

Western Australia

**Iron Ore Agreements Legislation Amendment
Act 2011**

As at 14 Dec 2011

No. 61 of 2011

Extract from www.slp.wa.gov.au, see that website for further information

Iron Ore Agreements Legislation Amendment Act 2011

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Western Australia

Iron Ore Agreements Legislation Amendment Act 2011

No. 61 of 2011

An Act to amend these Acts —

- **the *Iron Ore (Hamersley Range) Agreement Act 1963*;**
- **the *Iron Ore (Robe River) Agreement Act 1964*;**
- **the *Iron Ore (Mount Bruce) Agreement Act 1972*;**
- **the *Iron Ore (Hope Downs) Agreement Act 1992*;**
- **the *Iron Ore (Yandicoogina) Agreement Act 1996*.**

[Assented to 14 December 2011]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Iron Ore Agreements Legislation Amendment Act 2011*.

2. Commencement

This Act comes into operation as follows —

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

**Part 2 — Iron Ore (Hamersley Range) Agreement
Act 1963 amended**

3. Act amended

This Part amends the *Iron Ore (Hamersley Range) Agreement Act 1963*.

4. Section 2 amended

- (1) At the end of section 2 insert:

the Thirteenth Supplementary Agreement means the agreement a copy of which is set out in the Fourteenth Schedule;

the Fourteenth Supplementary Agreement means the agreement a copy of which is set out in the Fifteenth Schedule.

- (2) In section 2 in the definition of *the Twelfth Supplementary Agreement* delete “Schedule.” and insert:

Schedule;

5. Sections 4F and 4G inserted

After section 4E insert:

4F. Thirteenth Supplementary Agreement

- (1) The Thirteenth Supplementary Agreement is ratified and its implementation is authorised.
- (2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the

Thirteenth Supplementary Agreement is to operate and take effect despite any other Act or law.

4G. Fourteenth Supplementary Agreement

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

6. Fourteenth and Fifteenth Schedules inserted

After the Thirteenth Schedule insert:

**Fourteenth Schedule — Thirteenth Supplementary
Agreement**

[s. 2]

2011

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

AND

**HAMERSLEY IRON PTY. LIMITED
ACN 004 558 276**

**IRON ORE (HAMERSLEY RANGE) AGREEMENT 1963
RATIFIED VARIATION AGREEMENT**

[Solicitor's details]

THIS AGREEMENT is made this 7th day of November 2011

BETWEEN

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

AND

HAMERSLEY IRON PTY. LIMITED ACN 004 558 276 of Level 22, Central Park, 152-158 St Georges Terrace, Perth, Western Australia (**Company**).

RECITALS:

- A. The State and the Company are the parties to the agreement dated 30 July 1963, approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B. The State and the Company wish to vary the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Interpretation

Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.

2. Ratification and Operation

- (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia prior to 31 December 2011 or such later date as may be agreed between the parties hereto to ratify this Agreement.

The State shall endeavour to secure the timely passage of such Bill as an Act.

- (2) The provisions of this Agreement other than this clause and clause 1 will not come into operation until the day after the day on which the Bill referred to in subclause (1) has been passed by the State Parliament of Western Australia and commences to operate as an Act.
- (3) If by 30 June 2012 the said Bill has not commenced to operate as an Act then, unless the parties hereto otherwise agree, this Agreement will then cease and determine and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (4) On the day after the day on which the said Bill commences to operate as an Act all the provisions of this Agreement will operate and take effect despite any enactment or other law.

3. Variation of Principal Agreement

The Principal Agreement is varied as follows:

- (1) in clause 1 by:
 - (a) inserting in the appropriate alphabetical positions the following new definitions:

"Eligible Existing Tenure" means:

 - (a) (i) a miscellaneous licence or general purpose lease granted to the Company under the Mining Act 1978; or
 - (ii) a lease or easement granted to the Company under the LAA,

and not clearly, to the satisfaction of the Minister, granted under or pursuant to or held pursuant to this Agreement; or
 - (b) an application by the Company for the grant to it of a tenement referred to in paragraph (a)(i) (which application has not clearly, to the satisfaction of the Minister, been made under or pursuant to this

Agreement) and as the context requires the tenement granted pursuant to such an application,

where that tenure was granted or that application was made (as the case may be) on or before 1 October 2011;

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

"Relevant Land", in relation to Eligible Existing Tenure or Special Advance Tenure, means the land which is the subject of that Eligible Existing Tenure or Special Advance Tenure, as the case may be;

"second variation date" means the date on which clause 3 of the variation agreement made on or about 7 November 2011 between the State and the Company comes into operation;

"Special Advance Tenure" means:

- (a) a miscellaneous licence or general purpose lease requested under clause 9(2b) to be granted to the Company under the Mining Act 1978; or
- (b) an easement or a lease requested under clause 9(2b) to be granted to the Company under the LAA,

and as the context requires such tenure if granted;

- (b) inserting after the words "reference in this Agreement to an Act other than the Mining Act 1904 shall include the amendments to such Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder" the words "(and for the avoidance of doubt this principle, subject to the context and without limitation to its application to other Acts, may apply in respect of references to the Land Act notwithstanding references in this Agreement to the LAA)";

- (2) by inserting after clause 8C the following new clauses:

"Community development plan

8D. (1) In this clause, the term "community and social benefits" includes:

- (a) assistance with skills development and training opportunities to promote work readiness and employment for persons living in the Pilbara region of the said State;
 - (b) regional development activities in the Pilbara region of the said State, including partnerships and sponsorships;
 - (c) contribution to any community projects, town services or facilities; and
 - (d) a regionally based workforce.
- (2) The Company acknowledges the need for community and social benefits flowing from this Agreement.
- (3) The Company agrees that:
- (a) it shall prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with its activities under this Agreement; and
 - (b) the Company shall, not later than 3 months after the second variation date, submit to the Minister the plan prepared under paragraph (a) and confer with the Minister in respect of the plan.
- (4) The Minister shall within 2 months after receipt of a plan submitted under subclause (3)(b), either notify the Company that the Minister approves the plan as submitted or notify the Company of changes which the Minister requires be made to the plan. If the Company is unwilling to accept the changes which the Minister requires it shall notify the Minister to

that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes required by the Minister.

- (5) The effect of an award made on an arbitration pursuant to subclause (4) shall be that the relevant plan submitted by the Company pursuant to subclause (3)(b) shall, with such changes required by the Minister under subclause (4) as the arbitrator determines to be reasonable (with or without modification by the arbitrator), be deemed to be the plan approved by the Minister under this clause.
- (6) At least 3 months before the anticipated submission of proposals relating to a proposed development pursuant to any of clauses 8A, 10G, 10I, 10K or 10N, the Company must, unless the Minister otherwise requires, give to the Minister information about how the proposed development may affect the plan approved or deemed to be approved by the Minister under this clause. This obligation operates in relation to all proposals submitted on or after the date that is 4 months after the date when a plan is first approved or deemed to be approved under this clause.
- (7) The Company shall at least annually report to the Minister about the Company's implementation of the plan approved or deemed to be approved by the Minister under this clause.
- (8) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan approved or deemed to be approved by the Minister under this clause and may agree to amendment of the plan or adoption of a new plan. Any such amended plan or new plan will be deemed to be the plan approved by the Minister under this clause in respect of the development to which it relates.

- (9) During the currency of this Agreement, the Company shall implement the plan approved or deemed to be approved by the Minister under this clause.

Local participation plan

- 8E. (1) In this clause, the term "local industry participation benefits" means:
- (a) the use and training of labour available within the said State;
 - (b) the use of the services of engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and contractors available within the said State; and
 - (c) the procurement of works, materials, plant, equipment and supplies from Western Australian suppliers, manufacturers and contractors.
- (2) The Company acknowledges the need for local industry participation benefits flowing from this Agreement.
- (3) The Company agrees that it shall, not later than 3 months after the second variation date, prepare and provide to the Minister a plan which contains:
- (a) a clear statement on the strategies which the Company will use, and require a third party as referred to in subclause (7) to use, to maximise the uses and procurement referred to in subclause (1);
 - (b) detailed information on the procurement practices the Company will adopt, and require a third party as referred to in subclause (7) to adopt, in calling for tenders and letting contracts for works, materials, plant, equipment and supplies stages in relation to a proposed development and

how such practices will provide fair and reasonable opportunity for suitably qualified Western Australian suppliers, manufacturers and contractors to tender or quote for works, materials, plant, equipment and supplies;

- (c) detailed information on the methods the Company will use, and require a third party as referred to in subclause (7) to use, to have their respective procurement officers promptly introduced to Western Australian suppliers, manufacturers and contractors seeking such introduction; and
- (d) details of the communication strategies the Company will use, and require a third party as referred to in subclause (7) to use, to alert Western Australian engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and consultants and Western Australian suppliers, manufacturers and contractors to services opportunities and procurement opportunities respectively as referred to in subclause (1).

It is acknowledged by the Company that the strategies of the Company referred to in subclause (3)(a) will include strategies of the Company in relation to supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement.

- (4) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.

- (5) At least 6 months before the anticipated submission of proposals relating to a proposed development pursuant to any of clauses 8A, 10G, 10I, 10K or 10N, the Company must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this clause in relation to the proposed development. This obligation operates in relation to all proposals submitted on or after the date that is 7 months after the date when a plan is first provided under this clause.
 - (6) During the currency of this Agreement the Company shall implement the plan provided under this clause.
 - (7) The Company shall:
 - (a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this clause; and
 - (b) use reasonable endeavours to ensure that the third party complies with those provisions.";
- (3) in clause 9(1)(b):
- (a) by deleting "1904" in subparagraph (i) and substituting "1978"; and
 - (b) by inserting after sub-subparagraph E. the following new paragraph:

"Notwithstanding clause 10L(2)(b)(iv), detailed proposals may refer to activities on tenure which is proposed to be granted pursuant to this paragraph (b) as if that tenure was

granted pursuant to this Agreement (but this does not limit the powers or discretions of the Minister under this Agreement or the Minister responsible for the administration of any relevant Act with respect to the grant of the tenure).";

- (4) by inserting after subclause 9(2) the following new subclauses:

"Application for Eligible Existing Tenure to be held pursuant to this Agreement

- (2a) (a) The Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Eligible Existing Tenure becoming held pursuant to this Agreement on such conditions as the Minister sees fit (including, without limitation and notwithstanding the Mining Act 1978 and the LAA, as to the surrender of land, the submission of detailed proposals and the variation of the terms and conditions of the Eligible Existing Tenure (including for the Eligible Existing Tenure to be held pursuant to this Agreement and for the more efficient use of the Relevant Land)) and the Minister may from time to time vary such conditions in order to extend any specified time for the doing of any thing or otherwise with the agreement of the Company.
- (b) Eligible Existing Tenure the subject of an approval by the Minister under this subclause will be held by the Company pursuant to this Agreement:
- (i) if the Minister's approval was not given subject to conditions, on and from the date of the Minister's notice of approval;
 - (ii) unless paragraph (iii) applies, if the Minister's approval was given subject to conditions, on the date on which all such conditions have been satisfied; and
 - (iii) if the Minister's approval was given subject to a condition requiring that the Company submit detailed proposals in accordance

with this Agreement, on the later of the date on which the Minister approves proposals submitted in discharge of that specified condition and the date upon which all other specified conditions have been satisfied, but the Company is authorised to implement any approved proposal to the extent such implementation is consistent with the then terms and conditions of the Eligible Existing Tenure pending the satisfaction of any conditions relating to the variation of the terms or conditions of the Eligible Existing Tenure. Where this paragraph (iii) applies, prior to any approval of proposals and satisfaction of other conditions, the relevant tenure will be treated for (but only for) the purposes of clause 10L(2)(b)(iv) as tenure held pursuant to this Agreement.

