

Western Australia

**Iron Ore Processing (BHP Minerals) Agreement
Act 1994**

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Western Australia

Iron Ore Processing (BHP Minerals) Agreement Act 1994

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Iron Ore Processing (BHP Minerals) Agreement Act 1994

An Act to ratify, and authorise the implementation of, an agreement between the State and BHP Minerals Pty. Ltd. relating to investigations into the feasibility of establishing further iron ore processing facilities in Western Australia.

1. Short title

This Act may be cited as the *Iron Ore Processing (BHP Minerals) Agreement Act 1994*¹.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent¹.

3. Interpretation

In this Act, unless the contrary intention appears —
the Agreement means the Iron Ore Processing (BHP Minerals) Agreement, a copy of which is set out in Schedule 1, and includes that 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.

s. 4

- (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 Ore Processing (BHP Minerals)
Agreement**

[s. 3]

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

THIS AGREEMENT is made the 31st day of March 1994

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

BHP MINERALS PTY. LTD. ACN 008 694 782 a company incorporated in
the State of Western Australia and having its principal office at Level 18,
200 St George’s Terrace, Perth (hereinafter called “the Company” in which term
shall be included its successors and permitted assigns) of the other part.

W H E R E A S:

- (a) the Company proposes to conduct ongoing investigations into the establishment of a new plant or plants within Western Australia for further processing of iron ore having a project cost or an aggregate project cost of at least \$400M (June 1993 dollars);
- (b) the State, for the purpose of promoting employment opportunity and industrial development and in particular the establishment of further processing facilities in Western Australia, has agreed to assist the establishment of the said facilities upon and subject to the terms of this Agreement; and
- (c) by the agreements of even date herewith referred to in subclause (1)(b) of Clause 4 of this Agreement the State has agreed to the deletion of certain provisions relating to the processing of iron ore in the Iron Ore (Mount Goldsworthy) Agreement, the Iron Ore (Marillana Creek) Agreement and the Iron Ore (McCamey’s Monster) Agreement contingent upon the ratification of those agreements and this Agreement.

NOW THIS AGREEMENT WITNESSES:

Definitions

1. In this Agreement subject to the context
 “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;
 “alternative investments” means investments within Western Australia which are approved by the Minister from time to time as alternative investments under subclause (4) of Clause 5;
 “approved proposal” means a proposal approved or deemed to be approved under this Agreement;
 “Clause” means a clause of this Agreement;
 “Commonwealth” means the Commonwealth of Australia and includes the Government for the time being thereof;
 “Company’s workforce” means the persons (and the dependants of those persons) engaged whether as employees, agents or contractors in the construction and operation of the facilities to be established pursuant to approved proposals;
 “EP Act” means the *Environmental Protection Act 1986*;
 “further processing” means the production of iron, steel, direct reduced iron, hot briquetted iron, iron carbide, sinter, pellets or other products involving comparable changes in the physical character of iron ore;
 “June 1993 dollars” means 30 June 1993 dollars escalated thereafter to reflect movements in the Consumer Price Index (all groups weighted average eight capital cities) for each June quarter to the succeeding June quarter or, if such Index ceases to be published or becomes inappropriate, such other Index to be agreed between the parties hereto for the purpose of this definition;
 “Land Act” means the *Land Act 1933*;
 “laws relating to traditional usage” means laws applicable from time to time in Western Australia in respect of rights or entitlements to or interests in land or waters which rights, entitlements or interests are acknowledged, observed or exercisable by Aboriginal persons (whether communally or

individually) in accordance with Aboriginal traditions, observances, customs or beliefs;

“local authority” means the council of a municipality that is a city, town or shire constituted under the *Local Government Act 1960*;

“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 Company and includes the successors in office of the Minister;

“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“private roads” means the roads referred to in subclause (1) of Clause 11 and any other roads constructed by the Company in accordance with an approved proposal or agreed by the parties to be a private road for the purposes of this Agreement;

“project cost” means all expenditure reasonably incurred by the Company in undertaking or obtaining (as the case may require) evaluation, approvals, authorities, design, construction and commissioning of or for a project under this Agreement;

“public road” means a road as defined by the *Road Traffic Act 1974*;

“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.

