



Western Australia

## **Iron and Steel (Mid West) Agreement Act 1997**

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As at 01 Oct 2004

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1 October 2004

Western Australia

## Iron and Steel (Mid West) Agreement Act 1997

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Western Australia

## Iron and Steel (Mid West) Agreement Act 1997

**An Act to ratify, and authorise the implementation of, an agreement between the State and An Feng (Australia) Pty. Ltd. and Kingstream Resources NL relating to the establishment and operation of mines, plant and ancillary facilities in the Mid West region of Western Australia to mine and process iron ore into steel and other value added products, and to the investigation of the feasibility of establishing a port and associated industrial estate at Oakajee.**

### 1. Short title

This Act may be cited as the *Iron and Steel (Mid West) Agreement Act 1997*<sup>1</sup>.

### 2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent<sup>1</sup>.

### 3. Interpretation

In this Act —

*the Agreement* means the Iron and Steel (Mid West) Agreement, a copy of which is set out in Schedule 1, and includes the Agreement as varied from time to time in accordance with its provisions.

**4. Agreement ratified and implementation authorised**

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

## **Schedule 1 — Iron and Steel (Mid West) Agreement**

[Section 3]

THIS AGREEMENT is made the 12th day of March 1997

BETWEEN

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

**AN FENG (AUSTRALIA) PTY. LTD.** ACN 075 191 098 a company  
incorporated in the State of Victoria and having its registered office at Level 39,  
Rialto Tower, 525 Collins Street, Melbourne and **KINGSTREAM**  
**RESOURCES NL** ACN 009 224 800 a company incorporated in the State of  
Western Australia and having its registered office at Level 45, BankWest  
Tower, 108 St George’s Terrace, Perth (hereinafter collectively called “the  
Proponents” in which term shall be included their successors and persons to  
whom rights or obligations under this Agreement are assigned pursuant to  
Clause 31) of the other part.

W H E R E A S:

- (a) the Proponents have rights in mining tenements in the Mid West Region of Western Australia;
- (b) the Proponents propose to establish and operate mines, plant and ancillary facilities in the Mid West Region of Western Australia to mine and process iron ore into steel and other value added products;
- (c) the State and the Proponents have agreed to investigate the feasibility of the State establishing an industrial estate and a port at Oakajee partly for the purposes of the Proponents’ project and to investigate the feasibility of the Proponents using such industrial estate and port for the purposes of their project; and
- (d) the State, for the purpose of promoting employment opportunity and industrial development and in particular the establishment of further raw material processing facilities in Western Australia, has agreed to assist the establishment and operation of the mines, plant and ancillary facilities upon and subject to the terms of this Agreement.

NOW THIS AGREEMENT WITNESSES:

**Definitions**

1. In this Agreement subject to the context —

“**Aboriginal Heritage Act**” means the *Aboriginal Heritage Act 1972*;

“**Acquisition Act**” means the *Land Acquisition and Public Works Act 1902*;

“**advise**”, “**apply**”, “**approve**”, “**approval**”, “**consent**”, “**certify**”, “**direct**”, “**notify**”, “**request**”, or “**require**”, means advise, apply, approve, approval, consent, certify, direct, notify, request, or require in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;

“**Ancillary Facilities**” means facilities necessary for the establishment, support or operation of a Plant or a Mine which are located in the Mid West Region and are the subject of approved proposals, including but not limited to facilities for power generation and transmission, water extraction treatment supply and disposal, oxygen production, natural gas treatment, raw material and product storage handling and transportation (including rail facilities and port facilities), residue disposal, communications, maintenance and administration;

“**approved proposal**” means a proposal approved or deemed to be approved under this Agreement;

“**Clause**” means a clause of this Agreement;

“**commencement date**” means the date on which the Bill to ratify this Agreement comes into operation as an Act;

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

“**Electricity Corporation**” means the body corporate established by section 4 of the *Electricity Corporation Act 1994*;

“**EP Act**” means the *Environmental Protection Act 1986*;

“**Gas Corporation**” means the body corporate established by section 4 of the *Gas Corporation Act 1994*;



**“Iron and Steel Plant”** means the plant referred to in paragraph (a) of the definition of “Plant”;

**“Land Act”** means the *Land Act 1933*;

**“laws relating to native title”** means laws applicable from time to time in Western Australia in respect of native title and includes the NTA;

**“local government”** means a local government established under the *Local Government Act 1995*;

**“Mid West Region”** means the Mid West Region as described in the *Regional Development Commissions Act 1993*;

**“Mine”** means any of:

- (a) any iron ore mine on a Mining Tenement; and
- (b) any other iron ore mine acquired or established by the Proponents in accordance with an approved proposal and approved by the Minister as a Mine for the purposes of this Agreement;

**“Mine Site”** means the site on which a Mine is or is proposed to be established;

**“Mining Act”** means the *Mining Act 1978*;

**“Mining Tenement”** means any of:

- (a) mining lease M.L. 70/896 (Tallering Peak), exploration licence E.L. 70/1192 (Tallering Peak), exploration licence E.L. 70/1212 (Koolanooka) and exploration licence E.L. 59/462 (Blue Hills);
- (b) any mining lease, any general purpose lease and any miscellaneous licence granted to or acquired by the Proponents during the term of this Agreement over the land the subject of a mining tenement referred to in paragraph (a) in addition to or in place of any such mining tenement; and
- (c) any other mining tenement acquired by the Proponents in accordance with an approved proposal and approved by the Minister as a Mining Tenement for the purposes of this Agreement;

**“Minister”** means the Minister in the Government of the State for the time being responsible for the administration of the Act to ratify this Agreement and, pending the passing of that Act, means the Minister for

the time being designated in a notice from the State to the Proponents and includes the successors in office of the Minister;

**“Narngulu Plant Site”** means

- (a) Lot 6 on Diagram 11238 the subject of certificate of title Volume 1409 Folio 727;
- (b) Lot 13 on Diagram 11238 the subject of certificate of title Volume 1755 Folio 598; and
- (c) Lot 21 on Diagram 73637 the subject of certificate of title Volume 1805 Folio 787;

**“native title”** and **“native title rights and interests”** have the meanings given to them in the NTA;

**“notice”** means notice in writing;

**“NTA”** means the *Native Title Act 1993* (Commonwealth);

**“Oakajee Plant Site”** means a site comprising one or more parcels of land suitable as a site for the Iron and Steel Plant and the Power Station and located in the proposed Oakajee industrial estate north of Geraldton in the Mid West Region;

**“Plant”** means —

- (a) a plant which uses one or more of pelletising, direct reduction, briquetting, steel making, alloying, casting, milling and rolling technologies to convert iron ore or iron ore concentrate into iron ore pellets, direct reduced iron, hot briquetted iron, steel and alloys, and which will have an initial nominal output of approximately 2.4 million tonnes per annum of steel; and
- (b) any other plant which uses one or more of crushing, ore concentration and pelletising technologies to convert iron ore into iron ore concentrate or pellets for use in the Plant referred to in paragraph (a) and which is approved by the Minister as a Plant for the purposes of this Agreement and in every case includes Ancillary Facilities on the same site as the Plant;

**“Plant Site”** means —

- (a) either the Oakajee Plant Site or the Narngulu Plant Site; and

(b) any other site on which a Plant is or will be established pursuant to approved proposals;

**“Power Station”** means the Power Station referred to in subclause (1) of Clause 19;

**“private roads”** means the roads referred to in subclause (1) of Clause 16 and any other roads constructed by the Proponents in accordance with an approved proposal or agreed by the parties to be a private road for the purposes of this Agreement;

**“Project”** means the establishment and operation under this Agreement of Mines, Plants and Ancillary Facilities and, if it is the subject of approved proposals, the Pipeline referred to in Clause 20;

**“Proponents’ workforce”** means the persons (and the dependants of those persons) engaged whether as employees, agents or contractors in the Project;

**“subclause”** means subclause of the Clause in which the term is used;

**“this Agreement”** **“hereof”** and **“hereunder”** refer to this Agreement whether in its original form or as from time to time added to varied or amended;

**“Water Corporation”** means the body corporate established by section 4 of the *Water Corporation Act 1995*; and

**“Westrail”** means the Western Australian Government Railways Commission established by section 8 of the *Government Railways Act 1904*.

### **Interpretation**

2. (1) In this Agreement —
- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
  - (b) power given under any clause other than Clause 34 to extend any period or date shall be without prejudice to the power of the Minister under Clause 34;
  - (c) Clause headings do not affect the interpretation or construction;

- (d) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;
  - (e) every obligation of and every covenant or agreement on the part of the Proponents hereunder is a joint and several obligation, covenant or agreement as the case may be; and
  - (f) words in the singular number include the plural and words in the plural number include the singular.
- (2) Nothing in this Agreement shall exempt the State or the Proponents from compliance with, or empower or oblige the State or the Proponents to do anything contrary to or in breach of laws relating to native title or any obligation or requirement imposed on the State or the Proponents, as the case may be, pursuant to laws relating to native title.
- (3) Nothing in this Agreement shall be construed to exempt the Proponents 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 pursuant to the EP Act.

**Ratification and operation**

3. (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 30 June 1997 or such later date as may be agreed between the parties hereto.
- (2) The provisions of this Agreement other than this Clause and Clauses 1, 2 and 11 (apart from subclause (5) thereof) shall not come into operation until the Bill to ratify this Agreement as referred to in subclause (1) is passed as an Act.
- (3) If before 30 June 1997 or such later agreed date the said Bill has not commenced to operate as an Act then, unless the parties hereto otherwise agree, this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

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

**Initial obligations of the Proponents**

4. (1) The Proponents shall undertake field and office engineering, environmental, heritage, marketing and financial studies and other matters necessary for the purposes of this Clause and to enable them to finalise and to submit proposals referred to in Clause 5.
- (2) The Proponents shall keep the State fully informed in writing quarterly as to the progress and results of their operations under subclause (1) and shall supply to the State such information in relation thereto as the Minister may request including (but not limited to) details of any services (including any elements of the Project investigations, design and management) and any works, materials (including raw materials which will be required for the operation of the Plants), 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.
- (3) The Proponents shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclauses (1) and (2) and any other relevant studies in relation to those subclauses that the Minister may wish to undertake.
- (4) To the extent reasonably necessary to enable the Proponents to carry out their obligations under this Clause and to carry out surveys of land and other works in relation to the Project and for the purpose of complying with and making applications with respect to land under the Aboriginal Heritage Act (for all of which purposes the Proponents shall be deemed to be within the expression “the owner of any land” in section 18 of that Act), but subject to the adequate protection of the environment (including flora and fauna) —
- (a) the State shall, subject to the adequate protection of the land affected (including improvements thereon), allow the

Proponents and their agents and contractors to enter upon Crown lands (including land the subject of a pastoral lease); and

- (b) the Proponents and their agents and contractors may enter land to carry out surveys and other works in relation to the Project and may, subject to sections 82 and 83A of the Acquisition Act and authorisations pursuant to those sections exercise the powers set out in those sections as if the Project was a work under that Act.

**Proponents to submit proposals**

- 5. (1) Subject to the provisions of this Agreement, the Proponents shall, on or before 31 December 1998, or by such extended date as the Minister may allow as hereinafter provided, submit to the Minister 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 Project, which proposals shall include the location, area, lay-out, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely —
  - (a) the Mines;
  - (b) the Plants;
  - (c) subject to Clause 20, the Gas Transmission Services referred to in that Clause;
  - (d) Ancillary Facilities;
  - (e) supplies of iron ore, lime, scrap steel, gas, water, electricity and other inputs necessary for the Project;
  - (f) residue disposal;
  - (g) construction camps and any other arrangements providing temporary accommodation and other facilities for the Proponents' workforce engaged in the establishment of a

Mine or in the construction and commissioning of a Plant or of Ancillary Facilities;

- (h) permanent housing or other appropriate permanent accommodation and facilities for the Proponents' workforce engaged in the operation of a Mine, a Plant or Ancillary Facilities;
- (i) rail, road and port facilities and associated services necessary for the Project;
- (j) any other works, services or facilities necessary for the purposes of the Project;
- (k) an environmental management programme as to measures to be taken, in respect of the Proponents' activities under this Agreement, for rehabilitation and the protection and management of the environment;
- (l) use of local labour, professional services, manufacturers, suppliers, contractors and materials; and
- (m) any lease, licence, easement or other title of Crown lands desired for the Project.