Application for Special Advance Tenure to be granted pursuant to this Agreement

- (2b) Without limiting clause 9(1)(c), the Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Special Advance Tenure being granted to the Company pursuant to this Agreement if:
- (a) the Company proposes to submit detailed proposals under this Agreement (other than under clause 10N) to construct works installations or facilities on the Relevant Land and the Company's request is so far as is practicable made, unless the Minister approves otherwise, no less than 6 months before the submission of those detailed proposals; and
 - (b) the Minister is satisfied that it is necessary and appropriate that Special Advance Tenure, rather than tenure granted under or pursuant to the other provisions of this Agreement, be used for the

purposes of the proposed works installations or facilities on the Relevant Land,

and if the Minister does so approve:

- (c) notwithstanding the Mining Act 1978 or the LAA, the appropriate authority or instrumentality of the State shall obtain the consent of the Minister to the form and substance of the Special Advance Tenure prior to its grant (which for the avoidance of doubt neither the State nor the Minister is obliged to cause) to the Company; and
 - (d) if the Company does not submit detailed proposals relating to construction of the relevant works installations or facilities on the Relevant Land within 24 months after the date of the Minister's approval or such later time subsequently allowed by the Minister, or if submitted the Minister does not approve such detailed proposals, the Special Advance Tenure (if then granted) shall be surrendered at the request of the Minister.
- (2c) The decisions of the Minister under subclauses (2a) and (2b) shall not be referable to arbitration and any approval of the Minister under this clause shall not in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.";
- (5) in clause 9 by:
- (a) deleting in subclause (3) "subclause (2)" and substituting "subclauses (2), (2a) and (2b)"; and
 - (b) deleting in subclause (3a) "subclause (1)" and substituting "subclauses (1), (2a) and (2b)";
- (6) in clause 10(2) by:
- (a) deleting in paragraph (a) the words "allow crossing places for roads stock and other railways and";

- (b) inserting after paragraph (a) the following new paragraph:

"Crossings over Railway

- (aa) for the purposes of livestock and infrastructure such as roads, railways, conveyors, pipelines, transmission lines and other utilities proposed to cross the land the subject of the Company's railway the Company shall:

- (i) if applicable, give its consent to, or otherwise facilitate the grant by the State or any agency, instrumentality or other authority of the State of any lease, licence or other title over land the subject of the Company's railway so long as such grant does not in the Minister's opinion unduly prejudice or interfere with the activities of the Company under this Agreement; and
- (ii) on reasonable terms and conditions allow access for the construction and operation of such crossings and associated infrastructure,

provided that in forming his opinion under this clause, the Minister must consult with the Company;"

- (c) deleting paragraph (j)(ii) and substituting the following subparagraph:

- "(ii) on fine ore sold or shipped separately as such at the rate of:
- (A) 5.625% of the f.o.b. value, for ore shipped prior to or on 30 June 2012;
 - (B) 6.5% of the f.o.b. value, for ore shipped during the period from 1 July 2012 to 30 June 2013 (inclusive of both dates); and
 - (C) 7.5% of the f.o.b. value, for ore shipped on or after 1 July 2013;"

- (7) in clause 10N by:
- (a) deleting in subclause (1) "'LAA" means the *Land Administration Act 1997* (WA);";
 - (b) inserting after subclause (3)(c) the following new paragraph:
 - "(d) Without limiting subclause (9), the Minister may waive the requirement under this clause for the Company to obtain and to furnish the consent of a title holder if the title holder has refused to give the required consent and the Minister is satisfied that:
 - (i) the title holder's affected land is or was subject to a miscellaneous licence granted under the Mining Act 1978 for the purpose of a railway to be constructed and operated in accordance with this Agreement; and
 - (ii) in the Minister's opinion, the title holder's refusal to give the required consent is not reasonable in all the circumstances including having regard to:
 - (A) the rights of the Company in relation to the affected land as the holder of the miscellaneous licence, relative to its rights as the holder of the sought Special Railway Licence or Lateral Access Road Licence (as the case may be); and
 - (B) the terms of any agreement between the Company and the title holder."; and
 - (c) deleting in subclause (4)(a) the comma after "the provisions of this Agreement" and substituting "and"; and
 - (d) in subclause (7):
 - (i) deleting all words in paragraph (c) after "at the date of such inclusion"; and

(ii) inserting after paragraph (k) the following new paragraph:

"(l) The provisions of clause 10(2)(aa) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause."

s. 6

EXECUTED as a deed.

SIGNED by the **HONOURABLE**)
COLIN JAMES BARNETT)
in the presence of:)

[Signature]

Signature of witness

[Signature]

Stephen Bombardieri

Name of witness

THE COMMON SEAL of)
HAMERSLEY IRON PTY. LIMITED)
ACN 004 558 276 was hereunto affixed)
by authority of the Directors in the presence of:)

[C.S.]

[Signature]

Director

Robert Paul Shannon

[Signature]

Secretary

Helen Fernihough

**Fifteenth Schedule — Fourteenth Supplementary
Agreement**

[s. 2]

2011

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

AND

**HAMERSLEY IRON PTY. LIMITED
ACN 004 558 276**

**IRON ORE (HAMERSLEY RANGE) AGREEMENT 1968
RATIFIED VARIATION AGREEMENT**

[Solicitor's details]

THIS AGREEMENT is made this 7th day of November 2011

BETWEEN

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

AND

HAMERSLEY IRON PTY. LIMITED ACN 004 558 276 of Level 22, Central Park, 152-158 St Georges Terrace, Perth, Western Australia (**Company**).

RECITALS:

- A. The State and the Company are the parties to the agreement dated 30 July 1963, approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B. The State and the Company wish to vary the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Interpretation

Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.

2. Ratification and Operation

- (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia prior to 31 December 2011 or such later date as may be agreed between the parties hereto to

ratify this Agreement. The State shall endeavour to secure the timely passage of such Bill as an Act.

- (2) The provisions of this Agreement other than this clause and clause 1 will not come into operation until the day after the day on which the Bill referred to in subclause (1) has been passed by the State Parliament of Western Australia and commences to operate as an Act.
- (3) If by 30 June 2012 the said Bill has not commenced to operate as an Act then, unless the parties hereto otherwise agree, this Agreement will then cease and determine and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (4) On the day after the day on which the said Bill commences to operate as an Act all the provisions of this Agreement will operate and take effect despite any enactment or other law.

3. Variation of Principal Agreement

The Principal Agreement is varied as follows:

- (1) in clause 1 by:
 - (a) inserting in the appropriate alphabetical positions the following new definitions:

"Eligible Existing Tenure" means:

 - (a) (i) a miscellaneous licence or general purpose lease granted to the Company under the Mining Act 1978; or
 - (ii) a lease or easement granted to the Company under the LAA,

and not clearly, to the satisfaction of the Minister, granted under or pursuant to or held pursuant to this Agreement; or
 - (b) an application by the Company for the grant to it of a tenement referred to in paragraph (a)(i) (which application has not clearly, to the satisfaction of the

Minister, been made under or pursuant to this Agreement) and as the context requires the tenement granted pursuant to such an application,

where that tenure was granted or that application was made (as the case may be) on or before 1 October 2011;

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

"Relevant Land", in relation to Eligible Existing Tenure or Special Advance Tenure, means the land which is the subject of that Eligible Existing Tenure or Special Advance Tenure, as the case may be;

"second variation date" means the date on which clause 3 of the variation agreement made on or about 7 November 2011 between the State and the Company comes into operation;

"Special Advance Tenure" means:

- (a) a miscellaneous licence or general purpose lease requested under clause 6(3b) to be granted to the Company under the Mining Act 1978; or
- (b) an easement or a lease requested under clause 6(3b) to be granted to the Company under the LAA,

and as the context requires such tenure if granted;

- (b) inserting after the words "Reference in this Agreement to an Act other than the Mining Act 1904 shall include the amendments to such Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder" the words "(and for the avoidance of doubt this principle, subject to the context and without limitation to its application to other Acts, may apply in respect of references to the Land Act notwithstanding references in this Agreement to the LAA)";

- (2) by inserting after clause 5C the following new clauses:

"Community development plan

5D. (1) In this clause, the term "community and social benefits" includes:

- (a) assistance with skills development and training opportunities to promote work readiness and employment for persons living in the Pilbara region of the said State;
 - (b) regional development activities in the Pilbara region of the said State, including partnerships and sponsorships;
 - (c) contribution to any community projects, town services or facilities; and
 - (d) a regionally based workforce.
- (2) The Company acknowledges the need for community and social benefits flowing from this Agreement.
- (3) The Company agrees that:
- (a) it shall prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with its activities under this Agreement; and
 - (b) the Company shall, not later than 3 months after the second variation date, submit to the Minister the plan prepared under paragraph (a) and confer with the Minister in respect of the plan.
- (4) The Minister shall within 2 months after receipt of a plan submitted under subclause (3)(b), either notify the Company that the Minister approves the plan as submitted or notify the Company of changes which the Minister requires be made to the plan. If the Company is unwilling to accept the changes which the Minister requires it shall notify the Minister to

that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes required by the Minister.

- (5) The effect of an award made on an arbitration pursuant to subclause (4) shall be that the relevant plan submitted by the Company pursuant to subclause (3)(b) shall, with such changes required by the Minister under subclause (4) as the arbitrator determines to be reasonable (with or without modification by the arbitrator), be deemed to be the plan approved by the Minister under this clause.
- (6) At least 3 months before the anticipated submission of proposals relating to a proposed development pursuant to clauses 5A or 7E of this Agreement and 10G of the Principal Agreement (as applying to this Agreement pursuant to clause 11(1)), the Company must, unless the Minister otherwise requires, give to the Minister information about how the proposed development may affect the plan approved or deemed to be approved by the Minister under this clause. This obligation operates in relation to all proposals submitted on or after the date that is 4 months after the date when a plan is first approved or deemed to be approved under this clause.
- (7) The Company shall at least annually report to the Minister about the Company's implementation of the plan approved or deemed to be approved by the Minister under this clause.
- (8) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan approved or deemed to be approved by the Minister under this clause and may agree to amendment of the plan or adoption of a new plan. Any such amended plan or new plan will be deemed to be the plan approved by the Minister under this clause in respect of the development to which it relates.

- (9) During the currency of this Agreement, the Company shall implement the plan approved or deemed to be approved by the Minister under this clause.

Local participation plan

- 5E. (1) In this clause, the term "local industry participation benefits" means:
- (a) the use and training of labour available within the said State;
 - (b) the use of the services of engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and contractors available within the said State; and
 - (c) the procurement of works, materials, plant, equipment and supplies from Western Australian suppliers, manufacturers and contractors.
- (2) The Company acknowledges the need for local industry participation benefits flowing from this Agreement.
- (3) The Company agrees that it shall, not later than 3 months after the second variation date, prepare and provide to the Minister a plan which contains:
- (a) a clear statement on the strategies which the Company will use, and require a third party as referred to in subclause (7) to use, to maximise the uses and procurement referred to in subclause (1);
 - (b) detailed information on the procurement practices the Company will adopt, and require a third party as referred to in subclause (7) to adopt, in calling for tenders and letting contracts for works, materials, plant, equipment and supplies stages in relation to a proposed development and

how such practices will provide fair and reasonable opportunity for suitably qualified Western Australian suppliers, manufacturers and contractors to tender or quote for works, materials, plant, equipment and supplies;

- (c) detailed information on the methods the Company will use, and require a third party as referred to in subclause (7) to use, to have their respective procurement officers promptly introduced to Western Australian suppliers, manufacturers and contractors seeking such introduction; and
- (d) details of the communication strategies the Company will use, and require a third party as referred to in subclause (7) to use, to alert Western Australian engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and consultants and Western Australian suppliers, manufacturers and contractors to services opportunities and procurement opportunities respectively as referred to in subclause (1).

It is acknowledged by the Company that the strategies of the Company referred to in subclause (3)(a) will include strategies of the Company in relation to supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement.

- (4) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.

