliedly a discretionary power.”

(26) by adding after clause 27 thereof a new clause 28 namely —

“Environmental Protection”⁴

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

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

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

JOHN T. TONKIN

H. E. GRAHAM
Minister for Industrial Development

D. G. MAY
Minister for Mines

SIGNED SEALED AND DELIVERED
for and on behalf of CONSOLIDATED
GOLD FIELDS AUSTRALIA LIMITED
by its duly appointed attorney
BARTHOLOMEW CARRACK RYAN
in the presence of —

}
}
}

B. C. RYAN
[L.S.]

D. E. MOORE

SIGNED SEALED AND DELIVERED
for and on behalf of CYPRUS MINES
CORPORATION by its duly appointed
attorney BARTHOLOMEW CARRACK
RYAN in the presence of —

}
}
}

B. C. RYAN
[L.S.]

D. E. MOORE

SIGNED SEALED AND DELIVERED
for and on behalf of UTAH
DEVELOPMENT COMPANY by its
duly appointed attorney
BARTHOLOMEW CARRACK RYAN
in the presence of —

}
}
}

B. C. RYAN
[L.S.]

D. E. MOORE

[Second Schedule inserted by No. 58 of 1971 s. 5.]

Third Schedule — Second Variation Agreement

[s. 3]

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

THIS AGREEMENT is made the 31st day of March 1994

B E T W E E N

THE HONOURABLE RICHARD FAIRFAX COURT B.Com., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part AND **BHP IRON PTY. LTD.** ACN 008 852 784 (formerly called CGF Iron Holdings Pty. Ltd.) a company incorporated in the State of Western Australia and having its registered office at Mt Newman House, 200 St George’s Terrace, Perth, **BHP AUSTRALIA COAL PTY. LTD.** ACN 010 595 721 (formerly called BHP-UTAH Coal Limited) a company incorporated in the State of Queensland and having its registered office situate at 20th Floor, 167 Eagle Street, Brisbane, **CI MINERALS AUSTRALIA PTY. LTD.** ACN 009 256 259 a company incorporated in the State of Western Australia and having its registered office at 22nd Floor, Forrest Centre, 221 St George’s Terrace, Perth and **MITSUI IRON ORE CORPORATION PTY. LTD.** ACN 050 157 456 a company incorporated in the State of Western Australia and having its registered office at 24th Floor, Forrest Centre, 221 St George’s Terrace, Perth (hereinafter called “the Joint Venturers”) of the other part.

WHEREAS:

- (a) the State and the Joint Venturers (pursuant to certain assignments) are now the parties to the agreement (as amended from time to time) approved by the *Iron Ore (Mount Goldsworthy) Agreement Act 1964* (hereinafter called “the Principal Agreement”);
- (b) the State and the Joint Venturers wish to vary the Principal Agreement.

NOW THIS AGREEMENT WITNESSES —

1. Unless the context otherwise requires the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.

2. The State shall introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1994 or such later date as may be agreed between the parties hereto.
3. (1) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation unless and until —
 - (a) the Bill to ratify this Agreement as referred to in Clause 2; and
 - (b) Bills to ratify the following agreements of even date herewith, namely: —
 - (i) an agreement between the State of the one part and BHP Minerals Pty. Ltd. of the other part called the Iron Ore Processing (BHP Minerals) Agreement;
 - (ii) an agreement between the State of the one part and BHP Minerals Pty. Ltd., Mitsui Iron Ore Corporation Pty. Ltd. and CI Minerals Australia Pty. Ltd. of the other part to vary the Iron Ore (Marillana Creek) Agreement; and
 - (iii) an agreement between the State of the one part and BHP Iron Ore (Jimblebar) Pty. Ltd. of the other part to vary the Iron Ore (McCamey's Monster) Agreementare passed as Acts before 31 December 1994 or such later date if any as the parties hereto may agree upon.
- (2) If before 31 December 1994 or such later agreed date the said Bills have not commenced to operate as Acts then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (3) On the said Bills commencing to operate as Acts all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

4. The Principal Agreement is hereby varied as follows —

(1) Clause 10(a) —

by inserting after “generate” the following —

“or purchase their electricity requirements from generating facilities established under the agreement (as amended from time to time) ratified by the *Pilbara Energy Project Agreement Act 1994*”.

(2) Clause 12 —

(a) in the marginal note, by deleting “and Secondary Processing”;

(b) by deleting subclauses (1), (2) and (3) and substituting the following subclauses —

“(1) In this clause —

“**aggregate project cost under the Processing Agreement**” means the sum of \$400,000,000 (June 1993 dollars) which is agreed or determined for the purposes of Clause 27 of the Processing Agreement to have been expended on the establishment of facilities for further processing or alternative investments pursuant to that Agreement;

“**approved production limit under this clause**” means the production level (if any) of tonnes of iron ore per annum for transportation from the third mineral lease consented to by the Minister pursuant to subclauses (3a) or (3b) of this clause or such higher number of tonnes per annum as may be consented to from time to time by the Minister pursuant to subclause (8) of this clause and become the subject of proposals approved or deemed to be approved pursuant to subclause (9) of this clause;

“**BHP**” means BHP Minerals Pty. Ltd. and its successors and assigns who are parties with the State to the Processing Agreement;

“**combined limit**” means the aggregate of —

(i) any approved production limit under this clause;

- (ii) the approved production limit under clause 11 of the Marillana Creek Agreement; and
- (iii) any approved production limit under clause 11A of the McCamey's Monster Agreement

PROVIDED THAT if any of the approved production limits referred to in paragraphs (i), (ii) or (iii) exceeds 15,000,000 tonnes per annum then in calculating the combined limit such approved production limit shall be treated as being 15,000,000 tonnes per annum;

"EP Act" means the *Environmental Protection Act 1986*;

"laws relating to traditional usage" means laws applicable from time to time in Western Australia in respect of rights or entitlements to or interests in land or waters which rights, entitlements or interests are acknowledged, observed or exercisable by Aboriginal persons (whether communally or individually) in accordance with Aboriginal traditions, observances, customs or beliefs;

"Marillana Creek Agreement" means the agreement (as amended from time to time) ratified by the *Iron Ore (Marillana Creek) Agreement Act 1991*;

"McCamey's Monster Agreement" means the agreement (as amended from time to time) the execution of which was authorized by the *Iron Ore (McCamey's Monster) Agreement Authorization Act 1972*;

"Processing Agreement" means the agreement (as amended from time to time) ratified by the *Iron Ore Processing (BHP Minerals) Agreement Act 1994*;

"the third mineral lease" means the mineral lease granted pursuant to subclause (4) of this clause.