**Order of proposals**

- (2) Each of the proposals pursuant to subclause (1) may, with the approval of the Minister or if so required by him, be submitted separately and in any order as to any matter or matters mentioned in subclause (1).

**Use of existing infrastructure**

- (3) Each of the proposals pursuant to subclause (1) may, with the consent of the Minister and that of any other parties concerned, instead of providing for the construction of new works, facilities or equipment or the provision of new services of the kind therein mentioned, provide for the use by the Proponents of any other works, facilities, equipment or services of such kind belonging to the Proponents or (upon terms and conditions agreed between the Proponents and the other persons concerned) of any existing works, facilities equipment or services of such kind belonging to any other persons.

**Additional submissions**

- (4) At the time when the Proponents submit the said proposals they shall submit to the Minister —
- (a) 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;
  - (b) evidence to the reasonable satisfaction of the Minister as to the availability of finance necessary to carry out the Project; and
  - (c) evidence to the reasonable satisfaction of the Minister as to the readiness of the Proponents in all other respects to carry out the Project.

**Consideration of proposals**

6. (1) In respect of each proposal pursuant to subclause (1) of Clause 5 the Minister shall —
- (a) approve the proposal without qualification or reservation; or
  - (b) defer consideration of or decision upon the same until such time as the Proponents submit a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 5 not covered by the said proposal; or
  - (c) require, as a condition precedent to the giving of his approval to the said proposal, that the Proponents make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable, and in such a case the Minister shall disclose his reasons for such alterations or conditions,

PROVIDED ALWAYS that where implementation of any proposals hereunder have 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 Proponents make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

**Advice of Minister's decision**

- (2) The Minister shall, within two months after receipt of proposals pursuant to subclause (1) of Clause 5 give notice to the Proponents of his decision in respect to the proposals, PROVIDED THAT —
  - (a) where a proposal is to be assessed under section 40(1)(b) of the EP Act the Minister shall give notice to the Proponents of his decision in respect to the proposal within 2 months after the later happening of the receipt of the proposal and the service on him of an authority under section 45(7) of the EP Act; and
  - (b) where implementation of a proposal by the State will or may require the State to do any act which affects any native title rights and interests the Minister shall give notice to the Proponents of his decision in respect to the proposal within 2 months of the later happening of the receipt of the proposal and the completion of all processes required by laws relating to native title to be undertaken by the State before that act may be done by the State.

**Consultation with Minister**

- (3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1), the Minister shall afford the Proponents 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.

**Minister's decision subject to arbitration**

- (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) and the Proponents consider that the decision is unreasonable, the Proponents within 2 months after receipt of the notice mentioned in subclause (2), may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any

requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder.

**Arbitration award**

- (5) An award made on an arbitration pursuant to subclause (4) shall have force and effect as follows —
- (a) if by the award the dispute is decided against the Proponents then, unless the Proponents within 3 months after delivery of the award give notice to the Minister of their acceptance of the award, this Agreement shall on the expiration of that period of 3 months determine and neither the State nor the Proponents shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement; or
  - (b) if by the award the dispute is decided in favour of the Proponents, the decision shall take effect as (and be deemed to be) a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

**Effect of non-approval of proposals**

- (6) Notwithstanding that under this Clause any proposals of the Proponents are approved by the Minister or deemed to be approved as a consequence of an arbitration award, unless each and every such proposal and matter is so approved or deemed to be approved within 12 months of the date on which the last of those proposals is submitted pursuant to subclause (1) of Clause 5 or by such extended date or period if any as the Proponents shall be granted or entitled to pursuant to the provisions of this Agreement, then the Minister may give to the Proponents 12 months' notice of intention to determine this Agreement and, unless before the expiration of the said 12 months' period all the detailed proposals and matters are so approved or determined this Agreement shall determine and neither the State nor the Proponents shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

**Implementation of proposals**

- (7) The Proponents shall implement the approved proposals in accordance with the terms thereof.

**Variation of proposals**

- (8) Notwithstanding Clause 32, the Minister may during the implementation of approved proposals approve variations to those proposals.

**Extension of periods**

- (9) The periods set forth in subclause (1) of Clause 5 and subclause (6) of this Clause will be extended (in addition to any extension granted pursuant to Clause 33 or Clause 34) upon agreement of the parties for such period or periods as may be agreed from time to time.

**Additional proposals**

7. (1) If the Proponents at any time during the continuance of this Agreement desire to significantly modify, expand or otherwise vary their activities carried on pursuant to any approved proposals they shall give notice of such desire to the Minister and, within 2 months thereafter, shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in subclause (1) of Clause 5 as the Minister may require.
- (2) The provisions of Clause 5 and Clause 6 (other than subclauses (5)(a) and (6) of Clause 6) shall mutatis mutandis apply to detailed proposals submitted pursuant to this Clause, with the proviso that the Proponents may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same.

**Mining Tenements**

8. (1) During the currency of this Agreement each of the Mining Tenements shall, subject to compliance by the Proponents with the terms and conditions applicable thereto (as modified by this

Clause), be held under and subject to the Mining Act modified as follows —

- (a) any assignment, underletting or parting with possession of the Mining Tenement shall be subject to Clause 31;
  - (b) subject to subclauses (9) and (10) and except as regards any Mining Tenement falling within paragraph (c) of the definition of Mining Tenement (unless the Minister otherwise agrees) —
    - (i) the Proponents shall not be required to comply with any expenditure conditions imposed by or under the Mining Act in regard to any Mining Tenement; and
    - (ii) the provisions of section 65 of the Mining Act shall not apply.
- (2) If this Agreement ceases or determines during the term of a Mining Tenement, the Mining Tenement shall continue in force under and subject to the Mining Act for the balance of the term then current.
- (3) The Proponents shall lodge with the Department of Minerals and Energy at Perth in respect of all Mining Tenements —
- (a) such periodical reports (except, in the case of Mining Tenements in respect of which the Proponents are not required to comply with expenditure conditions, reports in the form of Form 5 of the *Mining Regulations 1981* or other reports relating to expenditure) and returns as may be prescribed in respect of mining tenements pursuant to regulations under the Mining Act;
  - (b) if requested by the Department but not more frequently than annually, a report on identified mineral resources and/or ore reserves within the Mining Tenements (using the Australasian Code for Reporting of Identified Mineral Resources and Ore Reserves, published by the Australasian Institute of Mining and Metallurgy, the Australian Institute of Geoscientists and the Minerals Council of Australia in July 1996 or any future superseding code issued by the same or any future equivalent organisation or organisations) together with a list of any geological, geochemical,

geophysical, geotechnical and metallurgical activities carried out during the year and, if requested by the Department, will provide details and results of any of those activities in a mineral exploration report, or other technical report, in accordance with the statutory guidelines on reporting as specified in the Mining Act; and

- (c) reports on drilling operations and drill holes where the main purpose of the drilling was to discover or define future mineral resources and ore reserves within the Mining Tenements and, if requested by the Department, reports on drilling done within blocks of proven ore for the purpose of mine planning.
- (4) The Proponents shall at all times permit the State and third parties with the consent of the State (with or without stock, vehicles and rolling stock) to have access to and to pass over the Mining Tenements (by separate route, road or railway) so long as that access and passage does not unduly prejudice or interfere with the activities of the Proponents under this Agreement.
- (5) Subject to and in accordance with section 95 of the Mining Act the Proponents 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 the Mining Tenements.
- (6) The Proponents in accordance with approved proposals may for the construction of works (and the maintenance thereof) within the Mining Tenements for the purposes of this Agreement and without payment of royalty, obtain stone sand clay and gravel from the Mining Tenements.
- (7) Except to the extent that the Minister may, from time to time, consent to other uses, all iron ore mined in a Mining Tenement shall be processed in the Plant in accordance with approved proposals.
- (8) Where approved proposals in respect of a Mine provide for the issue of a mining lease of a portion of the land subject to exploration licence E.L. 70/1212 or exploration licence E.L. 59/462 the State, on application by the Proponents not later

than 3 months after the proposals have been approved and the Proponents have complied with the provisions of subclause (4) of Clause 5 shall, on the surrender of the land applied for out of the relevant exploration licence or part thereof, cause to be granted to the Proponents at the rents specified from time to time in the Mining Act a mining lease of the land so applied for (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed at the Proponents' expense) each such mining lease to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but in the form of the Schedule hereto and subject to such conditions or stipulations consistent with the provisions of this Agreement and approved proposals as the Minister for Mines with the concurrence of the Minister may determine and to be for a period terminating 21 years after the commencement date with the right during the currency of this Agreement to take an automatic extension of the said term for two further periods of 21 years upon the same terms and conditions such extension to apply upon the Proponents making written application for the extension not later than one month before the expiration of the current term of the mining lease.

- (9) The Proponents shall, on the land presently the subject of exploration licence E.L.59/462, progressively explore and carry out geological investigations to delineate Indicated Mineral Resource (as defined in the reporting code referred to in subclause (3)) in respect of iron ore on that land in accordance with a programme approved by the Minister providing for the completion of such exploration and investigations within ten years of the commencement date. The Proponents shall report to the Department of Minerals and Energy at Perth the results of such exploration and investigations as and when required by the Minister.
- (10) With effect from the date eleven years after the commencement date subclause (1)(b) shall (unless the Minister otherwise agrees) cease to apply to exploration licence E.L.59/462.

**Royalties**

9. (1) The Proponents shall during the continuance of this Agreement pay to the State royalty on all minerals (other than iron ore

concentrates, pellets, reduced iron or steel shipped solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) produced or obtained from the Mining Tenements as follows —

- (a) on lump ore, fine ore and iron ore concentrate so produced or obtained (hereinafter referred to in this Clause as the “input”) processed under this Agreement — royalty assessed on the imputed value of the relevant input calculated in accordance with subclause (2) at the relevant royalty rate, minus:
    - (i) 2% where the input is processed into steel;
    - (ii) 1% where the input is processed into direct reduced iron but is not further processed under this Agreement into steel; or
    - (iii) 0.5% where the input is processed into high grade pellets but is not further processed under this Agreement into steel or direct reduced iron,as if the imputed value of the relevant input was its realised value;
  - (b) on all other iron ore — royalty as from time to time prescribed under the Mining Act; and
  - (c) on all other minerals — royalty as from time to time prescribed under the Mining Act.
- (2) (a) Unless previously agreed by the Minister and the Proponents, the imputed value of each input for each financial year commencing on 1 July, will be 85% of the average of the free on board sale prices, converted to Australian currency terms at the Reserve Bank mid-rate exchange rate prevailing on 1 July, of —
- (i) where the input is lump ore — Goldsworthy, Hamersley and Mt Newman lump ores; or
  - (ii) where the input is fine ore or concentrate — Goldsworthy, Hamersley and Mt Newman highgrade fines,

sold to Japanese steel mills, as agreed by the relevant producers and consumers for the Japanese financial year which commenced on the immediately preceding 1 April and as quoted in the TEX report or a similar trade journal accepted by the Minister and the Proponent in place thereof.

