



Western Australia

Iron Ore (Hamersley Range) Agreement Act 1963

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Contents

1.	Short title	1
2.	Terms used	1
3.	Agreement approved and provisions to take effect	2
3A.	First Supplementary Agreement	3
3B.	Second Supplementary Agreement	3
3C.	Third Supplementary Agreement	3
3D.	Fourth Supplementary Agreement	4
3E.	Fifth Supplementary Agreement	4
3F.	Sixth Supplementary Agreement	4
3G.	Seventh Supplementary Agreement	4
3H.	Eighth Supplementary Agreement	4
3I.	Ninth Supplementary Agreement	5
3J.	Tenth Supplementary Agreement	5
4A.	Variation of Agreement to increase rates of royalty	5
4B.	Variation of Second Supplementary Agreement to increase rates of royalty	6
4C.	Eleventh Supplementary Agreement	7
4D.	Twelfth Supplementary Agreement	8
4E.	State empowered	8
4F.	Thirteenth Supplementary Agreement	8
4G.	Fourteenth Supplementary Agreement	9
4H.	Fifteenth Supplementary Agreement	9
4.	By-laws	9

**First Schedule — Iron Ore
(Hamersley Range) Agreement**

**Second Schedule — First
Supplementary Agreement**

**Third Schedule — Second
Supplementary Agreement**

**Fourth Schedule — Third
Supplementary Agreement**

**Fifth Schedule — Fourth
Supplementary Agreement**

**Sixth Schedule — Fifth
Supplementary Agreement**

**Seventh Schedule — Sixth
Supplementary Agreement**

**Eighth Schedule — Seventh
Supplementary Agreement**

**Ninth Schedule — Eighth
Supplementary Agreement**

**Tenth Schedule — Ninth
Supplementary Agreement**

**Eleventh Schedule — Tenth
Supplementary Agreement**

**Twelfth Schedule — Eleventh
Supplementary Agreement**

**Thirteenth Schedule — Twelfth
Supplementary Agreement**

**Fourteenth Schedule — Thirteenth
Supplementary Agreement**

**Fifteenth Schedule — Fourteenth
Supplementary Agreement**

**Sixteenth Schedule — Fifteenth
Supplementary Agreement**

Notes

Compilation table 352

Defined terms

Iron Ore (Hamersley Range) Agreement Act 1963

An Act to approve an agreement relating to iron ore deposits at or near the Hamersley Range, and for incidental and other purposes.

1. Short title

This Act may be cited as the *Iron Ore (Hamersley Range) Agreement Act 1963*¹.

2. Terms used

In this Act, unless the contrary intention appears —

Agreement means the agreement of which a copy is set out in the First Schedule, and, if that agreement is added to or varied or any of its provisions are cancelled, in accordance with the provisions thereof, includes the agreement as so altered from time to time;

Company has the same meaning as it has in, and for the purposes of, the Agreement;

Eighth Supplementary Agreement means the agreement a copy of which is set out in the Ninth Schedule;

Eleventh Supplementary Agreement means the agreement a copy of which is set out in the Twelfth Schedule;

Fifteenth Supplementary Agreement means the agreement a copy of which is set out in the Sixteenth Schedule;

Fifth Supplementary Agreement means the agreement of which a copy is set out in the Sixth Schedule;

First Supplementary Agreement means the agreement of which a copy is set out in the Second Schedule;

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

Fourth Supplementary Agreement means the agreement of which a copy is set out in the Fifth Schedule;

Ninth Supplementary Agreement means the agreement a copy of which is set out in the Tenth Schedule;

Second Supplementary Agreement means the agreement of which a copy is set out in the Third Schedule;

Seventh Supplementary Agreement means the agreement of which a copy is set out in the Eighth Schedule;

Sixth Supplementary Agreement means the agreement of which a copy is set out in the Seventh Schedule;

Tenth Supplementary Agreement means the agreement a copy of which is set out in the Eleventh Schedule;

Third Supplementary Agreement means the agreement of which a copy is set out in the Fourth Schedule;

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

Twelfth Supplementary Agreement means the agreement a copy of which is set out in the Thirteenth Schedule.

[Section 2 amended: No. 98 of 1964 s. 2; No. 48 of 1968 s. 2; No. 39 of 1972 s. 2; No. 93 of 1976 s. 2; No. 26 of 1979 s. 2; No. 39 of 1982 s. 2; No. 27 of 1987 s. 4; No. 60 of 1987 s. 4; No. 32 of 1990 s. 4; No. 42 of 1992 s. 4; No. 34 of 2010 s. 6; No. 61 of 2010 s. 4; No. 61 of 2011 s. 4; No. 13 of 2017 s. 9.]

3. Agreement approved and provisions to take effect

- (1) The Agreement is approved.

- (2) Notwithstanding any other Act or law, and without limiting the effect of subsection (1), —
 - (a) the Company shall be permitted to enter upon the lands mentioned in paragraph (c) of clause 2 of the Agreement, to the extent, and for the purposes, by that paragraph provided; and
 - (b) the provisions of subclause (2) of clause 3 of the Agreement shall take effect.
- (3) The provisions of section 96 of the *Public Works Act 1902*, do not apply to any railway constructed pursuant to the Agreement.
- (4) The provisions of section 277(5) of the *Mining Act 1904*², do not apply to any renewal of the rights of occupancy granted pursuant to paragraph (a) of clause 2 of the Agreement.

3A. First Supplementary Agreement

The First Supplementary Agreement is approved.

[Section 3A inserted: No. 98 of 1964 s. 3; amended: No. 48 of 1968 s.3.]

3B. Second Supplementary Agreement

- (1) The Second Supplementary Agreement is approved.
- (2) The provisions of subsections (2), (3) and (4) of section 3 apply to the Second Supplementary Agreement, but as though subsection (2)(a) referred to the lands mentioned in paragraph (b) of clause 2, and subsection (4) referred to the rights of occupancy granted pursuant to subclause (1) of clause 6 of the Second Supplementary Agreement.

[Section 3B inserted: No. 48 of 1968 s.4.]

3C. Third Supplementary Agreement

The Third Supplementary Agreement is approved.

[Section 3C inserted: No. 39 of 1972 s. 3.]

3D. Fourth Supplementary Agreement

The Fourth Supplementary Agreement is approved.

[Section 3D inserted: No. 93 of 1976 s. 3.]

3E. Fifth Supplementary Agreement

The Fifth Supplementary Agreement is approved and ratified.

[Section 3E inserted: No. 26 of 1979 s. 3.]

3F. Sixth Supplementary Agreement

The Sixth Supplementary Agreement is approved and ratified.

[Section 3F inserted: No. 39 of 1982 s. 3.]

3G. Seventh Supplementary Agreement

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

[Section 3G inserted: No. 27 of 1987 s. 5.]

3H. Eighth Supplementary Agreement

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

[Section 3H inserted: No. 60 of 1987 s. 5.]

3I. Ninth Supplementary Agreement

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

[Section 3I inserted: No. 32 of 1990 s. 5.]

3J. Tenth Supplementary Agreement

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

[Section 3J inserted: No. 42 of 1992 s. 5.]

4A. Variation of Agreement to increase rates of royalty

- (1) In this section —
Agreement means the agreement a copy of which is set out in the First Schedule —
 - (a) as varied from time to time in accordance with its provisions; and
 - (b) as varied by these agreements —
 - (i) the First Supplementary Agreement;
 - (ii) the Second Supplementary Agreement;
 - (iii) the Third Supplementary Agreement;
 - (iv) the Fourth Supplementary Agreement;
 - (v) the Fifth Supplementary Agreement;
 - (vi) the Sixth Supplementary Agreement;

s. 4B

- (vii) the Seventh Supplementary Agreement;
 - (viii) the Eighth Supplementary Agreement;
 - (ix) the Ninth Supplementary Agreement;
 - (x) the Tenth Supplementary Agreement.
- (2) Clause 10(2)(j) of the Agreement is varied —
- (a) in subparagraph (ii) by deleting “3.75%” and inserting —

5.625%
 - (b) in subparagraph (iii) by deleting “3.25%” and inserting —

5%
- (3) Clause 10(2)(j)(ii) and (iii) of the Agreement as varied by subsection (2) operate and take effect despite —
- (a) any other provision of the Agreement; and
 - (b) any other agreement or instrument; and
 - (c) any other Act or law.
- (4) Nothing in this section affects the amount of royalty payable under clause 10 of the Agreement in respect of any period before the commencement of the *Iron Ore Agreements Legislation Amendment Act 2010 Part 3*¹.
[Section 4A inserted: No. 34 of 2010 s. 7.]

4B. Variation of Second Supplementary Agreement to increase rates of royalty

- (1) In this section —
- Second Supplementary Agreement*** means the agreement a copy of which is set out in the Third Schedule —
- (a) as varied from time to time in accordance with its provisions; and

- (b) as varied by these agreements —
 - (i) the Third Supplementary Agreement;
 - (ii) the Fourth Supplementary Agreement;
 - (iii) the Fifth Supplementary Agreement;
 - (iv) the Sixth Supplementary Agreement;
 - (v) the Seventh Supplementary Agreement;
 - (vi) the Eighth Supplementary Agreement;
 - (vii) the Ninth Supplementary Agreement;
 - (viii) the Tenth Supplementary Agreement.
- (2) Clause 7(4) of the Second Supplementary Agreement is varied by deleting “(j),” and inserting —
 - (j) (as varied by the *Iron Ore (Hamersley Range) Agreement Act 1963* section 4A),
- (3) Clause 7(4) of the Second Supplementary Agreement as varied by subsection (2) operates and takes effect despite —
 - (a) any other provision of the Agreement; and
 - (b) any other agreement or instrument; and
 - (c) any other Act or law.
- (4) Nothing in this section affects the amount of royalty payable under clause 7(4) of the Second Supplementary Agreement in respect of any period before the commencement of the *Iron Ore Agreements Legislation Amendment Act 2010* Part 3¹.
[Section 4B inserted: No. 34 of 2010 s. 7.]

4C. Eleventh Supplementary Agreement

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

s. 4D

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

[Section 4C inserted: No. 61 of 2010 s. 5.]

4D. Twelfth Supplementary Agreement

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

[Section 4D inserted: No. 61 of 2010 s. 5.]

4E. State empowered

- (1) The State has power in accordance with clause 10N(9)(a) of the Principal Agreement, as defined in the Eleventh Supplementary Agreement, and as inserted by that Supplementary Agreement.
- (2) The State has power in accordance with clause 7E(9)(a) of the Principal Agreement, as defined in the Twelfth Supplementary Agreement, and as inserted by that Supplementary Agreement.

[Section 4E inserted: No. 61 of 2010 s. 5.]

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.

[Section 4F inserted: No. 61 of 2011 s. 5.]

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.

[Section 4G inserted: No. 61 of 2011 s. 5.]

4H. Fifteenth Supplementary Agreement

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

[Section 4H inserted: No. 13 of 2017 s. 10.]

4. By-laws

- (1) The Governor may make by-laws, for the purposes of, and in accordance with, the Agreement and the Second Supplementary Agreement.
- (2) By-laws made pursuant to this section —
 - (a) shall be published in the *Government Gazette*; and
 - (b) take effect and have the force of law from the date they are so published or from such later date as is fixed by the by-laws; and
 - (c) may prescribe penalties not exceeding \$100; and
 - (d) are not subject to the provisions of section 36 of the *Interpretation Act 1918*³, but shall be laid before each House of Parliament within 6 sittings days of such

s. 4

House next following the publication of the by-laws in
the *Government Gazette*.

[Section 4 amended: No. 98 of 1964 s. 4; No. 48 of 1968 s. 5.]

First Schedule — Iron Ore (Hamersley Range) Agreement

[s. 2]

[Heading inserted: No. 98 of 1964 s. 5; amended: No. 19 of 2010 s. 4.]

THIS AGREEMENT under seal made the thirtieth day of July One thousand nine hundred and sixty-three BETWEEN THE HONOURABLE CRAWFORD DAVID NALDER M.L.A. Acting Premier and Acting Treasurer of the State of Western Australia acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called “the State”) of the one part AND HAMERSLEY IRON PTY. LIMITED a company incorporated under the *Companies Act 1961* of the State of Victoria and having its registered office and principal place of business in that State at 95 Collins Street Melbourne and its registered office in the State of Western Australia at 37 Saint George’s Terrace Perth (hereinafter called “the Company” which expression will include the successors and assigns of the Company including where the context so admits the assignees and appointees of the company under clause 20 hereof) of the other part.

WHEREAS:

- (a) The Company (being satisfied from investigations which prior to the year 1963 cost over three hundred thousand pounds (£300,000) that the mining areas defined in clause 1 hereof contain iron ore of tonnages and grades sufficient to warrant economic recovery and marketing) desires to carry out certain investigations relating to the mining transport by rail and shipment of iron ore from the mining areas and also to the entering into a contract or contracts for the export sale of that ore
- (b) The Company having commenced already to investigate the feasibility of establishing within the State of Western Australia a plant for secondary processing agrees to review this matter from time to time with a view to its being in a position to submit to the State proposals for such establishment as hereinafter provided
- (c) The Company agrees to investigate in due course the feasibility of establishing within the State of Western Australia an integrated iron and steel industry and to review this matter from time to time with a view to its being in a position to submit to the State proposals for such establishment as hereinafter provided

(d) Conzinc Riotinto of Australia Limited a company incorporated under the *Companies Act 1958* of the State of Victoria and having its registered office and principal place of business in that State at 95 Collins Street Melbourne (hereinafter called “the Guarantor Company”) has agreed to guarantee that the Company (which is a subsidiary of the Guarantor Company) will complete the expenditure of the sum of five hundred thousand pounds (£500,000) as provided in clause 4(1) hereof.

NOW THIS AGREEMENT WITNESSETH: —

*Interpretation*⁴.

1. In this Agreement subject to the context —

“associated company” means —

- (a) any company notified in writing by the Company to the Minister which is incorporated in the United Kingdom the United States of America or the Commonwealth of Australia and which is —
 - (i) a subsidiary of the Company within the meaning of the term “subsidiary” in section 6 of the *Companies Act 1961*;
 - (ii) promoted by the Company for all or any of the purposes of this Agreement and in which the Company holds not less than one million pounds (£1,000,000) of the issued ordinary share capital;
 - (iii) a company in which the Company holds not less than twenty per cent (20%) of the issued ordinary share capital; or
 - (iv) a company which is related within the meaning of that term in the aforesaid section to the Company or to any company in which the Company holds not less than twenty per cent (20%) of the issued ordinary share capital, and
- (b) any company approved in writing by the Minister for the purposes of this Agreement which is associated directly or indirectly with the Company in its business or operations hereunder;

- “commencement date” means the date referred to as the commencement date in clause 8(3) hereof;
- “Commonwealth” means the Commonwealth of Australia and includes the Government for the time being thereof;
- “Company’s wharf” means the wharf to be constructed by the Company pursuant to this Agreement for the shipment of iron ore from the mineral lease or (except for the purposes of the definition of “harbour”) other the temporary wharf for the time being approved by the Minister as the Company’s wharf for the purposes hereof during the period to which such approval relates;
- “deposits townsite” means the townsite to be established on or near the mining areas pursuant to this Agreement;
- “direct shipping ore” means iron ore which has an average pure iron content of not less than sixty per cent (60%) which will not pass through a one half (½) inch mesh screen and which is sold without concentration or other beneficiation other than crushing and screening;
- “export date” means the earlier of the following dates namely —
- (a) the date three (3) years after the commencement date;
 - (b) the date when the Company first exports iron ore hereunder (other than iron ore shipped solely for testing purposes);
- “financial year” means a year commencing on and including the 1st day of July;
- “fine ore” means iron ore which has an average pure iron content of not less than sixty per cent. (60%) which will pass through a one half (½) inch mesh screen and which is sold without concentration or other beneficiation other than crushing and screening;
- “fines” means iron ore (not being direct shipping ore or fine ore) which will pass through a one half (½) inch mesh screen;
- “f.o.b. revenue” means the price for iron ore from the mineral lease the subject of any shipment or sale and payable by the purchaser thereof to the Company or an associated company less all export duties and export taxes payable to the Commonwealth on the export of the iron ore and all costs

and charges properly incurred and payable by the Company from the time the ore shall be placed on ship at the Company's wharf to the time the same is delivered and accepted by the purchaser including —

- (1) ocean freight;
- (2) marine insurance;
- (3) port and handling charges at the port of discharge;
- (4) all costs properly incurred in delivering the ore from port of discharge to the smelter and evidenced by relevant invoices;
- (5) all weighing sampling assaying inspection and representation costs;
- (6) all shipping agency charges after loading on and departure of ship from the Company's wharf; and
- (7) all import taxes by the country of the port of discharge;

“harbour” means the port or harbour serving the Company's wharf;

“integrated iron and steel Industry” means an industry for the manufacture of iron and steel or for the manufacture of steel from iron ore by a process which does not necessarily involve the production of pig iron or basic iron in the production of steel;

“iron ore contracts” means the contract or contracts referred to in clause 5(1) hereof;

“Land Act” means the *Land Act 1933*;

“mineral lease” means the mineral lease referred to in clause 9(1) hereof and includes any renewal thereof;

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

“mining areas” means the areas delineated and coloured red on the Plan marked “A” initialled by or on behalf of the parties hereto for the purposes of identification;

“Minister” means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the administration of the Ratifying Act and pending the passing of that Act means the Minister for the time being

designated in a notice from the State to the Company and includes the successors in office of the Minister;

“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“port townsite” means the townsite to be established pursuant to this Agreement near the harbour;

“Ratifying Act” means the Act to ratify this Agreement and referred to in clause 3 hereof;

“said State” means the State of Western Australia;

“secondary processing” means concentration or other beneficiation of iron ore other than by crushing or screening and includes thermal electrostatic magnetic and gravity processing;

“special lease” means a special lease or license to be granted in terms of this Agreement under the Ratifying Act the Land Act or the *Jetties Act 1926* and includes any renewal thereof;

“this Agreement” “hereof” and “hereunder” include this Agreement as from time to time added to varied or amended;

“ton” means a ton of two thousand two hundred and forty (2,240) lbs. net dry weight;

“townsite” in relation to the townsite to be established near the harbour means a townsite (whether or not constituted and defined under section 10 of the Land Act) primarily to facilitate the Company’s operations in and near the harbour and for employees of the Company and in relation to the mining areas means such a townsite or townsites or any other townsite or townsites which is or are established by the Company for the purposes of its operations and employees on or near the mining areas in lieu of a townsite constituted and defined under section 10 of the Land Act;

“wharf” includes any jetty structure;

“year 1” means the year next following the export date and “year” followed immediately by any other numeral has a corresponding meaning;

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;

power given under any clause of this Agreement other than clause 24 hereof to extend any period or date shall be without prejudice to the power of the Minister under the said clause 24;

marginal notes shall not affect the interpretation or construction hereof⁴;

the phases in which it is contemplated that this Agreement will operate are as follows —

- (a) Phase 1 — the period from the execution hereof by the parties hereto until the commencement date;
- (b) Phase 2 — the period from the commencement date until a plant for secondary processing or an integrated iron and steel industry is established by the Company hereunder or by another company or party as referred to in clause 12 or clause 13 hereof whichever first occurs;
- (c) Phase 3 — (operative if the Company commences secondary processing before establishing an integrated iron and steel industry hereunder) — the period from the commencement of secondary processing by the Company hereunder until the Company has established an integrated iron and steel industry hereunder which period shall include a continuation of Phase 2 operations; and
- (d) Phase 4 — the period after the Company has established an integrated iron and steel industry hereunder which period shall include a continuation of Phase 2 operations.

Obligations of the State during Phase 1⁴.

2. The State shall —

- (a) upon application by the Company within one (1) month after the execution hereof by the parties hereto (and surrender of the then existing rights of occupancy already granted in

respect of any portions of the mining areas) cause to be granted to the Company and to the Company alone rights of occupancy for the purposes of this Agreement (including the sole right to search and prospect for iron ore) over the whole of the mining areas under section 276 of the Mining Act at a rental at the rate of four pounds (£4) per square mile per annum payable quarterly in advance for the period expiring on the 31st December, 1963 and shall then and thereafter subject to the continuance of this Agreement cause to be granted to the Company as may be necessary successive renewals of such last-mentioned rights of occupancy (each renewal for a period of twelve (12) months at the same rental and on the same terms) the last of which renewals notwithstanding its currency shall expire —

- (i) on the date of application for a mineral lease by the Company under clause 9(1) hereof;
- (ii) at the expiration of one month from the commencement date;
- (iii) on the determination of this Agreement; or
- (iv) on the day of the receipt by the State of a notice from the Company to the effect that the Company abandons and cancels this Agreement,

whichever shall first happen;

- (b) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement;
- (c) to the extent reasonably necessary for the purposes of clauses 4 and 5 hereof allow the Company to enter upon Crown lands (including land the subject of a pastoral lease and survey possible sites for a harbour wharf railway townsite (both in or near the harbour and on or near the mining areas) stockpiling processing and other areas required for the purposes of this Agreement; and
- (d) at the request and cost of the Company co-operate with the Company in the discharge of its obligations under clause 4(1)(a) hereof.

*Ratification and operation*⁴.

3. (1) Clauses 9 10 11 (other than paragraphs (d) and (l) thereof) 12-22 both inclusive and 24 of this Agreement shall not operate unless and until the Bill to ratify this Agreement as referred to in clause 2(b) hereof is passed as an Act before the fifteenth day of November, 1963 or such later date if any as the parties hereto may mutually agree upon. If the Bill is not so passed before that date or later date (as the case may be) this Agreement will then cease and determine and neither of the parties hereto will have any claim against the other of them with respect to any matter or thing arising out of done performed or omitted to be done or performed under this agreement except as hereinafter provided in clause 11(d) hereof.

(2) If the Bill to ratify this Agreement is passed as an Act before the date or later date if any referred to in subclause (1) of this clause the following provisions of this clause shall notwithstanding the provisions of any Act or law thereupon operate and take effect namely —

- (a) the provisions of subclauses (1) (2) (3) and (4) of clause 9 the proviso to paragraph (a) of subclause (2) of clause 10 subclause (3) of clause 10 paragraphs (a) (f) (g) (h) (i) (k) and (m) of clause 11 and clauses 21 23 24 and 27 shall take effect as though the same had been brought into force and had been enacted by the Ratifying Act;
- (b) subject to paragraph (a) of this subclause the State and the Minister respectively shall have all the powers discretions and authorities necessary or requisite to enable them to carry out and perform the powers discretions authorities and obligations conferred or imposed upon them respectively hereunder;
- (c) no future Act of the said State will operate to increase the Company's liabilities or obligations hereunder with respect to rents or royalties; and
- (d) the State may as for a public work under the *Public Works Act 1902* resume any land or any estate or interest in land required for the purposes of this Agreement and may lease or otherwise dispose of the same to the Company.

Obligations of Company during Phase 1⁴.

4. (1) The Company at an estimated total cost as from the 1st January, 1963 of not less than five hundred thousand pounds (£500,000) shall with all reasonable diligence continue to do or shall carry out and by the 31st December, 1964 (or such extended date if any as the Minister may approve) shall complete the matters hereinafter in this subclause mentioned and everything necessary to enable it to finalise and to submit to the Minister the detailed proposals and other matters referred to in clause 5(1)(a) hereof. The matters first referred to in this subclause are —

- (a) a thorough geological and (as necessary) geophysical investigation and proving of the iron ore deposits in the mining areas and the testing and sampling of such deposits;
- (b) a general reconnaissance of the various sites of proposed operations pursuant to the Agreement;
- (c) a selection of the most suitable route for a railway from the mining areas to a suitable harbour and wharf installation for the export of the iron ore;
- (d) an engineering investigation of a suitable harbour site (from possible sites at Cape Lambert Dampier Archipelago and Maud Landing) and wharf site therein for the purposes of the Company but having regard to the proper development use and capacity of the harbour as a whole by persons and corporations other than the Company;
- (e) an investigation of suitable water supplies for the townsites and harbour or port services;
- (f) the planning of suitable townsite in consultation with the State but having due regard to the general development of the port townsite and (if and to the extent applicable) the deposits townsite for use by others as well as the Company; and
- (g) metallurgical and market research.

