

Western Australia

**Railway and Port (The Pilbara Infrastructure  
Pty Ltd) Agreement Amendment Act 2010**

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As at 10 Dec 2010

No. 60 of 2010

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Western Australia

# **Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Act 2010**

(No. 60 of 2010)

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Amendment Act 2010***

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Western Australia

## **Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Act 2010**

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**No. 60 of 2010**

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***An Act to amend the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* and the *Railways (Access) Act 1998*.***

*[Assented to 10 December 2010]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary matters**

### **1. Short title**

This is the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Act 2010*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

**Part 2 — *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* amended**

**3. Act amended**

This Part amends the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004*.

**4. Section 3 amended**

- (1) In section 3 delete the definition of *the Agreement*.
- (2) In section 3 before the first alphabetical definition insert in numerical order:

*2010 variation agreement* means the agreement a copy of which is set out in Schedule 2;

- (3) In section 3 insert in alphabetical order:

*the Agreement* means the scheduled agreement —

- (a) as varied from time to time in accordance with its terms; and
- (b) as varied by the 2010 variation agreement.

Note: The heading to amended section 3 is to read:

**Terms used**

**5. Section 4 amended**

After section 4(1) insert:

- (2A) The 2010 variation agreement is ratified.

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**6.            Section 6 amended**

In section 6(2) after “agreement” insert:

or the 2010 variation agreement

**7.            Section 7A inserted**

At the end of Part 2 insert:

**7A.          Validation of certain licences**

- (1) The Special Railway Licence (***SRL***) granted or purportedly granted pursuant to the Agreement clause 14(1)(a) before the commencement of the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Act 2010* section 7 is, and is taken always to have been, as valid as the SRL would have been if consent from each title holder in respect of the land affected by the SRL had been obtained as required by the Agreement clause 7(3).
- (2) Each Lateral Access Road Licence (***LARL***) granted or purportedly granted pursuant to the Agreement clause 14(1)(b) before the commencement of the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Act 2010* section 7 is, and is taken always to have been, as valid as the LARL would have been if consent from each title holder in respect of the land affected by the LARL had been obtained as required by the Agreement clause 7(3).



**8. Schedule 2 inserted**

After Schedule 1 insert:

**Schedule 2 — 2010 variation agreement**

[s. 3]

**2010**

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

**AND**

**THE PILBARA INFRASTRUCTURE PTY LTD**

**ACN 103 096 340**

**AND**

**FORTESCUE METALS GROUP LTD**

**ACN 002 594 872**

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**RAILWAY AND PORT (THE PILBARA INFRASTRUCTURE  
PTY LTD) AGREEMENT 2004**

**RATIFIED VARIATION AGREEMENT**

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[Solicitor's details]

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**THIS AGREEMENT** is made this 19<sup>th</sup> day of November 2010

**BETWEEN**

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

**AND**

**THE PILBARA INFRASTRUCTURE PTY LTD ACN**  
103 096 340 of Level 2, 87 Adelaide Terrace, East Perth, Western  
Australia (**Company**)

**AND**

**FORTESCUE METALS GROUP LTD ACN 002 594 872** of  
Level 2, 87 Adelaide Terrace, East Perth, Western Australia  
(**Guarantor**).

**RECITALS**

- A.** The State, the Company and the Guarantor are the parties to the agreement ratified by the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* and which is referred to in this Agreement as the "**Principal Agreement**".
- B.** The State, the Company and the Guarantor wish to vary the Principal Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

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

its passage as an Act prior to 30 June 2011 or such later date as the parties may agree.

3.
  - (a) Clause 4 does not come into operation unless or until an Act passed in accordance with clause 2 ratifies this Agreement.
  - (b) If by 31 December 2011 or such later date as may be agreed pursuant to clause 2, clause 4 has not come into operation then unless the parties hereto otherwise agree this Agreement shall cease and determine and none of the parties shall have any claim against the other parties with respect to any matter or thing arising out of or done or performed or omitted to be done or performed under this Agreement.
  