- (b) The imputed value of each input shall be calculated in respect of each financial year by an officer of the Department of the Public Service of the State principally assisting the Minister for Mines in the administration of the Mining Act appointed by the Minister for Mines for the purpose of this subclause and the Department shall advise the Proponents of the imputed values as soon as reasonably possible after 1 July.
  - (c) Where for any reason an imputed value cannot be calculated in accordance with this subclause it will be agreed or determined.
- (3) The Proponents shall —
- (a) within twenty eight days after the quarter days which are the last days of March June September and December in each year commencing with the quarter day next following the first date on which minerals the subject of royalty under subclause (1) are disposed of furnish to the Minister for Mines a return showing separately the quantities of all inputs, other iron ore and other minerals the subject of royalty under subclause (1) and first disposed of during the quarter immediately preceding the due date of the return and shall not later than one (1) month after such due date pay to the Minister for Mines the royalty payable in accordance with that return in respect of the minerals first disposed of in that quarter or if any imputed value has not then been calculated, agreed or determined pay to the Minister for Mines on account of the royalty payable in respect of the relevant input a sum calculated on the basis of the imputed value last calculated, agreed or determined in respect of that input and shall from time to time in the next following appropriate return and payment make (by return and by cash) all such necessary adjustments (and give to the Minister for



Mines full details thereof) when the imputed value has been calculated, agreed or determined;

- (b) permit the Minister for Mines or his nominee to inspect at all reasonable times the books of account and records of the Proponents including contracts relative to any shipment or sale of minerals and records of minerals in stockpile or transit and to take copies of extracts therefrom and for the purpose of determining the royalty payable in respect of any minerals hereunder the Proponents shall take reasonable steps (i) to provide the Minister for Mines with details and information that may be required by the Minister for Mines for the purpose of calculating, agreeing or determining the imputed values and (ii) to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the reasonable satisfaction of the Minister for Mines as to all relevant weights and analyses and shall give due regard to any objection or representation made by the Minister for Mines or his nominee as to any particular weight or assay of minerals which may affect the amount of royalty payable hereunder; and
  - (c) as and when required by the Minister for Mines from time to time install and thereafter maintain in good working order and condition meters for measuring quantities of minerals of such design or designs and at such places as the Minister for Mines may reasonably require.
- (4) (a) If at any time not less than 5 years after the first royalty return is submitted under subclause (3), it appears to a party to this Agreement that the method set out in subclause (2) by which imputed values are calculated (the “method”) does not produce the true and fair market values of the inputs that party may give notice to the other party to that effect, setting out the reasons for its belief. After such notice has been given, the Minister and the Proponents shall consult and endeavour to agree to an alternative method of calculating imputed values which better represent the true and fair market values of the inputs (the “alternative method”). If the Minister and the Proponents are unable to agree an alternative method within 12 months from the date of the notice, either party may then refer to arbitration under this

Agreement the determination of the alternative method and the date from which any alternative method shall apply.

- (b) Notwithstanding that a notice may have been given under paragraph (a) the calculation of imputed values shall continue to be made as provided for in the method until an alternative method is agreed or determined by arbitration. Any alternative method may, under an agreement or determination by arbitration, apply from the date on which the notice under paragraph (a) was given or from a later date.
  - (c) Where an alternative method is agreed or determined by arbitration, the Proponents shall in the next return and payment of royalty under subclause (3) make (by return and, if the case requires, by cash) all necessary adjustments (and give to the Minister for Mines full details thereof). If any refund of royalty remains due from the State to the Proponents after such adjustments have been made, the State shall refund such royalty to the Proponents within one month of receipt by the Minister for Mines of the royalty return setting out the adjustments.
- (5) Where used in this Clause —
- (a) **“agreed or determined”** means agreed between the Proponents and the Minister or, failing agreement within three months of the Minister giving notice to the Proponents that he requires the value of a quantity of input to be agreed or determined, as determined by the Minister and in agreeing or determining a fair and reasonable market value of such input assessed at an arm’s length basis the Proponents and/or the Minister as the case may be shall have regard to prevailing markets and prices for lump ores and high grade fines adjusted for Fe content both outside and within the Commonwealth;
  - (b) **“disposed of”** means transported from the Iron and Steel Plant, transported from a Mine or Plant (except to a Plant or another Plant) or otherwise disposed of;
  - (c) **“minerals”** includes minerals processed or partly processed under this Agreement; and

- (d) **“relevant royalty rate”** means —
- (i) for the period ending on the quarter date next following the date 14 years after the commencement date —  
  
for lump ore — 7.5% of the realised value,  
  
for fine ore — 5.625% of the realised value,  
  
for iron ore concentrate — 5% of the realised value;  
and
  - (ii) for the period after the quarter date next following the date 14 years after the commencement date the royalty rate from time to time prescribed under the Mining Act for lump ore, fine ore or (in the case of iron ore concentrate) beneficiate, as the case requires.

**Accommodation/housing**

10. (1) Any accommodation at a Mine Site for the Proponents’ workforce engaged in the operation of the Mine shall be by way of temporary accommodation units (not caravans) and ancillary facilities of a standard generally used in the mining industry in the Mid West Region and —
- (a) the accommodation units and ancillary facilities (which may include offices for the Proponents’ personnel, a mess/wet mess, and amenities blocks) may be provided by the Proponents or a contractor to the Proponents but shall be subject to the prior approval of the Minister as to nature and type;
  - (b) all accommodation units on the Mine Site shall be removed from the Mine Site upon the Proponents’ workforce engaged in its mining activities being accommodated elsewhere than at the Mine Site;
  - (c) only members of the Proponents’ workforce engaged in its mining activities and persons visiting the Mine Site in connection with the Proponents’ mining activities on a short term basis or employed for a specific task of limited duration shall be permitted to stay on a Mine Site;

- (d) no dependants shall reside on a Mine Site;
  - (e) no pets shall be allowed on a Mine Site; and
  - (f) unless otherwise agreed by the Minister not more than 20 members of the Proponents' workforce may be accommodated on a Mine Site.
- (2) If approved proposals relating to accommodation on a Mine Site for the Proponents' workforce require the State to provide any services or facilities (including any expanded services or facilities the Minister considers are necessary) the State shall provide the services or facilities subject to the Proponents paying the capital cost involved and reasonable charges for maintenance and operation (except for operation of educational, medical or police services and except where and to the extent that the State otherwise agrees).
- (3) As and when required by the Minister after consultation with the relevant local government, the Proponents shall confer with the Minister with a view to assisting in the cost of providing any appropriate community, recreation, civic or social amenities required for the Proponents' workforce and associated population at any existing town in which the Proponents' workforce engaged in its mining activities is accommodated or is proposed to be accommodated.

**Establishment of Oakajee Port and Industrial Estate**

11. (1) In this Clause unless the context otherwise requires —
- “feasible”** means technically, economically, environmentally and financially feasible and **“feasibility”** has a similar meaning.
- (2) (a) The State wishes, if it is feasible to do so, to establish a port and an associated industrial estate at Oakajee situated north of Geraldton in the Mid West Region (the “State’s proposal”) to enable the Proponents to establish the Iron and Steel Plant and some Ancillary Facilities at Oakajee and to use a port at Oakajee for imports and exports required by the Project.
- (b) The Proponents wish, if it is feasible to do so, to establish the Iron and Steel Plant and some Ancillary Facilities at an

industrial estate established by the State at Oakajee and to use a port established by the State at Oakajee for imports and exports required by the Project (the “Proponents’ proposal”).

- (3) (a) The State shall promptly commence and expeditiously undertake field and office technical, site selection, engineering, environmental, heritage and financial studies necessary to determine the feasibility of the State’s proposal, and shall promptly initiate and expeditiously advance the obtaining of environmental, zoning and other approvals necessary to enable the State’s proposal to proceed.
- (b) The Proponents shall promptly commence and expeditiously undertake field and office technical, site selection, engineering, environmental, heritage and financial studies necessary to determine the feasibility of the Proponents’ proposal, and shall promptly initiate and expeditiously advance the obtaining of environmental, zoning and other approvals necessary to enable the Proponents’ proposal to proceed.
- (4) The parties shall keep each other fully informed in writing monthly as to the progress and results of their activities under subclause (3) and shall supply to each other such information in relation thereto as each may reasonably request having regard to commercial confidentiality considerations. The parties shall cooperate and consult with each other regarding matters referred to in subclause (3) and any other relevant studies in relation to subclause (3) which either party may wish to undertake.
- (5) The provisions of Clause 4(4) apply to the Proponents’ activities under subclause (3) as if the conduct of those activities was an obligation under Clause 4.
- (6) The parties acknowledge that any industrial estate at Oakajee and any port at Oakajee will be designed to cater for the heavy industry needs of the Mid West Region generally as well as the needs of the Project in particular.
- (7) The parties shall use all reasonable endeavours to complete by 30 April 1997 sufficient of the activities envisaged by subclauses (3) and (4) to enable the Minister and the Proponents to make the decision referred to in this subclause. The Minister and

the Proponents shall consult thereon immediately after 30 April 1997. If the Minister and the Proponents agree as a result of those consultations that either the State's proposal or the Proponents' proposal is not economically and financially feasible neither party will be obliged to give further consideration to the State's proposal, the Proponents' proposal or the selection of the Oakajee Plant Site.

- (8) Unless the Minister and the Proponents agree that either the State's proposal or the Proponents' proposal is not economically and financially feasible the parties, immediately after 30 June 1997 or such later date as the parties agree or on the earlier full completion of the activities envisaged by subclauses (3) and (4), shall in good faith consult regarding the feasibility of the State's proposal and the feasibility of the Proponents' proposal.
- (9) If the parties agree that the State's proposal and the Proponents' proposal are both feasible they shall consult further and use all reasonable endeavours to finalise as soon as practicable and in any event by not later than 31 July 1997 or such later date as the parties agree the location and size (which the parties agree will be approximately 200 hectares) of the Oakajee Plant Site.
- (10) If the parties agree on the Oakajee Plant Site the Proponents shall submit proposals pursuant to Clause 5 which shall be based on the premise that the Iron and Steel Plant and Power Station will be established at the Oakajee Plant Site.
- (11) If —
  - (a) the Minister and the Proponents agree pursuant to subclause (7) that either the State's proposal or the Proponents' proposal is not economically and financially feasible;
  - (b) after the consultations referred to in subclause (8) have been held the Proponents give notice to the Minister that in their opinion the Proponents' proposal is not feasible or the Minister gives notice to the Proponents that in his opinion the State's proposal is not feasible;
  - (c) the parties fail to agree pursuant to subclause (9) on the Oakajee Plant Site; or

- (d) the Minister and the Proponents agree at any time before the submission of proposals that either the State's proposal or the Proponents' proposal is not feasible, the Proponents shall submit proposals pursuant to Clause 5 which may be based on the premise that the Iron and Steel Plant and the Power Station will be located at the Narngulu Plant Site.

**Land**

- 12. (1) On application made by the Proponents, not later than 3 months after all proposals submitted pursuant to subclause (1) of Clause 5 have been approved or deemed to be approved or not later than 3 months after proposals submitted under subclause (1) of Clause 7 have been approved or deemed to be approved the State, insofar as is permitted by laws relating to native title, shall in accordance with the approved proposals grant to the Proponents, or arrange to have the appropriate authority or other interested instrumentality of the State grant on conditions set out in and for periods determined in accordance with subclause (5) and on such further terms and conditions as shall be reasonable having regard to the requirements of the Proponents —
  - (a) leases, licences or easements for access roads to Mine Sites and Plant Sites;
  - (b) leases for construction camps in the vicinity of the Mine Sites and Plant Sites providing accommodation and other facilities for the Proponents' workforce engaged in the establishment of a Mine or the construction and commissioning of Plant or of Ancillary Facilities; and
  - (c) other leases, licences for the use of land or easements as are appropriate for the Project

under and, except as otherwise provided in this Agreement, subject to the Land Act, the Mining Act or the *Petroleum Pipelines Act 1969* (each as modified by this Agreement).

- (2) Where any lease, licence or easement which is the subject of an approved proposal is granted before all the proposals submitted pursuant to subclause (1) of Clause 5 have been approved or determined each such lease, licence or easement shall be issued subject to a condition that if this Agreement ceases and determines

before all the said proposals submitted pursuant to subclause (1) of Clause 5 have been approved or determined, the lease, licence or easement as the case may be shall thereupon itself cease and determine subject to the provisions of Clause 38.

**Licence fees and rentals**

- (3) The Proponents shall pay in respect of the leases, licences and easements granted hereunder reasonable rentals or other reasonable amounts to be agreed between the Minister and the Proponents.