- (5) At least 6 months before the anticipated submission of proposals relating to a proposed development pursuant to clauses 5A or 7E of this Agreement and 10G of the Principal Agreement (as applying to this Agreement pursuant to clause 11(1)), the Company must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this clause in relation to the proposed development. This obligation operates in relation to all proposals submitted on or after the date that is 7 months after the date when a plan is first provided under this clause.
 - (6) During the currency of this Agreement the Company shall implement the plan provided under this clause.
 - (7) The Company shall:
 - (a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this clause; and
 - (b) use reasonable endeavours to ensure that the third party complies with those provisions.";
- (3) in clause 6(2) by:
- (a) in subparagraph (b)(i), deleting "1904" and substituting "1978"; and
 - (b) at the end of paragraph (b) inserting the following new paragraph:

"Notwithstanding clause 7C(2)(b)(iv), detailed proposals may refer to activities on tenure which is proposed to be granted

pursuant to this paragraph (b) as if that tenure was granted pursuant to this Agreement (but this does not limit the powers or discretions of the Minister under this Agreement or the Minister responsible for the administration of any relevant Act with respect to the grant of the tenure).";

- (4) by inserting after clause 6(3) the following new subclauses:

"Application for Eligible Existing Tenure to be held pursuant to this Agreement

- (3a) (a) The Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Eligible Existing Tenure becoming held pursuant to this Agreement on such conditions as the Minister sees fit (including, without limitation and notwithstanding the Mining Act 1978 and the LAA, as to the surrender of land, the submission of detailed proposals and the variation of the terms and conditions of the Eligible Existing Tenure (including for the Eligible Existing Tenure to be held pursuant to this Agreement and for the more efficient use of the Relevant Land)) and the Minister may from time to time vary such conditions in order to extend any specified time for the doing of any thing or otherwise with the agreement of the Company.
- (b) Eligible Existing Tenure the subject of an approval by the Minister under this subclause will be held by the Company pursuant to this Agreement:
- (i) if the Minister's approval was not given subject to conditions, on and from the date of the Minister's notice of approval;
 - (ii) unless paragraph (iii) applies, if the Minister's approval was given subject to conditions, on the date on which all such conditions have been satisfied; and
 - (iii) if the Minister's approval was given subject to a condition requiring that the Company

submit detailed proposals in accordance with this Agreement, on the later of the date on which the Minister approves proposals submitted in discharge of that specified condition and the date upon which all other specified conditions have been satisfied, but the Company is authorised to implement any approved proposal to the extent such implementation is consistent with the then terms and conditions of the Eligible Existing Tenure pending the satisfaction of any conditions relating to the variation of the terms or conditions of the Eligible Existing Tenure. Where this paragraph (iii) applies, prior to any approval of proposals and satisfaction of other conditions, the relevant tenure will be treated for (but only for) the purposes of clause 7C(2)(b)(iv) as tenure held pursuant to this Agreement.

Application for Special Advance Tenure to be granted pursuant to this Agreement

- (3b) Without limiting clause 6(2)(c), the Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Special Advance Tenure being granted to the Company pursuant to this Agreement if:
- (a) the Company proposes to submit detailed proposals under this Agreement (other than under clause 7E) to construct works installations or facilities on the Relevant Land and the Company's request is so far as is practicable made, unless the Minister approves otherwise, no less than 6 months before the submission of those detailed proposals; and
 - (b) the Minister is satisfied that it is necessary and appropriate that Special Advance Tenure, rather than tenure granted under or pursuant to the other provisions of this Agreement, be used for the

purposes of the proposed works installations or facilities on the Relevant Land,

and if the Minister does so approve:

- (c) notwithstanding the Mining Act 1978 or the LAA, the appropriate authority or instrumentality of the State shall obtain the consent of the Minister to the form and substance of the Special Advance Tenure prior to its grant (which for the avoidance of doubt neither the State nor the Minister is obliged to cause) to the Company; and
 - (d) if the Company does not submit detailed proposals relating to construction of the relevant works installations or facilities on the Relevant Land within 24 months after the date of the Minister's approval or such later time subsequently allowed by the Minister, or if submitted the Minister does not approve such detailed proposals, the Special Advance Tenure (if then granted) shall be surrendered at the request of the Minister.
- (3c) The decisions of the Minister under subclauses (3a) and (3b) shall not be referable to arbitration and any approval of the Minister under this clause shall not in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.";
- (5) in clause 6 by:
- (a) deleting in subclause (4) "subclause (3)" and substituting "subclauses (3), (3a) and (3b)"; and
 - (b) deleting in subclause (4a) "subclause (2)" and substituting subclauses (2), (3a) and (3b)";
- (6) in clause 7(4) by:
- (a) in the introductory paragraph:
 - (i) inserting "(aa), " after "(a), "; and

- (ii) inserting "including" after "(j) ("; and
 - (b) inserting in paragraph (c) after "paragraph (a)" the words "and "the Company's railway" in the said paragraph (aa); and
- (7) in clause 7E by:
- (a) deleting in subclause (1) "'LAA" means the *Land Administration Act 1997* (WA)";
 - (b) inserting after subclause (3)(c) the following new paragraph:
 - "(d) Without limiting subclause (9), the Minister may waive the requirement under this clause for the Company to obtain and to furnish the consent of a title holder if the title holder has refused to give the required consent and the Minister is satisfied that:
 - (i) the title holder's affected land is or was subject to a miscellaneous licence granted under the Mining Act 1978 for the purpose of a railway to be constructed and operated in accordance with this Agreement; and
 - (ii) in the Minister's opinion, the title holder's refusal to give the required consent is not reasonable in all the circumstances including having regard to:
 - (A) the rights of the Company in relation to the affected land as the holder of the miscellaneous licence, relative to its rights as the holder of the sought Special Railway Licence or Lateral Access Road Licence (as the case may be); and
 - (B) the terms of any agreement between the Company and the title holder.";

- (c) deleting in subclause (4)(a) the comma after "the provisions of this Agreement" and substituting "and"; and
- (d) in subclause (7):
 - (i) deleting all words in paragraph (c) after "at the date of such inclusion"; and
 - (ii) inserting after paragraph (k) the following new paragraph:
 - "(l) The provisions of clause 10(2)(aa) of the Principal Agreement (as applying pursuant to clause 7(4)) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause."

Part 3 — *Iron Ore (Robe River) Agreement Act 1964* amended

7. Act amended

This Part amends the *Iron Ore (Robe River) Agreement Act 1964*.

8. Section 2 amended

In section 2 insert in alphabetical order:

the seventh variation agreement means the agreement a copy of which is set forth in the Eighth Schedule to this Act;

9. Section 4D inserted

After section 4C insert:

4D. Seventh variation agreement

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

10. Eighth Schedule inserted

After the Seventh Schedule insert:

Eighth Schedule — Seventh variation agreement

[s. 4D]

2011

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

AND

ROBE RIVER LIMITED

ACN 008 478 493

ROBE RIVER MINING CO PTY. LIMITED

ACN 008 694 246

MITSUI IRON ORE DEVELOPMENT PTY. LTD.

ACN 008 734 361

NORTH MINING LIMITED

ACN 000 081 434

NIPPON STEEL AUSTRALIA PTY. LTD.

ACN 001 445 049

SUMITOMO METAL AUSTRALIA PTY. LTD.

ACN 001 444 604

IRON ORE (ROBE RIVER) AGREEMENT 1964

RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 8th day of November 2011

BETWEEN

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

AND

ROBE RIVER LIMITED ACN 008 478 493 of Level 33, 120 Collins Street, Melbourne, Victoria (**RRL**)

AND

ROBE RIVER MINING CO PTY. LIMITED ACN 008 694 246 of Level 27, Central Park, 152-158 St Georges Terrace, Perth, Western Australia (**RRMC**),

MITSUI IRON ORE DEVELOPMENT PTY. LTD. ACN 008 734 361 of Level 26, Exchange Plaza, 2 The Esplanade, Perth, Western Australia (**Mitsui**),

NORTH MINING LIMITED ACN 000 081 434 of Level 33, 120 Collins Street, Melbourne, Victoria (**NML**),

NIPPON STEEL AUSTRALIA PTY. LTD. ACN 001 445 049 of Level 24, 1 York Street, Sydney, New South Wales, **SUMITOMO METAL AUSTRALIA PTY. LTD.** ACN 001 444 604 of Level 39, Australia Square, 264 George Street, Sydney, New South Wales, and the said **MITSUI IRON ORE DEVELOPMENT PTY. LTD.** which 3 companies carry on business under the name of **Cape Lambert Iron Associates (CLIA)**, and

the said **NIPPON STEEL AUSTRALIA PTY LTD** and **SUMITOMO METAL AUSTRALIA PTY LTD** which 2 companies carry on business together under the name **Pannawonica Iron Associates (PIA)**.

(RRMC, Mitsui, NML, CLIA and PIA are collectively referred to in this Agreement as the **Robe Participants**.)

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RECITALS:

- A. The State, RRL and the Robe Participants are now the parties to the agreement dated 18 November 1964, approved by and scheduled to the *Iron Ore (Robe River) Agreement Act 1964* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B. The parties wish to vary the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Interpretation

Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.

2. Ratification and Operation

- (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia prior to 31 December 2011 or such later date as may be agreed between the parties hereto to ratify this Agreement. The State shall endeavour to secure the timely passage of such Bill as an Act.
- (2) The provisions of this Agreement other than this clause and clause 1 will not come into operation until the day after the day on which the Bill referred to in subclause (1) has been passed by the State Parliament of Western Australia and commences to operate as an Act.
- (3) If by 30 June 2012 the said Bill has not commenced to operate as an Act then, unless the parties hereto otherwise agree, this Agreement will then cease and determine and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (4) On the day after the day on which the said Bill commences to operate as an Act all the provisions of this Agreement will operate and take effect despite any enactment or other law.

3. Variation of Principal Agreement

The Principal Agreement is varied as follows:

(1) in clause 1 by:

- (a) inserting in the appropriate alphabetical positions the following new definitions:

"Eligible Existing Tenure" means:

- (a) (i) a miscellaneous licence or general purpose lease granted to the Company under the Mining Act 1978; or
- (ii) a lease or easement granted to the Company under the LAA,

and not clearly, to the satisfaction of the Minister, granted under or pursuant to or held pursuant to this Agreement; or

- (b) an application by the Company for the grant to it of a tenement referred to in paragraph (a)(i) (which application has not clearly, to the satisfaction of the Minister, been made under or pursuant to this Agreement) and as the context requires the tenement granted pursuant to such an application,

where that tenure was granted or that application was made (as the case may be) on or before 1 October 2011;

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

"Relevant Land", in relation to Eligible Existing Tenure or Special Advance Tenure, means the land which is the subject of that Eligible Existing Tenure or Special Advance Tenure, as the case may be;

"second variation date" means the date on which clause 3 of the variation agreement made on or about 7 November 2011 between the State and the Company comes into operation;

"Special Advance Tenure" means:

- (a) a miscellaneous licence or general purpose lease requested under clause 8(2b) to be granted to the Company under the Mining Act 1978; or
- (b) an easement or a lease requested under clause 8(2b) to be granted to the Company under the LAA,

and as the context requires such tenure if granted;

- (b) inserting after the words "reference in this Agreement to an Act shall include the amendments to such Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder" the words "(and for the avoidance of doubt this principle, subject to the context and without limitation to its application to other Acts, may apply in respect of references to the Land Act and the Mining Act notwithstanding references in this Agreement to the LAA and the Mining Act 1978);";

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

"Community development plan

- 7G. (1) In this clause, the term "community and social benefits" includes:
- (a) assistance with skills development and training opportunities to promote work readiness and employment for persons living in the Pilbara region of the said State;
 - (b) regional development activities in the Pilbara region of the said State, including partnerships and sponsorships;
 - (c) contribution to any community projects, town services or facilities; and
 - (d) a regionally based workforce.
- (2) The Company acknowledges the need for community and social benefits flowing from this Agreement.

- (3) The Company agrees that:
 - (a) it shall prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with its activities under this Agreement; and
 - (b) the Company shall, not later than 3 months after the second variation date, submit to the Minister the plan prepared under paragraph (a) and confer with the Minister in respect of the plan.
- (4) The Minister shall within 2 months after receipt of a plan submitted under subclause (3)(b), either notify the Company that the Minister approves the plan as submitted or notify the Company of changes which the Minister requires be made to the plan. If the Company is unwilling to accept the changes which the Minister requires it shall notify the Minister to that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes required by the Minister.
- (5) The effect of an award made on an arbitration pursuant to subclause (4) shall be that the relevant plan submitted by the Company pursuant to subclause (3)(b) shall, with such changes required by the Minister under subclause (4) as the arbitrator determines to be reasonable (with or without modification by the arbitrator), be deemed to be the plan approved by the Minister under this clause.
- (6) At least 3 months before the anticipated submission of proposals relating to a proposed development pursuant to clauses 7A or 9D, the Company must, unless the Minister otherwise requires, give to the Minister information about how the proposed development may affect the plan approved or deemed to be approved by the Minister under this clause. This obligation operates in relation to all proposals

submitted on or after the date that is 4 months after the date when a plan is first approved or deemed to be approved under this clause.