4. The Principal Agreement is hereby varied as follows:
  - (1) in clause 1:
    - (a) by deleting the existing definition of “Additional Infrastructure” and substituting the following new definition:

“Additional Infrastructure” means:

      - (a) Train Loading Infrastructure;
      - (b) Train Unloading Infrastructure;
      - (c) a conveyor, train unloading and other infrastructure necessary for the transport of iron ore products, freight goods or other products from the SRL Railway to the Company’s Port Facilities within the Port;”;
    - (b) in the definition of “Lateral Access Road Licence” by inserting “or clause 14(1a) as the case may be” after “clause 14(1)(b)”;
    - (c) by inserting after the definition of “Pilbara Iron Ore Railways” the following new definition:

“Plan” means the plan marked “A” initialled by or on behalf of the parties for the purpose of identification and which shows the land the subject

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- of the Special Railway Licence as at  
18 November 2010;
- (d) in the definition of “Port Additional Infrastructure Area” by inserting “and after the grant of the Port Additional Infrastructure Licence means the area from time to time the subject of that licence” after “clause 8(1)(b)(i)”;
  - (e) in the definition of “Port Additional Infrastructure Licence” by inserting “, as varied in accordance with clauses 14(10) or 14(11)” after “clause 14(7)(b)”;
  - (f) by inserting after the definition of “Port Authorities Act” the following new definition:  
“Port Authorities Minister” means the Minister in the Government of the State for the time being responsible for the administration of the Port Authorities Act;
  - (g) in the definition of “Port Facilities Area” by inserting “and after the grant of the Port Lease means the area from time to time the subject of that lease” after “clause 8(1)(a)”;
  - (h) in the definition of “Port Lease” by inserting “, as varied in accordance with clause 14(10),” after “clause 14(7)(a)”;
  - (i) in the definition of “Project” by deleting “each approved pursuant to proposals submitted under clause 10,” and substituting “in accordance with approved proposals and”;
  - (j) in the definition of “Railway” by deleting “extension or enlargement” and substituting “expansion or extension”;
  - (k) in the definition of “Railway Corridor” by:
    - (i) deleting “upon” and substituting “after”;
    - (ii) inserting “from time to time” between “land” and “the subject of the Special Railway Licence”; and

- (iii) deleting “less any portion of the Railway Corridor surrendered by the Company from time to time in accordance with the terms of the Special Railway Licence”;
- (l) in the definition of “Railway Operation Date” by inserting “15 May 2008 being” after “means”;
- (m) in the definition of “Special Railway Licence” by inserting “, as varied in accordance with clauses 14(4a), 14(4b), 14(6), 14(6a) or 14(6b),” after “clause 14(1)(a)”;
- (n) by inserting after the definition of “Special Railway Licence” the following new definitions:
  - “**SRL Railway spur line**” means a standard gauge heavy haul railway spur line from a mine, or from in the vicinity of a mine, in the Pilbara region of the said State connecting to the SRL Railway (and whether to the initial railway line the subject of approved proposals under clauses 10 and 11 or to an expansion or extension thereof, including a spur line, which is the subject of additional proposals approved in accordance with clause 12) for transport upon the SRL Railway to the Port of iron ore products, freight goods or other products and for the avoidance of doubt includes the approved Christmas Creek to Cloud Break railway spur line and the proposed (as at 18 November 2010) Investigator railway spur line;
  - “**SRL Railway spur line Operation Date**” means in respect of a SRL Railway spur line, the date of the first carriage of iron ore products, freight goods or other products over that spur line (other than for construction or commissioning purposes);
- (o) by deleting “and” at the end of the definition of “this Agreement”;
- (p) by deleting the full stop at the end of the definition of “Trade Practices Act” and substituting a semi colon; and