**Modification of Land Act**

- (4) For the purposes of this Agreement, in respect of any land the subject of or proposed to be the subject of a lease, licence or easement granted to the Proponents by the State under subclause (1) —
- (a) the Minister for Lands may lease to the Proponents any lot being town or suburban lands without offering that land to the public;
  - (b) the Minister for Lands may grant a lease of land to the Proponents without giving notice of the Proponents' application for that land or of the purpose or term for which it is proposed to be granted;
  - (c) an application for land made by the Proponents under subclause (1) shall take priority over any other application made for that land under the Land Act;
  - (d) it shall not be a prerequisite to the validity of any transfer, mortgage or sublease permitted under this Agreement of any lease or licence that the approval to the transfer, mortgage or sublease of the Minister for Lands or of an officer of the department of the State government assisting him in the administration of the Land Act be obtained;
  - (e) the Minister for Lands may grant to the Proponents occupancy rights over land on such terms and conditions as the Minister for Lands may determine; and



- (f) the Minister for Lands may grant leases or licences for terms or periods and on terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, terms and conditions and forms referred to in the Land Act.

The provisions of this subclause shall prevail over the provisions of the Land Act. The provisions of this subclause shall not operate so as to prejudice the rights of the State to determine any lease, licence or other title in accordance with the other provisions of this Agreement.

**Term of leases, licences and easements**

- (5) (a) Notwithstanding any provisions of the Land Act or the Mining Act or the *Petroleum Pipelines Act 1969* to the contrary the term of each lease, licence or easement granted under subclause (1) other than a lease granted under paragraph (b) of subclause (1) shall be for a period expiring 63 years after the commencement date with the right, exercisable subject to paragraph (b) by the Proponents giving written notice thereof to the Minister, to extend the term for a further period of 10 years upon the same terms and conditions including this right to extend the term.
- (b) The Proponents may only exercise their right to extend under paragraph (a) the term of any lease, licence or easement granted under subclause (1) —
- (i) prior to the determination of this Agreement; and
- (ii) not more than one year or less than six months before the expiration of the term of the lease, licence or easement.
- (c) The term of any lease for a construction camp shall be for a reasonable period agreed between the Minister and the Proponents which in any event shall be no greater than is required for the establishment of the Mine or the construction and commissioning of the Plant or Ancillary Facilities for which the camp is required and the rehabilitation of the land subject to it to the satisfaction of the Minister.

- (d) The term of any lease, licence or easement granted under subclause (1) shall, if the Proponents so require, be for a period shorter than that provided for under paragraph (a).
- (e) Each lease, licence or easement granted under subclause (1) shall be granted subject to the condition which shall survive the expiration or determination of this Agreement that it shall terminate if the Proponents, except with the consent of the Minister, cease for a period of 12 months to operate the Iron and Steel Plant.

**Resumption for the purposes of this Agreement**

13. (1) The State, pursuant to the Acquisition Act (as modified by this Agreement), may for the purpose of conferring interests therein on the Proponents take or resume any land which in the opinion of the Proponents is necessary for the Project and which the Minister determines is appropriate to be taken or resumed for the Project, and notwithstanding any other provisions of the Acquisition Act, may grant leases, licences or easements in respect of the whole or portions of that land to the Proponents in accordance with approved proposals. The provisions of subsections (2) to (7) inclusive of section 17, section 17A and subsections (1) and (2) of section 33C of the Acquisition Act shall not apply to or in respect of land taken or resumed hereunder or the resumption thereof. The Proponents shall pay to the State, on demand, the costs to the State of and incidental to any taking or resumption of land pursuant to this Clause, including but not limited to any compensation payable to any holder of native title or of native title rights and interest in the land.
- (2) For the purposes of this Agreement, and in the Acquisition Act, when construed for the purposes of this Agreement a reference to “land” shall be read as extending to any land, or to any portion of any land, or to the subsoil, surface or airspace relating thereto and to any estate, right, title, easement, lease, licence, privilege, native title right or interest or other interest, in, over, under, affecting, or in connection with that land or any portion, stratum or other specified sector of that land.

**Protection and management of the environment**

14. (1) The Proponents shall in respect of the matters referred to in paragraph (k) of subclause (1) of Clause 5 and which are the subject of approved proposals, carry out a continuous programme including monitoring to ascertain the effectiveness of the measures they are taking pursuant to such approved proposals for rehabilitation and the protection and management of the environment and shall, as and when reasonably required by the Minister from time to time, submit to the Minister a detailed report thereon.
- (2) Whenever as a result of its activities pursuant to subclause (1) or otherwise information becomes available to the Proponents which, in order to more effectively rehabilitate, protect or manage the environment, may necessitate or could require any changes or additions to any approved proposals or require matters not addressed in any such proposals to be addressed, the Proponents shall forthwith notify the Minister thereof and with such notification shall submit a detailed report thereon.
- (3) The Minister may, within 2 months of the receipt of a detailed report pursuant to subclause (1) or (2), notify the Proponents that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the report and such other reasonable matters as the Minister may require in connection therewith.
- (4) The Proponents shall, within 2 months of receipt of a notice given pursuant to subclause (3), submit to the Minister additional detailed proposals as required and the provisions of subclauses (1), (2), (3), (4) and (5) of Clause 6 shall mutatis mutandis apply.
- (5) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Proponents shall implement the decision of the Minister or any award on arbitration, as the case may be, in accordance with the terms thereof.

**Use of local labour professional services and materials**

15. (1) The Proponents shall, for the purposes of this Agreement —
- (a) except in those cases where the Proponents can demonstrate it is impracticable so to do, use labour available within

Western Australia or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;

- (b) 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 Western Australia, or if such services are not available within Western Australia, then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;
  - (c) 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;
  - (d) 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
  - (e) if, notwithstanding the foregoing provisions of this subclause, 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.
- (2) Except as otherwise agreed by the Minister, the Proponents 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 the same obligations as are referred to in subclause (1) and shall report to the Proponents concerning such third party's implementation of that condition.

- (3) The Proponents shall submit a report to the Minister at monthly intervals or such longer period as the Minister determines, commencing from the date of this Agreement, concerning their implementation of the provisions of this Clause, together with a copy of any report received by the Proponents pursuant to subclause (2) during that month 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.
- (4) The Proponents 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 they may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia, together with their reasons therefor and shall, as and when required by the Minister, consult with the Minister with respect thereto.

**Road — Private roads**

16. (1) The Proponents shall —
  - (a) be responsible for the cost of the construction and maintenance of all private roads which will be used in their activities hereunder;
  - (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 Proponents' activities and their invitees and licensees from using the private roads; and
  - (c) at any place where any private roads are constructed by the Proponents so as to cross any railways or to cross or intersect with any public roads provide at their cost such reasonable protection and signposting as may be required by

the owner of the railway or the Commissioner of Main Roads as the case may be.

**Maintenance of public roads**

- (2) 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 Proponents for the purposes of this Agreement to a standard similar to comparable public roads maintained by the Commissioner of Main Roads or a local government as the case may be.

**Upgrading of public roads**

- (3) In the event that for or in connection with the Proponents' activities hereunder the Proponents or the Proponents' workforce uses or wishes to use a public road (whether referred to in subclause (2) or otherwise) which is inadequate for the purpose, or any use by the Proponents or the Proponents' workforce of any public road results in excessive damage to or deterioration thereof (other than fair wear and tear), the Proponents 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.

**Acquisition of private roads**

- (4) Where a road constructed by the Proponents for their own use is subsequently required for public use, the State may, after consultation with the Proponents and so long as resumption thereof shall not unduly prejudice or interfere with the activities of the Proponents under this Agreement, resume and dedicate such road as a public road. Upon any such resumption the State shall pay to the Proponents such amount as is reasonable.

**Stone sand clay and gravel**

17. The State shall in accordance with approved proposals grant to the Proponents a mining lease or mining leases for the obtaining of stone, sand, clay and gravel for the construction of works the subject of approved proposals, such mining lease or mining leases to be granted

under and, except as otherwise provided herein, subject to the Mining Act but limited in term to a reasonable period required for construction of the works and rehabilitation in accordance with the proposals. No royalty shall be payable under the Mining Act in respect of stone, sand, clay and gravel obtained from any such mining lease.

**Water**

18. (1) The State and the Proponents shall agree upon the amounts and qualities of the Proponents' annual and daily maximum water requirements for use in its operations under this Agreement (which amounts or such other amounts as shall from time to time be agreed between the parties to be reasonable are hereinafter called "the Proponents' water requirements").
- (2) Except as otherwise specifically provided for under this Clause the Proponents' water requirements shall be obtained in accordance with laws applicable from time to time in Western Australia in respect of rights in water and the supply of water and water services.
- (3) Subject to such laws the Proponents may draw the Proponents' water requirements from —
- (a) any existing or augmented or extended water supply scheme;
  - (b) a water supply scheme developed and operated by the Proponents or an independent water service provider under the provisions of this Clause; or
  - (c) any combination of these sources.
- (4) The Proponents shall have the right, at the cost of the Proponents but otherwise without royalty, to explore for water and to develop any new source of water or any existing source of water which is not yet fully utilised which is capable of meeting all or part of the Proponents' water requirements on terms and conditions and with the rights to such water that are no less favourable than those upon which any third party including but not limited to the Water Corporation is or may be entitled to do the same activities.
- (5) The State shall grant or cause to be granted to the Proponents a licence, licences or successive licences (as the case may require) each for the maximum permitted period to develop and draw all or

part of the Proponents' water requirements from a specified source or sources and dispose of mine de-watering water and any residue water from the Plants at the Proponents' cost but otherwise without charge or royalty on such reasonable terms and conditions as are necessary to ensure good water resource management and the protection of the neighbouring areas as the Minister may from time to time reasonably require and during the continuance of this Agreement the State shall grant renewals of any such licence PROVIDED HOWEVER that should any licensed source prove inadequate to meet the State's commitments to the holders of licences issued prior to the Proponents' licence or licences as well as the Proponents' water requirements the State may on at least twelve months' prior notice to the Proponents (or on not less than 48 hours notice if in the opinion of the Minister an emergency exists) limit the amount of water which may be taken from that source at any one time or from time to time to the maximum which the Minister, after full consultation with the Proponents, reasonably determines that the source is hydrologically capable of meeting as aforesaid.

- (6) The State shall ensure that it is a condition of any subsequently granted licence to third parties to draw water from the same source as the Proponents' licence or licences following the commencement of this Agreement that in the event that the capacity of the water source is reduced such reduction shall be applied first to the third parties and thereafter if further reduction is necessary subject to subclause (5) above the entitlement of the Proponents to draw water from that source shall be reduced by such amount as may be agreed by the Minister and the Proponents and any shortfall in the Proponents' water requirements shall be provided for pursuant to the other provisions of this Agreement.
- (7) No royalty shall be payable by the Proponents for any water, whether potable or otherwise, drawn or used by the Proponents for operations carried out in accordance with approved proposals.
- (8) Where any new water source identified by the Proponents is beneath Crown land (including land the subject of a pastoral lease) the Proponents shall in accordance with Clause 12 apply for such leases or licences for the use of land as are appropriate for the Project in relation to drawing water from that water source.



- (9) Where any new water source identified by the Proponents is beneath land other than Crown land the Proponents shall, before any licence is granted to them under subclause (5), make appropriate arrangements with the owner of the land for access to the water source.
- (10) The Proponents shall to the extent that it is practical and economical design, construct and operate the Plants and Mines so as to ensure the most efficient use of available water resources, and to that intent shall provide for the re-use of water, the use of Mine de-watering water and the use of any residue water from Plant Sites.
- (11) The State shall ensure that no rights to mine minerals, petroleum or other substances are granted over the area of any water source from which the Proponents are drawing water or from time to time have a right to draw water under this Clause unless the Minister reasonably determines that such grant is not likely to unduly prejudice or to interfere with the activities of the Proponents under this Clause and is not likely to render the water source incapable of supplying the Proponents' water requirements on a continuous basis.

