



Western Australia

## **Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972**

Compare between:

[11 Sep 2010, 01-d0-05] and [30 Oct 2024, 01-e0-01]



## Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972

An Act to authorise the execution on behalf of the State of an agreement with Rhodes Ridge Mining Co. Ltd., Hancock Prospecting Pty. Ltd., Wright Prospecting Pty. Ltd., and Texas Gulf Inc. relating to the exploration for, and the development and treatment of, iron ore and for incidental and other purposes.

### 1. Short title

This Act may be cited as the *Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972*<sup>+.</sup>

### 1A. Terms used

In this Act —

**2024 Variation Agreement** means the agreement a copy of which is set out in Schedule 2;

**current Agreement** means the agreement referred to in section 2 as varied —

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

(b) by the *Iron Ore Agreements Legislation Amendment Act 2010* Part 9; and

(c) by the 2024 Variation Agreement.

[Section 1A inserted: No. 38 of 2024 s. 4.]

### 2. Execution of agreement authorised

The execution by the Premier of the State of Western Australia acting for and on behalf of the State of an agreement in or

s. 3

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substantially in accordance with the form set out in ~~the~~  
Schedule 1 is authorised.

[Section 2 amended: No. 38 of 2024 s. 5.]

**3. Executed agreement to operate and take effect**

When the agreement referred to in section 2 is duly executed by all the parties thereto, the agreement shall, subject to its provisions, operate and take effect as though those provisions were enacted in this Act.

**4. Variation of Agreement to alter rates of royalty**

- (1) In this section —

**Agreement** means the agreement referred to in section 2 as varied from time to time in accordance with its provisions.

- (2) Section 21.01 of the Agreement is varied —

- (a) in paragraph (b) by deleting “seven and one half percentum (7½%)” and inserting —

5.625%

- (b) in paragraph (c) by deleting “fifteen cents (\$0.15) per ton.” and inserting —

5% of the FOB revenue (computed as aforesaid).

- (c) in paragraph (d)(ii) by deleting “fifteen cents (\$0.15) per ton.” and inserting —

5% of the FOB revenue (computed as aforesaid).

- (3) Section 21.01(b), (c) and (d)(ii) 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 section 21.01 of the Agreement in respect of any period before the commencement of the *Iron Ore Agreements Legislation Amendment Act 2010* Part 9.

*[Section 4 inserted: No. 34 of 2010 s. 21.]*

- (5) Nothing in this section affects the amount of royalty payable under section 21.01 of the current Agreement in respect of any period after the commencement of the *Iron Ore Agreements Legislation Amendment Act 2024* Part 2.

*[Section 4 amended: No. 38 of 2024 s. 6.]*

## **5. 2024 Variation Agreement ratified and implementation authorised**

- (1) The 2024 Variation Agreement is ratified.
- (2) The implementation of the 2024 Variation Agreement is authorised.

*[Section 5 inserted: No. 38 of 2024 s. 7.]*

## **6. State empowered**

The State has power in accordance with section 10.05(a) of the current Agreement.

*[Section 6 inserted: No. 38 of 2024 s. 7.]*

## **7. Effect on other laws**

- (1) The current Agreement operates and takes effect despite any enactment or other law.
- (2) If a provision of the agreement referred to in section 2 or the 2024 variation agreement expressly or by implication purports to modify or exclude the application or operation of an

**s. 7**

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enactment for a purpose or in relation to a person or thing, the application or operation of the enactment is modified or excluded for that purpose, or in relation to that person or thing, to the extent or for the period mentioned in the provision or necessary for the provision to have effect.

(3) To avoid doubt, it is declared that the provisions of the *Public Works Act 1902* section 96 do not apply to a railway constructed under the current Agreement.

(4) This section does not limit or otherwise affect the application of the *Government Agreements Act 1979*.

[Section 7 inserted: No. 38 of 2024 s. 7.]

## Schedule 1 — Iron Ore (Rhodes Ridge) Agreement

[s. 2]

*[Heading ~~amended~~inserted: No. ~~1938~~ of ~~2010~~2024 s. 48.]*

AN AGREEMENT MADE and executed this \_\_\_\_\_ day of \_\_\_\_\_  
One thousand nine hundred and seventy-two  
BETWEEN THE HONOURABLE JOHN TREZISE TONKIN, MLA, THE  
PREMIER OF THE STATE OF WESTERN AUSTRALIA acting for and on  
behalf of the said State and its instrumentalities from time to time (hereinafter  
called “the State”) of the first part RHODES RIDGE MINING CO. LTD. a  
company incorporated in the State of Delaware in the United States of America  
and having its executive offices situate at the 55th Floor, 200 Park Avenue New  
York in the United States of America and registered in the State of Western  
Australia and having its registered office there situate at the 2nd Floor,  
7 Havelock Street West Perth, HANCOCK PROSPECTING PTY. LTD. a  
company incorporated in the State of Western Australia and having its  
registered office situate at the 14th Floor Lombard House, 251 Adelaide Terrace  
Perth in that State and WRIGHT PROSPECTING PTY. LTD. a company  
incorporated in the State of Western Australia and having its registered office  
situate at the 14th Floor Lombard House, 251 Adelaide Terrace Perth aforesaid  
(hereinafter called “the Joint Venturers” which expression shall where the  
context so admits or requires extend to and include the Joint Venturers jointly  
and each of them severally their and each of their successors and permitted  
assigns and appointees) of the second part and TEXAS GULF INC. a company  
incorporated in the State of Texas in the United States of America and having  
its executive offices situated at the 55th Floor, 200 Park Avenue, New York  
aforesaid and having an address for the service of notices in the State of  
Western Australia at the 2nd Floor, 7 Havelock Street, West Perth aforesaid  
(hereinafter called “the Guarantor” which expression shall where the context so  
admits or requires extend to and include the Guarantor and also its successors  
and assigns) of the third part being the Agreement referred to in Section 2 of the  
enabling Act.

WHEREAS:

- (a) For some time prior to the execution hereof exploration and investigations have been carried out as to the possibility of the mining areas hereinafter defined containing large deposits of iron ore and as a result of such exploration and investigation the parties hereto believe that in the mining areas there are substantial deposits of iron ore

having an average grade of 60% Fe or better and certain lesser deposits of limited size of higher grade that may after further study be found to be useable as blending ore in conjunction with lower grade iron ores which may exist within the mining areas or elsewhere.

- (b) Research has been and is still being conducted by the Joint Venturers in both Australia and the United States of America with the object of establishing satisfactory ore crushing screening upgrading and pelletising procedures that could be used in the treatment of iron ore from the said deposits.
- (c) The Joint Venturers have also prior to the execution hereof caused preliminary engineering studies to be made as to the construction of a railway between the mining areas and a port site in or in the vicinity of the area between Dampier and Cape Lambert and the development of such a port site.
- (d) The said Rhodes Ridge Mining Co. Ltd. is a wholly owned subsidiary of the Guarantor which as the parent company has agreed to guarantee to the State performance by the said Rhodes Ridge Mining Co. Ltd. of its obligations hereunder upon and subject to the terms and conditions of the guarantee hereinafter contained.

THEREFORE IT IS MUTUALLY AGREED between the State and the Joint Venturers as follows: —

PART I

Preliminary

CLAUSE I

SECTION 1.01 DEFINITIONS In this Agreement unless the context otherwise admits or requires each of the following words has the meaning hereby respectively assigned to that word namely —

“apply”, “approve”, “approval”, “consent”, “certify”, “direct”, “notify”, “require” or “request” means apply, approve, approval, consent, certify, direct, notify, require or request in writing, as the case may be;

“assignee” means an associated company or a third party in whose favour the Joint Venturers jointly have or any of them has executed an assignment subletting or other disposition pursuant to



paragraph (a) of Section 25.04 and includes an associated company or third party in whose favour an appointment has been made pursuant to paragraph (b) of Section 25.04.

“associated company” means —

- (a) any company notified in writing by the Joint Venturers or any of them to the Minister which has a paid-up capital of not less than two million dollars (\$2,000,000) and 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 percentum (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 percentum (20%) of the issued ordinary share capital and —
- (b) any other company which is nominated by the Joint Venturers or any of them and of which the Minister approves as an associated company for the purposes of this Agreement.

“commencement date” means the date on which this Agreement is executed by all parties hereto;

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

“direct shipping ore” means iron ore which has an average pure iron content of not less than sixty percentum (60%) which will not pass through a one half ( $\frac{1}{2}$ ) inch mesh screen and which is sold without concentration or other beneficiation other than crushing and screening;

“enabling Act” means the Act of Parliament of the said State entitled  
“*Iron Ore (Rhodes Ridge) Agreement Authorization Act 1972*”;

“export date” means the date on which the ship carrying the first  
shipment of iron ore products shipped by the Joint Venturers  
under this Agreement (other than iron ore shipped solely for  
testing purposes) sails from the port at which it has been loaded;

“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 sum of money remaining after deducting  
from the amount of the gross purchase price (net of any amounts  
which the purchaser is entitled to deduct from the gross purchase  
price by way of penalty or otherwise for any defect in quality  
quantity or delay in delivery) payable to the Joint Venturers or an  
associated company by a purchaser thereof in respect of a  
specified quantity of iron ore products sold by the Joint Venturers  
or the associated company to the purchaser for shipment beyond  
the Commonwealth the following items of cost namely — all  
export duties and export taxes payable on the iron ore products  
sold and shipped and all other costs and charges properly incurred  
and payable in respect of the iron ore products by the Joint  
Venturers or the associated company to the State or a third party  
between the point in time when the iron ore products are placed  
on ship at the Joint Venturers’ wharf and the point in time when  
the iron ore products are delivered to and accepted by the  
purchaser there being included in such other costs and charges —

- (1) ocean freight;
- (2) marine insurance;
- (3) port and handling charges at port of discharge;

- (4) costs of delivery from port of discharge to a smelter nominated by the purchaser;
- (5) weighing, sampling, assaying, inspection and representation costs incurred on discharge or delivery;
- (6) shipping agency charges;
- (7) import taxes payable to the country of the port of discharge;
- (8) demurrage incurred after loading and at port of discharge;
- (9) such other costs and charges as the parties (having regard *inter alia* to such matters as the parties to and the *bona fide* nature of the transaction as the result of which the cost or charge was incurred) shall mutually agree to include or failing agreement as fixed by arbitration as hereinafter provided.

For the purpose of this definition —

- (a) the Minister may from time to time in respect of any of the costs or charges mentioned in items (1) to (8) (inclusive) above incurred in relation to any particular shipment or sale notify the Joint Venturers in writing that he does not regard the cost or charge as being properly incurred and in that event should the Joint Venturers disagree with the Minister's decision they may refer the matter in question to arbitration as hereinafter provided but unless and until it is otherwise determined such cost or charge shall be treated as being not properly incurred and if otherwise determined the State will refund to the Joint Venturers any royalty paid by the Joint Venturers on the basis that the charge was not properly incurred;
- (b) unless and until the Minister determines that the same is a cost or charge coming within the category of those mentioned in item (9) above a cost or charge mentioned in any of the said items (1) to (8) (inclusive) which is directly or indirectly imposed upon or incurred by the Joint Venturers or an associated company pursuant to an

arrangement entered into between the Joint Venturers and the State shall be treated as being not properly incurred;

- (c) in the event of the parties failing to agree to the inclusion of a cost or charge which might be included pursuant to item (9) and referring the same to arbitration then unless and until it is otherwise determined such cost or charge shall be excluded but if it is determined that the same should be included the State will refund to the Joint Venturers any royalty paid by reason of the same having been excluded.

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

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

“iron ore pellets” means iron ore in pellet or other form produced by pelletisation or a more advanced reduction or other treatment or process from iron ore mined on the mineral lease;

“iron ore products” is an inclusive term covering iron ore of all grades obtained from the mineral lease and also all products produced by secondary processing any part of such iron ore;

“Joint Venturers’ wharf” means any wharf utilised by the Joint Venturers for the purpose of shipping iron ore products produced as the result of the operation of this Agreement and whether the same be a wharf constructed by or on behalf of the Joint Venturers a wharf used by the Joint Venturers in conjunction with another or others (including the State) or any temporary structure approved by the Minister as the Joint Venturers’ wharf for the time being for the purposes of this Agreement;

“Land Act” means the *Land Act 1933*;

“locally used ore” means iron ore used by the Joint Venturers or an associated company within the Commonwealth for secondary processing or in an integrated iron and steel industry or any plant for the production of steel;

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

“mineral lease” means the mineral lease referred to in Section 9.01 and includes any renewal thereof and according to the requirements of the context shall describe the area of land demised as well as the instrument by which it is demised;

“mine townsite” means a townsite or townsites established by the Joint Venturers on or near the mining areas pursuant to this Agreement and may include any existing townsite approved by the Minister;

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

“mining areas” means the land described in the “particulars of mining areas” appended to Section 3.02;

“Minister” means the Minister of the Government of the said State for the time being responsible for the administration of this Agreement;

“Minister for Mines” means the Minister in the Government of the said State for the time being responsible for the administration of the Mining Act and includes any other Minister in the said Government for the time being temporarily undertaking such responsibility;

“Minister for Works” means the Minister for Works in the Government of the said State or such other member of the Executive Council as the Governor may appoint to administer the *Rights in Water and Irrigation Act 1914*;

“month” means calendar month;

“mortgagee” means an associated company or a third party in whose favour the Joint Venturers jointly have or any of them severally has executed a mortgage or charge pursuant to paragraph (a) of Section 25.04;

“notice” means notice in writing;

“ore” means iron ore;

“parties” means the parties to this Agreement of the first and second parts;

“person” or “persons” includes bodies corporate;

“the port” means and is primarily used to designate the new port to be established in implementation of proposals made by the Joint Venturers pursuant to Clause V whether the same be established by the Joint Venturers exclusively or by them in conjunction with another or others (including the State) and should no such new port be established the term means any existing port developed or used by the Joint Venturers for the purposes of this Agreement by arrangement with another or others (including the State) and in either case the term extends to and includes as well as the land upon which the Joint Venturers’ wharf is erected also the adjacent land serving the Joint Venturers’ wharf and the adjacent land on which it is proposed to locate or on which could be located or in fact is located secondary and tertiary processing plants crushing grinding and screening facilities stockpiling yards electric power generating plant petroleum storage and other ancillary facilities;

“port townsite” means the townsite to be expanded or developed near the port;

“said State” means the State of Western Australia;

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

“tertiary processing” means the production of pig iron by blast furnace smelting and the production of steel by any means whatsoever;

“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;

“Transfer of Land Act” means the *Transfer of Land Act 1893*;

“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.

#### SECTION 1.02 CAPTIONS

- (a) The captions of the Parts into which this Agreement is divided and the Schedule to this Agreement and each plan or other document referred to in this Agreement which is marked by the parties for identification are part of this Agreement.
- (b) The Table of Clauses included in this Agreement and the captions of the Clauses and any headings to sections are for convenience only and do not constitute part of this Agreement and the same are not to be deemed to define or limit any of the terms of this Agreement nor to be construed as giving any indication as to how such terms are to be construed or interpreted.

#### SECTION 1.03 CONSTRUCTION

- (a) References to money are to be construed as referring to Australian currency.
- (b) References to an Act are to be construed as referring to the amendments to such Act for the time being in force and also to any Act passed in substitution therefor or in lieu thereof and also to the regulations for the time being in force thereunder.
- (c) Where any provision of this Agreement constitutes an agreement or undertaking by one of the parties to make a payment or to perform some act or to carry out some obligation or to assume some responsibility or liability or to grant some right concession or advantage that party by its execution hereof will be deemed to have covenanted and agreed with the other party accordingly.
- (d) By virtue of Section 3 of the enabling Act this Agreement operates and takes effect as from the commencement date according to the tenor of the provisions thereof notwithstanding the provisions of any other relevant existing Act of the said Parliament and of any rule or law to the contrary.
- (e) The State and the Minister will be deemed to have power and authority to exercise all such powers and discretions and to do all such other acts matters and things as may be required or be

necessary to be exercised or done in order to carry out and give effect to the provisions of this Agreement and in particular the State and the Minister will be deemed to have power —

- (i) to close or vary the alignments or boundaries of any public road and —
- (ii) to resume as and for a public work any land or other estate right or interest in land.

**SECTION 1.04 EXISTING ACTS** For the purposes of this Agreement (and for those purposes only) the provisions of any relevant existing Act will be deemed to be modified or amended to the extent necessary to enable this Agreement to be given full force and effect and in particular without limiting the generality of the foregoing the Acts mentioned in Sections 1.05 to 1.08 inclusive shall be deemed to be amended to the extent indicated therein.

**SECTION 1.05 MINING ACT** The Mining Act will be deemed amended as if Sections 277 and 282 thereof were both deleted therefrom.

**SECTION 1.06 LAND ACT** The Land Act will be deemed amended as if —

- (a) subsections (1) and (2) of Section 45A thereof were deleted therefrom and the following substituted therefor —

45A (1) Notwithstanding anything contained in the last preceding Sections of this Part (Part IV) of this Act the Governor may dispense with the requirements thereof as to the sale of town or country lands and may approve of any lot being offered for sale or for leasing in the manner prescribed in subsection (2) of this Section.

(2) Upon the Governor signifying approval pursuant to subsection (1) of this Section in respect of any such lands the Minister may offer the said lands or any part thereof for sale or may grant leases or licences thereof for such price or prices and for such period or periods (including rights of renewal) and upon and subject to such other terms and conditions and in such form as the Minister may think fit provided that the price period or other terms and conditions shall not be inconsistent with the provisions of any agreement executed by the Premier of the State of Western



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Australia acting for and on behalf of the said State pursuant to the authority in that behalf given by an Act of the Parliament of the said State. ;

(b) the proviso to Section 116 thereof was deleted therefrom;

(c) Sections 135 and 143 thereof were deleted therefrom.

**SECTION 1.07 PUBLIC WORKS ACT** The Public Works Act will be deemed amended as if subsections (2) to (7) inclusive of Section 17 thereof and also the whole of Section 17A thereof were all deleted therefrom.

**SECTION 1.08 FLOATING CHARGES** Section 82 of the Mining Act and Section 81D of the Transfer of Land Act will be deemed not to apply to a mortgage or charge in the form commonly known as a floating charge given by the Joint Venturers or an associated company pursuant to Section 25.04 or to a transfer or assignment in exercise of a power of sale contained in any such mortgage or charge.

**SECTION 1.09 PARTITION** No lease sub-lease licence or other title or right granted or assigned under or in pursuance of this Agreement shall be subject to or capable of partition and accordingly the provisions of Part XIV of the *Property Law Act 1969*, will be deemed not to apply thereto.

## PART II

### Feasibility Studies and Preparation of Proposals

#### CLAUSE II

**SECTION 2.01 INVESTIGATIONS AND STUDIES** Beginning as soon as practicable after the commencement date the Joint Venturers will diligently and expeditiously explore and investigate the mining areas hereinafter mentioned (which operations are herein referred to as “the investigations”) with the view to preparing and submitting to the State as soon as practicable feasibility studies (herein referred to as “the studies”) as to the various aspects of the development of the mining areas for the mining of iron ore and the treatment and processing thereof and also with a view to making to the State detailed proposals as to such development as hereinafter provided.

**SECTION 2.02 STATE ASSISTANCE** The State will afford the Joint Venturers all such reasonable assistance as they may require during the course of the investigations and the studies to enable them to complete the same and to

that end will furnish such advice and commentaries as the Joint Venturers may require and as may be reasonably practicable for the State so to do.

### CLAUSE III

**SECTION 3.01 ENTRY ON CROWN LANDS** To the extent reasonably necessary for the purpose of the investigations and studies and subject to the adequate protection of the environment (including flora and fauna) the State will permit the Joint Venturers to enter into and upon Crown land other than the mining areas (including the lands the subject of a pastoral lease) and to survey possible sites for their proposed operations under this Agreement.

**SECTION 3.02 RIGHT OF OCCUPANCY** As soon as practicable after the commencement date the State will cause the Minister for Mines in exercise of the power in that behalf conferred by Section 276 of the Mining Act to temporarily reserve from occupation the land more particularly described in the “particulars of mining areas” appended to this Section and with the approval of the Governor to authorise the Joint Venturers to temporarily occupy such land (the right of the Joint Venturers so to do pursuant to such authority being hereinafter referred to as “the right of occupancy”) for the period and upon and subject to the terms and conditions hereinafter mentioned.

### PARTICULARS OF MINING AREAS

ALL those pieces of land (containing in the aggregate an area of 322 square miles or thereabouts) being those portions of the land the subject of Temporary Reserves 4192H, 4193H, 4266H, 4267H, 4737H, 4881H, 4882H, 4883H, and 4884H, as are delineated and coloured green in the plan marked ‘A’ signed by or on behalf of the parties hereto for the purpose of identification.

**SECTION 3.03 SURRENDER OF EXISTING RIGHTS** The right of occupancy will be granted subject to the condition precedent that the Joint Venturers acquire by transfer all existing rights of occupancy in to or in respect of the mining areas and surrender the same to the Crown.

### SECTION 3.04 SURVEY

- (a) The Location boundaries and other dimensions of the mining areas other than Temporary Reserves 4193H, 4881H and 4884H have been ascertained and fixed by and the area thereof calculated following upon a survey of such land made on behalf of the Joint Venturers at their cost and expense prior to the

commencement date which said survey has been approved by the State for the purposes of this Agreement and used in the preparation of the plan marked 'A' mentioned in Section 3.02.

- (b) The location boundaries and other dimensions of the land comprised in Temporary Reserves 4193H, 4881H and 4884H will be ascertained and fixed by and the area thereof calculated following upon a survey of such land made by or on behalf of the State at the cost and expense of the Joint Venturers as soon as practicable after the commencement date.

**SECTION 3.05 OCCUPANCY PERIOD** Subject as provided in Section 3.06 the period of the right of occupancy will be a fixed period expiring twelve months after the commencement date or on the date of the granting of the mineral lease pursuant to Section 9.01 (notwithstanding that the instrument of such lease may not be issued) whichever is the earlier date.

**SECTION 3.06 OCCUPANCY RENEWAL** If at any time within one (1) month prior to the expiration of the period of the right of occupancy (whether the period be that mentioned in Section 3.05 or any renewed period granted pursuant to this Section) the Joint Venturers make a written request to the State that the said period be renewed the State will cause the Minister for Mines to renew the same for such period (not exceeding twelve months on any one occasion) and upon and subject to the same terms and conditions but (unless the State shall otherwise agree) the period of the right of occupancy will not be renewed beyond the fifth anniversary of the commencement date and will expire at noon on that date.

**SECTION 3.07 CONSIDERATION FOR OCCUPANCY** The Joint Venturers will on the commencement date and thereafter on the first and every subsequent anniversary of the commencement date during the continuance of the period of the right of occupancy pay to the State as consideration for the right of occupancy in advance an annual fee of \$1,000 for each Temporary Reserve comprised in the mining areas and also \$26.00 for each square mile or part of a square mile of the mining areas for the time being subject to the right of occupancy.

**SECTION 3.08 OTHER CONDITIONS OF OCCUPANCY** Subject as otherwise provided in this Clause (Clause III) the right of occupancy may be granted or renewed upon and subject to such terms and conditions not inconsistent with the provisions for the time being of the Mining Act as the parties mutually agree and of which the Governor may approve.

**SECTION 3.09 DETERMINATION OF OCCUPANCY** The right of occupancy will forthwith cease and determine on the happening of any of the following events namely —

- (a) upon the Joint Venturers by notice to the Minister relinquishing the same; or
- (b) upon the initial or any renewed period thereof expiring by effluxion of time; or
- (c) upon the State granting to the Joint Venturers a mineral lease pursuant to section 9.01 (notwithstanding that the instrument of such lease may not be issued); or
- (d) upon the Joint Venturers making default in the due and punctual payment of any annual fee payable pursuant to Section 3.07 and failing to comply with a notice from the State specifying such default and calling upon the Joint Venturers to remedy the same within a period of fourteen (14) days of the service of such notice, or
- (e) upon the Joint Venturers making default in the due performance or observance of any of the other of the terms and conditions upon and subject to which the right of occupancy was granted and failing to comply with a notice from the State specifying such default and calling upon the Joint Venturers to remedy the same within a period of fourteen (14) days of the service of such notice.

#### CLAUSE IV

**SECTION 4.01 JOINT VENTURERS INVESTIGATIONS** In the course of the investigations and the studies the Joint Venturers will insofar as they have not already done so to the reasonable satisfaction of the Minister commence forthwith and carry out at their expense (with the assistance of experienced consultants where appropriate) the following —

- (a) a thorough geological and (as necessary) geophysical investigation and proving of the iron ore deposits in the mining areas and the testing and sampling of such deposits;

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- (b) a reconnaissance of sites of the operations proposed pursuant to this Agreement together with the preparation of suitable maps and drawings;
  - (c) an engineering investigation of the route for a railway from the mining areas to the port or (in consultation with the owner) to connect with any existing or proposed railway operated or to be operated by any other party under an agreement with the State;
  - (d) a general survey and preliminary engineering investigation of possible port sites in the general Cape Lambert-Dampier area including Legendre Island;
  - (e) a study of the technical and economic feasibility of the mining transporting handling and shipping of iron ore from the mining areas;
  - (f) the planning and development of a suitable mine townsite and a suitable port townsite in consultation with the State having due regard as to the possible or probable use of the same by others as well as the Joint Venturers;
  - (g) the investigation, in areas indicated by the Minister of suitable water supplies for mining industrial and mine townsite purposes;
  - (h) metallurgical and market research;
  - (i) a thorough assessment of the environmental impact likely to result from operations pursuant to this Agreement together with details of the measures proposed for the treatment of such effects;

**SECTION 4.02 PORT INVESTIGATIONS** After consultation with the Minister concerning the result of the investigations and surveys mentioned in Section 4.01(d) the Joint Venturers will employ or retain experienced consultant engineers acceptable to the State to investigate report upon and make recommendations as to the best overall development of a port at such location as appears to be the location most suitable as the subject of the investigations report and recommendations contemplated by this Section 4.02. The Joint Venturers will require such engineers when making such report and recommendations to have full regard for the general development of the port with a view to its reasonable use by others and the Joint Venturers will furnish to the State copies of such reports and recommendations. When submitting to the Minister pursuant to Section 5.02 detailed proposals in regard to the matters

mentioned in this Section 4.02 the Joint Venturers will so far as reasonably practicable ensure that the detailed proposals —

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

**SECTION 4.03 REPORTS TO STATE** The Joint Venturers will collaborate with and keep the State fully informed as to the progress and results of the investigations and studies and in particular as to the carrying out of the operations as to the matters mentioned in Sections 4.01 and 4.02. For that purpose the Joint Venturers will at least once in every quarter submit to the State a comprehensive report of such progress and results and if and when the Minister may reasonably require furnish the Minister with copies of all relevant reports made by consultants and of all findings and conclusions made by the Joint Venturers as the result of the consultants reports and consequent upon the progress made in the investigations and studies and in the said operations but the Joint Venturers will not be required to disclose to the State any information findings conclusions or reports concerning or touching the economic feasibility of any of the matters mentioned in paragraph (e) of Section 4.01 which are of a financial nature and which the Joint Venturers consider are private and confidential to themselves and if revealed could prejudice them or otherwise react to their detriment in their dealings with third parties.

**SECTION 4.04 STATE INVESTIGATIONS** If the State concurrently carries out its own investigations and reconnaissances in regard to all or any of the matters mentioned in Sections 4.01 and 4.02 the Joint Venturers will co-operate with the State therein and so far as it is reasonably practicable so to do will consult with the representatives or officers of the State and make full disclosures and give expressions of opinion regarding the matters mentioned in Sections 4.01 and 4.02.

## CLAUSE V

**SECTION 5.01 INITIAL PORT PROPOSAL** As soon as practicable after the completion of the investigations mentioned in Section 4.02 the Joint

Venturers will submit to the Minister proposals as to the location and an outline in sufficient detail to enable the Minister to satisfy himself as to the suitability technical feasibility and practicability of the proposed development of the port (having regard to the matters mentioned in paragraph (a) of Section 5.02) and the Minister will within two (2) months after such submission notify the Joint Venturers whether he approves or otherwise of such proposals or the Minister may within that time himself suggest an alternative proposal. If the Minister does not approve of the Joint Venturers' proposals or if he himself submits an alternative proposal the Minister will disclose his reasons for so doing by specifying the same in the said notice and afford the Joint Venturers ample opportunity to consult with him and themselves to submit further or alternative proposals and to consider any alternative proposal suggested by the Minister. When considering any of the Joint Venturers' proposals and in making his own proposal the Minister will have regard to the possible future requirements of others (including the State) and no preference or other priority will be given to the Joint Venturers or their proposals by reason only that the proposals were submitted for consideration first before proposals from any other party.