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- (q) by inserting after the definition of “Trade Practices Act” the following new definitions:
- “**Train Loading Infrastructure**” means conveyors, stockpile areas, blending and screening facilities, stackers, re-claimers and other infrastructure reasonably required for the loading of iron ore products, freight goods or other products onto the SRL Railway for transport to the Port;
- “**Train Unloading Infrastructure**” means train unloading infrastructure reasonably required for the unloading of iron ore from the SRL Railway to be processed at processing facilities in the vicinity of that train unloading infrastructure and with the resulting iron ore products then loaded onto the SRL Railway for transport to the Port; and
- “**variation date**” means the date on which the Bill to ratify the agreement made on or about 19 November 2010 between the State, the Company and the Guarantor comes into operation as an Act.”;
- (2) in clause 4 by inserting “(unless the Minister otherwise allows)” after “and subject to the Company”;
- (3) in clause 6(a) by inserting “as varied from time to time” after “ACN 002 594 872”;
- (4) in clause 7(3) by:
- (a) inserting “(except as required by any waiver pursuant to clause 4 for the issue of the requisite authority under the LAA as referred to in it)” between “and” and “for obtaining”;
- (b) inserting “unconditional and irrevocable” between “all” and “consents”;
- (c) inserting in paragraph (a) “(including as applying pursuant to clause 12(2))” after “clause 5(1)”;

- (d) deleting the comma at the end of paragraph (c) and substituting “(including as applying pursuant to clause 12(2)); and”;
  - (e) inserting after paragraph (c) the following new paragraph:
    - “(d) the inclusion of additional land in the Special Railway Licence as referred to in clauses 14(6), 14(6a) or 14(6b) as the case may be,”;
  - (f) deleting “mining or petroleum right” and substituting “mining, petroleum or geothermal energy right”;
  - (g) deleting “(b) and (c)” and substituting “(b), (c) and (d)”;
  - (h) inserting “including as applying pursuant to clauses 12(4) or 12A(3)(c) as the case may be or in respect of clause 14(6b) as referred to in that subclause” before the full stop at end of the clause;
- (5) by deleting the second sentence of clause 7(4);
  - (6) in clause 9(3) by inserting “, 12A” after “12”;
  - (7) in clause 12(1) by:
    - (a) deleting “clause 13” and substituting “clauses 12A and 13”;
    - (b) deleting the reference to “a spur line” where it appears first and substituting “a SRL Railway spur line”;
    - (c) inserting “otherwise” after “or desires to”; and
    - (d) inserting “and in the case of the proposed construction of a SRL Railway spur line, the proposed capacity of such spur line” before the full stop at the end of this clause;
  - (8) in clause 12(2) by inserting “is given before the variation date and” after “If the notice”;

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(9) by inserting after subclause (2) of clause 12 the following new subclause:

“(2a) If the notice is given on or after the variation date and relates to a SRL Railway spur line, the Minister shall within one month of receipt of such notice advise the Company whether or not he approves in principle the proposed construction of such spur line. If the Minister gives in principle approval the Company may (but not otherwise) submit detailed proposals in respect thereof provided that the provisions of clauses 4, 5, 7 and 9 shall mutatis mutandis apply prior to submission of detailed proposals in respect thereof.”;

(10) in clause 12(3) by inserting “(or in the case of a notice referred to in subclause (2a) after the giving of the Minister’s in-principle consent as referred to in that subclause)” after “in subclause (1)”;

(11) in clause 12(4) by deleting “other than subclause (5)(a)” and substituting “other than subclause (2)(a)(i) and with the reference in subclause (5)(b) to clause 7(3)(b) being read as a reference to clause 7(3)(d)”;

(12) by inserting after clause 12 the following new clause:

“12A. (1) The Company shall not be permitted to:

- (a) construct Train Loading Infrastructure or Train Unloading Infrastructure; or
- (b) change the nature and characteristics of Train Loading Infrastructure or Train Unloading Infrastructure from that specified in approved proposals, without the prior consent of the Minister and approval of detailed proposals in regard thereto in accordance with this clause.