(2) The Company shall keep the State fully informed at least quarterly commencing within one (1) quarter after the execution hereof as to the progress and results of the Company's operations under subclause (1) of this clause.

(3) If the State concurrently carries out its own investigations and reconnaissances in regard to all or any of the matters mentioned in subclause (1) of this clause or any alternative harbour site the Company shall co-operate with

the State therein and so far as reasonably practicable will consult with the representatives or officers of the State and make full disclosures and expressions of opinion regarding matters referred to in this subclause.

(4) The Company will employ and retain expert consultant engineers to investigate report upon and make recommendations in regard to the sites for and design of the Company's wharf (including areas for installations stockpiling and other purposes in the harbour area) reasonably required by the Company under this Agreement but in such regard the Company will require the consultant engineers to have full regard for the general development of the harbour area and the dredging thereof and of approaches thereto with a view to the reasonable use by others of the harbour area and approaches and the Company will furnish to the State copies of such report and recommendations. When submitting to the Minister detailed proposals as referred to in clause 5(1)(a) hereof in regard to the matters mentioned in this subclause the Company will so far as reasonably practicable ensure that the detailed proposals —

- (a) do not materially depart from the report and recommendations of the consultant engineers;
- (b) provide for the best overall development of the harbour area; and
- (c) disclose any conditions of user and where alternative proposals are submitted the Company's preferences in regard thereto.

*Company to submit proposals*⁴.

5. (1) By the 31st day of December, 1964 (or such extended date if any as the Minister may approve) the Company will submit to the Minister —

- (a) to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect so far as relevant —
 - (A) to the mining from the mining areas (or so much thereof as shall be comprised within the mineral lease) by the Company during the three (3) years next following the commencement of such mining with a view to the transport and shipment of the iron ore mined and its outline proposals with respect to such mining during the next following seven (7) years; and

(B) to the transport and shipment of iron ore to be mined by the Company hereunder during the operation of Phase 2 of this Agreement —

and including the location area lay-out design number materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters namely —

- (i) the harbour and harbour development including dredging the depositing of spoil the provision of navigational aids the Company's wharf (the plans and specifications for which wharf shall be submitted to and be subject to the approval of the State) the berth and swinging basin for the Company's use and harbour installations facilities and services all of which shall permit of adaptation so as to enable the use of the harbour and wharf by vessels having an ore-carrying capacity of not less than one hundred thousand (100,000) tons;
- (ii) the railway between the mining areas and the Company's wharf and works ancillary to or connected with the railway and its proposed operation including fencing (if any) and crossing places;
- (iii) townsites on the mining areas and near the harbour and development services and facilities in relation thereto
- (iv) housing;
- (v) water supply;
- (vi) roads (including details of roads in respect of which it is not intended that the provisions of clause 10(2)(b) shall operate); and
- (vii) any other works services or facilities proposed or desired by the Company;

and

- (b) (subject to the provisions of subclause (3) of this clause) satisfactory evidence firstly of the making or likelihood of making suitable iron ore contracts for the sale by the Company hereunder and shipment from the Company's

wharf of not less than fifteen million (15,000,000) tons of iron ore from the mineral lease at not less than two million (2,000,000) tons in the first two (2) years next following the export date and in each succeeding year after the expiration of the said two (2) years at not less than one million (1,000,000) tons secondly of the availability of finance necessary for the fulfilment of the Company's proposals hereunder relating to the iron ore export project the subject of Phase 2 of this Agreement and thirdly of any necessary license to the Company from the Commonwealth to export hereunder iron ore the subject of the iron ore contracts in the quantities at the rate or rates and in the years stated in the contracts.

(2) The Company shall have the right to submit to the Minister its detailed proposals aforesaid in regard to a matter or matters the subject of any of the subparagraphs numbered (i) to (vii) inclusive of paragraph (a) of subclause (1) of this clause as and when the detailed proposals become finalised by the Company PROVIDED THAT where any such matter is the subject of a subparagraph which refers to more than one subject matter the detailed proposals will relate to and cover each of the matters mentioned in the subparagraph PROVIDED FURTHER that the first detailed proposals submitted to the Minister relate to and cover the matters mentioned in subparagraph (i) of the said paragraph (a) of the said subclause (1) and that the last two detailed proposals submitted to the Minister relate to and cover the iron ore contracts and the finance necessary for the iron ore export project.

(3) If the Company should desire an extension for a period not exceeding six (6) months of the date namely the 31st day of December, 1964 (or such later date if any previously approved by the Minister) within which to negotiate satisfactory iron ore contracts or to arrange the necessary finance aforesaid and if the Company demonstrates to the Minister that the Company has substantially complied with its obligations under clause 4 hereof and its other obligations under clause 5(1) hereof and reasonably requires an additional period for the purposes of such contracts or finance the Minister will grant such extension for such additional period not exceeding six (6) months as is warranted in the circumstances.

Consideration of Company's proposals under clause 5(1)(a)(i)⁴.

6. (1) Within two (2) months after receipt of the detailed proposals of the Company in regard to the matters mentioned in clause 5(1)(a)(i) hereof pursuant

to the provisions of the said clause 5 the Minister will give notice to the Company either —

- (a) that he approves the proposals in which event the parties hereto shall be bound thereby subject however to the provisions of clause 8(2) hereof; or
- (b) that he does not approve the proposals in which event he will in the notice state his reasons for not approving the same; and also either —
 - (i) that he will invoke the provisions of subclause (4) of this clause; or
 - (ii) that he desires such alterations to the Company's proposals as shall be set out in the notice —

but subject to the site for the harbour as set out in the proposals being one of the sites mentioned in clause 4(1)(d) hereof such site shall not be altered except under subclause (4) of this clause or by mutual agreement.

(2) If the Minister states in his notice that he will invoke the provisions of subclause (4) of this clause the Minister will within three (3) months next following the giving of that notice give to the Company the notice referred to in the said subclause (4) (which latter notice is hereinafter in this clause called "the Demonstration Notice").

(3) If the Minister states in his notice under subsection (1) of this clause that he desires alterations as referred to in subclause (1)(b)(ii) of this clause the parties will consult with a view to reaching agreement in regard to the alterations desired and if agreement is so reached the Company's proposals as altered by such mutual agreement will be deemed approved and will be binding on the parties hereto subject to the provisions of clause 8 hereof. If however agreement is not so reached within two (2) months from the giving of the notice referred to in subclause (1) of this clause the State will within one (1) month thereafter employ and retain other expert consultant engineers to make recommendations in regard to the Company's detailed proposals as mentioned in the said clause 5(1)(a)(i) except the site for the harbour. Such latter consultants shall be appointed from a panel of consulting engineers already agreed upon by the parties and listed in a writing initialled by or on behalf of the parties hereto for the purposes of identification. On receipt of the report and recommendations of the consultants so employed by the State the Minister will furnish to the Company copies thereof and in the event of the recommendations providing for alternative sites for the Company's wharf and related purposes the Minister shall give to the Company the option to select whichever of the

alternative sites should be so recommended subject to any conditions recommended by the consultants and approved by the Minister. The Company shall as soon as reasonably practicable (and in any event within a period of two (2) months) make such election and advise the State in writing accordingly whereupon the site so selected subject to such conditions (if any) shall be deemed approved and the parties hereto shall be bound thereby for the purposes of this Agreement subject however to the provisions of clause 8 hereof. In the event of no alternative sites being so recommended the Company's original detailed proposals in regard to the matters mentioned in clause 5(1)(a)(i) hereof with any alterations thereto which may have been or be mutually agreed shall be deemed approved by the Minister and (subject to clause 8 hereof) the parties hereto shall be bound thereby for the purposes hereof.

(4) Notwithstanding that under earlier provisions of this Agreement the Company's proposals for a site for a harbour for the Company's wharf are restricted to a site at Cape Lambert Dampier Archipelago or Maud Landing and provided that the Company shall have submitted to the Minister its detailed proposals in regard to the matters mentioned in clause 5(1)(a)(i) hereof and that the Minister shall not have approved of those proposals and has given notice under clause 6(1)(b)(i) hereof then if at any time within three (3) months after receipt of that notice the Minister in the Demonstration Notice demonstrates that —

- (a) a harbour at another site;
- (b) sites therein for the Company's wharf and for harbour installations and facilities; and
- (c) a railway thereto from the mining areas along a route indicated in the notice —

would be both suitable for the Company's purposes under this Agreement and more economical to the Company on the whole having regard to both the Company's long-term interests hereunder and the relative costs both of construction and of subsequent operation over a period of twenty-one (21) years next following the export date then (unless a dispute under this subclause is referred to arbitration and determined in favour of the Company) the sites and railway route the subject of the Minister's notice will be deemed substituted for the relevant sites and railway route which otherwise may be or have been the subject of the Company's proposals hereunder and shall subject to such alterations thereto as may have been mutually agreed be deemed to have been approved by the State. Within two (2) months after receipt of the Demonstration Notice the Company may elect by notice to the State to refer to arbitration and will then within two (2) months thereafter refer to arbitration any

dispute concerning matters the subject of the notice. If by the award on arbitration the dispute is decided in favour of the State then the State's detailed proposals as set out in the Demonstration Notice with regard to the matters mentioned in clause 5(1)(a)(i) hereof shall be substituted for the Company's proposals in relation thereto and shall subject to such alterations thereto as may be mutually agreed be deemed to have been approved by the State. If by the award on arbitration the dispute is decided in favour of the Company then the Minister will be deemed to have approved the Company's proposed site for a harbour but the State will (unless it meanwhile approves all the matters mentioned in clause 5(1)(a)(i) hereof which have not previously been approved) within one (1) month after the delivery of the award on arbitration employ and retain other expert consultants (appointed from a panel as mentioned in subclause (3) hereof) to make recommendations in regard to the Company's detailed proposals as mentioned in the said clause 5(1)(a)(i) except for the site for a harbour and the same procedure shall be followed with regard to such consultants and their report and recommendations as is set out in subclause (3) hereof.

(5) (a) In the event of the Minister retaining consultants under subclause (3) or subclause (4) of this clause a period equal to the period from the date of such retention until the day on which the Minister furnishes to the Company copies of the report and recommendation of the said consultants (plus in the case of the Minister retaining consultants under subclause (4) of this clause one month) shall be added to the period within which the Company would otherwise be required to submit evidence under clause 5(1)(b) hereof.

(b) In the event of the Minister invoking the provisions of subclause (4) of this clause and the Company referring a dispute thereunder to arbitration then the period from the day of the receipt by the Company of the Demonstration Notice until the day of the delivery of the award under the arbitration with respect thereto shall be added to the period within which the Company would otherwise be required to submit evidence under clause 5(1)(b) hereof.

Consideration of other proposals under Clause 5(1)⁴.

7. (1) Within two (2) months after receipt of the detailed proposals of the Company in regard to any of the matters mentioned in clause 5(1)(a) hereof other than those mentioned in clause 5(1)(a)(i) hereof the Minister shall give to the Company notice either of his approval of the proposals or of alterations desired thereto and in the latter case shall afford to the Company opportunity to consult with and to submit new proposals to the Minister. The Minister may make such reasonable alterations to or impose such reasonable conditions on the

proposals or new proposals (as the case may be) as he shall think fit having regard to the circumstances including the overall development and use by others as well as the Company but the Minister shall in any notice to the Company disclose his reasons for any such alteration or condition. Within two (2) months of the receipt of the notice the Company may elect by notice to the State to refer to arbitration and within two (2) months thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Company then unless the Company within three (3) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period of three (3) months cease and determine (save as provided in clause 11(d) hereof) but if the question is decided in favour of the Company the decision will take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

(2) Within two (2) months after receipt of evidence from the Company with regard to the matters mentioned in clause 5(1)(b) hereof to the reasonable satisfaction of the Minister the State will give to the Company notice either that it is satisfied with such evidence (in which case the proposals in relation to those matters will be deemed approved) or not in which case the State shall afford the Company an opportunity to consult with and to submit further evidence to the Minister. If within thirty (30) days of receipt of such notice further evidence has not been submitted to the Minister's reasonable satisfaction and his approval obtained thereto the Company may within a further period of thirty (30) days elect by notice to the State to refer to arbitration as hereinafter provided and will within two (2) months thereafter refer to arbitration any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the dispute is decided against the Company then unless the Company within three (3) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period cease and determine (save as provided in clause 11(d) hereof) but if the question is decided in favour of the Company the decision will take effect as a notice by the Minister that he is so satisfied with and has approved the matter or matters the subject of the arbitration.

*Extension of time*⁴.

8. (1) The arbitrator arbitrators or umpire (as the case may be) of any submission to arbitration hereunder is hereby empowered upon application by either party hereto to grant any interim extension of time or date referred

to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of either or both the parties hereunder and an award in favour of the Company may in the name of the Minister grant any further extension of time for that purpose.

(2) Notwithstanding that under clause 6 or clause 7 hereof any detailed proposals of the Company are approved by the State or the Minister or determined by consultant engineers or by arbitration award unless each and every such proposal and matter is so approved or determined by the 28th day of February, 1965 or by such extended date if any as the Company shall be entitled to or shall be granted pursuant to the provisions hereof then on the latest of the dates aforesaid this Agreement shall cease and determine subject however to the provisions of clause 11(d) hereof.

*Commencement date*⁴.

(3) Subject to the approval by the Minister or determination by arbitration or by consulting engineers as herein provided of each and every of the detailed proposals and matters referred to in clause 5(1) hereof (except if and as modified by the application of clause 6(4) hereof) the date upon which the last of those proposals of the Company shall have been so approved or determined shall be the commencement date for the purposes of this Agreement.

(4) If under any arbitration under clause 7 hereof the dispute is decided against Company and subsequently but before the commencement date this Agreement ceases and determines the State will not for a period of three (3) years after such determination enter into a contract with any other party for the mining transport and shipment of iron ore from the mining areas on terms more favourable on the whole to the other party than those which would have applied to the Company hereunder if the question had been determined in favour of the Company.

*Phase 2 Obligations of State*⁴.

9. (1) As soon as conveniently may be after the commencement date the State shall —

*Mineral Lease*⁴.

- (a) after application is made by the Company for a mineral lease of any part or parts (not exceeding in total area three hundred (300) square miles and in the shape of a parallelogram or parallelograms) of the mining areas in conformity with the Company's detailed proposals under clause 5(1)(a)(A) hereof as finally approved or determined

cause any necessary survey to be made of the land so applied for (the cost of which survey to the State will be recouped or repaid to the State by the Company on demand after completion of the survey) and shall cause to be granted to the Company a mineral lease thereof for iron ore in the form of the Schedule hereto for a term which subject to the payment of rents and royalties hereinafter mentioned and to the performance and observance by the Company of its obligations under the mineral lease and otherwise under this Agreement shall be for a period of twenty-one (21) years commencing from the commencement date with rights to successive renewals of twenty-one (21) years upon the same terms and conditions but subject to earlier determination upon the cessation or determination of this Agreement PROVIDED HOWEVER that the Company may from time to time (without abatement of any rent then paid or payable in advance) surrender to the State any portion or portions (of reasonable size and shape) of the mineral lease;

*Under Company's proposals*⁴.

- (b) in accordance with the Company's proposals as finally approved or determined under clause 6 or clause 7 hereof and as require the State to accept obligations —

*Lands*⁴.

- (i) grant to the Company in fee simple or for such terms or periods and on such terms and conditions (including renewal rights) as subject to the proposals (as finally approved or determined as aforesaid) shall be reasonable having regard to the requirements of the Company hereunder and to the overall development of the harbour and access to and use by others of lands the subject of any grant to the Company and of services and facilities provided by the Company —
- for nominal consideration — townsite lots;
 - at peppercorn rental — special leases of Crown lands within the harbour area the townsites and the railway; and
 - at rentals as prescribed by law or are otherwise reasonable — leases rights mining tenements

easements reserves and licenses in on or under
Crown lands

under the Mining Act the *Jetties Act 1926* or under
the provisions of the Land Act modified as in
subclause (2) of this clause provided (as the case may
require) as the Company reasonably requires for its
works and operations hereunder including the
construction or provision of the railway wharf roads
airstrip water supplies and stone and soil for
construction purposes; and

*Services and Facilities*⁴.

- (ii) provide any services or facilities subject to the Company's bearing and paying the capital cost involved and reasonable charges for operation and maintenance except where and to the extent that the State otherwise agrees —

subject to such terms and conditions as may be finally approved or determined as aforesaid PROVIDED THAT from and after the fifteenth anniversary of the export date or the twentieth anniversary of the date hereof whichever shall first occur the Company will in addition to the rentals already referred to in this paragraph pay to the State during the currency of this Agreement after such anniversary as aforesaid a rental (which subject to its being payable by the Company to the State may from time to time at the option of the Company be payable in respect of such one or more of the special leases or leases granted to the Company under this paragraph and remaining current) equal to two shillings and sixpence (2s. 6d.) per ton on all iron ore or (as the case may be) all iron ore concentrates in respect of which royalty is payable under clause 10(2)(j) hereof in any financial year such additional rental to be paid within three (3) months after shipment sale use or production as the case may be of the iron ore or iron ore concentrates SO NEVERTHELESS that where in respect of any such year the additional rental so payable is less than a minimum sum of one hundred and fifty thousand pounds (£150,000) the Company will within three (3) months after expiration of that year pay to the State as further rental the difference between one hundred and

fifty thousand pounds (£150,000) and the additional rental actually paid in respect of that year but any amount so paid in respect of any financial year in excess of the rental payable for that year at the rate of two shillings and sixpence (2s. 6d.) per ton as aforesaid shall be offset by the Company against any amount payable by it to the State above the minimum amounts payable to the State under this paragraph in respect of the two (2) financial years immediately following the financial year in respect of which the said minimum sum was paid; and

*Other rights*⁴.

- (c) on application by the Company cause to be granted to it such machinery and tailings leases (including leases for the dumping of overburden) and such other leases licenses reserves and tenements under the Mining Act or under the provisions of the Land Act modified as in subclause (2) of this clause provided as the Company may reasonably require and request for its purposes under this Agreement on or near the mineral lease;

(2) For the purposes of subparagraph (i) of paragraph (b) and paragraph (c) of subclause (1) of this clause the Land Act shall be deemed to be modified by —

- (a) the substitution for subsection (2) of section 45A of the following subsection:
 - (2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased;
- (b) the deletion of the proviso to section 116;
- (c) the deletion of section 135;
- (d) the deletion of section 143;
- (e) the inclusion of a power to offer for sale or leasing land within or in the vicinity of any townsite notwithstanding that the townsite has not been constituted a townsite under section 10; and
- (f) the inclusion of a power to offer for sale or grant leases or licenses for terms or periods and on such terms and

conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of for the terms or periods and upon the terms and conditions and in the forms referred to in the Act and upon application by the Company in forms consistent as aforesaid in lieu of in the forms referred to in the Act.

(3) The provisions of subclause (2) of this clause shall not operate so as to prejudice the rights of the State to determine any lease license or other right or title in accordance with the other provisions of this Agreement.

(4) The State further covenants with the Company that the State —
*Non-interference with Company's rights*⁴.

(a) shall not during the currency of this Agreement register any claim or grant any lease or other mining tenement under the Mining Act or otherwise by which any person other than the Company will obtain under the laws relating to mining or otherwise any rights to mine or take the natural substances (other than petroleum as defined in the *Petroleum Act 1936*) within the mineral lease unless the Minister reasonably determines that it is not likely to unduly prejudice or to interfere with the operations of the Company hereunder assuming the taking by the Company of all reasonable steps to avoid the interference;

*No resumption*⁴.

(b) subject to the performance by the Company of its obligations under this Agreement shall not during the currency hereof without the consent of the Company resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the said State any of the works installations plant equipment or other property for the time being belonging to the Company and the subject of or used for the purposes of this Agreement nor any of the lands the subject of any lease or license granted to the Company in terms of this Agreement AND without such consent (which shall not be unreasonably withheld) the State will not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road right-of-way or easement of any nature or kind whatsoever over or in respect of any such lands which may unduly

prejudice or interfere with the Company's operations hereunder;

*Labour requirements*⁴.

- (c) shall if so requested by the Company and so far as its powers and administrative arrangements permit use reasonable endeavours to assist the Company to obtain adequate and suitable labour for the construction and the carrying out of the works and operations referred to in this Agreement including suitable immigrants for that purpose;

*No discriminatory rates*⁴.

- (d) except as provided in this Agreement shall not impose nor permit nor authorize any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Company in the conduct of the Company's business hereunder nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement;

*Rights to other minerals*⁴.

- (e) shall where and to the extent reasonably practicable on application by the Company from time to time grant or assist in obtaining the grant to the Company of prospecting rights and mining leases with respect to limestone dolomite and other minerals reasonably required by the Company for its purposes under this Agreement; and

*Consents to improvements on leases*⁴.

- (f) shall as and when required by the Company (but without prejudice to the foregoing provisions of this Agreement relating to the detailed proposals and matters referred to in clause 5(1) hereof) consent in writing where and to the extent that the Minister considers to be reasonably justified to the Company's making improvements for the purposes of this Agreement on the land comprised in any lease granted by the State to the Company pursuant to this Agreement

PROVIDED THAT the Company shall also obtain any other consents legally required in relation to such improvements.

(5) The Company shall not have any tenant rights in improvements made by the Company on the land comprised in any lease granted by the State to the Company pursuant to this Agreement in any case where pursuant to clause 11(e) hereof such improvements will remain or become the absolute property of the State.

*Phase 2 Obligations of the Company*⁴.

*To construct*⁴.

10. (1) The Company shall within three (3) years next following the commencement date and at a cost of not less than thirty million pounds (£30,000,000) construct install provide and do all things necessary to enable it to mine from the mineral lease to transport by rail to the Company's wharf and to commence shipment therefrom in commercial quantities at an annual rate of not less than one million (1,000,000) tons of iron ore and without lessening the generality of this provision the Company shall within the aforesaid period of three years —

*On mining areas*⁴.

- (a) construct install and provide upon the mineral lease or in the vicinity thereof mining plant and equipment crushing screening stockpiling and car loading plant and facilities power house workshop and other things of a design and capacity adequate to enable the Company to meet and discharge its obligations hereunder and under the iron ore contracts and to mine handle load and deal with not less than three thousand (3,000) tons of iron ore per item such capacity to be built up progressively to not less than ten thousand (10,000) tons of iron ore per diem within three (3) years next following the export date;

*To commence exports*⁴.

- (b) actually commence to mine transport by rail and ship from the Company's wharf iron ore from the mineral lease so that the average annual rate during the first two years shall not be less than one million (1,000,000) tons;

*To construct railway*⁴.

- (c) subject to the State having assured to the Company all necessary rights in or over Crown lands available for the

purpose construct in a proper and workmanlike manner and in accordance with recognised standards of railways of a similar nature operating under similar conditions and along a route approved or determined under clause 6 or clause 7 hereof (but subject to the provisions of the *Public Works Act 1902* to the extent that they are applicable) a four feet eight and one-half inches (4' 8½") gauge railway (with all necessary signalling switch and other gear and all proper or usual works) from the mining areas to the Company's wharf and will provide for crossing places and the running of such railway with sufficient and adequate locomotives freight cars and other railway stock and equipment to haul at least one million (1,000,000) tons of iron ore per annum to the Company's wharf or as required for the purposes of this Agreement;

*To make roads*⁴.