**SECTION 5.02 DETAILED PROPOSALS** Subject to the proposals or any alternative proposals as to the location and development of the port being approved the Joint Venturers will on or before the fifth anniversary of the commencement date or on or before such later date as the Minister may approve submit to the Minister detailed proposals (herein referred to as "the said proposals") which shall include (where practicable) appropriate plans and (where reasonably required by the Minister) appropriate specifications in respect of the mining of iron ore on and the future development of the mining areas (or so much thereof as is comprised in the mineral lease mentioned in Section 9.01) and detailed particulars as to the measures proposed to be taken for the protection of the environment should the same be approved or be deemed to be approved and also (to the fullest extent reasonably practicable) detailed particulars as to the location area layout design number materials to be used in and time programme for the commencement and completion of the construction or the provision (as the case may be) of each of the following matters —

- (a) (to the extent not already covered by the proposals mentioned in Section 5.01) the port and port development including the dredging thereof and the disposal and depositing of the spoil the provision of navigational aids the Joint Venturers' wharf the berth and swinging basin proposed in connection with the Joint Venturers' use thereof and the port installations facilities and

services to be available all of which are to be of such nature and extent as to be capable of and suitable for adaption to permit use of the Joint Venturers' wharf by ships having a capacity to carry 60,000 tons of iron ore.

- (b) the railway from the mining areas to the port or to connect with an existing railway and its proposed operation including joint user conditions (if any) fencing (if any) crossing places and grade separation or other forms of acceptable protection at intersections with public roads;
- (c) the development of the mine townsite and the port townsite including services and facilities in relation thereto;
- (d) housing;
- (e) water supply;
- (f) roads;
- (g) generation transmission and distribution of electricity;
- (h) airfields;
- (i) the leases licenses or other tenures of land (if any) required from the State;
- (j) disposal of waste materials;
- (k) drainage;
- (l) dust control measures; and
- (m) any other works, services or facilities proposed or required by the Joint Venturers.

**SECTION 5.03 SUBJECT OF PROPOSALS** Initially the said proposals may with the approval of the Minister and if so required by the State will be submitted as to the matter or matters mentioned in one or more of paragraphs (a) to (m) of section 5.02 and in that event submission of the said proposals as to the matter or matters mentioned in the other or others of the said paragraphs will be deferred but in any event will be finally submitted within the time mentioned in Section 5.02.

**SECTION 5.04 USE OF EXISTING INFRASTRUCTURE** The said proposals relating to any of the matters mentioned in Section 5.02 may with the



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approval 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.

**SECTION 5.05 MINISTER TO BE SATISFIED** At the time when the Joint Venturers submit the said proposals they will be required to show to the reasonable satisfaction of the Minister that the investigations and the studies in so far as the same are relevant to the said proposals have been completed. In order to be so satisfied the Minister may require the Joint Venturers to produce to him acceptable evidence of —

- (a) marketing arrangements demonstrating the Joint Venturers' ability to sell iron ore and iron ore products in accordance with the said proposals;
- (b) the availability of finance necessary for the fulfilment of the operations to which the said proposals refer; and
- (c) the readiness of the Joint Venturers to embark upon and proceed to carry out the operations referred to in the said proposals.

**SECTION 5.06 PORT LOCATION** The Minister's determination in respect of the Joint Venturers' proposals relating to the location of the port and in respect of proposals relating to the overall development of the port and the location of the port townsite will be conclusive final and binding on all parties and the same shall not be referable to arbitration.

## CLAUSE VI

**SECTION 6.01 CONSIDERATION OF PROPOSALS** On receipt of the said proposals the Minister may —

- (a) 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 one or more of the other matters mentioned in one or more of the paragraphs (a) to (m) of Section 5.02 not covered by the said proposals; or
- (b) approve of the said proposals either wholly or in part without qualification or reservation; 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 (having regard to the circumstances including the overall development of and the use by others as well as the Joint Venturers of all or any of the facilities proposed to be provided) thinks reasonable and in such case will disclose to the Joint Venturers the reasons for requiring such conditions precedent.

**SECTION 6.02 MINISTER'S DECISION** The Minister will within two (2) months after receipt of the said proposals give notice to the Joint Venturers of his decision in respect to the same and will disclose to the Joint Venturers by such notice the reasons for such decision.

**SECTION 6.03 CONSULTATION WITH MINISTER** If the decision of the Minister is as mentioned in either of paragraphs (a) or (c) of Section 6.01 he will afford the Joint Venturers full opportunity to consult with him and should they so desire to submit new proposals either generally or in respect of some particular matter.

**SECTION 6.04 MINISTER'S DECISION SUBJECT TO ARBITRATION** If the decision of the Minister is as mentioned in paragraph (c) of Section 6.01 and the Joint Venturers consider that such decision or any condition precedent imposed is technically financially economically or otherwise unreasonable the Joint Venturers may within two (2) months after receipt of the notice mentioned in Section 6.02 elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of such decision or of the condition precedent.

**SECTION 6.05 REASONABLENESS OF MINISTER'S DECISION** In addition to any other matter to which the arbitrator is required (whether pursuant to the provisions of Section 32.01 or otherwise) to have regard in considering the reasonableness of any decision of the Minister made pursuant to Section 6.01 the Minister will not be regarded to have acted unreasonably if he shall defer his decision on a proposal made in relation to the matters mentioned in paragraph (i) of Section 5.02 until the said proposals in relation to the matters mentioned in the other paragraphs of Section 5.02 have become or deemed to have become approved proposals.

**SECTION 6.06 ARBITRATING AWARD** An award made on an arbitration pursuant to Section 6.04 shall have force and effect as follows —

- (a) if by the award it is adjudged that the condition precedent is reasonable then the decision of the Minister in respect to the said proposals shall stand; or
- (b) if by the award it is adjudged that the condition precedent is unreasonable then the said proposals shall be deemed to have been approved by the Minister in the form in which the same were submitted.

**SECTION 6.07 APPROVED PROPOSALS DEFINED** Proposals which are approved by the Minister as provided in paragraph (b) of Section 6.01 and those (if any) which are deemed to have been approved as provided in paragraph (b) of Section 6.06 are hereinafter referred to as “approved proposals”.

## CLAUSE VII

**SECTION 7.01 ADDITIONAL PROPOSALS** If the Joint Venturers at any time during the continuance of this Agreement desire to expand their activities beyond those specified in any approved proposals they will give notice of such desire to the Minister and within two (2) months thereafter will 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 (m) of Section 5.02 as the Minister may require. The provisions of Clauses V and VI shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this Section save that the provisions of Section 5.05 shall not apply.

**SECTION 7.02 BASIS OF SUBMISSION** In the event of the Joint Venturers submitting detailed proposals pursuant to Section 7.01 or if as a consequence of their submitting detailed proposals pursuant to Section 23.01 the Minister requires further detailed proposals to be submitted on any of the said matters mentioned in paragraphs (a) to (m) of Section 5.02 (which said detailed proposals and said further detailed proposals are herein referred to as “additional proposals”) then subject as provided in Section 7.03 the additional proposals will be submitted on the basis that should the same become approved proposals the provisions of Clause XVIII will apply *mutatis mutandis* in respect of any increase in the extent of the services and facilities mentioned in Section 18.01 and also in respect of the provision of the additional services or facilities (whether of the kind mentioned in Section 18.01 or not) occasioned in either case by the additional proposals becoming approved proposals.

**SECTION 7.03 DETERMINATION OF JOINT VENTURERS' OBLIGATIONS** The extent of the Joint Venturers' responsibilities under Clause XVIII to provide the capital cost of and to maintain any increased or additional services and facilities of the kind mentioned in Section 18.01 occasioned by the additional proposals or any of them becoming approved proposals will be determined by the Minister after discussion and negotiation on such matters with the Joint Venturers and in making such determination the Minister will have regard (*inter alia*) to the current and anticipated composition of any mining or other town affected and the extent to which the State's current capital resources will permit of its undertaking its responsibilities ordinarily to provide the capital cost of and maintain such services and facilities.

#### **CLAUSE VIII**

**SECTION 8.01 DETERMINATION BEFORE IMPLEMENTATION** In any of the following events namely —

- (a) if the right of occupancy ceases and determines pursuant to Section 3.09; or
- (b) if the Joint Venturers give to the State notice of their intention to abandon or discontinue the investigations and the studies; or
- (c) if the Joint Venturers fail within the time (or any extension thereof) limited by Section 5.02 to submit any proposals and fail to satisfy the Minister that they are then diligently and actively conducting the necessary investigations and studies incidental to the preparation of the proposals; or
- (d) if the effect of an award made upon an arbitration under Section 6.04 is that the decision of the Minister is to stand and the Joint Venturers fail within three (3) months after the making of the award to give notice that they accept the same and propose forthwith to implement the proposals in respect of which the award was made —

the State may give to the Joint Venturers one month's notice determining this Agreement and on the expiration of such notice this Agreement will cease and determine and neither party will have any claim against the other in respect of any matter or thing arising out of or done or performed or omitted to be done or performed under this Agreement except as provided under Clause XXVI.

PART III

Implementation of Proposals

CLAUSE IX

SECTION 9.01 MINERAL LEASE As soon as practicable after the said proposals become approved proposals the State will in accordance with the relevant approved proposal on the application of the Joint Venturers cause to be granted to them a mineral lease in the form set out in the Schedule to this Agreement for the mining of iron ore from such part or parts of the land comprised in the mining areas as is or are then subject to the right of occupancy and referred to in the said proposals. The following provisions will apply to the mineral lease —

- (a) the total area of the land the subject thereof will not exceed three hundred (300) square miles;
- (b) the boundaries of the land comprising such area will be so located as to form either a single parallelogram or a number of parallelograms;
- (c) the rent reserved thereby will be that fixed in Section 9.04;
- (d) the Joint Venturers will therein covenant to pay to the State in addition to the said rent the royalties fixed in Section 21.01;
- (e) subject to the due payment by the Joint Venturers of the said rent and royalties and to the due performance and observance by them of their other obligations thereunder and of their obligations under this Agreement the term thereof will be twenty one (21) years as from the date of the granting thereof but the Joint Venturers will during the continuance of this Agreement have the right to take successive renewals of the said term each for a period of twenty one (21) years upon the same terms and conditions subject to the sooner determination of the said term upon the cessation or determination of this Agreement. The said right will be exercisable by the Joint Venturers making written application for any such renewal not later than one month before the expiration of the current term of the mineral lease;
- (f) subject to paragraphs (a) to (e) inclusive of this Section and as in this Agreement otherwise provided all relevant provisions of the

Mining Act and the Regulations thereunder will apply but subject to their discharging and carrying out their obligations under this Part (Part III) of this Agreement the Joint Venturers will not be required to comply with the labour conditions imposed by the said Act in respect of mineral leases.

**SECTION 9.02 SURVEY** The State will cause to be made any survey necessary to define the area and boundaries of the land to be comprised in the mineral lease and the Joint Venturers will upon demand made on or after the completion of such survey pay to the State the cost thereof. The Minister for Mines may decline to issue the instrument for the mineral lease until such survey is completed.

**SECTION 9.03 SURRENDER OF PORTIONS** Notwithstanding the provisions of paragraph (e) of Section 9.01 the Joint Venturers may from time to time (with abatement of future rent in respect to the area surrendered but without any abatement of rent already paid or any rent which has become due and has been paid in advance) surrender to the State all or any portion or portions (of reasonable size and shape) of the mineral lease.

**SECTION 9.04 RENTAL** The rent payable by the Joint Venturers under the mineral lease will be an annual rent (payable annually in advance) of a sum equal to seventy cents (\$0.70) per acre per annum calculated on the total area of land for the time being the subject of the mineral lease. The said rent will run as from the date of the granting of the mineral lease on which date the first payment of rent will become due and payable notwithstanding that the survey mentioned in Section 9.02 may not have been commenced or completed or the instrument for the mineral lease may not have been issued.

**SECTION 9.05 OTHER LEASES** The State will to such extent as may be reasonably practicable on the application of the Joint Venturers from time to time grant to the Joint Venturers or assist them in obtaining the grant of leases and other rights for limestone, dolomite, granite, diorite, silica sand and other minerals and substances reasonably required by the Joint Venturers for the purposes of this Agreement.

**SECTION 9.06 EXCLUSIVE MINING RIGHTS** The State will not during the continuance of this Agreement register any claim or grant any lease or other mining tenement under the Mining Act or otherwise whereby any person other than the Joint Venturers might under the laws relating to mining or otherwise obtain any rights to mine or take natural substances (other than petroleum as defined by the *Petroleum Act 1967*) from within the mineral lease

unless the Minister reasonably determines that the registration or grant is not likely unduly to prejudice or interfere with the Joint Venturers' operations hereunder.

**SECTION 9.07 ACCESS OVER MINERAL LEASE** The Joint Venturers will at all times permit the State and third parties (with or without stock vehicles and rolling stock) to have access to and to pass over the mineral lease (by separate route, road or railway) so long as that access and passage does not unduly prejudice or interfere with the operations of the Joint Venturers under this Agreement.

**SECTION 9.08 LAND RESUMPTION** The State will as and for a public work under the *Public Works Act 1902* resume any land required for the purposes of this Agreement and will if it considers it expedient so to do sell lease or otherwise dispose of the land to the Joint Venturers.

## CLAUSE X

**SECTION 10.01 LEASES FOR OTHER PURPOSES** The State will in compliance on its part with the approved proposals as and when required by the Joint Venturers so to do cause to be granted to the Joint Venturers such other leases of Crown lands as the parties may consider reasonable and necessary for all or any of the following purposes namely town sites, private roads, railway lines and sidings, tailing areas, over-burden areas, water pipelines, pumping installations and reservoirs, airport, power transmission lines and stockpile areas and for any other of the purposes of this Agreement. Such leases will be granted for such periods at such rentals and upon and subject to such other terms and conditions as shall be reasonable having regard to the obligations of the Joint Venturers under this Agreement.

**SECTION 10.02 SPECIAL LEASES** Pursuant to Section 10.01 the State will in particular when required by the Joint Venturers so to do cause to be granted to it —

- (a) a special lease (or special leases) of Crown land at the mine townsite for residential, professional, business, commercial and industrial purposes and for the purpose of providing communal facilities. Such special lease will be granted upon all usual terms and conditions and in particular will contain the following provisions —

- (i) the term thereof (unless sooner determined) will expire on the same date as that on which the term of the mineral lease or any renewal thereof terminates or is determined;
  - (ii) the rental payable thereunder will be one peppercorn per annum payable if and when demanded;
  - (iii) the Joint Venturers will have the right during the continuance thereof to purchase (for a price comparable with that charged by the State for other Crown land released for freehold sale in similar towns in the general region of the Joint Venturers' operations) the fee simple of any parcel or lot being part of the land thereby demised on which the Joint Venturers have erected buildings or structures (not being dwellings) costing at least ten thousand dollars (\$10,000) or dwellings costing at least seven thousand dollars (\$7,000);
- (b) a special lease (or special leases) of Crown land at or near the port for industrial stockpiling, ship loading, power generation and other similar purposes. Such special lease will be granted upon all usual terms and conditions and in particular will contain the following provisions —
  - (i) the term thereof will (unless sooner determined) expire on the same date as that on which the term of the mineral lease or any renewal thereof terminates or is determined;
  - (ii) the rental payable thereunder will be an annual rental of two dollars (\$2.00) per acre payable in advance;
- (c) notwithstanding the provisions contained in the mineral lease or any other lease granted pursuant to either of paragraphs (a) or (b) of this Section 10.02 whereby the rent payable thereunder and the times at which such rent is so payable are fixed the Joint Venturers will during the continuance of this Agreement from and after the commencement of Year 16 pay to the State as and by way of an additional annual rent to that payable under such one or more of such leases as the Joint Venturers may from time to time at their option in a notice to the State designate a sum equal to 25 cents per ton on all iron ore products in respect of which a royalty is payable under this Agreement in the ensuing



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financial year. The said additional rent shall be paid within three (3) months of the shipment sale use or production as the case may be of the said iron or products being included in a return to the State under Section 21.03.

#### CLAUSE XI

**SECTION 11.01 NO RESUMPTION** Subject to the performance by the Joint Venturers of their obligations hereunder the State will not resume or suffer or permit to be resumed by any instrumentality or by any local or other authority of the said State any portion of the land the subject of any special lease mentioned in Section 10.02 the resumption of which would unduly prejudice or interfere with the Joint Venturers' works and activities conducted or reasonably likely or contemplated to be conducted thereon or any portion of the land the subject of the mineral lease whereon any of the Joint Venturers' works are situate or are reasonably likely or contemplated to be situate the resumption of which would unduly prejudice or interfere with the Joint Venturers' mining or other activities including mining or other activities conducted or reasonably likely or contemplated to be conducted thereon nor will the State create or grant or permit or suffer to be created or granted by an instrumentality or authority of the said State any road right of way or easement of any nature or kind whatsoever over or in respect of the land comprised in the said leases whereon any of the Joint Venturers' works are situate or are reasonably likely or contemplated to be situate without the consent in writing of the Joint Venturers first had and obtained which consent the Joint Venturers agree they will not arbitrarily or unreasonably withhold.

**SECTION 11.02 NO DISCRIMINATORY RATES** Except to the extent provided by this Agreement the State will not impose or permit or suffer any instrumentality of the said State or any local or other authority to impose discriminatory taxes, rates or charges of any nature whatever on or in respect of the titles, property or other assets, products, materials or services used or produced by or through the operations of the Joint Venturers required to be carried out under this Agreement and the State will not take or permit any such instrumentality or any local or other authority to take any other discriminatory action that would deprive the Joint Venturers of the rights granted or intended to be granted to them under this Agreement.

**SECTION 11.03 ZONING** The State will ensure that land the subject of the mineral lease or any other lease licence or easement granted under or pursuant to this Agreement and all freehold land or land of any other tenure

used or occupied by the Joint Venturers for any of the purposes of this Agreement will not except as provided in this Agreement be made subject to any such restriction as to its use as would prevent or unreasonably hinder the Joint Venturers carrying out any of the operations required or permitted to be carried out under this Agreement whether the restriction be by way of zoning regulation, by-law or other exercise of statutory power by the State or any local or other authority.

**SECTION 11.04 VALUATION BASIS** The State will ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all land (whether of a freehold or leasehold nature) the subject of this Agreement (except any part upon which for the time being a permanent residence is erected or which for the time being is occupied in connection with that residence and except also any part upon which for the time being there stands any improvements that are used in connection with a commercial undertaking not directly connected with the operations of the Joint Venturers under this Agreement) will for rating purposes be deemed to be on the unimproved value thereof and no such land will be subject to any discriminatory rate but the Joint Venturers will be at liberty should they so desire to make the election provided for by Section 533B of the *Local Government Act 1960*.

## CLAUSE XII

**SECTION 12.01 IMPLEMENTATION OF PROPOSALS** The Joint Venturers will within four (4) years next following the date on which all the said proposals required to be submitted pursuant to Section 5.02 have become approved proposals at a cost of not less than sixty million dollars (\$60,000,000) 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 —

- (a) construct install and provide upon the mineral lease or in the vicinity thereof or at the port (as the case may be) 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 to mine handle load and deal with not less than three thousand (3,000) tons of iron ore per diem such capacity to be built up progressively to not less than ten thousand (10,000) tons of iron ore per diem within three (3) years next following the export date;

- (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 after export date shall not be less than one million (1,000,000) tons.

### CLAUSE XIII

**SECTION 13.01 CONSTRUCTION OF RAILWAY** Subject to the State assuring to the Joint Venturers all necessary rights in or over Crown lands available for the purpose the Joint Venturers will in a proper and workmanlike manner and in accordance with recognised standards for railways of a similar nature operating under similar conditions construct along the route specified in the approved proposals (but subject to the provisions of the *Public Works Act 1902*, to the extent that they are applicable) the railway having a four feet eight and one-half inch (4 ft. 8½ in.) gauge specified in the approved proposals and will also construct *inter alia* any necessary deviations loops spurs sidings crossings points bridges signalling switches and other works and appurtenances and provide for crossing places and (where appropriate and required by the Minister) flashing lights boom gates grade separation or other protective devices at places where the specified railway crosses or intersects with major roads or existing railways (all of which together with the specified railway being hereinafter referred to as "the said railway") and will operate the said 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.

**SECTION 13.02 OPERATION OF RAILWAY** The Joint Venturers will during the continuance of this Agreement operate the said railway in a safe and proper manner and where they can do so without unduly prejudicing or interfering with their other operations hereunder they will provide crossing places for livestock and also for any roads or other railways which now exist or in the future may be constructed and which cross or may be required to cross the said railway.

**SECTION 13.03 OTHER PASSENGERS AND FREIGHT** Where they can do so without unduly prejudicing or interfering with their operations hereunder and subject to the payment to them of the charges prescribed by and for the time being payable under any by-laws made by the Joint Venturers in respect of the transporting of passengers and the carriage of freight over the said railway and subject to the due compliance with the other requirements and conditions prescribed by such by-laws (or should there be no such by-laws for the time being in force then subject to the payment of such charges and the due compliance with such requirements and conditions as in either case are reasonable having regard to the cost to the Joint Venturers of the construction and operation of the said railway) the Joint Venturers will if and when reasonably required so to do by the State transport passengers and carry the freight of the State and third parties over the said railway but in relation to the carriage of such freight the Joint Venturers will not be deemed to be a common carrier at law or otherwise.

#### CLAUSE XIV

**SECTION 14.01 ROAD CONSTRUCTION** Subject to the State assuring to the Joint Venturers all necessary rights in or over Crown lands available for the purpose the Joint Venturers will at their own cost and expense construct such new roads as they may reasonably require for the purposes of this Agreement, such roads to be of such widths, of such materials, with such gates crossings (level or grade separated where required) and pass-overs for cattle sheep and other livestock and along such routes as the parties mutually agree after consideration of the requirements of the Commissioner of Main Roads. Except to the extent that the Joint Venturers' relevant approved proposal otherwise provides, the Joint Venturers will allow the public to use free of charge any roads constructed or upgraded pursuant to or for the purposes of this Agreement so long as such use will not unduly prejudice or interfere with the Joint Venturers' operations hereunder.

**SECTION 14.02 USE OF PUBLIC ROADS** The Joint Venturers will have the right to use any public roads that may from time to time exist in the area of their operations under this Agreement both prior to the commencement date and also in the course of their operations hereunder. If the exercise by the Joint Venturers of such right results in or is likely to result in intensive use of any public road whereby excessive damage or deterioration is caused thereto or whereby the road becomes inadequate for use by the Joint Venturers and the public the Joint Venturers will upon demand (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or part of such

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

**SECTION 14.03 ROAD UPGRADING** If required by the Joint Venturers the State will at the Joint Venturers' cost and expense (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or any part of the cost) widen upgrade or realign any public road existing from time to time which the Joint Venturers desire to use for their operations hereunder.

**SECTION 14.04 LIABILITY FOR USE OF ROADS**

(a) For the purpose of determining whether and the extent to which —

- (i) the Joint Venturers are liable to any person or body corporate (other than the State) or
- (ii) an action is maintainable by any such person or body corporate

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

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

**CLAUSE XV**

**SECTION 15.01 COASTAL WATER REQUIREMENTS** The Joint Venturers will give to the State not less than two (2) years notice of the estimated amount of water likely to be required for consumption at the port and at the port townsite and of the rate or rates at which the same in each case will be required to be supplied. The said estimated amounts or such other amounts

as the parties may agree in that connection are hereinafter called “the Joint Venturers’ coastal water requirements”.

**SECTION 15.02 COASTAL WATER SEARCH** Upon receipt of such notice the State will in collaboration with the Joint Venturers and in accordance with a mutually agreed programme and budget at the expense of the Joint Venturers search in areas agreed to by the parties for subterranean water sources sufficient to supply the Joint Venturers’ coastal water requirements.

**SECTION 15.03 DEVELOPMENT OF WATER SOURCES** In the event of the search mentioned in Section 15.02 identifying and proving subterranean water sources which the parties mutually agree are adequate to satisfy the Joint Venturers’ coastal water requirements the State will in accordance with a mutually agreed programme and budget develop the said water sources by constructing or arranging to have constructed at the Joint Venturers’ expense all bores valves pipelines meters tanks equipment and appurtenances (in this Clause called “water works”) necessary to produce a water supply capacity sufficient to satisfy the Joint Venturers’ coastal water requirements.

**SECTION 15.04 PROGRAMME AND BUDGET** If —

- (a) within six (6) months after receipt of the notice mentioned in Section 15.01 the parties fail to produce a mutually agreed programme and budget for the purposes of Section 15.02 or —
- (b) within six (6) months after identifying and proving the subterranean water source the parties fail to produce a mutually agreed programme and budget for the purpose of Section 15.03 —

then the latest proposal of the State in respect of such programme and budget will in either case be deemed to be the mutually agreed programme and budget for the purposes of Section 15.02 or Section 15.03 (as the case may be) unless the Joint Venturers within the time fixed in the paragraph (a) or paragraph (b) of this Section 15.04 (as the case may be) refer the matter to arbitration under Section 32.01 but nothing contained in this Section will effect the obligation of the State at the Joint Venturers’ expense to comply with Section 15.02.

**SECTION 15.05 ADDITIONAL CAPACITY** The State may in its discretion further develop the said water sources by constructing water works capable of achieving a capacity greater than that needed to meet the Joint Venturers’ coastal water requirements and in that event the Joint Venturers will

pay to the State a sum or sums to be mutually agreed as being the Joint Venturers' fair share of the cost of constructing the same.

**SECTION 15.06 STATE TO SUPPLY WATER** To the extent that the water sources developed by the State pursuant to Sections 15.02 and 15.03 are hydrologically capable so to do the State shall supply the Joint Venturers' coastal water requirements from such sources up to an amount and at a rate not less than that set out in the notice given pursuant to Section 15.01 but should such sources prove hydrologically inadequate of meeting the Joint Venturers' coastal water requirements the State may limit the amount of water which may be taken from such sources at any one time or from time to time to the maximum which such sources are hydrologically capable of meeting.

**SECTION 15.07 INLAND WATER REQUIREMENTS.** The Joint Venturers will give to the State not less than six (6) months notice of the estimated amount of water likely to be required for consumption at the mine townsite and also elsewhere within or near the mineral lease in order to enable them to implement their obligations hereunder and of the rate or rates at which the same in each case will be required to be supplied. The said estimated amounts or such other amounts as the parties may agree in that connection are hereinafter called "the Joint Venturers' inland water requirements".

**SECTION 15.08 INLAND WATER SEARCH** The Joint Venturers will in collaboration with the State search for and make investigations to establish the availability of suitable subterranean water sources within the mineral lease or at other locations approved by the Minister as the parties mutually agree and will employ and retain experienced groundwater consultants where appropriate and will furnish the Minister with copies of the consultants' reports or alternatively if so requested by the Joint Venturers the State will carry out the said search and investigations at the Joint Venturers' expense.

**SECTION 15.09 WATER WORKS CONSTRUCTION** In the event of the search mentioned in Section 15.08 identifying and proving subterranean water sources which the parties agree are adequate to satisfy the Joint Venturers' inland water requirements the Joint Venturers will provide and construct at their own expense to standards and designs satisfactory to the reasonable requirements of the said Minister and in accordance with their relevant proposals all water works necessary to draw transport use and dispose of water drawn from such sources in accordance with the licences issued to the Joint Venturers pursuant to Section 15.10.

**SECTION 15.10 LICENCE**

- (a) The Joint Venturers will make application under the provisions of the *Rights in Water and Irrigation Act 1914* to the Minister for Works for a licence to draw water up to an amount and at a rate not less than that set out in the notice given pursuant to Section 15.07 from the subterranean water sources mentioned in Section 15.09 and the State will ensure that the said Minister will grant to the Joint Venturers such licence;
- (b) Should such water sources subsequently be found to be hydrologically inadequate to meet the Joint Venturers' inland water requirements the said Minister may limit the amount of water which may be taken from such water sources at any one time or from time to time to the maximum which the same are hydrologically capable of meeting.