- (2) The Joint Venturers shall in respect of mining area 'C' —
 - (a) continue their field and office engineering, environmental, market and finance studies and other matters necessary to enable them to finalise and to submit to the Minister the detailed proposals referred to in subclause (3c) of this clause; and

- (b) keep the State fully informed in writing not more frequently than once in every two years as to the progress and results of their operations under paragraph (a) of this subclause.
- (3) Prior to submitting any proposal pursuant to subclause (3c) of this clause the Joint Venturers shall obtain the consent in principle of the Minister to an approved production limit under this clause. When requesting a consent under this subclause the Joint Venturers shall furnish to the Minister an outline of their proposals in respect to production of iron ore from the third mineral lease (including the matters mentioned in paragraph (a) - (k) of subclause (3c) of this clause).
- (3a) The Minister shall advise the Joint Venturers within two months of receipt by the Minister of a request under subclause (3) of this clause whether or not he consents in principle to the proposed production limit PROVIDED THAT the Minister shall consent in principle to the proposed production limit —
 - (a) if the aggregate project cost under the Processing Agreement has been expended; or
 - (b) if the aggregate project cost under the Processing Agreement has not been expended and:
 - (i) the obligations of BHP under the Processing Agreement have been and are being properly performed and complied with; and
 - (ii) the proposed production limit would not result in the approved production limit under this clause exceeding 15,000,000 tonnes per annum or the combined limit exceeding 30,000,000 tonnes per annum.
- (3b) If the aggregate project cost under the Processing Agreement has not been expended and:
 - (i) the obligations of BHP under the Processing Agreement have been and are being properly performed and complied with; and

- (ii) the proposed production limit would result in the approved production limit under this clause exceeding 15,000,000 tonnes per annum or the combined limit exceeding 30,000,000 tonnes per annum,

the Minister may consent in principle to the whole or part of a proposed production limit or withhold his approval, of the proposed production limit. The Minister shall give reasons for his decision if he withholds his approval, but his decision shall not be referable to arbitration under this Agreement or otherwise be the subject of challenge by the Joint Venturers.

- (3c) Subject to and in accordance with the EP Act, the laws relating to traditional usage and the provisions of this Agreement, the Joint Venturers shall on or before the 31st day of December 1999 submit to the Minister to the fullest extent reasonably practicable their detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister) with respect to the mining of iron ore for transportation from the land to be the subject of the third mineral lease up to the approved production limit under this clause which proposals shall make provision for the necessary workforce and associated population required to enable the Joint Venturers to mine and recover iron ore from the third mineral lease and shall include the location, area, layout, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely —
 - (a) the mining and recovery of iron ore from the third mineral lease including mining crushing screening handling transport and storage of iron ore and plant facilities;
 - (b) roads;
 - (c) housing and accommodation for the persons engaged in the development and/or mining of the third mineral lease and associated activities including the provision of utilities, services and associated facilities;
 - (d) water supply;

- (e) power supply;
 - (f) iron ore transportation;
 - (g) airstrip and other airport facilities and services;
 - (h) any other works, services or facilities desired by the Joint Venturers;
 - (i) use of local labour professional services manufacturers suppliers contractors and materials;
 - (j) any leases licences or other tenures of land required from the State; and
 - (k) an environmental management programme as to measures to be taken, in respect of the Joint Venturers' activities at the mining area for rehabilitation and the protection and management of the environment.
- (3d) The proposals pursuant to subclause (3c) of this clause may with the approval of the Minister or if so required by him be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (k) of that subclause.
- (3e) The proposals relating to any of the matters mentioned in subclause (3c) of this clause may with the agreement of the Minister and that of any third parties concerned instead of providing for the construction of new facilities of the kind therein mentioned provide for the use by the Joint Venturers upon reasonable terms and conditions of any existing facilities of such kind.
- (3f) Subject to the EP Act and laws relating to traditional usage in respect of each proposal pursuant to subclause (3c) the Minister shall —
- (a) approve of the said proposals either wholly or in part without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Joint Venturers submit a further proposal or proposals in respect of some other of the

matters mentioned in subclause (3c) of this clause not covered by the said proposals; or

- (c) require as a condition precedent to the giving of his approval to the said proposals that the Joint Venturers 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 alterations or 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 Joint Venturers make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

- (3g) The Minister shall within two months after receipt of proposals pursuant to subclause (3c) of this clause or, if applicable, within two months of service on him of an authority under section 45(7) of the EP Act or satisfaction of the requirements under laws relating to traditional usage (as the case may be) give notice to the Joint Venturers of his decision in respect of the proposals.
- (3h) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (3f) of this clause the Minister shall afford the Joint Venturers full opportunity to consult with him and should they so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (3i) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (3f) of this clause and the Joint Venturers consider that the decision is unreasonable the Joint Venturers within two months after receipt of the notice mentioned in subclause (3f) of this clause 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 (3f) of this clause shall not be referable to arbitration hereunder.

- (3j) An award made on an arbitration pursuant to subclause (3i) of this clause shall have force and effect as follows —
- (a) if by the award the dispute is decided against the Joint Venturers then, unless the Joint Venturers within 3 months after delivery of the award give notice to the Minister of their acceptance of the award, then the proposals submitted pursuant to subclause (3c) shall be deemed to be withdrawn by the Joint Venturers, PROVIDED THAT if the date of expiration of that period of 3 months occurs after 31st December 1999 then this clause and the Joint Venturers' rights under this clause shall cease and determine and neither the State nor the Joint Venturers shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this clause; or
 - (b) if by the award the dispute is decided in favour of the Joint Venturers the decision shall take effect as (and be deemed to be) a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.
- (3k) Notwithstanding that under subclause (3f) of this clause any proposals of the Joint Venturers are approved by the Minister or are deemed to be approved as a consequence of an arbitration award, unless each and every such proposal and matter is so approved or deemed approved within 12 months of the date of the submission of the last of the proposals pursuant to subclause (3c) or by such extended date or period if any as the Joint Venturers shall be granted or entitled to pursuant to the provisions of this Agreement, then the Minister may give to the Joint Venturers notice that unless before the expiration of a further period of 12 months all the said proposals and matters are so approved or deemed to be approved then the said proposals shall be deemed to be withdrawn by the Joint Venturers and the proviso to paragraph (a) of subclause (3j) of this clause shall apply mutatis mutandis.

- (3l) Subject to and in accordance with the EP Act and any approvals and licences required under that Act and laws relating to traditional usage the Joint Venturers shall, subject to paragraph (a) of subclause (3j) of this clause, implement the proposals as approved by the Minister or an award made on arbitration as the case may be in accordance with the terms thereof.
- (3m) The periods set forth in subclause (3k) of this clause will be extended (in addition to any extension granted pursuant to clauses 23 or 24) upon request of either the Joint Venturers or the State for such reasonable period or periods as may be necessary from time to time to enable either of the parties hereto to comply with laws relating to traditional usage.
- (c) subclause (4) —
by deleting “(hereinafter referred to as “the third mineral lease”)”.
- (d) by deleting subclauses (5), (6), and (7) and substituting the following subclauses —
- “(5) (a) Subject to subclauses (6) to (9) of this clause if the Joint Venturers at any time during the continuance of this Agreement desire to produce more than the approved production limit under this clause or to significantly modify expand or otherwise vary their activities within the third mineral lease beyond those specified in any proposals approved or deemed to be approved under this clause they shall give notice of such desire to the Minister and within two months of the giving of such notice shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (k) of subclause (3c) of this clause as the Minister may require.
- (b) The provisions of subclauses (3d) to (3i) and subclause (3m) of this clause shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause with the proviso that the Joint Venturers may withdraw such proposals at any time before approval thereof or, where any decision of the

Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that they shall not be proceeding with the same.