(2) (a) If the Company desires to do anything mentioned in subclause (1) it shall give notice thereof to the Minister and



furnish to the Minister with that notice an outline of its proposals in respect thereto including:

- (i) of any area outside the Railway Corridor within which the Train Loading Infrastructure or Train Unloading Infrastructure is to be constructed;
  - (ii) the nature and characteristics of the Train Loading Infrastructure or Train Unloading Infrastructure to be constructed including the capacity of such infrastructure; and
  - (iii) such matters mentioned in paragraphs (e), (f), (g), (i) and (j) of clause 10(1) or as the Minister otherwise requires.
- (b) The Minister shall within one month of receipt of a notice under paragraph (a) of this subclause advise the Company whether or not he approves in principle the proposed action by the Company so notified. An approval by the Minister under this subclause may be given subject to conditions including conditions as to the matters referred to in paragraph (a) (i) and (ii) provided that any such condition shall not without the consent of the Company require variations of:
- (i) the term of the Special Railway Licence, Lateral Access Road Licences, the Port Lease, the Port Additional Infrastructure Licence or the Port Railway Licence;

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(ii) the rentals payable under any lease or licence granted under or pursuant to this Agreement (except where the Company desires any additional land to be included in the Special Railway Licence); or

(iii) this Agreement.

The Minister shall afford the Company full opportunity to consult with him in respect of any decision of the Minister under this subclause.

- (3) (a) If the Minister approves in principle the proposed action of the Company the Company shall within 18 months or such longer period as the Minister may from time to time allow of that approval submit to the Minister detailed proposals in respect thereof in accordance with any conditions of that approval, otherwise that approval shall lapse.
- (b) The Company acknowledges that the provisions of clause 9 must be complied with before the Company submits its detailed proposals and that notwithstanding the plan required to be approved pursuant to clause 9 has not been approved, the Minister's in-principle approval will lapse as provided in paragraph (a) if the Company's detailed proposals are not submitted within the time required by that paragraph.
- (c) The provisions of clause 10 (with the reference in subclause (5)(b) to clause 7(3)(b) being read as a reference to clause 7(3)(d)) and

clause 11 (other than subclauses (5)(a), (6) and (7) of clause 11) shall mutatis mutandis apply to detailed proposals submitted pursuant to this clause with the proviso that the Company 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. Subject to and in accordance with the EP Act and any approvals or licences required under that Act, the Company shall implement approved proposals pursuant to this clause in accordance with the terms thereof.

- (4) On and after approval or determination of any such proposal pursuant to subclause (3)(c) the provisions of this clause shall apply mutatis mutandis to any subsequent desires of the Company referred to in subclause (1).”;

(13) in clause 13(2) by:

- (a) in paragraph (a) deleting all the words after “proposals in respect thereto” and substituting:

“including:

- (i) if Port Facilities or Port Additional Infrastructure are to be constructed outside the then Port Facilities Area or Port Additional Infrastructure Area as the case may be:

- (A) the area or areas of the Port within which any such Port Facilities are to be constructed;

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- (B) the nature and characteristics of such Port Facilities, including the capacity of the Port Facilities;
  - (C) the area or areas of the Port within which such Port Additional Infrastructure is to be constructed; and
  - (D) the nature and characteristics of such Port Additional Infrastructure, including the capacity of such Port Additional Infrastructure; and
- (ii) such matters mentioned in paragraphs (e) - (g), (i) and (j) of clause 10(1) or as the Minister otherwise requires.”; and
- (b) in paragraph (b):
- (i) inserting “(or within 2 months after receipt of such notice if it relates to the construction of Port Facilities or Port Additional Infrastructure as referred to in paragraph (a)(i))” after “under paragraph (a) of this subclause”;
  - (ii) deleting “clauses 8(1)(b)(ii) and 8(1)(d)” and substituting “paragraphs (a)(i)(A)-(D) of this subclause”; and
  - (iii) inserting in subparagraph (ii) “(except where the Company desires any additional area to be included in the Port Lease or the Port Additional Infrastructure Licence as the case may be)” after “pursuant to this Agreement”;
- (14) by deleting paragraph (c) of clause 13(3) and substituting the following new paragraphs:
- “(c) The provisions of clause 10 (with the reference in subclause (5)(b) to clauses 7(3)(b) and 7(3)(c) being read as references to paragraph (d) of this subclause) and clause 11 (other than subclauses (5)(a), (6) and (7) of clause 11) shall mutatis mutandis apply to detailed proposals

submitted pursuant to this clause with the proviso that the Company 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. Subject to and in accordance with the EP Act and any approvals or licences required under that Act, the Company shall implement approved proposals pursuant to this clause in accordance with the terms thereof.