**SECTION 15.11 REVOCATION OF LICENCE** If during the currency of a licence granted under Section 15.10 the Minister is of the opinion that it is desirable that the water sources from which the Joint Venturers are licensed to draw water and the water works constructed by the Joint Venturers pursuant to Section 15.09 be made available to the State for such purposes, (*inter alia*) as water conservation water management utilisation of unused hydrological capacity supply of water to third parties (where such supply will not unduly prejudice or interfere with the Joint Venturers' operations hereunder) and the establishment of a regional water supply system incorporating the area of operations of the Joint Venturers the Minister will (after first affording the Joint Venturers an opportunity to consult with him) so notify the Joint Venturers and the Joint Venturers will after the expiration of 6 months from the date of such notice relinquish the ownership control and operation of the said water works to the State and thereupon the State will assume the ownership control and operation of the same and will cause the Minister for Works to revoke all relevant licences to draw water previously issued to the Joint Venturers. The State will not be liable to pay the Joint Venturers compensation in respect of the water works so relinquished or the licences so revoked. Immediately after the revocation of such licences the State will (subject only to the continued hydrological availability of water from the water sources previously the subject of such licences) commence and thereafter continue to supply water to the Joint Venturers up to the same amount and at the same rate as that which the Joint Venturers would have been entitled to draw under such revoked licences and paragraph (b) of Section 15.10 will apply as if included in this Section.



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**SECTION 15.12 REGIONAL WATER SUPPLY** The State may in its discretion develop any district or regional water supply and for the purposes thereof construct water works to a greater capacity than that required to supply the Joint Venturers' inland water requirements but in that event the cost of the water works so constructed shall be shared by the parties in such manner as they mutually agree to be fair in all the circumstances.

**SECTION 15.13 NON-POTABLE WATER** The Joint Venturers will so design and construct their plant and facilities for the mining handling processing and transportation of iron ore that as far as practicable non-potable water may be used therein.

**SECTION 15.14 CHARGES FOR WATER** The Joint Venturers will pay to the State for water supplied by it pursuant to this Clause a fair price to be mutually agreed between the parties but such rate will not be less than the actual cost incurred by the State in supplying the water to the Joint Venturers including operating maintenance and overhead costs and a provision for replacement of the necessary water works. Notwithstanding the foregoing provision the Joint Venturers will pay to the State in respect of water supplied by the State to the Joint Venturers for domestic purposes such charges as are levied from time to time pursuant to the provisions of the *Country Areas Water Supply Act 1947*.

**SECTION 15.15 ADDITIONAL WATER SEARCH** Should the State at any time pursuant to Section 15.06 or paragraph (b) of Section 15.10 limit the amount of water to be taken from the water sources therein mentioned to the maximum amount which such water sources are hydrologically capable of meeting the Joint Venturers will collaborate with the State in a search at the Joint Venturers' expense for new or additional subterranean water sources with a view to restoring the full quantity or quantities of water required by the Joint Venturers and such search will (if necessary and agreed between the parties) extend to and include investigations into surface water resources made pursuant to Section 15.16.

**SECTION 15.16 SURFACE WATER** Without prejudice to the provisions of Sections 15.02 and 15.08 the Joint Venturers will collaborate with the State in an investigation of surface water catchments storage dams and reticulation facilities should water supplies from available underground sources prove insufficient to meet the Joint Venturers' coastal water requirements and the Joint Venturers' inland water requirements and the Joint Venturers will if they propose to utilise such water catchments and/or storage dams pay to the State a sum or sums to be mutually agreed towards the cost of such

investigation and of constructing any water storage dam or dams and reticulation facilities required but nevertheless the State may in its sole discretion elect to construct a water storage dam or dams and reticulation facilities having a capacity in excess of that required to supply the Joint Venturers' needs and in that event the Joint Venturers' contribution to the cost thereof will be limited to a fair and reasonable proportion of the total cost of constructing such water storage dam or dams and reticulation facilities.

SECTION 15.17 RIGHTS IN WATER AND IRRIGATION ACT The provisions of the *Rights in Water and Irrigation Act 1914* relating to water rights and licences will except where inconsistent with the provisions of this Agreement apply to any water sources developed by the Joint Venturers for the purposes of this Agreement.

#### CLAUSE XVI

SECTION 16.01 ELECTRICITY FACILITIES The Joint Venturers will in accordance with the approved proposals construct without cost or expense to the State the necessary plant equipment and systems (in this Clause called "electricity facilities") for the generation and transmission of electricity needed to enable the Joint Venturers to carry out their obligations hereunder. The Joint Venturers will so design and construct the electricity facilities as to facilitate the ultimate connection of the same with similar electricity facilities owned by the State Electricity Commission (in this Clause called "the Commission") or other third parties.

SECTION 16.02 PURCHASE OF ELECTRICITY Notwithstanding the provisions of Section 16.01 (and for the purpose of facilitating integration of electricity generation and transmission facilities in areas where the Joint Venturers operate) the Joint Venturers will be at liberty to purchase electricity from the Commission and third parties or to negotiate with the Commission or third parties for the augmentation of the electricity facilities of the Commission and such third parties to enable them to supply the Joint Venturers in lieu of the Joint Venturers providing their own electricity facilities pursuant to the said Section.

SECTION 16.03 ACQUISITION OF FACILITIES The State may at any time give the Joint Venturers twelve (12) months notice of its intention to acquire and may thereafter acquire the Joint Venturers' electricity facilities or any part thereof up to the first point of voltage breakdown or such other appropriate point as may be agreed at a price to be agreed between the parties and the Joint Venturers will take all such steps as may be necessary to effect the

acquisitions. The State undertakes that in such event the Joint Venturers will for their purposes hereunder have first call on the power generated by such electricity facilities or such part thereof as may be transmitted by the same and that (subject only to its inability to supply power for any of the reasons set out in Section 25.02) it will supply to the Joint Venturers with electrical power for all their purposes hereunder up to the normal continuous full load capacity of such electrical facilities and that (in the event of such inability occurring) it will take all possible steps to restore such supply regardless of the time or day when such inability arises and may call upon the Joint Venturers to provide employees for that purpose.

**SECTION 16.04 CHARGES FOR ELECTRICITY** In the event of the State acquiring the Joint Venturers' electricity facilities the Joint Venturers will pay to the Commission for all electricity supplied to the Joint Venturers by the Commission at a rate equal to the standard tariff applying from time to time in respect to the supplying of electricity by the Commission less the difference (if any) between the Commission's standard tariff in force at the time of the State's acquisition of the said electricity facilities and the Joint Venturers' costs of operating the same (including (inter alia) appropriate capital charges) at the time of the acquisition. The said rate will apply only in respect of an amount of electricity equal to the continuous full load capacity of the electricity facilities so acquired and the Joint Venturers will pay for all electricity in excess of such amount supplied to them by the Commission from other sources at the Commission's standard tariff from time to time.

**SECTION 16.05 BULK SUPPLY TO STATE** Should the Joint Venturers' relevant approved proposal provide for the Commission to reticulate electricity to houses occupied by the Joint Venturers' workforce (including their dependants) and by any other persons (including their dependants) connected directly with Joint Venturers' operations whether employees or not and to commercial establishments directly connected with such operations the Joint Venturers will sell to the Commission in bulk electricity in sufficient quantities to meet the needs of such workforce persons and establishments at a price equal to the Joint Venturers' actual cost of generating and transmitting such electricity including inter alia appropriate capital charges.

## CLAUSE XVII

### SECTION 17.01 PORT DEVELOPMENT

- (a) The Joint Venturers will develop the port, construct the Joint Venturers' wharf and carry out all necessary dredging of

approach channels, swinging basin and berth at the Joint Venturers' wharf and provide all necessary buoys beacons markers navigational aids lighting equipment and services and facilities in accordance with the Joint Venturers' relevant approved proposal.

- (b) Notwithstanding the provisions of paragraph (a) of this Section the parties recognise that it could be to their mutual advantage if the State provided all or some of the said works mentioned in the said paragraph and accordingly the State will confer with the Joint Venturers and the others users and potential users of the port as to the manner in which and the terms and conditions upon which the State should provide such works. The Joint Venturers will pay to the State such sum or sums as the parties agree (not exceeding the amount that would have been payable had the Joint Venturers carried out the said works) towards the cost of each of the said works as are provided by the State.

#### SECTION 17.02 USE OF WHARF

- (a) Subject to the payment to them of the charges prescribed by and for the time being payable under any by-laws made by the Joint Venturers in respect of the use by others of the Joint Venturers' wharf and subject to the due compliance with the other requirements and conditions prescribed by such by-laws or should there be no such by-laws for the time being in force then subject to the payment of such charges and the due compliance with such requirements and conditions as in either case may be reasonable having regard to the cost to the Joint Venturers of the construction and operation of the Joint Venturers' wharf the Joint Venturers will permit the State and third parties to use the Joint Venturers' wharf and the port installations wharf machinery and port services and facilities constructed or provided by the Joint Venturers in connection therewith if and for so long as such user does not unduly prejudice or interfere with the operations of the Joint Venturers under this Agreement.
- (b) Subject to the provisions of Section 17.03 nothing in this Agreement shall be construed to limit the application of the *Shipping and Pilotage Act 1967*.

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SECTION 17.03 NO CHARGE FOR CARGOES 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 port the State will not (and ensures that a State agency or authority or instrumentality will not) make any charge or levy on the Joint Venturers in relation to the loading of outward or the unloading of inward cargoes from the Joint Venturers' wharf whether much cargoes be the property of the Joint Venturers or of a third party but the State will be under no obligation to undertake such loading or unloading and will be at liberty to make all statutory charges from time to time prevailing in respect of services rendered by the State or by any State agency authority or instrumentality or by any local or other authority on behalf of the State and to charge vessels using the Joint Venturers' wharf ordinary light conservancy and tonnage dues.

CLAUSE XVIII

SECTION 18.01 TOWNSITES

- (a) Should the approved proposals provide for the establishment of a new town at the port townsite or at the mine townsite or of new towns at both places the Joint Venturers will at their own cost and in accordance with the approved proposals —
  - (i) provide at the townsite or at each townsite (as the case may be) such housing accommodation services and works (including sewerage reticulation and treatment works water supply works and main drainage works and also educational hospital medical police fire and other services and social recreational cultural and civic facilities) as may be reasonably necessary in order to provide for the needs of persons (and the dependants of those persons) connected directly with the Joint Venturers' operations under this Agreement, whether or not such persons are employed by the Joint Venturers;
  - (ii) provide at the townsite or at each townsite (as the case may be) all necessary public roads public buildings and other public works; and
  - (iii) provide all equipment required for the operation and proper functioning of the services and works mentioned

in paragraph (i) above established in such new town or new towns;

- (iv) service maintain and where necessary repair and renovate the housing accommodation services and works mentioned in the said paragraph (i);
  - (v) (subject to and in accordance with by-laws from time to time to be made and altered by the Joint Venturers which include provisions for fair and reasonable prices rentals or charges or if no such by-laws are made or in force then at such prices rentals or charges and upon and subject to such terms and conditions as are fair and reasonable) ensure that the said housing accommodation services and works are at all times readily available to persons requiring the same being employees licensees or agents of the Joint Venturers or persons engaged in providing a legitimate and normal service to or for the Joint Venturers or their employees licensees or agents including the dependants of such persons; and
  - (vi) ensure that the roads buildings and other works mentioned in paragraph (ii) above and the equipment mentioned in paragraph (iii) above are readily available free of charge to those desiring to use the same.
- (b) Nothing contained in Section 18.01(a) shall be construed as placing on the Joint Venturers an obligation to provide and pay for personnel required to operate the educational hospital medical or police services mentioned in such Section.

**SECTION 18.02 EQUIPMENT** The Joint Venturers shall at their own cost equip all the buildings mentioned in Section 18.01(a) to the extent and of a standard at least equal to that normally adopted by the State in similar types of buildings used for similar purposes in comparable townsites.

**SECTION 18.03 STAFF HOUSING** The Joint Venturers will at their own cost provide adequate housing accommodation for married and single staff directly connected with the educational hospital medical and police services mentioned in paragraphs (i) and (iii) of Section 18.01(a).

**SECTION 18.04 EXISTING TOWNS** If the approved proposals provide for the assimilation into any existing town of the whole or part of the Joint

Venturers' workforce (including their dependants) and any other persons (including their dependants) connected directly with the Joint Venturers' operations (whether employees of the Joint Venturers or not) whereby the population of such existing town is increased then the Joint Venturers will subject to the provisions of Section 7.03 bear the cost of the provision and maintenance at that existing town of additional housing accommodation services works and equipment of the kind mentioned in paragraph (i) of Section 18.01(a) to the extent necessary in order to provide for the needs of the said increase in population of such existing town. The said additional housing services works and equipment may be provided by the State or by another party under an agreement with the State and in either case will be to the extent and of a standard at least equal to that normally adopted by the State in similar types of buildings used for similar purposes in comparable towns. The Joint Venturers will pay to the State or such other party such proportion of the cost of such additional housing services works and equipment as is fair and reasonable having regard to the extent of the said increase in the population of such existing town.

**SECTION 18.05 STATE PROVIDED SERVICES** Should the approved proposals place an obligation on the State itself to provide any services or facilities of the kind mentioned in paragraph (i) of Section 18.01(a) or require the State to procure and accept the responsibility of the provision of any such services and facilities the State will provide or procure the provision of the same but (unless the approved proposals otherwise provide) subject to the following conditions namely —

- (a) that the State is satisfied that the need to provide such services and facilities results solely from or is reasonably attributable solely to the Joint Venturers' operations under this Agreement; and
- (b) the Joint Venturers agree to bear the capital cost involved and thereafter to pay reasonable charges for the maintenance and operation of the said services or facilities other than the operation charges in respect of education hospital medical and police services.

## **CLAUSE XIX**

**SECTION 19.01 ENVIRONMENTAL PROTECTION** Nothing in this Agreement will 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 operations of the Joint Venturers hereunder that may be made by the State or any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to the *Environmental Protection Act 1971* or any other Act for the time being in force relating to environmental protection.

## CLAUSE XX

**SECTION 20.01 COMPLIANCE WITH STATE LAWS** The Joint Venturers will in the construction operation maintenance and use of any work installation plant machinery equipment service or facility provided or controlled by them comply with and observe the provisions of this Agreement and subject thereto the laws for the time being in force in the said State.

**SECTION 20.02 INSTALLATIONS TO BE KEPT IN GOOD REPAIR** The Joint Venturers will at all times keep and maintain in good repair and working order and where necessary replace all such works installations plant machinery and equipment railways wharfs roads (other than public roads unless and to the extent otherwise provided herein) and water and power supplies for the time being the subject of this Agreement.

**SECTION 20.03 LOCAL LABOUR AND SUPPLIERS** The Joint Venturers will as far as it is reasonably and economically practicable for them so to do —

- (a) use the labour for the time being available within the said State;
- (b) when calling for tenders and letting contracts for works materials plant equipment and supplies ensure that Western Australian suppliers manufacturers and contractors are given reasonable opportunity to tender or quote —
- (c) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works materials plant equipment and supplies and where price quality delivery and service are equal to or better than that obtainable elsewhere.

## **SECTION 20.04 COMMONWEALTH CONSENTS**

- (a) The Joint Venturers will from time to time make application to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to them of



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any licence or consent under the laws of the Commonwealth of Australia necessary to enable or permit them to enter into this Agreement and/or to perform any of their obligations hereunder;

- (b) On request by the Joint Venturers the State will make representations to the Commonwealth or to the Commonwealth constituted agency authority or instrumentality concerned for the grant to the Joint Venturers of any licence or consent mentioned in Section 20.04(a).

#### CLAUSE XXI

**SECTION 21.01 ROYALTY** The Joint Venturers will during the continuance of this Agreement pay to the State a royalty on all iron ore products at the rates herein specified in respect of each particular class of iron ore product namely —

- (a) on iron ore products (being direct shipping ore and fine ore and fines not sold or shipped separately as such) sold and shipped beyond the Commonwealth — at the rate of seven and one half percentum (7½%) of the FOB revenue (computed at the rate of exchange prevailing on date of receipt by the Joint Venturers of the purchase price of such iron ore products) PROVIDED NEVERTHELESS that subject as provided in paragraph (a) of Section 21.02 the total royalty payable under this paragraph will not be less than the sum ascertained by multiplying sixty cents (\$0.60) by the total tonnage of such iron ore products.
- (b) On iron ore products (being fine ore and fines so sold or shipped separately as such) sold and shipped beyond the Commonwealth — at the rate of seven and one half percentum (7½%) of the FOB revenue (computed as mentioned in paragraph (a) of this Section) PROVIDED NEVERTHELESS that subject as provided in paragraph (b) of Section 21.02 the total royalty payable under this paragraph shall not be less than the sum ascertained by multiplying thirty cents (\$0.30) by the total tonnage of such iron ore products.
- (c) on iron ore products (being such as are produced by secondary processing locally used ore) sold and shipped beyond the Commonwealth — at the rate of fifteen cents (\$0.15) per ton.

- (d) on any other iron ore products of whatsoever kind —
  - (i) where the same are sold and shipped beyond the Commonwealth — at the rate of seven and one half percentum (7½%) of the FOB revenue (computed as aforesaid) without any minimum royalty;
  - (ii) where the same are not so sold and shipped — at the rate of fifteen cents (\$0.15) per ton.

**SECTION 21.02 FURTHER ROYALTY PROVISIONS** The following provisions will also apply in relation to the payment of the royalty —

- (a) if the amount ascertained by multiplying sixty cents (\$0.60) by the total tonnage of direct shipping ore shipped or sold (and liable to royalty under paragraph (a) of Section 21.01) in any financial year is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that paragraph then that proviso shall not apply in respect of direct shipping ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made;
- (b) if the amount ascertained by multiplying thirty cents (\$0.30) by the total tonnage of fine ore and fines shipped or sold separately as such (and liable to royalty under paragraph (b) of Section 21.01) in any financial year is less than the total royalty which would be payable in respect of that ore but for the operation of that proviso to that paragraph then that proviso shall not apply in respect of fine ore and fines shipped or sold separately as such in that year and at the expiration of that year any necessary adjustments shall be made;
- (c) the rate of royalty of fifteen cents (\$0.15) per ton mentioned in paragraphs (c) and (d) of Section 21.01 will be adjusted up or down (as the case may be) as at the first day of January 1969 and as at the beginning of every fifth year thereafter in accordance with any variation in the average of the basic prices of foundry pig iron CIF Australian capital city ports as announced by BHP 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;

- (d) where iron ore products produced from secondary processing hereunder are so produced from an admixture of iron ore from the mineral lease and other iron ore a portion (and a portion only) of the iron ore products so produced (being that part of the whole of the iron ore products so produced as bears to that whole the same ratio as the amount of iron in the iron ore from the mineral lease used in the production of those iron products bears to the total amount of iron in the iron ore so used) will be deemed to be iron ore products within the meaning of that term as defined in Section 1.01.

**SECTION 21.03 ROYALTY PAYMENT** The Joint Venturers will during the continuance of this Agreement within fourteen (14) days after the following quarter days namely the last days of March June September and December in each year (commencing with the quarter day next following the export date) furnish to the Minister a return showing the quantity of all iron ore and/or iron ore products on which royalty is payable hereunder and shipped sold or used (as the case may be) during the quarter immediately preceding the due date of the return and shall not later than two (2) months after such due date pay to the Minister the royalty payable in respect of such of the iron ore products mentioned in Section 21.01 as are locally used and will also pay to the Minister in respect of such of the said iron ore products as are shipped or sold a sum on account of the royalty payable hereunder calculated on the basis of the invoices or provisional invoices (as the case may be) therefore rendered by the Joint Venturers to the purchaser (which invoices the Joint Venturers shall render without delay and simultaneously will furnish copies thereof to the Minister) and will from time to time when the f.o.b. revenue realised in respect of the shipments has been ascertained in the next following appropriate return and payment (in the return and by cash) make all such necessary adjustments and give to the Minister full details thereof.

**SECTION 21.04 INSPECTION OF RECORDS** The Joint Venturers will throughout the continuance of this Agreement permit the Minister or his nominee at all reasonable times to inspect the books of account and records of the Joint Venturers relative to any shipment sale or use of iron ore products hereunder including sales contracts and to take copies or extracts therefrom and for the purpose of determining the f.o.b. revenue payable in respect of any shipment or sale of iron ore products hereunder the Joint Venturers will take

reasonable steps (either by the certificate of a competent independent party acceptable to the Minister or otherwise to the Minister's reasonable satisfaction) to satisfy the State as to the correctness of all relevant weights assays and analyses and will give due regard to any objection or representation made by the Minister or his nominee as to any particular weight assay or analysis that may affect the amount of royalty payable hereunder. The information obtained by the Minister or his nominee as a result of any such inspection shall be used only for the purposes of verifying the amount of royalty payable by the Joint Venturers and for no other purpose and shall not be disclosed by the State the Minister or his nominee to any other party for any other purpose.

## CLAUSE XXII

**SECTION 22.01 OFFLOADING WITHIN COMMONWEALTH** Subject to Section 22.03 the Joint Venturers will not at any time during the continuance of this Agreement unless the Minister otherwise permits offload or permit to be offloaded any iron ore products shipped pursuant to this Agreement at a place within the Commonwealth.

**SECTION 22.02 NOTICE OF OFFLOADING** Where iron ore products are off-loaded in breach of Section 22.01 the Joint Venturers will forthwith after becoming aware of that event give notice of the same to the Minister and will without prejudice to any other rights or remedies of the State by reason of the breach on demand pay to the State by way of additional royalty such sum as the Minister may determine but not more than a sum representing one dollar (\$1.00) per ton on the quantity of iron ore products off-loaded.

**SECTION 22.03 PERMISSIBLE OFFLOADING** The Joint Venturers will not be deemed to have committed a breach of Section 22.01 if iron ore products are off-loaded at a place within the Commonwealth in any of the following circumstances —

- (a) where the iron ore products are shipped in a vessel that is not owned by the Joint Venturers or an associated company and the Joint Venturers have taken appropriate steps to ensure that iron ore products will not again be off-loaded in breach of Section 22.01; or
- (b) because the vessel in which the iron ore products are being carried is diverted for necessary repairs or because of a force majeure or other unforeseeable cause and the Joint Venturers satisfy the Minister that because of any such event they could not

take or be reasonably expected to have taken steps to prevent the off-loading; or

- (c) where the iron ore products off-loaded are locally used ore and the tonnage of ore of that kind which has been off-loaded in any part of the Commonwealth in any year does not exceed fifty per centum (50%) (or such other percentage as the Minister approves) of the tonnage of locally used ore consumed used or otherwise applied in the said State.

#### PART IV

#### Secondary Processing

#### CLAUSE XXIII

**SECTION 23.01 SECONDARY PROCESSING PROPOSALS** The Joint Venturers will from time to time renew the investigations already commenced by them as to the feasibility of establishing within the said State a plant or plants for secondary processing of iron ore from the mineral lease and will by the end of Year 10 (or within such extended time as the Minister may allow) submit to the Minister detailed proposals for the establishment of such a plant or plants on the following basis —

- (a) the plant or plants to be of such design and dimensions that will progressively have the capacity to process annually —
  - (i) by the end of Year 12 — not less than two million (2,000,000) tons of iron ore,
  - (ii) by the end of Year 21 — not less than four million (4,000,000) tons of iron ore,
  - (iii) by the end of Year 30 — not less than six million (6,000,000) tons of iron ore.
- (b) the capital cost involved to be not less than eighty million dollars (\$80,000,000) unless the Joint Venturers utilize a less expensive but at least equally satisfactory method of secondary processing of iron ore than any at present known to either party.

**SECTION 23.02 CONSIDERATION OF PROPOSALS** If such detailed proposals are submitted by the Joint Venturers to the Minister within the time mentioned in Section 23.01 the Minister will within two months of the receipt

thereof give to the Joint Venturers notice either of his approval of the said proposals or of any objections he has or alterations he desires thereto. In the latter case the Minister will afford the Joint Venturers an opportunity to consult with and to submit new or further proposals to him and if within thirty (30) days after receipt of such notice agreement is not reached as to the said proposals the Joint Venturers may within a further period of thirty (30) days by notice to the State elect to refer to arbitration under Section 32.01 any question as to the reasonableness of the Minister's decision. If by the award on the arbitration the question is decided in favour of the Joint Venturers the Minister will be deemed to have approved of the said proposals as submitted by the Joint Venturers.

**SECTION 23.03 FAILURE TO SUBMIT PROPOSALS** If such detailed proposals are not submitted by the Joint Venturers to the Minister within the time mentioned in Section 23.01 or if such proposals are so submitted but are not approved by the Minister within two months of receipt thereof (or within such further time as the Minister may desire to take before delivering his decision) or if upon an arbitration under Section 23.02 the question is decided against the Joint Venturers then the following provisions shall apply —

- (a) subject as provided in paragraph (c) of this Section the Joint Venturers shall not after the end of the Year 12 export iron ore hereunder at an annual rate in excess of five million (5,000,000) tons unless prior to Year 10 the Minister has already approved of proposals by the Joint Venturers involving the export of iron ore at an annual rate in excess of five million (5,000,000) tons, and —
- (b) if by the end of Year 13 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 within the said State a plant for secondary processing 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 then this Agreement will (subject as hereinafter provided) cease and determine at the end of Year 21 or at the date on which the Third Party substantially establishes the said plant in accordance with terms agreed between the State and the Third Party whichever date is the later;
- (c) if by the end of Year 13 the State has not given to the Joint Venturers a notice pursuant to the provisions of paragraph (b) of

this Section then the provisions of paragraph (a) of this Section shall as from the end of Year 13 cease to operate and have effect.

#### SECTION 23.04 SUBMISSION OF PROPOSALS AFTER YEAR 10

Notwithstanding the provisions of Section 23.03 the Joint Venturers may nevertheless at any time after the end of Year 10 submit proposals for the establishment of the said plant if at the time they have not received a notice pursuant to the provisions of paragraph (b) of Section 23.03 and the provision of Section 23.02 will apply to such proposals but the Joint Venturers may not submit such proposals between the end of Year 10 and the end of Year 21 if by the end of Year 13 they receive such a notice and the same is not subsequently withdrawn. In the event of negotiations between the Minister and the Third Party being terminated the Minister will withdraw such notice.

#### SECTION 23.05 FAILURE NOT A DEFAULT

The failure by the Joint Venturers to submit proposals to the Minister pursuant to Section 23.01 or the non-approval by the Minister of any proposals so submitted shall not constitute a breach of this Agreement by the Joint Venturers but subject as herein otherwise provided the only consequence arising from such failure or non-approval will be that set out in Section 23.03.

#### SECTION 23.06 PROVISIONS APPLYING TO PROPOSALS

Subject as in this Clause (Clause XXIII) otherwise provided the provisions of Clauses V, VI and VII shall apply *mutatis mutandis* to detailed proposals made under this Clause.

#### SECTION 23.07 “SUBSTANTIALLY ESTABLISHED”

For the purposes of this Clause a plant for secondary processing will be deemed to have been substantially established when and not before such plant has a capacity to process not less than two million (2,000,000) tons of iron ore per annum and the Minister is satisfied that the party establishing the plant will proceed *bona fide* to operate and develop the same.

#### SECTION 23.08 “TERMS NOT MORE FAVOURABLE”

When considering for the purposes of this Clause whether or not the terms agreed by the State for the establishment of a plant for secondary processing are not more favourable on the whole to the party establishing the same than those proposed by or applicable to the Joint Venturers regard will be had (*inter alia*) to the following —

- (a) the obligations which would have devolved on the Joint Venturers had their proposals for the establishment of a plant for

secondary processing been approved by the State and the Joint Venturers had proceeded to the substantial establishment of such plant;

- (b) the obligations of the Joint Venturers to mine and transport by rail and ship iron ore mined from the mineral lease and the restrictions relating thereto;
- (c) the obligations of the Joint Venturers to pay rent and royalty hereunder;
- (d) the possible loss of rights under this Agreement by reason of the same ceasing and determining pursuant to the provisions of this Clause;
- (e) the need for the Third Party to pay on a fair and reasonable basis for or for the use of property made available by the State to them; and
- (f) the equivalent or additional obligations to the State assumed by the Third Party.