### **Electricity**

19. (1) In order to supply electricity necessary for the Project the Proponents may, subject to the consent of the Minister under section 7(1) of the *Electricity Act 1945* as modified in subclause (3), establish, maintain and operate —
  - (a) a gas fired power station located within or adjoining the site of the Iron and Steel Plant with a generating capacity as specified in approved proposals; and
  - (b) electricity transmission and distribution facilities and associated works and facilities to supply electricity in accordance with this Clause from the Power Station to the Plants, Mines and Ancillary Facilities and to other consumers in the industrial estate in which the Power Station is located who have an electricity requirement of at least one megawatt and are approved by the Minister from time to time for the purposes of this Clause.

- (2) The proposals submitted to the Minister pursuant to Clause 5 with respect to the supply of electricity necessary for the Project shall contain all information and details reasonably required under that Clause with respect to the establishment and operation of the Power Station and electricity transmission and distribution facilities and associated works and facilities including (but not limited to) the following:
- (a) the site of the Power Station and routes for the electricity transmission lines;
  - (b) the Power Station, the electricity transmission and distribution facilities and associated works and facilities; and
  - (c) all switching stations and interconnection facilities and other works, services or facilities required for the supply of electricity necessary for the Project.
- (3) For the purposes of this Agreement in respect of the Power Station and electricity transmission and distribution facilities and associated works and facilities, the *Electricity Act 1945* shall be deemed to be modified by —
- (a) the deletion of sections 13(4), 13(5), 13(6) and 17, paragraphs (a), (d) and (l) of section 32(1) and section 43;
  - (b) the deletion of “Co-ordinator” whenever it occurs in sections 7(1), 8(1), 8(3), 12(1), 13(1), 13(2), 13(3) and 14 and the deletion of “Director” in section 20 and the substitution in each case of —  
“Minister”; and
  - (c) the deletion of “twenty-one years” in section 12(1) and the substitution of —  
“the term of the agreement (as amended from time to time) ratified by the *Iron and Steel (Mid-West) Agreement Act 1997*”.
- (4) Subject to subclause (5) and notwithstanding section 93 of the *Electricity Corporation Act 1994*, Clause 2(1) of Schedule 5 to that Act and Clause 2(1) of Schedule 6 to that Act, the State shall ensure that the Electricity Corporation, where such access is

technically feasible and economically feasible, shall grant access for electricity transmission and distribution through and interconnection with any integrated system of power supply of the Electricity Corporation (or portions thereof) for the purpose of enabling the supply of electricity from the Power Station —

- (a) to any Mine, Plant, or Ancillary Facility; and
  - (b) to the other consumers referred to in paragraph (b) of subclause (1).
- (5) (a) The terms and conditions of any access granted pursuant to subclause (4) shall be subject to the third party access arrangements applicable under the *Electricity Corporation Act 1994*. Such arrangements shall apply notwithstanding that the electricity requirements of the consumers mentioned in paragraphs (a) and (b) of subclause (4) may be less than is otherwise required for such arrangements to be applicable.
- (b) If such third party access arrangements are not in existence or are not operative then the terms and conditions of any access granted pursuant to subclause (4) shall be subject to arrangements to be agreed between the Electricity Corporation and the Proponents (subject always however to emergency powers of the Electricity Corporation and such operational and technical requirements as are necessary for the safe operation of its electricity grid) or, failing agreement on such terms and conditions, as may be determined by arbitration between the Electricity Corporation and the Proponents pursuant to the *Commercial Arbitration Act 1985*.

**Natural gas transmission**

20. (1) In this Clause —

**“Gas Transmission Proposals”** means proposals submitted under Clause 5 in respect of the Gas Transmission Services;

**“Gas Transmission Services”** means the Proponents’ present and future gas transmission services required for the purposes of the Project;

**“Petroleum Pipelines Act”** means the *Petroleum Pipelines Act 1969*; and

**“Pipeline”** means the gas pipeline referred to in subclause (2).

- (2) The Proponents shall submit Gas Transmission Proposals which may provide for the Gas Transmission Services to be provided by means of a gas pipeline from the North West of Western Australia to the Iron and Steel Plant and the Power Station to be constructed and operated in accordance with the provisions of this Clause by the Proponents.
- (3) The Proponents shall submit with the Gas Transmission Proposals evidence to the satisfaction of the Minister —
  - (a) that the Proponents have provided to the Gas Corporation such information as the Gas Corporation may reasonably require to determine the nature and extent of the Gas Transmission Services (being information that does not differ materially from that provided by the Proponents to any other parties from whom the Proponents have received submissions for the provision of the Gas Transmission Services);
  - (b) that the Proponents have, after the provision of the information referred to in paragraph (a), allowed the Gas Corporation at least one month to make submissions for the provision of the Gas Transmission Services; and
  - (c) that the Proponents have considered in good faith all submissions made to them by the Gas Corporation for the provision of the Gas Transmission Services and have used all reasonable endeavours to enter into an agreement with the Gas Corporation to that effect but that agreement has not been reached.
- (4) If the Pipeline is provided for in the Gas Transmission Proposals the Proponents shall provide to the Minister, as part of the Gas Transmission Proposals, the information and other matters referred to in paragraphs (c) — (j) of section 8(1) of the Petroleum Pipelines Act and sections 8(2), 8(3), 8(4) and 8(5) shall apply *mutatis mutandis* to those proposals as if those proposals were an application for a licence under that Act but otherwise section 8 of that Act shall not apply in relation to the Pipeline.

- (5) The Gas Transmission Proposals may, subject to section 67 of the *Petroleum Act 1967*, include proposals for gas storage and recovery arrangements as are appropriate for the purposes of the Iron and Steel Plant and the Power Station including provision for the Pipeline (if the Pipeline is provided for in the Gas Transmission Proposals) to extend to the gas storage facilities.
- (6) The Gas Transmission Proposals may include provision in the capacity of the Pipeline for the reasonably anticipated requirements in respect of such capacity of third party industries which are reasonably expected to be located in the industrial estate in which the Iron and Steel Plant is located or elsewhere north of latitude 29° South PROVIDED HOWEVER that nothing in this Agreement shall affect any requirement for any person to obtain any authority licence or other approval or consent in respect of the supply and/or transmission of gas through or from the Pipeline.
- (7) If the Proponents do not comply with subclause (3), the Minister may in his discretion refuse to consider or make a decision on the Gas Transmission Proposals, but otherwise the provisions of Clause 6 shall apply to the Gas Transmission Proposals.
- (8) For the purposes of this Agreement in respect of the Pipeline and any licence relating thereto —
- (a) the Petroleum Pipelines Act shall be deemed modified by —
- (i) the substitution for section 10 of the following section —
- “10. The Minister may on application made pursuant to Clause 20(9) of the agreement (as amended from time to time) ratified by the *Iron and Steel (Mid West) Agreement Act 1997* grant a licence in accordance with the provisions of that agreement and cause to be published in the *Government Gazette* a notice that the licence has been granted.”;
- (ii) in subsection (5) of section 21, by inserting after “so conveyed” the following —

“Provided that any direction as to amounts to be paid shall not be determined until after consultation between the Minister, the Minister administering the *Iron and Steel (Mid West) Agreement Act 1997* and the Proponents under the agreement ratified by that Act”;

- (iii) the deletion of paragraph (c) in the definition of “pipeline” in section 4; and
  - (iv) the deletion of sections 9, 11, 12, 13, 19(1), (2) and (3), 24, 26, 27 and 28; and
- (b) the *Energy Corporation (Powers) Act 1979* shall be deemed modified by the deletion of paragraph (b) of section 55.
- (9) On application made by the Proponents after the Proponents have commenced construction on the site of the Iron and Steel Plant and have submitted evidence to the satisfaction of the Minister that they have spent on the Project or have entered into binding commitments to spend on construction on the site of the Iron and Steel Plant a total not less than \$100 million the State shall in accordance with Gas Transmission Proposals approved or deemed to be approved pursuant to Clause 6 grant to the Proponents, or arrange to have the appropriate authority or other interested instrumentality of the State grant, a pipeline licence for the Pipeline on such terms and conditions as shall be reasonable to meet the requirements of the State and the Proponents, such licence to be granted under and, except as otherwise provided in this Agreement, subject to the Petroleum Pipelines Act (as modified by this Agreement).
- (10) Licence fees in accordance with the Petroleum Pipelines Act shall apply to the pipeline licence for the Pipeline.
- (11) (a) The term of the licence shall be for a period expiring 21 years after the commencement date with, during the currency of this Agreement two automatic extensions each for a period of 21 years on the same terms and conditions.
- (b) On the determination or expiration of this Agreement the pipeline licence shall continue for the unexpired period of the then current term under and subject to the Petroleum

Pipelines Act (unaffected by any modification of that Act by this Clause).

**Railways**

- 21 (1) The Proponents may in accordance with approved proposals use rail or road or rail and road transport for the carriage of inputs necessary for the Project and of finished products, partly finished products and waste products of the Project between the Mine Sites the Plant Sites and the port used from time to time for the imports and exports required for the Project. Any requirement in respect of rail transport contained in approved proposals is referred to in this Clause as “the Proponents’ rail transport requirements”.
- (2) The Proponents shall use reasonable endeavours to conclude on fair and reasonable commercial terms and conditions, arrangements with Westrail which will meet the Proponents’ rail transport requirements.
- (3) The arrangements referred to in subclause (2) may, notwithstanding the provisions of the *Government Railway Act 1904*, provide for one or more of the following —
- (a) the upgrading of part or all of Westrail’s existing railway between the port of Geraldton and Morawa to a standard suitable for the Proponents’ rail transport requirements;
  - (b) the extension of Westrail’s existing railway to the Mines at Tallering Peak, Koolanooka and Blue Hills;
  - (c) carriage by Westrail using its own locomotives, freight cars and other railway stock on Westrail’s existing, upgraded or extended railway; and
  - (d) carriage by the Proponents using their own locomotives, freight cars and other railway stock on Westrail’s existing, upgraded or extended railway.
- (4) If the Proponents demonstrate to the satisfaction of the Minister that they are unable to conclude with Westrail the arrangements necessary to meet the Proponents’ rail transport requirements then the Proponents may submit to the Minister additional proposals in accordance with Clause 7 providing for the construction and operation by the Proponents of their own narrow gauge railway on

a route agreed with the Minister between the Plant Sites and specified Mine Sites or between specified Mine Sites and Westrail's railway.

- (5) Before submitting any proposals envisaged under subclause (4) the Proponents shall meet with the Minister to seek agreement on the route for their proposed railway and the land required for it. 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 cost (all of which shall be borne by the Proponents) of acquiring the land.
- (6) Subject to and in accordance with any approved proposals envisaged under subclause (4) the Proponents shall 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 Acquisition Act, to the extent that they are applicable) the railway specified in the approved proposals and shall also construct inter alia any necessary deviations loops spurs sidings crossings 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 specified railway crosses or intersects with major roads or existing railways (all of which together with the specified railway is referred to in this Agreement as "the Proponents' railway") and shall operate the Proponents' railway with sufficient and adequate locomotives, freight cars and other railway stock and equipment to meet the Proponents' rail transport requirements.
- (7) The Proponents shall during the continuance of this Agreement operate the Proponents' railway in a safe and proper manner and shall provide crossings for livestock and also for any roads and other railways which now exist and where they can do so without unduly prejudicing or interfering with their activities under this Agreement shall allow such crossings for roads and railways which may be constructed for future needs and which may be required to cross the Proponents' railway.
- (8) The Proponents shall if and when reasonably required so to do carry the freight of the State and third parties over the Proponents'



railway and allow the State and third parties to operate their own locomotives, freight cars and other railway stock on the Proponents' railway where they can do so without unduly prejudicing or interfering with the Proponents' activities under this Agreement and subject to the payment to the Proponents of the charges prescribed by and for the time being payable under any by-laws made by the Proponents in respect of the carriage of freight over and the operation of railway stock on the Proponents' 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 shall be reasonable having regard to the cost to the Proponents of the construction and operation of the Proponents' railway.