Interpretation

2. In this Agreement —

- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
- (b) power given under any clause other than Clause 18 to extend any period or date shall be without prejudice to the power of the Minister under Clause 18;
- (c) clause headings do not affect the interpretation or construction;

- (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
- (e) one gender includes the other genders; and
- (f) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution thereof or in lieu thereof and the regulations for the time being in force thereunder.

Initial obligation of the State

- 3. The State shall introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1994 or such later date as may be agreed between the parties hereto.

Ratification and operation

- 4. (1) The provisions of this Agreement other than this Clause and Clauses 1, 2 and 3 shall not come into operation unless and until —
 - (a) the Bill to ratify this Agreement as referred to in Clause 3; and
 - (b) Bills to ratify the following agreements of even date herewith, namely: —
 - (i) an agreement between the State of the one part and BHP Iron Pty. Ltd., BHP Australia Coal Pty. Ltd., CI Minerals Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. of the other part to vary the Iron Ore (Mount Goldsworthy) Agreement;
 - (ii) an agreement between the State of the one part and the Company, Mitsui Iron Ore Corporation Pty. Ltd. and CI Minerals Australia Pty. Ltd. of the other part to vary the Iron Ore (Marillana Creek) Agreement; and
 - (iii) an agreement between the State of the one part and BHP Iron Ore (Jimblebar) Pty. Ltd. of the other part to vary the Iron Ore (McCamey's Monster) Agreementare passed as Acts before 31 December 1994 or such later date if any as the parties hereto may agree upon.
- (2) If before 31 December 1994 or such later agreed date the said Bills have not commenced to operate as Acts then, unless the parties

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

- (3) On the said Bills commencing to operate as Acts, all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

Obligations for ongoing investigations

5. (1) During the continuance of this Agreement the Company shall undertake ongoing investigations into the technical and economic feasibility of establishing facilities for further processing within Western Australia either alone or in association with others and as and when requested by the Minister, but subject to subclause (5) not more frequently than once in every two years, shall submit detailed reports of its investigations to the date of request and its conclusions in regard thereto.
- (2) The State may undertake similar investigations and, for this purpose, the Company shall provide the State, within a reasonable time of request, with such information as the State may reasonably request. The Company shall not be obliged to supply technical information of a confidential nature or financial and economic information the disclosure of which would unduly prejudice contractual or commercial arrangements between the Company and third parties, but will use reasonable endeavours to arrange for the supply of this or like information on request by the State.
- (3) If, as result of investigations undertaken under subclause (1) or (2), the Company or the State reasonably concludes that further processing of iron ore is technically and economically feasible, then the State and the Company shall consult without commitment on the implementation of such further processing.
- (4) At any time the Company may propose, for the approval of the Minister, alternative investments within Western Australia to be carried out by it alone or in association with others in lieu of or in part performance of the provision of the facilities for further processing contemplated by subclause (1). If as a result of a proposal under this subclause, the Minister approves an alternative

investment, then the State and the Company shall consult on the implementation of such alternative investment.

- (5) The Company will if so requested by the Minister consult with the Minister with regard to the provision of facilities for further processing and/or alternative investments at any time that the Minister receives a request for consent in principle to an increase in an approved production limit under any of the agreements referred to in subclause (1)(b) of Clause 4.