- (c) If the Joint Venturers do not withdraw their proposals or give notice pursuant to paragraph (b) of this clause, then subject to and in accordance with the EP Act and any approvals and licences required under that Act and laws relating to traditional usage the Joint Venturers shall implement the proposals as approved by the Minister or an award made on arbitration as the case may be in accordance with the terms thereof.
- (6) The Joint Venturers shall not produce iron ore from the third mineral lease for transportation in any calendar year in excess of the approved production limit without the prior consent in principle of the Minister and, subject to that consent, approval of detailed proposals in regard thereto in accordance with this clause.
- (7) If the Joint Venturers desire to increase the approved production limit under this clause they shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of their proposals in respect thereto (including the matters mentioned in paragraphs (a) to (k) of subclause (3c) of this clause).
- (8) The provisions of subclauses (3a) and (3b) of this clause shall apply to a notice under subclause (7) of this clause but with the substitution in subclause (3a) of —
 - (i) “notice under subclause (7)” for “request under subclause (3)”;
 - (ii) “proposed increase” for “proposed production limit”, wherever it occurs;with the substitution in subclause (3b) of “proposed increase” for “proposed production limit” wherever it occurs.
- (9) (a) If the Minister consents in principle to a proposed increase the Joint Venturers must within three months of

Fourth Schedule — Third Variation Agreement

[s. 4C]

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

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

B E T W E E N

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

AND

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

W H E R E A S :

- (a) the State and the Joint Venturers (pursuant to certain assignments) are now the parties to the agreement approved by the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*, which agreement as amended from time to time is hereinafter called “the Principal Agreement”;
- (b) the State and the Joint Venturers wish to vary the Principal Agreement.

NOW THIS AGREEMENT WITNESSES —

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

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

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

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

- (2) If before 31 December 2000 or such later agreed date the said Bills have not commenced to operate as Acts then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any

other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

- (3) On the said Bills commencing to operate as Acts all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.
4. The Principal Agreement is hereby varied with effect on and from the coming into operation of this agreement as follows —
- (1) Clause 1 —
in the definition of “beneficiated ore” by inserting after “upgraded” the following —
“by the Joint Venturers pursuant to proposals approved under this Agreement”.
 - (2) Clause 2(c) —
by deleting “and 11” and substituting the following “,11 and 12”.
 - (3) By inserting after Clause 8 the following clauses —
“8A. Notwithstanding any provision in this Agreement for the grant of titles hereunder to the Joint Venturers as tenants in common in equal shares, if the Joint Venturers hold their interests in this Agreement in other than equal shares, the grant of titles and the renewal of any leases hereunder shall be made to the Joint Venturers, if they so request the State, in accordance with their percentage interests in this Agreement.
8B. Notwithstanding the Mining Act the Joint Venturers may with the prior approval of the Minister for Mines apply from time to time for general purpose leases for the purposes of its operations under this Agreement in respect of areas of land greater than the maximum area provided for under that Act.”.
 - (4) Clause 9(2)(j) —
by inserting after subparagraph (ii) the following subparagraph —
“(iia) on iron ore used in the beneficiation plant the subject of the Agreement ratified by the *Iron Ore Beneficiation (BHP) Agreement Act 1996* at the following rates —

- (A) in respect of lump ore, 7.5% of the f.o.b. value; and
 - (B) in respect of fine ore, 3.75% of the f.o.b. value;”.
- (5) Clause 12 —
by inserting after subclause (2) the following subclause —
“(2a) Notwithstanding the *Mining Act 1978*, the Minister for Mines may for the purposes of this clause grant to the Joint Venturers rights of occupancy in respect of the whole or parts of Temporary Reserve 3156H for such period or periods and on such terms and conditions as the Minister for Mines after consultation with the Minister considers reasonable.”.
- (6) Clause 12A —
by inserting after “the State shall” the following —
“subject in respect of proposals under clause 12 to the surrender by the Joint Venturers of any rights of occupancy granted under clause 12(2a)”.
5. The Principal Agreement is hereby further varied with effect on and from the later of the coming into operation of the Water Agreement (as hereinafter defined) or the coming into operation of this agreement as follows —
- (1) By inserting after Clause 8B the following clause —
“Water — Port Hedland
8C.(1) In this clause —
“Water Agreement” means an agreement entered into between the Water Corporation (established pursuant to section 4 of the *Water Corporation Act 1995*) and BHP Iron Ore Pty. Ltd. ACN 008 700 981 as agent for BHP Direct Reduced Iron Pty. Ltd. and the Mount Newman and Mount Goldsworthy Mining Associates Joint Venturers in a form approved by the Minister in relation to the supply of water for, inter alia, the Joint Venturers’ water requirements for the purposes of this Agreement at Port Hedland;

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

- (2) Notwithstanding any provision of the Water Agreement, the State shall ensure during the period from the Commencement Date until the later of the sixtieth (60th) anniversary of the Commencement Date or the end of the Renewal Period that (except where the Water Agreement is lawfully terminated because of the Buyer’s Default) —
- (a) the Waters and Rivers Commission (established by section 4 of the *Waters and Rivers Commission Act 1995*) will allocate water reserves sufficient to meet the quantities set out in the Water Agreement; and
 - (b) in the event of expiration of the Water Agreement the Coordinator of Water Services under the *Water Services Coordination Act 1995* will impose a condition on any relevant licence to supply water in Port Hedland that the supplier is to supply BHP Iron Ore Pty. Ltd. (as agent as aforesaid) with water on the same terms as those contained in the Water Agreement.”.

(2) Clause 10(a) —

- (a) by inserting after “purposes hereunder” the following —
“at mining area “A”, mining area “B” and mining area “C” ”;
- (b) by inserting after “townsite” the following —
“established by the Joint Venturers for the purposes of their operations and employees on or near mining area “A”, mining area “B” or mining area “C” ”.

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

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

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

} RICHARD COURT
—
}

COLIN BARNETT
MINISTER FOR RESOURCES DEVELOPMENT

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

} [C.S.]
—
}

STEFANO GIORGINI
Director

MICHAEL KNOWLES
Secretary

THE COMMON SEAL of **CI MINERALS**
AUSTRALIA PTY. LTD. was hereunto
affixed by authority of the Directors in the
presence of:

} [C.S.]
—
}

MASAYUKI YAMAMOTO
Director

MICHAEL APPLEBEE
Secretary

THE COMMON SEAL of **MITSUI IRON**
ORE CORPORATION PTY. LTD. was
hereunto affixed by authority of the
Directors in the presence of:

} [C.S.]
—

}

YOICHI HASHIMOTO
Director

JOHN SMITH
Secretary

[Fourth Schedule inserted by No. 57 of 2000 s. 18.]

Fifth Schedule — Fourth Variation Agreement

[s. 3]

[Heading inserted by No. 61 of 2010 s. 33.]`

2010

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

AND

BHP BILLITON MINERALS PTY. LTD.

ACN 008 694 782

mitsui iron ore corporation pty. ltd.

ACN 050 157 456

ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.

ACN 009 256 259

**IRON ORE (MOUNT GOLDSWORTHY) AGREEMENT 1964
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

BHP BILLITON MINERALS PTY. LTD. ACN 008 694 782 of Level 17, St Georges Square, 225 St Georges Terrace, Perth, Western Australia, **ITSUI IRON ORE CORPORATION PTY. LTD.** ACN 050 157 456 of Level 16, Exchange Plaza, 2 The Esplanade, Perth, Western Australia and **ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.** ACN 009 256 259 of Level 22, Forrest Centre, 221 St Georges Terrace, Perth, Western Australia (**Joint Venturers**).