- (d) subject to the State having assured to the Company all necessary rights in or over Crown lands or reserves available for the purpose construct by the said date such new roads as the Company reasonably requires for its purposes hereunder of such widths with such materials gates crossings and passovers for cattle and for sheep and along such routes as the parties hereto shall mutually agree after discussion with the respective shire councils through whose districts any such roads may pass and subject to prior agreement with the appropriate controlling authority (being a shire council or the Commissioner of Main Roads) as to terms and conditions the Company may at its own expense and risk except as otherwise so agreed upgrade or realign any existing road;

*To construct wharf*⁴.

- (e) construct the Company's wharf in accordance with plans and specifications for the construction thereof previously approved or determined under clause 6 hereof on the site previously approved or determined for the purpose; and

*To carry out proposals*⁴.

- (f) in accordance with the Company's proposals as finally approved or determined under clause 6 or clause 7 hereof and as require the Company to accept obligations —

- (i) dredge the berth at the Company's wharf and the channel and approaches thereto and any necessary swinging basin;
- (ii) lay out and develop the townsites and provide adequate and suitable housing recreational and other facilities and services;
- (iii) construct and provide roads housing school water and power supplies and other amenities and services; and
- (iv) construct and provide other works (if any) including an airstrip.

(2) Throughout the continuance of this Agreement the Company shall —

*Operation of railway*⁴.

- (a) operate its railway in a safe and proper manner and where and to the extent that it can do so without unduly prejudicing or interfering with its operations hereunder allow crossing places for roads stock and other railways and transport the passengers and carry the freight of the State and of third parties on the railway subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made altered and repealed as provided in subclause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost of the railway to the Company) PROVIDED THAT in relation to its use of the said railway the Company shall not be deemed to be a common carrier at common law or otherwise;

*Use of roads by others*⁴.

- (b) except to the extent that the Company's proposals as finally approved or determined under clause 6 or clause 7 hereof otherwise provide allow the public to use free of charge any roads constructed or upgraded under this clause PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder;

*Compliance with laws*⁴.

- (c) in the construction operation maintenance and use of any work installation plant machinery equipment service or facility provided or controlled by the Company comply with and observe the provisions hereof and subject thereto the laws for the time being in force in the said State;

*Maintenance*⁴.

- (d) at all times keep and maintain in good repair and working order and condition and where necessary replace all such works installations plant machinery and equipment and the railway wharf roads (other than the public roads referred to in clause 11(b) hereof) dredging and water and power supplies for the time being the subject of this Agreement;

*Shipment of and price for ore*⁴.

- (e) ship from the Company's wharf all iron ore mined from the mineral lease and sold and use its best endeavours to obtain therefor the best price possible having regard to market conditions from time to time prevailing PROVIDED THAT this paragraph shall not apply to iron ore used for secondary processing or for the manufacture of iron or steel in any part of the said State lying north of the twenty-sixth parallel of latitude;

*Use of wharf and facilities*⁴.

- (f) subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made and altered as provided in subclause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Company) allow the State and third parties to use the Company's wharf and harbour installations wharf machinery and equipment and wharf and harbour services and facilities PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder;

*Access through mining areas*⁴.

- (g) allow the State and third parties to have access (with or without stock vehicles and rolling stock) over the mineral lease (by separate route road or railway) PROVIDED THAT

such access over shall not unduly prejudice or interfere with the Company's operations hereunder:

*Protection for inhabitants*⁴.

- (h) subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made and altered as provided in subclause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Company) allow the inhabitants for the time being of the port townsite being employees licensees or agents of the Company or persons engaged in providing a legitimate and normal service to or for the Company or those employee licensees or agents to make use of the water power recreational health and other services or facilities provided or controlled by the Company;

*Use of local labour and materials*⁴.

- (i) so far as reasonably and economically practicable use labour materials plant equipment and supplies available within the said state where it is not prejudicial to the interests of the Company so to do;

*Royalties*⁴.

- (j) pay to the State royalty on all iron ore from the mineral lease shipped or sold (other than ore shipped solely for testing purposes) or (in the circumstances mentioned in subparagraph (iv) of this paragraph) on iron ore concentrates produced from iron ore from the mineral lease or on other iron ore from the mineral lease used as mentioned in subparagraph (iv) of this paragraph as follows —
 - (i) on direct shipping ore (not being locally used ore) at the rate of seven and one half per centum (7½%) of the f.o.b. revenue (computed at the rate of exchange prevailing on date of receipt by the Company of the purchase price in respect of ore shipped or sold hereunder) PROVIDED NEVERTHELESS that such royalty shall not be less than six shillings (6/-d) per ton (subject to subparagraph (vi) of this paragraph) in

respect of ore the subject of any shipment or sale;

- (ii) on fine ore (not being locally used ore) at the rate of three and three quarter per centum (3¾%) of the f.o.b. revenue (computed as aforesaid) PROVIDED NEVERTHELESS that such royalty shall not be less than three shillings (3/-d) per ton (subject to subparagraph (vii) of this paragraph) in respect of ore the subject of any shipment or sale;
- (iii) on fines (not being locally used ore) at the rate of one shilling and sixpence (1s. 6d.) per ton;
- (iv) on iron ore concentrates produced from locally used ore by secondary processing and on locally used ore (not being iron ore used for producing iron ore concentrates subject to royalty hereunder) at the rate of one shilling and sixpence (1s. 6d.) per ton;
- (v) on all other iron ore (not being locally used ore) at the rate of seven and one half per centum (7½%) of the f.o.b. revenue (computed as aforesaid) without any minimum royalty;
- (vi) if the amount ascertained by multiplying the total tonnage of direct shipping ore shipped or sold (and liable to royalty under subparagraph (i) of this paragraph) in any financial year by six shillings (6/-d) is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that subparagraph then that proviso shall not apply in respect of direct shipping ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made accordingly;
- (vii) if the amount ascertained by multiplying the total tonnage of fine ore shipped or sold (and liable to royalty under subparagraph (ii) of this paragraph) in any financial year by three shillings (3/-d) is less than the total

royalty which would be payable in respect of that ore but for the operation of the proviso to that subparagraph then that proviso shall not apply in respect of fine ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made accordingly; and

- (viii) the royalty at the rate of one shilling and sixpence (1/6d) per ton referred to in subparagraphs (iii) and (iv) of this paragraph shall be adjusted up or down (as the case may be) as at the first day of January, 1969 and as at the beginning of every fifth year thereafter proportionately to the variation of the average of the prices payable for foundry pig iron f.o.b. Adelaide during the last full calendar year preceding the date at which the adjustment is to be made as compared with the average of those prices during the calendar year 1963.

For the purposes of this paragraph “locally used ore” means iron ore used by the Company or an associated company both within the Commonwealth and within the limits referred to in paragraph (o) of this clause for secondary processing or in an integrated iron and steel industry and includes iron ore used by any other person or company north of the twenty-sixth parallel of latitude in the said State for secondary processing or in an integrated iron and steel industry;

*Payments of royalties*⁴.

- (k) within fourteen days after the quarter days the last days of March June September and December in each year commencing with the quarter day next following the first commercial shipment of iron ore from the Company’s wharf furnish to the Minister a return showing the quantity of all iron ore or iron ore concentrates the subject of royalty hereunder and shipped sold used or produced (as the case may be) during the quarter immediately preceding the due date of the return and shall not later than two (2) months

after such due date pay to the Minister the royalty payable in respect of iron ore concentrates produced or iron ore used and in respect of all iron ore shipped or sold pay to the Minister on account of the royalty payable hereunder a sum calculated on the basis of invoices or provisional invoices (as the case may be) rendered by the Company to the purchaser (which invoices the Company shall render without delay simultaneously furnishing copies thereof to the Minister) of such iron ore and shall from time to time in the next following appropriate return and payment make (by the return and by cash) all such necessary adjustments (and give to the Minister full details thereof) when the f.o.b. revenue realised in respect of the shipments shall have been ascertained;

*Rent for mineral lease*⁴.

- (l) by way of rent for the mineral lease pay to the State annually in advance a sum equal to three shillings and sixpence (3/6d) per acre of the area for the time being the subject of the mineral lease commencing on and accruing from the commencement date PROVIDED THAT after the Company commences production in commercial quantities within the said State from a plant for secondary processing or for iron and steel manufacture or steel manufacture (whichever is first constructed) if and during the period that the total area for the time being comprised within the mineral lease —
 - (i) is not more than one hundred (100) square miles the annual rent shall be two shillings (2/-d) per acre;
 - (ii) is over one hundred (100) square miles but not more than one hundred and fifty (150) square miles the annual rent shall be two shillings and sixpence (2/6d) per acre; and
 - (iii) is over one hundred and fifty (150) square miles but not more than two hundred (200) square miles the annual rent shall be three shillings (3/-d) per acre;

*Other rentals*⁴.

- (m) pay to the State the rental referred to in the proviso to clause 9(1)(b) hereof if and when such rental shall become payable;

*Inspection*⁴.

- (n) permit the Minister or his nominee to inspect at all reasonable times the books of account and records of the Company relative to any shipment or sale of iron ore hereunder and to take copies or extracts therefrom and for the purpose of determining the f.o.b. revenue payable in respect of any shipment of iron ore hereunder the Company will take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the Minister's reasonable satisfaction as to all relevant weights and analyses and will give due regard to any objection or representation made by the Minister or his nominee as to any particular weight or assay of iron ore which may affect the amount of royalty payable hereunder; and

*Export to places outside the Commonwealth*⁴.

- (o) ensure that without the prior written approval of the Minister all iron ore shipped pursuant to this Agreement will be off-loaded at a place outside the Commonwealth and if it fails so to ensure the Company will subject to the provisions of this paragraph be in default hereunder. Where any such shipment is off-loaded within the Commonwealth without such prior written approval the Company shall forthwith on becoming aware thereof give to the State notice of the fact and pay to the State in respect of the iron ore the subject of the shipment such further and additional rental calculated at a rate not exceeding ten shillings (10/-d) per ton of the iron ore as the Minister shall demand without prejudice however to any other rights and remedies of the State hereunder arising from the breach by the Company of the provisions hereof. If ore is shipped in a vessel not owned by the Company or an associated company or

any other company in which the Company has a controlling interest and such ore is off-loaded in the Commonwealth the Company will not be or be deemed to be in default hereunder if it takes appropriate action to prevent a recurrence of such an off-loading PROVIDED FURTHER that the foregoing provisions of this paragraph shall not apply in any case (including any unforeseeable diversion of the vessel for necessary repairs or arising from *force majeure* or otherwise) where the Company could not reasonably have been expected to take steps to prevent that particular off-loading PROVIDED ALSO that the provisions of this paragraph shall not apply —

- (i) to ore the subject of secondary processing or iron and steel or steel manufacture by the Company or an associated company within the said State;
- (ii) to ore processed by the Company or an associated company within the Commonwealth but outside the said State to the extent that the tonnage of ore so processed does not in any year exceed fifty per centum (50%) of the total quantity of iron ore the subject of secondary processing and/or iron and steel manufacture or steel manufacture by the Company or an associated company within the said State; or
- (iii) to ore processed by the Company or an associated company within the Commonwealth but outside the said State in excess of fifty per centum (50%) of the total quantity of ore the subject of secondary processing and/or iron and steel manufacture or steel manufacture by the Company or an associated company within the said State with the prior written approval of the Minister as aforesaid.

*By-laws*⁴.

(3) The Governor in Executive Council may upon recommendation by the Company make alter and repeal by-laws for the purpose of enabling the Company to fulfil its obligations under paragraphs (a) and (f) of subclause (2)

of this clause and (unless and until the port townsite is declared a townsite pursuant to section 10 of the Land Act) under paragraph (h) of subclause (2) of this clause and under clause 11(a) hereof upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Company) as set out in such by-laws consistent with the provisions hereof. Should the State at any time consider that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Company shall recommend such alteration or repeal thereof as the State may reasonably require or (in the event of there being any dispute as to the reasonableness of such requirement) then as may be decided by arbitration hereunder.

*Mutual covenants*⁴.

11. The parties hereto covenant and agree with each other as follows: —

*Water and power supplies*⁴.

- (a) that subject to and in accordance with proposals approved or determined under clause 7 hereof the Company for its purposes hereunder and for domestic and other purposes in relation to a townsite may to the extent determined by the Minister but notwithstanding any Act bore for water construct catchment areas store (by dams or otherwise) take and charge for water from any Crown lands available for the purpose and generate transmit supply and charge for electrical energy and the Company shall have all such powers and authorities with respect to water and electrical energy as are determined by the Minister for the purposes hereof which may include the powers of a water board under the *Water Boards Act 1904* and of a supply authority under the *Electricity Act 1945*;

*Use of public roads*⁴.

- (b) that the Company may use any public roads which may from time to time exist in the area of its operations hereunder for the purpose of transportation of goods and materials in connection with such operations PROVIDED NEVERTHELESS that the Company shall on demand pay to the State or the shire council concerned the cost of making good any damage to such roads occasioned by —
- (i) such user by the Company prior to the export date;
and

- (ii) user by the Company for the transportation of iron ore won from the mineral lease;

*Upgrading of existing roads*⁴.

- (c) that the State will at the request and cost of the Company (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or part of the cost involved) widen upgrade or realign any public road over which the State has control subject to the prior approval of the said Commissioner to the proposed work;

*Effect of determination of Agreement*⁴.

- (d) that on the cessation or determination of this Agreement —
 - (i) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement and the rights of the Company or of any assignee of the Company or any mortgagee to in or under the mineral lease and any other lease license easement or right granted hereunder or pursuant hereto shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder AND the Company will without further consideration but otherwise at the request and cost of the State transfer or surrender to the State or the Crown all land the subject of any Crown Grant issued under the Land Act pursuant to this Agreement;
 - (ii) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
 - (iii) the Company shall forthwith furnish to the State complete factual statements of the work research surveys and reconnaissances carried out pursuant to clause 4(1) hereof if and insofar as the statements may not have been so furnished; and
 - (iv) save as aforesaid and as provided in clause 8(4) hereof and in the next following paragraph neither of the parties hereto shall have any claim against another of

them with respect to any matter or thing in or arising out of this Agreement;

*Effect of determination of lease*⁴.

- (e) that on the cessation or determination of any lease license or easement granted hereunder by the State to the Company or (except as otherwise agreed by the Minister) to an associated company or other assignee of the Company under clause 20 hereof of land for the Company's wharf for any installation within the harbour for the Company's railway or for housing at the port or port townsite the improvements and things erected on the relevant land and provided for in connection therewith shall remain or become the absolute property of the State without compensation and freed and discharged from all mortgages and encumbrances and the Company will do and execute such documents and things (including surrenders) as the State may reasonably require to give effect to this provision. In the event of the Company immediately prior to such expiration or determination or subsequent thereto deciding to remove its locomotives rolling stock plant equipment and removable buildings or any of them from any land it shall not do so without first notifying the State in writing of its decision and thereby granting to the State the right or option exercisable within three months thereafter to purchase at valuation *in situ* the said plant equipment and removable buildings or any of them. Such valuation shall be mutually agreed or in default of agreement shall be made by such competent valuer as the parties may appoint or failing agreement as to such appointment then by two competent valuers one to be appointed by each party or by an umpire appointed by such valuers should they fail to agree;

*No charge for the handling of cargoes*⁴.

- (f) that subject to the Company at its own expense providing all works buildings dredging and things of a capital nature reasonably required for its operations hereunder at or in the vicinity of the harbour no charge or levy shall be made by the State or by any State authority in relation to the loading of outward or the unloading of inward cargoes from the Company's wharf whether such cargoes shall be the property

of the Company or of any other person or corporation but the State accepts no obligation to undertake such loading or unloading and may make the usual charges from time to time prevailing in respect of services rendered by the State or by any State agency or instrumentality or other local or other authority of the State and may charge vessels using the Company's wharf ordinary light conservancy and tonnage dues;

*Zoning*⁴.

- (g) that the mineral lease and the lands the subject of any Crown Grant lease license or easement granted to the Company under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State by any State agency or instrumentality or by any local or other authority of the State on the ground that such operations are contrary to any zoning by-law or regulation;

*Rentals and evictions*⁴.

- (h) that any State legislation for the time being in force in the said State relating to the fixation of rentals shall not apply to any houses belonging to the Company in any townsite and that in relation to each such house the Company shall have the right to include as a condition of its letting thereof that the Company may take proceedings for eviction of the occupant if the latter shall fall to abide by and observe the terms and conditions of occupancy or if the occupant shall cease to be employed by the Company;

*Labour conditions*⁴.

- (i) that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the labour conditions imposed by or under the Mining Act in regard to the mineral lease;

*Subcontracting*⁴.

- (j) that without affecting the liability of the parties under this Agreement either party shall have the right from time to time

to entrust to third parties the carrying out of any portions of the operations which it is authorized or obliged to carry out hereunder;

*Rating*⁴.

- (k) that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection therewith) shall for rating purposes be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate;

*Default*⁴.

- (l) that in any of the following events namely if the Company shall make default in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sublease license or other title or document granted or assigned under this Agreement on its part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to it by the State or if the Company shall abandon or repudiate its operations under this Agreement or shall go into liquidation (other than a voluntary liquidation for the purposes of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and the rights of the Company hereunder or under any lease license easement or right granted hereunder or pursuant hereto: PROVIDED HOWEVER that if the Company shall fail to remedy any default after such notice as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand; and
- (m) that —

- (i) for the purposes of determining whether and the extent to which —
 - (A) the Company is liable to any person or body corporate (other than the State); or
 - (B) an action is maintainable by any such person or body corporatein respect of the death or injury of any person or damage to any property arising out of the use of any of the roads for the maintenance of which the Company is responsible hereunder and for no other purpose the Company shall be deemed to be a municipality and the said roads shall be deemed to be streets under the care control and management of the Company; and
- (ii) for the purposes of this paragraph the terms “municipality” “street” and “care control and management” shall have the meanings which they respectively have in the *Local Government Act 1960*.

*Secondary processing*⁴.

12. (1) The Company having commenced already to investigate the feasibility of establishing a plant for the secondary processing by the Company within the said State of iron ore from the mineral lease will from time to time review this matter with a view to its being in a position before the end of year 10 to submit to the Minister detailed proposals for such plant (capable ultimately of treating not less than Two million (2,000,000) tons of iron ore per annum) containing provision that —

- (a) the plant will by the end of year 12 have the capacity to process at an annual rate of and will during year 13 process not less than Five hundred thousand (500,000) tons of iron ore;
- (b) production will progressively increase so that the plant will by the end of year 16 have the capacity to process at an annual rate of and will during year 17 process not less than Two million (2,000,000) tons of iron ore; and
- (c) the capital cost involved will be not less than Eight million pounds (£8,000,000) unless the Company utilises a less expensive but at least equally satisfactory

method of secondary processing than any at present known to either party.

(2) If before the end of year 10 such proposals are submitted by the Company to the Minister the State shall within two months of the receipt thereof give to the Company notice either of its approval of the proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford the Company an opportunity to consult with and to submit new proposals to the Minister. If within thirty days of receipt of such notice agreement is not reached as to the proposals the Company may within a further period of thirty days elect by notice to the State to refer to arbitration as hereinafter provided any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have then approved the proposals of the Company.

(3) If such proposals are not submitted by the Company to the Minister before the end of year 10 or if such proposals are so submitted but are not approved by the Minister within two months of receipt thereof then (subject to any extension of time granted under subclause (1) of clause 8 hereof)

- (a) the Company shall not after the end of year 12 export iron ore hereunder at an annual rate in excess of Five million (5,000,000) tons; and
- (b) if by the end of year 13 (or extended date if any) the State gives to the Company notice that some other company or party (hereinafter referred to as "the Third Party") has agreed to establish a plant for secondary processing within the said State of iron ore from the mineral lease on terms not more favourable on the whole to the Third Party than those proposed by or available to the Company hereunder this Agreement will (subject to the provisions of subclauses (d) and (e) of clause 11 and of clause 16 hereof) cease and determine at the end of year 21 or at the date by which the Third Party has substantially established the plant referred to in this subclause in accordance with the terms agreed upon by the State and the Third Party whichever is the later

PROVIDED THAT if by the end of year 13 (or extended date if any) the State has not given to the Company the notice referred to in this subclause paragraph (a) of this subclause shall thereupon cease to have effect AND PROVIDED FURTHER that the Company may at any time after the end of year 10 submit proposals as aforesaid if at that time it has not received the

notice aforesaid and the provisions of subclause (2) of this clause shall apply to such proposals but (subject to any extension of time as aforesaid) the Company may not submit proposals as aforesaid after the end of year 10 and before the end of year 13 if it has received a notice from the Minister that he is negotiating with a Third Party and such notice has not been withdrawn.

(4) Subject to the provisions of clause 13 hereof and except as provided in paragraph (b) of subclause (3) of this clause this Agreement will continue in operation subject to compliance by the Company with its obligations hereunder and with such proposals by the Company as are approved by the Minister.

(5) Notwithstanding anything contained herein no failure by the Company to submit to the Minister proposals as aforesaid nor any non-approval by the Minister of such proposals shall constitute a breach of this Agreement by the Company and subject to the provisions of clause 13 hereof the only consequence arising from such failure or non-approval (as the case may be) will be those set out in subclause (3) of this clause.

*Iron and steel industry*⁴.

13. (1) The Company will in due course investigate the feasibility of establishing an integrated iron and steel industry within the said State and will from time to time review this matter with a view to its being in a position before the end of year 20 to submit to the Minister detailed proposals for such industry (capable ultimately of producing One million (1,000,000) tons of steel per annum) containing provision that —

- (a) by the end of year 25 productive capacity will be at an annual rate of not less than and during year 26 production will be not less than Five hundred thousand (500,000) tons of pig iron foundry iron or steel (hereinafter together referred to as “product”) of which not less than Two hundred and fifty thousand (250,000) tons will be steel;
- (b) production will progressively increase so that by the end of year 29 productive capacity will be at an annual rate of not less than and during year 30 production will be not less than One million (1,000,000) tons of product (of which not less than Five hundred thousand (500,000) tons will be steel) and by the end of year 31 productive capacity will be at an annual rate of not less than and during year 32 production will be not less than One million (1,000,000) tons of steel; and

- (c) the capital cost involved will be not less than Forty million pounds (£40,000,000) unless the Company utilises a less expensive but at least equally satisfactory method of manufacture than any at present known to either party.

(2) If before the end of year 20 such proposals are submitted by the Company to the Minister the State shall within two months of the receipt thereof give to the Company notice either of its approval of the proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford to the Company an opportunity to consult with and to submit new proposals to the Minister. If within thirty days of receipt of such notice agreement is not reached as to the proposals the Company may within a further period of thirty days elect by notice to the State to refer to arbitration as hereinafter provided any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have then approved the proposals of the Company.

(3) If such proposals are not submitted by the Company to the Minister before the end of year 20 or if such proposals are so submitted but are not approved by the Minister within two months after receipt thereof then (subject to any extension of time granted under subclause (1) of Clause 8 hereof) if by the end of year 23 (or extended date if any) the State gives to the Company notice that some other company or party (hereinafter referred to as "the Fourth Party") has agreed to establish either —

- (a) a plant for secondary processing within the said State of iron ore from the mineral lease (if proposals by the Company for the establishment of such a plant have not previously been submitted to and approved by the Minister) on terms not more favourable on the whole to the Fourth Party than those proposed by or available to the Company hereunder; or
- (b) an integrated iron and steel industry within the said State (using iron ore from the mineral lease) on terms not more favourable on the whole to the Fourth Party than those proposed by or available to the Company hereunder

then and in either case this Agreement will (subject to the provisions of subclauses (d) and (e) of clause 11 hereof and clause 16 hereof) cease and determine —

- (i) in the case of the Fourth Party proceeding with secondary processing then when the Fourth Party has substantially

established the plant referred to in paragraph (a) of this subclause;

- (ii) in the case of the Fourth Party proceeding with an integrated iron and steel industry then (if proposals by the Company for a plant for secondary processing have previously been submitted to and approved by the Minister) at the end of year 30 or at the date by which the Fourth Party has substantially established that industry whichever is the later; and
- (iii) in the case of the Fourth Party proceeding with an integrated iron and steel industry then (if proposals by the Company for a plant for secondary processing have not previously been submitted to and approved by the Minister) at the date by which the Fourth Party has substantially established that industry.