- (9) In relation to their use of the Proponents' railway when carrying freight pursuant to subclause (8) the Proponents shall not be deemed to be a common carrier at law or otherwise.
- (10) The Minister may upon recommendation by the Proponents make alter and repeal by-laws for the purpose of enabling the Proponents to fulfil their obligations under this Clause upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Proponents) as set out in such by-laws consistent with the provisions hereof. Should the Minister at any time consider that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Proponents shall recommend such alteration or repeal thereof as the Minister may reasonably require or (in the event of there being any dispute as to the reasonableness of such requirement) then as may be decided by arbitration hereunder.
- (11) For the purposes of this Agreement in respect of the Proponents' railway the *Government Railways Act 1904* is deemed to be modified by —
  - (a) the deletion in section 68(1) of —

“seven years from the date thereof” and the substitution therefor of —

“the term of the agreement (as amended from time to time) ratified by the *Iron and Steel (Mid West) Agreement Act 1997*”;

- (b) the insertion in sections 68(3) and 68(4) after “Commission” of —

“with the consent of the Minister, as defined in the agreement (as amended from time to time) ratified by the *Iron and Steel (Mid West) Agreement Act 1997*”;

- (c) the deletion of section 68(5);  
(d) the deletion in section 68(6) of —

“either of the two last preceding subsections hereof” and the substitution therefor of —

“subsection (4).”; and

- (e) the deletion in section 69(2) of —

“three years from the date thereof” and the substitution therefor of —

“the term of the agreement (as amended from time to time) ratified by the *Iron and Steel (Mid West) Agreement Act 1997*”.

### **Geraldton Port Facilities**

22. (1) In this Clause —

- (a) “**Access Area**” means the area between No. 6 Berth and the Storage Area, including the services corridor, and depicted as “Access Area” on the Plan;
- (b) “**No. 6 Berth**” means the Port Authority’s general purpose berth known as No. 6 Berth situated in the Port, comprising a strip of land approximately 20 metres in width between the face of the berth and the rear rail of the gantry crane proposed to be installed on the berth and depicted as “No. 6 Berth” on the Plan;
- (c) “**Plan**” means the plan of the vicinity of No. 6 Berth attached to this Agreement and initialled by or on behalf of the parties for the purposes of identification;

- (d) **“Port”** means the port as defined in section 5 of the *Geraldton Port Authority Act 1968*;
  - (e) **“Port Authority”** means the body corporate established by the name of the Geraldton Port Authority by the *Geraldton Port Authority Act 1968*; and
  - (f) **“Storage Area”** means the area of 12,500 square metres in the vicinity of No. 6 Berth depicted as “Storage Area” on the Plan.
- (2) Within 30 days of the date on which the proposals submitted by the Proponents pursuant to paragraph (i) of subclause (1) of Clause 5 become approved proposals the Proponents shall give notice to the Port Authority of the date, being a date not less than 12 months after the date of the notice, (the “specified date”) from which the Proponents anticipate they will require priority access to No. 6 Berth. The Proponents shall promptly give notice to the Port Authority of any change they reasonably anticipate from time to time in the specified date (which except with the agreement of the Port Authority may not be earlier in time than the specified date).
  - (3) Prior to the specified date, the Port Authority and the Proponents shall agree on any strengthening or other improvements or modifications to No. 6 Berth, the Access Area and the Storage Area required to meet the Proponents’ shipping requirements pursuant to this Agreement and on appropriate arrangements for use by the Proponents of each of those areas.
  - (4) The arrangements referred to in subclause (3) shall be on such fair and reasonable terms as are agreed between the Port Authority and the Proponents or, failing such agreement, determined by the Minister after consultation with the Port Authority and the Proponents.
  - (5) The arrangements referred to in subclause (3) shall include —
    - (a) a lease for the term of this Agreement in favour of the Proponents at a reasonable rental and on reasonable terms of the Storage Area for the purpose of the handling and storage of iron and steel products for export, imported steel scrap and other cargo approved by the Port Authority;

- (b) an option exercisable by the Proponents within 10 years of the specified date on their demonstrating to the reasonable satisfaction of the Port Authority that the Storage Area is inadequate for the purposes of the lease, to take a lease at a reasonable rental and on reasonable terms of such additional land in the vicinity of No. 6 Berth as is reasonably required by the Proponents and can be made available by the Port Authority for the purpose of the handling and storage of iron and steel products for export, imported steel scrap and other cargo approved by the Port Authority;
- (c) an agreement giving the Proponents priority access to No. 6 Berth;
- (d) arrangements for access at all times by the Proponents' work force with vehicles and equipment for the purposes of transporting, loading, unloading and handling iron and steel products for export, imported steel scrap and other cargo approved by the Port Authority;
- (e) an agreement under which the Port Authority, the Proponents or a third party will install, operate and make available at a charge to the Proponents and to third parties (where such use does not prejudice or interfere with the operations of the Proponents or the Port Authority) equipment necessary for the efficient loading and unloading of vessels using No. 6 Berth in accordance with the Proponents' shipping requirements pursuant to this Agreement, provided that if the Port Authority installs and operates such equipment the actual capital cost of the equipment shall be incorporated into the charges payable by the Proponents for the use of the equipment;
- (f) agreements providing for use by the Proponents of stevedoring services provided by or independently of the Port Authority; and
- (g) agreements as to port dues payable to the Port Authority under the *Geraldton Port Authority Act 1968* and as to any other fees and charges payable to the Port Authority by the Proponents.

- (6) The arrangements referred to in subclause (3) may, if required by the Proponents, also include an agreement to the following effect —
- (a) The Proponents shall have exclusive access to No. 6 Berth or, with the agreement of the Port Authority, an alternative berth whether existing or proposed in consideration for the payment by the Proponents to the Port Authority of the full actual capital cost to the Port Authority of providing equivalent alternative berthing facilities, lay down areas and adjacent handling and storage areas at the Port and all other reasonable costs of the Port Authority resulting from it giving the Proponents exclusive access to No. 6 Berth or such alternative berth, or any lesser amount agreed by the Port Authority.
  - (b) The costs associated with the provision of alternative facilities and areas may be made payable in a lump sum or through amounts payable pursuant to subclause (5)(g) or otherwise, shall be fair and reasonable and shall not duplicate charges already incurred by the Proponents in connection with the capital costs of No. 6 Berth, the Access Area and the Storage Area, unless those capital costs were incurred by the Port Authority after the date of this Agreement specifically to meet the requirements of the Proponents. The Port Authority shall consult and endeavour to reach agreement with the Proponents regarding the development and costs of the alternative facilities and areas and regarding the revision of amounts payable pursuant to subclause (5)(g), and any dispute thereon will be determined by the Minister after consultation with the Port Authority and the Proponents.
  - (c) The Proponents shall give the Port Authority not less than 24 months notice of the date from which they will require exclusive access to No. 6 Berth or any alternative berth.
  - (d) The Proponents' rights of exclusive access to a berth ("the Proponents' berth") shall not apply while the Proponents occupy any other berth in the Port but do not occupy the Proponents' berth. If the Proponents' berth is subsequently occupied by a vessel discharging or loading cargo on behalf of a third party while the Proponents' rights of exclusive

access do not apply and if the Proponents then wish to occupy the Proponents' berth and another berth is available the Proponents shall bear the reasonable costs of moving that vessel to the other berth. In this paragraph occupancy of a berth by the Proponents means occupancy by a vessel loading or unloading cargo for the purposes of the Proponents' shipping requirements pursuant to this Agreement.

- (7) For the purposes of this Agreement in respect of any lease referred to in subclause (5) the *Ports (Functions) Act 1993* shall be deemed to be modified by the deletion of section 14(2).

**Oakajee Infrastructure**

23. (1) This Clause only applies in the event that the parties agree on the Oakajee Plant Site pursuant to subclause (9) of Clause 11.
- (2) (a) On application made by the Proponents within the three month period after all proposals submitted pursuant to subclause (1) of Clause 5 (other than any Gas Transmission Proposals) have been approved or deemed to be approved the State shall lease to the Proponents or arrange to have the appropriate authority or other interested instrumentality of the State lease to the Proponents the Oakajee Plant Site for a term of 5 years at an annual rental of 10% of the current market value of the land at the time of the application assessed by the Valuer General on the basis that the land is zoned for industrial purposes and is serviced but otherwise unimproved, subject to such terms and conditions as shall be reasonable having regard to the requirements of the Proponents.
- (b) The lease referred to in paragraph (a) shall include an option exercisable by the Proponents during the term of the lease, but only after the Proponents have commenced construction on the site of the Iron and Steel Plant and have submitted evidence to the satisfaction of the Minister that they have spent on the Project or have entered into binding commitments to spend on construction on the site of the Iron and Steel Plant a total of not less than \$100 million, to purchase the Oakajee Plant Site for a consideration equal to

the value of the land assessed for the purposes of paragraph (a).

- (c) The State shall set aside or have the appropriate authority or other interested instrumentality of the State set aside for the purposes of the Project additional land in the Oakajee industrial estate the location and size of which is to be finalised by the parties but which the parties agree will be contiguous to the Oakajee Plant Site and will measure approximately 100 hectares. The State or the relevant authority or instrumentality shall grant to the Proponents an option to purchase such additional land exercisable within 15 years of the commencement date but only after the Proponents have submitted and the Minister has approved or is deemed to have approved additional proposals pursuant to Clause 7 demonstrating a requirement for such additional land and providing for the production of the Iron and Steel Plant to be expanded or for the product of the Iron and Steel Plant to be further processed. The consideration payable for the purchase of the additional land shall be the current market value of the land at the time the option is exercised assessed by the Valuer General on the basis that the land is unimproved but zoned for industrial purposes.
- (3) The State shall at its sole cost construct or upgrade those public roads approved by the Minister between the boundary of the Oakajee Plant Site and the Port of Geraldton which are necessary for the operation of the Iron and Steel Plant (assuming its output to be approximately 2.4 million tonnes per annum of steel) (other than the carriage of iron and steel products for export), the Power Station and Ancillary Facilities.
- (4)
  - (a) Subject to Clause 18 the Proponents may obtain water required at the Oakajee Plant Site from the Water Corporation or from a water supply scheme developed and operated by the Proponents or any other licensed water service provider.
  - (b) If the Proponents obtain such water from the Water Corporation the State shall meet so much of the capital costs of the Water Corporation supplying water necessary for the operation of the Iron and Steel Plant (assuming its output to

- be approximately 2.4 million tonnes per annum of steel), the Power Station and Ancillary Facilities, as exceed the capital costs which would have been incurred as a result of the Water Corporation supplying a similar amount and quality of water to the Proponents at the Narngulu Plant Site.
- (c) The capital costs met by the State pursuant to paragraph (b) shall not be reflected in charges payable by the Proponents for the supply of water.
- (d) If the Proponents obtain the water referred to in paragraph (b) from a water supply scheme developed and operated by the Proponents or any other licensed water service provider the State will be under no obligation to meet or contribute to the capital costs of the Proponents or the licensed water service provider supplying such water.
- (5) (a) The State shall meet the capital costs of constructing electricity transmission facilities enabling electricity required at the Oakajee Plant Site for general plant use but not for use in any electric arc furnace to a maximum demand of 20 megawatts to be supplied to the Oakajee Plant Site from the existing Electricity Corporation electricity transmission system but may recover from the Proponents the capital costs which would have been incurred as a result of the Electricity Corporation supplying a similar electricity requirement to the Proponents at the Narngulu Plant Site.
- (b) The capital costs met by the State pursuant to paragraph (a) shall not be reflected in charges payable by the Proponents for the supply of electricity.
- (6) (a) The State shall construct at its sole cost or cause Westrail to construct at its sole cost a railway suitable for the operation of the Iron and Steel Plant (assuming its output to be approximately 2.4 million tonnes per annum of steel), the Power Station and Ancillary Facilities linking the Oakajee Plant Site to the existing Geraldton to Mullewa railway line.
- (b) The State shall maintain at its sole cost or cause Westrail to maintain at its sole cost until the port at Oakajee is operational and capable of being used for the imports and exports required by the Project the railway linking the



Oakajee Plant Site to the port of Geraldton via the railway constructed under paragraph (a).