RECITALS

- A. The State and the Joint Venturers are now the parties to the agreement dated 15 October 1964 approved by and scheduled to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B. The State and the Joint Venturers 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 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 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 varied as follows:
- (1) in clause 1:
- (a) by deleting the existing definitions of "beneficiated ore", "deemed f.o.b. value", "fine ore", "low grade run of mine iron ore" and "lump ore";
- (b) by inserting in the appropriate alphabetical positions the following new definitions:
- "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 Joint Venturers 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. 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 Joint Venturers 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;

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

"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 Joint Venturers 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;

"Mining Act 1978" means the *Mining Act 1978* (WA);

"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 and the *Mining Act 1978*;

"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 Joint Venturers comes into operation;

- (c) in the definition of "agreed or determined" by:
 - (i) inserting "(following if requested by the Joint Venturers, consultation with the Joint Venturers and their consultants in regard thereto)" after "determined by the Minister";
 - (ii) deleting "assessed at" and substituting "assessed on"; and
 - (iii) deleting all the words after "shall have regard to" 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 clause 9(2)(e), 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 Joint Venturers 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";
- (d) in the definition of "deemed f.o.b. point" by deleting "Joint Venturers' wharf" and substituting "relevant loading port";
- (e) in the definition of "f.o.b. value":
- (i) in paragraph (i) by:
 - (A) inserting "subject to paragraph (ii)," before "in the case";
 - (B) deleting "(including from any wharf approved by the Minister under Clause 9(2)(e))";
 - (C) deleting "assessed at" and substituting "assessed on";
 - (D) deleting "Joint Venturers' wharf or other wharf approved from time to time by the Minister for the purpose or other wharf approved by the Minister under clause 9(2)(e) as the case may

be" and substituting "relevant loading port";
and

- (E) in paragraph (6), inserting "after loading on and departure of ship from the relevant loading port" after "agency charges";
- (ii) renumbering paragraph (ii) as paragraph (iii); and
- (iii) inserting after paragraph (i) the following new paragraph:

"in the case of iron ore initially sold at cost pursuant to paragraph (B) of the proviso to clause 9(2)(e), 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";

- (f) in the definition of "Joint Venturers' wharf" by inserting "and in clauses 9(2)(e) and (f) also any additional wharf constructed by the Joint Venturers pursuant to this Agreement" before the semi colon;
- (g) in the definition of "mineral lease" by inserting "and includes any areas added to any such mineral lease pursuant to clause 9A" before the semi colon;
- (h) 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";
- (i) in the sentence commencing "marginal notes" by inserting "and clause headings" after "marginal notes"; and

- (j) by inserting at the end of clause 1 the following new sentences:

"Words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context.

Nothing in this Agreement shall be construed:

- (a) to exempt the Joint Venturers from compliance with any requirement in connection with the protection of the environment arising out of or incidental to their activities under this Agreement that may be made by or under the EP Act; or
 - (b) to exempt the State or the Joint Venturers from compliance with or to require the State or the Joint Venturers to do anything contrary to any laws relating to native title or any lawful obligation or requirement imposed on the State or the Joint Venturers as the case may be pursuant to any laws relating to native title; or
 - (c) to exempt the Joint Venturers from compliance with the provisions of the *Aboriginal Heritage Act 1972* (WA).";
- (2) by inserting after clause 7 the following new clauses:

"Additional Proposals

- 7A. (1) If the Joint Venturers, at any time during the continuance of this Agreement after the variation date, desire to significantly modify, expand or otherwise vary their activities carried on pursuant to this Agreement (other than under clauses 11, 12 or 9E) beyond those activities specified in any proposals approved pursuant to clause 6 they shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in clause 5(2)(a) as the Minister may require.

- (2) 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 Joint Venturers of any works installations or facilities constructed or established under a Government agreement.
- (3) 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.
- (4) At the time when the Joint Venturers submit the said proposals they 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 they propose to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with their reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto.
- (5) The Joint Venturers may withdraw their 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 7B, within 3 months after the award by notice to the Minister that they shall not be proceeding with the same.

Consideration of Joint Venturers' proposals under clause 7A

- 7B. (1) In respect of each proposal pursuant to subclause (1) of clause 7A 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 Joint Venturers submit a further proposal or proposals in respect of some other of the matters mentioned in clause 7A(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 Joint Venturers 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 Joint Venturers 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 Joint Venturers.

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 9C for the purpose of that clause) as contemplated by clause 9C. It may not be so exercised in respect of a proposal if pursuant to clause 7C(5) the Minister, prior to the submission of the proposal, advised the Joint Venturers 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 7C(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 7C(5) in respect of that single preferred development.

- (2) The Minister shall within 2 months after receipt of proposals pursuant to clause 7A(1) give notice to the Joint Venturers 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 Joint Venturers 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 Joint Venturers full

opportunity to consult with him and should they 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 Joint Venturers consider that the decision is unreasonable the Joint Venturers 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 Joint Venturers 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 Joint Venturers shall implement the approved proposals in accordance with the terms thereof.
- (7) Notwithstanding clause 21, the Minister may during the implementation of approved proposals approve variations to those proposals.

Notification of possible proposals

- 7C. (1) If the Joint Venturers, 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 9C) for the matter to be undertaken, intend to further consider the matter with

a view to possibly submitting such proposals they 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 Joint Venturers of the Minister's views of the matter at that stage.
- (3) If the Joint Venturers are informed of the Minister's views, they shall take them into account in deciding whether or not to proceed with their 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.
- (5)
 - (a) This subclause applies where the Joint Venturers have 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 9C for the purpose of that clause) as contemplated by clause 9C.
 - (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 Joint Venturers.
- (c) At any time prior to submission of proposals the Joint Venturers may give to the Minister notice of their single preferred development and request the Minister to confirm that the Minister has no public interest concerns with that single preferred development.
- (d) The Joint Venturers shall furnish to the Minister with their 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) their progress in undertaking any feasibility or other studies or matters to be completed before submission of proposals; and
 - (iii) their timetable for obtaining required statutory and other approvals in relation to the submission and approval of proposals; and
 - (iv) their tenure requirements.
- (e) If so required by the Minister, the Joint Venturers 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 Joint Venturers' 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 Joint Venturers:
 - (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 Joint Venturers may, should they 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.";

(3)in clause 8(2)(b) by:

- (a) deleting "clause 6" and substituting "clauses 6, 7B, 11 or 12";
- (b) in sub-paragraph (i):
 - (A) inserting "or cause to be granted" after "grant";
 - (B) in the paragraph beginning "at peppercorn rental", deleting "the harbour area";
 - (C) inserting after that paragraph the following new paragraph:

"at commercial rentals, licence or easement fees as applicable – leases, licences or easements within the Port of Port Hedland; and";

(D) inserting "the *Port Authorities Act 1999* (WA)" after "1926"; and

(E) inserting "installations or facilities" after "for their works"; and

(c) in subparagraph (ii), deleting "and iron ore concentrates";

(4) by inserting after subclause (4) of clause 8 the following new subclause:

"(4a) The provisions of subclause (2) of this clause shall not operate so as to require the said 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;"

(5) in clause 9(2) by deleting paragraph (e) and substituting the following new paragraphs:

"(e) ship, or procure the shipment of, all iron ore mined from the mineral lease and sold:

(i) from the Joint Venturers' 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 their 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 secondary processing or for the industry for additional upgrading of beneficiated ore 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 Joint Venturers 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 subclause (2)(k) 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 (2)(ea);

Designated purchaser

- (ea) 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 (2)(e) 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 Joint Venturers 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 Joint Venturers. For the avoidance of doubt and without limiting the Minister's discretion above, the parties acknowledge that marketing entities forming part of a corporate group that includes the majority Joint Venturer (or part of a parallel corporate group if that Joint Venturer is part of a dual-listed corporate structure) are not independent participants for the purposes of this subclause;"
- (6) in clause 9(2)(j) by deleting subparagraph (iv) and inserting at the end of the clause after subparagraph (v) the following new paragraphs:

"Where beneficiated ore is produced from an admixture of iron ore from the mineral lease and iron ore from elsewhere, a portion (and a portion only) of the beneficiated ore so produced being equal to the proportion that the amount of the iron in the iron ore from the mineral lease used in the production of that 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 Joint Venturers 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 subclause.";

(7) in clause 9(2)(k) 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 (j)" after "the 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 (2)(e), 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 Joint Venturers to the purchaser (which invoices the Joint Venturers 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;"

(8) in clause 9(2)(n):

- (a) by deleting "books of account and records of the Joint Venturers relative to the Joint Venturers' operation under this Agreement including contracts relative" and substituting "books, records, accounts, documents (including contracts), data and information of the Joint Venturers stored by any means relating";
 - (b) by inserting "(in whatever form)" after "copies or extracts"; and
 - (c) by inserting "the subject of royalty" before the first two references to "hereunder";
- (9) by deleting the fullstop at the end of paragraph (n) of clause 9(2) and substituting "; and" followed by:
- "(o) 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 (n) to enable the exercise of rights by the Minister or the Minister's nominee under paragraph (n), 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.";
- (10) by inserting after clause 9 the following new clauses:

"Additional areas

9A (1) Notwithstanding the provisions of the Mining Act or the Mining Act 1978 the Joint Venturers may from time to time during the currency of this Agreement apply to the Minister for areas held by the Joint Venturers or an associated company under a mining tenement granted under the Mining Act 1978 to be included in any of the mineral leases but so that the total area of the mineral leases, any land that may be included in any of the mineral leases 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 relevant 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 relevant 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 Joint Venturers' expense.

- (2) The Minister may approve, upon application by the Joint Venturers 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 Joint Venturers shall not mine or carry out other activities (other than exploration, bulk sampling and testing) on any area or areas added to a 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 Joint Venturers desire to commence mining of iron ore or to carry out any other activities (other than as aforesaid) on the said areas they 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 their 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 7A in respect of mineral lease 235SA, pursuant to clause 11(8) in respect of mineral lease 249SA and pursuant to clause 12(5) in respect of mineral lease 281SA.";

Blending of iron ore

- 9B. (1) The Joint Venturers 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 Joint Venturers and provided the Joint Venturers have 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 Joint Venturers 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 (j) and (k) of subclause (2) of this clause, 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.

Integrated use of works installations or facilities under the Integration Agreements

- 9C. (1) Subject to subclauses (2) to (7) of this clause and to the other provisions of this Agreement, the Joint Venturers 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 Joint Venturers carried on by them 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 9B) 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 Minister's prior approval, 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 Joint Venturers 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 Joint Venturers 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 Joint Venturers' activities carried on by them 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 7A and 7B or clauses 11, 12 or 9E 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 Joint Venturers shall not be entitled to:

- (i) submit proposals to construct any new port or to establish harbour or port works installations or facilities, or to expand modify or otherwise vary harbour or works installations or facilities otherwise than at or near the town of Port Hedland within the boundaries of the Port of Port Hedland; 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 Joint Venturers 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 9E; 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 Joint Venturers 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 7B, 11, 12 and 9E, the Minister may defer consideration of, or a decision upon, a proposal submitted by the Joint Venturers 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 Joint Venturers' 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 Joint Venturers first confirming with the Minister that the Minister is satisfied that the relevant company is a Related Entity.
- (4) The Joint Venturers 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 their use, or in their 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 Joint Venturers 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 them 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 Joint Venturers' rights under clause 20.

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 Joint Venturers from complying with, or the application of, the other provisions of this Agreement including, without limitation, clause 20 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

- 9D. (1) For the purposes of this clause "Relevant Infrastructure" means any works installations or facilities (as defined in clause 9C(7)):
- (a) constructed or held under another Integration Agreement;
 - (b) which the Joint Venturers are using in their activities pursuant to this Agreement;
 - (c) which the Minister is satisfied (after consulting with the Joint Venturers 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 Joint Venturers to continue to carry on their activities pursuant to this Agreement; and
 - (d) in respect of which that other Integration Proponent has notified the Minister it consents to the Joint Venturers submitting proposals as referred to in subclause (2).
- (2) The Joint Venturers may as an additional proposal pursuant to clause 7A propose:
 - (a) that they 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 Joint Venturers 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 7B shall mutatis mutandis apply to any such additional proposal. In addition the Joint Venturers acknowledge 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 Joint Venturers pursuant to clause 10(l) and while such notice remains unsatisfied.

Miscellaneous Licences for Railways

9E. (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 Joint Venturers' 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 Joint Venturers 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.

Joint Venturers to obtain prior Ministerial in-principle approval

- (2) (a) If the Joint Venturers wish, from time to time during the continuance of this Agreement, to proceed under this clause with a plan to develop a Railway they shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of their plan.
- (b) The Minister shall within one month of a notice under paragraph (a) advise the Joint Venturers whether or not he approves in-principle the proposed plan. The Minister shall afford the Joint Venturers 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 Joint Venturers have 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 Joint Venturers to develop a Railway they 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 Joint Venturers). The parties acknowledge the intention is for the Joint Venturers 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 25 shall not apply to this subclause.

- (b) If the date by which the Joint Venturers 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 24, any agreement made pursuant to paragraph (a) before such date is extended or varied shall unless the Minister notifies the Joint Venturers otherwise be deemed to be at an end and neither party shall have any claim against the other in respect of it.
- (c) The Joint Venturers acknowledge that they 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)).

Joint Venturers to submit proposals for Railway

- (4) (a) The Joint Venturers 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 their 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 Joint Venturers' 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 Joint Venturers pursuant to subclause 3(a);
 - (vii) any other works, services or facilities desired by the Joint Venturers; 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 Joint Venturers, their 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 their proposals under this subclause have been approved the Joint Venturers may withdraw and may resubmit any proposal but the withdrawal of any proposal shall not affect the obligations of the Joint Venturers to submit a proposal under this subclause in respect of the subject matter of the withdrawn proposal.

- (d) The Joint Venturers shall, whenever any of the following matters referred to in this subclause are proposed by the Joint Venturers (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 they propose to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia, together with their reasons therefor and shall, if required by the Minister consult with the Minister with respect thereto.
- (e) At the time when the Joint Venturers submit the last of the said proposals pursuant to this subclause, they 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 Joint Venturers 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 7B shall apply mutatis mutandis to detailed proposals submitted under this subclause.

Additional Railway Proposals

- (5) (a) If the Joint Venturers at any time during the currency of a Special Railway Licence desire 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 their 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 them 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, they shall give notice of such desire to the Minister and furnish to the Minister with that notice an outline of their 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 Joint Venturers 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 Joint Venturers 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 Joint Venturers 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 their 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 7B shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause.

Grant of Tenure

- (6) (a) On application made by the Joint Venturers to the Minister in such manner as the Minister may determine, not later than 3 months after all their proposals submitted pursuant to subclause (4)(a) have been approved or deemed to be approved and the Joint Venturers have complied with the provisions of subclause (4)(e), the State notwithstanding the Mining Act 1978 shall cause to be granted to the Joint Venturers:
- (i) a miscellaneous licence to conduct within the Railway Corridor and in accordance with their 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 Second 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 Third 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 Joint Venturers to the Minister in such manner as the Minister may determine, not later than 3 months after their 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 Joint Venturers have 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 Joint Venturers 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 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.
- (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 Joint Venturers 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 Joint Venturers 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 1978 in respect of stone, sand, clay and gravel which the Joint Venturers are 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 Joint Venturers (as defined in 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)";
- (C) deleting "for any one or more of the purposes prescribed" and substituting "for the purpose specified in clause 9E(6)(a)(i), clause 9E(6)(a)(ii) or clause 9E(6)(b), of 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";
- (ii) in section 91(3)(a), by deleting "prescribed form" and substituting "form required by 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";
- (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 approved by and scheduled to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*, 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 approved by and scheduled to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*, 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 approved by and scheduled to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*, 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 Joint Venturers' 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 Joint Venturers' 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 Joint Venturers 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 Joint Venturers 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 Joint Venturers or any other person from compliance with the Rail Safety Act or limit its application to the Joint Venturers' operations generally (except as otherwise may be provided in that Act or regulations made under it).