- (7) The Company shall at least annually report to the Minister about the Company's implementation of the plan approved or deemed to be approved by the Minister under this clause.
- (8) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan approved or deemed to be approved by the Minister under this clause and may agree to amendment of the plan or adoption of a new plan. Any such amended plan or new plan will be deemed to be the plan approved by the Minister under this clause in respect of the development to which it relates.
- (9) During the currency of this Agreement, the Company shall implement the plan approved or deemed to be approved by the Minister under this clause.

Local participation plan

- 7H. (1) In this clause, the term "local industry participation benefits" means:
- (a) the use and training of labour available within the said State;
 - (b) the use of the services of engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and contractors available within the said State; and
 - (c) the procurement of works, materials, plant, equipment and supplies from Western Australian suppliers, manufacturers and contractors.

- (2) The Company acknowledges the need for local industry participation benefits flowing from this Agreement.
- (3) The Company agrees that it shall, not later than 3 months after the second variation date, prepare and provide to the Minister a plan which contains:
 - (a) a clear statement on the strategies which the Company will use, and require a third party as referred to in subclause (7) to use, to maximise the uses and procurement referred to in subclause (1);
 - (b) detailed information on the procurement practices the Company will adopt, and require a third party as referred to in subclause (7) to adopt, in calling for tenders and letting contracts for works, materials, plant, equipment and supplies stages in relation to a proposed development and how such practices will provide fair and reasonable opportunity for suitably qualified Western Australian suppliers, manufacturers and contractors to tender or quote for works, materials, plant, equipment and supplies;
 - (c) detailed information on the methods the Company will use, and require a third party as referred to in subclause (7) to use, to have their respective procurement officers promptly introduced to Western Australian suppliers, manufacturers and contractors seeking such introduction; and
 - (d) details of the communication strategies the Company will use, and require a third party as referred to in subclause (7) to use, to alert Western Australian engineers, surveyors, architects and other professional consultants, experts, specialists, project

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managers and consultants and Western Australian suppliers, manufacturers and contractors to services opportunities and procurement opportunities respectively as referred to in subclause (1).

It is acknowledged by the Company that the strategies of the Company referred to in subclause (3)(a) will include strategies of the Company in relation to supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement.

- (4) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.
- (5) At least 6 months before the anticipated submission of proposals relating to a proposed development pursuant to clauses 7A or 9D, the Company must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this clause in relation to the proposed development. This obligation operates in relation to all proposals submitted on or after the date that is 7 months after the date when a plan is first provided under this clause.
- (6) During the currency of this Agreement the Company shall implement the plan provided under this clause.
- (7) The Company shall:
 - (a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions

requiring the third party to undertake procurement activities in accordance with the plan provided under this clause; and

- (b) use reasonable endeavours to ensure that the third party complies with those provisions.";

- (3) in clause 8(1)(b) by:

- (a) inserting a comma after "Mining Act"; and
- (b) inserting after subparagraph (iii) the following new paragraph:

"and notwithstanding clause 9B(2)(b)(iv), detailed proposals may refer to activities on tenure which is proposed to be granted pursuant to this paragraph (b) as if that tenure was granted pursuant to this Agreement (but this does not limit the powers or discretions of the Minister under this Agreement or the Minister responsible for the administration of any relevant Act with respect to the grant of the tenure);";

- (4) by inserting after clause 8(2) the following new subclauses:

"Application for Eligible Existing Tenure to be held pursuant to this Agreement

- (2a) (a) The Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Eligible Existing Tenure becoming held pursuant to this Agreement on such conditions as the Minister sees fit (including, without limitation and notwithstanding the Mining Act 1978 and the LAA, as to the surrender of land, the submission of detailed proposals and the variation of the terms and conditions of the Eligible Existing Tenure (including for the Eligible Existing Tenure to be held pursuant to this Agreement and for the more efficient use of the Relevant Land)) and the Minister may from time to time vary such conditions in order to extend any specified time for the doing of any thing or otherwise with the agreement of the Company.

- (b) Eligible Existing Tenure the subject of an approval by the Minister under this subclause will be held by the Company pursuant to this Agreement:
- (i) if the Minister's approval was not given subject to conditions, on and from the date of the Minister's notice of approval;
 - (ii) unless paragraph (iii) applies, if the Minister's approval was given subject to conditions, on the date on which all such conditions have been satisfied; and
 - (iii) if the Minister's approval was given subject to a condition requiring that the Company submit detailed proposals in accordance with this Agreement, on the later of the date on which the Minister approves proposals submitted in discharge of that specified condition and the date upon which all other specified conditions have been satisfied, but the Company is authorised to implement any approved proposal to the extent such implementation is consistent with the then terms and conditions of the Eligible Existing Tenure pending the satisfaction of any conditions relating to the variation of the terms or conditions of the Eligible Existing Tenure. Where this paragraph (iii) applies, prior to any approval of proposals and satisfaction of other conditions, the relevant tenure will be treated for (but only for) the purposes of clause 9B(2)(b)(iv) as tenure held pursuant to this Agreement.

Application for Special Advance Tenure to be granted pursuant to this Agreement

- (2b) Without limiting clause 8(1)(c), the Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Special Advance

Tenure being granted to the Company pursuant to this Agreement if:

- (a) the Company proposes to submit detailed proposals under this Agreement (other than under clause 9D) to construct works installations or facilities on the Relevant Land and the Company's request is so far as is practicable made, unless the Minister approves otherwise, no less than 6 months before the submission of those detailed proposals; and
- (b) the Minister is satisfied that it is necessary and appropriate that Special Advance Tenure, rather than tenure granted under or pursuant to the other provisions of this Agreement, be used for the purposes of the proposed works installations or facilities on the Relevant Land,

and if the Minister does so approve:

- (c) notwithstanding the Mining Act 1978 or the LAA, the appropriate authority or instrumentality of the State shall obtain the consent of the Minister to the form and substance of the Special Advance Tenure prior to its grant (which for the avoidance of doubt neither the State nor the Minister is obliged to cause) to the Company; and
 - (d) if the Company does not submit detailed proposals relating to construction of the relevant works installations or facilities on the Relevant Land within 24 months after the date of the Minister's approval or such later time subsequently allowed by the Minister, or if submitted the Minister does not approve such detailed proposals, the Special Advance Tenure (if then granted) shall be surrendered at the request of the Minister.
- (2c) The decisions of the Minister under subclauses (2a) and (2b) shall not be referable to arbitration and any approval of the Minister under this clause shall not in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's

obligations, under this Agreement or otherwise under the laws from time to time of the said State.";

(5) in clause 8 by:

- (a) deleting in subclause (3) "subclause (2)" and substituting "subclauses (2), (2a) and (2b)"; and
- (b) deleting in subclause (3a) "subclause (1)" and substituting "subclauses (1), (2a) and (2b)";

(6) in clause 9(2) by:

- (a) deleting in paragraph (a) the words "allow crossing places for roads stock and other railways and";
- (b) inserting after paragraph (a) the following new paragraph:

"Crossings over Railway

(aa) for the purposes of livestock and infrastructure such as roads, railways, conveyors, pipelines, transmission lines and other utilities proposed to cross the land the subject of the Company's railway the Company shall:

- (i) if applicable, give its consent to, or otherwise facilitate the grant by the State or any agency, instrumentality or other authority of the State of any lease, licence or other title over land the subject of the Company's railway so long as such grant does not in the Minister's opinion unduly prejudice or interfere with the activities of the Company under this Agreement; and
- (ii) on reasonable terms and conditions allow access for the construction and operation of such crossings and associated infrastructure,

provided that in forming his opinion under this clause, the Minister must consult with the Company;"

- (c) deleting paragraph (j)(ii) and substituting the following subparagraph:
- "(ii) on fine ore and pisolite fine ore sold or shipped separately as such at the rate of:
- (A) 5.625% of the f.o.b. value, for ore shipped prior to or on 30 June 2012;
- (B) 6.5% of the f.o.b. value, for ore shipped during the period from 1 July 2012 to 30 June 2013 (inclusive of both dates); and
- (C) 7.5% of the f.o.b. value, for ore shipped on or after 1 July 2013;"
- (7) in clause 9D by:
- (a) deleting in subclause (1) "'LAA" means the *Land Administration Act 1997* (WA)";
- (b) inserting after subclause (3)(c) the following new paragraph:
- "(d) Without limiting subclause (9), the Minister may waive the requirement under this clause for the Company to obtain and to furnish the consent of a title holder if the title holder has refused to give the required consent and the Minister is satisfied that:
- (i) the title holder's affected land is or was subject to a miscellaneous licence granted under the Mining Act 1978 for the purpose of a railway to be constructed and operated in accordance with this Agreement; and
- (ii) in the Minister's opinion, the title holder's refusal to give the required consent is not reasonable in all the circumstances including having regard to:
- (A) the rights of the Company in relation to the affected land as the holder of the miscellaneous licence, relative to its rights as the holder of the sought Special

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Railway Licence or Lateral Access
Road Licence (as the case may be);
and

- (B) the terms of any agreement between the Company and the title holder.";
- (c) deleting in subclause (4)(a) the comma after "the provisions of this Agreement" and substituting "and"; and
- (d) in subclause (7):
- (i) deleting all words in paragraph (c) after "at the date of such inclusion"; and
- (ii) inserting after paragraph (k) the following new paragraph:
- "(l) The provisions of clause 9(2)(aa) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause."; and
- (8) in clause 10B by deleting "clause 9(2)(a)" and substituting "clauses 9(2)(a) and (aa)".

Iron Ore Agreements Legislation Amendment Act 2011

Part 3 Iron Ore (Robe River) Agreement Act 1964 amended

s. 10

THE COMMON SEAL of ROBE)
RIVER MINING CO PTY. LIMITED)
ACN 008 694 246 was hereunto affixed) [C.S.]
by authority of the Directors in the)
presence of:)

[Signature] _____ Andrew Kite
Director

[Signature] _____ Helen Fernihough
Secretary

THE COMMON SEAL of)
MITSUI IRON ORE)
DEVELOPMENT PTY. LTD.) [C.S.]
ACN 008 734 361 was hereunto affixed)
by authority of the Directors in the)
presence of:)

[Signature] _____ Hirofumi Fujita
Director

[Signature] _____ John William Smith
Director/Secretary

Signed by **NORTH MINING**)
LIMITED ACN 000 081 434 by)
its attorney in the presence of:)

[Signature]

Witness signature

[Signature]

Attorney signature

Christopher Richards

Print Name

Paul Shannon

Print Name

CAPE LAMBERT IRON ASSOCIATES

Signed by **NIPPON STEEL**)
AUSTRALIA PTY. LTD.)
ACN 001 445 049 by its duly appointed)
attorney **MITSUI IRON ORE**)
DEVELOPMENTS PTY. LTD.)
ACN 008 734 361 hereunto affixing)
its Seal by authority of the Directors)
in the presence of:)

[C.S.]

[Signature]

Director

Hirofumi Fujita

[Signature]

Director/Secretary

John William Smith

s. 10

Signed by **SUMITOMO METAL**)
AUSTRALIA PTY. LTD.)
ACN 001 444 604 by its duly appointed)
attorney **MITSUI IRON ORE**) [C.S.]
DEVELOPMENTS PTY. LTD.)
ACN 008 734 361 hereunto affixing)
its Seal by authority of the Directors)
in the presence of:)

[Signature] _____ Hirofumi Fujita _____
Director

[Signature] _____ John William Smith _____
~~Director~~/Secretary

THE COMMON SEAL of **MITSUI**)
IRON ORE DEVELOPMENT PTY.)
LTD. ACN 008 734 361 was hereunto) [C.S.]
affixed by authority of the Directors in)
the presence of:)

[Signature] _____ Hirofumi Fujita _____
Director

[Signature] _____ John William Smith _____
Secretary

Part 4 — *Iron Ore (Mount Bruce) Agreement Act 1972* amended

11. Act amended

This Part amends the *Iron Ore (Mount Bruce) Agreement Act 1972*.