Company to submit proposals

6. (1) As and when the Company determines to proceed with the provision of facilities for further processing or the provision of alternative investments, the Company shall subject to and in accordance with the EP Act, the laws relating to traditional usage and the provisions of this Agreement, submit to the Minister to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister and any other details normally required by the local authority in which area the project is to be situated) for the construction of those facilities or investments as the case may be and 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 facilities for further processing of iron ore (including the transportation and storage of inputs and outputs) or the alternative investments;
 - (b) power supply;
 - (c) roads;
 - (d) accommodation and ancillary facilities for the Company's workforce on or in the vicinity of the plant site and housing or other appropriate accommodation and facilities elsewhere for the Company's workforce;
 - (e) water supply;
 - (f) any other works, services or facilities required by the Company;
 - (g) use of local labour, professional services, manufacturers, suppliers, contractors and materials;

- (h) any lease, licence or other title of Crown lands desired for the facilities to be constructed pursuant to the proposals; and
- (i) an environmental management programme as to measures to be taken, in respect of the Company's activities under this Agreement, for rehabilitation and the protection and management of the environment.

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 the matter or matters mentioned in one or more of paragraphs (a) to (i) of 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 facilities or equipment or the provision of new services of the kind therein mentioned, provide for the use by the Company of any existing facilities equipment or services of such kind belonging to the Company or upon terms and conditions agreed between the Company and the other parties concerned, of any other existing facilities equipment or services of such kind.

Additional submissions

- (4) At the time when the Company submits the said proposals it shall submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia, together with its reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto.

Consideration of proposals

- 7. (1) Subject to the EP Act and laws relating to traditional usage, in respect of each proposal pursuant to subclause (1) of Clause 6 the Minister shall —
 - (a) approve of the proposal without qualification or reservation;
or

- (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 6 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 Company makes 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 Company makes 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 6 or, where the proposals are to be assessed under section 40(1)(b) of the EP Act or where laws relating to traditional usage apply, then within two months after service on him of an authority under section 45(7) of the EP Act or satisfaction of the requirements under laws relating to traditional usage (as the case may be), give notice to the Company of his decision in respect to the proposals.

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 Company full opportunity to consult with him and, should it so desire, to submit new or revised proposals either generally or in respect to some particular matter.

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 Company considers that the decision is unreasonable, the Company within two 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 Company then, unless the Company within 3 months after delivery of the award gives notice to the Minister of its acceptance of the award, the proposals the subject of the arbitration shall be deemed withdrawn and of no effect; or
 - (b) if by the award the dispute is decided in favour of the Company, 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 subclause (1) any proposals of the Company 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 of the submission of the proposals pursuant to subclause (1) of Clause 6 or by such extended date or period if any as the Company shall be granted or entitled to pursuant to the provisions of this Agreement, then at the end of that period or extended date or period as the case may be all of the said proposals shall be deemed withdrawn and of no effect.

Implementation of proposals

- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act and laws relating to traditional usage the Company shall use its best endeavours to implement the approved proposals in accordance with the terms thereof.

Variation of proposals

- (8) Notwithstanding Clause 16, the Minister may during the implementation of approved proposals approve variations to those proposals.

Extension of period

- (9) The period set forth in subclause (6) will be extended (in addition to any extension granted pursuant to Clause 18) upon request of either the Company or the State for such reasonable period or periods as may be necessary from time to time to enable either of the parties hereto to comply with laws relating to traditional usage.

Land

8. (1) Where any proposals approved or deemed to be approved under Clause 7 provide for the grant of a lease, licence or other title of Crown lands for the facilities to be constructed pursuant to those proposals the State shall on application therefor made by the Company, not later than 3 months after those proposals have been approved or deemed to be approved cause such lease, licence or other title to be granted to the Company at a reasonable rental, fee or other reasonable consideration and in the case of a lease or licence for such period not exceeding 50 years with one automatic extension for a further period of 10 years at the option of the Company and on such terms and conditions as shall be reasonable having regard to the requirements of the Company (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 Company's expense).

Modification of Land Act

- (2) For the purpose of this Agreement in respect of any land sold or leased, or the subject of a licence, to the Company by the State the Land Act shall be deemed to be modified by —
- (a) the substitution for subsection (2) of section 45A of the following subsection —

“(2) Upon the Minister signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased.”;
 - (b) the deletion of the proviso to section 116;
 - (c) the deletion of section 135;
 - (d) the deletion of section 143;
 - (e) the inclusion of a power to offer for sale or grant leases, licences or other titles for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, the terms and conditions and the forms referred to in 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.