**SECTION 23.09 SUPPLIES TO FOURTH PARTY** If at any time after Year 15 or such earlier date as the parties may mutually agree the Minister shall give to the Joint Venturers notice that some other company or party (hereinafter referred to as “the Fourth Party”) has agreed to establish tertiary processing facilities within the said State the Joint Venturers will upon being requested by the Minister so to do (he having had due regard to the obligations of the Joint Venturers under existing sales contracts) at any time after Year 17 after reasonable notice supply to the Fourth Party at the rate of five million (5,000,000) tons per annum iron ore of a grade equal to the average grade of direct shipping ore which at the time is being sold and shipped by the Joint Venturers or if the parties shall mutually agree then such quantity per annum of iron ore products produced by the Joint Venturers by secondary processing as shall contain the same quantity of iron as would be contained in five million (5,000,000) tons of such direct shipping ore. The Joint Venturers will charge the Fourth Party for all iron ore or iron ore products so supplied a fair and reasonable price to be mutually agreed between them and the Fourth Party (or in default of agreement as fixed by arbitration in accordance with the provisions of the *Arbitration Act 1895*).



CLAUSE XXIV

**SECTION 24.01 PROTECTION FOR CURRENT CONTRACTS** If this Agreement should cease and determine pursuant to any provision contained in Clause XXIII and if at the date of such cessation or determination the Joint Venturers are under an obligation arising under a current contract or contracts with some other party originally entered into by them pursuant to proposals approved by the Minister to supply iron ore to that other party the Joint Venturers may give notice of that fact to the Minister and request the State to ensure that the Third Party agrees itself to take over and assume liability for the due and punctual discharge of the Joint Venturers said obligations or alternatively agrees to supply iron ore to enable them to discharge their said obligations and the State will forthwith upon receipt of such notice or as soon as possible or practicable thereafter do or cause to be done all such acts matters or things as may be fair and reasonable in the circumstances to comply with the Joint Venturers' said request.

PART V

General Provisions

CLAUSE XXV

**SECTION 25.01 GENERAL APPLICATION** The provisions of this Part (Part V) shall have application throughout this Agreement.

**SECTION 25.02 DELAYS** This Agreement is deemed to be made subject to any delays in the performance of the obligations hereunder and to the temporary suspension of the continuing obligations hereunder that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including delays or any temporary suspension caused by or arising from an act of God force majeure floods storms tempest 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 profitably to sell iron ore products or factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen but the party whose responsibility it is to perform the obligations the performances of which are so delayed or suspended

will minimise the effect of the cause thereof as soon as possible after its occurrence.

**SECTION 25.03 NOTICE OF DELAYS** On the happening of any event mentioned in Section 25.02 that in the opinion of the Joint Venturers may delay the performance by them of any of their obligations hereunder within a specified time the Joint Venturers will promptly give notice to the Minister of that event and of any likely delay and in that case the Minister will grant such extension of time for the performance of the obligation as shall in all the circumstances be fair and reasonable and where the Joint Venturers object to the decision of the Minister as to what is a fair and reasonable extension the matter will be referred to arbitration hereunder.

**SECTION 25.04 ASSIGNMENT AND MORTGAGE** The Joint Venturers jointly or any one of them severally may at any time —

- (a) by an assignment mortgage charge subletting or other disposition assign mortgage charge sublet or otherwise dispose of to an associated company as of right or to any third party with the consent of the Minister the whole or any part of their or its rights (including their or its rights to or as the holder of any lease licence easement grant or other title) and obligations hereunder; or
- (b) by appointment in writing appoint an associated company as of right or any third party with the consent of the Minister to exercise for and on their or its behalf all or any of the powers functions and authorities that are or may be conferred on them hereunder;

subject however to the assignee (as hereinbefore defined) 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 of this Agreement by or on the part of the Joint Venturers to be complied with observed or performed in regard to the subject of such assignment subletting or other disposition or appointment.

**SECTION 25.05 JOINT VENTURERS TO REMAIN LIABLE** Notwithstanding anything contained in or anything done under or pursuant to Section 25.04 but subject as provided in Section 25.06 the Joint Venturers and each of them will at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on their part contained herein and in any lease

licence easement grant or other title the subject of an assignment mortgage charge subletting or other disposition or appointment under Section 26.04 but the Minister may however agree to release the Joint Venturers or any of them from any such liability where he considers such release will not be contrary to the interests of the State.

#### **SECTION 25.06 JOINT VENTURERS MAY BE DISCHARGED**

Where any agreement that is not inconsistent with the terms of this Agreement is entered into by the Joint Venturers with some other company or person and results in that other company or person discharging all or any of the obligations undertaken by the Joint Venturers under this Agreement or renders it unnecessary for the Joint Venturers to discharge any obligation undertaken by them hereunder the Minister may discharge or temporarily relieve the Joint Venturers from such part of their obligations as is reasonable having regard to the extent of and the period during which the other company or person actually effects the discharge of those obligations.

**SECTION 25.07 BY-LAWS** The Governor in Executive Council may upon the recommendation of the Joint Venturers make alter and repeal by-laws for the purpose of enabling the Joint Venturers to fulfil their obligations under Sections 13.02, 13.03, 16.05 and 17.02 and (unless and until the townsite concerned is declared a townsite pursuant to Section 10 of the Land Act) under item (v) of Section 18.01(a) upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Joint Venturers) consistent with the provisions hereof. If at any time it appears that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Joint Venturers will recommend to the Governor that he makes 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) as may be decided by arbitration as herein provided.

### **CLAUSE XXVI**

**SECTION 26.01 DETERMINATION** In any of the following events namely —

- (a) if the Joint Venturers make default in the due performance or observance of any of their obligations or responsibilities hereunder (including the breach of any covenant agreement or condition contained in any lease licence easement grant or other document of title and by or on their part to be performed or

observed) and fail to remedy such default within a 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 and the arbitrator finds that there was a *bona fide* dispute and that the Joint Venturers had not been dilatory in pursuing the arbitration); or

- (b) if all of the Joint Venturers and all assignees who have executed or are bound by a Deed of Covenant mentioned in Section 25.04 abandon their operations or repudiate their obligations under this Agreement and fail to resume such operations or resume such performance within a reasonable time after notice specifying in what respects they have failed to resume operations or resume performance of their obligations is given to them by the State or (if the alleged failure is contested by the Joint Venturers or any such assignees and promptly submitted to arbitration) within the time fixed by the arbitration award where the question is decided against the Joint Venturers and the arbitrator finds that there was a *bona fide* dispute and that the Joint Venturers or such assignees had not been dilatory in pursuing the arbitration; or
- (c) if all the Joint Venturers still bound by any of the terms of this Agreement and all assignees who have executed and are still bound by a Deed of Covenant mentioned in Section 25.04 go into liquidation (other than a voluntary liquidation for the purpose of reconstruction); or
- (d) if the Joint Venturers surrender the entire mineral lease —

then and in any of such events the State may by notice to the Joint Venturers determine this Agreement and the rights of the Joint Venturers hereunder and under any lease licence easement or right granted hereunder or pursuant hereto will thereupon cease and determine.

**SECTION 26.02 FORM OF NOTICES** A notice given by the State pursuant to paragraph (a) of Section 26.01 or pursuant to paragraph (b) of that Section shall specify the nature of the default or other ground (if any) on which the State claims to be entitled to exercise the right to determine this Agreement and the time within which the default is required to be remedied and (where appropriate and possible for the State so to do) shall name the party or parties

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whose responsibility it is to remedy the same. Such notice shall be given to the Joint Venturers and to any assignee or any mortgagee of whose name and address for service the State has had previous notice in writing.

**SECTION 26.03 ASSIGNEE OR MORTGAGEE MAY REMEDY DEFAULT** Any assignee or any mortgagee will be at liberty to remedy any default specified in any notice given pursuant to paragraph (a) of Section 26.01 or pursuant to paragraph (b) of Section 26.01 within the time specified in such notice and such remedying shall be accepted by the State as and in lieu of a remedying of the default by the Joint Venturers.

**SECTION 26.04 STATE MAY REMEDY DEFAULT** Instead of determining this Agreement as provided in Section 26.01 the State may itself remedy or cause to be remedied any default on the part of the Joint Venturers for which purpose the State will have full power and authority by its agents or workmen or otherwise to enter into and upon land occupied by the Joint Venturers and to use all of any plant machinery equipment and installations thereon and all costs and expenses incurred by the State in remedying such default or causing the same to be remedied will be a debt due by the Joint Venturers to the State and be payable on demand.

**SECTION 26.05 EFFECT OF DETERMINATION** Upon the cessation or determination of this Agreement —

- (a) the rights of the Joint Venturers and those of any assignee or mortgagee of the Joint Venturers under this Agreement or under the mineral lease or any other lease, licence, easement or right granted hereunder or pursuant hereto and all the right title and interest of the Joint Venturers and of any such assignee or mortgagee in and to any land wherever situated granted to the Joint Venturers or to such assignee for any other of the purposes of this Agreement will except as otherwise agreed by the Minister thereupon cease and determine, but without prejudice to the liability of either of the parties 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 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;

- (b) the Joint Venturers will forthwith pay to the State all monies that may then have been payable or accrued due hereunder; and
- (c) the Joint Venturers will forthwith furnish to the State complete factual statements of the work research surveys and reconnaissance carried out under Clause IV if and in so far as the statements may not have been furnished; and
- (d) except as provided in Section 26.06 or otherwise provided in this Agreement neither of the parties will have any claim against the other of them in respect to any matter or thing contained in or arising out of this Agreement.

**SECTION 26.06 PROPERTY PASSES TO STATE** Upon the cessation of this Agreement all buildings erections and other improvements erected on any land then occupied by the Joint Venturers or any associate company or assignee of the Joint Venturers under the mineral lease or any other lease licence easement, right or grant made hereunder for the purposes hereof (including the said railway and the appurtenances constructed pursuant to Section 13.01 and including also the Joint Venturers' wharf) shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Joint Venturers or any other party and freed and discharged from all mortgages and other encumbrances and the Joint Venturers will do and execute all such deeds documents and other acts matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this Section.

**SECTION 26.07 STATE OPTION TO PURCHASE** In the event of the Joint Venturers immediately prior to the cessation or determination of this Agreement or subsequently thereto desiring to remove any of their locomotives rolling stock, or their electricity facilities or any of their other fixed or movable plant and equipment (excluding the said railway and appurtenances and the Joint Venturers' wharf) from any part of the land occupied by them at the date of such cessation or determination they will give to the State notice of such desire and thereby will grant to the State the right or option exercisable within three (3) months thereafter to purchase at a valuation *in situ* the said locomotives rolling stock electricity facilities and other fixed or movable plant and equipment or any part thereof. Such valuation will be such as is mutually agreed or in default of agreement shall be made by a competent valuer mutually appointed by the parties or in default of agreement by two valuers, one to be

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appointed by each party and an umpire appointed by such valuers should they fail to agree.

**CLAUSE XXVII**

**SECTION 27.01 INDEMNIFICATION** The Joint Venturers will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Joint Venturers pursuant to this Agreement or relating to their operations or arising out of in connection with the construction maintenance operation or use by them or their servants agents contractors appointees or assignees of the works or services constructed maintained operated or used by them under this Agreement or the plant apparatus or equipment installed in connection therewith.

**CLAUSE XXVIII**

**SECTION 28.01 VARIATION** The parties may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of any lease licence easement or right granted hereunder or pursuant hereto for the purpose of implementing or facilitating any of the purposes and objects of this Agreement.

**SECTION 28.02 VARIATIONS TO BE TABLED IN PARLIAMENT** Where in the opinion of the Minister an agreement made under Section 28.01 constitutes a material or substantial alteration of the rights or obligations of either party hereto, the agreement will contain a declaration to that effect and the Minister will cause the agreement to be laid before each House of the Parliament of the said State for the twelve (12) sitting days of that House next following the execution of the Agreement. If within that time neither House passes a resolution disallowing the same, the agreement shall have effect as and from the last day on which the agreement might have been disallowed.

**CLAUSE XXIX**

**SECTION 29.01 MINISTER MAY GRANT EXTENSION OF TIME** Notwithstanding any other provision of this Agreement the Minister may at the request of the Joint Venturers from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

CLAUSE XXX

SECTION 30.01 NOTICES Any notice consent or other writing required by this Agreement to be given or sent by the State to the Joint Venturers will be deemed to have been duly given or sent if the same be signed by the Minister or by a senior officer of the Civil Service of the said State acting by the direction of the Minister and forwarded by pre-paid post to the Joint Venturers at their principal place of business for the time being in Perth in the said State or at the registered office or address for the time being in the said State and any notice consent or other writing required by this Agreement to be given or sent by the Joint Venturers to the State will be deemed to have been duly sent if the same be executed by the Joint Venturers or signed for and on behalf of the Joint Venturers by any person or persons authorised by the Joint Venturers in that behalf or by the solicitors for the time being appointed to act on their behalf (of whose appointment the State has had previous notice) and forwarded by pre-paid post to the Minister at his office in Perth in the said State and every such notice consent or writing will be deemed to have been duly given or sent on the day on which it would be delivered to the addressee in the ordinary course of post.

CLAUSE XXXI

SECTION 31.01 STAMP DUTY EXEMPTION The State will cause all of the following documents to be exempted from any stamp duty which but for the operation of this Section would or might be chargeable thereon —

- (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 associated company or permitted assignee of the Joint Venturers any tenement lease easement licence or other right or interest;
- (c) any assignment sublease or disposition (other than by way of mortgage or charge) and any appointment to or in favour of the Joint Venturers or an associated company of any interest right obligation power function or authority made pursuant to the provisions of this Agreement.

SECTION 31.02 EXEMPTION TIME LIMIT Section 31.01 will not apply to any instrument or other document executed or made after Year 7.



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SECTION 31.03 REFUND If prior to the commencement date stamp duty has been assessed and paid on any instrument or other document referred to in Section 31.01 the State will after the passing of the enabling Act refund the stamp duty paid on any such instrument or other document to the person by whom it was paid.

#### CLAUSE XXXII

SECTION 32.01 ARBITRATION Except where otherwise specifically provided in this Agreement to the contrary any dispute or difference between the parties in respect to any act matter or thing arising out of or in connection with this Agreement or any agreed amendment or variation thereof or addition thereto and particularly 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 hereunder or thereunder or as to any matter left to be agreed upon between the parties shall in default of agreement between the parties be referred for decision to two (2) arbitrators one to be appointed by each party and an umpire appointed by the arbitrators before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the *Arbitration Act 1895*.

SECTION 32.02 ARBITRATOR MAY EXTEND TIME If when hearing a reference made pursuant to this Clause it shall appear or be made to appear to the arbitrators and the umpire that in consequence of the reference having been made or because of any delay in the issuing of the award made thereon either party to the reference had been or is likely to be prevented from doing performing or carrying out within a time prescribed by this Agreement some act matter or thing required by this Agreement to be done performed or carried out by that party within that time whereby the rights of that party hereunder have been or could be put in jeopardy and the arbitrators and the umpire consider it reasonable in order to protect such rights that the prescribed time be extended the arbitrators and the umpire shall have and are hereby granted full power and authority for and on behalf of the Minister on the application of the party concerned to grant such extension of the prescribed time as they in the circumstances considered reasonable and by their award to order accordingly.

#### CLAUSE XXXIII

SECTION 33.01 APPLICABLE LAW This Agreement will be interpreted according to law for the time being in force in Western Australia.

AND THEREFORE THE GUARANTOR AGREES WITH THE STATE as follows —

CLAUSE XXXIV

SECTION 34.01 GUARANTEE The Guarantor will and hereby guarantees to the State the due and punctual performance by the said Rhodes Ridge Mining Co. Ltd (hereinafter in this Clause referred to as “the Subsidiary”) of all the covenants agreements and obligations of the Subsidiary under this Agreement notwithstanding any time or indulgence granted to the Subsidiary or any addition to or amendment of or variation of the provisions of this Agreement or the cancellation thereof.

THE SCHEDULE

WESTERN AUSTRALIA

*Mining Act 1904-1970*

MINERAL LEASE

LEASE No.

MINERAL FIELD

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

TO ALL TO WHOM these presents shall come, GREETING: KNOW YE that —

WHEREAS by an Agreement made the day of 1972 between the Honourable JOHN TREZISE TONKIN, MLA the Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities for the time being (hereinafter called “the State”) of the first part RHODES RIDGE MINING CO. LTD a company incorporated under the laws of the State of Delaware in the United States of America and having its executive offices situate at the 55th Floor, 200 Park Avenue, New York in the United States of America and registered in the State of Western Australia and having its registered office in the said State situate at the 2nd Floor, 7 Havelock Street, West Perth, HANCOCK PROSPECTING PTY LIMITED a company incorporated in the State of Western Australia and having its registered office at the 14th Floor, Lombard House, 251 Adelaide

Terrace, Perth in that State and WRIGHT PROSPECTING PTY LIMITED a company also incorporated in the said State and having its registered office situate at the 14th Floor, Lombard House, 251 Adelaide Terrace, Perth aforesaid (in the said Agreement and herein called the “Joint Venturers” which expression shall where the context so admits or requires extend to and include the Joint Venturers jointly and each of them severally their and each of their successors and permitted assigns and appointees) of the second part and TEXAS GULF INC. a company incorporated under the laws of the State of Texas in the United States of America and having its executive offices situate at the 55th Floor, 200 Park Avenue, New York aforesaid of the third part (being the Agreement referred to in Section 2 of “*Iron Ore (Rhodes Ridge) Agreement Authorization Act 1972*”) the State agreed to cause to be granted to the Joint Venturers a mineral lease of a portion or portions of the land referred to in the said Agreement as the mining areas (being the land hereinafter described)

AND WHEREAS the said Agreement was executed by the State pursuant to the authority granted by the *Iron Ore (Rhodes Ridge) Agreement Authorization Act 1972* and the same operates and takes effect as provided in the said Act.

NOW WE in consideration of the rents and royalties reserved by and of the provisions of the said Agreement and in pursuance of the said Act DO BY THESE PRESENTS GRANT AND DEMISE unto the Joint Venturers as tenants in common in the following shares that is to say —

as to one undivided half share the said Rhodes Ridge Mining Co. Ltd.  
and as to the remaining one undivided half share the said Hancock  
Prospecting Pty. Ltd. and the said Wright Prospecting Pty. Ltd. as  
tenants in common in equal shares —

subject to the said provisions ALL THOSE pieces and parcels of land situated in the Mineral Field containing by admeasurement acres (be the same more or less) and particularly described and delineated on the plan in the Schedule hereto and all those mines, veins, seams, lodes and deposits of iron ore in on or under the said land (hereinafter called “the said mine”) together with all rights, liberties, easements, advantages and appurtenances thereto belonging or appertaining to a lessee of a mineral lease under the *Mining Act 1904*, including all amendments thereof for the time being in force and all regulations made thereunder for the time being in force (which Act and regulations are hereinafter referred to as “the Mining Act”) or to which the Joint Venturers are entitled under the said Agreement TO HOLD the said land and

mine and all and singular the premises hereby demised for the full term of twenty-one years from the                      day of                      19                      with the right to renew the same from time to time for further periods each of twenty-one years as provided in (but subject to) the said Agreement for the purposes of the said Agreement but upon and subject to the terms covenants and conditions set out in the said Agreement and to the Mining Act (as modified by the said Agreement) YIELDING and paying therefor the rent and royalties as set out in the said Agreement. AND WE do hereby declare that this lease is subject to the observance and performance by the Joint Venturers of the following covenants and conditions, that is to say —

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

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

PROVIDED FURTHER that all mineral oil on or below the surface of the demised land is reserved to Her Majesty with the right to Her Majesty or any person claiming under her or lawfully authorised in that behalf to have access to the demised land for the purpose of searching for and for the operations of obtaining mineral oil in any part of the land under the provisions of the *Petroleum Act 1967*.

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

IN WITNESS WHEREOF this Agreement has been executed the day and year first hereinbefore written.

SIGNED by the said THE  
HONOURABLE JOHN TREZISE  
TONKIN, MLA in the presence of — }

Minister for Development  
and Decentralisation

Minister for Mines

THE COMMON SEAL OF RHODES  
RIDGE MINING CO. LTD was hereunto  
affixed with the authority of a resolution of  
the Board of Directors and in the presence  
of — }

Secretary

THE COMMON SEAL OF HANCOCK  
PROSPECTING PTY LTD. was hereunto  
affixed with the authority of a resolution of  
the Board of Directors and in the presence  
of — }

Director

Secretary

THE COMMON SEAL OF WRIGHT  
PROSPECTING PTY LTD. was hereunto  
affixed with the authority of a resolution of  
the Board of Directors and in the presence  
of — }

Director

Secretary

THE COMMON SEAL OF TEXAS GULF  
INC. was hereunto affixed with the  
authority of a resolution of the Board of  
Directors and in the presence of — }

Secretary

**Schedule 2 — 2024 Variation Agreement**

[\[s. 1A\]](#)

**2024**

**THE HONOURABLE ROGER COOK**  
**PREMIER OF THE STATE OF WESTERN AUSTRALIA**

**AND**

**HAMERSLEY RESOURCES LIMITED**  
**ACN 004 887 656**

**WRIGHT PROSPECTING PTY LTD**  
**ACN 008 677 021**

**AUSTRALIAN MINING & SMELTING PTY LTD**  
**ACN 004 896 726**

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**IRON ORE (RHODES RIDGE) AGREEMENT 1972**  
**RATIFIED VARIATION AGREEMENT**

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[\[Solicitor's details\]](#)

**THIS AGREEMENT** is made this 26 day of August 2024

**BETWEEN**

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

**AND**

**HAMERSLEY RESOURCES LIMITED** ACN 004 887 656 of Level 18, Central Park, 152-158 St Georges Terrace, Perth, Western Australia and **WRIGHT PROSPECTING PTY LTD** ACN 008 677 021 of Suite 3, Level 1, 254 Rokeby Road, Subiaco, Western Australia (**Joint Venturers**)

**AND**

**AUSTRALIAN MINING & SMELTING PTY LTD** ACN 004 896 726 of Level 43, 120 Collins Street, Melbourne, Victoria (**Guarantor**).

**RECITALS**

- A.**      The State, the Joint Venturers and the Guarantor are now the parties to the agreement dated 12 October 1972 authorised by and as scheduled to the *Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B.**      The State, the Joint Venturers and the Guarantor wish to vary the **Principal Agreement**.

**THE PARTIES AGREE AS FOLLOWS:**

**1.      Ratification and operation**

- (1)      This Agreement, other than this clause, does not come into operation except in accordance with subclause (2).



- (2) This Agreement, other than this clause, comes into operation on the day on which it is ratified by an Act of the Parliament of Western Australia ("**Operative Date**") unless, before that day, it terminates under subclauses (4) or (5).
- (3) The State must introduce in the Parliament of Western Australia before 30 September 2024 or a later date agreed between the parties to this Agreement, a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.
- (4) If by 31 December 2024 this Agreement has not been ratified by an Act of the Parliament of Western Australia then, unless the parties to this Agreement otherwise agree, this Agreement terminates on that day 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.
- (5) The parties agree that if the Principal Agreement is otherwise determined in accordance with its provisions on a day prior to the Operative Date, then this Agreement shall also terminate on and from that day 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.

## **2. Variations of the Principal Agreement**

The Principal Agreement is varied as follows:

- (1) in Section 1.01 by:

(a) deleting the definitions of "direct shipping ore", "fine ore", "fines", "f.o.b. revenue", "iron ore", "Land Act", "mineral lease", "mine townsite", "Minister for Works", "mortgagee", "port townsite", "tertiary processing" and "the port";

(b) inserting in the appropriate alphabetical position the following new definitions:

"agreed or determined" means agreed between the Joint Venturers and the Minister or, failing agreement within three (3) months of the Minister giving notice to the Joint Venturers that he requires the value of a quantity of iron ore to be agreed or determined, as determined by the Minister (following, if requested by the Joint Venturers, consultation with the Joint

Venturers and their consultants in regard thereto) and in agreeing or determining a fair and reasonable market value of such iron ore assessed on an arm's length basis the Joint Venturers and/or the Minister as the case may be shall have regard to:

(a) in the case of iron ore initially sold at cost pursuant to the proviso to Section 21.05, 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 (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

(b) 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;

"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. point" means on ship at the relevant loading point;

"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;

"Department" means the department of the State from time to time assisting the Minister for Mines in the general administration of the Mining Act 1978;

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

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

"f.o.b. value" means:

- (a) subject to paragraph (b), in the case of iron ore shipped and sold by the Joint Venturers, the price which is payable for the iron ore by the purchaser thereof to the Joint Venturers or an associated company or, where the Minister considers, following advice from the appropriate Government department, that the price payable in respect of the iron ore does not represent a fair and reasonable market value for that type of iron ore assessed on an arm's length basis, such amount as is agreed or determined as representing such a fair and reasonable market value, less all export duties and export taxes payable to the Commonwealth on the export of the iron ore and all costs and charges properly incurred and payable by the Joint Venturers from the time the iron ore shall be placed on ship at the relevant loading port to the time the same is delivered and accepted by the purchaser including:
  - (i) ocean freight;
  - (ii) marine insurance;

- (iii) port and handling charges at the port of discharge;
- (iv) all costs properly incurred in delivering the iron ore from port of discharge to the smelter and evidenced by relevant invoices;
- (v) all weighing sampling assaying inspection and representation costs;
- (vi) all shipping agency charges after loading on and departure of ship from the relevant loading port;
- (vii) all import taxes by the country of the port of discharge; and
- (viii) such other costs and charges as the Minister may in his discretion consider reasonable in respect of any shipment or sale;
- (b) in the case of iron ore initially sold at cost pursuant to the proviso to Section 21.05, the price which is payable for the iron ore by the arm's length purchaser as referred to in paragraph (c) 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 (a) above; and
- (c) in all other cases, the deemed f.o.b. value.

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

satisfied that such entire consideration represents the fair and reasonable market value;

“GNH Portion” means the portion of Great Northern Highway that traverses Temporary Reserves 4192H, 4737H, and 4882H (being more particularly land comprising portion of Lot 182 on Deposited Plan 219299 (LR 3116/247), the whole of Lot 181 on Deposited Plan 219298 (LR3116/246), the whole of Lot 180 on Deposited Plan 219297 (LR3116/245) and portion of Lot 179 on Deposited Plan 219296 (LR3116/244));

"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 authorised by and as scheduled to the *Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended; or
- (f) 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

(g) the agreement ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996*, 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;

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

"LAA Minister" means the Minister for Lands, a body corporate under section 7 of the LAA;

"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) any other port constructed after the variation date under an Integration Agreement; or

(d) 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 Mining Lease;

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

"mine closure plan" means a document that:

(a) is in the form required under the Mining Act 1978 for a mine closure plan relating to mining leases granted under that Act; and

(b) contains information required under the Mining Act 1978 for a mine closure plan relating to mining leases granted under that Act including about:

(i) the decommissioning of each mine (within the meaning given to that term in the Mining Act 1978); and

(ii) the rehabilitation of land,

within the area of the Mining Lease;

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

"Mining Lease" means the mining lease, granted pursuant to Section 9.01 and includes any renewal thereof and according to the requirements of the context describes the area of land demised as well as the instrument by which it is demised and includes any areas added to it pursuant to Section 9A.01;

"Minister for Water" means the Minister in the Government of the said State for the time being responsible for the administration of the *Rights in Water and Irrigation Act 1914* (WA);

"MRF Act" means the *Mining Rehabilitation Fund Act 2012* (WA);

"Related Entity" means a company in which:

(a) as at 21 June 2010; and

(b) after 21 June 2010, with the approval of the Minister,

a direct or (through a subsidiary or subsidiaries within the meaning of the *Corporations Act 2001* (Commonwealth)) indirect shareholding of 20% or more is held by Rio Tinto Limited ABN 96 004 458 404;

"Relevant Land", in relation to Special Advance Tenure, means the land which is the subject of that Special Advance Tenure;

"Special Advance Tenure" means:

(a) a miscellaneous licence or general purpose lease requested under Section 10.04 to be granted to the Joint Venturers under the Mining Act 1978; or

(b) an easement or a lease requested under Section 10.04 to be granted to the Joint Venturers under the LAA,

and as the context requires such tenure if granted;

"Surrendered Land" means all portions and interests in land surrendered from Temporary Reserves 4192H, 4737H and 4882H pursuant to registered Partial Surrenders 751H/856, 752H/856 and 753H/856 respectively;

"The JORC Code" means the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves prepared by the Joint Ore Reserves Committee of The Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and Minerals Council of Australia in December 2012 or any future superseding code issued by the same or any future equivalent organisation or organisations;

"variation date" means the date on which clause 2 of the variation agreement made on or about 27 August 2024 between the State, the Joint Venturers and the Guarantor comes into operation;

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

(c) in the definition of "assignee", deleting "and includes as associated company or third party in whose favour an appointment has been made pursuant to paragraph (b) of Section 25.04";

(d) in the definition of "associated company", deleting "section (6) of the Companies Act 1961" and substituting "the Corporations Act 2001 (Commonwealth)";

(e) in the definition of "iron ore pellets", deleting "mineral lease" and substituting "Mining Lease";

(f) in the definition of "iron ore products", deleting "mineral lease" and substituting "Mining Lease";

(g) in the definition "Joint Venturers' wharf", by deleting "and whether the same be a wharf constructed by or on behalf of the Joint Venturers a wharf used by the Joint Venturers in conjunction with another or others (including the State)";

(h) in the definition of "Minister for Mines", after the words "Mining Act" inserting the words "and the Mining Act 1978";



- (i) in the definition of "parties", by deleting "or" and substituting "and";
  - (j) in the definition of "secondary processing", by:
    - (i) deleting "concentration or other beneficiation of iron ore otherwise than by crushing or screening" and substituting "beneficiation of iron ore"; and
    - (ii) before the word "pellets" inserting the words "iron ore"; and
  - (k) in the definition of "Year 1", after the words "export date and" deleting "year" and substituting "Year";
- (2) in Section 1.03 by:
- (a) in paragraph (b), after the words "References to an Act" insert the words "(other than the Mining Act)"; and
  - (b) inserting after subparagraph (ii) of paragraph (e) the following new paragraphs:
    - "(f) Words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context.
    - (g) One gender includes the other genders.
    - (h) Reference in this Agreement to any other document includes that document as from time to time added to, varied or amended and notwithstanding any change in the identity of the parties.
    - (i) "Including" means "including, but not limited to".
    - (j) Reference to a "person" includes a body corporate.
    - (k) Nothing in this Agreement shall be construed:
      - (i) 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
      - (ii) 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

(iii) to exempt the Joint Venturers from compliance with the provisions of the *Aboriginal Heritage Act 1972* (WA)."