- (c) The Joint Venturers 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 Joint Venturers 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 9D, the Joint Venturers 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 10(j) but subject to clause 9D) shall at all times own manage and control the use of each Railway the subject of a Special Railway Licence held by the Joint Venturers.
- (e) The Joint Venturers 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 Joint Venturers so as not to unreasonably interfere with the Joint Venturers' operations.
- (f) The Joint Venturers' ownership of a Railway constructed pursuant to this clause shall not give it an interest in the land underlying it.
- (g) The Joint Venturers 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 Joint Venturers 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 Joint Venturers 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 9D, the Joint Venturers shall:
 - (i) be responsible for the cost of construction and maintenance of all Private Roads constructed pursuant to this clause; and
 - (ii) at their 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 Joint Venturers' activities and their invitees and licensees) from using the Private Roads; and

- (iii) at any place where any Private Roads are constructed by the Joint Venturers so as to cross any railways or public roads provide at their 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 clauses 9(2)(a) and (3) regarding third party access as well as the proviso to clause 9(2)(a) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause except that the Joint Venturers shall not be obliged to transport any 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 Joint Venturers" means the persons from time to time comprising "the Joint Venturers" in their capacity as such under 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 in relation to the use or proposed use of land pursuant to clause 9E of that agreement after and in accordance with approved proposals under clause 9E of that agreement and in relation to the use of that land before any such approval of proposals where the Joint Venturers have 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 Joint Venturers as the case may be" after the words "owner of any land";
- (c) the insertion in section 18(3) of the words "or the Joint Venturers 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 Joint Venturers the conditions that the Minister may specify can as appropriate include, among other conditions, a condition restricting the Joint Venturers' 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 Joint Venturers' submitted initial proposals thereunder for the Railway Operation (as defined in clause 9E(1) of the abovementioned agreement), or in the case of additional proposals submitted or to be submitted by the Joint Venturers 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 Joint Venturers acknowledge 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 Joint Venturers 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 Joint Venturers 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 Joint Venturers.
- (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 Joint Venturers 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 Joint Venturers 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 Joint Venturers shall from the date occurring 6 months before the date for completion of construction of a Railway specified in their 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 Joint Venturers 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 Joint Venturers shall from the date occurring 6 months before the date for completion of construction of a Railway spur line specified in their 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 Joint Venturers 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.";

(11) by inserting after clause 10(a) the following new paragraph:

"(aa) the purposes for which the Joint Venturers may in accordance with paragraph (a) generate transmit and supply electricity shall, without limiting paragraph (a), include the purpose of supply to:

- (i) "the Company" or "Joint Venturers" as the case may be as defined in, and for the purpose of an Integration Agreement, for its or their purposes thereunder;
- (ii) the holders from time to time of 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) for the purpose of their iron ore mining operations on that mining lease; and
- (iii) with the prior approval of the Minister, "the Company" or "the Joint Venturers" as the case may be as defined in, and for the purpose of a Government agreement (excluding an Integration Agreement) for the mining of iron ore in, or proximate to, the Pilbara region of the said State for the purpose of its or their operations under that agreement;"

(12) in clause 10(d)(i) by inserting "or held pursuant hereto" after "granted hereunder or pursuant hereto";

- (13) in clause 10(e) by:
- (a) inserting "or pursuant hereto" after "easement granted hereunder"; and
 - (b) inserting "or held pursuant hereto" after "clause 20 hereof";
- (14) in clause 10(1) 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 3 references to "granted hereunder or pursuant hereto"; and
 - (c) deleting "occupied by the Joint Venturers" 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";
- (15) by inserting after subclause (7) of clause 11 the following new subclause::
- "(8) (a) If the Joint Venturers at any time during the continuance of this Agreement desire to significantly modify expand or otherwise vary their activities within the second mineral lease beyond those specified in any proposals approved or deemed to be approved under this clause they shall give notice of such desire to the Minister and within two months of the giving of such notice shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraph (a) of subclause (2) of this clause as the Minister may require.
 - (b) The provisions of clause 7A(2) to (5) and 7B shall apply mutatis mutandis to proposals pursuant to this subclause.";
- (16) in clause 12(3e) by:

- (a) inserting "(except in relation to an Integration Agreement)" after "agreement of the Minister"; and
 - (b) inserting "(being in respect of an Integration Agreement the Integration Proponent for that Agreement)" after "third parties concerned";
- (17) in clause 12(5) by deleting paragraphs (b) and (c) and substituting the following paragraph:
- "(b) The provisions of clauses 7A(2) to (5) and 7B shall apply mutatis mutandis to proposals submitted pursuant to this subclause.";
- (18) in the heading to clause 11 by deleting "Company" and substituting "Joint Venturers";
- (19) by inserting after subclause (1) of clause 12A the following new subclause:
- "(1a) The provisions of subclause (1) 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.";
- (20) in clause 19:
- (a) by in the second sentence:
 - (i) deleting the first reference to "Company" and substituting "Joint Venturers"; and
 - (ii) deleting "Company or its" and substituting "Joint Venturers or their"; and
 - (b) inserting at its end the following new sentence:

"As a separate independent indemnity the Joint Venturers will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in

connection with any use, making available for use or other activities of the Joint Venturers as referred to in clause 9C.";

- (21) in clause 21(1) by inserting "or held pursuant hereto" after "granted hereunder or pursuant hereto";
- (22) by deleting clause 28; and
- (23) inserting after the Schedule the following new schedules:

"SECOND SCHEDULE

WESTERN AUSTRALIA

**IRON ORE (MOUNT GOLDSWORTHY) AGREEMENT
ACT 1964**

MINING ACT 1978

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

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "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, the State agreed to grant to [] (hereinafter with their successors and permitted assigns called "the Joint Venturers") a miscellaneous licence for the construction operation and maintenance of a Railway (as defined in clause 9E(1) of the Agreement and otherwise as provided in the Agreement) and, if

applicable, other purposes AND WHEREAS the Joint Venturers pursuant to clause 9E(6)(a) of the Agreement have 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 Goldsworthy) Agreement Act 1964*, as from time to time added to, varied or amended, the Joint Venturers are 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 9E(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 9E(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 Joint Venturers be more than one the liability of the Joint Venturers 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 therefore 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.

(i) 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 Joint Venturers are 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 Joint Venturers are 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, determine 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 Joint Venturers 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 9E(6)(h) or clause 9E(6)(i) of the Agreement.

2. The Joint Venturers 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 9E(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, determine 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

THIRD SCHEDULE

WESTERN AUSTRALIA

**IRON ORE (MOUNT GOLDSWORTHY) AGREEMENT
ACT 1964**

MINING ACT 1978

**MISCELLANEOUS LICENCE FOR A LATERAL ACCESS
ROAD**

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") approved by and scheduled the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with their successors and permitted assigns called "the Joint Venturers") a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Joint Venturers pursuant to clause 9E(6)(a)(ii) of the Agreement have 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 Goldsworthy) Agreement Act 1964*, as from time to time added to, varied or amended, the Joint Venturers are 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 9E(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 Joint Venturers be more than one the liability of the Joint Venturers 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 therefore 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.