12. Section 2 amended

- (1) At the end of section 2 insert:

the 2011 Variation Agreement means the agreement a copy of which is set forth in the Fifth Schedule.

- (2) In section 2 in the definition of *the Agreement* delete “Part 6 and the 2010 Variation Agreement;” and insert:

Part 6, the 2010 Variation Agreement and the 2011 Variation Agreement;

- (3) In section 2 in the definition of *the 2010 Variation Agreement* delete “Schedule.” and insert:

Schedule;

13. Section 4D inserted

After section 4C insert:

4D. 2011 Variation Agreement

- (1) The 2011 Variation Agreement is ratified and its implementation is authorised.

- (2) Without limiting or otherwise affecting the *Government Agreements Act 1979*, the 2011 Variation Agreement is to operate and take effect despite any other Act or law.

14. Fifth Schedule inserted

After the Fourth Schedule insert:

Fifth Schedule — 2011 Variation Agreement

[s. 2]

2011

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

AND

MOUNT BRUCE MINING PTY. LTD.

ACN 008 714 010

**IRON ORE (MOUNT BRUCE) AGREEMENT 1972
RATIFIED VARIATION AGREEMENT**

[Solicitor's details]

THIS AGREEMENT is made this 7th day of November 2011

BETWEEN

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

AND

MOUNT BRUCE MINING PTY. LTD. ACN 008 714 010 of Level 22, Central Park, 152-158 St Georges Terrace, Perth, Western Australia (**Company**).

RECITALS:

- A. The State and the Company are the parties to the agreement dated 10 March 1972, ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B. The State and the Company wish to vary the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Interpretation

Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.

2. Ratification and Operation

- (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia prior to 31 December 2011 or such later date as may be agreed between the parties hereto to ratify this Agreement.

The State shall endeavour to secure the timely passage of such Bill as an Act.

- (2) The provisions of this Agreement other than this clause and clause 1 will not come into operation until the day after the day on which the Bill referred to in subclause (1) has been passed by the State Parliament of Western Australia and commences to operate as an Act.
- (3) If by 30 June 2012 the said Bill has not commenced to operate as an Act then, unless the parties hereto otherwise agree, this Agreement will then cease and determine and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (4) On the day after the day on which the said Bill commences to operate as an Act all the provisions of this Agreement will operate and take effect despite any enactment or other law.

3. Variation of Principal Agreement

The Principal Agreement is varied as follows:

- (1) in clause 1 by:
 - (a) inserting in the appropriate alphabetical positions the following new definitions:

"Eligible Existing Tenure" means:

 - (a) (i) a miscellaneous licence or general purpose lease granted to the Company under the Mining Act 1978; or
 - (ii) a lease or easement granted to the Company under the LAA,

and not clearly, to the satisfaction of the Minister, granted under or pursuant to or held pursuant to this Agreement; or
 - (b) an application by the Company for the grant to it of a tenement referred to in paragraph (a)(i) (which application has not clearly, to the satisfaction of the Minister, been made under or pursuant to this

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Agreement) and as the context requires the tenement granted pursuant to such an application,

where that tenure was granted or that application was made (as the case may be) on or before 1 October 2011;

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

"Relevant Land", in relation to Eligible Existing Tenure or Special Advance Tenure, means the land which is the subject of that Eligible Existing Tenure or Special Advance Tenure, as the case may be;

"second variation date" means the date on which clause 3 of the variation agreement made on or about 7 November 2011 between the State and the Company comes into operation;

"Special Advance Tenure" means:

- (a) a miscellaneous licence or general purpose lease requested under clause 7(3b) to be granted to the Company under the Mining Act 1978; or
- (b) an easement or a lease requested under clause 7(3b) to be granted to the Company under the LAA,

and as the context requires such tenure if granted;

- (b) inserting after the words "reference in this Agreement to an Act shall include the amendments to such Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder" the words "(and for the avoidance of doubt this principle, subject to the context and without limitation to its application to other Acts, may apply in respect of references to the Land Act and the Mining Act notwithstanding references in this Agreement to the LAA and the Mining Act 1978)";

- (2) in clause 7(1) by inserting after paragraph (c) the following new paragraph:

"Notwithstanding clause 20C(2)(b)(iv), detailed proposals may refer to activities on tenure which is proposed to be granted pursuant to this subclause (1) as if that tenure was granted pursuant to this Agreement

(but this does not limit the powers or discretions of the Minister under this Agreement or the Minister responsible for the administration of any relevant Act with respect to the grant of the tenure).";

- (3) by inserting after clause 7(3) the following new subclauses:

"Application for Eligible Existing Tenure to be held pursuant to this Agreement

- (3a) (a) The Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Eligible Existing Tenure becoming held pursuant to this Agreement on such conditions as the Minister sees fit (including, without limitation and notwithstanding the Mining Act 1978 and the LAA, as to the surrender of land, the submission of detailed proposals and the variation of the terms and conditions of the Eligible Existing Tenure (including for the Eligible Existing Tenure to be held pursuant to this Agreement and for the more efficient use of the Relevant Land)) and the Minister may from time to time vary such conditions in order to extend any specified time for the doing of any thing or otherwise with the agreement of the Company.
- (b) Eligible Existing Tenure the subject of an approval by the Minister under this subclause will be held by the Company pursuant to this Agreement:
- (i) if the Minister's approval was not given subject to conditions, on and from the date of the Minister's notice of approval;
 - (ii) unless paragraph (iii) applies, if the Minister's approval was given subject to conditions, on the date on which all such conditions have been satisfied; and
 - (iii) if the Minister's approval was given subject to a condition requiring that the Company submit detailed proposals in accordance

with this Agreement, on the later of the date on which the Minister approves proposals submitted in discharge of that specified condition and the date upon which all other specified conditions have been satisfied, but the Company is authorised to implement any approved proposal to the extent such implementation is consistent with the then terms and conditions of the Eligible Existing Tenure pending the satisfaction of any conditions relating to the variation of the terms or conditions of the Eligible Existing Tenure. Where this paragraph (iii) applies, prior to any approval of proposals and satisfaction of other conditions, the relevant tenure will be treated for (but only for) the purposes of clause 20C(2)(b)(iv) as tenure held pursuant to this Agreement.

Application for Special Advance Tenure to be granted pursuant to this Agreement

- (3b) Without limiting clause 7(2), the Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Special Advance Tenure being granted to the Company pursuant to this Agreement if:
- (a) the Company proposes to submit detailed proposals under this Agreement (other than under clause 20E) to construct works installations or facilities on the Relevant Land and the Company's request is so far as is practicable made, unless the Minister approves otherwise, no less than 6 months before the submission of those detailed proposals; and
 - (b) the Minister is satisfied that it is necessary and appropriate that Special Advance Tenure, rather than tenure granted under or pursuant to the other provisions of this Agreement, be used for the

purposes of the proposed works installations or facilities on the Relevant Land,

and if the Minister does so approve:

- (c) notwithstanding the Mining Act 1978 or the LAA, the appropriate authority or instrumentality of the State shall obtain the consent of the Minister to the form and substance of the Special Advance Tenure prior to its grant (which for the avoidance of doubt neither the State nor the Minister is obliged to cause) to the Company; and
 - (d) if the Company does not submit detailed proposals relating to construction of the relevant works installations or facilities on the Relevant Land within 24 months after the date of the Minister's approval or such later time subsequently allowed by the Minister, or if submitted the Minister does not approve such detailed proposals, the Special Advance Tenure (if then granted) shall be surrendered at the request of the Minister.
- (3c) The decisions of the Minister under subclauses (3a) and (3b) shall not be referable to arbitration and any approval of the Minister under this clause shall not in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.";
- (4) in clause 7 by:
- (a) deleting in subclause (4) "subclause (3)" and substituting "subclauses (3), (3a) and (3b)"; and
 - (b) deleting in subclause (4a) "and (2)" and substituting ", (2), (3a) and (3b)";

- (5) by inserting after clause 11B the following new clauses:

"Community development plan

11C. (1) In this clause, the term "community and social benefits" includes:

- (a) assistance with skills development and training opportunities to promote work readiness and employment for persons living in the Pilbara region of the said State;
 - (b) regional development activities in the Pilbara region of the said State, including partnerships and sponsorships;
 - (c) contribution to any community projects, town services or facilities; and
 - (d) a regionally based workforce.
- (2) The Company acknowledges the need for community and social benefits flowing from this Agreement.
- (3) The Company agrees that:
- (a) it shall prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with its activities under this Agreement; and
 - (b) the Company shall, not later than 3 months after the second variation date, submit to the Minister the plan prepared under paragraph (a) and confer with the Minister in respect of the plan.
- (4) The Minister shall within 2 months after receipt of a plan submitted under subclause (3)(b), either notify the Company that the Minister approves the plan as submitted or notify the Company of changes which the Minister requires be made to the plan. If the Company is unwilling to accept the changes which the Minister requires it shall notify the Minister to

that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes required by the Minister.

- (5) The effect of an award made on an arbitration pursuant to subclause (4) shall be that the relevant plan submitted by the Company pursuant to subclause (3)(b) shall, with such changes required by the Minister under subclause (4) as the arbitrator determines to be reasonable (with or without modification by the arbitrator), be deemed to be the plan approved by the Minister under this clause.
- (6) At least 3 months before the anticipated submission of proposals relating to a proposed development pursuant to any of clauses 5, 11 or 20E, the Company must, unless the Minister otherwise requires, give to the Minister information about how the proposed development may affect the plan approved or deemed to be approved by the Minister under this clause. This obligation operates in relation to all proposals submitted on or after the date that is 4 months after the date when a plan is first approved or deemed to be approved under this clause.
- (7) The Company shall at least annually report to the Minister about the Company's implementation of the plan approved or deemed to be approved by the Minister under this clause.
- (8) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan approved or deemed to be approved by the Minister under this clause and may agree to amendment of the plan or adoption of a new plan. Any such amended plan or new plan will be deemed to be the plan approved by the Minister under this clause in respect of the development to which it relates.

- (9) During the currency of this Agreement, the Company shall implement the plan approved or deemed to be approved by the Minister under this clause.

Local participation plan

11D. (1) In this clause, the term "local industry participation benefits" means:

- (a) the use and training of labour available within the said State;
 - (b) the use of the services of engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and contractors available within the said State; and
 - (c) the procurement of works, materials, plant, equipment and supplies from Western Australian suppliers, manufacturers and contractors.
- (2) The Company acknowledges the need for local industry participation benefits flowing from this Agreement.
- (3) The Company agrees that it shall, not later than 3 months after the second variation date, prepare and provide to the Minister a plan which contains:
- (a) a clear statement on the strategies which the Company will use, and require a third party as referred to in subclause (7) to use, to maximise the uses and procurement referred to in subclause (1);
 - (b) detailed information on the procurement practices the Company will adopt, and require a third party as referred to in subclause (7) to adopt, in calling for tenders and letting contracts for works, materials, plant, equipment and supplies stages in relation to a proposed development and

how such practices will provide fair and reasonable opportunity for suitably qualified Western Australian suppliers, manufacturers and contractors to tender or quote for works, materials, plant, equipment and supplies;

- (c) detailed information on the methods the Company will use, and require a third party as referred to in subclause (7) to use, to have their respective procurement officers promptly introduced to Western Australian suppliers, manufacturers and contractors seeking such introduction; and
- (d) details of the communication strategies the Company will use, and require a third party as referred to in subclause (7) to use, to alert Western Australian engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and consultants and Western Australian suppliers, manufacturers and contractors to services opportunities and procurement opportunities respectively as referred to in subclause (1).

It is acknowledged by the Company that the strategies of the Company referred to in subclause (3)(a) will include strategies of the Company in relation to supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement.

- (4) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.