(3) in Section 1.04 by:

(a) after the words "will be deemed" inserting the words "(as at the commencement date and as at the variation date)"; and

(b) deleting "and in particular without limiting the generality of the foregoing the Acts mentioned in Sections 1.05 to 1.08 inclusive shall be deemed to be amended to the extent indicated therein";

(4) inserting after Section 1.05 the following new Section:

"SECTION 1.05A      EP ACT      Section 41 of the EP Act will be deemed amended so that subsections (2) and (3) of that section do not apply to decisions under or pursuant to this Agreement, the Mining Act and the Mining Act 1978 relating to:

(a) the granting of the mining lease pursuant to Section 9.01; or

(b) for the avoidance of doubt, the renewal of the right of occupancy pursuant to Section 3.06."

(5) deleting Section 1.06 (other than the heading) and substituting "Not used.";

(6) deleting Section 1.07 (other than the heading) and substituting "Not used.";

(7) deleting Section 1.08 (other than the heading) and substituting "Not used.";

(8) deleting Section 2.01 (other than the heading) and substituting "Not used.";

(9) deleting Section 2.02 (other than the heading) and substituting "Not used.";

(10) deleting Section 3.01 and substituting the following:

"SECTION 3.01 INITIAL OBLIGATIONS OF THE STATE

(a) The State shall subject to paragraph (c) and the adequate protection of the environment (including flora and fauna) and the land affected (including improvements thereon) arrange for the issue of requisite authority under any one or both of (as determined by the State in its discretion):

(i) section 91 of the LAA; or

(ii) section 182 of the LAA,

to allow the Joint Venturers to enter upon Crown land (within the meaning of the LAA and including, if applicable, land the subject of a pastoral lease) to carry out all works to the extent reasonably necessary for the purposes of undertaking their obligations under Section 4.01 or to undertake investigations, studies and surveys in furtherance of their proposed activities under this Agreement.

(b) For the purposes of subparagraph (ii) of paragraph (a), section 182 of the LAA shall apply as if the activities under this Agreement (including a significant modification, expansion or other variation of them for which proposals are required pursuant to this Agreement) are a proposed public work for which the LAA Minister is under that section authorised to take interests in land within the meaning of that section.

(c) The Joint Venturers acknowledge that they shall be responsible for obtaining all consents of each person whose consent the LAA Minister (acting with the concurrence of the Minister in respect of any such Crown land the subject of a Government agreement) requires for the grant of any requisite authority referred to in paragraph (a) and in a form and substance acceptable to the LAA Minister."

(11) in Section 3.09 deleting "mineral lease" and substituting "mining lease";

(12) inserting after Section 3.09 the following new Section:

"SECTION 3.10 MINING TENEMENTS DEDICATED TO THIS AGREEMENT

(a) On and from the variation date the Joint Venturers dedicate to this Agreement the mining tenements listed in the Fifth Schedule and such dedication will extend to any tenements granted by way of conversion of or substitution for the above described tenements as well as any renewals or extensions from time to time.

(b) The terms and conditions of the dedicated mining tenements and the rights and obligations of the Joint Venturers under the Mining Act 1978 and the general law of the State are only affected to the extent required by the dedication in paragraph (a)."

(13) in Section 4.01 by:

(a) deleting Section 4.01 (other than the heading) and substituting the following:

"The Joint Venturers shall continue their field and office engineering, environmental, heritage, market and finance studies and other matters necessary for the purposes of enabling them to finalise and to submit to the Minister the detailed proposals referred to in Clause V."; and

(b) in the heading, inserting an apostrophe after the word "VENTURERS" and inserting the word "CONTINUING" before the word "INVESTIGATIONS";

(14) deleting Section 4.02 (other than the heading) and substituting "Not used.";

(15) deleting Section 4.03 (other than the heading) and substituting the following:

"The Joint Venturers shall keep the State fully informed in writing at annual intervals from the variation date (or such lesser interval determined from time to time by the Minister) as to the progress and results of its investigations under Section 4.01 and shall supply to the State such information in relation thereto as the Minister may reasonably request from time to time.";

(16) deleting Section 4.04 and substituting the following:

"SECTION 4.04 CONSULTATION WITH STATE The Joint Venturers shall co-operate with the State and consult with the

representatives or officers of the State regarding matters referred to in Sections 4.01 and 4.03 and any other relevant studies in relation to those Sections that the Minister may wish the Joint Venturers to undertake."

(17) deleting Section 5.01 (other than the heading) and substituting "Not used.";

(18) deleting Section 5.02 (other than the heading) and substituting the following:

"The Joint Venturers shall, subject to the EP Act, the provisions of this Agreement, grant of the Mining Lease, approval of a plan as referred to in Section 7.04 and provision of a plan as referred to in Section 7.05, submit to the Minister on or before 31 December 2032 to the fullest extent reasonably practicable their detailed proposals (herein referred to as "the said proposals") (which shall include (where practicable) appropriate plans and (where reasonably required by the Minister) appropriate specifications and any other details normally required by a local government for a large scale mining project in whose area any works are to be situated) in respect of the production of not less than 30 million tonnes of iron ore per annum for transportation from the Mining Lease and the transport and shipment of iron ore produced (whether as an initial development or as an expansion of a development the subject of proposals approved under Section 6A.02), which proposals shall be in substance consistent with the information provided by the Joint Venturers in support of their application for the Mining Lease under Section 9.01 (unless otherwise approved by the Minister) and include the location, area, layout, design, materials and time program for the commencement and completion of the construction or the provision (as the case may be) of each of the following matters:

(a) the mining and recovery of iron ore including mining, crushing, screening, handling, transport and storage of iron ore and plant facilities and any beneficiation or further processing of iron ore proposed to be carried out;

(b) transportation of iron ore from the Mining Lease (by road, railway, rail spur line or conveyor connecting to a railway constructed and operated under an Integration Agreement) to the loading port for shipping;

(c) temporary accommodation and ancillary facilities for the mine construction workforce on or in the vicinity of the Mining Lease

and housing or other appropriate accommodation and facilities elsewhere for the Joint Venturers' workforce;

(d) storage and ship loading of iron ore;

(e) water supply and disposal;

(f) roads within the Mining Lease and roads serving the Mining Lease;

(g) energy supplies;

(h) mine aerodrome on or in the vicinity of the Mining Lease and any other aerodrome facilities and services;

(i) any ancillary leases, licenses, easements or other titles to land (not being exploration licences or retention licences) required from the State;

(j) disposal of waste materials;

(k) drainage;

(l) dust control measures;

(m) any other works, services or facilities proposed or required by the Joint Venturers; and

(n) 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."

(19) in Section 5.03 deleting "(m) of Section 5.02" and substituting "(n) of Section 5.02";

(20) in Section 5.04 by:

(a) after the words "approval of the Minister" inserting the words "(except in relation to an Integration Agreement)"; and

(b) before each occurrence of the words "facilities" inserting the words "works installations or";

(21) deleting Section 5.05 (other than the heading) and substituting the following:

"At the time when the Joint Venturers submit the last of the said proposals pursuant to this Clause, they shall furnish to the Minister's reasonable satisfaction evidence of:

(a) marketing arrangements demonstrating the Joint Venturers' ability to sell iron ore and iron ore products produced in accordance with the said proposals;

(b) the financial capacity of the Joint Venturers to undertake the operations to which the said proposals refer; and

(c) the readiness of the Joint Venturers to embark upon and proceed to carry out the operations referred to in the said proposals."

(22) deleting Section 5.06 (other than the heading) and substituting "Not used.";

(23) in Section 6.01 by:

(a) after the words "the Minister may" in the first sentence inserting the words "subject to the EP Act";

(b) in paragraph (a) by:

(i) deleting "(m)" and substituting "(n)"; and

(ii) inserting before the semi colon the words "or until such time as Section 5.05 has been complied with"; and

(c) deleting the full stop at the end of paragraph (c) and substituting "; or" followed by the following new paragraphs:

"(d) 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.

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 (d) 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 paragraph (g) of Section 9A.03 for the purpose of that Section) as contemplated by Section 9A.03. It may not be so exercised in respect of a proposal if pursuant to Section 7.03(e) 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 Section) with the single preferred development (as referred to in Section 7.03(e)(i)) 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 Section 7.03(e) in respect of that single preferred development."

(24) deleting Section 6.02 (other than the heading) and substituting the following:



"The Minister shall within two (2) months after receipt of proposals pursuant to Section 5.02 give notice to the Joint Venturers of his decision in respect to the proposals, PROVIDED THAT:

(a) 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 two (2) months after service on him of an authority under section 45(12) of the EP Act; and

(b) the Minister shall not consider a purported proposal or proposals (as the case may be) if the Minister is of the opinion that the purported proposal or proposals does not or do not (as the case may be) comply with Clause V or other provisions of this Agreement that apply to the purported proposal or proposals and in such circumstances:

(i) Section 6.01 and this Section (other than this paragraph (b)) shall not apply to the purported proposal or proposals;

(ii) subject to this Agreement, the Minister shall afford the Joint Venturers full opportunity to consult with him (including disclosure of written reasons for his opinion) and should they so desire to submit a new or revised proposal or proposals either generally or in respect to some particular matter; and

(iii) the Minister's opinion is not subject to arbitration hereunder.

(c) Nothing in this Agreement prevents the Joint Venturers providing the Minister with a particular proposal or proposals in draft form and requesting that the Minister provide his or her view as to whether, if submitted under Section 5.02, Section 6.02(b) may apply to that proposal or proposals PROVIDED ALWAYS that in considering the draft proposal or proposals it is in the Minister's discretion whether to form or not form a view on the draft proposal or proposals and in that regard relevant considerations for not forming a view may include that the Joint Venturers have developed the draft proposal or proposals without consulting with, or taking into account comments of, the department from time to time principally assisting the Minister in the administration of this Agreement.

- (d) If the Minister decides to form a view on the Joint Venturers' draft proposal or proposals for the purpose referred to in paragraph (c), the Minister will within three (3) months of receiving the request (or if the Minister requests further information, within three (3) months of provision of that information) provide to the Joint Venturers his or her view on the application of Section 6.02(b) and provide reasons if the Minister considers Section 6.02(b) may apply.
- (e) If the Minister decides not to form a view on the Joint Venturers' draft proposal or proposals for the purpose referred to in paragraph (c), the Minister will within three (3) months of receiving the request (or if the Minister requests further information, within three (3) months of provision of that information) advise the Joint Venturers accordingly and shall provide reasons to the extent he or she considers appropriate.
- (f) The Minister's view and any reasons provided under paragraph (d) or decision not to form a view on the Joint Venturers' draft proposal or proposals (including reasons in that regard) are not subject to arbitration hereunder.
- (g) Subject to paragraph (h), if, within six (6) months of the Minister providing views under paragraph (d), the Joint Venturers submit a proposal or proposals under Section 5.02 in materially the same form and substance as the draft proposal or proposals provided under paragraph (c) or as altered to address any reasons provided under paragraph (d) (as the case may be), Section 6.02(b) will not apply to such proposal or proposals.
- (h) Notwithstanding paragraph (g), the Minister may form the opinion under Section 6.02(b) that the proposal or proposals referred to in paragraph (g) does not or do not (as the case may be) comply with Clause V or other applicable provisions of this Agreement for reasons including a change in circumstances affecting or relevant to the proposal or proposals.
- (i) Subject to paragraph (g), a decision by the Minister to form or not form a view on the draft proposal or proposals provided by the Joint Venturers for the purpose referred to in paragraph (c) 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."

(25) in Section 6.03 deleting "(a) or (c)" and substituting "(a), (c) or (d)";

(26) in Section 6.04 by:

(i) deleting "paragraph" and substituting "paragraph (a) or";  
and

(ii) inserting after the full stop the sentence "Any requirement of the Minister pursuant to the proviso to Section 6.01 and any decision of the Minister under paragraph (d) of Section 6.01 shall not be referable to arbitration hereunder.";

(27) in Section 6.06 by:

(a) in paragraph (a) after the words "condition precedent" inserting the words "or Minister's decision to defer consideration";

(b) in paragraph (b) by:

(i) deleting "that the condition precedent is unreasonable" and substituting "in favour of the Joint Venturers"; and

(ii) inserting before the full stop the words "unless determined otherwise by the arbitrator";

(28) deleting Section 6.07 and substituting the following new Sections:

"SECTION 6.07 EFFECT OF NON-APPROVAL OF SAID PROPOSALS Notwithstanding that under Section 6.01 any proposals of the Joint Venturers are approved by the Minister or determined by arbitration award, unless each and every such proposal and matter is so approved or determined by 31 December 2033 (or if the date for submission of proposals under Section 5.02 is extended pursuant to Section 29.01 then by the date twelve (12) months after expiry of such extension) then 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 XXVI.

SECTION 6.08    IMPLEMENTATION OF APPROVED PROPOSALS

- (a)    The Joint Venturers shall implement the approved proposals in accordance with the terms thereof.
- (b)    Notwithstanding Section 28.01, the Minister may during the implementation of approved proposals approve variations to those proposals."

(29)   inserting after Section 6.08 the following new Clause:

"CLAUSE VIA

SECTION 6A.01   OPTIONAL INTERIM PROPOSALS

- (a)    Without limiting the obligation of the Joint Venturers under Section 5.02, the Joint Venturers may with the prior approval of the Minister and subject to the EP Act, the provisions of this Agreement, grant of the Mining Lease, approval of a plan as referred to in Section 7.04 and provision of a plan as referred to in Section 7.05, submit to the Minister on or before 31 December 2030 to the fullest extent reasonably practicable their detailed proposals (which shall include (where practicable) appropriate plans and (where reasonably required by the Minister) appropriate specifications and any other details normally required by a local government for a large scale mining project in whose area any works are to be situated) in respect of the Interim Development, which proposals shall be in substance consistent with the information provided by the Joint Venturers in support of their application for the Mining Lease under Section 9.01 (unless otherwise approved by the Minister) and include the location, area, layout, design, materials and time program for the commencement and completion of the construction or the provision (as the case may be) of the matters referred to in Section 5.02 as may be applicable to the development.
- (b)    For the purposes of this Section "Interim Development" means a development preparatory to or comprising part of the initial development to be the subject of proposals under Section 5.02.

SECTION 6A.02 CONSIDERATION OF OPTIONAL INTERIM PROPOSALS The provisions of Clause VI (except for Section 6.07) shall apply *mutatis mutandis* to proposals submitted under Section 6A.01."

(30) deleting Section 7.01 (other than the heading) and substituting the following:

"(a) Subject to Clause XXIII, if the Joint Venturers, at any time during the continuance of this Agreement after the approval of the said proposals, desire to significantly modify, expand or otherwise vary their activities carried on pursuant to this Agreement (other than under Section 9A.05 or Clause XXIII) beyond those activities specified in any proposals approved pursuant to Clause VI they shall give notice of such desire to the Minister and within two (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 Section 5.02 as the Minister may require.

(b) 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.

(c) Each of the proposals pursuant to paragraph (a) 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.

(d) 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.

(e) The Joint Venturers may withdraw their proposals pursuant to paragraph (a) at any time before approval thereof, or where any decision in respect thereof is referred to arbitration as referred to in Section 7.02, within three (3) months after the award by notice to the Minister that they shall not be proceeding with the same."

(31) deleting Section 7.02 and substituting the following:

"SECTION 7.02 CONSIDERATION OF JOINT VENTURERS'  
PROPOSALS UNDER SECTION 7.01

(a) In respect of each proposal pursuant to paragraph (a) of Section 7.01 the Minister shall:

(i) subject to the limitations set out below, refuse to approve the proposal (whether it requests the grant of new tenure or not) if the Minister is satisfied on reasonable grounds that it is not in the public interest for the proposal to be approved; or

(ii) approve of the proposal without qualification or reservation; or

(iii) defer consideration of or decision upon the same until such time as the Joint Venturers submit a further proposal or proposals in respect of some other of the matters mentioned in paragraph (a) of Section 7.01 not covered by the said proposal; or

(iv) require as a condition precedent to the giving of his approval to the said proposal that the 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:

(v) 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 Section 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; and

(vi) the Minister shall not consider a purported proposal or proposals (as the case may be) if the Minister is of the opinion that the purported proposal or proposals does not or do not (as the case may be) comply with Section 7.01 or other provisions of this Agreement that apply to the purported proposal or proposals and in such circumstances:

(A) this Section (other than this paragraph (vi)) shall not apply to the purported proposal or proposals;

(B) subject to this Agreement, the Minister shall afford the Joint Venturers full opportunity to consult with him (including disclosure of written reasons for his opinion) and should they so desire to submit a new or revised proposal or proposals either generally or in respect to some particular matter; and

(C) the Minister's opinion is not subject to arbitration hereunder.

The provisions of paragraphs (c) to (i) of Section 6.02 shall apply *mutatis mutandis*.

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

(A) detrimentally affect economic and orderly development in the said State, including without limitation, infrastructure development in the said State; or

(B) be contrary to or inconsistent with the planning and development policies and objectives of the State; or

(C) detrimentally affect the rights and interests of third parties; or

(D) detrimentally affect access to and use by others of the lands the subject of any grant or proposed grant to the 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 paragraph (g) of Section 9A.03 for the purpose of that Section) as contemplated by Section 9A.03. It may not be so exercised in respect of a proposal if pursuant to Section 7.03(e) 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 Section) with the single preferred development (as referred to in Section 7.03(e)(i)) 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 Section 7.03(e) in respect of that single preferred development.

(b) The Minister shall within two (2) months after receipt of proposals pursuant to Section 7.01 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 two (2) months after service on him of an authority under section 45(12) of the EP Act.

(c) If the decision of the Minister is as mentioned in either of subparagraphs (i), (iii) or (iv) of paragraph (a) the Minister shall afford the 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.

(d) If the decision of the Minister is as mentioned in either of subparagraphs (iii) or (iv) of paragraph (a) and the Joint Venturers consider that the decision is unreasonable the Joint Venturers within two (2) months after receipt of the notice mentioned in paragraph (b) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the



Minister pursuant to the proviso to paragraph (a) shall not be referable to arbitration hereunder. A decision of the Minister under subparagraph (i) of paragraph (a) shall not be referable to arbitration under this Agreement.

(e) If by the award made on the arbitration pursuant to paragraph (d) 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.

(f) The Joint Venturers shall implement the approved proposals in accordance with the terms thereof.

(g) Notwithstanding Section 28.01, the Minister may during the implementation of approved proposals approve variations to those proposals."

(32) deleting Section 7.03 and substituting the following:

"SECTION 7.03 NOTIFICATION OF POSSIBLE PROPOSALS

(a) 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 Section 9A.03) for the matter to be undertaken, intends 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.

(b) 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.

(c) 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.

(d) 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.

(e) (i) This paragraph (e) 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 paragraph (g) of Section 9A.03 for the purpose of that Section) as contemplated by Section 9A.03.

(ii) For the purpose of this paragraph (e) "public interest concerns" means any concern that implementation of the single preferred development or any part of it will:

(A) detrimentally affect economic and orderly development in the said State, including without limitation, infrastructure development in the said State; or

(B) be contrary to or inconsistent with the planning and development policies and objectives of the State; or

(C) detrimentally affect the rights and interests of third parties; or

(D) detrimentally affect access to and use by others of lands the subject of any grant or proposed grant to the Joint Venturers.

(iii) 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.

(iv) The Joint Venturers shall furnish to the Minister with their notice reasonable particulars of the single preferred development including, without limitation:

(A) as to the matters that would be required to be addressed in submitted proposals; and

(B) their progress in undertaking any feasibility or other studies or matters to be completed before submission of proposals; and

(C) their timetable for obtaining required statutory and other approvals in relation to the submission and approval of proposals; and

(D) their tenure requirements.

(v) 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.

(vi) Within two (2) months after receiving the notice (or if the Minister requests further information, within two (2) months after the provision of that information) the Minister must advise the Joint Venturers:

(A) that the Minister has no public interest concerns with the single preferred development; or

(B) 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.

(vii) If the Minister gives the advice mentioned in subparagraph (vi)(B) 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 paragraph shall apply *mutatis mutandis* thereto."

(33) inserting after Section 7.03 the following new Sections:

"SECTION 7.04 COMMUNITY DEVELOPMENT PLAN

(a) In this Section, the term "community and social benefits" includes:

- (i) assistance with skills development and training opportunities to promote work readiness and employment for persons living in the Pilbara region of the said State;
- (ii) regional development activities in the Pilbara region of the said State, including partnerships and sponsorships;
- (iii) contribution to any community projects, town services or facilities; and
- (iv) a regionally based workforce.
- (b) The Joint Venturers acknowledge the need for community and social benefits flowing from this Agreement.
- (c) The Joint Venturers agree that:
  - (i) 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
  - (ii) the Joint Venturers shall, not later than six (6) months after the variation date, submit to the Minister the plan prepared under subparagraph (c)(i) and confer with the Minister in respect of the plan.
- (d) The Minister shall within two (2) months after receipt of a plan submitted under subparagraph (c)(ii), 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.
- (e) The effect of an award made on an arbitration pursuant to paragraph (d) shall be that the relevant plan submitted by the Joint Venturers pursuant to subparagraph (c)(ii) shall, with such changes required by the Minister under paragraph (d) 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 Section.

- (f) At least three (3) months before the anticipated submission of proposals relating to a proposed development pursuant to any of Clauses V, VIA and VII, Section 9A.05 and Clause XXIII, the Joint Venturers must, unless the Minister otherwise requires, give to the Minister information about how the proposed development may affect the plan approved or deemed to be approved by the Minister under this Section. This obligation operates in relation to all proposals submitted on or after the date that is four (4) months after the date when a plan is first approved or deemed to be approved under this Section.
- (g) 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 Section.
- (h) 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 Section 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 Section in respect of the development to which it relates.
- (i) During the currency of this Agreement, the Joint Venturers shall implement the plan approved or deemed to be approved by the Minister under this Section.
- (j) The Joint Venturers shall promptly provide to the State a summary of each plan approved or deemed to be approved in a form reasonably required by the State (which summary shall be published by or on behalf of the Joint Venturers).

#### SECTION 7.05 LOCAL PARTICIPATION PLAN

- (a) In this Section, the term "local industry participation benefits" means:

  - (i) the use and training of labour available within the said State;
  - (ii) 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

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

(b) The Joint Venturers acknowledge the need for local industry participation benefits flowing from this Agreement.

(c) The Joint Venturers agree that they shall, not later than six (6) months after the variation date, prepare and provide to the Minister a plan which contains:

(i) a clear statement on the strategies which the Joint Venturers will use, and require a third party as referred to in paragraph (g) to use, to maximise the uses and procurement referred to in paragraph (a);

(ii) detailed information on the procurement practices the Joint Venturers will adopt, and require a third party as referred to in paragraph (g) to adopt, in calling for tenders and letting contracts for works, materials, plant, equipment and supplies 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;

(iii) detailed information on the methods the Joint Venturers will use, and require a third party as referred to in paragraph (g) to use, to have its respective procurement officers promptly introduced to Western Australian suppliers, manufacturers and contractors seeking such introduction; and

(iv) details of the communication strategies the Joint Venturers will use, and require a third party as referred to in paragraph (g) 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 paragraph (a).

It is acknowledged by the Joint Venturers that the strategies of the Joint Venturers referred to in subparagraph (c)(i) 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.

(d) 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 Section and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.

(e) At least six (6) months before the anticipated submission of proposals relating to a proposed development pursuant to any of Clauses V, VIA and VII, Section 9A.05 and Clause XXIII, the Joint Venturers must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this Section in relation to the proposed development. This obligation operates in relation to all proposals submitted on or after the date that is seven (7) months after the date when a plan is first provided under this Section.

(f) During the currency of this Agreement the Joint Venturers shall implement the plan provided under this Section.

(g) The Joint Venturers shall:

(i) 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 Section; and

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

(h) The Joint Venturers shall promptly provide to the State a summary of each plan provided under this Section in a form reasonably required by the State (which summary shall be published by or on behalf of the Joint Venturers)."

(34) in Section 8.01 by:

(a) in paragraph (a) inserting before the semi colon the words "(other than as contemplated by paragraph (c) of that Section)";

(b) deleting paragraph (c) (other than the paragraph number) and substituting "Not Used."; and

(c) in paragraph (d) deleting "three (3)" and substituting "six (6)";

(35) deleting Section 9.01 and substituting the following:

"SECTION 9.01 MINING LEASE The Joint Venturers may at any time and before the date that is two (2) years from the variation date (or thereafter within such period as extended by the Minister pursuant to Section 29.01) apply to the Minister for a mining lease for the whole of the land comprised in the mining areas as is then subject to the right of occupancy, the Surrendered Land and the mining tenements listed in the Fifth Schedule (and any tenements granted by way of conversion of or substitution for those tenements as well as any renewals or extensions of them that at the time the application is made the Joint Venturers are registered holders) and such application shall be supported by the following information:

(a) proposed overall plan for development of the mining lease (including location of mines, mining sequence strategy and time frames for development);

(b) proposed mining and processing methodology and supporting significant works, installations or facilities and areas proposed to be used for such infrastructure;

(c) details of all resources reported in accordance with The JORC Code;

and the Minister may within two (2) months after receipt of the application under this Section 9.01 request:



(d) any other information required under the Mining Act 1978 in support of an application for a mining lease that is required by the Minister (after consulting the Minister for Mines); and

(e) any other information required by the Minister.