- (d) The Company acknowledges that it shall be responsible for liaising with every title holder in respect of the land affected and for obtaining in a form and substance acceptable to the Minister all unconditional and irrevocable consents of each such title holder to, and all statutory consents required in respect of the land affected for the inclusion of additional land in the Port Lease or the Port Additional Infrastructure Licence as referred to in clauses 14(10) or 14(11) as the case may be, in accordance with this Agreement. For the purposes of this paragraph (d) “title holder” means a person who holds a mining, petroleum or geothermal energy right (as defined in the LAA) in respect of any part of the affected land, a person who holds a lease or licence under the Port Authorities Act in respect of any part of the affected land, a person who holds any other title granted under or pursuant to a Government agreement in respect of any part of the affected land, a person who holds a lease or licence in respect of any part of the affected land under any other Act applying in the said State and a person (other than the Port Authority) in whom any part of the affected land is vested, immediately before the provision of such consents to the Minister as referred to in clause 10(5)(b) (as applying pursuant to paragraph (c) above). For the purpose of this

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paragraph (d) “title holder” does not include the Port Authority.”;

- (15) by inserting after subclause (1) of clause 14 the following new subclause:

“(1a) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after its proposals submitted pursuant to clause 12(1) for the construction of Lateral Access Roads for access to the Railway Corridor to construct a SRL Railway spur line have been approved or deemed to be approved and the Company has complied with the provisions of clause 10(5)(b) (as applying pursuant to clause 12(4)), the State notwithstanding the Mining Act shall cause to be granted to the Company a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under clause 7(1) (as applying pursuant to clause 12(2)) (each a “**Lateral Access Road Licence**”), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act in the form of Schedule 3 hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the Mining Act.”;

- (16) by inserting after subclause (4) of clause 14 the following new subclauses:

“(4a) The Special Railway Licence shall be deemed amended on the variation date by:

(a) the deletion of condition 1 in the schedule of conditions set out in it and the substitution of the following conditions:

“1. (a) The Company shall within 5 years after the variation date surrender in

accordance with the provisions of the Mining Act those portions of this licence outlined and coloured red on the Plan which are then not being specifically used, or approved for specific use, by the Company pursuant to an approved proposal.

- (b) If after 18 November 2010 land is included in this licence pursuant to clause 14(6) of the Agreement, the Company shall as soon as possible after the construction of the SRL Railway spur line upon the land surrender in accordance with the provisions of the Mining Act that land down to a maximum width of 100 metres or as otherwise approved by the Minister for the safe operation of that SRL Railway spur line and associated access road within that area of land.

For the purpose of the conditions the terms “approved proposal”, “Minister”, “Plan” and “variation date” have the meanings given in the Agreement.”; and

- (b) the deletion of “(excluding the taking of stone, sand, clay and gravel) and the substitution of “(including the taking of stone, sand, clay and gravel in accordance with the Agreement)””; and
- (c) the insertion under the heading “In this licence” of the following provision:  
“- Reference to “the Agreement” includes such agreement as varied from time to time.

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- (4b) (a) From and including the variation date the Company may, in accordance with approved proposals, take stone, sand, clay and gravel:
- (i) from the land included in the Special Railway Licence pursuant to subclauses (6) (in accordance with approved proposals which were submitted after the variation date), (6a) or (6b) and while it is so included, for the construction, operation and maintenance of the Railway and Additional Infrastructure constructed within or approved for construction within the Railway Corridor; and
  - (ii) subject to paragraph (b), from any other land within the Railway Corridor and while such land is part of the Railway Corridor, for the construction, operation and maintenance of the Railway and Additional Infrastructure constructed within or approved for construction within such Railway Corridor.
- (b) Before commencing the taking of stone, sand, clay or gravel as referred to in paragraphs (a)(ii) the Company must obtain the consent of all of the then underlying title holders of the land from which such taking is to occur.
- (c) Notwithstanding the Mining Act no royalty shall be payable under the Mining Act in respect of stone, sand, clay and gravel which the Company is permitted to obtain from the land the subject of the Special Railway Licence.”;