Protection and management of the environment

9. (1) The Company shall in respect of the matters referred to in paragraph (i) of subclause (1) of Clause 6 and which are the subject of approved proposals, carry out a continuous programme including monitoring to ascertain the effectiveness of the measures it is 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 Company 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 Company 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 subclauses (1) or (2) notify the Company 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 Company 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) and (4) 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 and laws relating to traditional usage the Company 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

10. (1) The Company shall, for the purposes of this Agreement —
- (a) except in those cases where the Company 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 Company 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 Company concerning such third party's implementation of that condition.
- (3) The Company 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 its implementation of the provisions of this Clause, together with a copy of any report received by the Company 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 Company shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as reasonably required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia together with its reasons therefor and shall as and when required by the Minister consult with the Minister with respect thereto.

Roads — Private roads

11. (1) The Company shall —
- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in its activities hereunder;
 - (b) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles other than those engaged upon the Company's activities and its invitees and licensees from using the private roads; and
 - (c) at any place where any private roads are constructed by the Company so as to cross any railways or public roads, provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or The Western Australian Government Railways Commission 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 authority, which may be used by the Company for the purposes of

this Agreement to a standard similar to comparable public roads maintained by the Commissioner of Main Roads or a local authority, as the case may be.

Upgrading of public roads

- (3) In the event that for or in connection with the Company's activities hereunder the Company or the Company's 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 Company or the Company's workforce of any public road results in excessive damage to or deterioration thereof (other than fair wear and tear), the Company shall pay to the State or the local authority, 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 Company for its own use is subsequently required for public use, the State may, after consultation with the Company and so long as resumption thereof shall not unduly prejudice or interfere with the activities of the Company under this Agreement, resume and dedicate such road as a public road. Upon any such resumption the State shall pay to the Company such amount as is reasonable.

Water requirements

12. The water requirements of the Company for its operations under this Agreement shall be obtained in accordance with the provisions of the Water Authority Act or other relevant Act.

Resumption for the purposes of this Agreement

13. (1) The State may as and for a public work under the *Public Works Act 1902*, resume any land required for the site for any facilities to be constructed pursuant to approved proposals and notwithstanding any other provisions of that Act may sell, lease or otherwise dispose of that land to the Company and the provisions of subsections (2) to (7) inclusive of section 17 and section 17A of that Act shall not apply to or in respect of that land or the resumption thereof. The Company shall pay to the State on demand the costs of and

incidental to any land resumed at the request of and on behalf of the Company except that the State shall pay any compensation payable pursuant to, and the costs incurred by it in connection with, the *Land (Titles and Traditional Usage) Act 1993*.

- (2) For the purposes of this Agreement, and in the *Public Works Act 1902*, 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, or other interest, in, over, under, affecting, or in connection with that land or any portion, stratum or other specified sector of that land.

Training levy exemption

14. The provisions of the *Building and Construction Industry Training Levy Act 1990* and the *Building and Construction Industry Training Fund and Levy Collection Act 1990* shall have no application to the Company when acting pursuant to and in accordance with the provisions of this Agreement.

Assignment

15. (1) Subject to the provisions of this Clause the Company may at any time assign, mortgage, charge, sublet or dispose of to any company or persons, with the consent of the Minister, the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of any lease, licence or other title) and of the obligations of the Company hereunder subject however, in the case of an assignment, subletting or disposition, to the assignee, sublessee or disponee (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 Company 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 Company shall, at all times during the currency of this Agreement, be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained in this Agreement and in any lease, licence or other title the subject of an assignment, mortgage,

subletting or disposition under subclause (1) PROVIDED THAT the Minister may agree to release the Company 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 may apply —
- (a) no assignment, mortgage, charge, sublease or disposition made or given pursuant to this Clause of or over any lease, licence or other title granted under or pursuant to this Agreement by the Company 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

16. (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, easement, grant or other title 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

17. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the temporary suspension of continuing obligations under this Agreement that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including, 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, 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 PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

Power to extend periods

18. Notwithstanding any provision of this Agreement, the Minister may, at the request of the Company 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.