(4) If by the end of year 23 (or extended date if any) the State has not given to the Company any such notice as is referred to in subclause (3) of this clause that subclause shall thereupon cease to have effect except that (to the extent they can from time to time operate) the provisions of subclause (3) of this clause shall revive (for a period of three years) at the end of year 33 and at the end of each successive period of 13 years thereafter in such a way that each year referred to in that subclause shall be read as the year thirteen years or (as the case may require) a multiple of thirteen years thereafter (subject to extensions of dates if any as aforesaid).

(5) The Company may at any time after the end of year 20 submit proposals for an integrated iron and steel industry if at that time it has not received any notice under subclause (3) of this clause and the provisions of subclauses (1) and (2) of this clause shall apply to such proposals.

(6) Except as provided in subclause (3) of this clause this Agreement will continue in operation subject to compliance by the Company with its obligations hereunder and with such proposals by the Company as are approved by the Minister.

(7) Notwithstanding anything contained herein no failure by the Company to submit to the Minister proposals as aforesaid nor any non-approval by the Minister of such proposals shall constitute a breach of this Agreement by the Company and the only consequences arising from such failure or non-approval (as the case may be) will be those set out in subclause (3) of this clause.

*“Substantial establishment.”*⁴.

14. The Third Party or the Fourth Party shall have substantially established a plant for secondary processing or an integrated iron and steel industry when and not before that party’s secondary processing plant has the capacity to treat not less than two million (2,000,000) tons of iron ore per annum or (as the case may be) that party’s integrated iron and steel industry has the capacity to produce one million (1,000,000) tons of steel per annum in either case the Minister has notified the Company that he is satisfied that that party will proceed *bona fide* to operate its plant or industry.

*Terms “not more favourable ”*⁴.

15. In deciding whether for the purposes of clause 12 or clause 13 hereof the terms granted by the State to some company or party are not more favourable on the whole than those proposed by or available to the Company regard shall be had *inter alia* to all the obligations which would have continued to devolve on the Company had it proceeded with secondary processing or (as the case may be) iron and steel manufacture or steel manufacture including its obligations to mine transport by rail and ship iron ore and restrictions relating thereto to pay rent additional rental and royalty and (in the case of secondary processing by a third party pursuant to clause 12 hereof) to termination of rights as provided in clause 13 hereof if proposals for iron and steel manufacture or steel manufacture are not brought to fruition and also to the need for the other company or party to pay on a fair and reasonable basis for or for the use of property accruing to the State under paragraph (e) of clause 11 hereof and made available by the State to that company or party but also to any additional or equivalent obligations to the State assumed by that company or party. PROVIDED HOWEVER that if after the end of year 33 the Minister gives notice to the Company under clause 13 hereof that another company or party has agreed to establish either secondary processing or an integrated iron and steel industry but not both then the latter company or party need not have any obligation to establish both.

*Supply of iron ore by others*⁴.

16. If at the date upon which this Agreement ceases and determines pursuant to clauses 12 or 13 hereof the Company remains under any obligation for the supply of iron ore arising out of a contract or contracts entered into by the Company with the consent of the Minister the Company may give notice to the Minister that it desires the State to ensure that the Third Party (or the Fourth Party as the case may be) is obligated to discharge such remaining obligations to supply iron ore or to supply iron ore to the Company into ships to enable it to discharge such obligations. Forthwith upon receipt of such notice the State will

ensure that the Third Party (or the Fourth Party as the case may be) is obligated to discharge such obligations in accordance with such contract or contracts on a basis which is fair and reasonable as between the Company and the Third Party (or the Fourth Party as the case may be) or if desired to supply iron ore to the Company into ships on such fair reasonable basis.

*Supply of iron ore to others*⁴.

17. The Company covenants and agrees with the State that should the Company remain in possession of the mineral lease for any period during which the Third Party or the Fourth Party is operating or is ready to operate a plant for secondary processing of iron ore or an integrated iron and steel industry then during such period (whenever commencing) the Company will supply the Third Party or the Fourth Party or both (as the case may be) with iron ore from the mineral lease (not exceeding in all Five million (5,000,000) tons per annum unless otherwise agreed) —

- (i) at such rates and grades (as may reasonably be available and be required);
- (ii) at such points on the Company's railway;
- (iii) at such price; and
- (iv) on such other terms and conditions

as may mutually be agreed between the Company and the State or failing agreement decided by arbitration between them PROVIDED ALWAYS that the price shall unless otherwise agreed between them be equivalent to the total cost of production and transport incurred by the Company (including reasonable allowance for depreciation and all overhead expenses) plus ten per centum of such total cost.

*Alteration of works*⁴.

18. If at any time the State finds it necessary to request the Company to alter the situation of any of the installations or other works (other than the Company's wharf) erected constructed or provided hereunder and gives to the Company notice of the request the Company shall within a reasonable time after its receipt of the notice but at the expense in all things of the state (unless the alteration is rendered necessary by reason of a breach by the Company of any of its obligations hereunder) alter the situation thereof accordingly.

*Indemnity*⁴.

19. The Company will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or

costs arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's wharf railway or other works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

*Assignment*⁴.

20. (1) Subject to the provisions of this clause the Company may at any time —
- (a) assign mortgage charge sublet or dispose of to an associated company as of right and to any other company or person with the consent in writing of the Minister the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of any lease license easement grant or other title) and of the obligations of the Company hereunder; and
 - (b) appoint as of right an associated company or with the consent in writing of the Minister any other company or person to exercise all or any of the powers functions and authorities which are or may be conferred on the Company hereunder

subject however to the assignee or (as the case may be) the appointee executing in favour of the State a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with observed or performed in regard to the matter or matters so assigned or (as the case may be) the subject of the appointment.

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this clause the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained herein and in any lease license easement grant or other title the subject of an assignment under the said subclause (1).

*Variation*⁴.

21. The parties hereto may from time to time by mutual agreement in writing add to cancel or vary all or any of the provisions of this Agreement or of any lease license easement or right granted hereunder or pursuant hereto for the purpose of implementing or facilitating the carrying out of such provisions or for the purpose of facilitating the carrying out of some separate part or parts of

the Company's operations hereunder by an associated company as a separate and distinct operation or for the establishment or development of any industry making use of the minerals within the mineral lease or such of the Company's works installations services or facilities the subject of this Agreement as shall have been provided by the Company in the course of work done hereunder.

*Export licence*⁴.

22. (1) On request by the Company the State shall make representations to the Commonwealth for the grant to the Company of a license or licenses under Commonwealth law for the export of iron ore in such quantities and at such rate or rates as shall be reasonable having regard to the terms of this Agreement the capabilities of the Company and to maximum tonnages of iron ore for the time being permitted by the Commonwealth for export from the said State and in a manner or terms not less favourable to the Company (except as to rate or quantity) than the State has given or intends to give in relation to such a license or licenses to any other exporter of iron ore from the said State.

(2) If at any time the Commonwealth limits by export license the total permissible tonnage of iron ore for export from the said State then the Company will at the request of the State and within three (3) months of such request inform the State whether or not it intends to export to the limit of the tonnage permitted to it under Commonwealth licenses in respect of the financial year next following and if it does not so intend will co-operate with the State in making representation to the Commonwealth with a view to some other producer in the said State being licensed by the Commonwealth to export such of the tonnage permitted by the Commonwealth in respect of that year as the Company does not require and such other producer may require. Such procedure shall continue to be followed year by year during such time as the Commonwealth limits by export license the total permissible tonnage of iron ore for export from the said State.

(3) The Company shall be in default hereunder if at any time it fails to obtain any license or licenses under Commonwealth law for the export of iron ore as may be necessary for the purpose of enabling the Company to fulfil its obligations hereunder or if any such license is withdrawn or suspended by the Commonwealth and such failure to obtain or such withdrawal or suspension (as the case may be) is due to some act or default by the Company or to the Company not being *bona fide* in its application to the Commonwealth or otherwise having failed to use its best endeavours to have the license granted or restored (as the case may be) but save as aforesaid if at any time any necessary license is not granted or any license granted to the Company shall be withdrawn or suspended by the Commonwealth and so that as a result thereof the Company

is not for the time being permitted to export at least the tonnage it has undertaken with the State it will export then the Company shall not be obliged to export the tonnage not so permitted until such time as it is so permitted and thereafter it will export the tonnage it has undertaken with the State it will export. The State shall at all times be entitled to apply on behalf of the Company (and is hereby authorized by the Company so to do) for any license or licenses under Commonwealth law for the export of iron ore as may from time to time be necessary for the purposes of this Agreement.

*Delays*⁴.

23. This Agreement shall be deemed to be made subject to any delays in the performance of obligations under this Agreement and to the temporary suspension of continuing obligations hereunder which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays or any such temporary suspension as aforesaid caused by or arising from Act of God force majeure floods storms tempests washaways fire (unless caused by the actual fault or privity of the Company) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability (common in the iron ore export industry) to profitably sell ore or factors due to overall world economic conditions or factors which could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall minimise the effect of the said causes as soon as possible after their occurrence.

*Power to extend periods*⁴.

24. Notwithstanding any provision hereof the Minister may at the request of the Company from time to time extend any period or date referred to in this Agreement for such period or to such later date as the Minister thinks fit and the extended period or later date when advised to the Company by notice from the Minister shall be deemed for all purposes hereof substituted for the period or date so extended.

*Arbitration*⁴.

25. Any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Agreement or any

such amendment variation or addition as to the rights duties or liabilities of either party thereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the *Arbitration Act 1895*.

*Notices*⁴.

26. Any notice consent or other writing authorized or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Civil Service of the said State acting by the direction of the Minister and forwarded by prepaid post to the Company at its registered office for the time being in the said State and by the Company if signed on its behalf by a director manager or secretary of the Company or by any person or persons authorized by the Company in that behalf or by its solicitors as notified to the State from time to time and forwarded by prepaid post to the Minister and any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

*Exemption from stamp duty*⁴.

27. (1) The State shall exempt from any stamp duty which but for the operation of this clause would or might be chargeable on —

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee of the Company any tenement lease easement license or other right or interest;
- (c) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment made in conformity with the provisions of subclause (1) of clause 20 hereof;
- (d) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment to or in favour of the Company or an associated company of any interest right obligation power function or authority which has already been the subject of an assignment sublease disposition or appointment executed pursuant to subclause (1) of clause 20 hereof; and
- (e) a deed giving effect to the hereinbefore recited guarantee;

PROVIDED THAT this clause shall not apply to any instrument or other document executed or made more than seven years from the date hereof.

(2) If prior to the date on which the Bill referred to in clause 2(b) hereof to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) of this clause the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document to the person who paid the same.

*Interpretation*⁴.

28. This Agreement shall be interpreted according to the law for the time being in force in the said State.

SCHEDULE
WESTERN AUSTRALIA
IRON ORE (HAMERSLEY RANGE) AGREEMENT ACT 1963
MINERAL LEASE

Lease No.Goldfield(s)

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

TO ALL TO WHOM THESE PRESENTS shall come GREETINGS: KNOW YE that WHEREAS by an Agreement made the day of , 1963 between the State of Western Australia of the one part and HAMERSLEY IRON PTY. LIMITED (hereinafter called “the Company” which expression will include the successors and assigns of the Company including where the context so admits the assignees of the Company under clause 20 of the said Agreement) of the other part the said State agreed to grant to the Company a mineral lease of portion or portions of the lands referred to in the said Agreement as “the mining areas” AND WHEREAS the said Agreement was ratified by the *Iron Ore (Hamersley Range) Agreement Act 1963* which said Act

(*inter alia*) authorized the grant of a mineral lease to the Company NOW WE in consideration of the rents and royalties reserved by and of the provisions of the said Agreement and in pursuance of the said Act DO BY THESE PRESENTS GRANT AND DEMISE unto the Company subject to the said provisions ALL THOSE pieces and parcels of land situated in the Goldfield(s) containing by admeasurement be the same more or less and particularly described and delineated on the plan in the Schedule hereto and all those mines, veins, seams, lodes and deposits of iron ore in on or under the said land (hereinafter called “the said mine”) together with all rights, liberties, easements, advantages and appurtenances thereto belonging or appertaining to a lessee of a mineral lease under the *Mining Act 1904* including all amendments thereof for the time being in force and all regulations made thereunder for the time being in force (which Act and regulations are hereinafter referred to as “the Mining Act”) or to which the Company is entitled under the said Agreement TO HOLD the said land and mine and all and singular the premises hereby demised for the full term of twenty-one years from the day of , 19 with the right to renew the same from time to time for further periods each of twenty-one years as provided in but subject to the said Agreement for the purposes but upon and subject to the terms covenants and conditions set out in the said Agreement and to the Mining Act (as modified by the said Agreement) YIELDING and paying therefor the rent and royalties as set out in the said Agreement. AND WE do hereby declare that this lease is subject to the observance and performance by the Company of the following covenants and conditions, that is to say: —

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

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

PROVIDED FURTHER that all mineral oil on or below the surface of the demised land is reserved to Her Majesty with the right to Her Majesty or any person claiming under her or lawfully authorized in that behalf to have access to the demised land for the purpose of searching for and for the operations of obtaining mineral oil in any part of the land under the provisions of the *Petroleum Act 1936*.

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

THE SCHEDULE ABOVE REFERRED TO:

IN WITNESS WHEREOF THE HONOURABLE CRAWFORD DAVID NALDER M.L.A. has hereunto set his hand and seal and the COMMON SEAL of the Company has hereunto been affixed the day and year first hereinbefore mentioned.

SIGNED SEALED AND DELIVERED by the said THE HONOURABLE CRAWFORD DAVID NALDER M.L.A. in the presence of —	}	C.D. NALDER [L.S.]
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C. W. Court
Minister for Industrial Development.

Arthur F. Griffith
Minister for Mines.

THE COMMON SEAL of HAMERSLEY IRON PTY. LIMITED Was hereunto affixed in the presence of —	}	[C.S.]
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F. S. ANDERSON
Director.

JOHN HOHNEN

A person authorized pursuant to Article 111 of the
Company's Articles of Association to
counter-sign the affixing of the Company's
Common Seal.

GUARANTEE

In order to induce the parties to the foregoing deed to execute the same and in consideration of the execution thereof the Guarantor Company referred to in Recital (d) of the deed hereby for itself its successors and assigns agrees with and guarantees to the State referred to in the deed that the Company therein referred to will by the 31st day of December, 1964 (or such extended date if any as the Minister referred to in the deed may approve) expend as provided in clause 4 of the deed the balance of the amount of five hundred thousand pounds (£500,000) therein referred to notwithstanding any time or indulgence granted to the Company or any addition to cancellation of or variation of the provisions of the deed.

IN WITNESS WHEREOF the Guarantor Company has executed this Guarantee this twenty-sixth day of July, One thousand nine hundred and sixty-three.

THE COMMON SEAL of
CONZINC RIOTINTO OF
AUSTRALIA LIMITED
was hereunto affixed in the
presence of —

}

[C.S.]

M. MAWBY
Director.

J. CRAIG
Secretary.

Second Schedule — First Supplementary Agreement

[s. 2]

[Heading inserted: No. 98 of 1964 s. 6; amended: No. 19 of 2010 s. 4.]

THIS AGREEMENT under seal made the twenty-seventh day of October One thousand nine hundred and sixty-four BETWEEN THE HONOURABLE DAVID BRAND, M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called “the State”) of the one part and HAMERSLEY IRON PTY. LIMITED a company incorporated under the *Companies Act 1961* of the State of Victoria and having its registered office and principal place of business in that State at 95 Collins Street Melbourne and its registered office in the State of Western Australia at 37 Saint George’s Terrace Perth (hereinafter called “the Company” which expression will include the successors and assigns of the Company including where the context so admits the assignees and appointees of the Company under clause 20 of the agreement hereinafter referred to) of the other part.

NOW THIS AGREEMENT WITNESSETH:

1. This Agreement shall have no force or effect and shall not be binding upon either party until it is approved by the Parliament of Western Australia.
2. The agreement made between the parties and defined in and approved by the *Iron Ore (Hamersley Range) Agreement Act 1963* (hereinafter referred to as “the said Agreement”) is amended or altered as hereinafter provided and the said Agreement shall be read and construed accordingly.
3. Paragraph (a) of the definition of “export date” in clause 1 of the said Agreement is amended by substituting therefor the following paragraph —
 - (a) the date on which the period of three (3) years next following the commencement date or (as the case may be) the date on which the extended period referred to in clause 10(1) hereof expires;

4. Clause 1 of the said Agreement is further amended by inserting after the definition of “port townsite” therein the following definition —

“processed iron ore” means iron ore processed by secondary processing;

5. Paragraph (b) of subclause (1) of clause 5 of the said Agreement is amended by inserting after the passage, “fifteen million (15,000,000) tons of iron ore” in line six the passage, “(and/or processed iron ore)”.

6. Clause 5 of the said Agreement is further amended by adding thereto a subclause as follows —

(4) If the Company should desire a further extension for a period not exceeding three (3) years beyond the expiration of any period of extension granted under subclause (3) of this clause within which to negotiate satisfactory iron ore contracts and if the Company demonstrates to the satisfaction of the Minister that the Company has duly complied with its other obligations hereunder has genuinely and actively but unsuccessfully endeavoured to make the iron ore contracts on a competitive basis and reasonably requires an additional period for the purpose of making iron ore contracts the Minister will grant such extension for such period not exceeding a further three (3) years as is warranted in the circumstances subject always to the condition that the Company duly complies (or complies to the satisfaction of the Minister) with its other obligations hereunder.

7. Clause 8 of the said Agreement is amended by substituting for subclause (2) thereof the following subclause.

(2) Notwithstanding that under clause 6 or clause 7 hereof any detailed proposals of the Company are approved by the State or the Minister or determined by consultant engineers or by arbitration award unless each and every such proposal and matter is so approved or determined by the 28th day of February, 1965 or by such extended date if any as the Company shall be entitled to or shall be granted pursuant to the provisions hereof then at any time after the said 28th day of February, 1965 or if any extension or extensions should be granted under clause 5(3) or clause 5(4) hereof or any other provision of this Agreement then on or after the expiration of the last such extensions the Minister may give to the Company twelve (12) months notice of intention to determine this Agreement and unless before the expiration of the said

twelve (12) months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of clause 11(d) hereof.

8. Paragraph (b) of subclause (1) of clause 9 of the said Agreement is amended by inserting after the words “reasonable charges for operation and maintenance” in subparagraph (ii) of the said paragraph the following words “except operation charges in respect of education hospital and police services and”.

9. Paragraph (b) of subclause (1) of clause 9 of the said Agreement is further amended by inserting after the words “whichever shall first occur” in the proviso to that paragraph the following passage “(provided that the said twentieth anniversary shall be extended one (1) year for each year this Agreement has been continued in force and effect under clause 5(3) or clause 5(4) hereof)”.

10. Clause 10 of the said Agreement is amended by inserting after the passage “three (3) years next following the commencement date” in lines one and two of subclause (1) thereof the passage “(or within such extended period not exceeding a further two (2) years as the Company may satisfy the Minister that the Company reasonably requires and the Minister approves)”.

11. Clause 10 of the said Agreement is further amended by substituting for the words “within the aforesaid period of three years” in lines nine and ten of the said subclause (1) thereof the passage “within such period of three years or such extended period (as the case may be)”.

12. Subclause (2) of clause 10 of the said Agreement is amended by adding to paragraph (f) thereof the following passage “and that the Company shall have the entire control of such use and that no personnel other than personnel provided or approved by the Company shall be utilised for or in respect of such use”.

13. Paragraph (1) of clause 11 of the said Agreement is amended by substituting for the passage “: PROVIDED HOWEVER” the following passage “or if the Company shall surrender the entire mineral lease as permitted under clause 9(1)(a) this Agreement and the rights of the Company hereunder and under any lease licence easement or right granted hereunder or pursuant hereto shall thereupon determine PROVIDED THAT if the State gives to the Company a notice specifying a default on the part of the Company and the Company promptly refers to arbitration the question whether such alleged default has

taken place then if upon the arbitration it is decided that the Company has made such default but that there has been a *bona fide* dispute and that the Company has not been dilatory in pursuing the arbitration then neither this Agreement nor any of the rights hereinbefore referred to may be determined unless and until a reasonable time fixed by the award upon the arbitration as the time within which the Company must remedy such default has elapsed without such default having been remedied and PROVIDED FURTHER”.

14. Paragraph (1) of clause 11 of the said Agreement is further amended by adding after the words “if the Company shall fail to remedy any default after such notice” in the final proviso to the paragraph the following passage “or within the time fixed by the arbitration award”.

15. Subclause (1) of clause 12 of the said Agreement is amended by adding thereto the following passage “Provided that if the Company satisfies the Minister that the Company’s mining operations are not producing quantities of iron ore suitable for treatment at a rate of two million (2,000,000) tons of iron ore per annum on an economic basis then the Minister may approve a modified proposal and reduce the figure of two million (2,000,000) tons to a figure the Minister considers appropriate having regard to prevailing circumstances but to not less than one million (1,000,000) tons per annum with provision for progressive increase to two million (2,000,000) tons per annum on a revised programme and in approving such modified proposal the Minister may approve corresponding variations of the provisions of paragraphs (a) (b) and (c) of this subclause.”

16. Subclause (3) of clause 12 of the said Agreement is amended by inserting after the passage “excess of Five million (5,000,000) tons” in paragraph (a) thereof the passage “unless prior to year 10 the Minister shall have approved the Company entering into a contract or contracts for the export of iron ore at an annual rate in excess of five million (5,000,000) tons”.

IN WITNESS WHEREOF THE HONOURABLE DAVID BRAND
M.L.A. has hereunto set his hand and seal and the COMMON SEAL of the
Company has hereunto been affixed the day and year first hereinbefore
mentioned.

Third Schedule — Second Supplementary Agreement

[s. 2]

*[Heading inserted: No. 48 of 1968 s. 6; amended: No. 19 of 2010
s. 4.]*

THIS AGREEMENT under Seal made the 8th day of October 1968 BETWEEN THE HONOURABLE DAVID BRAND M.L.A. Premier and Treasurer of the State of Western Australia, acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called “the State”) of the one part AND HAMERSLEY IRON PTY. LIMITED a company incorporated under the *Companies Act 1961* of the State of Victoria and having its registered office in the State of Western Australia at 185 St. George’s Terrace, Perth (hereinafter called “the Company” which expression will include the successors and assigns of the Company including where the context so admits the assignees and appointees of the Company under clause 20 of the Principal Agreement (as hereinafter defined) or under that clause as applying to this Agreement) of the other part —

WHEREAS

- (a) The Company has pursuant to and in compliance with clauses 4, 5 and 10(1) of the Principal Agreement established a mine, a railway, townsites, a harbour, a wharf and extensive works, services and facilities relating to the foregoing;
- (b) The Company has also pursuant to and in compliance with clause 12 of the Principal Agreement established a plant for the secondary processing of iron ore and such plant has the capacity to produce two million (2,000,000) tons of iron ore pellets per annum;
- (c) it is desired to make provision for the grant of additional rights to and the undertaking of additional obligations by the Company as hereinafter provided;
- (d) it is also desired to add to and amend the Principal Agreement as hereinafter provided.

NOW THIS AGREEMENT WITNESSETH:

*Interpretation*⁴.