- (17) in clause 14(5) by:
- (a) deleting “and subclause (6)” and substituting “and subclauses (6), (6a) and (6b)”;
  - (b) in paragraph (a)(ii):
    - (i) deleting the quotation marks immediately after “the Company”; and
    - (ii) inserting “as varied from time to time” after “ACN 002 594 872”;
  - (c) inserting in paragraph (a)(iii):
    - (i) “or clause 14(1a)” after ““clause 14(1)(b)””; and
    - (ii) “as varied from time to time” after “ACN 002 594 872”;
  - (d) by inserting in each of paragraphs (b), (e) and (i) “as varied from time to time” after “ACN 002 594 872”;
- (18) by deleting subclause (6) of clause 14 and inserting the following new subclauses:
- “(6) If additional proposals are approved in accordance with clause 12 for the construction of a SRL Railway spur line outside the then Railway Corridor, the Minister for Mines shall include the area of land within which such construction is to occur in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company’s expense.
  - (6a) If additional proposals are approved in accordance with clause 12A for the construction of Train Loading Infrastructure or Train Unloading Infrastructure outside the then Railway Corridor, the Minister for Mines shall include the area of land within which such infrastructure is approved for construction in the Special Railway Licence by

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endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.

- (6b) Notwithstanding the provisions of the Mining Act the Company may apply to the Minister for that part of the land held by the Company under miscellaneous licence 45/199 which is outside the Port to be included in the Special Railway Licence. The Minister shall confer with the Minister for Mines in regard to such application and if the Minister shall approve the application the Minister for Mines shall upon surrender by the Company of that miscellaneous licence and the Company furnishing to the Minister the written consents referred to in clause 7(3)(d) in respect of the land the subject of the Company's application include such land in the Special Railway Licence subject to such of the conditions of the surrendered miscellaneous licence as the Minister for Mines determines. In respect of such land:
- (a) the land shall in addition to any conditions so determined by the Minister for Mines be subject to same terms covenants and conditions as apply to the Special Railway Licence;
  - (b) the Minister for Mines may make such apportionment of rents as may be necessary in connection therewith; and
  - (c) the land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.”;

(19) by inserting after subclause (8) of clause 14 the following new subclauses:

“(9) The Company shall not be entitled to surrender the Port Lease or Port Additional Infrastructure Licence or any part or parts of them without the prior consent of the Minister.

(10) If additional proposals are approved in accordance with clause 13 for the construction of Port Facilities outside the then Port Facilities Area or Port Additional Infrastructure outside the then Port Additional Infrastructure Area, the State shall not later than 3 months after approval of such additional proposals arrange for the Port Authority to grant to the Company a variation (consistent with the approved proposals and any conditions to which the Minister’s in-principle approval under clause 13 was given) of the Port Lease and/or the Port Additional Infrastructure Licence as the case may be to include the area or areas within which such Port Facilities or Port Additional Infrastructure are to be constructed in the Port Facilities Area the subject of the Port Lease (in the case of Port Facilities) and in the Port Additional Infrastructure Area the subject of the Port Additional Infrastructure Licence (in the case of Port Additional Infrastructure).

(11) Concurrently with its application under clause 14(6b) the Company may apply to the Minister for that part of the land held by the Company under miscellaneous licence 45/199 which is within the Port to be included in the Port Additional Infrastructure Licence as part of the Port Additional Infrastructure Area the subject of the Port Additional Infrastructure Licence. The Minister shall confer with the Port Authorities Minister in regard to such application and if the Minister shall approve such application and the Company accepts any conditions subject to which the Minister’s approval is given, then the State

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shall within 3 months after such approval, and subject to the Company surrendering such miscellaneous licence, arrange for the Port Authority to grant to the Company a variation (consistent with any conditions of the Minister's approval) of the Port Additional Infrastructure Licence to include such land in the Port Additional Infrastructure Licence as part of the Port Additional Infrastructure Area the subject of the Port Additional Infrastructure Licence.”;