Provided that the Minister is satisfied that the information supporting the Joint Venturers' application is sufficient, the State shall subject to the conditions and provisions set out in the paragraphs below and insofar as is permitted by laws relating to native title cause to be granted to the Joint Venturers a mining lease in the form set out in the Schedule to this Agreement for the mining of iron ore from the land identified in the application upon the surrender of the right of occupancy and the relevant mining tenements:

(a) the mining lease may be in respect of one or more pieces of land whether contiguous or not provided that the total area of the land the subject thereof will not exceed one thousand, one hundred and sixty-seven (1,167) square kilometres;

(b) the boundaries of each piece of land comprising such area will be so located as to form a rectangle or as near thereto as is practicable;

(c) the rental payable in respect of the mining lease shall be that prescribed from time to time under the Mining Act 1978 otherwise than under regulation 28A;

(d) the Joint Venturers will therein covenant to pay to the State in addition to the said rent the royalties fixed in Section 21.01;

(e) the mining lease may be granted before the area leased has been surveyed but in that case shall be granted subject to the condition that the area leased shall be surveyed by the Joint Venturers at their expense in accordance with the Mining Act 1978 except that the Minister will determine any disputes or objections and shall accord with that survey;

(f) subject to the due payment by the Joint Venturers of the said rent and royalties and to the due performance and observance by them of their other obligations thereunder and of their obligations under this Agreement and the Mining Act 1978 the term thereof will be twenty one (21) years as from the date of the granting thereof but the Joint Venturers will during the continuance of this

Agreement have the right to take three (3) successive renewals of the said term each for a period of twenty one (21) years upon the same terms and conditions as the previous term and to apply to the Minister for one (1) further renewal at the Minister's discretion for a period up to twenty one (21) years upon such terms and conditions as the Minister for Mines determines subject to the sooner determination of the said term upon the cessation or determination of this Agreement. The said right will be exercisable by the Joint Venturers making written application to the Minister for any such renewal not later than twelve (12) months before the expiration of the current term of the Mining Lease;

- (g) from and after Year 14 the Joint Venturers, in addition to the rental already referred to in paragraph (c), shall pay to the State an additional rental in respect of the Mining Lease equal to 25 cents per tonne on all iron ore in respect of which royalty is payable under Section 21.01, such additional rental to be paid in respect of the same periods and at the same times as such royalty is payable;
- (h) the Commissioner of Main Roads (in consultation with the Minister and the Minister for Mines) shall pursuant to this paragraph determine prior to the grant of the mining lease and from time to time thereafter terms and conditions relating to the GNH Portion (including, as a consequence of the Joint Venturers' planned or proposed activities hereunder, requiring the Joint Venturers to enter into an agreement with the Commissioner of Main Roads relating to relevant matters including the modification, replacement and relocation of any affected portion or section of Great Northern Highway and associated infrastructure and equipment at the cost of the Joint Venturers and otherwise on terms reasonably required by the Commissioner of Main Roads);
- (i) the Joint Venturers shall carry out their operations on the mining lease in accordance with this Agreement and approved proposals hereunder, the terms and conditions of the mining lease (including such conditions not inconsistent with this Agreement as determined and endorsed thereon by the Minister for Mines from time to time), the terms and conditions determined from time to time by the Commissioner of Main Roads (in consultation

with the Minister and the Minister for Mines) in relation to the GNH Portion and any other applicable requirements that are not inconsistent with the terms of this Agreement;

(j) the provisions of the Mining Act 1978 are deemed modified to prohibit any application for a mining tenement being made in respect of the Surrendered Land prior to the grant of the mining lease and to the extent any application for a mining tenement in respect of such land is made by a person (other than the Joint Venturers) prior to the variation date such pending application (other than miscellaneous licence application L 47/1151) is by this paragraph terminated on the variation date and no action, claim or demand lies against the State, the Minister or any other person in respect of any matter or thing arising from the termination of the pending application under this paragraph;

(k) the provisions of the Mining Act 1978 which, but for this paragraph, entitle or would entitle a person to object with or without the leave of the warden to the grant of the mining lease to the Joint Venturers, shall not apply to the extent only that those provisions entitle or would entitle a person to so object;

(l) the mining lease on grant, amendment or renewal will be taken to be, and to always have been, valid and effective to the same extent as it would have been if the requirements under this Agreement and the Mining Act 1978 for its grant, amendment or renewal had been complied with;

(m) section 118A of the Mining Act 1978 does not apply to the Mining Lease; and

(n) subject to paragraphs (a) to (m) inclusive of this Section and as in this Agreement otherwise provided all relevant provisions of the Mining Act 1978 and the Regulations thereunder will apply subject to contrary express and implied provisions of this Agreement (and for the avoidance of doubt the Joint Venturers will not be required to submit any mining proposals, mine closure plans, programmes of works or other authorising documents under the Mining Act 1978 in respect of their activities upon the Mining Lease)."

(36) deleting Section 9.02 (other than the heading) and substituting "Not used.";

(37) in Section 9.03 by:

(a) deleting "(e)" and substituting "(f)";

(b) after the words "Section 9.01" inserting the words "and the Mining Act 1978";

(c) after the words "due and has" inserting the word "not";

(d) before "surrender" inserting the words "with the prior consent of the Minister"; and

(e) deleting "mineral lease" and substituting "Mining Lease provided however that such portion or portions have been rehabilitated in accordance with the EP Act, the approved mine closure plan, the terms and conditions of the Mining Lease and any other applicable requirements, unless the Minister otherwise allows";

(38) deleting Section 9.04 (other than the heading) and substituting "Not used.";

(39) deleting Section 9.05 and substituting the following:

"SECTION 9.05 STONE, SAND, CLAY AND GRAVEL The Joint Venturers in accordance with approved proposals may for the construction of works (and the maintenance thereof) for the purposes of this Agreement and without payment of royalty, obtain stone sand clay and gravel from the Mining Lease."

(40) deleting Section 9.06 (other than the heading) and substituting "Not used.";

(41) in Section 9.07 by deleting "MINERAL LEASE" in the heading and substituting "MINING LEASE" and deleting "mineral lease" in the Section and substituting "Mining Lease";

(42) deleting Section 9.08 (other than the heading) and substituting "Not used.";

(43) inserting after Section 9.08 the following new Sections:

"SECTION 9.09 COMPLIANCE WITH LAWS RELATING TO  
NATIVE TITLE

The provisions of this Section 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 laws relating to native title to enable that grant or variation to proceed, have been completed.

**SECTION 9.10    EXEMPTION FROM EXPENDITURE CONDITIONS**

The State shall ensure that during the currency of this Agreement and subject to compliance with its obligations hereunder the Joint Venturers shall not be required to comply with the expenditure conditions imposed by or under the Mining Act 1978 in regard to the Mining Lease.

**"SECTION 9.11    MINING    LEASE    REPORTS    AND INFORMATION**    The Joint Venturers shall lodge with or provide to the Department in respect of the Mining Lease:

- (a)    such periodical reports and returns as may be prescribed or otherwise usually required (including by the imposition of conditions or other requirements) in respect of a mining lease under or pursuant to the Mining Act 1978 or the regulations made thereunder, unless the Minister for Mines allows otherwise;
- (b)    if requested by the Department but not more frequently than annually, a report on identified mineral resources and/or iron ore reserves within the Mining Lease (prepared in accordance with The JORC Code) together with a list of any geological, geochemical, geophysical, geotechnical and metallurgical activities carried out during the year and, if requested by the Department, the Joint Venturers will provide details and results of any of those activities in a mineral exploration report or other technical report, in accordance with statutory guidelines on reporting as specified under the Mining Act 1978;
- (c)    reports on drilling operations and drill holes where the main purposes of the drilling was to discover or define future mineral resources and ore reserves within the Mining Lease and, if requested by the Department, reports on drilling done within blocks of proven ore for the purpose of mine planning; and
- (d)    notification to the Department of any intention to destroy or dispose of drill cores obtained from the Mining Lease and, if requested by the Department, such drill cores.

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**SECTION 9.12    CONTINUED EXPLORATION**

- (a) The Joint Venturers shall progressively explore and carry out reasonable geological investigations to delineate the Inferred Mineral Resource (as defined in The JORC Code) of iron ore within the Mining Lease to support timely development of that resource and provide notice to the Department each anniversary of the grant of the Mining Lease of their proposed exploration works programme for that reporting year and the exploration works undertaken during the preceding reporting year as part of a report lodged under Section 9.11.
- (b) In considering each application by the Joint Venturers for the renewal of the term of the Mining Lease, the Minister for Mines shall consult with the Minister and have regard to the Joint Venturers' compliance with paragraph (a) in respect of the Mining Lease and the results of the geological investigations carried out on it.
- (c) (i) Without limiting paragraph (f) of Section 9.01 or Clause XXVI, at the time of considering each application by the Joint Venturers for the renewal of the term of the Mining Lease, the Minister for Mines may, taking into account the types of circumstances where an exemption from compliance with expenditure conditions would ordinarily be granted under the Mining Act 1978 and any other relevant matters (including any prior concerns notified by the Minister for Mines and the Department in relation to the Joint Venturers' compliance with paragraph (a) in respect of the Mining Lease) and after consulting the Joint Venturers and with the concurrence of the Minister, determine that the Joint Venturers have not complied with their obligation under paragraph (a) in respect of an area or areas and have not provided reasonable explanation in that regard, in which case, subject to the matter being referred to arbitration by the Joint Venturers under Section 32.01 and the award in the matter being adjudged in favour of the Joint Venturers, the Joint Venturers shall within two (2) months of being notified of that determination provide the Minister for Mines with an exploration programme in respect of the area or areas

identified in the notice for approval by the Minister for Mines and implementation by the Joint Venturers.

(ii) If the Joint Venturers fail to:

(A) provide an exploration programme to the Minister for Mines or to have the programme approved; or

(B) implement the approved exploration programme to the reasonable satisfaction of the Minister for Mines (acting with the concurrence of the Minister).

the Minister for Mines shall notify the Joint Venturers and, subject to the matter being referred to arbitration and the award being adjudged in favour of the Joint Venturers, on the date one (1) month after such notification or the date of an award in favour of the Minister for Mines the area or areas identified in the notice or by the award (as the case may be) will be deemed surrendered from the Mining Lease and exempted from mining under section 19 of the Mining Act 1978 pending the Minister for Mines determining how and when to deal with the exempted land pursuant to that section.

SECTION 9.13 MRF ACT On and from the variation date, the right of occupancy, the Mining Lease and any other mining tenements granted pursuant to this Agreement shall be deemed to be a mining authorisation for the purposes of the MRF Act and the regulations made under that Act. For the avoidance of doubt, the mining tenements referred to in Section 3.10 continue to be mining authorisations for the purposes of the MRF Act notwithstanding their dedication to the Agreement.

#### SECTION 9AA.01 OTHER MINING TENEMENTS

(a) Notwithstanding anything contained or implied in this Agreement or in the Mining Lease or the Mining Act 1978, mining tenements may subject to the provisions of this Section be granted to or registered in favour of persons other than the Joint Venturers under the Mining Act 1978 in respect of the areas the subject of the Mining Lease unless the Minister for Mines determines that such grant or registration is likely unduly to prejudice or interfere with the current or prospective operations

of the Joint Venturers hereunder with respect to iron ore, assuming the taking by the Joint Venturers of reasonable steps to avoid the prejudice or interference, or is likely unduly to reduce the quantity of economically extractable iron ore available to the Joint Venturers.

(b) A mining tenement granted or registered as a result of this Section shall not confer any right to mine or otherwise obtain rights to iron ore on the tenement.

(c) (i) In respect of any application for a mining tenement made under the Mining Act 1978 in respect of an area the subject of the Mining Lease the Minister for Mines shall consult with the Minister and the Joint Venturers with respect to the significance of iron ore deposits in, on or under the land the subject of the application and any effect the grant of a mining tenement pursuant to such application might have on the current or prospective iron ore operations of the Joint Venturers under this Agreement.

(ii) Where the Minister for Mines, after taking into account any matters raised by the Minister or the Joint Venturers determines that the grant or registration of the application is likely to have the effect on the operations of the Joint Venturers or the iron ore referred to in paragraph (a) of this Section, he shall notwithstanding any recommendation of any mining registrar or warden, by notice served on the mining registrar with whom the application was lodged, refuse the application.

(iii) Before making a determination pursuant to subparagraph (ii) of this paragraph (c) the Minister for Mines may request the warden of the mineral field or district thereof in which is situated the mining tenement for which the application was made to hear the application and any objections thereto and as soon as practicable after the hearing of the application to report to the Minister for Mines on the application and the objections and the effect on the current or prospective operations of the Joint Venturers or the quantity of economically extractable iron ore that a grant of the application might have.



- (d) (i) Except as provided in paragraph (c) of this Section no mining registrar shall deal with an application for a mining tenement in respect of an area the subject of the Mining Lease unless and until the Minister for Mines has notified them that it is not intended to refuse the application pursuant to paragraph (c) of this Section. Following such advice to the mining registrar the application shall be disposed of under and in accordance with the Mining Act 1978 save that where the warden has heard the application and objections thereto pursuant to subparagraph (iii) of paragraph (c) of this Section, the application may be dealt with by the warden without further hearing.
- (ii) The Joint Venturers may exercise in respect of any application for a mining tenement lodged with a mining registrar any right that it may have under the Mining Act 1978 to object to the granting of the application.
- (iii) Any mining tenement granted pursuant to such application shall, in addition to any covenants and conditions that may be prescribed or imposed, be granted subject to such conditions as the Minister for Mines may determine having regard to the matters the subject of the consultations with the Minister and the Joint Venturers pursuant to subparagraph (i) of paragraph (c) of this Section and any matters raised by the Joint Venturers before the warden pursuant to subparagraph (iii) of paragraph (c) of this Section or to subparagraph (ii) of this paragraph (d).
- (e) (i) On the grant of any mining tenement pursuant to an application to which this Section applies the land the subject thereof shall thereupon be deemed excised from the Mining Lease (with abatement of future rent in respect of the area excised but without any abatement of rent already paid or of rent which has become due and has not been paid in advance).
- (ii) On the expiration or sooner determination of any such mining tenement or, if that tenement is a prospecting licence, exploration licence or retention licence and a substitute tenement is granted in respect thereof pursuant

to an application made under section 49 or section 67 or section 70L of the Mining Act 1978, then on the expiration or sooner determination of the substitute title the land the subject of such mining tenement or substitute title as the case may be shall thereupon be deemed to be part of the land in the Mining Lease (with appropriate adjustment of rental) and unless the Minister otherwise directs shall be subject to the terms and conditions of the Mining Lease and this Agreement.

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**SECTION 9AB.01    MINE CLOSURE PLANNING**

(a)    The Joint Venturers shall, not later than twelve (12) months after the approval of proposals under Clause VI or Clause VIA (whichever is earlier), lodge with the State a mine closure plan for, subject to the EP Act, approval by the Minister for Mines (acting with the concurrence of the Minister) and on provision of such approval:

(i)    the mine closure plan shall be deemed to be a mine closure plan within the meaning given to that term in the Mining Act 1978 that, subject to this Section, is to be reviewed, amended and implemented in accordance with that Act;

(ii)   the Mining Lease shall be deemed to be subject to:

(A)   a condition that the holder of the Mining Lease must review the mine closure plan and obtain approval for the reviewed mine closure plan in accordance with this Section; and

(B)   a condition that the holder of the Mining Lease must decommission all mines (within the meaning given to that term in the Mining Act 1978) from time to time within the area of, and rehabilitate the land within, the Mining Lease in accordance with the approved mine closure plan from time to time.

(b)   The Joint Venturers shall ensure that the mine closure plan referred to in paragraph (a) of this Section is reviewed at the times that a mine closure plan under the Mining Act 1978 is required by that Act to be reviewed and otherwise at the times

determined from time to time by the Minister for Mines (acting with the concurrence of the Minister).

(c) The Joint Venturers shall ensure that a reviewed mine closure plan is within the applicable times under paragraph (b) of this Section lodged with the State for approval, subject to the EP Act, by the Minister for Mines (acting with the concurrence of the Minister).

(d) The Minister for Mines (acting with the concurrence of the Minister) may approve the mine closure plan or a reviewed mine closure plan as lodged or subject to such changes as required by the Minister for Mines (acting with the concurrence of the Minister). If the Joint Venturers are unwilling to accept the changes required to be made, they shall notify the Minister to that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes and the effect of an award made on arbitration shall be that the mine closure plan or reviewed mine closure plan (as the case may be) lodged by the Joint Venturers shall, with such changes as required by the Minister for Mines (acting with the concurrence of the Minister) as the arbitrator determines to be reasonable (with or without modification by the arbitrator) be deemed to be the plan approved by the Minister for Mines (acting with the concurrence of the Minister) under this Section.

(e) Without limiting the Mining Act 1978, the Joint Venturers shall implement the mine closure plan or reviewed mine closure plan approved or deemed to be approved from time to time under paragraph (d) of this Section.

(f) Without limiting the Mining Act 1978, the obligations set out in paragraph (e) of this Section shall survive the cessation or determination of this Agreement and the expiry or surrender of the Mining Lease, in which case the Joint Venturers may enter and re-enter the land that was the subject of the Mining Lease with such agents, employees, vehicles, machinery and equipment as may be necessary for the purpose of implementing the relevant mine closure plan and complying with the relevant conditions.

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**SECTION 9A.01      ADDITIONAL AREAS**

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- (a) Notwithstanding the provisions of 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 the Mining Lease but so that the total area of the Mining Lease, any land that may be included in the Mining Lease pursuant to this Agreement and of any other mining lease granted under or pursuant to this Agreement (as aggregated) shall not at any time exceed one thousand, one hundred and sixty-seven (1,167) 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 Mining 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 Mining 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.
- (b) The Minister may approve, upon application by the Joint Venturers from time to time, for the total area referred to in paragraph (a) to be increased up to a limit not exceeding one thousand five hundred (1,500) square kilometres.
- (c) 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 the Mining Lease pursuant to paragraph (a) of this Section unless and until proposals with respect thereto are approved or determined as contemplated by paragraph (d) of this Section.
- (d) 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 two (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 Section 7.01.

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SECTION 9A.02      BLENDING OF IRON ORE

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(a) The Joint Venturers may blend iron ore mined from the Mining Lease with any:

(i) iron ore mined from a mining tenement or other mining title granted under, or pursuant to, an Integration Agreement; or

(ii) 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

(iii) 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

(iv) 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.

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(b) The authority given under paragraph (a) 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 paragraph (a), 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 paragraph (b).

(c) If any blending of iron ore occurs as contemplated by this Section, then for the purposes of Sections 21.01 and 21.03, a portion of the iron ore so blended being equal to the proportion that the amount of iron ore from the Mining 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 Mining Lease.

SECTION 9A.03      INTEGRATED      USE      OF      WORKS  
INSTALLATIONS OR FACILITIES UNDER  
THE INTEGRATION AGREEMENTS

(a) Subject to paragraphs (b) to (g) of this Section and to the other provisions of this Agreement, the Joint Venturers may during the continuance of this Agreement:

(i) use any existing or new works installations or facilities constructed or held:

(A) under this Agreement; or

(B) under any other Integration Agreement which are made available for such use and during the continuance of such Integration Agreement; or

(C) 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 Section 9A.02) of:

(aa) 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);

(ab) 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);

(ac) 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;

(ad) iron ore mined under an Integration Agreement;

(ii) 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:

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

(B) with the prior approval of the Minister (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);

(C) with 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;

(D) iron ore mined under an Integration Agreement;

(iii) 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:

(A) 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

(B) 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;

(iv) subject to paragraph (b) under this Agreement and for the purpose of any use or making available for use referred to in subparagraph (i), (ii) or (iii) 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;

(v) subject to paragraph (b) under this Agreement and for the purpose of any use or making available for use referred to in subparagraph (i), (ii) or (iii) or making of any connection referred to in subparagraph (iv) 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;

(vi) 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

(vii) 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.

(b) (i) A connection referred to in paragraph (a)(iv) or construction, expansion, modification or other variation referred to in paragraph (a)(v) 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 Sections 7.01 and 7.02 or Section 9A.05 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 paragraph (a)(i), (a)(ii) or (a)(iii) shall not otherwise than as required by this paragraph (a) require the submission and approval of further proposals under this Agreement.

(ii) The Joint Venturers shall not be entitled to:

(A) submit proposals to construct or to develop a port;  
or

(B) generate and supply power, take and supply water  
or dispose of water otherwise than in accordance  
with the other Sections of this Agreement and  
subject to any restrictions contained in those  
Sections; or

(C) without limiting subparagraphs (ii)(A) and (ii)(B)  
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 paragraphs (a)(i), (a)(ii) or (a)(iii)  
or as permitted by Section 9A.05; or

(D) submit proposals to make a connection as referred  
to in paragraph (a)(iv) or a construction, expansion,  
modification or other variation as referred to in  
paragraph (a)(v) 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

(E) submit proposals to make a connection referred to  
in paragraph (a)(iv), or a construction, expansion,  
modification or other variation as referred to in  
paragraph (v) for the purpose of use as  
contemplated by paragraph (a)(iii)(A), 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

(F) submit proposals to make a connection as referred to in paragraph (a)(iv) or a construction, expansion, modification or other variation as referred to in paragraph (a)(v) for the purpose of use as contemplated by paragraph (a)(iii) and involving the grant of tenure without the prior approval of the Minister; or

(G) 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 Section.

(iii) Notwithstanding the provisions of Sections 7.02 and 9A.05, the Minister may defer consideration of, or a decision upon, a proposal submitted by the Joint Venturers for a connection as referred to in paragraph (a)(iv) or a construction, expansion, modification or other variation as referred to in paragraph (a)(v) for the purpose of use or making available for use as referred to in paragraphs(a)(i) or (a)(ii) 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.

(c) Any use or making available for use as referred to in paragraph (a), or submission of proposals as referred to in paragraph (b), 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.

(d) 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 them making available for use, works, installations or facilities as referred to in this Section:

- (i) from that authorised under this Agreement immediately before the variation date; and
- (ii) subsequently from that previously notified to the Minister under this paragraph,

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 paragraph (a)(vi) or (a)(vii) or request of them for such connection to be allowed.

(e) Nothing in this Agreement shall be construed to:

- (i) exempt another Integration Proponent from complying with, or the application of, the provisions of its Integration Agreement; or
- (ii) restrict the Joint Venturers' rights under Section 25.04.

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.

(f) Nothing in this Section shall be construed to exempt the Joint Venturers from complying with, or the application of, the other provisions of this Agreement including, without limitation, Section 25.04 and of relevant laws from time to time of the said State.

(g) For the purpose of this Section "works installations or facilities" means any:

- (i) harbour or port works installations or facilities including, without limitation, stockpiles, reclaimers, conveyors and wharves;
- (ii) railway or rail spur lines;
- (iii) 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;

(iv) train loading and unloading works installations or facilities;

(v) conveyors;

(vi) private roads;

(vii) mine aerodrome and associated aerodrome works installations and facilities;

(viii) iron ore mining, crushing, screening, beneficiation or other processing works installations or facilities;

(ix) mine administration buildings including, without limitation, offices, workshops and medical facilities;

(x) borrow pits;

(xi) accommodation and ancillary facilities including, without limitation, construction camps and in townsites constructed pursuant to and held under any Integration Agreement;

(xii) water, sewerage, electricity, gas and telecommunications works installations and facilities including, without limitation, pipelines, transmission lines and cables; and

(xiii) any other works installations or facilities approved of by the Minister for the purpose of this Section.

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**SECTION 9A.04      TRANSFER OF RIGHTS TO SHARED  
WORKS INSTALLATIONS OR FACILITIES**

(a) For the purposes of this Section "Relevant Infrastructure" means any works installations or facilities (as defined in Section 9A.03):

(i) constructed or held under another Integration Agreement;

(ii) which the Joint Venturers are using in their activities pursuant to this Agreement;

(iii) which the Minister is satisfied (after consulting with the Joint Venturers and the Integration Proponent for that other Integration Agreement):

(A) 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

(B) are required by the Joint Venturers to continue to carry on their activities pursuant to this Agreement; and

(iv) in respect of which that other Integration Proponent has notified the Minister it consents to the Joint Venturers submitting proposals as referred to in paragraph (b).

(b) The Joint Venturers may as an additional proposal pursuant to Section 7.01 propose:

(i) 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

(ii) 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 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 Section 7.02 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 Section.

- (c) This Section shall cease to apply in the event the State gives any notice of default to the Joint Venturers pursuant to Section 26.01 and while such notice remains unsatisfied.

SECTION 9A.05      MISCELLANEOUS      LICENCES      FOR  
RAILWAYS

- (a) In this Section subject to the context:

"Additional Infrastructure" means:

- (i) Train Loading Infrastructure;  
(ii) Train Unloading Infrastructure;  
(iii) 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;

"Lateral Access Roads" has the meaning given in paragraph (c)(i)(D);

"Lateral Access Road Licence" means a miscellaneous licence granted pursuant to paragraph (f)(i)(B) or paragraph (f)(ii) 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 National Law* (WA) *Act 2015* (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 paragraph (d) and includes any expansion or extension thereof outside a Port which is the subject of additional proposals approved in accordance with paragraph (e);

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"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 paragraph (c)(i) and after the grant of the Special Railway Licence the land from time to time the subject of that Special Railway Licence;

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"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;

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"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;

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"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 paragraph (f)(i)(A) as varied in accordance with paragraph (f)(viii) or paragraph (f)(ix) 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

(b) (i) If the Joint Venturers wish, from time to time during the continuance of this Agreement, to proceed under this Section 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.

(ii) The Minister shall within one (1) month of a notice under subparagraph (i) 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 subparagraph.

- (iii) 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 Section within eighteen (18) months of the Minister's in-principle approval.

Railway Corridor

- (c) (i) 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:

(A) where the Railway will begin and end; and

(B) 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

(C) in respect of Additional Infrastructure (if any) the nature and capacity of such Additional Infrastructure; and

(D) 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 Section 32.01 shall not apply to this paragraph (c).

(ii) If the date by which the Joint Venturers must submit detailed proposals under paragraph (d)(i) (as referred to in paragraph (b)(iii)) is extended or varied by the Minister pursuant to Section 29.01, any agreement made pursuant to subparagraph (i) 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.

(iii) The Joint Venturers acknowledges 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:

(A) 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

(B) 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 subparagraph (i); and

(C) the inclusion of additional land in the Special Railway Licence as referred to in paragraph (f)(viii) or paragraph (f)(ix),

in accordance with this Section. For the purposes of this paragraph (c)(iii), "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 paragraph (d)(v)(B) (including as applying pursuant to paragraph (e)(iv)).

Joint Venturers to submit proposals for Railway

(d) (i) The Joint Venturers shall, subject to the EP Act, the provisions of this Agreement and agreement at that time subsisting in respect of the matters required to be agreed pursuant to paragraph (c)(i) submit to the Minister by the latest date applying under paragraph (b)(iii) 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:

(A) the Railway including fencing (if any) and crossing places within the Railway Corridor;

(B) Additional Infrastructure (if any) within the Railway Corridor;

(C) 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;

(D) water supply;

(E) energy supplies;

(F) 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 paragraph (c)(i);

(G) any other works, services or facilities desired by the Joint Venturers; and

(H) 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, its agents and contractors.

(ii) Proposals pursuant to subparagraph (i) must specify the matters agreed for the purpose pursuant to paragraph (c)(i) and must not be contrary to or inconsistent with such agreed matters.

(iii) Each of the proposals pursuant to subparagraph (i) 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 subparagraph (i)(A) to (H) and until all of its proposals under this subparagraph 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 subparagraph in respect of the subject matter of the withdrawn proposal.

(iv) The Joint Venturers shall, whenever any of the following matters referred to in this subparagraph are proposed by the Joint Venturers (whether before or during the submission of proposals under this subparagraph), 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 proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia, together with its reasons therefor and shall, if required by the Minister consult with the Minister with respect thereto.

(v) At the time when the Joint Venturers submit the last of the said proposals pursuant to this paragraph, they shall:

(A) 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

(B) furnish to the Minister the written consents referred to in paragraphs(c)(iii)(A) and (c)(iii)(B).

(vi) The provisions of Section 7.02 shall apply *mutatis mutandis* to detailed proposals submitted under this subparagraph.

Additional Railway Proposals

(e) (i) 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 desire 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 paragraph (d)(i) as are relevant or as the Minister otherwise requires).

- (ii) 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 (1) 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 paragraph (c) shall *mutatis mutandis* apply prior to submission of detailed proposals in respect thereof.
- (iii) 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 paragraph (c)(i) (as referred to in subparagraph (ii) above), 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 subparagraph (i) (or in the case of a notice referred to in subparagraph (ii) 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 paragraph (d)(i) as the Minister may require.
- (iv) The provisions of paragraph (d) (with the date for submission of proposals being read as the date or time determined by the Minister under subparagraph (iii) above and the reference in paragraph (d)(iii)(B) to paragraph (c)(iii)(A) being read as a reference to paragraph (c)(iii)(C)) and of Section 7.02 shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this paragraph.