1. In this Agreement subject to the context —
 - “mineral lease” means the mineral lease referred to in clause 6(2)(a) hereof and includes any renewal thereof;
 - “mining areas” means the areas delineated and coloured red on the Plan marked “B” initialled by or on behalf of the parties hereto for the purposes of identification;
 - “minister” means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the administration of the Ratifying Act and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of the Minister;
 - “new Hamersley year 1” means the year next following the date by which the mineral lease has been granted to the Company and “new Hamersley year” followed by any other numeral has a corresponding meaning;
 - “Principal Agreement” means the agreement of which a copy is set out in the First Schedule to the *Iron Ore (Hamersley Range) Agreement Act 1963* as amended by the agreement of which a copy is set out in the Second Schedule to that Act (both of which agreements were approved by that Act) and except where the context otherwise requires as further amended by this Agreement;
 - “Ratifying Act” means the Act to ratify this Agreement and referred to in clause 3(1) (a) hereof;
 - “special lease” means a special lease or licence to be granted in terms of this Agreement under the Ratifying Act or the Land Act and includes any renewal thereof;
 - “this Agreement” “hereof” and “hereunder” include this Agreement as from time to time added to varied or amended;
 - “townsite” in relation to the mining areas means a townsite or townsites which is or are established by the Company for the purposes of its operations and employees on or near the mining areas and

whether or not constituted and defined under section 10 of the Land Act;

Words and phrases to which meanings are given under clause 1 of the Principal Agreement (other than words and phrases to which meanings are given in the foregoing provisions of this clause) shall have the same respective meanings in this Agreement as are given to them under clause 1 of the Principal Agreement;

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;

Power given under any clause of this Agreement or under any clause other than clause 24 of the Principal Agreement as applying to this Agreement to extend any period or date shall be without prejudice to the power of the Minister under the said clause 24 as applying to this Agreement;

Marginal notes shall not affect the construction or interpretation hereof ⁴.

Initial Obligations of the State ⁴.

2. The State shall —

- (a) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement; and
- (b) to the extent reasonably necessary for the purposes of this Agreement allow the Company to enter upon Crown lands (including land the subject of a pastoral lease) and survey possible sites for a railway, townsite, stockpiling, processing and other areas required for the purposes of this Agreement.

Ratification and Operation ⁴.

3. (1) Clause 3(2) and the subsequent clauses (other than clause 11(3)) of this Agreement shall not operate unless and until —

- (a) the Bill to ratify this Agreement as referred to in clause 2(a) hereof is passed as an Act before the 31st day of December, 1968 or such later date if any as the parties hereto may mutually agree upon; and
- (b) a Bill to ratify the agreement secondly referred to in the First Schedule hereto is passed as an Act before the 31st day of

December 1968 or such later date if as the parties hereto may mutually agree upon.

If the said Bills are not passed before that date or later date or dates (as the case may be) this Agreement will then cease and determine and neither of the parties hereto will have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement save as provided in clause 11(d) of the Principal Agreement as applying to this Agreement.

(2) The following provisions of this Agreement shall notwithstanding the provision of any Act or law operate and take effect, namely —

- (a) the provisions of subclauses (2), (3), (4) and (5) of clause 6, clause 7(6) and clause 15(13) of this Agreement and the provisions of the proviso to clause 10(2)(a), clause 10(3), paragraphs (a), (f), (g), (h), (i), (k) and (m) of clause 11 and clauses 20A, 21, 23, 24 and 27 of the Principal Agreement as applying to this Agreement shall take effect as though the same had been brought into force and been enacted by the Ratifying Act;
- (b) subject to paragraph (a) of this sub-clause the State and the Minister respectively shall have all the powers discretions and authorities necessary or requisite to enable them to carry out and perform the powers discretions authorities and obligations conferred or imposed upon them respectively hereunder;
- (c) no future Act of the said State will operate to increase the Company's liabilities or obligations hereunder with respect to rents or royalties; and
- (d) the State may as for a public work under the *Public Works Act 1902* resume any land or any estate or interest in land required for the purposes of this Agreement and may lease or otherwise dispose of the same to the Company.

*Company to submit Proposals*⁴.

4. (1) By 31st December 1968 (or such extended date if any as the Minister may approve) the Company will (unless and to the extent otherwise agreed by the Minister) submit to the Minister to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect to the mining by the Company of iron ore from the mining areas (or so much thereof as shall be comprised within the mineral lease) during the three (3) years next

following the commencement of such mining with a view to the transport and shipment of the iron ore mined and its outline proposals with respect to such mining during the next following seven (7) years; including the location area lay-out design number materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters namely —

- (a) any further harbour and port development;
- (b) the railway between the mining areas and the Company's existing railway from Tom Price to Dampier including fencing (if any) and crossing places;
- (c) townsites on the mining areas and development services and facilities in relation thereto;
- (d) housing;
- (e) water supply;
- (f) roads (including details of any roads in respect of which it is not intended that the provisions of clause 10(2)(b) of the Principal Agreement as applying to this Agreement shall operate);
- (g) any other works services or facilities proposed or desired by the Company.

(2) The Company shall have the right to submit to the Minister its detailed proposals aforesaid in regard to a matter or matters the subject of any of the paragraphs (a) to (g) inclusive of sub-clause (1) of this clause as and when the detailed proposals become finalised by the Company PROVIDED THAT where any such matter is the subject of a paragraph which refers to more than one subject matter the detailed proposals will relate to and cover each of the matters mentioned in the paragraph.

*Consideration of Company's Proposals*⁴.

5. (1) Within one (1) month after receipt of any of the detailed proposals required to be submitted by the Company pursuant to clause 4(1) hereof the Minister shall give to the Company notice either of his approval of the proposals submitted or of alterations desired thereto and in the latter case shall afford to the Company opportunity to consult with and to submit new proposals to the Minister. The Minister may make such reasonable alterations to or impose such reasonable conditions on the proposals or new proposals (as the case may be) as he shall think fit having regard to the circumstances including the overall development and use by others as well as the Company but the Minister shall in any notice to the Company disclose his reasons for any such alteration or

condition. Within two (2) months of the receipt of the notice the Company may elect by notice to the State to refer to arbitration and within two (2) months thereafter shall refer to arbitration as provided in clause 25 of the Principal Agreement as applying to this Agreement any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Company then unless the Company within three (3) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement (other than clause 15 hereof) shall on the expiration of that period of three (3) months cease and determine (save as provided in clause 11(d) of the Principal Agreement as applying to this Agreement) but if the question is decided in favour of the Company the decision will take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

(2) Notwithstanding that under sub-clause (1) of this clause any detailed proposals required to be submitted by the Company pursuant to clause 4(1) hereof are approved by the Minister or determined by arbitration award unless each and every such proposal is so approved or determined by the 28th day of February, 1969, or by such extended date if any as the Company shall be entitled to or shall be granted pursuant to the provisions hereof then at any time after the said 28th day of February 1969 or last such extended date as the case may be the Minister may give to the Company twelve (12) months notice of intention to determine this Agreement and unless before the expiration of the said twelve (12) months period all such proposals are so approved or determined this Agreement (other than clause 15 hereof) shall cease and determine subject however to the provisions of clause 11(d) of the Principal Agreement as applying to this Agreement.

*Obligations of the State — Rights of Occupancy*⁴.

6. (1) The State shall forthwith (subject to the surrender of the rights of occupancy as referred to in clause 4(2) of the agreement secondly referred to in the First Schedule hereto) cause to be granted to the Company and to the Company alone rights of occupancy for the purposes of this Agreement (including the sole right to search and prospect for iron ore) over the whole of the mining areas under Section 276 of the Mining Act at a rental at the rate of eight dollars (\$8) per square mile per annum payable quarterly in advance for the period expiring on 31st December, 1968, and shall then and thereafter subject to the continuance of this Agreement cause to be granted to the Company as may be necessary successive renewals of such last-mentioned rights of occupancy (each renewal for a period of twelve months at the same

rental and on the same terms) the last of which renewals shall notwithstanding its currency expire —

- (i) on the date of grant of a mineral lease to the Company under sub-clause (2) hereof;
 - (ii) on the expiration of five years from the date hereof; or
 - (iii) on the determination of this Agreement pursuant to its terms;
- whichever shall first happen.

(2) The State shall as soon as conveniently may be after all the proposals required to be submitted by the Company pursuant to clause 4(1) hereof have been approved or determined pursuant to clause 5 hereof —

*Mineral lease*⁴.

- (a) after application is made by the Company for a mineral lease of any part or parts (not exceeding in total area fifty (50) square miles and in the shape of a rectangular parallelogram or parallelograms or as near thereto as is practicable) of the mining areas in conformity with the Company's detailed proposals under clause 4 hereof as finally approved or determined cause any necessary survey to be made of the land so applied for (the cost of which survey to the State will be recouped or repaid to the State by the Company on demand after completion of the survey) and shall cause to be granted to the Company a mineral lease of the land so applied for (notwithstanding the survey in respect thereof has not been completed but subject to such corrections as may be necessary to accord with the survey when completed) for iron ore in the form of the Second Schedule hereto for a term which subject to the payment of rents and royalties hereinafter mentioned and to the performance and observance by the Company of its obligations under the mineral lease and otherwise under this Agreement shall be for a period of twenty-one (21) years commencing from the date of application by the Company therefor with rights to successive renewals of twenty-one (21) years upon the same terms and conditions but subject to earlier determination upon the cessation or determination of this Agreement PROVIDED HOWEVER that the Company may from time to time (without abatement of any rent then paid or payable in advance) surrender to the State any portion or portions (of reasonable size and shape) of the mineral lease;

- (b) subject to and in accordance with the said proposals as finally approved or determined —

*Lands*⁴.

- (i) grant to the Company for such terms or periods and on such terms and conditions (including renewal rights) as subject to the proposals (as finally approved or determined as aforesaid) shall be reasonable having regard to the requirements of the Company hereunder and to the overall development of and access to and use by others of lands the subject of any grant to the Company and of services and facilities provided by the Company

at peppercorn rental — special leases of Crown lands for the townsite and for a railway from the vicinity of the mining areas to the Company's existing railway at or near Tom Price; and

at rentals as prescribed by law or as are otherwise reasonable — leases, rights, mining tenements, easements, reserves and licences in on or under Crown lands under the Mining Act or under the provisions of the Land Act modified as in sub-clause (3) of this clause provided (as the case may require) as the Company reasonably requires for its works and operations hereunder including the construction or provision of the railway roads an airstrip water supplies and stone and soil for construction purposes; and

- (ii) provide any services or facilities subject to the Company's bearing and paying the capital cost involved and reasonable charges for operation and maintenance except operation charges in respect of education, hospital and police services and except where and to the extent that the State otherwise agrees —

subject to such terms and conditions as may be finally approved or determined as aforesaid PROVIDED that from and after the expiration of the fifteenth year after the date when the Company first exports iron ore won from the mineral lease (other than iron ore exported solely for testing purposes) or the twentieth anniversary of the date hereof whichever shall first occur the Company will in addition to

the rentals already referred to in this paragraph pay to the State during the currency of the mineral lease after that date a rental (which if the Company so requests shall be allocated in respect of such one or more of the special leases or other leases granted to the Company hereunder and remaining current) equal to twenty-five cents (25c) per ton on all iron ore or (as the case may be) all iron ore concentrates in respect of which royalty is payable under this Agreement in any financial year such additional rental to be paid within three (3) months after shipment sale use or production as the case may be of the iron ore or iron ore concentrates;

- (c) On application by the Company cause to be granted to it such machinery and tailings leases (including leases for that dumping of overburden) and such other leases licences reserves and tenements under the Mining Act or under the provisions of the Land Act modified as in sub-clause (3) of this clause provided as the Company may reasonably require and request for its purposes under this Agreement on or near the mineral lease.

(3) For the purpose of paragraphs (b)(i) and (c) of sub-clause (2) of this clause the Land Act shall be deemed to be modified as set out in clause 9(2) of the Principal Agreement.

(4) The provisions of sub-clause (3) of this clause shall not operate so as to prejudice the rights of the State to determine any lease license or other right or title in accordance with the other provisions of this Agreement.

*Application of clauses 9(4) and (5) of Principal Agreement*⁴.

(5) The provisions of sub-clauses (4) and (5) of clause 9 of the Principal Agreement shall apply to and be deemed to be incorporated in this Agreement as if the references to “this Agreement” and “the mineral lease” contained in the said sub-clauses were references to this Agreement and the mineral lease respectively and as if in paragraph (f) of the said sub-clause (4) the word “foregoing” were deleted therefrom and the figures “4(1)” were substituted for the figures “5(1)” and as if in the said sub-clause (5) the words “of the Principal Agreement as applying to this Agreement” were substituted for the word “hereof”.

*Obligations of the Company*⁴.

*To Construct*⁴.

7. (1) Subject to sub-clauses (2) and (3) of this clause the Company shall by the end of new Hamersley year 7 at a cost of not less than fifty million dollars (\$50,000,000) construct (and shall actually commence construction by the end of new Hamersley year 4 and shall progressively continue the construction in accordance with the reasonable requirements of the Minister having regard to the obligation of the Company to complete the construction within the period specified in this sub-lease) instal provide and do all things necessary to enable it to mine from the mineral lease and to transport by rail to the Company's wharf and to commence shipment therefrom in commercial quantities at an annual rate of not less than one million (1,000,000) tons of iron ore and without lessening the generality of this provision the Company shall by the end of new Hamersley year 7 —

- (a) construct instal and provide upon the mineral lease or in the vicinity thereof mining plant and equipment crushing screening stockpiling and car loading plant and facilities power house workshop and other things of a design and capacity adequate to enable the Company to mine handle load and deal with not less than three thousand (3,000) tons of iron ore per diem;
- (b) actually commence to mine and transport by rail iron ore from the mineral lease so that the average annual rate during the first two years shall not be less than one million (1,000,000) tons;
- (c) subject to the State having assured to the Company all necessary rights in or over Crown lands available for the purpose construct in a proper and workmanlike manner and in accordance with recognised standards of railways of a similar nature operating under similar conditions and along a route approved or determined under clause 5 hereof (but subject to the provisions of the *Public Works Act 1902* to the extent that they are applicable) a four feet eight and one-half inches (4 ft. 8½ in.) gauge railway (with all necessary signalling switch and other gear and all proper or usual works) from the mining areas to the Company's existing railway from Tom Price to Dampier and provide for crossing places and the running of such railway with sufficient and adequate locomotives freight cars and other railway stock and equipment to haul at least one million (1,000,000) tons of iron ore per annum to the Company's existing railway aforesaid;

- (d) subject to the State having assured to the Company all necessary rights in or over Crown lands or reserves available for the purpose construct by the said date such new roads as the Company reasonably requires for its purposes hereunder of such widths with such materials gates crossings and passovers for cattle and for sheep and along such routes as the parties hereto shall mutually agree after discussion with the respective shire councils through whose districts any such roads may pass and subject to prior agreement with the appropriate controlling authority (being a shire council or the Commissioner of Main Roads) as to terms and conditions the Company may at its own expense and risk except as otherwise so agreed upgrade or realign any existing road;
- (e) in accordance with the Company's proposals as finally approved or determined under clause 5 hereof and as require the Company to accept obligations —
 - (i) carry out any further harbour and port development;
 - (ii) lay out and develop a townsite and provide adequate and suitable housing recreational and other facilities and services;
 - (iii) construct and provide roads housing school water and power supplies and other amenities and services; and
 - (iv) construct and provide other works (if any) including an airstrip.

(2) If at the end of new Hamersley year 3 the maximum number of tons of iron ore, iron ore concentrates and metallised agglomerates which the Company is or could become obligated to deliver during new Hamersley year 4 under all long term contracts existing at the end of new Hamersley year 3 exceeds by seven million five hundred thousand (7,500,000) tons or more the maximum number of tons of iron ore and iron ore concentrates which the Company now is or could become obligated to deliver during new Hamersley year 4 under all Presently existing long term contracts then sub-clause (1) of this clause shall thenceforth be read construed and take effect as if the passage "new Hamersley year 6" were substituted for the passage "new Hamersley year 7" where twice occurring therein.

(3) If at the end of new Hamersley year 4 the maximum number of tons of iron ore, iron ore concentrates and metallised agglomerates which the Company is or could become obligated to deliver during new Hamersley year 5 under all long term contracts existing at the end of new Hamersley year 4 does

not exceed by seven million five hundred thousand (7,500,000) tons or more the maximum number of tons of iron ore and iron concentrates which the Company now is or could become obligated to deliver during new Hamersley year 5 under all presently existing long term contracts then sub-clause (1) of this clause shall thenceforth be read construed and take effect as if the passage “new Hamersley year 8 or such later time (if any) as the Minister may approve” were substituted for the Passage “new Hamersley year 7” where twice occurring therein and as if the passage “new Hamersley year 5 or such later time (if any) as the Minister may approve” were substituted for the passage “new Hamersley year 4” where occurring therein. For the purpose of this sub-clause and sub-clause (2) of this clause a long term contract is one which has a currency of not less than three (3) years from the relevant date.

*Application of clause 10(2) of Principal Agreement*⁴.

(4) The provisions of paragraphs (a), (b), (c), (d), (e), (g), (i), (j), (k), (n) and (o) of clause 10(2) of the of the Principal Agreement shall apply to and be deemed to be incorporated in this Agreement as if —

- (a) the first reference in the said Clause 10(2) to “this Agreement” were a reference to the clauses of this Agreement other than clause 15 hereof and the other references therein to “this Agreement” were references to this Agreement;
- (b) the references in the said clause 10(2) to “the mineral lease” were references to the mineral lease;
- (c) the reference to “its railway” in the said paragraph (a) were a reference to any railway constructed by the Company and extending from the mining areas to the Company’s existing railway at or near Tom Price;
- (d) in the said paragraph (b) the word “hereunder” were substituted for the words “under clause 6 or clause 7 hereof”;
- (e) in the said paragraph (d) the words “wharf” and “dredging” were deleted therefrom and the word “hereof” were altered to read “of the Principal Agreement as applying to this Agreement”;
- (f) in the said paragraph (k) the words “commencing with the quarter day next following the first commercial shipment of iron ore from the Company’s wharf” were deleted therefrom;
- (g) in sub-paragraph (ii) of the proviso to the said paragraph (o) there were inserted after the word “not” the following, namely “together with the tonnage of ore so processed as mentioned in

sub-paragraph (ii) of the proviso to paragraph (o) of the Principal Agreement”.

*Rent for Mineral Lease*⁴.

- (5) Throughout the continuance of the mineral lease the Company shall pay to the State —
- (a) By way of rent for the mineral lease annually in advance a sum equal to thirty-five cents (35c) per acre of the area for the time being the subject of the mineral lease commencing on and accruing from the commencement of the term of the mineral lease; and
 - (b) the rental referred to in the proviso to clause 6(2)(b) hereof if and when such rental shall become payable.

*Application of Clause 10(3) of Principal Agreement*⁴.

(6) The provisions of clause 10(3) of the Principal Agreement shall apply to and be deemed to be incorporated in this Agreement as if the following passage, namely clauses 10(2)(a) and 11(a) of the Principal Agreement as applying to this Agreement” were substituted for the passage therein beginning “paragraphs (a) and (f)” and ending “clause 11(a) hereof”;

*Application of Clause 11 of the Principal Agreement (Mutual covenants)*⁴.

8. The provisions of clause 11 (other than paragraph (1) thereof) of the Principal Agreement shall apply to and be deemed to be incorporated in this Agreement as if —

- (a) all references in the said provisions to “this Agreement” and to “the mineral lease” were references to this Agreement and the mineral lease respectively;
- (b) in paragraph (a) of the said clause 11 the figure “5” were substituted for the figure “7”;

*(Effect of Determination of this Agreement)*⁴.

- (c) in paragraph (d) of the said clause 11: —
 - (i) sub-paragraph (iii) were deleted therefrom and the following sub-paragraph substituted therefor —
 - (iii) Any amendment to clause 13 of the Principal Agreement resulting from the operation of clause 14 hereof shall cease to take effect but the Principal Agreement shall continue to bear any construction that may have been placed on it pursuant to clause 13

hereof and shall continue to operate and have effect as amended by clause 15 hereof.

- (ii) the words “clause 8(4) of the Principal Agreement as applying to this Agreement” were substituted for the words “clause 8(4) hereof”;
- (d) in paragraph (e) of the said clause 11 the word “hereof” were deleted and the words “of the Principal Agreement as applying to this Agreement” were substituted therefor and the words “for the Company’s wharf for any installation within the harbour” and the words “port or port” were deleted therefrom.

*Metallised Agglomerates*⁴.

9. (1) The Company will subject always to the provisions of clause 10 hereof —

- (a) before the end of new Hamersley year 2 submit to the Minister detailed proposals for the establishment within the said State of plant for the production of metallised agglomerates containing provision that such plant will by the end of new Hamersley year 4 have the capacity to produce not less than one million (1,000,000) tons of metallised agglomerates annually;
- (b) before the end of new Hamersley year 7 submit to the Minister detailed proposals for the expansion of the productive capacity of such plant to not less than two million (2,000,000) tons of metallised agglomerates annually by the end of new Hamersley year 9; and
- (c) before the end of new Hamersley year 10 submit to the Minister detailed proposals for the further expansion of the productive capacity of such plant to not less than three million (3,000,000) tons of metallised agglomerates annually by the end of new Hamersley year 12.

(2) The Minister shall within two (2) months of the receipt of each of such proposals give to the Company notice either of his approval of those proposals (which approval shall not unreasonably be withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford the Company an opportunity to consult with and to submit new proposals to the Minister. If within two (2) months of receipt of such notice, agreement is not reached as to the proposals the Company may within a further period of two (2) months elect by notice to the State to refer to arbitration as provided in

clause 25 of the Principal Agreement as applying to this Agreement any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have approved the proposals of the Company.

(3) The Company will (except to the extent otherwise agreed with the Minister and subject always to clause 10 hereof) within the respective times specified in paragraphs (a), (b) and (c) of sub-clause (1) hereof complete the construction of plant in accordance with such proposals as finally approved or determined under this clause.

(4) The arbitrator arbitrators or umpire (as the case may be) of any submission to arbitration hereunder is hereby empowered upon application by either party hereto to grant any interim extension of time or date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of either or both the parties hereunder and an award in favour of the Company may in the name of the Minister grant any further extension of time for that purpose.

*If metallised agglomerates not feasible*⁴.

10. (1) If the Company at any time considers that the construction of plant for the production of metallised agglomerates or, as the case may be, the expansion or the further expansion of the productive capacity of such plant as required to be proposed or as required pursuant to any proposals finally approved or determined under clause 9 hereof (hereinafter called "the metallising operation") is for any technical economic and/or other reason not feasible then the Company may (without prejudice to its rights (if any) under clause 23 of the Principal Agreement as applying to this Agreement) submit to the Minister the reasons why it considers the metallising operation is not feasible, together with supporting data and other information.

(2) Within two (2) months after receipt of a submission from the Company under sub-clause (1) of this clause the Minister shall notify the Company whether or not he agrees with its submission.

(3) If the Minister notifies the Company that he does not agree with its submission then at the request of the Company made within two (2) months after receipt by the Company of the notification from the Minister, the Minister will appoint a tribunal (hereinafter called "the Tribunal") of three persons (one of whom shall be a Judge of the Supreme Court of Western Australia or falling him a Commissioner appointed pursuant to section 49 of the *Supreme Court Act 1935* and the others of whom shall have appropriate technical or economic qualifications) to decide whether or not the metallising operation

is feasible and the Tribunal in reaching its decision shall take into account (*inter alia*) the Company's submission, the amount of capital required for the metallising operation, the availability of that capital at that time on reasonable terms and conditions, the likelihood of the Company being able to sell metallised agglomerates at sufficient prices and in sufficient quantities and for a sufficient period to justify the metallising operation having regard to the amount and rate of return on total funds that would be involved in or in connection with the production and sale of metallised agglomerates by the Company and the comparable amount and rate of return on total funds employed in comparable metallurgical processes in Australia.