- (c) The capital and maintenance costs met by the State or Westrail pursuant to paragraphs (a) and (b) shall not be reflected in charges payable by the Proponents for rail services.
- (7) (a) The State shall construct and operate or cause some other person to construct and operate a port at Oakajee capable of being used for the export of steel slab in fully loaded Panamax vessels and for the import or export of steel scrap and general cargoes in Handymax vessels with —
  - (i) a berth (without loading equipment) suitable for loading steel slab onto a Panamax vessel;
  - (ii) a further berth (without loading or offloading equipment) suitable for loading general cargoes onto and offloading steel scrap and general cargoes from a Handymax vessel; and
  - (iii) a road network within the port permitting the use of motor vehicles for loading and offloading as envisaged in subparagraphs (i) and (ii) including the use of steel slab carriers of up to 160 tonnes gross weight for loading steel slab.
- (b) The State shall use all reasonable endeavours to enable the construction of the port at Oakajee to be completed as soon as practicable and in any event by not later than 5 years after the commencement of construction of the Iron and Steel Plant.
- (c) The parties acknowledge that it may be necessary to use the existing port at Geraldton for the purposes of the Project until construction of the port at Oakajee is completed.
- (d) With effect from the date on which the parties agree on the Oakajee Plant Site pursuant to subclause (9) of Clause 11, the following provisions of Clause 22 will cease to apply —
  - (i) the obligation imposed under subclause (3) on the Port Authority (as defined in Clause 22) and the

Proponents to agree on any strengthening or other improvements or modifications to No. 6 Berth, the Access Area and the Storage Area (all as defined in Clause 22);

- (ii) paragraph (b) of subclause (5); and
  - (iii) subclause (6).
- (e) With effect from the end of the third month following that in which the construction of the port at Oakajee is completed and the port is operational —
- (i) all arrangements made between the Port Authority (as defined in Clause 22) and the Proponents under subclause (3) of Clause 22 will terminate;
  - (ii) subclause (7) of Clause 22 will cease to apply; and
  - (iii) the Proponents shall use the port at Oakajee for imports and exports required by the Project other than minor and incidental cargoes which it would be uneconomical or technically impractical to import or export through the port and except when the port, for any reason not attributable to the Proponents, cannot be used or is unavailable for use for such imports or exports.
- (8) In carrying out its obligations under subclauses (3), (4), (5) and (6) the State shall use all reasonable endeavours to enable time programmes included by the Proponents in proposals submitted pursuant to Clause 5 to be met.

**Commonwealth licences and consents**

24. (1) The Proponents shall 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 any licence or consent under the laws of the Commonwealth necessary to enable or permit the Proponents to enter into this Agreement and to perform any of their obligations hereunder.
- (2) On request by the Proponents the State shall make representations to the Commonwealth or to the Commonwealth constituted agency,

authority or instrumentality concerned for the grant to the Proponents of any licence or consent mentioned in subclause (1).

**Subcontracting**

25. Without affecting the liabilities of the parties under this Agreement the State and the Proponents shall have the right from time to time to entrust to third parties the carrying out of any portions of the activities which it is or they are authorised or obliged to carry out hereunder.

**Zoning**

26. The State shall ensure after consultation with the relevant local government, that the Plant Sites, the Mine Sites and any other lands the subject of any lease, licence or easement granted to the Proponents under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the activities of the Proponents hereunder may be undertaken and carried out thereon without any interference or interruption by the State or by any State agency or instrumentality or by any local government or other authority of the State on the ground that such activities are contrary to any zoning, by-law, regulation or order.

**Rating**

27. The State shall ensure during the currency of this Agreement that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of the Plant Sites, the Mine Sites and any other lands the subject of any lease, licence or easement granted pursuant to this Agreement (except any parts of such lands on which accommodation units or housing for the Proponents' workforce is erected or which is occupied in connection with such accommodation units or housing and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the activities carried out by the Proponents pursuant to approved proposals) shall for rating purposes under the *Local Government Act 1995*, be deemed to be on the unimproved value thereof, and no such lands shall be subject to any discriminatory rate.

**No discriminatory rates**

28. Except as provided in this Agreement, the State shall not impose, nor shall it permit or authorise any of its agencies or instrumentalities or any

local government or other authority of the State to impose discriminatory taxes, rates or charges of any nature whatsoever on or in respect of the titles, property or other assets, products, materials or services used or produced by or through the activities of the Proponents in the conduct of their business hereunder, nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Proponents of full enjoyment of the rights granted and intended to be granted under this Agreement.

**No resumption**

29. Subject to the performance by the Proponents of their obligations under this Agreement, the State shall not, during the currency of this Agreement, without the consent of the Proponents, resume or suffer or permit to be resumed by any State instrumentality or by any local government or other authority of the State any of the works, installations, plant, equipment or other property for the time being belonging to the Proponents and the subject of or used for the purpose of this Agreement AND without the consent of the Proponents (which shall not be unreasonably withheld), the State shall not create or grant or permit or suffer to be created or granted by any State instrumentality, local government, or other authority of the State any road, right of way, water right or easement of any nature or kind whatsoever over or in respect of Mine Sites, Plant Sites or any other lands the subject of any lease, licence or easement granted to the Proponents under this Agreement which may unduly prejudice or interfere with the Proponents' activities under this Agreement.

**Indemnity**

30. The Proponents shall indemnify and keep indemnified the State and its servants, agents and contractors in respect of all actions, suits, claims, demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Proponents pursuant to this Agreement or relating to their activities hereunder or arising out of or in connection with the construction, maintenance or use by the Proponents or their servants, agents, contractors or assignees of the Proponents' works or services the subject of this Agreement or the plant, apparatus or equipment installed in connection therewith PROVIDED THAT, without in any way affecting the Proponents' obligations to the State under Clause 13, the foregoing provisions of this Clause shall not apply to any resumption by the State pursuant to Clause 13 AND PROVIDED

FURTHER THAT, subject to the provisions of any other relevant Act, such indemnity shall not apply in circumstances where the State, its servants, agents, or contractors are negligent in carrying out work for the Proponents pursuant to this Agreement.

**Assignment**

31. (1) Subject to the provisions of this Clause, the Proponents may at any time assign, mortgage, charge, sublet or dispose of to any person, with the consent of the Minister, the whole or any part of the rights of the Proponents hereunder (including their rights to or as the holders of any lease, licence or easement) and of the obligations of the Proponents hereunder subject however, in the case of an assignment, subletting or disposition, to the assignee, sublessee or disponent (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 Proponents to be complied with, observed or performed in regard to the matter or matters the subject of such assignment, subletting or disposition.
- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1), the Proponents shall, at all times during the currency of this Agreement, be and remain liable for the due and punctual performance and observance of all the covenants and agreements on their part contained in this Agreement and in any lease, licence, easement or other title the subject of an assignment, mortgage, subletting or disposition under subclause (1) PROVIDED THAT the Minister may agree to release the Proponents from such liability where the Minister considers such release will not be contrary to the interests of the State.
- (3) Notwithstanding the provisions of the Land Act and the *Transfer of Land Act 1893*, insofar as the same or any of them may apply —
- (a) no assignment, mortgage, charge, sublease or disposition made or given pursuant to this Clause of or over any lease, licence or easement granted under or pursuant to this Agreement by the Proponents or any assignee, sublessee or disponent who has executed and is for the time being bound by deed of covenant made pursuant to this Clause; and

- (b) 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 this Clause, and no equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent (otherwise than as required by this Clause).

**Variation**

32. (1) 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 or of any lease, licence or easement, granted under or pursuant to this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the subject matter of this Agreement.
- (2) The Minister shall cause any agreement made pursuant to subclause (1) 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.
- (3) Either House may, within 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.

**Force majeure**

33. (1) The obligations of a party under this Agreement shall be suspended while that party is prevented from complying with those obligations by an event or circumstance of the kind described below.
- (2) The events and circumstances referred to in subclause (1) are those beyond the power and control of the party responsible for the performance of those obligations including, without limiting the generality of the foregoing, delays or any such temporary suspension as aforesaid caused by or arising from act of God, force majeure, earthquakes, floods, storms, tempest, washaways, fire

(unless caused by the actual fault or privity of the party responsible for such performance), act of war, act of public enemies, riots, civil commotions, strikes, pickets, industrial boycotts, lockouts, stoppages, restraint of labour or other similar acts (whether partial or general), acts or omissions of the Commonwealth, shortages of labour or essential materials, reasonable failure to secure contractors, delays of contractors 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 an act authorised by this Agreement or, where the State is the party claiming force majeure, any act of the State or any authority of the State), or factors that could not reasonably have been foreseen.

- (3) The party whose performance of obligations is affected by any of the said events or circumstances shall promptly give notice thereof to the other party and shall use its best endeavours to minimise the effects thereof as soon as possible.

#### **Power to extend periods**

34. Notwithstanding any provision of this Agreement, the Minister may, at the request of the Proponents from time to time, extend or further extend any period or vary or further vary any date referred to in this Agreement or in any approved proposal 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.

#### **Consultation**

35. The Proponents shall, during the currency of this Agreement, consult with and keep the State fully informed on a confidential basis concerning any action that the Proponents 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.

#### **Arbitration**

36. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement, the construction of this Agreement or as to the rights, duties or liabilities of either party under this Agreement, or as to any matter to be agreed upon between the parties under this Agreement, shall, in default of

agreement between the parties and in the absence of any provision in this Agreement to the contrary, be referred to and settled by arbitration under the provisions of the *Commercial Arbitration Act 1985* and, notwithstanding section 20(1) of that Act, each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.

- (2) Except where otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State, the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered, upon the application of a party, to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which, having regard to the circumstances, may reasonably be required in order to preserve the rights of that party under this Agreement and an award may, in the name of the Minister, grant any further extension or variation for that purpose.

**Determination of Agreement**

37. (1) If —
- (a) (i) the Proponents make default which the State considers material in the due performance or observance of any of the covenants or obligations of the Proponents in this Agreement or in any lease, licence or other title granted or assigned under this Agreement on their part to be performed or observed; or
  - (ii) the Proponents repudiate this Agreement or abandon their activities under this Agreement, and such matter is not remedied within a period of 180 days after notice is given by the State as provided in subclause (2) or, if the matter is referred to arbitration, then within the period mentioned in subclause (3)(b); or
  - (b) either Proponent goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 3 months from the date of such liquidation the interest



of that Proponent is assigned to an assignee approved by the Minister under Clause 31

the State may, by notice to the Proponents, determine this Agreement.

- (2) The notice to be given by the State in terms of paragraph (a) of subclause (1) shall specify the nature of the alleged default or other grounds so entitling the State to exercise its right to determine this Agreement and, where appropriate and known to the State, the party or parties responsible therefor and shall be given to the Proponents and all such assignees, mortgagees, chargees and disponees for the time being of the Proponents' said rights to or in favour of whom or by whom an assignment, mortgage, charge or disposition has been effected in terms of Clause 31, whose name and address for service of notice has previously been notified to the State by the Proponents or any such assignee, mortgagee, chargee or donee.
- (3)
  - (a) If the Proponents contest the alleged default or grounds entitling the State to exercise its right to determine this Agreement or the materiality of the default the Proponents shall, within 60 days after notice given by the State as provided in subclause (2), refer the matter in dispute to arbitration under this Agreement.
  - (b) If the question is decided against the Proponents, the Proponents shall comply with the arbitration award within a reasonable time to be fixed by that award PROVIDED THAT if the arbitrator finds that there was a bona fide dispute and that the Proponents were not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.
- (4) If the default referred to in paragraph (a) of subclause (1) shall not have been remedied within 180 days after receipt of the notice referred to in that subclause or within the time fixed by the arbitration award as aforesaid the State, instead of determining this Agreement as aforesaid because of such default, may itself remedy such default, or cause the same to be remedied (for which purpose the State by agents, workmen or otherwise shall have full power to

enter upon lands occupied by the Proponents and to make use of all plant, machinery, equipment and installations thereon), and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Proponents to the State on demand.