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- (5) At least 6 months before the anticipated submission of proposals relating to a proposed development pursuant to any of clauses 5, 11 or 20E, the Company must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this clause in relation to the proposed development. This obligation operates in relation to all proposals submitted on or after the date that is 7 months after the date when a plan is first provided under this clause.
 - (6) During the currency of this Agreement the Company shall implement the plan provided under this clause.
 - (7) The Company shall:
 - (a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this clause; and
 - (b) use reasonable endeavours to ensure that the third party complies with those provisions.";
- (6) in clause 12(1) by:
- (a) deleting in paragraph (a) "allow crossing places for roads stock and other railways and also";
 - (b) inserting after paragraph (a) the following new paragraph:

"Crossings over Railway

 - (aa) for the purposes of livestock and infrastructure such as roads, railways, conveyors, pipelines, transmission lines and other utilities proposed to

cross the land the subject of the Company's railway the Company shall:

- (i) if applicable, give its consent to, or otherwise facilitate the grant by the State or any agency, instrumentality or other authority of the State of any lease, licence or other title over land the subject of the Company's railway so long as such grant does not in the Minister's opinion unduly prejudice or interfere with the activities of the Company under this Agreement; and
- (ii) on reasonable terms and conditions allow access for the construction and operation of such crossings and associated infrastructure,

provided that in forming his opinion under this clause, the Minister must consult with the Company;" and

- (c) deleting paragraph (h)(ii) and substituting the following subparagraph:

"(ii) on fine ore sold or shipped separately as such at the rate of:

- (A) 5.625% of the f.o.b. value, for ore shipped prior to or on 30 June 2012;
- (B) 6.5% of the f.o.b. value, for ore shipped during the period from 1 July 2012 to 30 June 2013 (inclusive of both dates); and
- (C) 7.5% of the f.o.b. value, for ore shipped on or after 1 July 2013;" and

- (7) in clause 20E by:

- (a) deleting in subclause (1) "'LAA" means the *Land Administration Act 1997* (WA)";

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- (b) inserting after subclause (3)(c) the following new paragraph:
- "(d) Without limiting subclause (9), the Minister may waive the requirement under this clause for the Company to obtain and to furnish the consent of a title holder if the title holder has refused to give the required consent and the Minister is satisfied that:
- (i) the title holder's affected land is or was subject to a miscellaneous licence granted under the Mining Act 1978 for the purpose of a railway to be constructed and operated in accordance with this Agreement; and
 - (ii) in the Minister's opinion, the title holder's refusal to give the required consent is not reasonable in all the circumstances including having regard to:
 - (A) the rights of the Company in relation to the affected land as the holders of the miscellaneous licence, relative to their rights as the holders of the sought Special Railway Licence or Lateral Access Road Licence (as the case may be); and
 - (B) the terms of any agreement between the Company and the title holder.";
- (c) deleting in subclause (4)(a) the comma after "the provisions of this Agreement" and substituting "and"; and
- (d) in subclause (7):
- (i) deleting all words in paragraph (c) after "at the date of such inclusion"; and

(ii) inserting after paragraph (k) the following new paragraph:

"(l) The provisions of clause 12(1)(aa) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause."

Iron Ore Agreements Legislation Amendment Act 2011

Part 4 Iron Ore (Mount Bruce) Agreement Act 1972 amended

s. 14

EXECUTED as a deed.

SIGNED by the **HONOURABLE**)
COLIN JAMES BARNETT)
in the presence of:)

[Signature]

[Signature]

Signature of witness

Stephen Bombardieri

Name of witness

THE COMMON SEAL of **MOUNT**)
BRUCE MINING PTY. LIMITED)
ACN 008 714 010 was hereunto affixed)
by authority of the Directors in the)
presence of:)

[C.S.]

[Signature]

Robert Paul Shannon

Director

[Signature]

Helen Fernihough

Secretary

**Part 5 — Iron Ore (Hope Downs) Agreement
Act 1992 amended**

15. Act amended

This Part amends the *Iron Ore (Hope Downs) Agreement Act 1992*.

16. Section 3 amended

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

the Second Variation Agreement means the agreement
a copy of which is set out in Schedule 3.

- (2) In section 3 in the definition of *Agreement* delete “Agreement;”
and insert:

Agreement and the Second Variation Agreement;

- (3) In section 3 in the definition of *the First Variation Agreement*
delete “Schedule 2.” and insert:

Schedule 2;

17. Section 4 amended

After section 4(2A) insert:

- (2B) The Second Variation Agreement is ratified.

18. Schedule 3 inserted

After Schedule 2 insert:

Schedule 3 — Second Variation Agreement

[s. 3]

2011

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

AND

HOPE DOWNS IRON ORE PTY. LTD.

ACN 071 514 308

HAMERSLEY WA PTY. LTD.

ACN 115 004 138

IRON ORE (HOPE DOWNS) AGREEMENT 1992

RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 9th day of November 2011

BETWEEN

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

AND

HOPE DOWNS IRON ORE PTY LTD ACN 071 514 308 of Level 3, Hapl House, 28-42 Ventnor Avenue, West Perth, Western Australia and **HAMERSLEY WA PTY. LTD.** ACN 115 004 138 of Level 22, Central Park, 152-158 St Georges Terrace, Perth, Western Australia (**Joint Venturers**).

RECITALS:

- A.** The State and the Joint Venturers are now the parties to the agreement dated 30 November 1992 ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B.** The State and the Joint Venturers wish to vary the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Interpretation

Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.

2. Ratification and Operation

- (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia prior to 31 December 2011 or such later date as

may be agreed between the parties hereto to ratify this Agreement. The State shall endeavour to secure the timely passage of such Bill as an Act.

- (2) The provisions of this Agreement other than this clause and clause 1 will not come into operation until the day after the day on which the Bill referred to in subclause (1) has been passed by the State Parliament of Western Australia and commences to operate as an Act.
- (3) If by 30 June 2012 the said Bill has not commenced to operate as an Act then, unless the parties hereto otherwise agree, this Agreement will then cease and determine and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (4) On the day after the day on which the said Bill commences to operate as an Act all the provisions of this Agreement will operate and take effect despite any enactment or other law.

3. Variation of Principal Agreement

The Principal Agreement is varied as follows:

- (1) in clause 1 by inserting in the appropriate alphabetical positions the following new definitions:

"Eligible Existing Tenure" means:

- (a) (i) a miscellaneous licence or general purpose lease granted to the Company under the Mining Act 1978; or
- (ii) a lease or easement granted to the Company under the LAA,

and not clearly, to the satisfaction of the Minister, granted under or pursuant to or held pursuant to this Agreement; or

- (b) an application by the Company for the grant to it of a tenement referred to in paragraph (a)(i) (which application has not clearly, to the satisfaction of the Minister, been made under or pursuant to this Agreement) and as the context requires the tenement granted pursuant to such an application,

where that tenure was granted or that application was made (as the case may be) on or before 1 October 2011;

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

"Relevant Land", in relation to Eligible Existing Tenure or Special Advance Tenure, means the land which is the subject of that Eligible Existing Tenure or Special Advance Tenure, as the case may be;

"second variation date" means the date on which clause 3 of the variation agreement made on or about 7 November 2011 between the State and the Company comes into operation;

"Special Advance Tenure" means:

- (a) a miscellaneous licence or general purpose lease requested under Clause 23(2c) to be granted to the Company under the Mining Act 1978; or
- (b) an easement or a lease requested under Clause 23(2c) to be granted to the Company under the LAA,

and as the context requires such tenure if granted;

- (2) in clause 2(e) by inserting after "for the time being in force thereunder" the words "(and for the avoidance of doubt this principle, subject to the context and without limitation to its application to other Acts, may apply in respect of references to the Land Act notwithstanding references in this Agreement to the LAA)";
- (3) by inserting after clause 10B the following new clauses:

"Community development plan

10C. (1) In this Clause, the term "community and social benefits" includes:

- (a) assistance with skills development and training opportunities to promote work readiness and employment for persons living in the Pilbara region of the said State;
- (b) regional development activities in the Pilbara region of the said State, including partnerships and sponsorships;

- (c) contribution to any community projects, town services or facilities; and
 - (d) a regionally based workforce.
- (2) The Company acknowledges the need for community and social benefits flowing from this Agreement.
- (3) The Company agrees that:
 - (a) it shall prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with its activities under this Agreement; and
 - (b) the Company shall, not later than 3 months after the second variation date, submit to the Minister the plan prepared under paragraph (a) and confer with the Minister in respect of the plan.
- (4) The Minister shall within 2 months after receipt of a plan submitted under subclause (3)(b), either notify the Company that the Minister approves the plan as submitted or notify the Company of changes which the Minister requires be made to the plan. If the Company is unwilling to accept the changes which the Minister requires it shall notify the Minister to that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes required by the Minister.
- (5) The effect of an award made on an arbitration pursuant to subclause (4) shall be that the relevant plan submitted by the Company pursuant to subclause (3)(b) shall, with such changes required by the Minister under subclause (4) as the arbitrator determines to be reasonable (with or without modification by the arbitrator), be deemed to be the plan approved by the Minister under this Clause.

- (6) At least 3 months before the anticipated submission of proposals relating to a proposed development pursuant to any of Clauses 10, 11, 15, 15C and 27 the Company must, unless the Minister otherwise requires, give to the Minister information about how the proposed development may affect the plan approved or deemed to be approved by the Minister under this Clause. This obligation operates in relation to all proposals submitted on or after the date that is 4 months after the date when a plan is first approved or deemed to be approved under this Clause.
- (7) The Company shall at least annually report to the Minister about the Company's implementation of the plan approved or deemed to be approved by the Minister under this Clause.
- (8) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan approved or deemed to be approved by the Minister under this Clause and may agree to amendment of the plan or adoption of a new plan. Any such amended plan or new plan will be deemed to be the plan approved by the Minister under this Clause in respect of the development to which it relates.
- (9) During the currency of this Agreement, the Company shall implement the plan approved or deemed to be approved by the Minister under this Clause.

Local participation plan

- 10D. (1) In this Clause, the term "local industry participation benefits" means:
- (a) the use and training of labour available within the said State;
 - (b) the use of the services of engineers, surveyors, architects and other professional consultants, experts, specialists, project

managers and contractors available within the said State; and

- (c) the procurement of works, materials, plant, equipment and supplies from Western Australian suppliers, manufacturers and contractors.
- (2) The Company acknowledges the need for local industry participation benefits flowing from this Agreement.
- (3) The Company agrees that it shall, not later than 3 months after the second variation date, prepare and provide to the Minister a plan which contains:
- (a) a clear statement on the strategies which the Company will use, and require a third party as referred to in subclause (7) to use, to maximise the uses and procurement referred to in subclause (1);
 - (b) detailed information on the procurement practices the Company will adopt, and require a third party as referred to in subclause (7) to adopt, in calling for tenders and letting contracts for works, materials, plant, equipment and supplies stages in relation to a proposed development and how such practices will provide fair and reasonable opportunity for suitably qualified Western Australian suppliers, manufacturers and contractors to tender or quote for works, materials, plant, equipment and supplies;
 - (c) detailed information on the methods the Company will use, and require a third party as referred to in subclause (7) to use, to have its respective procurement officers promptly introduced to Western Australian suppliers, manufacturers and contractors seeking such introduction; and

- (d) details of the communication strategies the Company will use, and require a third party as referred to in subclause (7) to use, to alert Western Australian engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and consultants and Western Australian suppliers, manufacturers and contractors to services opportunities and procurement opportunities respectively as referred to in subclause (1).

It is acknowledged by the Company that the strategies of the Company referred to in subclause (3)(a) will include strategies of the Company in relation to supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement.

- (4) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.
- (5) At least 6 months before the anticipated submission of proposals relating to a proposed development pursuant to any of Clauses 10, 11, 15, 15C and 27, the Company must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this Clause in relation to the proposed development. This obligation operates in relation to all proposals submitted on or after the date that is 7 months after the date when a plan is first provided under this Clause.
- (6) During the currency of this Agreement the Company shall implement the plan provided under this Clause.