(4) If the Minister notifies the Company that he agrees with its submission or if on reference to the Tribunal the Tribunal decides that the metallising operation is not feasible then —

- (a) the Company will not have any obligation or further obligation to submit proposals in respect of the metallising operation as provided in clause 9 hereof or to carry out such proposals in respect thereof as may have been finally approved or determined pursuant to that clause; and
- (b) the Minister and the Company will forthwith confer with a view to agreeing on the substitution for the Company's obligations in respect of the metallising operation the obligation to carry out some feasible operation (related directly to the mining and metallurgical industry) representing an economic development within the said State approximately equivalent to the metallising operation.

(5) If within two (2) months after the Minister notifies the Company that he agrees with its submission or (as the case may be) within two (2) months after the Tribunal has announced its decision that the metallising operation is not feasible the Minister and the Company have not reached agreement under paragraph (b) of sub-clause (4) of this clause then the Minister will instruct the Tribunal to decide whether any and if so what other feasible operation of the kind referred to in that paragraph is capable of being and should be undertaken by the Company and the Tribunal in reaching its decision thereon shall have regard to any submissions made to it by the Minister and by the Company and also (*inter alia*) to the amount of capital required for such other operation, the availability of that capital at that time on reasonable terms and conditions, the likelihood of the Company being able to sell the product of such operation at sufficient prices and in sufficient quantities and for a sufficient period to justify the same having regard to the amount and rate of return on total capital that would be involved in or in connection with that other operation and the

comparable amount and rate of return on total funds employed in comparable processes in Australia.

(6) If the Minister and the Company reach agreement under paragraph (b) of sub-clause (4) of this clause or if on reference to the Tribunal under sub-clause (5) of this clause the Tribunal decides that some other feasible operation is capable of being and should be undertaken by the Company then this Agreement shall be altered to give effect to that agreement or as the case may be that decision and the Company shall be obliged to comply with the obligations imposed on it as a result of such alteration.

(7) If the Company makes a submission to the Minister under sub-clause (1) of this clause then the period from the time of making that submission to the time when the Minister notifies the Company that he does not agree with its submission or (if the Company requests the Minister as provided in sub-clause (3) of this clause) to the time (if any) when the Tribunal decides that the metallising operation is feasible shall be added to the respective times by which the Company is required to comply with its obligations under clause 9 hereof.

(8) The Company may invoke the foregoing provisions of this clause at any time and from time to time in respect of all or any of its obligations arising under or pursuant to clause 9 hereof and the references to the metallising operation in those provisions shall as the case may require be read and construed as referring to the one or more of those obligations in respect of which those provisions are invoked by the Company.

*Application of other clauses of Principal Agreement*⁴.

11. (1) The provisions of clauses 8(1), 18, 19, 20, 20A, 20B, 20C, 21, 23, 24, 25, 26, and 28 of the Principal Agreement shall apply to and be deemed to be incorporated in this Agreement as if all references in those clauses to “this Agreement” and “the mineral lease” were references to this Agreement and the mineral lease respectively.

(2) The provisions of clause 8(4) of the Principal Agreement shall apply to and be deemed to be incorporated in this Agreement as if the following passages, namely, “clause 5” and “grant of the mineral lease” were substituted for the passages “clause 7” and “commencement date” therein respectively.

(3) The provisions of clause 27 of the Principal Agreement shall apply to and be deemed to be incorporated in this Agreement as if all references in that clause to “this Agreement” were references to this Agreement and as if the following passages, namely, “clause 20 of the Principal Agreement as applying to this Agreement” and “clause 2(a) hereof” were substituted for the passages

“clause 20 hereof” (where twice appearing) and “clause 2(b) hereof” therein respectively.

*Default*⁴.

12. The parties covenant and agree with each other that in any of the following events namely if the Company shall make default in the due performance or observance of any of its covenants or obligations to the State in or under this Agreement or of its covenants or obligations in or under the Principal Agreement or of its covenants or obligations in or under any lease sub-lease licence or other title or document granted or assigned under this Agreement on its part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to it by the State (or if the alleged default is contested by the Company and promptly submitted to arbitration within a reasonable time fixed by the arbitration award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company shall abandon or repudiate its operations under this Agreement or shall go into liquidation (other than a voluntary liquidation for the purposes of reconstruction) or if the Company shall surrender the entire mineral lease as permitted under clause 6(2)(a) hereof then and in any of such events the State may by notice to the Company given at any time determine this Agreement (other than clause 15 hereof) and the rights of the Company hereunder and under any lease licence easement or right granted hereunder or pursuant hereto shall thereupon determine PROVIDED HOWEVER that —

- (a) if the Company shall fail to remedy any default (other than a default in complying with the provisions of clauses 9 or 10 hereof) after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand;
- (b) the State shall not be entitled to determine this Agreement as aforesaid on account of any default by the Company in the due performance or observance of any of its covenants or obligations

to the State under clause 9 hereof or of any of its obligations substituted therefor under clause 10 hereof until such time as the State has given notice of such default to the Company and the following period has elapsed since the giving of such notice —

- (i) if the notice of default is given in respect of the Company's obligations under clause 9(1)(a) hereof or of any of its obligations substituted therefor under clause 10 hereof or its relative construction obligations under clause 9(3) hereof then the period during which the Company exports from the said State fifty million (50,000,000) tons of iron ore won from the mineral lease or a period of ten (10) years whichever first elapses;
- (ii) if the notice of default is given in respect of the Company's obligations under clause 9(1)(b) hereof or of any of its obligations substituted therefor under clause 10 hereof or its relative construction obligations under clause 9(3) hereof then the period during which the Company exports from the said State thirty seven million five hundred thousand (37,500,000) tons of iron ore won from the mineral lease or a period of seven (7) years and six (6) months which ever first elapses;
- (iii) if the notice of default is given in respect of the Company's obligations under clause 9(1)(c) hereof or of any of its obligations substituted therefor under clause 10 hereof or its relative construction obligations under clause 9(3) hereof then the period during which the Company exports from the said State twenty five million (25,000,000) tons of iron ore won from the mineral lease or a period of five (5) years whichever first elapses;

provided that in each case the period shall be extended by such further period as may be necessary to enable the Company to fulfil any contract or contracts for the sale of iron ore won from the mineral lease which it has entered into with the consent of the Minister.

- (c) in no event shall any default by the Company in the due performance or observance of any of its covenants or obligations

to the State in or under this Agreement or of its covenants or obligations under clause 13 of the Principal Agreement if and while amended by clause 14 of this Agreement or of its covenants or obligations in or under any lease sub-lease licence or other title or document granted or assigned under this Agreement on its part to be performed or observed entitle the State to determine the Principal Agreement or any rights of the Company thereunder or under any lease licence easement or right granted thereunder or pursuant thereto.

*Company's obligations under Clauses 13 to 17 of Principal Agreement may be suspended*⁴.

13. (1) If Mount Bruce Mining Pty. Limited gives notice pursuant to clause 5(1) of the agreement secondly referred to in the First Schedule hereto and a mineral lease is granted by the State pursuant to clause 8(1) of the agreement (as amended) firstly referred to in that Schedule (which in agreement is hereinafter referred to as "the Hanwright Agreement") then the operation of clauses 13 to 17 (both inclusive) of the Principal Agreement shall be suspended until such time as the Minister —

- (a) gives notice pursuant to clause 11K of the Hanwright Agreement in which case the provisions of sub-clause (2) of this clause shall take effect, or
- (b) fails to give such notice in which case the Principal Agreement shall thenceforth be read and construed as if the said clauses 13 to 17 (both inclusive) were deleted from the Principal Agreement.

(2) If the Minister gives notice pursuant to clause 11K of the Hanwright Agreement he shall at the same time or as soon as reasonably possible thereafter give a copy of such notice to the Company and from and after the giving of such copy notice the suspension of the operation of the said clauses 13 to 17 (both inclusive) of the Principal Agreement shall cease and the said clauses shall recommence to operate and thereafter shall be read and construed and take effect as if the word "Hanwright" were inserted before the word "year" wherever appearing in the said clause 13 and as if each numeral appearing therein immediately after the word "year" were a numeral one more than the corresponding numeral in the corresponding provisions in clause 11E of the Hanwright Agreement and any reference in the said clause 13 to "Hanwright year" followed by a numeral shall have the same meaning as a reference to "year" followed by the same numeral would have had if that clause 11E had continued to operate in the Hanwright Agreement.

*Acceleration of Company's obligations under Principal Agreement*⁴.

14. Subject to clause 13(1)(b) hereof if before the first day of January 1977 the State gives to the Company notice that it is willing to supply the Company at all times from the commencement of the first day of January 1986 and thereafter during the continuance in operation of the Principal Agreement with all the Company's requirements for electrical power within a radius of thirty miles from the Post Office at Dampier in the said State (including all electrical power from time to time required by the Company for secondary processing, for the production of iron and/or steel and for all ancillary purposes including crushing, screening and loading, and the operation of any harbour or harbours but not including electrical power from time to time required by the Company for any townsite or townsites established or to be established by the Company) at a total cost to the Company of five tenths of a cent (0.5c) per kilowatt hour and supplied by the State at points reasonably adjacent to the respective places at which it is from time to time required by the Company, then the State and the Company will forthwith enter into an agreement for the supply of such electrical power accordingly, and from and after the date when such agreement is entered into and so long as the State complies with all its obligations under the said agreement clause 13 of the Principal Agreement shall be read construed and take effect as if each numeral appearing therein immediately after the word "year" were a numeral six less than each such numeral PROVIDED that upon the grant by the State of a mineral lease to Mount Bruce Mining Pty. Limited pursuant to clause 8(1) of the Hanwright Agreement this clause shall be read construed and take effect as if the words and figures "six tenths of a cent (0.6c)" were substituted for the words and figures "five tenths of a cent (0.5c)" appearing in this clause and any electricity supply agreement then entered into between the State and the Company pursuant to this clause shall be correspondingly amended from and after that time.

*Further Amendments to Principal Agreement*⁴.

15. The Principal Agreement is hereby amended as follows —
- (1) by inserting after the definition of "integrated iron and steel industry" in clause 1 thereof the following definition —

"iron ore concentrates" means products (whether in pellet or other form) resulting from secondary processing but does not include metallised agglomerates;
 - (2) by inserting after the definition of "Land Act" in clause 1 thereof the following definition —

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

- (3) by adding the following words at the end of the definition of “secondary processing” in clause 1 thereof —

and pelletisation and the production of metallised agglomerates;
- (4) by inserting in clause 9(1)(a) thereof before the word “parallelogram” the word “rectangular” and after the word “parallelograms” the words “or as near thereto as is practicable”;
- (5) by inserting after the words “the Company’s wharf” in clause 10(2)(e) thereof the words “or from any other wharf constructed by the Company within a distance of three (3) miles (or such further distance as may be approved by the Minister) from the Company’s wharf”;
- (6) by substituting for the passage “on direct shipping ore (not being locally used ore)” in clause 10(2)(j)(i) thereof the passage “on direct shipping ore and on fine ore and fines where such fine ore or fines are not sold and shipped separately as such (not being locally used ore)”;
- (7) by substituting for the passage “on fine ore (not being locally used ore)” in clause 10(2)(j)(ii) thereof the passage “on fine ore sold and shipped separately as such (not being locally used ore)”;
- (8) by substituting for the passage “on fines (not being locally used ore)” in clause 10(2)(j)(iii) thereof the passage “on fines sold and shipped separately as such (not being locally used ore)”;
- (9) by substituting for sub-paragraph (iv) of clause 10(2)(j) thereof the following sub-paragraph —
 - (iv) on locally used ore (not being iron ore used for producing iron ore concentrates) and on iron ore concentrates produced from locally used ore and shipped or sold or used in an integrated iron and steel industry or in plant for the production of metallised agglomerates (other than iron ore concentrates shipped solely for testing purposes) at the rate of fifteen cents (15c) per ton;

- (10) by adding the words “separately as such” after the words “shipped or sold” where twice appearing in clause 10(2)(j)(vii) thereof;
- (11) by adding the following words at the end of paragraph (j) of clause 10(2) thereof, namely —

Where iron ore concentrates are produced from an admixture of iron ore from the mineral lease and other iron ore a portion (and a portion only) of the iron ore concentrates so produced being equal to the proportion that the amount of iron in the iron ore from the mineral lease used in the production of those iron ore concentrates bears to the total amount of iron in the iron ore so used shall be deemed to be produced from iron ore from the mineral lease;

- (12) by substituting for the words “the subject of” (where thrice appearing), “ore processed” (where twice appearing) and “so processed” in sub-paragraphs (i), (ii) and (iii) of clause 10(2)(o) thereof the words “used in”, “ore so used” and “so used” respectively;
- (13) by inserting the following clauses immediately after clause 20 thereof —

20A. Notwithstanding the provisions of section 82 of the Mining Act and of regulations 192 and 193 made thereunder and of section 81D of the *Transfer of Land Act 1893* in so far as the same or any of these may apply —

- (a) no mortgage or charge in a form commonly known as a floating charge made or given pursuant to clause 20 hereof over any lease, licence, reserve or tenement granted hereunder or pursuant hereto by the Company or any assignee or appointee who has executed, and is for the time being bound by deed of covenant made pursuant to clause 20 hereof;
- (b) no transfer or assignment made or given at any time in exercise of any power of sale contained in any such mortgage or charge;

shall require any approval or consent (other than such consent as may be necessary under clause 20 hereof and no such mortgage or charge shall be rendered ineffectual as an equitable charge by the absence of any approval or consent

(otherwise than as required by clause 20 hereof) or because the same is not registered under the provisions of the *Mining Act 1904*;

20B. The Company may arrange for any obligation undertaken or to be undertaken by the Company hereunder (including any obligation to erect a plant or plants for the production of or any obligation to produce iron ore pellets, metallised agglomerates, pig iron, foundry iron or steel and any obligation to construct a railway and/or to provide locomotives freight cars and other railway stock and equipment therefor) to be undertaken either wholly or partially by any associated company or associated companies or with the Minister's consent (which consent shall not be unreasonably withheld) by any other company or companies and fulfilment of any such obligation in whole or in part by such associated company or associated companies or by that other company or companies shall be deemed to be fulfilment (wholly or partially as the case may be) of that obligation by the Company hereunder. Where such associated company or associated companies or such other company or companies now has or at some future time has installed or provided a plant or plants for the production of iron ore pellets, metallised agglomerates, pig iron, foundry iron or steel or a railway or any other facilities any increase in the capacity of such plant, plants, railway or other facilities which is carried out under arrangements made by the Company with such associated company or associated companies or (with the consent of the Minister as aforesaid) with such other company or companies shall to the extent of the increase reduce or (as the case may be) extinguish the obligation of the Company to provide such capacity.

20C. (1) The Minister may with the consent of the Company from time to time add to cancel or vary any right or obligation relating to works for the transport and/or export of ore or pellets or the production or transport or export of metallised agglomerates or steel to the extent that the addition cancellation or variation implements or facilitates the method of achieving any of the purposes of production or transport or export of ore or pellets or metallised

agglomerates or steel produced from ore from the mineral lease.

(2) The Company shall be entitled at any time and from time to time with the prior approval in writing of the Minister to enter into an agreement with any third party for the joint construction maintenance and user or for the joint user only of any work constructed or agreed to be constructed by the Company pursuant to the terms of this Agreement or by such other party pursuant to any agreement entered into by it with the State and in any such event any amount expended in or contributed to the cost of such construction by the Company shall for the purpose of the calculation of the sum agreed to be expended on that work by the Company under this agreement and if so approved by the Minister be taken and accepted as an amount equal to the total amount expended (whether by the Company or the said third party or by them jointly) in the construction of such work.

(3) When any agreement entered into by the Company with some other company or person results in that other company or person discharging all or any of the obligations undertaken by the Company under this Agreement or renders it unnecessary for the Company to discharge any obligation undertaken by it hereunder the Minister will discharge or temporarily relieve the Company from such part of its said obligations as is reasonable having regard to the extent of any period for which the other company or person actually effects the discharge of those obligations.

- (14) by substituting for the passage commencing “and inability” and ending “sell ore” in clause 23 thereof the words —
- inability (common in the iron ore export industry) to profitably sell ore inability to profitably sell metallised agglomerates;

FIRST SCHEDULE

FIRSTLY The agreement under seal made the eleventh day of August 1967 between the Honourable David Brand, M.L.A., Premier and Treasurer of the State of Western Australia acting for and on behalf of the said State of the one part and Hancock Prospecting Pty. Ltd. and Wright Prospecting Pty. Ltd. of the other part, a copy of which agreement is set out in the Schedule to the *Iron Ore (Hanwright) Agreement Act 1967*.

SECONDLY The agreement under seal of even date herewith between the said the Honourable David Brand, M.L.A. of the first part, Hancock Prospecting Pty. Ltd. and Wright Prospecting Pty. Ltd. of the second part and Mount Bruce Mining Pty. Limited of the third part amending and adding to the agreement firstly referred to in this Schedule.

SECOND SCHEDULE

WESTERN AUSTRALIA

Iron Ore (Hamersley Range) Agreement Act 1968

MINERAL LEASE

Lease No. Goldfield(s)

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

TO ALL TO WHOM THESE PRESENTS shall come GREETINGS:

KNOW YE that WHEREAS by an Agreement made the
day of

1968 between the State of Western Australia of the one part and HAMERSLEY IRON PTY. LIMITED (hereinafter called "the Company" which expression will include the successors and assigns of the company including where the context so admits the assignees of the Company under the said Agreement) of the other part the said State agreed to grant to the Company a mineral lease of

portion or portions of the lands referred to in the said Agreement as “the mining areas” AND WHEREAS the said Agreement was ratified by the Act 196 which said Act (*inter alia*) authorized the grant of a mineral lease to the Company NOW WE in consideration of the rents and royalties reserved by and of the provisions of the said Agreement and in pursuance of the said Act DO BY THESE PRESENTS GRANT AND DEMISE unto the Company subject to the said provisions ALL THOSE pieces and parcels of land situated in the

Goldfield(s) containing

approximately acres and (subject to such corrections as may be necessary to accord with survey when made) being the land shaded pink on the plan in the Schedule hereto and all those mines, veins, seams, lodes and deposits of iron ore in on or under the said land (hereinafter called “the said mine”) together with all rights, liberties, easements, advantages and appurtenances thereto belonging or appertaining to a lessee of a mineral lease under the *Mining Act 1904* including all amendments thereof for the time being in force and all regulations made thereunder for the time being in force (which Act and regulations are hereinafter referred to as “the Mining Act”) or to which the Company is entitled under the said Agreement TO HOLD the said land and mine and all and singular the premises hereby demised for the full term of twenty-one years from the day of 19 with the right to renew the same from time to time for further periods each of twenty-one years as provided in but subject to the said Agreement for the purposes but upon and subject to the terms covenants and conditions set out in the said Agreement and to the Mining Act (as modified by the said Agreement) YIELDING and paying therefor the rent and royalties as set out in the said Agreement. AND WE do hereby declare that this lease is subject to the observance and performance by the Company of the following covenants and conditions, that is to say: —

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

THE COMMON SEAL of
HAMERSLEY IRON PTY. LIMITED }
was hereunto affixed in the }
presence of —

R. T. MADIGAN
DIRECTOR.

[C.S.]

C. J. WYATT
SECRETARY.

[Third Schedule inserted: No. 48 of 1968 s. 6.]

Fourth Schedule — Third Supplementary Agreement

[s. 2]

[Heading inserted: No. 39 of 1972 s. 4; amended: No. 19 of 2010 s. 4.]

THIS AGREEMENT made the 10th day of March One thousand nine hundred and seventy-two BETWEEN THE HONOURABLE JOHN TREZISE TONKIN, M.L.A., Premier of the State of Western Australia acting for and on behalf of the said State and Instrumentalities thereof from time to time (hereafter called “the State”) of the one part and HAMERSLEY IRON PTY. LIMITED a company incorporated under the *Companies Act 1961* of the State of Victoria and having its registered office and principal place of business in that State at 95 Collins Street Melbourne and its registered office in the State of Western Australia at 191 St. George’s Terrace Perth (hereinafter called “the Company” which expression will include the assignees and appointees of the Company under clause 20 of the Agreement a copy of which is set out in the First Schedule to the *Iron Ore (Hamersley Range) Agreement Act 1963* (as that clause applies to the agreement hereinafter defined as the “amending Agreement”)) of the other part —

WHEREAS —

- (a) there are references in the amending Agreement (as hereinafter defined) to the Agreement forming the Second Schedule to the *Iron Ore (Hanwright) Agreement Act 1967* (which Agreement (as amended) is hereinafter referred to as “the Hanwright Agreement”);
- (b) the Hanwright Agreement is to be determined by the mutual consent of the parties thereto contemporaneously with the coming into force of the Agreements set out in the Schedule hereto;
- (c) it is desired in consequence to amend the amending Agreement as hereinafter provided.

WITNESSETH —

1. In this Agreement to the context —

“amending Agreement” means the Agreement of which a copy is set out in the Third Schedule to the *Iron Ore (Hamersley Range) Agreement Act 1963* (which Agreement was

approved by the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*);

“principal Agreement” means the Agreement of which a copy is set out in the First Schedule to the *Iron Ore (Hamersley Range) Agreement Act 1963* as amended by the Agreement of which a copy is set out in the Second Schedule to that Act (both of which Agreements were approved by that Act) as further amended by the amending Agreement and except where the context otherwise requires as further amended by this Agreement;

words and phrases to which meanings are given under clause 1 of the principal Agreement (other than words and phrases to which meanings are given in the foregoing provisions of this clause) shall have the same respective meanings in this Agreement as are given to them under clause 1 of the principal Agreement;

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;

power given under any clause of this Agreement or under any clause other than clause 24 of the principal Agreement as applying to this Agreement to extend any period or date shall be without prejudice to the power of the Minister under the said clause 24 as applying to this Agreement.

2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage.

3. The subsequent clauses of this Agreement shall not operate unless and until —

- (a) the Bill to ratify this Agreement as referred to in clause 2 hereof is passed as an Act before the 30th day of June, 1972 or such later date if any as the parties hereto may mutually agree upon; and
- (b) Bills to ratify each of the Agreements referred to in the Schedule hereto are passed as Acts before the 30th day of June, 1972 or such later date if any as the parties hereto may mutually agree upon.

If the said Bills are not passed before that date or later date or dates (as the case may be) this Agreement will then cease and determine and neither of the parties hereto will have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

4. The amending Agreement is amended or altered as hereinafter provided and such amending Agreement shall be read and construed accordingly.

5. Clause 13 of the amending Agreement is amended by substituting therefore the following clause: —

“13 (1) If a mineral lease is granted by the State to Mount Bruce Mining Pty. Limited pursuant to sub-clause (2) of clause 4 of the Agreement dated the 10th day of March, 1972 between the State of the one part and Mount Bruce Mining Pty. Limited of the other part (which Agreement is hereinafter called “the Mount Bruce Agreement”) then the operation of clauses 13 to 17 (both inclusive) of the principal Agreement shall be suspended until such time as the Minister —

- (a) give notice pursuant to clause 41 of the Mount Bruce Agreement in which case the provisions of sub-clause (2) of this clause shall take effect; or
- (b) fails to give such notice in which case the principal Agreement shall thenceforth be read and construed as if the said clauses 13 to 17 (both inclusive) were deleted from the principal Agreement.

(2) If the Minister gives notice pursuant to clause 41 of the Mount Bruce Agreement he shall at the same time or as soon as reasonably possible thereafter give a copy of such notice to the Company and from and after the giving of such copy notice the suspension of the operation of the said clauses 13 to 17 (both inclusive) of the principal Agreement shall cease and the said clauses shall recommence to operate and thereafter shall be read and construed and take effect as if each numeral appearing in the said clause 13 immediately after the word “year” were a numeral one more than the corresponding numeral in the corresponding provisions in sub-clause (2) of clause 35 of the Mount Bruce Agreement”.

6. The proviso to clause 14 of the amending Agreement is amended by substituting for the words “clause 8(1) of the Hanwright Agreement” the words “sub-clause (2) of clause 4 of the Mount Bruce Agreement”.