(20) in clause 16(1) by:

- (a) in the definition of “access” in paragraph (a) inserting “and, for the avoidance of doubt, does not in any event include use of Train Loading Infrastructure or Train Unloading Infrastructure constructed under this Agreement” after “Access Act”); and
- (b) inserting after the definition of “agreement” in paragraph (c) the following new paragraph:
  - “(ca) “**Expansion Access Date**” in relation to an expansion or extension (including any spur line) of the Railway means the date on which all of the documents referred to in subclause (8)(d) are approved or determined under the relevant section of the Access Act or of the Access Code in connection with the expansion or extension of the Railway;”;

(21) in clause 16(2) by:

- (a) deleting paragraph (a) and substituting the following new paragraph:
  - “(a) The State and the Company intend that the Access Act and the Access Code shall apply:
    - (i) to the Railway the subject of approved proposals under clauses 10 and 11 as soon as possible after that Railway is constructed but before the Railway Operation Date; and

- (ii) to any expansion or extension thereof (including a spur line) the subject of approved proposals as soon as possible after such expansion or extension is constructed.”; and
- (b) inserting after paragraph (c) the following new paragraphs:
  - “(d) The Company shall from the date occurring 6 months before the date for completion of construction of a SRL Railway spur line specified in its time program for the commencement and completion of construction of that spur line submitted under clause 12(1) keep the Minister fully informed as to:
    - (i) the progress of that construction and its likely completion; and
    - (ii) in respect of it, the likely date SRL Railway spur line Operation Date.
  - (e) The Company shall on the SRL Railway spur line Operation Date in respect of any SRL Railway spur line notify the Minister that the first carriage of iron ore products, freight goods or other products as the case may be over such spur line (other than for construction or commissioning purposes) has occurred.”;
- (22) in clause 16(3) by inserting “)” after “Access Act”);
- (23) by inserting after subclause (5) of clause 16 the following new subclause:
  - “(5a) The provisions of subclause (5) shall apply mutatis mutandis in respect of any expansion or extension (including any spur line) of the Railway on the basis that references in the provisions of subclause (5) to “Railway” are to be read as including the relevant expansion or extension and

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to “Access Date” are to be read as references to  
“Expansion Access Date.”;

- (24) in clause 16(8) by:
- (a) in paragraph (a) deleting “section 6” and substituting “Part 2A”;
  - (b) deleting “and” after paragraph (b);
  - (c) deleting the full stop after “apply to the Railway” at the end of paragraph (c) and substituting the following:  
“; and
  - (d) ensure the submission to the Regulator within 3 months of the Access Act and the Access Code applying to any expansion or extension (including any spur line) of the Railway of new or amended guidelines, statements of policy, principles, rules, arrangements and other documents and matters referred to in this subclause (8) as may be required by the Access Act and the Access Code in respect of the relevant expansion or extension of the Railway and conduct itself in such manner as to, and do all such things as are reasonable to, facilitate the approval or determination of new or amended documents or matters.”;
- (25) by inserting after subclause (8) of clause 16 the following new subclause:
- “(9) The parties acknowledge, for the avoidance of doubt, that the Company may provide train loading services (using the Company’s Train Loading Infrastructure) or train unloading services (using the Company’s Train Unloading Infrastructure) to a third party either as part of their agreement for the Company to provide to the third party rail transport services over the Railway or separately to facilitate access by that third party to the Railway pursuant to the Access Act and the Access Code.”;

- (26) in clause 18(1) by inserting after the definition of “Access Date” in paragraph (b) the following new paragraph:  
“(ba) “Additional Infrastructure” does not include Train Loading Infrastructure or Train Unloading Infrastructure;”;
- (27) in clause 18(2) by:
- (a) inserting “as well for the review of the regime from time to time” after “constructed under this Agreement”;
  - (b) inserting “and in reviewing the regime from time to time” after “this clause is acceptable”; and
  - (c) deleting “(4)” after “6”;
- (28) in clause 18(3) by inserting “from time to time” after “regime approved”;
- (29) in clause 19(2) by deleting “The” and substituting “Except as otherwise provided in this Agreement, the”;
- (30) in clause 21(3)(b) by:
- (a) inserting “, 12A” between “12 or 13” in both places;
  - (b) inserting “, 12A(2)” between “12(1) and 13(2)(a)”;
- and