(ii) 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

FOURTH SCHEDULE

WESTERN AUSTRALIA

**IRON ORE (MOUNT GOLDSWORTHY) AGREEMENT
ACT 1964**

MINING ACT 1978

**MISCELLANEOUS LICENCE FOR A LATERAL ACCESS
ROAD**

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") approved by and scheduled the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with their successors and permitted assigns called "the Joint Venturers") a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Joint Venturers pursuant to clause 9E(6)(b) of the Agreement have 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 Goldsworthy) Agreement Act 1964*, as from time to time added to, varied or amended, the Joint Venturers are 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 9E(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 Joint Venturers be more than one the liability of the Joint Venturers 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 therefore 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.

(iii) 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

EXECUTED by **BHP BILLITON**)
MINERALS PTY. LTD. ACN 008 694)
782 in accordance with section 127(1) of)
the Corporations Act)

[Signature]
Signature of Director

[Signature]
Signature of ~~Director~~/Company Secretary

STEWART HART
Name of Director

ROBIN B LEES
Name of ~~Director~~/Company Secretary

EXECUTED by **MITSUI IRON ORE**)
CORPORATION PTY. LTD. ACN)
050 157 456 in accordance with section)
127(1) of the Corporations Act)

[Signature]
Signature of Director

[Signature]
Signature of ~~Director~~/Company Secretary

RYUZO NAKAMURA

GAVIN PETER PATTERSON

Iron Ore (Mount Goldsworthy) Agreement Act 1964
Fourth Variation Agreement **Fifth Schedule**

Name of Director

Name of ~~Director~~/Company Secretary

Signed by Shuzaburo Tsuchihashi as)
attorney for **ITOCHU MINERALS &**)
ENERGY OF AUSTRALIA PTY.)
LTD. ACN 009 256 259 under power)
of attorney dated 12 November 2010)
in the presence of:)

[Signature]
Signature of Director

[Signature]
Signature of ~~Director~~/Company Secretary

YASUSHI FUKUMURA
Name of Director

Shuzaburo Tsuchihashi
Name of ~~Director~~/Company Secretary

[Fifth Schedule inserted by No. 61 of 2010 s. 33.]

Notes |

~~±~~ **This Sixth Schedule — Fifth Variation Agreement**

[s. 3]

[Heading inserted by No. 62 of 2011 s. 10.]

2011

THE HONOURABLE COLIN JAMES BARNETT

PREMIER OF THE STATE OF WESTERN AUSTRALIA

AND

BHP BILLITON MINERALS PTY. LTD.

ACN 008 694 782

MITSUI IRON ORE CORPORATION PTY. LTD.

ACN 050 157 456

ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.

ACN 009 256 259

IRON ORE (MOUNT GOLDSWORTHY) AGREEMENT 1964

RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is a ~~compilation~~ 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

BHP BILLITON MINERALS PTY. LTD. ACN 008 694 782 of Level 17, St Georges Square, 225 St Georges Terrace, Perth, Western Australia, **MITSUI IRON ORE CORPORATION PTY. LTD.** ACN 050 157 456 of Level 16, Exchange Plaza, 2 The Esplanade, Perth, Western Australia and **ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.** ACN 009 256 259 of Level 22, Forrest Centre, 221 St Georges Terrace, Perth, Western Australia (Joint Venturers).

RECITALS

- A.** The State and the Joint Venturers are now the parties to the agreement dated 15 October 1964 approved by and scheduled to the *Iron Ore (Mount Goldsworthy) Agreement Act—1964* and ~~includes the amendments made by the other written laws~~ which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B.** The State and the Joint Venturers wish to vary the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Intepretation

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 inserting in the appropriate alphabetical positions the following ~~table. The table also contains~~ new definitions:

"Eligible Existing Tenure" means:

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

- (ii) a lease or easement granted to the Joint Venturers 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 Joint Venturers for the grant to them 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 Joint Venturers comes into operation;

"Special Advance Tenure" means:

(a) a miscellaneous licence or general purpose lease requested under clause 8(3b) to be granted to the Joint Venturers under the Mining Act 1978; or

(b) an easement or a lease requested under clause 8(3b) to be granted to the Joint Venturers under the LAA,

and as the context requires such tenure if granted;

(2) by inserting after clause 7C the following new clauses:

"Community development plan

7D. (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 Joint Venturers acknowledge the need for community and social benefits flowing from this Agreement.

(3) The Joint Venturers agree that:

(a) they shall prepare a plan which describes the Joint Venturers' proposed strategies for achieving community and social benefits in connection with their activities under this Agreement; and

(b) the Joint Venturers 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 Joint Venturers that the Minister approves the plan as submitted or notify the Joint Venturers of changes which the Minister requires be made to the plan. If the Joint Venturers are unwilling to accept the changes which the Minister requires they 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 Joint Venturers 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 7A, 9E, 11 or 12, the Joint Venturers must, unless the Minister otherwise requires, give to the Minister information about ~~any reprint~~ 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.

Compilation table

- (7) The Joint Venturers shall at least annually report to the Minister about the Joint Venturers' 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 Joint Venturers 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 Joint Venturers shall implement the plan approved or deemed to be approved by the Minister under this Clause.

Local participation plan

- 7E. (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 Joint Venturers acknowledge the need for local industry participation benefits flowing from this Agreement.

(3) The Joint Venturers agree that they 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 Joint Venturers 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 Joint Venturers 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 Joint Venturers will use, and require a third party as referred to in subclause (7) to use,

to have its respective procurement officers promptly introduced to Western Australian suppliers, manufacturers and contractors seeking such introduction; and

- (d) details of the communication strategies the Joint Venturers 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 Joint Venturers that the strategies of the Joint Venturers referred to in subclause (3)(a) will include strategies of the Joint Venturers 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 Joint Venturers 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 7A, 9E, 11 or 12, the Joint Venturers 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 Joint Venturers shall implement the plan provided under this Clause.

(7) The Joint Venturers 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.";

(3) by inserting after clause 8(2)(b)(ii) the following new paragraph:

"notwithstanding clause 9C(2)(b)(iv), detailed proposals may refer to activities on tenure which is proposed to be granted pursuant to this paragraph (b) 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);";

(4) by inserting after clause 8(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 Joint Venturers 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 Joint Venturers.