- (7) The Company shall:
- (a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this Clause; and
 - (b) use reasonable endeavours to ensure that the third party complies with those provisions.";
- (4) by deleting clause 13(1)(ii) and substituting the following paragraph:
- "(ii) on fine ore sold or shipped separately as such at the rate of:
- (A) 5.625% of the f.o.b. value, for ore shipped prior to or on 30 June 2012;
 - (B) 6.5% of the f.o.b. value, for ore shipped during the period from 1 July 2012 to 30 June 2013 (inclusive of both dates); and
 - (C) 7.5% of the f.o.b. value, for ore shipped on or after 1 July 2013;
- (5) in clause 15C by:
- (a) deleting in subclause (1) "'LAA" means the *Land Administration Act 1997* (WA)";
 - (b) inserting after subclause (3)(c) the following new paragraph:

"(d) Without limiting subclause (9), the Minister may waive the requirement under this Clause for the Company to obtain and to furnish the consent of a

title holder if the title holder has refused to give the required consent and the Minister is satisfied that:

- (i) the title holder's affected land is or was subject to a miscellaneous licence granted under the Mining Act 1978 for the purpose of a railway to be constructed and operated in accordance with this Agreement; and
 - (ii) in the Minister's opinion, the title holder's refusal to give the required consent is not reasonable in all the circumstances including having regard to:
 - (A) the rights of the Company in relation to the affected land as the holder of the miscellaneous licence, relative to its rights as the holder of the sought Special Railway Licence or Lateral Access Road Licence (as the case may be); and
 - (B) the terms of any agreement between the Company and the title holder.";
- (c) deleting in subclause (4)(a) the comma after "the provisions of this Agreement" and substituting "and"; and
- (d) in subclause (7):
- (i) deleting all words in paragraph (c) after "at the date of such inclusion"; and
 - (ii) inserting after paragraph (k) the following new paragraph:
 - "(l) The provisions of clause 24(2a) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this Clause.";

(6) in clause 23 by:

- (a) inserting at the end of subclause (1) the following new paragraph:

"Notwithstanding Clause 15A(2)(b)(iv), detailed proposals may refer to activities on tenure which is proposed to be granted pursuant to this subclause (1) as if that tenure was granted pursuant to this Agreement (but this does not limit the powers or discretions of the Minister under this Agreement or the Minister responsible for the administration of any relevant Act with respect to the grant of the tenure).";

- (b) in subclause (2), inserting after "The provisions of this subclause" the words "and subclauses (2b) and (2c)";

- (c) in subclause (2a), deleting "subclause (1)" and substituting "subclauses (1), (2b) and (2c)"; and

- (d) inserting after subclause (2a) the following new subclauses:

"Application for Eligible Existing Tenure to be held pursuant to this Agreement

- (2b) (a) The Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Eligible Existing Tenure becoming held pursuant to this Agreement on such conditions as the Minister sees fit (including, without limitation and notwithstanding the Mining Act 1978 and the LAA, as to the surrender of land, the submission of detailed proposals and the variation of the terms and conditions of the Eligible Existing Tenure (including for the Eligible Existing Tenure to be held pursuant to this Agreement and for the more efficient use of the Relevant Land)) and the Minister may from time to time vary such conditions in order to extend any specified time for the doing of any thing or

otherwise with the agreement of the Company.

- (b) Eligible Existing Tenure the subject of an approval by the Minister under this subclause will be held by the Company pursuant to this Agreement:
- (i) if the Minister's approval was not given subject to conditions, on and from the date of the Minister's notice of approval;
 - (ii) unless paragraph (iii) applies, if the Minister's approval was given subject to conditions, on the date on which all such conditions have been satisfied; and
 - (iii) if the Minister's approval was given subject to a condition requiring that the Company submit detailed proposals in accordance with this Agreement, on the later of the date on which the Minister approves proposals submitted in discharge of that specified condition and the date upon which all other specified conditions have been satisfied, but the Company is authorised to implement any approved proposal to the extent such implementation is consistent with the then terms and conditions of the Eligible Existing Tenure pending the satisfaction of any conditions relating to the variation of the terms or conditions of the Eligible Existing Tenure. Where this paragraph (iii) applies, prior to any approval of proposals and satisfaction of other conditions, the

relevant tenure will be treated for (but only for) the purposes of clause 15A(2)(b)(iv) as tenure held pursuant to this Agreement.

Application for Special Advance Tenure to be granted pursuant to this Agreement

(2c) The Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Special Advance Tenure being granted to the Company pursuant to this Agreement if:

- (a) the Company proposes to submit detailed proposals under this Agreement (other than under Clause 15C) to construct works installations or facilities on the Relevant Land and the Company's request is so far as is practicable made, unless the Minister approves otherwise, no less than 6 months before the submission of those detailed proposals; and
- (b) the Minister is satisfied that it is necessary and appropriate that Special Advance Tenure, rather than tenure granted under or pursuant to the other provisions of this Agreement, be used for the purposes of the proposed works installations or facilities on the Relevant Land,

and if the Minister does so approve:

- (c) notwithstanding the Mining Act 1978 or the LAA, the appropriate authority or instrumentality of the State shall obtain the consent of the Minister to the form and substance of the Special Advance Tenure prior to its grant (which for the avoidance of doubt neither the State nor the Minister is obliged to cause) to the Company; and

- (d) if the Company does not submit detailed proposals relating to construction of the relevant works installations or facilities on the Relevant Land within 24 months after the date of the Minister's approval or such later time subsequently allowed by the Minister, or if submitted the Minister does not approve such detailed proposals, the Special Advance Tenure (if then granted) shall be surrendered at the request of the Minister.
- (2d) The decisions of the Minister under subclauses (2b) and (2c) shall not be referable to arbitration and any approval of the Minister under this Clause shall not in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State."; and
- (7) in clause 24 by:
 - (a) deleting in subclause (2) all words after "other railways which now exist"; and
 - (b) inserting after subclause (2) the following new subclause:

"Crossings over Railway

 - (2a) For the purposes of livestock and infrastructure such as roads, railways, conveyors, pipelines, transmission lines and other utilities proposed to cross the land the subject of the said railway the Company shall:
 - (i) if applicable, give its consent to, or otherwise facilitate the grant by the State or any agency, instrumentality or other authority of the State of any lease, licence or other title over land the subject of the said railway so long as such grant does not in the Minister's opinion unduly prejudice

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or interfere with the activities of the Company under this Agreement; and

- (ii) on reasonable terms and conditions allow access for the construction and operation of such crossings and associated infrastructure,

provided that in forming his opinion under this clause, the Minister must consult with the Company."

Iron Ore Agreements Legislation Amendment Act 2011

Part 5 Iron Ore (Hope Downs) Agreement Act 1992 amended

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THE COMMON SEAL of)
HAMERSLEY WA PTY. LTD.) [C.S.]
ACN 115 004 138 was hereunto affixed)
by authority of the Directors in the presence of:)

[Signature] _____ Robert Paul Shannon
Director

[Signature] _____ Helen Fernihough
Secretary

Part 6 — *Iron Ore (Yandicoogina) Agreement Act 1996 amended*

19. Act amended

This Part amends the *Iron Ore (Yandicoogina) Agreement Act 1996*.

20. Section 3 amended

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

the Second Variation Agreement means the agreement a copy of which is set out in Schedule 3.

- (2) In section 3 in the definition of *Agreement* delete “Agreement;” and insert:

Agreement and the Second Variation Agreement;

- (3) In section 3 in the definition of *the First Variation Agreement* delete “Schedule 2.” and insert:

Schedule 2;

21. Section 4 amended

After section 4(2A) insert:

- (2B) The Second Variation Agreement is ratified.

22. Schedule 3 inserted

After Schedule 2 insert:

Schedule 3 — Second Variation Agreement

[s. 3]

2011

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

AND

HAMERSLEY IRON-YANDI PTY. LIMITED

ACN 009 181 793

AND

HAMERSLEY IRON PTY. LIMITED

ACN 004 558 276

**IRON ORE (YANDICOOGINA) AGREEMENT 1996
RATIFIED VARIATION AGREEMENT**

[Solicitor's details]

THIS AGREEMENT is made this 7th day of November 2011

BETWEEN

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

AND

HAMERSLEY IRON-YANDI PTY. LIMITED ACN 009 181 793 of Level 22, Central Park, 152-158 St Georges Terrace, Perth, Western Australia (**Company**)

AND

HAMERSLEY IRON PTY. LIMITED ACN 004 558 276 of Level 22, Central Park, 152-158 St Georges Terrace, Perth, Western Australia (**Hamersley**).

RECITALS:

- A. The State, the Company and Hamersley are the parties to the agreement dated 22 October 1996 ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B. The State, the Company and Hamersley wish to vary the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Interpretation

Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.

2. Ratification and Operation

- (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia prior to 31 December 2011 or such later date as may be agreed between the parties hereto to ratify this Agreement. The State shall endeavour to secure the timely passage of such Bill as an Act.
- (2) The provisions of this Agreement other than this clause and clause 1 will not come into operation until the day after the day on which the Bill referred to in subclause (1) has been passed by the State Parliament of Western Australia and commences to operate as an Act.
- (3) If by 30 June 2012 the said Bill has not commenced to operate as an Act then, unless the parties hereto otherwise agree, this Agreement will then cease and determine and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (4) On the day after the day on which the said Bill commences to operate as an Act all the provisions of this Agreement will operate and take effect despite any enactment or other law.

3. Variation of Principal Agreement

The Principal Agreement is varied as follows:

- (1) in clause 1 by inserting in the appropriate alphabetical positions the following new definitions:

"Eligible Existing Tenure" means:

- (a)
 - (i) a miscellaneous licence or general purpose lease granted to the Company under the Mining Act; or
 - (ii) a lease or easement granted to the Company under the LAA,

and not clearly, to the satisfaction of the Minister, granted under or pursuant to or held pursuant to this Agreement; or

- (b) an application by the Company for the grant to it of a tenement referred to in paragraph (a)(i) (which application has not clearly, to the satisfaction of the Minister, been made

under or pursuant to this Agreement) and as the context requires the tenement granted pursuant to such an application,

where that tenure was granted or that application was made (as the case may be) on or before 1 October 2011;

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

"**Mount Bruce Agreement**" means the agreement ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972*, as from time to time added to, varied or amended;

"**Mount Bruce Agreement Minister**" means the Minister in the Government of the State for the time being responsible for the *Iron Ore (Mount Bruce) Agreement Act 1972*;

"**Relevant Land**", in relation to Eligible Existing Tenure or Special Advance Tenure, means the land which is the subject of that Eligible Existing Tenure or Special Advance Tenure, as the case may be;

"**second variation date**" means the date on which clause 3 of the variation agreement made on or about 7 November 2011 between the State, the Company and Hamersley comes into operation;

"**Special Advance Tenure**" means:

- (a) a miscellaneous licence or general purpose lease requested under clause 21(2b) to be granted to the Company under the Mining Act; or
- (b) an easement or a lease requested under clause 21(2b) to be granted to the Company under the LAA,

and as the context requires such tenure if granted;

- (2) in clause 2(1) by inserting after "and the regulations for the time being in force thereunder" in paragraph (f) "(and for the avoidance of doubt this principle, subject to the context and without limitation to its application to other Acts, may apply in respect of references to the Land Act notwithstanding references in this Agreement to the LAA)";

- (3) by inserting after clause 9B the following new clauses:

"Community development plan

9C. (1) In this clause, the term "community and social benefits" includes:

- (a) assistance with skills development and training opportunities to promote work readiness and employment for persons living in the Pilbara region of the said State;
 - (b) regional development activities in the Pilbara region of the said State, including partnerships and sponsorships;
 - (c) contribution to any community projects, town services or facilities; and
 - (d) a regionally based workforce.
- (2) The Company acknowledges the need for community and social benefits flowing from this Agreement.
- (3) The Company agrees that:
- (a) it shall prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with its activities under this Agreement; and
 - (b) the Company shall, not later than 3 months after the second variation date, submit to the Minister the plan prepared under paragraph (a) and confer with the Minister in respect of the plan.
- (4) The Minister shall within 2 months after receipt of a plan submitted under subclause (3)(b), either notify the Company that the Minister approves the plan as submitted or notify the Company of changes which the Minister requires be made to the plan. If the Company is unwilling to accept the changes which the Minister requires it shall notify the Minister to

that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes required by the Minister.