Determination of Agreement

19. (1) If—
- (a) the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations of the Company in this Agreement or in any lease, licence or other title granted or assigned under

this Agreement on its part to be performed or observed, and such default is not remedied within a period of 180 days after notice is given by the State as provided in subclause (2) or, if the default is referred to arbitration, then within the period mentioned in subclause (3); or

- (b) the Company 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 the Company is assigned to an assignee approved by the Minister under Clause 15

the State may, by notice to the Company, 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 default so entitling the State to exercise such right of determination and, where appropriate and known to the State, the party or parties responsible therefor and shall be given to the Company and all such assignees, mortgagees, chargees and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment, mortgage, charge or disposition has been effected in terms of Clause 15, whose name and address for service of notice has previously been notified to the State by the Company or any such assignee, mortgagee, chargee or donee.
 - (3) (a) If the Company contests the alleged default referred to in paragraph (a) of subclause (1) the Company shall, within 60 days after notice given by the State as provided in subclause (2), refer the matter in dispute to arbitration.
 - (b) If the question is decided against the Company, the Company 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 Company was 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 Company 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 Company to the State on demand.

Effect of determination of Agreement

20. (1) On the determination of this Agreement pursuant to Clause 19 —
- (a) except as otherwise agreed by the Minister, but subject to subclause (2), the rights of the Company to in or under this Agreement and the rights of the Company or of any assignee of the Company or any mortgagee to in or under any lease, licence or other title granted under this Agreement shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given under this Agreement;
 - (b) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
 - (c) save as aforesaid and as otherwise provided in this Agreement neither of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.
- (2) Where, at the determination of this Agreement pursuant to Clause 19, approved proposals have been implemented by the Company in accordance with the terms thereof:
- (a) any lease, licence or other title granted pursuant to such approved proposals, shall continue subject to its terms and conditions and, if applicable, for the balance of its unexpired term; and
 - (b) any buildings, erections or other improvements (if any) comprised in any facility for further processing or alternative investments established pursuant to such approved proposals shall continue to exist under the laws for the time being in force in Western Australia.

- (3) (a) In respect of :
- (i) any lease, licence or other title; and
 - (ii) any buildings, erections or other improvements (if any) comprised in any facility for further processing or alternative investments established on such lease, licence or other title,
- not being a lease, licence or other title or facility or alternative investment to which subclause (2) applies, upon the determination of this Agreement pursuant to Clause 19, 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 or alternative investments erected on any land then occupied by the Company under any such lease, licence 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 Company or any other party and freed and discharged from all mortgages and other encumbrances, and the Company 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 Company immediately prior to determination of this Agreement or subsequently thereto desiring to remove any of its fixed or movable plant and equipment or any part thereof from any part of the land referred to in paragraph (a) of this subclause, it 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.

Environmental protection

21. Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made pursuant to the EP Act.

Indemnity

22. The Company 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 Company pursuant to this Agreement or relating to its activities hereunder or arising out of or in connection with the construction, maintenance or use by the Company or its servants, agents, contractors or assignees of the Company's 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 Company's 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 Company pursuant to this Agreement.

Subcontracting

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

Arbitration

24. (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 either of the parties, 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 or of the parties under this Agreement and an award may, in the name of the Minister, grant any further extension or variation for that purpose.

Consultation

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

Notices

26. Any notice consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Public Service of the Western Australia acting by the direction of the Minister and forwarded by prepaid post or handed to the Company at its address hereinbefore set forth or other address in Western Australia nominated by the Company to the Minister and by the Company if signed on its behalf by any person or persons authorised by the Company or by its solicitors as notified to the State 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.