(b) Eligible Existing Tenure the subject of an approval by the Minister under this subclause will be held by the Joint Venturers 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 Joint Venturers 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 Joint Venturers are 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 9C(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 8(2)(c), the Minister may at the request of the Joint Venturers from time to time made during the continuance of this Agreement approve Special Advance Tenure being granted to the Joint Venturers pursuant to this Agreement if:

(a) the Joint Venturers propose to submit detailed proposals under this Agreement (other than under clause 9E) to construct works installations or facilities on the Relevant Land and the Joint Venturers' 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 Joint Venturers as tenants in common in equal shares; and

(d) if the Joint Venturers do 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.";

(5) in subclauses (4) and (4a) of clause 8 by deleting "subclause (2)" and substituting "subclauses (2), (3a) and (3b)";

(6) in clause 8(5) by:

(a) deleting "and" after the semicolon at the end of paragraph (e);

(b) inserting "and" after the semicolon at the end of paragraph (f); and

(c) inserting after paragraph (f) the following new paragraph:

"Reservation of land within the Port of Port Hedland for leases

(g) without limiting the State's obligations under clause 8(2)(b), shall ensure that the land within the areas coloured red and green on the plan marked 'Plan D' (initialled by or on behalf of the parties hereto for the purposes of identification) is reserved until 31 December 2030 for the purposes of the Port Authority granting from time to time to the Joint Venturers in accordance with proposals approved or determined under clauses 7B, 11 or 12 leases of that reserved land:

(i) at commercial rental; and

(ii) upon such other terms and conditions as approved by the Minister responsible for the Port Authorities Act (acting with the concurrence of the Minister) including as to the facilitation and allowance on reasonable terms and conditions of future crossings of the land within the area coloured green on the plan marked 'Plan D' so long as such crossings do not unduly prejudice or interfere with the operations of the Joint Venturers under this Agreement.

provided that this obligation to ensure reservation of the land shall cease:

(iii) if the Joint Venturers do not submit detailed proposals prior to 31 December 2013 (or such later date prior to 31 December 2014 as the Minister may allow) under and in accordance with clause 7B, 11 or 12 relating to the construction of at least a two berth wharf facility and associated jetty within the area the subject of the reservation;

(iv) if a lease or leases are granted to the Joint Venturers as contemplated by this clause in relation to a two berth wharf facility and associated jetty development, in respect of the land within the areas coloured red and green on the plan marked 'Plan D' that are subject to such lease or leases or laterally adjacent to the area of the lease or leases; and

(v) progressively thereafter if a lease is granted as contemplated by this clause, or any existing lease relating to the wharf facility is varied, to accommodate additional berths, in respect of the land within the area coloured red on the plan marked 'Plan D' that is subject to such lease (including as

varied) or laterally adjacent to the area of the lease (including as varied).

The parties agree that clause 24 shall not apply to this paragraph (g).";

(7) in clause 9(2)(a) by deleting "allow crossing places for roads stock and other railways and also";

(8) by inserting after clause 9(2)(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 Joint Venturers' railway the Joint Venturers shall:

(i) if applicable, give their 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 Joint Venturers' railway so long as such grant does not in the Minister's opinion unduly prejudice or interfere with the activities of the Joint Venturers 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 Joint Venturers;";

(9) by deleting clause 9(2)(j)(ii) and substituting the following new 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;";

(10) by deleting clause 9(2)(j)(iia);

(11) by inserting after clause 9D the following new clause:

"Transfer of rights to section of Goldsworthy-Nimingarra Railway

9DA (1) The Joint Venturers may as an additional proposal pursuant to clause 7A propose that they be granted a lease under the LAA and pursuant to this Agreement over the section of the railway held pursuant to the agreement ratified by the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972* that is:

(a) near the Port of Port Hedland; and

(b) west of the intersection of that railway with the railway constructed pursuant to the agreement approved by the *Iron Ore (Mount Newman) Agreement Act 1964*,

subject to and conditional upon the Joint Venturers (as defined in the former agreement) surrendering wholly or in part (and upon such terms as the Minister considers reasonable) its lease or leases over that section of railway.

(2) The provisions of clause 7B shall mutatis mutandis apply to any such additional proposal, except that the Minister's right to refuse to approve a proposal under clause 7B(1) does not apply to a proposal contemplated by this clause.

(3) The Joint Venturers acknowledge that the lease referred to in subclause (1) will on reasonable terms and conditions allow for crossings relating to the

proposed Boodarie industrial estate infrastructure corridor (including the grant of tenure and rights reasonably necessary for infrastructure and utilities proposed to be constructed and operated within such corridor).";

(12) in clause 9E 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 Joint Venturers 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 Joint Venturers 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 Joint Venturers 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:

"(1) The provisions of clause 9(2)(aa) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause.";

(13) in clause 12 by:

(a) in subclause (1), deleting the definition of "approved production limit under this clause";

(b) in subclause (5)(a):

(i) deleting "Subject to subclauses (6) to (9) of this Clause if" and substituting "If"; and

(ii) deleting "produce more than the approved production limit under this Clause or to"; and

(c) deleting subclauses (6), (7), (8) and (9) and substituting the following new subclause:

"(6) For the avoidance of doubt, nothing in this clause 12 requires the Joint Venturers to seek or obtain the Minister's approval or consent (by submitting proposals or otherwise) to a mere increase in production limits."; and

(14) by deleting clause 12A.

Iron Ore (Mount Goldsworthy) Agreement Act 1964
Fifth Variation Agreement **Sixth Schedule**

[Signature]
Signature of Director

[Signature]
Signature of Secretary

Uvashni Raman
Full Name

Robin Lees
Full Name

EXECUTED by MITSUI IRON ORE)
CORPORATION PTY. LTD)
ACN 050 157 456 in accordance with section)
127(1) of the Corporations Act)

[Signature]
Signature of Director

[Signature]
Signature of Secretary

Ryuzo Nakamura
Full Name

Jiahe He
Full Name

SIGNED by Shuzaburo Tsuchihashi)
as attorney for ITOCHU MINERALS &)
ENERGY OF AUSTRALIA PTY. LTD.)
ACN 009 256 259 under power)
of attorney dated 27 October 2011)
in the presence of:)

[Signature]
Signature of witness

[Signature]
Signature of Attorney

Yasushi Fukumura
Name

Shuzaburo Tsuchihashi
Name

[Sixth Schedule inserted by No. 62 of 2011 s. 10.]

Notes

¹ [This is a compilation of the *Iron Ore \(Mount Goldsworthy\) Agreement Act 1964* 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

<u>Short title</u>	<u>Number and year</u>	<u>Assent</u>	<u>Commencement</u>
<i>Iron Ore (Mount Goldsworthy) Agreement Act 1964</i>	97 of 1964	23 Dec 1964	23 Dec 1964
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
<i>Iron Ore (Mount Goldsworthy) Agreement Act Amendment Act 1971</i>	58 of 1971	15 Dec 1971	15 Dec 1971
<i>Acts Amendment (Mount Goldsworthy, McCamey's Monster and Marillana Creek Iron Ore Agreements) Act 1994 Pt. 2</i>	29 of 1994	8 Jul 1994	8 Jul 1994 (see s. 2)
<i>Acts Amendment (Iron Ore Agreements) Act 2000 Pt. 5</i>	57 of 2000	7 Dec 2000	7 Dec 2000 (see s. 2)
<u>Reprint of the <i>Iron Ore (Mount Goldsworthy) Agreement Act 1964</i> as at 21 Jun 2002</u> (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010</i> s. 4 and 42(2)	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</i> Pt. 7	34 of 2010	26 Aug 2010	1 Jul 2010 (see s. 2(b)(ii))
<i>Iron Ore Agreements Legislation Amendment Act (No. 2) 2010</i> Pt. 8	61 of 2010	10 Dec 2010	11 Dec 2010 (see s. 2(c))

Iron Ore (Mount Goldsworthy) Agreement Act 1964

<u>Short title</u>	<u>Number and year</u>	<u>Assent</u>	<u>Commencement</u>
<u><i>Iron Ore Agreements Legislation (Amendment, Termination and Repeals) Act 2011 Pt. 3</i></u>	<u>62 of 2011</u>	<u>14 Dec 2011</u>	<u>15 Dec 2011 (see s. 2(b))</u>

² Repealed by the *Interpretation Act 1984*.

³ Repealed by the *Mining Act 1978*.

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.