- (5) The effect of an award made on an arbitration pursuant to subclause (4) shall be that the relevant plan submitted by the Company pursuant to subclause (3)(b) shall, with such changes required by the Minister under subclause (4) as the arbitrator determines to be reasonable (with or without modification by the arbitrator), be deemed to be the plan approved by the Minister under this clause.
- (6) At least 3 months before the anticipated submission of proposals relating to a proposed development pursuant to any of clauses 9, 10, 12C or 23, the Company must, unless the Minister otherwise requires, give to the Minister information about how the proposed development may affect the plan approved or deemed to be approved by the Minister under this clause. This obligation operates in relation to all proposals submitted on or after the date that is 4 months after the date when a plan is first approved or deemed to be approved under this clause.
- (7) The Company shall at least annually report to the Minister about the Company's implementation of the plan approved or deemed to be approved by the Minister under this clause.
- (8) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan approved or deemed to be approved by the Minister under this clause and may agree to amendment of the plan or adoption of a new plan. Any such amended plan or new plan will be deemed to be the plan approved by the Minister under this clause in respect of the development to which it relates.

- (9) During the currency of this Agreement, the Company shall implement the plan approved or deemed to be approved by the Minister under this clause.

Local participation plan

- 9D. (1) In this clause, the term "local industry participation benefits" means:
- (a) the use and training of labour available within the said State;
 - (b) the use of the services of engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and contractors available within the said State; and
 - (c) the procurement of works, materials, plant, equipment and supplies from Western Australian suppliers, manufacturers and contractors.
- (2) The Company acknowledges the need for local industry participation benefits flowing from this Agreement.
- (3) The Company agrees that it shall, not later than 3 months after the second variation date, prepare and provide to the Minister a plan which contains:
- (a) a clear statement on the strategies which the Company will use, and require a third party as referred to in subclause (7) to use, to maximise the uses and procurement referred to in subclause (1);
 - (b) detailed information on the procurement practices the Company will adopt, and require a third party as referred to in subclause (7) to adopt, in calling for tenders and letting contracts for works, materials, plant, equipment and supplies stages in relation to a proposed development and

how such practices will provide fair and reasonable opportunity for suitably qualified Western Australian suppliers, manufacturers and contractors to tender or quote for works, materials, plant, equipment and supplies;

- (c) detailed information on the methods the Company will use, and require a third party as referred to in subclause (7) to use, to have their respective procurement officers promptly introduced to Western Australian suppliers, manufacturers and contractors seeking such introduction; and
- (d) details of the communication strategies the Company will use, and require a third party as referred to in subclause (7) to use, to alert Western Australian engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and consultants and Western Australian suppliers, manufacturers and contractors to services opportunities and procurement opportunities respectively as referred to in subclause (1).

It is acknowledged by the Company that the strategies of the Company referred to in subclause (3)(a) will include strategies of the Company in relation to supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement.

- (4) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.

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- (5) At least 6 months before the anticipated submission of proposals relating to a proposed development pursuant to any of clauses 9, 10, 12C or 23, the Company must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this clause in relation to the proposed development. This obligation operates in relation to all proposals submitted on or after the date that is 7 months after the date when a plan is first provided under this clause.
- (6) During the currency of this Agreement the Company shall implement the plan provided under this clause.
- (7) The Company shall:
 - (a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this clause; and
 - (b) use reasonable endeavours to ensure that the third party complies with those provisions.";
- (4) in clause 12(2) by deleting subparagraph (ii) and substituting the following subparagraph:
 - "(ii) on fine ore and on pisolite fine ore sold or shipped separately as such at the rate of:
 - (A) 5.625% of the f.o.b. value, for ore shipped prior to or on 30 June 2012;

- (B) 6.5% of the f.o.b. value, for ore shipped during the period from 1 July 2012 to 30 June 2013 (inclusive of both dates); and
 - (C) 7.5% of the f.o.b. value, for ore shipped on or after 1 July 2013;"
- (5) in clause 12C by:
- (a) deleting in subclause (1) "'LAA" means the *Land Administration Act 1997* (WA);";
 - (b) inserting after subclause (3)(c) the following new paragraph:
 - "(d) Without limiting subclause (9), the Minister may waive the requirement under this clause for the Company to obtain and to furnish the consent of a title holder if the title holder has refused to give the required consent and the Minister is satisfied that:
 - (i) the title holder's affected land is or was subject to a miscellaneous licence granted under the Mining Act 1978 for the purpose of a railway to be constructed and operated in accordance with this Agreement; and
 - (ii) in the Minister's opinion, the title holder's refusal to give the required consent is not reasonable in all the circumstances including having regard to:
 - (A) the rights of the Company in relation to the affected land as the holders of the miscellaneous licence, relative to their rights as the holders of the sought Special Railway Licence or Lateral Access Road Licence (as the case may be); and
 - (B) the terms of any agreement between the Company and the title holder.";

- (c) deleting in subclause (4)(a) the comma after "the provisions of this Agreement" and substituting "and";
- (d) in subclause (7):
 - (i) deleting all words in paragraph (c) after "at the date of such inclusion"; and
 - (ii) inserting after paragraph (k) the following new paragraph:
 - "(l) The provisions of clause 20(2a) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause."
- (6) in clause 20 by:
 - (a) in subclause (2), deleting all words in the subclause after "and other railways which now exist"; and
 - (b) inserting after subclause (2) the following new subclause:

"Crossings over Railway

 - (2a) For the purposes of livestock and infrastructure such as roads, railways, conveyors, pipelines, transmission lines and other utilities proposed to cross the land the subject of the railway the Company shall:
 - (a) if applicable, give its consent to, or otherwise facilitate the grant by the State or any agency, instrumentality or other authority of the State of any lease, licence or other title over land the subject of the railway so long as such grant does not in the Minister's opinion unduly prejudice or interfere with the activities of the Company under this Agreement; and
 - (b) on reasonable terms and conditions allow access for the construction and operation of

such crossings and associated
infrastructure,

provided that in forming his opinion under this
clause, the Minister must consult with the
Company.";

- (7) at the end of clause 21(1) by inserting the following new paragraph:
- "Notwithstanding clause 12A(2)(b)(iv), detailed proposals may refer to activities on tenure which is proposed to be granted pursuant to this subclause (1) as if that tenure was granted pursuant to this Agreement (but this does not limit the powers or discretions of the Minister under this Agreement or the Minister responsible for the administration of any relevant Act with respect to the grant of the tenure).";
- (8) in the last paragraph of clause 21(2) by inserting "and subclauses (2a) and (2b)" after "The provisions of this subclause";
- (9) in clause 21 by:
- (a) renumbering subclause (2a) as subclause (2d) and inserting the following new subclauses before the renumbered subclause (2d):

"Application for Eligible Existing Tenure to be held pursuant to this Agreement

- (2a) (a) The Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Eligible Existing Tenure becoming held pursuant to this Agreement on such conditions as the Minister sees fit (including, without limitation and notwithstanding the Mining Act and the LAA, as to the surrender of land, the submission of detailed proposals and the variation of the terms and conditions of the Eligible Existing Tenure (including for the Eligible Existing Tenure to be held pursuant to this Agreement and for the more efficient use of the Relevant Land))

and the Minister may from time to time vary such conditions in order to extend any specified time for the doing of any thing or otherwise with the agreement of the Company.

- (b) Eligible Existing Tenure the subject of an approval by the Minister under this subclause will be held by the Company pursuant to this Agreement:
- (i) if the Minister's approval was not given subject to conditions, on and from the date of the Minister's notice of approval;
 - (ii) unless paragraph (iii) applies, if the Minister's approval was given subject to conditions, on the date on which all such conditions have been satisfied; and
 - (iii) if the Minister's approval was given subject to a condition requiring that the Company submit detailed proposals in accordance with this Agreement, on the later of the date on which the Minister approves proposals submitted in discharge of that specified condition and the date upon which all other specified conditions have been satisfied, but the Company is authorised to implement any approved proposal to the extent such implementation is consistent with the then terms and conditions of the Eligible Existing Tenure pending the satisfaction of any conditions relating to the variation of the terms or conditions of the Eligible Existing Tenure. Where

this paragraph (iii) applies, prior to any approval of proposals and satisfaction of other conditions, the relevant tenure will be treated for (but only for) the purposes of clause 12A(2)(b)(iv) as tenure held pursuant to this Agreement.

Application for Special Advance Tenure to be granted pursuant to this Agreement

- (2b) The Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Special Advance Tenure being granted to the Company pursuant to this Agreement if:
- (a) the Company proposes to submit detailed proposals under this Agreement (other than under clause 12C) to construct works installations or facilities on the Relevant Land and the Company's request is so far as is practicable made, unless the Minister approves otherwise, no less than 6 months before the submission of those detailed proposals; and
 - (b) the Minister is satisfied that it is necessary and appropriate that Special Advance Tenure, rather than tenure granted under or pursuant to the other provisions of this Agreement, be used for the purposes of the proposed works installations or facilities on the Relevant Land,

and if the Minister does so approve:

- (c) notwithstanding the Mining Act or the LAA, the appropriate authority or instrumentality of the State shall obtain the consent of the Minister to the form and substance of the Special Advance Tenure prior to its grant (which for the avoidance

of doubt neither the State nor the Minister is obliged to cause) to the Company; and

- (d) if the Company does not submit detailed proposals relating to construction of the relevant works installations or facilities on the Relevant Land within 24 months after the date of the Minister's approval or such later time subsequently allowed by the Minister, or if submitted the Minister does not approve such detailed proposals, the Special Advance Tenure (if then granted) shall be surrendered at the request of the Minister.

- (2c) The decisions of the Minister under subclauses (2a) and (2b) shall not be referable to arbitration and any approval of the Minister under this clause shall not in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.";

- (b) in the renumbered subclause (2d), deleting "subclause (1)" and substituting "subclauses (1), (2a) and (2b)"; and

- (10) in clause 23 by:

- (a) in the first line of subclause (2), deleting "The" and substituting "Subject to subclause (8) the"; and

- (b) inserting after subclause (7) the following new subclause:

"Capacity to defer obligations of the Company under subclause (2) if "alternative project" is approved under the Mount Bruce Agreement

- (8) (a) Subject to paragraph (b), in the event that the Mount Bruce Agreement Minister approves in accordance with clause 41A(5) of the Mount Bruce Agreement that the

carrying out of an alternative project (as defined in clause 41A(6) of that agreement) be accepted by the State in lieu of all of the obligations of the Company (as defined in that agreement) in respect of the establishment of plant for the production of steel pursuant to clause 41A of that agreement, the Minister may agree (including prior to and conditional upon such approval being given by the Mount Bruce Agreement Minister) to postpone the obligation of the Company to submit detailed proposals as contemplated by subclause (2) for a maximum period of 10 years from the third anniversary of the m.a. date immediately following the date on which the Mount Bruce Agreement Minister so approves.

- (b) If any approved alternative project referred to paragraph (a) is not implemented in accordance with the Mount Bruce Agreement Minister's approval and the default is not remedied in accordance with clause 21 of the Mount Bruce Agreement, the Company shall (subject to subclause (3)) submit detailed proposals in accordance with subclause (2) within 12 months of the Mount Bruce Agreement Minister notifying the Company (as defined in the Mount Bruce Agreement) of its failure to remedy the default.
- (c) For the purposes of this clause:
 - (i) the date of expiry of any period of postponement contemplated by paragraph (a) of this subclause shall be deemed to be the next third anniversary of the m.a. date; and

- (ii) the date of expiry of the 12 month period referred to in paragraph (b) of this subclause shall be deemed to be the next third anniversary of the m.a. date."

EXECUTED as a deed.

SIGNED by the **HONOURABLE**)
COLIN JAMES BARNETT in the)
presence of:)

[Signature]

Signature of witness

Stephen Bombardieri

Name of witness

[Signature]

THE COMMON SEAL of)
HAMERSLEY IRON-YANDI PTY.)
LIMITED ACN 009 181 793 was hereunto)
affixed by authority of the Directors in)
the presence of:)

[C.S.]

[Signature]

Director

Robert Paul Shannon

[Signature]

Secretary

Helen Fernihough

Iron Ore Agreements Legislation Amendment Act 2011

Part 6 Iron Ore (Yandicoogina) Agreement Act 1996 amended

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THE COMMON SEAL of)
HAMERSLEY IRON PTY. LIMITED) [C.S.]
ACN 004 558 276 was hereunto affixed)
by authority of the Directors in the presence of:)

[Signature] _____ Robert Paul Shannon
Director

[Signature] _____ Helen Fernihough
Secretary

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