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(31) inserting after Schedule 2 the following new Schedule:

**“SCHEDULE 3**

**WESTERN AUSTRALIA**

**RAILWAY AND PORT (THE PILBARA INFRASTRUCTURE  
PTY LTD) AGREEMENT ACT 2004**

**MINING ACT 1978**

**MISCELLANEOUS LICENCE FOR A LATERAL ACCESS  
ROAD**

No.

WHEREAS by the Agreement (hereinafter called “the Agreement”) ratified by the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* the State agreed to grant to The Pilbara Infrastructure Pty Ltd ACN 103 096 340 of Level 2, 87 Adelaide Terrace, East Perth, Western Australia (hereinafter with its successors and permitted assigns called “the Company”) a miscellaneous licence for the construction use and maintenance of the Lateral Access Roads (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 14(1a) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof subject to the sooner determination or cessation of the Agreement and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 14(1a) of the Agreement PROVIDED ALWAYS that this



licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

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

#### **ENDORSEMENTS**

1. [Land to be surveyed at Company’s cost]
2. [Any further terms and conditions or stipulations as the Minister for Mines may, consistent with the provisions of the Agreement, determine and thereafter impose in respect of the licence, including during the term of the Agreement.]

#### **SCHEDULE**

Description of land

DATED at Perth this                      day of                      .

**MINISTER FOR MINES”.**

5. The Guarantor confirms that its guarantee in favour of the State contained in clause 39 of the Principal Agreement shall continue notwithstanding the abovementioned variations to the Principal Agreement.

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**EXECUTED** as a deed.

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

Witness: [Signature]

Name: STEPHEN JOHN BOMBARDIERI

**THE COMMON SEAL** of **THE PILBARA**)  
**INFRASTRUCTUREPTY LTD** ) [C.S.]  
ACN 103 096 340 was hereunto affixed )  
in accordance with its constitution in the )  
presence of: )

Director: [Signature]

Name: WILLIAM GRAEME ROWLEY

~~Director~~/Secretary: [Signature]

Name: MARK ANDREW THOMAS

**THE COMMON SEAL** of **FORTESCUE** )  
**METALS GROUP LTD** ACN 002 594 872 ) [C.S.]  
was hereunto affixed in accordance )  
with its constitution in the presence of: )

Director: [Signature]

Name: WILLIAM GRAEME ROWLEY

~~Director~~/Secretary: [Signature]

Name: MARK ANDREW THOMAS

### **Part 3 — *Railways (Access) Act 1998* amended**

**9. Act amended**

This Part amends the *Railways (Access) Act 1998*.

**10. Section 3 amended**

After section 3(4) insert:

- (6) For the purposes of this Act and the Code, the railway constructed pursuant to the TPI Railway and Port Agreement includes the Christmas Creek to Cloud Break spur line and is taken to have included that spur line since construction of the spur line was completed.
- (7) Subsections (3) and (4) do not apply to a siding or spur line associated with the railway constructed pursuant to the TPI Railway and Port Agreement.

**11. Section 11B replaced**

Delete section 11B and insert:

**11B. Amending Code for purposes of TPI Railway and Port Agreement**

- (1) The Minister may, by order published in the *Gazette*, amend the Code for the purposes of its application to the railway constructed pursuant to the TPI Railway and Port Agreement.
- (2) If, after the commencement of the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Act 2010* section 11, the railway constructed pursuant to the TPI Railway and Port Agreement is expanded or extended (including by the addition of a spur line), the Minister must, by order

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published in the *Gazette*, amend the Code so that it applies to the expansion or extension.

- (3) Sections 5 and 10 to 11A do not apply in relation to an amendment made under this section.
- (4) An amendment made under subsection (2) is not an amendment of the Code for the purposes of section 9(2) to (6) of this Act.

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