SCHEDULE

The Agreement of even date herewith between the Honourable John Tresize Tonkin, M.L.A., Premier of the State of Western Australia acting for an on behalf of the said State and Instrumentalities thereof of the one part and Mount Bruce Mining Pty. Limited of the other part.

The Agreement of even date herewith between the Honourable John Tresize Tonkin, M.L.A., Premier of the State of Western Australia acting for and on behalf of the said State and Instrumentalities thereof of the first part Hancock Prospecting Pty. Ltd. and Wright Prospecting Pty. Ltd. of the second part.

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

SIGNED by the said THE
HONOURABLE JOHN TREZISE
TONKIN, M.L.A., in the presence
of — } JOHN T. TONKIN

DON MAY,
Minister for Mines.

THE COMMON SEAL of
HAMERSLEY
IRON PTY. LIMITED was
hereunto affixed in the
presence of — } (C.S.)

R. T. MADIGAN,
Director.

JOHN CALDER,
Secretary.

[Fourth Schedule inserted: No. 39 of 1972 s. 4.]

Fifth Schedule — Fourth Supplementary Agreement

[s. 2]

[Heading inserted: No. 93 of 1976 s. 4; amended: No. 19 of 2010 s. 4.]

THIS AGREEMENT made the 5th day of October, 1976 BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A., Premier of the State of Western Australia acting for and on behalf of the said State and Instrumentalities thereof from time to time (hereinafter called “the State”) of the one part and HAMERSLEY IRON PTY. LIMITED a company incorporated under the *Companies Act 1961* of the State of Victoria and having its registered office and principal place of business in that State at 31 Spring Street, Melbourne and its registered office in the State of Western Australia at 191 St George’s Terrace, Perth (hereinafter called “the Company” which expression will include the successors and assigns of the Company including where the context so admits the assignees and appointees of the Company under clause 20 of the principal Agreement as hereinafter defined) of the other part —

WHEREAS

- (a) The Company has increased the capacity of its existing pelletising plant being the plant for secondary processing of iron ore constructed pursuant to clause 12 of the principal Agreement from two million (2 000 000) tons of iron ore pellets per annum to three million (3 000 000) tons of iron ore pellets per annum; and
- (b) it is desired to make provision for the undertaking of additional obligations by the Company and to amend the provisions of the amending Agreement (as hereinafter defined) as hereinafter provided.

NOW THIS AGREEMENT WITNESSETH

1. In this Agreement subject to the context —

“amending Agreement” means the Agreement of which a copy is set out in the Third Schedule to the *Iron Ore (Hamersley Range) Agreement Act 1963-1972*, (as amended by the Agreement of which a copy is set out in the Fourth Schedule to that Act);

“principal Agreement” means the Agreement of which a copy is set out in the First Schedule to the *Iron Ore (Hamersley Range) Agreement Act 1963-1972* as amended by the Agreement of which a copy is set out in the Second Schedule to that Act and as further amended by the amending Agreement;

words and phrases to which meanings are given under clause 1 of the principal Agreement (other than words and phrases to which meanings are given in the foregoing provisions of this clause) shall have the same respective meanings in this Agreement as are given to them under clause 1 of the principal Agreement.

2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.

3. The subsequent clauses of this Agreement shall not operate unless and until —

(a) the Bill to ratify this Agreement referred to in clause 2 hereof is passed as an Act before the 30th day of November, 1976 or such later date if any as the parties hereto may mutually agree upon; and

(b) a Bill to ratify the Agreement referred to in the Schedule hereto is passed as an Act before the 30th day of November, 1976 or such later date if any as the parties hereto may mutually agree upon.

4. The amending Agreement is hereby varied as follows —

(1) by adding after clause 8 a new clause 8A as follows —
*Iron Ore concentrate plant*⁴.

8A (1) The Company shall on or before the 31st day of December, 1976 submit to the Minister detailed proposals for the establishment within the said State of a plant for the production of Iron ore concentrates with a capacity of not less than six million five hundred thousand (6 500 000) tons per annum.

(2) The Company shall not later than the end of new Hamersley year 9 (or such later date as the Minister may approve), in accordance with the proposals submitted pursuant to sub-clause (1) of this clause as finally approved or determined, complete the construction of the Iron ore concentrate plant at a total cost of not less than eighty million dollars (\$80 000 000).

(3) The Minister shall within two (2) months of the receipt of proposals submitted pursuant to sub-clause (1) of this clause give to the Company notice either of his approval of the said proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford to the Company an opportunity to consult with and to submit new proposals to the Minister. If within two (2) months of receipt of such notice agreement is not reached as to the said proposals the Company may within a further period of two (2) months elect by notice to the State to refer to arbitration as herein provided any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have then approved the said proposals of the Company.

(4) The arbitrator, arbitrators or umpire (as the case may be) of any submission to arbitration pursuant to this clause is hereby empowered upon application by either party hereto to grant any interim extension of time or date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of either or both parties hereunder and an award in favour of the Company may in the name of the Minister grant any further extension of time for that purpose. ; and

(2) as to clause 9 by substituting for sub-clause (1) the following sub-clause —

(1) The Company will subject always to the provisions of clause 10 hereof —

- (a) before the end of new Hamersley year 10 submit to the Minister detailed proposals for the establishment within the said State of a plant for the production of metallised agglomerates containing provision that such plant will by the end of new Hamersley year 12 have the capacity to produce not less than one million (1 000 000) tons of metallised agglomerates annually; and
- (b) before the end of new Hamersley year 13 submit to the Minister detailed proposals for the expansion of the productive capacity of such plant to not less than two million (2 000 000) tons of metallised

agglomerate annually by the end of new Hamersley
year 15. ; and

(3) as to clause 12 by inserting after the word “clauses” in the third line of paragraph (a), the passage “8A,”.

THE SCHEDULE

The Agreement of even date herewith between THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A., Premier of the State of Western Australia acting for and on behalf of the said State and Instrumentalities thereof of the one part and MOUNT BRUCE MINING PTY. LIMITED of the other part.

IN WITNESS WHEREOF these presents have been executed the day and year first hereinbefore mentioned.

SIGNED by the said THE
HONOURABLE SIR CHARLES
WALTER MICHAEL COURT,
O.B.E., M.L.A., in the presence
of —

}

CHARLES COURT

ANDREW MENSAROS,
MINISTER FOR INDUSTRIAL
DEVELOPMENT.

THE COMMON SEAL of
HAMERSLEY IRON PTY. LIMITED
was hereunto affixed in the
presence of —

}

[C.S.]

Director. DONALD S. STEWART,

Secretary. C. J. S. RENWICK,

[Fifth Schedule inserted: No. 93 of 1976 s. 4.]

Sixth Schedule — Fifth Supplementary Agreement

[s. 2]

[Heading inserted: No. 26 of 1979 s. 4; amended: No. 19 of 2010 s. 4.]

THIS AGREEMENT made the 9th day of May, 1979 BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, K.C.M.G., O.B.E., M.L.A., Premier of the State of Western Australia acting for and on behalf of the said State and Instrumentalities thereof from time to time (hereinafter called “the State”) of the one part and HAMERSLEY IRON PTY. LIMITED a company incorporated under the *Companies Act 1961* of the State of Victoria and having its registered office and principal place of business in that State at 31 Spring Street, Melbourne, and its registered office in the State of Western Australia at 191 St. George’s Terrace, Perth (hereinafter called “the Company” which expression will include the successors and assigns of the Company including where the context so admits the assignees and appointees of the Company under clause 20 of the Principal Agreement as hereinafter defined) of the other part —

WHEREAS:

It is desired to amend the Principal Agreement as hereinafter provided.

NOW THIS AGREEMENT WITNESSETH:

1. In this Agreement subject to the context —

“Principal Agreement” means the Agreement referred to in section 2 of the *Iron Ore (Hamersley Range) Agreement Act 1963-1976*.

Words and phrases to which meanings are given under clause 1 of the Principal Agreement (other than words and phrases to which meanings are given in the foregoing provisions of this clause) shall have the same respective meanings in this Agreement as are given to them under clause 1 of the Principal Agreement.

2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.

3. The subsequent clause of this Agreement shall not operate unless and until the Bill to ratify this Agreement referred to in clause 2 hereof is passed as an Act before the 31st day of December, 1979 or such later date if any as the parties hereto may mutually agree upon.

4. The Principal Agreement is hereby varied by substituting for the proviso to paragraph (b) of subclause (1) of clause 9 the following —

“PROVIDED THAT from and after the 1st day of July, 1979 the Company will in addition to the rentals already referred to in this paragraph pay to the State during the currency of this Agreement an additional rental in respect of the mineral lease equal to twenty five (25) cents per ton on all iron ore or (as the case may be) all iron ore concentrates in respect of which royalty is payable under clause 10(2)(j) hereof (hereinafter in this paragraph called the “royalty tonnage”) such additional rental to be paid in respect of the same periods and at the same times as the said royalty is payable under clause 10(2)(k) hereof but with the qualifications that —

- A. no such additional rental shall be payable in respect of a royalty tonnage in excess of eight million (8 000 000) tons for the financial year ending the 30th day of June, 1980;
- B. no such additional rental shall be payable in respect of a royalty tonnage in excess of ten million (10 000 000) tons for the financial year ending the 30th day of June, 1981;
- C. no such additional rental shall be payable in respect of the first seven million seven hundred thousand (7 700 000) tons of the royalty tonnage (hereinafter for the purposes of paragraph D and E of this proviso called “the exempt tonnage”) for each of the financial years ending the 30th day of June, 1982, 1983 and 1984;
- D. if the royalty tonnage in any of the financial years ending the 30th day of June, 1982, 1983 and 1984 is less than the exempt tonnage, then that difference may be offset by the Company against the royalty tonnage in subsequent financial years;
- E. if the royalty tonnage for the financial year ending the 30th day of June, 1980 does not exceed eight million (8 000 000) tons and/or the royalty tonnage for the year ending the 30th day of June, 1981 does not exceed ten million (10 000 000) tons the exempt tonnage for each of the financial years ending the 30th day of June, 1982, 1983 and 1984 shall be reduced by an amount arrived at by applying to seven million seven hundred thousand (7 700 000) the proportion that the total of any such deficiencies (for the

financial years ending the 30th day of June, 1980 and 1981)
bears to eighteen million (18 000 000); and”

IN WITNESS WHEREOF these presents have been executed the day and year
first hereinbefore mentioned.

SIGNED by the said THE
HONOURABLE SIR CHARLES
WALTER MICHAEL COURT,
K.C.M.G., O.B.E., M.L.A.
in the presence of —

}

CHARLES COURT

ANDREW MENSAROS
Minister for Industrial
Development.

THE COMMON SEAL OF
HAMERSLEY
IRON PTY. LIMITED was
hereunto affixed in the
presence of —

}

[C.S.]

C. A. WATTS,
Director.

L. A. WARNICK,
Secretary.

[Sixth Schedule inserted: No. 26 of 1979 s. 4.]

Seventh Schedule — Sixth Supplementary Agreement

[s. 2]

[Heading inserted: No. 39 of 1982 s. 4; amended: No. 19 of 2010 s. 4.]

THIS AGREEMENT made this 26th day of April 1982, BETWEEN THE HONOURABLE RAYMOND JAMES O'CONNOR, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the one part and HAMERSLEY IRON PTY. LIMITED a company incorporated under the *Companies Act 1961* of the State of Victoria and having its registered office and principal place of business in that State at 55 Collins Street, Melbourne and its registered office in the State of Western Australia at 191 Saint George's Terrace, Perth (hereinafter called "the Company" in which term shall be included its successors and permitted assigns and appointees) of the other part.

WHEREAS:

- (a) by an agreement made the 30th day of July, 1963 between the parties hereto (which agreement was approved by and its scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963* and is hereinafter referred to as "the 1963 Agreement") the Company acquired upon the terms and conditions therein set forth certain rights interests and benefits and assumed certain obligations with respect to the exploration for and development of specified iron ore deposits at Tom Price and the mining transportation processing and shipment of iron ore therefrom;
- (b) the 1963 Agreement has been varied by the following agreements made between the parties hereto —
 - (i) an agreement dated the 27th day of October, 1964 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1964*;
 - (ii) an agreement dated the 8th day of October, 1968 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*;and

- (iii) an agreement dated the 9th day of May, 1979 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1979*;
- (c) the 1963 Agreement as varied by the agreements referred to in recital (b) hereof hereinafter referred to as “the Principal Agreement”;
- (d) the port townsite and the deposits townsite referred to in the Principal Agreement have been established by the Company at Dampier and Tom Price respectively;
- (e) by the agreement dated the 8th day of October, 1968 referred to in paragraph (ii) of recital (b) hereof the Company also acquired certain rights interests and benefits and assumed certain obligations with respect to the exploration for and development of the iron ore deposits specified in that agreement at Paraburdoo and the mining transportation processing and shipment of iron ore therefrom;
- (f) the said agreement dated the 8th day of October, 1968 has been varied by the following agreements made between the parties hereto —
 - (i) an agreement dated the 10th day of March, 1972 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1972*; and
 - (ii) an agreement dated the 5th day of October, 1976 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1976*;
- (g) the said agreement dated the 8th day of October, 1968 as varied by the agreements referred to in recital (f) hereof is hereinafter referred to as “the Paraburdoo Agreement”;
- (h) the townsite referred to in the Paraburdoo Agreement has been established by the Company at Paraburdoo; and
- (i) the parties desire to add to and amend the provisions of the Principal Agreement and the Paraburdoo Agreement.

NOW THIS AGREEMENT WITNESSETH:

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

2. The State shall introduce and sponsor a bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.

3. The subsequent clauses of this Agreement shall not operate unless and until the Bill to ratify this Agreement referred to in clause 2 hereof is passed as an Act before the 30th day of June, 1982 or such later date if any as the parties hereto may mutually agree upon.

*Variation of Principal Agreement*⁴.

4. The Principal Agreement is hereby varied as follows —

(1) in clause 1 —

(a) by inserting, in their appropriate alphabetical positions, the following definitions —

“ “housing scheme” means any scheme to be established by the Company from time to time pursuant to any proposal approved under clause 10A hereof for the sale to employees engaged in the operations of the Company under this Agreement of lots of land whether improved or unimproved; ”;

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

“ “Minister for Mines” means the Minister in the Government of the State for the time being responsible for the administration of the Mining Act; ”;

(b) by inserting, in the definition of “mineral lease”, after “thereof” the following —

“ and according to the requirements of the context shall describe the area of land from time to time demised thereby as well as the instrument by which it is demised and any areas added thereto pursuant to the provisions of clause 10F hereof ”;

- (c) by deleting the definition of “Mining Act” and substituting the following definition —
 - “ “Mining Act” means the *Mining Act 1904* and the amendments thereto and the regulations made thereunder as in force on the 31st day of December, 1981; ”;
 - (d) by deleting, in the definition of “townsite”, “in lieu of a townsite constituted and defined under section 10 of the Land Act” and substituting the following —
 - “ (whether or not such townsite or townsites are constituted and defined under section 10 of the Land Act) ”;
 - (e) by inserting, after the definition of “year 1”, the following paragraph —
 - “ reference in this Agreement to the Company shall not include persons (other than the parties to this Agreement) to whom land in the deposits townsite or the port townsite is or is agreed to be transferred or otherwise disposed of by the Company in accordance with a proposal approved pursuant to clause 10A hereof;”
; and
 - (f) by inserting, in the paragraph commencing “Reference in this Agreement to an Act”, after “Act”, where it first occurs, the following —
 - “ other than the Mining Act”.
- (2) In clause 9 —
- (a) subclause (2) —
 - (i) by deleting “For the purposes of subparagraph (i) of paragraph (b) and paragraph (c) of subclause (1) of this clause” and substituting the following —
 - “ For the purpose of this Agreement ”;
 - (ii) by deleting, in paragraph (e),
 - “ and ”;

- (iii) by deleting, in paragraph (f), “Act.” and substituting the following —
 - “ Act; ”; and
- (iv) by inserting, after paragraph (f), the following paragraphs —
 - “ (g) the inclusion of a power whereby any special lease granted to the Company hereunder may be varied by agreement or surrendered in whole or in, part; and
 - (h) the inclusion of a power whereby any land granted or leased to the Company hereunder may be —
 - (i) acquired by way of transfer or exchange from the Company by the State or any instrumentality of the State; or
 - (ii) leased or subleased by the Company to the State or any instrumentality of the State. ”.
- (b) subclause 4 —

by deleting, in paragraph (b), “nor any of the lands the subject of any lease or license granted to the Company in terms of this Agreement” and substituting the following —

 - “ nor any lands for the time being owned by the Company in fee simple hereunder or under any lease or license issued pursuant to this Agreement ”.

*Additional proposals*⁴.

- (3) By inserting, after clause 10, the following clauses —
 - “ 10A. (1) The Company may submit to the Minister from time to time detailed proposals with respect to the deposits townsite and/or the port townsite relating to —
 - (a) any housing scheme, which may notwithstanding the provisions of this Agreement include provision for the sale to employees engaged in the Company’s operations hereunder of lots of land within the town of

Karratha of which the Company on the 31st day of December, 1981 was the lessee or proprietor in fee simple and which were acquired by the Company for the purpose of housing its employees;

- (b) the proposed sale by the Company of any land which on the 30th day of April, 1982, was the subject of a sublease or an agreement for sublease from the Company and was used for commercial community or welfare purposes, to the sublessee thereof or a successor in title of that sublessee or, with the prior consent of the Minister, to any other person;
- (c) the transfer to or vesting in the State or the appropriate instrumentality of the State or the relevant local authority as the case may be of the ownership, care control and management, maintenance or preservation of any service or facility owned and/or operated by the Company hereunder;
- (d) the vesting in transfer surrender lease or sublease to the State or the appropriate instrumentality of the State or the relevant local authority as the case may be of any land of which the Company is the lessee or proprietor in fee simple hereunder; or
- (e) any other purpose concerning the use or operation of the Company's services or facilities situated in or near the deposits townsite and/or the port townsite, as the Minister shall approve.

(2) The Minister shall within two (2) months of the receipt of proposals submitted pursuant to subclause (1) of this clause give to the Company notice either of —

- (a) his approval thereof; or
- (b) any objections or alterations desired thereto and in such case shall afford the Company an opportunity to consult with and submit new proposals to the Minister.

(3) If within two (2) months of receipt of a notice pursuant to paragraph (b) of subclause (2) of this clause agreement is not reached as to the said proposals then —

(a) with respect to proposals relating to any of the matters mentioned in paragraphs (a) or (b) of subclause (1) of this clause the Company may within a further period of two months elect by notice to the State to refer to arbitration as herein provided any dispute as to the reasonableness of the Minister's decision. If the Company does not so elect within such period the said proposals shall on the expiration of that period lapse; and

(b) with respect to proposals relating to any of the matters mentioned in paragraphs (c) (d) or (e) of subclause (1) of this clause the said proposals shall not be referable to arbitration hereunder but shall lapse.

(4) The Company shall implement proposals approved pursuant to this clause or an award made on arbitration as the case may be in accordance with the terms thereof.

*Grant and lease of lands*⁴.

10B. If a proposal approved pursuant to clause 10A hereof provides for the surrender by the Company to the State of any land comprised within a lease granted under or pursuant to this Agreement the State shall in accordance with such approved proposal —

- (a) grant to the Company in fee simple at a price to be determined by the Minister for Lands; or
- (b) lease to the Company for such terms or periods and on such terms and conditions (including renewal rights) as, subject to the approved proposal, shall be determined by the Minister for Lands

any part or parts of the land surrendered by the Company to the State in accordance with that proposal.

*Authorisation of local authority and certain Ministers to enter agreements*⁴.

10C. Where pursuant to any approved proposal as to any of the matters referred to in clause 10A hereof provision is made for

the relevant local authority consistent with its functions as a local authority or an instrumentality of the State to enter into and carry out any agreement with the Company and/or for the Minister or respective Ministers administering the *Hospitals Act 1927*, the *Education Act 1928*, the *Public Works Act 1902*, the *Fire Brigades Act 1942*, the *Country Areas Water Supply Act 1947*, the *Country Towns Sewerage Act 1948* and the *State Energy Commission Act 1979* to enter into and carry out any agreement with the Company —

- (a) the *Local Government Act 1960*, the *Hospitals Act 1927*, the *Education Act 1928*, the *Public Works Act 1902*, the *Fire Brigades Act 1942*, the *Country Areas Water Supply Act 1947* the *Country Towns Sewerage Act 1948* and the *State Energy Commission Act 1979* shall for the purposes of implementing such approved proposals be deemed to be modified by the inclusion of a power whereby such relevant local authority instrumentality of the State and/or Minister or Ministers are authorized and empowered to enter into and carry out any such agreement; and
- (b) the relevant local authority, instrumentality of the State and such Minister or Ministers may enter into and carry out any such agreement notwithstanding the other provisions of this Agreement.

*Release of lands*⁴.

10D. Notwithstanding the provisions of the Land Act if and to the extent that an approved proposal so provides, the Minister for Lands shall not at any time put up for sale or lease to persons other than the Company 30 or more lots of land as a single release within any land surrendered by the Company to the State pursuant to that proposal without first consulting with the Company for the purpose of ensuring that provision has been made for the Company's future development requirements pursuant to this Agreement.

*Sale of lots in housing scheme*⁴.

10E. (1) The Company shall, subject to and in accordance with the relevant approved proposal relating to a housing scheme, have the right during the currency of this

Agreement to enter into agreements in a form to be approved by the Minister to sell any lot the subject of that housing scheme to an employee engaged in the Company's operations under this Agreement and the provisions of sections 13 and 14 of the *Sale of Land Act 1970* shall not apply to any such agreement.

(2) So long as the Company shall be responsible for the provision and/or maintenance of water, electricity, sewerage or drainage services to any land granted in fee simple to the Company pursuant to clause 10B hereof the Company shall, in respect of any part or parts thereof sold or otherwise disposed of by the Company in accordance with a proposal approved pursuant to clause 10A hereof have the right, notwithstanding such sale or other disposition, to enter that part or parts by itself, its agents or contractors at any time for the purpose of maintaining, repairing or replacing (as the case may be) any pipes, drains, cables or other works relating to such services in or under that land PROVIDED that the Company shall be responsible for any damage occasioned by such entry.

*Addition to mineral lease*⁴.

10F. Notwithstanding the provisions of the Mining Act the Company may apply to the Minister for Mines for inclusion in the mineral lease of the areas coloured red on the plan marked 'C' (initialled by or on behalf of the parties hereto for the purposes of identification) except so much thereof as is comprised in Special Lease No. 3116/4592 (Crown Lease No. 162/1974) and the Minister for Mines shall subject to the Company surrendering or causing to be surrendered all rights of occupancy held by the Company, Hamersley Exploration Pty. Limited, and Mount Bruce Mining Pty. Limited or any of them to land within the land applied for, withdrawing all applications previously made by the Company for mining tenements within the land applied for and surrendering from the mineral lease the areas coloured green on the said plan marked 'C' include the land so applied for in the mineral lease subject to the same terms and conditions as apply to the mineral lease (with such apportionment of rents as is necessary) notwithstanding that the survey of the areas surrendered and the new areas have not been completed (but subject to correction to accord with the survey when completed at the Company's expense). ”.