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Grant of Tenure

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(f) (i) On application made by the Joint Venturers to the Minister in such manner as the Minister may determine, not later than three (3) months after all their proposals submitted pursuant to paragraph (d)(i)(A) have been approved or deemed to be approved and the Joint Venturers have complied with the provisions of paragraph (d)(v), the State notwithstanding the Mining Act 1978 shall cause to be granted to the Joint Venturers:

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(A) a miscellaneous licence to conduct within the Railway Corridor and in accordance with its approved proposals all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce and, subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance within the Railway Corridor of the Railway, access roads and Additional Infrastructure (if any) ("the Special Railway Licence") such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act 1978 in the form of the 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:

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(aa) prior to the Railway Operation Date, as if the width of the Railway Corridor were 100 metres; and

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(ab) on and from the Railway Operation Date, at the rentals from time to time prescribed under the Mining Act 1978; and

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(B) 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 paragraph (c)(i) (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.

- (ii) On application made by the Joint Venturers to the Minister in such manner as the Minister may determine, not later than three (3) months after their proposals submitted pursuant to paragraph (e)(i) 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 paragraph (d)(v) (as applying pursuant to paragraph (e)(iv)), 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 paragraph (c)(i) (as applying pursuant to paragraph (e)(ii)) (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.
- (iii) 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 fifty (50) years commencing on the date of grant thereof.
- (iv) 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 four (4) years commencing on the date of grant thereof.

(v) 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.

(vi) (A) 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.

(B) 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 (A) to obtain from the land the subject of the Special Railway Licence.

(vii) For the purposes of this Agreement and without limiting the operation of subparagraphs (i) to (vi) inclusive above, the application of the Mining Act 1978 and the regulations made thereunder are specifically modified;

(A) in section 91(1) by:

(aa) deleting "the mining registrar or the warden, in accordance with section 42 (as read with section 92)" and substituting "the Minister";

(ab) deleting "any person" and substituting "the Joint Venturers (as defined in the agreement authorised by and as scheduled to the *Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended)";

(ac) deleting "for any one or more of the purposes prescribed" and substituting "for the purpose specified in Section 9A.05(f)(i)(A), 9A.05(f)(i)(B) and 9A.05(f)(ii) of the agreement authorised by and as scheduled to the *Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended";

(B) in section 91(3)(a), by deleting "prescribed form" and substituting "form required by the agreement authorised by and as scheduled to the *Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended";

(C) by deleting sections 91(6), 91(9), 91(10) and 91B;

(D) 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";

(E) 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 authorised by and as scheduled to the *Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended";

(F) by deleting sections 94(2), (3) and (4);

(G) in section 96(1), by inserting after "miscellaneous licence" the words "(not being a miscellaneous licence granted pursuant to the agreement authorised by and as scheduled to the *Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended";

(H) by deleting mining regulations 37(2), 37(3), 42 and 42A; and

(I) by inserting at the beginning of mining regulations 41(c) and (f) the words "subject to the Agreement authorised by and as scheduled to the *Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended".

(viii) If additional proposals are approved in accordance with paragraph (e) 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.

(ix) If additional proposals are approved in accordance with paragraph (e) 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.

(x) The provisions of this subparagraph 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

(g) (i) 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.

(ii) The Joint Venturers shall while the holders of a Special Railway Licence:

(A) keep the Railway the subject of that licence in an operable state; and

(B) 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

(C) without limiting subparagraph (ii)(B) ensure that the obligations imposed under the Rail Safety Act on a 'rail infrastructure manager' and 'rail transport 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).

- (iii) 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.
- (iv) Subject to Section 9A.04, the Joint Venturers shall at all times be the holder of Special Railway Licences and Lateral Access Road Licences granted pursuant to this Section and (without limiting Section 25.08 but subject to Section 9A.04) 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.
- (v) 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 Section 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.
- (vi) The Joint Venturers ownership of a Railway constructed pursuant to this Section shall not give it an interest in the land underlying it.
- (vii) 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 Section, or permit this to occur, other than for the purpose of maintenance, repair, upgrade or renewal.
- (viii) 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 Section.

(ix) 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).

(x) Subject to Section 9A.04, the Joint Venturers shall:

(A) be responsible for the cost of construction and maintenance of all Private Roads constructed pursuant to this Section; and

(B) 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 its invitees and licensees) from using the Private Roads; and

(C) at any place where any Private Roads are constructed by the Joint Venturers so as to cross any railways or public roads provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the Public Transport Authority as the case may be.

(xi) The provisions of Section 13.03 regarding third party access as well as the proviso to that Section shall apply *mutatis mutandis* to any Railway or Railway spur line constructed pursuant to this Section except that the Joint Venturers shall not be obliged to transport passengers upon any Railway or Railway spur line.

- (xii) The provisions of Section 13.02A shall apply *mutatis mutandis* to any Railway or Rail spur line constructed pursuant to this Section.

Notification of Railway Operation Date

- (h) (i) The Joint Venturers shall from the date occurring six (6) months before the date for completion of construction of a Railway specified in its time program for the commencement and completion of construction of that Railway submitted under paragraph (d)(i), keep the Minister fully informed as to:

(A) the progress of that construction and its likely completion and commissioning; and

(B) the likely Railway Operation Date.

- (ii) 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.

- (iii) The Joint Venturers shall from the date occurring six (6) months before the date for completion of construction of a Railway spur line specified in its time program for the commencement and completion of construction of that spur line submitted under subparagraph (iii) of paragraph (e) keep the Minister fully informed as to:

(A) the progress of that construction and its likely completion and commissioning; and

(B) in respect of it, the likely Railway spur line Operation Date.

- (iv) 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."



(44) deleting Section 10.01 and substituting the following:

"SECTION 10.01      ANCILLARY TITLES

- (a)    On application made by the Joint Venturers not later than three (3) months after proposals submitted pursuant to Clauses V or VIA have been approved or determined or not later than three (3) months after proposals submitted pursuant to Section 7.01 have been approved or determined (as applicable), the State shall in accordance with the Joint Venturers' approved proposals grant to the Joint Venturers, or arrange to have the appropriate authority or other interested instrumentality of the State grant to the Joint Venturers, for such periods and on such terms and conditions including rentals and renewal rights as shall be reasonable having regard to the requirements of the Joint Venturers and as are consistent with the terms of this Agreement and approved proposals, leases and where applicable licences, easements and or other titles to land for all or any of the purposes of the Joint Venturers' activities hereunder.
- (b)    Notwithstanding Section 9A.03(b)(ii)(D), detailed proposals may refer to activities on tenure which is proposed to be granted pursuant to this Section 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).
- (c)    The State acknowledges that the Joint Venturers have made application for miscellaneous licence 47/1092 and may seek its grant pursuant to proposals to be submitted and approved under this Agreement for its use for the purposes of this Agreement subject to any underlying tenement holder(s) providing their consent to such use."

(45) deleting Section 10.02 and substituting the following:

"SECTION 10.02      NATIVE TITLE      The provisions of this Section and Section 10.04 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."

(46) inserting after Section 10.02 the following new Sections:

"SECTION 10.03      ABORIGINAL HERITAGE ACT

(a) For the purposes of this Agreement the *Aboriginal Heritage Act 1972* (WA) applies as if:

- (i) the expression 'owner of any land' in section 18(1) of that Act includes the Joint Venturers to the extent that their requisite authority to enter and be on the relevant land would not otherwise comprise a right contemplated by section 18(1) of the Act;
- (ii) the following sentences are added 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 agreement authorised by and scheduled to the *Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended, in relation to the use or proposed use of land pursuant to that agreement of all of the Joint Venturers' submitted interim and initial proposals thereunder, 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."

(b) The Joint Venturers acknowledge that nothing in this Section 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.

SECTION 10.04      APPLICATION FOR SPECIAL ADVANCE  
TENURE TO BE GRANTED PURSUANT TO  
THIS AGREEMENT

(a)    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:

(i)    the Joint Venturers propose to submit detailed proposals under this Agreement (other than under Section 9A.05) 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 six (6) months before the submission of those detailed proposals; and

(ii)   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:

(iii) 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; and

(iv)   if the Joint Venturers do not submit detailed proposals relating to construction of the relevant works installations or facilities on the Relevant Land within twenty four (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.

(b) The decisions of the Minister under paragraph (a) shall not be referable to arbitration and any approval of the Minister under this Section 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.

SECTION 10.05      RESUMPTION FOR THE PURPOSES OF THIS AGREEMENT

(a) The State is hereby empowered, as and for a public work under Parts 9 and 10 of the LAA and the *Public Works Act 1902* (WA), to take for the purposes of this Agreement any land which in the opinion of the Joint Venturers is necessary for the purposes of this Agreement and which the Minister determines is appropriate to be taken for such purposes (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 those Acts may license that land to the Joint Venturers.

(b) In applying Parts 9 and 10 of the LAA and the *Public Works Act 1902* (WA) for the purposes of this Clause:

(i) "land" in those Acts includes a legal or equitable estate or interest in land;

(ii) sections 170, 171, 172, 173, 174, 175 and 184 of the LAA do not apply; and

(iii) the LAA 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."

(47) in Section 11.01 by:

(a) after the words "hereunder the State" inserting the words "shall not during the term of this Agreement without the consent of the Joint Venturers";

(b) deleting "will not resume or suffer or" and substituting "resume nor suffer nor";

(c) before the word "instrumentality" inserting the word "State";

(d) deleting the words "portion of the land the subject of any special lease mentioned in Section 10.02" and substituting "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 or any of the works on the Mining Lease or other lease, licence or other title granted to or held by the Joint Venturers pursuant to this Agreement without such consent (which will not be arbitrarily or unreasonably withheld)"; and

(e) deleting "mineral lease" and substituting "titles";

(48) in Section 11.02 inserting after the full stop the sentence "In the application of this Section the conferral of rights upon parties to Government agreements shall be disregarded."

(49) in Section 11.03 deleting "mineral lease" and substituting "Mining Lease" and deleting "under or" and substituting "or held";

(50) deleting Section 11.04 and substituting the following:

"SECTION 11.04      RATING

(a) The State shall ensure that, notwithstanding the provisions of any Act or anything done or purported to be done under any Act, the valuation of all lands the subject of this Agreement (except as to any part of land upon which is situated a specified improvement as referred to below) shall for rating purposes under the *Local Government Act 1995* (WA), be deemed to be on the unimproved

value thereof and no such lands shall be subject to any discriminatory rate.

(b) For the purpose of this Section, the following improvements are specified improvements:

(i) accommodation, recreation and administration facilities and associated buildings; and

(ii) maintenance workshops existing within 100 metres of facilities listed in subparagraph (i) above."

(51) deleting Section 12.01 (other than the heading) and substituting "Not used.";

(52) in Section 13.01 by:

(a) after the words "Subject to" inserting the words "and in accordance with approved proposals, the Rail Safety Act (as defined for the purposes of this Clause in paragraph (a) of Section 9A.05) and";

(b) after the words "Crown lands" inserting the words "(as defined in the LAA)";

(c) deleting the words "(but subject to the provisions of the Public Works Act, 1902, to the extent that they are applicable) the railway having a four feet eight and one half inch (4ft. 8½in.) gauge specified in the approved proposals";

(d) after the words "(all of which together with the specified railway being hereinafter referred to as "the said railway") and will" adding the words "unless the Minister otherwise allows"; and

(e) deleting the words "to haul at least one million (1,000,000) tons of iron ore per annum" and substituting "for the purposes of the Joint Venturers' activities under this Agreement."

(53) deleting Section 13.02 (other than the heading) and substituting the following:

"The Joint Venturers shall during the continuance of this Agreement:

(a) keep the said railway constructed under this Agreement in operation;

(b) ensure that the said railway is operated in a safe and proper manner in compliance with all applicable laws from time to time; and

(c) without limiting paragraph (b), ensure that the obligations imposed under the Rail Safety Act on a 'rail infrastructure manager' and 'rail transport operator' (as those terms are therein defined) are complied with in connection with the said railway,

and nothing in this Agreement shall be construed to exempt the Joint Venturers or any person from compliance with the Rail Safety Act, or limit their application to the Joint Venturers' operations generally."

(54) inserting after Section 13.02 the following new Section:

"SECTION 13.02A CROSSINGS OVER RAILWAY 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:

(a) if applicable, give its consent to, or otherwise facilitate the grant by the State or any agency, instrumentality or other authority of the State of any lease, licence or other title over land the subject of the 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

(b) 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 Section, the Minister must consult with the Joint Venturers."

(55) deleting Section 14.01 and substituting the following:

"SECTION 14.01 CONSTRUCTION OF PRIVATE ROADS  
The Joint Venturers shall:

(a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in its activities under this Agreement;

(b) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles (other than those engaged upon the Joint Venturers' activities and its invitees and licensees) from using the private roads; and

(c) at any place where any private roads are constructed by the Joint Venturers so as to cross any public roads or private railways provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads, the relevant local government or the owner of the private railway as the case may be."

(56) deleting Section 14.02 (other than the heading) and substituting the following:

"The State shall maintain or cause to be maintained those public roads under the control of the Commissioner of Main Roads or a local government which may be used by the Joint Venturers for the purposes of this Agreement to a standard similar to comparable (in the Minister's opinion) public roads maintained by the Commissioner of Main Roads or a local government as the case may be."

(57) deleting Section 14.03 and substituting the following:

"SECTION 14.03      PUBLIC ROAD UPGRADING      In the event that for or in connection with the Joint Venturers' activities under this Agreement the Joint Venturers or a person engaged by them uses or wishes to use a public road (whether referred to in Section 14.02 or otherwise) which is inadequate for the purpose, or any use by the Joint Venturers or any person engaged by them of any public road results in excessive damage or deterioration thereof (other than fair wear and tear) the Joint Venturers shall pay to the State or the local government as the case may require the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads having regard to the use of such public road by others."

(58) deleting Section 14.04 and substituting the following:

"SECTION 14.04      DEDICATION OF PRIVATE ROADS AS PUBLIC ROADS      Where a road constructed by the Joint Venturers for their own use is subsequently required for public use, the State may,



after consultation with the Joint Venturers as so long as resumption thereof will not in the Minister's opinion unduly prejudice or interfere with the activities of the Joint Venturers under this Agreement, resume and dedicate such road as a public road and, upon such resumption, the State shall pay to the Joint Venturers such amount as is reasonable for such resumption."

(59) deleting Section 15.01 (other than the heading) and substituting "Not used.";

(60) deleting Section 15.02 (other than the heading) and substituting "Not used.";

(61) deleting Section 15.03 (other than the heading) and substituting "Not used.";

(62) deleting Section 15.04 (other than the heading) and substituting "Not used.";

(63) deleting Section 15.05 (other than the heading) and substituting "Not used.";

(64) deleting Section 15.06 (other than the heading) and substituting "Not used.";

(65) deleting Section 15.07 and substituting the following:

"SECTION 15.07      WATER – MINING LEASE

(a) To the fullest extent reasonably practicable and in preference to any other available source of water the Joint Venturers shall use water obtained from dewatering on the Mining Lease for their purposes under this Agreement.

(b) Nothing in this Agreement shall be construed so as to exempt the Joint Venturers from any liability to the State or to third parties arising out of or caused by the extraction of water from the Mining Lease by dewatering or any discharge or escape from the Mining Lease of water obtained by dewatering."

(66) deleting Section 15.08 (other than the heading) and substituting "Not used.";

(67) deleting Section 15.09 (other than the heading) and substituting "Not used.";

(68) deleting Section 15.10 and substituting the following:

"SECTION 15.10      RIGHTS TO WATER AND WATER SERVICES

The water requirements for the purposes of this Agreement shall be obtained and maintained in accordance with and subject to laws applicable from time to time in Western Australia in respect of rights in water and the supply and discharge of water and the supply of water services."

(69) deleting Section 15.11 (other than the heading) and substituting the following:

"The Joint Venturers will give notice to the Minister of any unused hydrological capacity and (where such supply will not unduly prejudice or interfere with the Joint Venturers' activities hereunder) the Minister will (after first affording the Joint Venturers an opportunity to consult with him) so notify the Joint Venturers that the Minister is of the opinion that it is desirable that the water sources so notified be made available to the State for the purposes of water conservation, water management and utilisation of the unused hydrological capacity by the State and the State will cause the Minister for Water to revoke or vary all relevant licences to draw water previously issued to the Joint Venturers. The State will not be liable to pay the Joint Venturers compensation in respect of the licences so revoked or varied."

(70) deleting Section 15.12 and substituting the following:

"SECTION 15.12      MINIMISATION OF WATER CONSUMPTION

The Joint Venturers shall to the extent that it is practical and economical design, construct and operate all facilities, plant and equipment used in their activities under this Agreement so as to minimise water consumption and shall at all times use their best endeavours to minimise the consumption of water in their activities under this Agreement and ensure the most efficient use of the available water resources."

(71) deleting Section 15.14 and substituting the following:

"SECTION 15.14      SUPPLY OF EXCESS WATER TO THIRD PARTIES

(a)    The Joint Venturers may only extract mine dewater from the Mining Lease to the extent reasonably required for their mining activities the subject of approved proposals under this Agreement.

(b)    Subject to Section 15.11, the Joint Venturers may only supply mine dewater in excess of the water requirements for the purposes of this Agreement in accordance with and subject to laws applicable from time to time in Western Australia in respect of the supply of water and water services to third parties including the State provided:

(i)    the Joint Venturers notify the Minister prior to entering into an arrangement for the proposed supply of the relevant third party advising the identity of the third party, the volume of water to be supplied and the purpose and duration of the proposed supply; and

(ii)   the water is to be supplied at a charge to be approved (including if there is no proposed charge) by the Minister in consultation with the Joint Venturers.

For the avoidance of doubt, and without limiting Section 9A.03, in such case the third party will be responsible for the construction and operation of any water pipeline facilities and to obtain their own tenure to support such activities under the general law of the said State.

(72) deleting Section 15.15 (other than the heading) and substituting "Not used.";

(73) deleting Section 15.16 (other than the heading) and substituting "Not used.";

(74) deleting Section 15.17 (other than the heading) and substituting "Not used.";

(75) deleting Section 16.01 (other than the heading) and substituting:

"The Joint Venturers may in accordance with approved proposals hereunder and subject to the provisions of the *Electricity Industry Act 2004* (WA) and any other relevant Act:

(a) install and operate without cost to the State, at an appropriate location or locations on the Mining Lease equipment of sufficient capacity to generate electricity for its activities on the Mining Lease and other areas provided for the facilities of the Joint Venturers in the vicinity of the Mining Lease; and

(b) transmit power within the Mining Lease and other areas provided for the Joint Venturers in the vicinity of the Mining Lease subject to the provisions of the *Electricity Industry Act 2004* (WA) and any other relevant Act; and

(c) for the purpose of supply to:

(i) "the Company" or "the 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 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,

and to the extent determined by the Minister generate transmit and supply electricity."

(76) in Section 16.02 by:

- (a) after the words "the Joint Venturers will" inserting the words "subject to the provisions of the *Electricity Industry Act 2004* (WA) and any other relevant Act";
- (b) deleting each occurrence of "the Commission and";
- (c) deleting the words "the Commission or"; and
- (d) inserting before the full stop the words "(for the avoidance of doubt, in such case the third party will augment their electricity facilities and obtain their own tenure to support such augmentation under the general law of the said State)";

(77) deleting Section 16.03 (other than the heading) and substituting "Not used.";

(78) deleting Section 16.04 (other than the heading) and substituting "Not used.";

(79) deleting Section 16.05 (other than the heading) and substituting "Not used.";

(80) inserting after the heading "CLAUSE XVII" the words "Not used.";

(81) deleting Section 17.01 (other than the heading) and substituting "Not used.";

(82) deleting Section 17.02 (other than the heading) and substituting "Not used.";

(83) deleting Section 17.03 (other than the heading) and substituting "Not used.";

(84) inserting after the heading "CLAUSE XVIII" the words "Not used.";

(85) deleting Section 18.01 (other than the heading) and substituting "Not used.";

(86) deleting Section 18.02 (other than the heading) and substituting "Not used.";

(87) deleting Section 18.03 (other than the heading) and substituting "Not used.";

(88) deleting Section 18.04 (other than the heading) and substituting "Not used.";

(89) deleting Section 18.05 (other than the heading) and substituting "Not used.";

(90) deleting Section 19.01 (other than the heading) and substituting "Not used.";

(91) in Section 20.02 deleting "wharfs";

(92) deleting Section 20.03 and substituting the following:

"SECTION 20.03      USE OF LOCAL LABOUR PROFESSIONAL SERVICES AND MATERIALS

(a) Except as otherwise agreed by the Minister the Joint Venturers shall, for the purposes of this Agreement:

(i) except in those cases where the Joint Venturers can demonstrate it is not reasonable and economically practicable so to do, use labour available within the said State (using all reasonable endeavours to ensure that as many as possible of the workforce be recruited from the Pilbara region) or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;

(ii) as far as it is reasonable and economically practicable so to do, use the services of engineers, surveyors, architects and other professional consultants experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within the said State, or if such services are not available within the said State, then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;

(iii) during design and when preparing specifications, calling for tenders and letting contracts for works, materials, plant, equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that suitably qualified Western Australian and Australian suppliers,

manufacturers and contractors are given fair and reasonable opportunity to tender or quote;

(iv) give proper consideration and, where possible, preference to Western Australian suppliers, manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price, quality, delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and, where possible, preference to other Australian suppliers, manufacturers and contractors; and

(v) if, notwithstanding the foregoing provisions of this Section, a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and, where possible, preference to tenders, arrangements or proposals that include Australian participation where price, delivery and service are otherwise equal or better.

(b) Except as otherwise agreed by the Minister, the Joint Venturers shall, in every contract entered into with a third party for the supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake:

(i) the same obligations as are referred to in paragraph (a) and shall report to the Joint Venturers concerning such third party's implementation of that condition; and

(ii) procurement activities in accordance with the plan provided under Section 7.05.

(c) The Joint Venturers shall:

(i) in respect of developments the subject or to be the subject (as the case may be) of proposals submitted under Clauses V or VIA (as the case may be), submit a report to the Minister at quarterly intervals from the date six (6) months after the variation date until commissioning of the works, installations and facilities described in such proposals and

thereafter as requested by the Minister from time to time;  
and

- (ii) in respect of developments the subject or to be the subject (as the case may be) of proposals submitted under Section 7.01 submit a report to the Minister at quarterly intervals from the date on which they give notice under Section 7.01 until commissioning of the developments the subject of the proposals approved pursuant to Section 7.02 and thereafter as requested by the Minister from time to time,

concerning its implementation of the provisions of this Section and of the relevant plan in connection with the development provided pursuant to Section 7.05, together with a copy of any report received by the Joint Venturers pursuant to paragraph (b) during that quarter or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine.

- (d) The Joint Venturers shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as reasonably required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia, together with its reasons therefor and shall, as and when required by the Minister, consult with the Minister with respect thereto."

- (93) in paragraph (b) of Section 20.04 deleting "Section 20.04(a)" and substituting "paragraph (a)";

- (94) in Section 21.01 by deleting paragraphs (a), (b), (c) and (d) (including subparagraphs (i) and (ii)) and substituting the following:

"(a) on lump ore and on fine ore not sold or shipped separately as such, at the rate of 7.5% of the f.o.b. value;

(b) on fine ore sold or shipped separately as such, at the rate of 7.5% of the f.o.b. value;



(c) on beneficiated ore, at the rate of 5% of the f.o.b. value; and

(d) on any other iron ore products, at the rate of 7.5% of the f.o.b. value.

Where beneficiated ore is produced from an admixture of iron ore from the Mining 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 Mining 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 Mining 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 the 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 Section."

(95) deleting Section 21.02 (other than the heading) and substituting:

"This Section 21.02 will also apply in relation to the payment of the royalty where iron ore products produced from secondary processing hereunder are so produced from an admixture of iron ore from the Mining Lease and other iron ore a portion (and a portion only) of the iron ore products so produced (being that part of the whole of the iron ore products so produced as bears to that whole the same ratio as the amount of iron in the iron ore from the Mining Lease used in the production of those iron products bears to the total amount of iron in the iron ore so used) will be deemed to be iron ore products within the meaning of that term as defined in Section 1.01."

(96) deleting Section 21.03 (other than the heading) and substituting:

"The Joint Venturers will during the continuance of this Agreement within fourteen (14) days after the following quarter days namely the last days of March June September and December in each year (commencing with the quarter day next following the export date) furnish to the Minister a return showing the quantity of all iron ore

and/or iron ore products on which royalty is payable hereunder and shipped sold or used (as the case may be) during the quarter immediately preceding the due date of the return, 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 Section 21.01, and shall not later than two (2) months after such due date pay to the Minister the royalty payable in respect of such of the iron ore products mentioned in Section 21.01 as are locally used and will also pay to the Minister in respect of such of the said iron ore products as are shipped or sold a sum on account of the royalty payable hereunder calculated on the basis of:

(a) in the case of iron ore initially sold at cost pursuant to the proviso to Section 21.05, at the price notified pursuant to paragraph (iii) of that proviso;

(b) 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."

(97) deleting Section 21.04 (other than the heading) and substituting:

"The Joint Venturers will throughout the continuance of this Agreement permit the Minister or his nominee at all reasonable times to inspect the books, records, accounts, documents (including contracts), data and information of the Joint Venturers stored by any means relating to any shipment or sale of iron ore the subject of the royalty hereunder and to take copies or extracts (in whatever form) therefrom and for the purpose of determining the f.o.b. value in respect of any shipment or sale of iron ore the subject of the royalty hereunder the Joint Venturers will take reasonable steps (either by the certificate of a competent independent party acceptable to the Minister or otherwise to the Minister's reasonable satisfaction) to satisfy the State as to the correctness of all relevant weights assays and analyses and will give

due regard to any objection or representation made by the Minister or his nominee as to any particular weight assay or analysis that may affect the amount of royalty payable hereunder. The information obtained by the Minister or his nominee as a result of any such inspection shall be used only for the purposes of verifying the amount of royalty payable by the Joint Venturers and for no other purpose and shall not be disclosed by the State the Minister or his nominee to any other party for any other purpose. The Joint Venturers shall cause to be produced in Perth in the said State all books, records, accounts, documents (including contracts), data and information of the kind referred to above to enable the exercise of rights under this Section by the Minister or the Minister's nominee, 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."

(98) inserting after Section 21.04 the following new Sections:

"SECTION 21.05      SHIPMENT AND PRICE FOR IRON ORE  
The Joint Venturers may ship, or procure the shipment of, all iron ore mined from the Mining Lease and sold:

- (a) from the Joint Venturers' wharf; or
- (b) from any other wharf in a loading port which wharf has been constructed under an Integration Agreement; or
- (c) 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 iron ore from the Mining 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 Section 21.03 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 subparagraph (iii) of the proviso above is not then a designated purchaser as referred to below.

If required by notice in writing from the Minister, the Joint Venturers must provide the Minister within 30 days after receiving the notice with evidence that the transaction as included in the return pursuant to subparagraph (iii) of the proviso above 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 Section.

#### SECTION 21.06      ACKNOWLEDGEMENT OF POTENTIAL LEGISLATION TO TRANSFER THE ADMINISTRATION OF ROYALTIES

The Joint Venturers acknowledge that the State intends to sponsor legislation to facilitate the transfer of the State's collection and administration of royalties and additional rent payable under Government agreements relating to mining (including this Agreement) to the Commissioner for State Revenue and the intention that this Agreement, to the extent of such collection and administration matters,

will be subject to any such legislation without the need for a further variation to this Agreement."

(99) deleting "Secondary Processing" in PART IV and substituting "Further Processing";

(100) deleting Clause XXIII and substituting the following:

"CLAUSE XXIII

SECTION 23.01      LIMITS ON MINING      The Joint Venturers shall not produce more than fifty million (50,000,000) tonnes of iron ore per annum for transportation from the Mining Lease without the prior consent of the Minister and approval of detailed proposals in regard thereto in accordance with Sections 23.02 and 23.04.

SECTION 23.02      INCREASE OF ANNUAL TONNAGE

(a) If the Joint Venturers desire to increase the annual tonnage beyond that specified in Sections 23.01 they shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of its proposals in respect thereto (including the matters mentioned in Section 5.02).

(b) The Minister shall within one (1) month of a notice under paragraph (a) of this Section advise the Joint Venturers whether or not he approves in principle the proposed increase. An approval by the Minister under this paragraph may be given subject to conditions including a condition requiring variations of or additions to this Agreement PROVIDED THAT any such condition shall not without the consent of the Joint Venturers require variations of:

(i) the term of the Mining Lease or the rental thereunder;

(ii) the rentals payable under any other lease, licence, easement or other title to land hereunder;

(iii) the rates of or method of calculating royalty;

(iv) the provisions of paragraph (g) of Section 9A.05; or

(v) the provisions of Sections 23.06 to 23.12 inclusive.