Project cost of facilities

27. Each time that the Company completes the establishment of any facilities for further processing or alternative investment in accordance with approved proposals, the Company and the Minister, for the purpose of

setting an amount to apply under Clause 28, shall confer and agree the amount, in June 1993 dollars, of the project cost of those facilities. If the Company and the Minister are unable to agree any such amount, it shall be determined by arbitration pursuant to this Agreement.

Term

28. (1) Subject to the provisions of Clauses 19 and 20, this Agreement shall expire on the later of:
- (a) the date that the aggregate project cost of facilities for further processing and for alternative investments established in accordance with approved proposals, as agreed or determined pursuant to Clause 27, reaches \$400,000,000 (June 1993 dollars); or
 - (b) the date being 60 years after the first lease, licence or other title in respect of a facility for further processing or alternative investments is granted pursuant to Clause 8 of this Agreement.
- (2) The expiration of this Agreement pursuant to this Clause shall not affect:
- (a) any lease, licence or other title granted pursuant to Clause 8 which shall continue subject to its terms and conditions and, if applicable, for the balance of its unexpired term; or
 - (b) any facility for further processing or alternative investments established on such lease, licence or other title which shall continue to operate under the laws for the time being in force in Western Australia.

Stone sand clay and gravel

29. The State shall in accordance with approved proposals grant to the Company a mining lease or mining leases for the obtaining of stone, sand, clay and gravel for the construction of projects 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 1978* but limited in term to a reasonable period required for construction of the project and rehabilitation in accordance with the proposals. No royalty shall be payable under the *Mining Act 1978* in respect of stone, sand, clay and gravel obtained from any such mining lease.

Zoning

30. The State shall ensure after consultation with the relevant local authority that the sites for projects the subject of approved proposals and any other lands the subject of any lease, licence or other title granted to the Company under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the activities of the Company 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 or other authority of the State on the ground that such activities are contrary to any zoning, by-law, regulation or order.

Rating

31. (1) 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 lands the subject of any lease, licence or other title granted pursuant to this Agreement (except any parts of such lands on which accommodation units or housing for the Company's 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 Company pursuant to approved proposals) shall for rating purposes under the *Local Government Act 1960*, be deemed to be on the unimproved value thereof, and no such lands shall be subject to any discriminatory rate.
- (2) It is hereby declared and agreed that the provisions of section 533B of the *Local Government Act 1960* shall not apply to any lands the subject of this Agreement.

No discriminatory rates

32. 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 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 Company in the conduct of its business hereunder, nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement.

No resumption

33. Subject to the performance by the Company of its obligations under this Agreement, the State shall not during the currency of this Agreement, without the consent of the Company, resume or suffer or permit to be resumed by any State instrumentality or by any local or other authority of the State any of the works, installations, plant, equipment or other property for the time being belonging to the Company and the subject of or used for the purpose of this Agreement AND without the consent of the Company (which shall not be unreasonably withheld), the State shall not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road, right-of-way, water right or easement of any nature or kind whatsoever over or in respect of the power station site which may unduly prejudice or interfere with the Company's activities under this Agreement.

Applicable law

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

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 |) | |
| THE HONOURABLE RICHARD |) | R F COURT |
| FAIRFAX COURT in the |) | |
| presence of: |) | |

Colin Barnett
MINISTER FOR RESOURCES DEVELOPMENT

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

Director R J Carter
Secretary Ada Lian Davies

Notes

- ¹ This is a compilation of the *Iron Ore Processing (BHP Minerals) Agreement Act 1994* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

| Short title | Number and year | Assent | Commencement |
|---|-----------------|-------------|--|
| <i>Iron Ore Processing (BHP Minerals) Agreement Act 1994</i> | 30 of 1994 | 8 Jul 1994 | 8 Jul 1994 (see s. 2) |
| Reprint 1: The <i>Iron Ore Processing (BHP Minerals) Agreement Act 1994</i> as at 5 Mar 2004 | | | |
| <i>Standardisation of Formatting Act 2010</i> s. 4 | 19 of 2010 | 28 Jun 2010 | 11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341) |