**Effect of determination of Agreement**

38. (1) On the determination of this Agreement pursuant to Clause 37 —
- (a) except as otherwise agreed by the Minister the rights of the Proponents to, in or under this Agreement and the rights of the Proponents or of any assignee of the Proponents or any mortgagee to in or under any lease, licence or other title granted under this Agreement shall thereupon cease and determine but without prejudice to the liability of any of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given under this Agreement;
  - (b) the Proponents shall forthwith pay to the State all moneys which may then have become payable or accrued due; and
  - (c) save as aforesaid and as otherwise provided in this Agreement, none of the parties shall have any claim against any other of them with respect to any matter or thing in or arising out of this Agreement.
- (2) Where, on the determination of this Agreement pursuant to Clause 37 approved proposals have been implemented by the Proponents in accordance with the terms thereof if the Minister in his discretion at the request of the Proponents so agrees:
- (a) any lease, licence, easement or other title granted pursuant to such approved proposals shall continue subject to its terms and conditions; and
  - (b) any facility established pursuant to such approved proposals may, insofar as is permitted by the laws for the time being in force in Western Australia continue to be operated under such laws.
- (3) (a) In respect of —

- (i) any lease, licence, easement or other title; and
- (ii) any buildings, erections or other improvements (if any) comprised in any facility established on such lease, licence, easement or other title,

not being a lease, licence, easement or other title or facility the continuation or continued operation of which has been agreed by the Minister under subclause (2), upon the determination of this Agreement pursuant to Clause 37, except as otherwise agreed by the Minister and subject to paragraph (b) of this subclause, all such buildings, erections and other improvements comprised in such facility erected on any land then occupied by the Proponents under any such lease, licence, easement or other title granted under this Agreement shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Proponents or any other party and freed and discharged from all mortgages and other encumbrances, and the Proponents shall 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 subclause.

- (b) In the event of the Proponents immediately prior to determination of this Agreement or within 3 months thereafter desiring to remove any of their fixed or movable plant and equipment or any part thereof from any part of the land referred to in paragraph (a) of this subclause, they shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within 3 months thereafter to purchase in situ such fixed or moveable plant and equipment at a fair valuation to be agreed between the parties, or failing agreement, determined by arbitration under this Agreement.
- (c) If the State does not exercise the right or option referred to in paragraph (b) the Proponents may on the expiry of the 3 month period referred to, or sooner with the consent of the Minister, remove the fixed or movable plant and equipment to which the right or option refers.

**Term**

39. (1) Subject to the provisions of this Agreement relating to sooner determination and subject to subclauses (2) and (3) this Agreement shall expire 63 years after the commencement date.
- (2) In the fiftieth year after the commencement date the parties to this Agreement shall meet and consider an extension to the term of this Agreement.
- (3) The parties shall record any agreement reached by them pursuant to subclause (2) to extend the term of this Agreement and any such agreement shall be dealt with in accordance with subclauses (2) and (3) of Clause 32 as if it were an agreement made pursuant to subclause (1) of that Clause.
- (4) The expiration of this Agreement pursuant to this Clause shall not affect —
- (a) any lease, licence, easement or other title still in effect at that time which shall continue subject to its terms and conditions; or
- (b) any facility established on lands the subject of any such lease, licence, easement or other title which shall continue to operate subject to the terms and conditions of such lease, licence, easement or other title and otherwise under the laws for the time being in force in Western Australia.

**Notices**

40. Any notice, consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Public Service of Western Australia acting by the direction of the Minister and forwarded by prepaid post or handed to each party constituting the Proponents at its respective address hereinbefore set forth or other address in Western Australia nominated by that party to the Minister and by the Proponents if signed on their behalf by any person or persons authorised by the Proponents or by their solicitors as notified to the Minister from time to time and forwarded by prepaid post or handed to the Minister and, except in the case of personal service, any such

notice, consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

**Stamp Duty**

41. (1) The State shall exempt the following instruments from any stamp duty which, but for the operation of this clause, would or might be assessed as chargeable on them —
- (a) this Agreement;
  - (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Proponents or any permitted assignee, any licence, lease, easement or other title;
  - (c) any assignment, sublease or disposition (other than by way of mortgage or charge) made by An Feng (Australia) Pty. Ltd. or Kingstream Resources NL arising from proposals consented to by the Minister in conformity with the provisions of subclause (1) of Clause 31; and
  - (d) any assignment, transfer or disposition (other than by way of mortgage or charge) by Kingstream Resources NL to An Feng (Australia) Pty. Ltd. made pursuant to the joint venture agreement executed by those parties on 12 October 1996 of any part of the interest of Kingstream Resources NL in this Agreement, the Mining Tenements and other property held or developed for the purpose of this Agreement,
- PROVIDED THAT this subclause shall not apply to any instrument or other document executed or made more than 3 years after the commencement date.
- (2) If prior to the commencement date stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) the State shall on request made after the commencement date refund any stamp duty so paid to the person who paid it.

**Applicable law**

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

THE SCHEDULE

WESTERN AUSTRALIA

*MINING ACT 1978*

*IRON AND STEEL (MID WEST) AGREEMENT ACT 1997*

MINING LEASE

MINING LEASE NO.

The Minister for Mines a corporation sole established by the *Mining Act 1978* (hereinafter called "the Mining Act") 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 (except, during such period as the Agreement (hereinafter called "the Agreement") described in the Second Schedule to this lease applies to this lease (hereinafter called "the Agreement period"), as otherwise provided by the Agreement) hereby leases to the Lessee the land more particularly delineated and described in the Third Schedule to this lease subject however to the exceptions and reservations set out in the Fourth Schedule to this lease and to any other exceptions and reservations which are by the Mining Act and by any Act for the time being in force deemed to be contained herein (subject, during the Agreement period, to the Agreement) 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 upon and subject to such of the provisions of the Mining Act, (except, during the Agreement period, as otherwise provided by the Agreement) as are applicable to mining leases granted thereunder and to the covenants and conditions herein contained or implied and any further conditions or stipulations set out in the Sixth Schedule to this lease and, during the Agreement period, to the terms covenants and conditions set out in the Agreement the Lessee paying therefor the rents for the time being and from time to time prescribed pursuant to the provisions of the Mining Act at the times and in the manner so prescribed and royalties during the Agreement period as provided in the Agreement and thereafter in accordance with the Mining Act with the right during the Agreement period and in accordance with the provisions of the Agreement to automatic extensions at the option of the Lessee for two further periods of 21 years each upon the same terms and conditions and thereafter subject to such provisions as to renewal of the term of this lease as may be applicable pursuant to the Mining Act.

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.

**FIRST SCHEDULE**

(Name and address of Lessee)

**SECOND SCHEDULE**

The Agreement made between the State of Western Australia and An Feng (Australia) Pty Ltd and Kingstream Resources NL and ratified by the *Iron and Steel (Mid West) Agreement Act 1997*.

**THIRD SCHEDULE**

(Description of land:)

Locality:

Mineral Field:                      Area, etc.:

Being the land delineated on Survey Diagram No.                      and  
recorded in the Department of Mines, Perth.

**FOURTH SCHEDULE**

All petroleum as defined in the *Petroleum Act 1967* 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**

(Any further conditions or stipulations).

IN witness whereof the Minister for Mines has affixed his seal and set his hand  
hereto this                      day of                      19

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

SIGNED by the said	)	
<b>THE HONOURABLE RICHARD</b>	)	RICHARD F COURT
<b>FAIRFAX COURT</b> in the presence of:	)	

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MINISTER FOR RESOURCES DEVELOPMENT		COLIN BARNETT
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THE COMMON SEAL of	)	
<b>AN FENG (AUSTRALIA) PTY. LTD.</b>	)	[C.S.]
was hereunto affixed in the presence of:	)	

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Director		AN-HSUING CHU
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(Name)

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Director/Secretary		SIN YU CHU
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(Name)



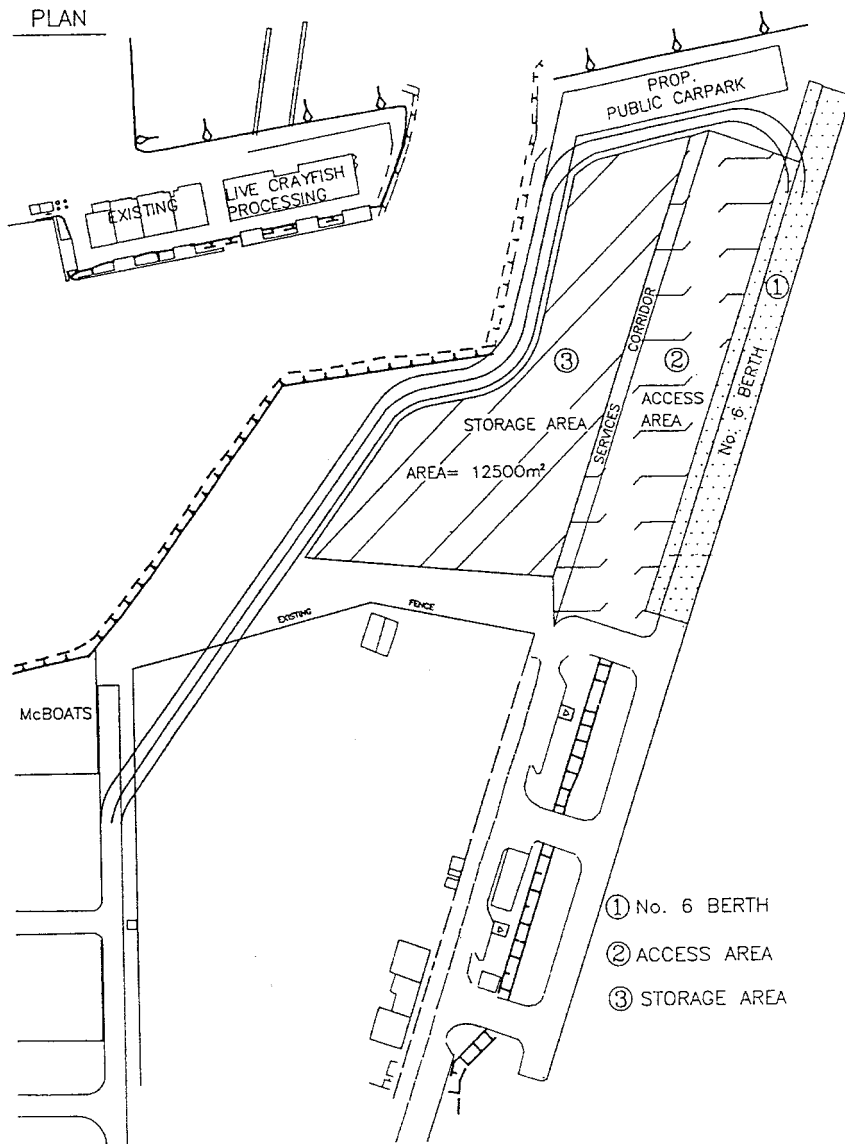
THE COMMON SEAL of )  
**KINGSTREAM RESOURCES NL** was ) [C.S.]  
hereunto affixed in the presence of: )

\_\_\_\_\_  
Director NIK ZUKS

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
Director/Secretary NEVILLE BASSETT

\_\_\_\_\_  
(Name)



### Notes

- <sup>1</sup> This is a reprint as at 1 October 2004 of the *Iron and Steel (Mid West) Agreement Act 1997*. The following table contains information about that Act and any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Iron and Steel (Mid West) Agreement Act 1997</i>	10 of 1997	27 Jun 1997	27 Jun 1997 (see s. 2)
<b>Reprint 1: The <i>Iron and Steel (Mid West) Agreement Act 1997</i> as at 1 Oct 2004</b>			