SECTION 23.03      PRODUCTION OF MORE THAN 70 MILLION TONNES    The Joint Venturers shall not seek approval in principle to proposals in regard to the production of more than seventy million (70,000,000) tonnes of iron ore per annum for transportation from the Mining Lease unless the Minister in accordance with Section 23.09 has approved or is deemed to have approved proposals submitted under Section 23.07 for the establishment within the State of plant for the production of metallised agglomerates or under Section 23.11 or an alternative project in lieu of the Joint Venturers' obligations in respect of the establishment of plant for the production of metallised agglomerates under this Clause or unless the Minister otherwise agrees for the purpose of this Section to receive a notice under paragraph (a) of Section 23.02.

SECTION 23.04      DETAILED PROPOSALS

- (a)    If the Minister approves in principle a proposed increase the Joint Venturers must within three (3) months of that approval submit to the Minister detailed proposals in respect thereof in accordance with any conditions of that approval otherwise that approval shall lapse.
- (b)    The provisions of paragraphs (b) to (e) (inclusive) of Section 7.01 and Section 7.02 shall apply to detailed proposals submitted pursuant to this Section.

SECTION 23.05      INCREASE OF MINE TONNAGE      Any proposal under Sections 23.01 to 23.04 to increase the annual tonnage to be produced shall specify the proposed increase and on and after approval or determination of any such proposal pursuant to paragraph (b) of Section 23.04 the provisions of Section 23.01 to 23.05 shall apply *mutatis mutandis* to the increased tonnage and also to any subsequent desires of the Joint Venturers for an increase in the tonnage.

SECTION 23.06      FURTHER PROCESSING      During the continuance of this Agreement, the Joint Venturers shall undertake ongoing investigations into the technical and economic feasibility of establishing within the said State plant for the production of metallised agglomerates and shall on or before the earlier of:

- (a)    the date seven (7) years after the date on which iron ore from the Mining Lease (other than iron ore transported solely for testing purposes and in respect of which no purchase price or other

consideration is payable or due) is first transported from the Mining Lease; and

- (b) the date on which the two hundred and ten millionth (210,000,000) tonne of such iron ore (or such additional tonnage as the Minister may approve) from the Mining Lease is transported from the Mining Lease,

submit to the Minister detailed reports of such investigations to the date of the report and its program, budget and timetable for the preparation of the proposals referred to in Section 23.07.

SECTION 23.07      DETAILED PROPOSALS      The Joint Venturers shall:

- (a) on or before the earlier of:

- (i) the date ten (10) years after the date on which iron ore from the Mining Lease (other than iron ore transported solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) is first transported from the Mining Lease; and

- (ii) the date on which the three hundred millionth (300,000,000) tonne of such iron ore (or such additional tonnage as the Minister may approve) from the Mining Lease is transported from the Mining Lease (which date is hereinafter called “the m.a. date”); or

- (b) if proposals under this Section are postponed for a three (3) year period pursuant to Section 23.08, on or before the third or subsequent third anniversary as the case may require of the m.a. date,

submit to the Minister detailed proposals for the establishment within the said State of plant for the production of metallised agglomerates containing provisions that such plant will within three (3) years of the date on which the proposals are submitted have the capacity to produce not less than four million (4,000,000) tonnes of metallised agglomerates per annum and will within eight (8) years of the date on which the proposals are submitted have the capacity to produce not less than six million (6,000,000) tonnes of metallised agglomerates per annum.

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SECTION 23.08      DEFERRAL

- (a) If the Joint Venturers believe that the submission of proposals pursuant to Section 23.07 on the m.a. date or a third anniversary of the m.a. date where a three (3) year postponement has been allowed pursuant to this Section should be postponed because the establishment of the said plant is not then economically feasible, the Joint Venturers may apply to the Minister not more than six (6) months nor less than three (3) months before the date for submission of those proposals for postponement for a period of three (3) years of the date for submission of proposals under Section 23.07 and shall provide to the Minister with such application all relevant information and supporting data available to the Joint Venturers relating to such application.
- (b) The Joint Venturers shall supply to the Minister such other information and data as the Minister may reasonably require in relation to its application.
- (c) If the Minister is satisfied that there are reasonable grounds for the postponement applied for the requirement on the Joint Venturers to submit proposals under this Section shall be postponed for a period of three (3) years.
- (d) If the Minister notifies the Joint Venturers that he does not agree with their submission then at the request of the Joint Venturers made within two (2) months after receipt of the Joint Venturers of the notification from the Minister, the Minister will appoint a tribunal (hereinafter called "the Tribunal") consisting of one person if the Joint Venturers and the State agree on that person or, failing such agreement consisting of three persons (one of whom shall be a Judge of the Supreme Court of Western Australia or failing him or her a Commissioner appointed pursuant to section 49 of the *Supreme Court Act 1935* (WA) or a Senior Counsel and the others of whom shall have appropriate technical or economic qualifications) to decide in accordance with Clause XXXII whether or not the metallising operation is feasible and the Tribunal in reaching its decision shall take into account (*inter alia*) the Joint Venturer's submission, the amount of capital required for the metallising operation, the availability of that capital at that time on reasonable terms and conditions, the likelihood of the Joint Venturers being able to sell metallised



agglomerates at sufficient prices and in sufficient quantities and for a sufficient period to justify the metallising operation having regard to the amount and rate of return on total funds that would be involved in or in connection with the production and sale of metallised agglomerates and the weighted average cost of capital to the Joint Venturers.

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**SECTION 23.09      APPROVED PROPOSALS BY MINISTER** The Minister shall within two (2) months of receipt of proposals under Section 23.07 give to the Joint Venturers notice of his approval of those proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto, and in the latter case shall afford the Joint Venturers an opportunity to consult with and to submit new proposals to the Minister. If within two (2) months of receipt of such notice agreement is not reached as to the proposals, the Joint Venturers may within a further period of two (2) months elect by notice to the State to refer to arbitration as provided in Clause XXXII 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 approved the proposals of the Joint Venturers.

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**SECTION 23.10      COMPLETION OF CONSTRUCTION OF PLANT** The Joint Venturers shall (except to the extent otherwise agreed with the Minister) before the end of the respective times specified in Section 23.07 complete the construction of plant in accordance with the Joint Venturers' proposals as finally approved or determined under this Clause and shall thereafter continue to produce metallised agglomerates from such plant at not less than the rates provided for in Section 23.07 for so long as the Joint Venturers continues to ship from the said State iron ore from the Mining Lease.

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**SECTION 23.11      ACCEPTANCE OF AN ALTERNATIVE PROJECT**

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(a) The Joint Venturers may at any time before the time for submission of proposals pursuant to Section 23.07 apply to the Minister for approval that an alternative project be accepted by the State in lieu of all or some part of the Joint Venturers' obligations in respect of the establishment of plant for the production of metallised agglomerates pursuant to this Clause.

(b) Where the Minister approves an application under paragraph (a) of this Section the Joint Venturers shall implement or cause to be implemented as the case may be the alternative project in accordance with that approval and upon completion thereof, or earlier with the agreement of the Minister, the provisions of Section 23.07 or that part of those provisions which pursuant to the said approval are to be satisfied by the alternative project shall cease to apply PROVIDED FURTHER that the provisions of Section 23.07 shall cease to apply upon completion of an alternative project which represents, or alternative projects which together represent, economic development in the said State (either alone or in the aggregate with other alternative projects) of value approximately equivalent to a plant for the production of four million (4,000,000) tonnes of metallised agglomerates per annum.

(c) For the purposes of this Section "alternative project" means:

(i) a project to establish and operate within the said State plant for the production of metallised agglomerates;

(ii) a project to establish and operate within the said State plant which processes and adds value to minerals mined in the said State; or

(iii) any other project within the said State which the Minister approves as providing as equivalent benefits to the State to a project to establish and operate within the said State plant for the production of metallised agglomerates,

to be undertaken by:

(iv) the Joint Venturers (excluding a project referred to in subparagraph (i)); or

(v) a related body corporate or related bodies corporate (within the meaning of the *Corporations Act 2001* (Commonwealth)) of a Joint Venturer solely or in conjunction with a Joint Venturer; or

(vi) a joint venture in which a Joint Venturer or its related body corporate has a majority participating interest; or

(vii) any other third person or persons which the Joint Venturers and the Minister accept as having the requisite financial and technical capacity and expertise to undertake solely, or in conjunction with the Joint Venturers, the relevant project referred to in subparagraph (i), (ii) or (iii)."

(101) deleting Section 25.04 and substituting the following:

"SECTION 25.04    ASSIGNMENT

- (a) Subject to the provisions of this Section a Joint Venturer may at any time assign, mortgage, charge, sublet or dispose of to any person with the consent of the Minister (save that for a twelve (12) month period commencing on the variation date a Joint Venturer may assign to an associated company as of right) the whole or any part of the rights of the Joint Venturer hereunder (including its rights to or as the holder, together with the other Joint Venturers, of the Mining Lease or any other lease, licence, easement, or other title) and of the obligations of the Joint Venturer hereunder subject however in the case of an assignment, subletting or disposition to the assignee, sublessee or donee (as the case may be) executing in favour of the State (unless the Minister otherwise determines) 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 Venturer to be complied with, observed or performed in regard to the matter or matters the subject of such assignment, subletting or disposition.
- (b) Notwithstanding anything contained in or anything done under or pursuant to paragraph (a) the Joint Venturer will at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained in this Agreement and in the Mining Lease or any other lease, licence, easement or other title the subject of an assignment, mortgage, subletting or disposition under paragraph (a) PROVIDED THAT the Minister may agree to release the Joint Venturer from such liability where the Minister considers such release will not be contrary to the interests of the State.

(c) Notwithstanding the provisions of the Mining Act 1978, the LAA, the Transfer of Land Act or any other Act, insofar as the same or any of them may apply:

(i) no assignment, mortgage, charge, sublease or disposition made or given pursuant to this Section of or over the Mining Lease or any other lease, licence, easement or other title granted under or pursuant to this Agreement or held pursuant to this Agreement in accordance with the provisions of paragraph (a) and the terms of consent thereunder; and

(ii) no transfer, assignment, mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge,

shall require any approval or consent other than such consent as may be necessary under paragraph (a) and no equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent (otherwise than as required by this Section) or because the same is not registered under the provisions of the Mining Act 1978."

(102) deleting Section 25.05 (other than the heading) and substituting "Not used.";

(103) deleting Section 25.06 (other than the heading) and substituting "Not used.";

(104) in Section 25.07 by:

(a) deleting "Sections 13.02," and substituting "Section"; and

(b) deleting ", 16.05 and 17.02 and (unless and until the townsite concerned is declared a townsite pursuant to Section 10 of the Land Act) under item (v) of Section 18.01 (a)";

(105) inserting after Section 25.07 the following new Sections:

"SECTION 25.08 SUBCONTRACTING Without affecting the liabilities of the parties under this Agreement each of the State and the Joint Venturers will have the right from time to time to entrust to third parties the carrying out of any portions of the activities which it is authorised or obliged to carry out hereunder.

SECTION 25.09    PROVISION OF CERTAIN INFORMATION  
RELATING TO PROPOSALS AND OTHER  
MATTERS

The Joint Venturers shall:

- (a)    provide spatial information relating to proposals and other relevant matters submitted or otherwise notified under this Agreement in a form that can be accessed, viewed and uploaded into a geographic information system (for example, by the provision of shapefiles); and
- (b)    at the request of the Minister, promptly provide 'as constructed' drawings of works, installations or facilities constructed or modified pursuant to this Agreement,

and without limiting any other Sections of this Agreement, which information will be provided on a confidential basis to the State.

SECTION 25.10    ACCESS BY MINISTER                      Subject    to compliance with reasonable safety requirements, the Joint Venturers will permit and facilitate the Minister and any other officer or person authorised by him to enter upon any land and access any works, installation or facility for the purpose of making any survey, inspection or examination relating to the administration or purposes of this Agreement."

(106)    in Section 26.01 by:

- (a)    in paragraph (a) after the words "or other document of title", inserting "granted under or pursuant to, or held pursuant to, this Agreement"; and
- (b)    in paragraph (d) by:
  - (i)    deleting "mineral lease" and substituting "Mining Lease";
  - (ii)    deleting "under any lease licence easement" and substituting "under the Mining Lease and any other lease licence easement"; and
  - (iii)    after the words "pursuant hereto" inserting the words "or held pursuant hereto";

- (107) in Section 26.04 by deleting "occupied by the Joint Venturers" and substituting "the subject of any lease licence easement or other title granted under or pursuant to, or held pursuant to, this Agreement";
- (108) in Section 26.05 by:
- (a) in paragraph (a):
    - (i) deleting "mineral lease" and substituting "Mining Lease";
    - (ii) deleting "Crown Grant" and substituting "grant";
    - (iii) deleting "Land Act" and substituting "LAA"; and
  - (b) in paragraph (c) deleting "work research surveys and reconnaissance" and substituting "studies and investigations";
- (109) in Section 26.06 by:
- (a) after the words "Upon cessation of this Agreement" inserting the words "(and, for the avoidance of doubt, subject to the EP Act and Section 9AB.01)";
  - (b) deleting "mineral lease" and substituting "Mining Lease";
  - (c) after the words "grant made hereunder" inserting the words "or pursuant hereto"; and
  - (d) deleting "and including also the Joint Venturers' wharf";
- (110) in Section 26.07 by deleting "and the Joint Venturers' wharf";
- (111) in Section 27.01 by inserting after the full stop the 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 Section 9A.03."
- (112) deleting Section 28.01 (other than the heading) and substituting the following:
- "The parties to this Agreement 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 for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement."

(113) deleting Section 28.02 and substituting the following:

"SECTION 28.02    TABLING OF AGREEMENT    The Minister shall cause any agreement made pursuant to Section 28.01 in respect of any addition, substitution, cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution."

(114) inserting after Section 28.02 the following new Section:

"SECTION 28.03    OPERATIONAL DATE    Either House may, within twelve (12) sitting days of that House after the agreement has been laid before it, pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day."

(115) deleting Section 29.01 and substituting the following:

"SECTION 29.01    MINISTER MAY VARY PERIODS OR DATES

(a)    Notwithstanding any other provision of this Agreement the Minister may at the request of the Joint Venturers from time to time vary or further vary any period or date referred to in this Agreement as the Minister thinks fit whether or not the period or date to be varied has expired or passed.

(b)    The dates specified in Sections 5.02 and 6A.01 for the submission of proposals (and the corresponding date in Section 6.07) may only be extended once pursuant to this Section and for a period not exceeding twenty four (24) months."

(116) in Section 30.01 by:

(a)    deleting "Civil" and substituting "Public"; and

(b)    renumbering the existing Section 30.01 as paragraph (a) and then inserting the following new paragraph:

"(b) Paragraph (a) does not preclude the parties providing notices, consents or other writings required by this Agreement by electronic means in accordance with a protocol agreed from time to time by the parties."

(117) inserting after Section 30.01 the following new Clause:

"CLAUSE XXXA

SECTION 30A.01 CONSULTATION      The Joint Venturers must during the currency of this Agreement keep the State fully informed on a confidential basis concerning any action the Joint Venturers propose to take with any third party (including the Commonwealth or any Commonwealth constituted agency, authority, instrumentality or other body) which might significantly affect the overall interest of the State under this Agreement."

(118) in Section 31.02 by deleting "Year 7" and substituting "17 October 2022";

(119) in Section 32.01 by:

(c) deleting "an umpire" and substituting "a third and presiding arbitrator"; and

(d) deleting "Arbitration Act 1895" and substituting "Commercial Arbitration Act 2012 (WA)";

(120) in Section 32.02 by deleting each occurrence of "and the umpire";

(121) inserting after Section 32.02 the following new Clause:

"CLAUSE XXXIIA

SECTION 32A.01 TERM OF AGREEMENT      Subject to the provisions of Section 6.07, Section 8.01 and Clause XXVI, this Agreement shall expire on the expiration or sooner determination or surrender of the Mining Lease."

(122) in Section 33.01 by:

(a) inserting in the heading after the words "APPLICABLE LAW" the words "AND SUBMISSION TO JURISDICTION"; and

(b) inserting before the full stop the words "and, except for matters to be referred to arbitration pursuant to this Agreement, the parties submit to the jurisdiction of the courts of Western Australia in relation to any action or proceeding to settle any dispute or question arising out of or in connection with this Agreement";



(123) deleting The Schedule and substituting the following new Schedule:

"THE SCHEDULE

WESTERN AUSTRALIA  
MINING ACT 1978

IRON ORE (RHODES RIDGE) AGREEMENT AUTHORISATION ACT 1972

MINING LEASE

MINING LEASE NO:

The Minister for Mines a corporation sole established by the *Mining Act 1978* (WA) with power to grant leases of land for the purposes of mining in consideration of the rents hereinafter reserved and of the covenants on the part of the Lessee described in the First Schedule to this lease and of the conditions hereinafter contained and pursuant to the *Mining Act 1978* (WA) (except as otherwise provided by the Agreement (hereinafter called "the Agreement") described in the Second Schedule to this lease) hereby leases to the Lessee the land more particularly delineated and described in the Third Schedule to this lease for iron ore subject however to the exceptions and reservations set out in the Fourth Schedule to this lease and to any other exceptions and reservations which subject to the Agreement are by the *Mining Act 1978* (WA) and by any Act for the time being in force deemed to be contained herein to hold to the Lessee this lease for a term of twenty one years commencing on the date set out in the Fifth Schedule to this lease (subject to the sooner determination of the said term upon the cessation or determination of the Agreement) upon and subject to such of the provisions of the *Mining Act 1978* (WA) except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the terms covenants and conditions set out in the Agreement and to the covenants and conditions herein contained or implied and any further conditions or endorsements set out in the Sixth Schedule to this lease or hereinafter endorsed hereon the Lessee paying therefor the rents for the time being and from time to time prescribed pursuant to the provisions of the *Mining Act 1978* (WA) at the times and in the manner so prescribed and royalties as provided in the Agreement with the right during the currency of the Agreement and in accordance with the provisions of the Agreement to take three (3)

successive renewals of the term each for a further period of twenty one (21) years upon the same terms and conditions as the previous term and to apply to the Minister for one (1) further renewal for a period up to twenty one (21) years upon such terms and conditions as the Minister for Mines determines subject to the sooner determination of the term upon cessation or determination of the Agreement PROVIDED ALWAYS that this lease shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this lease:

- "Lessee" includes the successors and permitted assigns of the Lessee.
- If the Lessee be more than one the liability of the Lessee 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 therefor or in lieu thereof and to the regulations and by-laws for the time being in force thereunder.
- Reference to "the Agreement" means such Agreement as from time to time added to, varied or amended.

#### FIRST SCHEDULE

**HAMERSLEY RESOURCES LIMITED** ACN 004 887 656 of Level 18, Central Park, 152-158 St Georges Terrace, Perth, Western Australia

**WRIGHT PROSPECTING PTY LTD** ACN 008 677 021 of Suite 3, Level 1, 254 Rokeby Road, Subiaco, Western Australia

#### SECOND SCHEDULE

The Agreement authorised by and as scheduled to the *Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended.

#### THIRD SCHEDULE

(Description of land:)

Locality:

Mineral Field:

Area, etc.:

Being the land delineated on Survey Diagram No.      and recorded  
in the Department of Energy, Mines, Industry Regulation and Safety,  
Perth.

#### FOURTH SCHEDULE

All petroleum as defined in the *Petroleum and Geothermal Energy Act 1967* (WA) on or below the surface of the land the subject of this lease is reserved to the Crown in right of the State of Western Australia with the right of the Crown in right of the State of Western Australia and any person lawfully claiming thereunder or otherwise authorised to do so to have access to the land the subject of this lease for the purpose of searching for and for the operations of obtaining petroleum (as so defined) in any part of the land.

#### FIFTH SCHEDULE

(Date of commencement of the lease).

#### SIXTH SCHEDULE

#### ENDORSEMENTS AND CONDITIONS

##### Endorsements

[Such endorsements which the Minister for Mines may, consistent with the provisions of the Agreement, determine and impose in respect of this lease including during the term of the Agreement]

##### Conditions

[Such conditions which the Minister for Mines may, consistent with the provisions of the Agreement, determine and impose in respect of this lease including during the term of the Agreement]

IN witness whereof the Minister for Mines has affixed his seal and set his hand hereto

this      day of      20      "

(124) inserting after The Schedule the following new Schedules:

"SECOND SCHEDULE

WESTERN AUSTRALIA  
MINING ACT 1978

IRON ORE (RHODES RIDGE) AGREEMENT AUTHORISATION ACT 1972

MISCELLANEOUS LICENCE FOR A RAILWAY AND OTHER PURPOSES

No. MISCELLANEOUS LICENCE [ ]

WHEREAS by the Agreement (hereinafter called "the Agreement")  
authorised by and scheduled to the *Iron Ore (Rhodes Ridge) Agreement*  
*Authorisation Act 1972*, 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 Section 9A.05(1) of the Agreement and  
otherwise as provided in the Agreement) and, if applicable, other  
purposes AND WHEREAS the Joint Venturers pursuant to  
Section 9A.05(f)(i) 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 (Rhodes Ridge)*  
*Agreement Authorisation Act 1972*, 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  
Section 9A.05(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 fifty (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* (WA) as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* (WA) 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 Section 9A.05(f)(i)(A) 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 Ventures 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.

#### 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* (WA), no royalty shall be payable under the *Mining Act 1978* (WA) 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, determines and thereafter impose in respect of this licence including during the term of the Agreement.]

#### Conditions

1. (a) Except as provided in paragraph (b), the Joint Venturers shall within 2 years after the Railway Operation Date surrender in accordance with the provisions of the *Mining Act 1978* (WA) 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 Section 9A.05(f)(viii) or Section 9A.05(f)(ix) 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* (WA) the land the subject of this licence that was included in this licence pursuant to Section 9A.05(viii) of the Agreement for the purpose of such construction down to a maximum of 100 metres in width or as otherwise approved by the Minister (as defined in the Agreement) for the safe operation of that Railway spur line or expansion or extension thereof as the case may be then constructed or approved for construction under approved proposals.

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

## SCHEDULE

## Land description

### Locality:

## Mineral Field

Area:

DATED at Perth this \_\_\_\_\_ day of \_\_\_\_\_.

**MINISTER FOR MINES**

### THIRD SCHEDULE

## WESTERN AUSTRALIA

## MINING ACT 1978

IRON ORE (RHODES RIDGE) AGREEMENT AUTHORISATION ACT 1972

## MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No. MISCELLANEOUS LICENCE [ ]

WHEREAS by the Agreement (hereinafter called "the Agreement") authorised by and as scheduled to the *Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972*, 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 Section 9A.05(f)(i)(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 (Rhodes Ridge) Agreement Authorisation Act 1972, 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 four (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* (WA) as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* (WA) 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 Section 9A.05(f)(i)(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 thereof or in lieu thereof and to the regulations and by-laws of the time being in force thereunder.
- Reference to "the Agreement" means such agreement as from time to time added to, varied or amended.

#### ENDORSEMENTS AND CONDITIONS

##### Endorsements

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

##### Conditions



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

SCHEDULE

Description of land

Locality:

Mineral Field:

Area:

DATED at Perth this                      day of                      .

MINISTER FOR MINES

FOURTH SCHEDULE

WESTERN AUSTRALIA

MINING ACT 1978

IRON ORE (RHODES RIDGE) AGREEMENT AUTHORISATION ACT 1972

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No.           MISCELLANEOUS LICENCE [   ]

WHEREAS by the Agreement (hereinafter called "the Agreement") authorised by and as scheduled to the *Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972*, 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 Section 9A.05(f)(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 (Rhodes Ridge) Agreement Authorisation Act 1972*, 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 four (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* (WA) as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* (WA) 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 Section 9A.05(f)(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.

#### ENDORSEMENTS AND CONDITIONS

##### Endorsements

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

thereafter impose in respect of this licence including during the term of the Agreement.]

## Conditions

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

## SCHEDULE

### Description of land

Locality:

Mineral Field:

Area:

DATED at Perth this \_\_\_\_\_ day of \_\_\_\_\_.

MINISTER FOR MINES

## FIFTH SCHEDULE

## WESTERN AUSTRALIA

MINING ACT 1978

IRON ORE (RHODES RIDGE) AGREEMENT AUTHORISATION ACT 1972

## EXPLORATION LICENCES AND MINING LEASES

E 47/622-I

E 47/623-I

E 47/624-I

E 47/542-I

E 47/541-I

E 47/540-I

E 47/539-I

M 46/437-I

M 46/438-I

M 46/439-I

M 46/440-I"

**EXECUTED** as a deed.

**SIGNED** by **THE HONOURABLE**      )  
**ROGER COOK**      )  
in the presence of:      )

[Signature] \_\_\_\_\_  
Signature of witness

[Signature] \_\_\_\_\_

SARAH GWEN KEEGAN \_\_\_\_\_  
Name of witness

EXECUTED by )  
HAMERSLEY RESOURCES LIMITED )  
ACN 004 887 656 in accordance with )  
section 127(1) of the *Corporations Act 2001* )  
(Cth) )

[Signature] \_\_\_\_\_  
Director

SIMON RICHMOND \_\_\_\_\_

[Signature] \_\_\_\_\_  
Director/Secretary

SOWMYA KOLLI \_\_\_\_\_

EXECUTED by )  
WRIGHT PROSPECTING PTY LTD )  
ACN 008 677 021 in accordance with )  
section 127(1) of the Corporations Act 2001 )  
(Cth) )

[Signature] \_\_\_\_\_ PAUL BENNETT  
Director

[Signature] \_\_\_\_\_ YASMIN BROUGHTON  
Director/Secretary

EXECUTED by )  
AUSTRALIAN MINING & SMELTING )  
PTY LTD ACN 004 896 726 )  
in accordance with section 127(1) of the )  
Corporations Act 2001 (Cth) )

[Signature] \_\_\_\_\_ SIMON RICHMOND  
Director

[Signature] \_\_\_\_\_ SOWMYA KOLLI  
Director/Secretary

[Schedule 2 inserted: No. 38 of 2024 s. 9.]

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## Notes

<sup>1</sup>—This is a compilation of the *Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972* and includes ~~the~~ amendments made by ~~the~~ other written laws ~~referred to in the following table. The table also contains.~~ [For provisions that have come into operation, and for](#) information about any ~~reprint~~ [reprints, see the compilation table.](#)

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Iron Ore (Rhodes Ridge) Agreement Authorization Act 1972</i>	36 of 1972	16 Jun 1972	16 Jun 1972
<b>Reprint 1: The <i>Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972</i> as at 7 Nov 2003</b>			
<i>Standardisation of Formatting Act 2010</i> s. 4	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. 9	34 of 2010	26 Aug 2010	1 Jul 2010 (see s. 2(b)(ii))
<sup>2</sup> <a href="#">Iron Ore Agreements Legislation Amendment Act 2024</a> Pt. 2	<a href="#">38 of 2024</a>	<a href="#">29 Oct 2024</a>	<a href="#">30 Oct 2024 (see s. 2(b))</a>

<sup>1</sup> A notice published in *Gazette* 29 September 1972 p. 3957 reads as follows:

“

It is hereby notified for public information that the following are alterations made to the Agreement scheduled to the above Act as printed that have been approved by all parties for incorporation in the final document engrossed for execution: —

Section 10.02: Third line, the word “it” altered to “them”.

Section 12.01: Tenth line, the word “shall” altered to “will”.

Section 15.06: Third line, the word “shall” altered to “will”.

Section 18.02: First line, the word “shall” altered to “will”.

Section 21.02(d): Sixth line, the word “prducts” altered to “products”.

Section 21.03: Fifteenth line, the word “therefore” altered to “therefor”.

Section 21.04: Second line, the word “continunce” altered to “continuance”.

The Schedule (Mineral Lease):

First recital, twelfth line, the word “LIMITED” altered to “LTD”.

First recital, fifteenth line, the word “LIMITED” altered to “LTD”.

Exhibit — Mining Areas: The plan marked “A” tabled in Parliament has been revised to show more detail. A copy of the plan may be sighted at the Department of Mines, Perth.

”.