- (4) in clause 11 —
- (a) in paragraph (a) by inserting at the end of that paragraph the following proviso —
- “ PROVIDED that such powers and authorities shall be modified from time to time to accord with proposals approved under clause 10A hereof ”;
- (b) in sub-paragraph (i) of paragraph (d) by inserting at the end of that sub-paragraph the following proviso —
- “ PROVIDED that this sub-paragraph shall not apply to townsite lots or other areas within any land granted to the Company in fee simple pursuant to clause 10B hereof unless such lots or areas are then owned by the Company ”;
- (c) in paragraph (g) —
- (i) by deleting “granted to” and substituting the following —
- “ held by ”; and
- (ii) by inserting after “this Agreement,” where it first occurs, the following —
- “ or in respect of which the Company has any right to purchase pursuant to a housing scheme ”.
- (5) In clause 20 —
- by inserting, after subclause (2), the following subclause —
- “ (3) Where in respect of any land acquired by the Company under this Agreement the Company makes any disposition pursuant to any approved proposal as to any of the matters mentioned in Clause 10A hereof, then notwithstanding the provisions of subclause (1) of this clause but subject to any contrary intention contained in any such approved proposal, the consent in writing of the Minister shall not be required to any such disposition nor shall any assignee from the Company be required to enter into a deed of covenant as provided in subclause (1) or this clause. ”.

*Variation of Paraburdoo Agreement*⁴.

5. The Paraburdoo Agreement is hereby varied as follows —

- (1) in clause 1 —
 - (a) by deleting the definition of “Principal Agreement” and substituting the following definition —

“ “Principal Agreement” means the agreement defined in section 2 of the *Iron Ore (Hamersley Range) Agreement Act 1963*; ”;
 - (b) by inserting, in the paragraph commencing “Reference in this Agreement to an Act”, after “Act”, where it first occurs, the following —

“ other than the Mining Act ”; and
 - (c) by inserting, after the said paragraph commencing “Reference in this Agreement to an Act”, the following paragraph —

“ Reference in this Agreement to the Company shall not include persons (other than the parties to this Agreement) to whom land in the townsite is or is agreed to be transferred or otherwise disposed of by the Company in accordance with a proposal approved pursuant to clause 7A hereof; ”.
- (2) in clause 6 subclause (3) —

by deleting “For the purpose of paragraphs (b) (i) and (c) of sub-clause (2) of this clause” and substituting the following —

“ For the purpose of this Agreement ”.
- (3) by inserting, after clause 7, the following clause —

“ 7A. The provisions of clauses 10A to 10E inclusive of the Principal Agreement shall apply to and be deemed to be incorporated in this Agreement as if all references in the said clauses to “this Agreement” and “the deposits townsite and/or port townsite” were references to this Agreement and the townsite defined herein. ”.
- (4) in clause 8 —
 - (a) by inserting, in paragraph (b), after “7” the following —

“ and the figure “7A” were substituted for the figure “10A” ”;

- (b) by inserting, in paragraph (c), after sub-paragraph (ii) the following sub-paragraph —
 - “ (iii) the words “clause 10B of the Principal Agreement as applying to this Agreement” were substituted for the words “clause 10B hereof ”.
- (5) in clause 11 subclause (1) —
 - by inserting after “respectively” the following —
 - “ and as if the words “clause 10A of the Principal Agreement as applying to this Agreement were substituted for the words “clause 10A hereof” in subclauses (3) and (4) of clause 20 of the Principal Agreement ”.

*Acknowledgement by the State*⁴.

6. (1) Subject to subclause (2) of this clause, it is acknowledged by the State that for the purposes of subparagraphs (ii) and (iii) of paragraph (f) of subclause (1) of clause 10 of the Principal Agreement and subparagraphs (ii) and (iii) of paragraph (e) of subclause (i) of clause 7 of the Paraburdoo Agreement the Company has duly —

- (a) laid out and developed the townsites of Dampier, Tom Price and Paraburdoo and provided therein adequate and suitable housing, recreational and other facilities and services; and
- (b) constructed and provided therein roads, housing, schools, water and power supplies and other amenities and services,

and that the Company shall have no further obligations to the State with regard to any of such matters that is or are the subject of proposals approved under clause 10A of the Principal Agreement or clause 7A of the Paraburdoo Agreement, except as provided in those proposals or either of them.

(2) If at any time by reason of the expansion of the Company’s operations or requirements within the said townsites or any of them additional services facilities or amenities are required, the Company shall negotiate with the State as to the provision of such additional services facilities or amenities.

*Preservation of subleases by Company*⁴.

7. If any land within the townsites of Dampier, Tom Price or Paraburdoo the subject of a special lease granted to the Company under or pursuant to the Principal Agreement or the Paraburdoo Agreement is surrendered by the

Company to the State in accordance with a proposal approved pursuant to clause 10A of the Principal Agreement or that clause as applying to the Paraburdoo Agreement and is or is subsequently to be granted in fee simple to the Company by the State pursuant to that proposal and that land is immediately prior to the surrender thereof, the subject of a sublease granted by the Company under the special lease then, notwithstanding the surrender of the special lease, any provision in the sublease or the provisions of any Act or any principle of law or equity to the contrary, that sublease shall as between the Company and the sublessee and any person deriving title under the sublessee continue and at all times remain in full force and effect in accordance with but subject to its terms as if the special lease out of which it was granted had not been surrendered.

*Sale of ore to Steel Mains Pty. Limited*⁴.

8. Notwithstanding anything in the Principal Agreement and the Paraburdoo Agreement, the sale by the Company of iron ore from the mineral leases the subject of those Agreements to Steel Mains Pty. Limited for use in the coating of the undersea pipeline to be constructed for the purposes of the agreement defined in section 2 of the *North West Gas Development (Woodside) Agreement Act 1979* is authorized and confirmed subject to payment by the Company to the State of royalty on the sale price ex Dampier stockpiles of all iron ore so sold at the rate of seven and one half per centum (7½%).

*Stamp duty exemption*⁴.

9. (1) The State shall exempt from any stamp duty which but for the operation of this clause would or might be chargeable on —

- (a) any agreement transfer or other instrument evidencing the sale or transfer of any lot in fee simple from the Company to any employee or to the Company from any such employee or former employee (as the case may be) pursuant to any proposal relating to a housing scheme approved pursuant to the Principal Agreement or the Paraburdoo Agreement as respectively amended by this Agreement;
- (b) any agreement transfer or other instrument evidencing the sale or transfer of any lot in fee simple to the Company from the Rural and Industries Bank of Western Australia pursuant to any such housing scheme; and
- (c) any mortgage to the Company from any employee in respect of any lot the subject of a transfer from the Company to that employee referred to in paragraph (a) of this subclause.

Eighth Schedule — Seventh Supplementary Agreement

[s. 2]

[Heading inserted: No. 27 of 1987 s. 6; amended: No. 19 of 2010 s. 4.]

THIS AGREEMENT is made this 28th day of May 1987

BETWEEN:

THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part and

HAMERSLEY IRON PTY LIMITED a company incorporated in Victoria and having its principal office in the State of Western Australia at 191 St. George’s Terrace, Perth (hereinafter called “the Company” in which term shall be included its successors and assigns) of the other part.

WHEREAS:

- (a) the State and the Company are the parties to the agreement dated the 30th day of July, 1963 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*;
- (b) the said agreement has been varied by the following agreements made between the parties hereto —
 - (i) an agreement dated the 27th day of October, 1964 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1964*;
 - (ii) an agreement dated the 8th day of October, 1968 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*;
 - (iii) an agreement dated the 9th day of May, 1979 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1979*; and
 - (iv) an agreement dated the 26th day of April, 1982 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Amendment Act 1982*,

and as so varied is referred to in this Agreement as “the Principal Agreement”;

- (c) the agreement dated the 8th day of October, 1968 referred to in paragraph (ii) of recital (b) hereof has been varied by the following agreements made between the State and the Company —
- (i) an agreement dated the 10th day of March, 1972 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1972*;
 - (ii) an agreement dated the 5th day of October, 1976 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1976*; and
 - (iii) the agreement dated the 26th day of April, 1982 referred to in paragraph (iv) of recital (b) hereof,
- and as so varied is referred to in this Agreement as “the Paraburdoo Agreement”;
- (d) the Principal Agreement and the Paraburdoo Agreement contain provisions with regard to the secondary and further processing of iron ore intended, where feasible, to further the economic development of the State; and
- (e) the parties, consistent with the above intention but in the light of changed world circumstances with respect to the secondary and further processing of iron ore, have agreed to vary certain of the provisions of the Principal Agreement and the Paraburdoo Agreement in relation thereto and to broaden the scope for substitution of alternative investments.

NOW THIS AGREEMENT WITNESSETH —

1. Subject to the context the words and expressions used in this Agreement have the same meanings as they have in and for the purpose of the Principal Agreement and the Paraburdoo Agreement respectively.
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.
3. The subsequent clauses of this Agreement shall not operate unless and until —
 - (a) the Bill to ratify this Agreement referred to in clause 2 hereof; and
 - (b) a Bill to ratify the Agreement referred to in the Schedule hereto

are passed as Acts before the 30th day of June, 1987 or such later date if any as the parties may agree.

4. The Principal Agreement is hereby varied as follows —
- (1) Clause 1 —
by deleting the paragraph commencing “the phases in which it is contemplated that this Agreement will operate”.
 - (2) By deleting clauses 13, 14, 15, 16 and 17.
 - (3) Clause 20B —
by deleting, in both cases where it occurs, the following —
“, metallised agglomerates, pig iron, foundry iron or steel”.
 - (4) Clause 20C subclause (1) —
by deleting the following —
 - (a) “or the production or transport or export of metallised agglomerates or steel”; and
 - (b) “or metallised agglomerates or steel”.
 - (5) Clause 23 —
by deleting the following —
“inability to profitably sell metallised agglomerates”.
 - (6) Clause 25 —
 - (a) by inserting after the clause designation 25 the subclause designation (1);
 - (b) by deleting “*Arbitration Act 1895*” and substituting the following —
“*Commercial Arbitration Act 1985* and notwithstanding section 20(1) of that Act each party may be represented by a duly qualified legal practitioner or other representative”;
 - (c) by inserting the following subclause —
“(2) The arbitrator determining any submission to arbitration under this Agreement is hereby empowered upon application by either party to grant any interim extension of time or date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of either or

both of the parties hereunder and an award in favour of the Company may in the name of the Minister grant any further extension of time for that purpose. ”.

5. The Paraburdoo Agreement is hereby varied as follows —

(1) Clause 1 —

(a) by inserting before the definition of “mineral lease” the following definition —

“ “alternative investments” means investments in the said State which are within the ability and competence of the Company or of corporations which are related to the Company for the purposes of the *Companies (Western Australia) Code* and which are approved by the Minister from time to time as alternative investments for the purpose of this Agreement (which approval shall not be unreasonably withheld in the case of an investment which would add value or facilitate the addition of value, beyond mining, to the mineral resources of the said State); ”;

(b) by inserting after the definition of “townsite”, the following —

“References in this Agreement to provisions of the Principal Agreement are to those provisions as amended from time to time;”.

(2) Clause 8 —

by deleting sub-paragraph (i) of paragraph (c) and substituting the following —

“(i) sub-paragraph (iii) were deleted;”.

(3) By deleting clauses 9 and 10 and substituting the following clauses —

“9. (1) The Company shall subject to sub-clause (5) of this clause and to clause 10 of this Agreement —

(a) on or before the 1st day of October, 1988 submit to the Minister detailed proposals for the establishment within the said State of a plant for the production of metallised agglomerates containing provision that such plant will by the 1st day of October, 1990 have the capacity to produce not less than

- one million (1,000,000) tons of metallised agglomerates annually; and
- (b) on or before the 1st day of October, 1991 submit to the Minister detailed proposals for the expansion of the productive capacity of such plant to not less than two million (2,000,000) tons of metallised agglomerates annually by the 1st day of October, 1993.
- (2) The provisions of clause 23 of the Principal Agreement as applying to this Agreement shall not apply to sub-clause (1) of this clause.
- (3) The Minister shall within two months of the receipt of such proposals give to the Company notice either of his approval of the proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford to the Company an opportunity to consult with and to submit new proposals to the Minister. If within two (2) months of receipt of such notice agreement is not reached as to the proposals, the Company may within a further period of two (2) months elect by notice to the State to refer to arbitration as hereinafter provided any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have then approved the proposals of the Company.
- (4) The Company shall (except to the extent otherwise agreed by the Minister) within the respective times specified in sub-clause (1) of this clause complete the construction of plant in accordance with the Company's proposals as finally approved or determined under this clause.
- (5) (a) The Company may at any time before the time for submission of proposals pursuant to sub-clause (1) of this clause apply to the Minister for approval that the carrying out by the Company of alternative investments be accepted by the State in lieu of all or some part

of the Company's obligations in respect of metallised agglomerates pursuant to this clause.

- (b) Where the Minister approves a request under paragraph (a) of this sub-clause the Company shall implement the investments in accordance with that approval and upon completion thereof, or earlier with the agreement of the Minister, the provisions of sub-clause (1) of this clause or that part of those provisions which pursuant to the said approval are to be satisfied by those investments shall cease to apply.
10. (1) If the Company at any time considers that the establishment of plant for the production of metallised agglomerates or, as the case may be, the expansion of the productive capacity of such plant as required to be proposed or as required pursuant to any proposals finally approved or determined under clause 9 hereof (hereinafter called "the metallising operation") is for any technical, economic or other reason not feasible, whether in whole or in part, then the Company may submit to the Minister in detail the reasons why it considers the metallising operation is not feasible, together with supporting data and such other relevant information as the Minister may require.
- (2) Within two (2) months after receipt of a submission from the Company under sub-clause (1) of this clause the Minister shall notify the Company whether or not he agrees with its submission.
 - (3) (a) If the Minister notifies the Company that he does not agree with its submission then at the request of the Company made within two (2) months after receipt by the Company of the notification from the Minister, the Minister will refer the matter to arbitration pursuant to clause 25 of the Principal Agreement as applying to this Agreement to decide whether or not the metallising operation is feasible.
 - (b) If the Company does not request a reference to arbitration under paragraph (a) of this

sub-clause or if on a reference to arbitration it is decided that the metallising operation is feasible the Company shall comply with its obligations under clause 9 hereof provided that the period from the time that the Company made its submission under sub-clause (1) of this clause to the time when the Minister notified the Company that he did not agree with its submission or the time when it was decided by arbitration that the metallising operation was feasible as the case may be shall be added to the respective times by which the Company is required to comply with those obligations.

- (4) If the Minister notifies the Company that he agrees with its submission or if on reference to arbitration it is decided that all or part of the metallising operation is not feasible, then —
- (a) the Company shall not have any obligation or further obligation to submit proposals in respect of so much of the metallising operation as has been found not to be feasible or to carry out the relevant part of any proposals in respect thereof that may have been finally approved or determined pursuant to clause 9 hereof; and
 - (b) the Company shall thenceforth be obliged to identify and investigate potential alternative investments which would (either alone or in the aggregate with other alternative investments) represent economic development within the said State approximately equivalent to the metallising operation (or relevant part thereof).
- (5) In carrying out its obligations under sub-clause (4)(b) of this clause the Company shall take account of and investigate, to the extent reasonable under the circumstances having regard, inter alia, to the expertise of the Company and related corporations, any potential alternative investments which are prima facie feasible and which are formally referred to the Company by the Minister from time to time.

- (6) The Company shall submit to the Minister in detail its programme for the identification and investigation of potential alternative investments pursuant to paragraph (b) of sub-clause (4) and sub-clause (5) of this clause not later than two (2) months after receiving the notice from the Minister or the decision on arbitration as the case may be referred to in sub-clause (4) of this clause which programme shall specify the potential alternative investments it is investigating and any potential alternative investments it intends to investigate and shall set forth the Company's proposed timetable for its investigations of those investments and the feasibility thereof.
- (7) (a) Within two (2) months after receipt of a programme from the Company under sub-clause (6) of this clause the Minister shall notify the Company of any investments referred to in the programme which he would be prepared to approve as alternative investments and forthwith after such a notice the Company and the Minister shall meet to agree upon a programme (including timing) for studies by the Company into the feasibility of those investments.
- (b) The Company shall duly investigate the feasibility of any potential alternative investments referred to in paragraph (a) of this sub-clause and report to the Minister thereon in accordance with the programme agreed pursuant thereto or determined by arbitration hereunder.
- (c) Where any such potential alternative investment is accepted by the Minister as an alternative investment and agreed by the Company and the Minister or found on arbitration to be feasible the Company and the Minister shall forthwith meet to agree on a date by which Company shall submit detailed proposals for that alternative investment.

- (d) The Company shall report to the Minister on its progress in performing its obligations under paragraphs (b) and (c) of this sub-clause at such intervals as the Minister may require but not more frequently, in respect of any such matter, than once in every three (3) months for summary reports and once in every twelve (12) months for detailed written reports.
- (8) (a) The Company shall submit its detailed proposals for any alternative investment referred to in sub-clause (7)(c) of this clause not later than the date agreed pursuant to that sub-clause.
 - (b) The provisions of sub-clause (3) of clause 9 hereof shall apply *mutatis mutandis* to the approval or determination of proposals made under this sub-clause. The Company shall implement proposals so approved or determined in accordance with the terms thereof.
- (9) (a) The obligations of the Company under sub-clause (4)(b) of this clause shall continue until the parties agree or it is found on arbitration that alternative investments presenting economic development within the said State approximately equivalent to the metallising operation (or relevant part thereof) as provided for in that sub-clause have become the subject of proposals approved or determined in accordance with sub-clause (8) of this clause.
 - (b) So long as the Company has continuing obligations under sub-clause (4)(b) of this clause the Company shall as and when it identifies any potential alternative investment forthwith submit to the Minister a programme for the investigation of that investment and the feasibility thereof by the Company including its proposed timetable for the investigations.

- (c) The provisions of sub-clauses (7) and (8) of this clause shall *mutatis mutandis* apply to a programme submitted under paragraph (b) of this sub-clause as if it were a programme under sub-clause (6) of this clause.
- (10) The Company may invoke the foregoing provisions of this clause at any time and from time to time in respect of all or any of its obligations arising under or pursuant to clause 9 hereof and the references to the metallising operation in those provisions shall as the case may require be read and construed as referring to the one or more of those obligations in respect of which those provisions are invoked by the Company.”.
- (4) Clause 11 —
 - (a) sub-clause (1) —
 - (i) by deleting “20B, 20C, 21, 23, 24, 25,” and substituting the following —
“21, 24,”;
 - (ii) by deleting “subclauses (3) and (4)” and substituting the following —
“sub-clause (3)”;
 - (b) by inserting after sub-clause (2) the following sub-clauses —
 - “(2a) The provisions of clauses 20B and 20C of the Principal Agreement shall apply to and be deemed incorporated in this Agreement —
 - (a) with respect to clause 20B, as if the passage “or metallised agglomerates, or to implement alternative investments,” were inserted after “iron ore pellets” in both cases where it occurs; and
 - (b) with respect to clause 20C, as if the passage “or the production or transport or export of metallised agglomerates or the product of any

production facility required to be established pursuant to this Agreement” were inserted after “pellets” where it first occurs and the passage “or metallised agglomerates or the product of any production facility required to be established pursuant to this Agreement” were inserted after “pellets” where it secondly occurs.

- (2b) Subject to sub-clause (2) of clause 9 of this Agreement the provisions of clause 23 of the Principal Agreement shall apply to and be deemed incorporated in this Agreement as if the passage “inability to profitably sell metallised agglomerates or the product of any production facility required to be established pursuant to this Agreement” were inserted after “ore”.
- (2c) The provisions of clause 25 of the Principal Agreement shall apply to and be deemed incorporated in this Agreement with the following variations —
- (a) sub-clause (1) —
- by deleting “*Commercial Arbitration Act 1985* and notwithstanding section 20(1) of that Act each party may be represented by a duly qualified legal practitioner or other representative” and substituting the following —
- “*Commercial Arbitration Act 1985* Provided That —
- (a) notwithstanding sections 6 and 7 of that Act if the dispute or difference relates to —
- (i) the feasibility of the metallising operation or a part thereof or any alternative investment;
- (ii) a failure by the Minister to approve an alternative investment in a case where he is required not to

withhold unreasonably such approval; or

- (iii) sub-clause (9)(a) of clause 10 hereof,

the matter, unless the parties agree to the appointment of a specific single arbitrator, shall be referred to and settled by arbitration under that Act by a tribunal of three (3) arbitrators appointed by the Minister, of which tribunal one member shall be a Judge of the Supreme Court of Western Australia, a Commissioner appointed pursuant to section 49 of the *Supreme Court Act 1935* or a Queen's Counsel and the other members shall have appropriate technical or economic qualifications; and

- (b) notwithstanding section 20(1) of that Act each party may be represented by a duly qualified legal practitioner or other representative”;

- (b) sub-clause (2) —

by inserting after “arbitrator” the following —
“or arbitrators as the case may be”; and

- (c) by inserting after sub-clause (2) the following sub-clause —

“(3) In deciding issues of economic feasibility the arbitrator or arbitrators as the case may be shall have regard to any submissions made by the Minister and by the Company and also (inter alia) to the amount of capital required for the investment, the availability of that capital at that time on reasonable terms and conditions, the likelihood of the investment being able to generate sufficient cash flow for a sufficient period to justify the same having regard to the amount and rate of return on

total capital that would be involved in or in connection with the investment and the weighted average cost of capital to the Company.”.

- (5) Clause 12 —
 - (a) in paragraph (a), by deleting “8A.”;
 - (b) in paragraph (b) —
 - (i) by deleting “clause 9(3) hereof” where it occurs in sub-paragraphs (i) and (ii) and substituting in each place the following —
“clause 9(4) hereof”;
 - (ii) by deleting sub-paragraph (iii); and
 - (c) in paragraph (c), by deleting “or of its covenants or obligations under clause 13 of the Principal Agreement if and while amended by clause 14 of this Agreement”.
- (6) By deleting clauses 13 and 14.

THE SCHEDULE

The Agreement of even date with this Agreement between THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities and MOUNT BRUCE MINING PTY. LIMITED.

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

SIGNED by the said THE HONOURABLE BRIAN THOMAS BURKE, M.L.A. in the presence of:

}

BRIAN BURKE

D. PARKER
MINISTER FOR MINERALS
AND ENERGY

THE COMMON SEAL of
HAMERSLEY IRON PTY.
LIMITED was hereunto
affixed by authority of the Directors
in the presence of:

}

[C.S.]

Director T. BARLOW

Secretary G. B. BABON

[Eighth Schedule inserted: No. 27 of 1987 s. 6.]

Ninth Schedule — Eighth Supplementary Agreement

[s. 2]

[Heading inserted: No. 60 of 1987 s. 6; amended: No. 19 of 2010 s. 4.]

THIS AGREEMENT made this 27th day of October 1987

BETWEEN:

THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part and

HAMERSLEY IRON PTY. LIMITED a company incorporated in Victoria and having its principal office in the State of Western Australia at 191 St. George’s Terrace, Perth (hereinafter called “the Company” in which term shall be included its successors and assigns) of the other part.

WHEREAS:

- (a) the State and the Company are the parties to the agreement dated the 30th day of July, 1963 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*;
- (b) the said agreement has been varied by the following agreements made between the parties hereto —
 - (i) an agreement dated the 27th day of October, 1964 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1964*;
 - (ii) an agreement dated the 8th day of October, 1968 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*;
 - (iii) an agreement dated the 9th day of May, 1979 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1979*;

- (iv) an agreement dated the 26th day of April, 1982 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Amendment Act 1982*; and
- (v) an agreement dated the 28th day of May, 1987 which agreement was ratified by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Amendment Act 1987*,
and as so varied is referred to in this Agreement as “the Principal Agreement”;
- (c) the agreement dated the 8th day of October, 1968 referred to in paragraph (ii) of recital (b) hereof has been varied by the following agreements made between the State and the Company —
 - (i) an agreement dated the 10th day of March, 1972 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1972*;
 - (ii) an agreement dated the 5th day of October, 1976 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1976*;
 - (iii) the agreement dated the 26th day of April, 1982 referred to in paragraph (iv) of recital (b) hereof; and
 - (iv) the agreement dated the 28th day of May, 1987 referred to in paragraph (v) of recital (b) hereof,
and as so varied is referred to in this Agreement as “the Paraburdoo Agreement”; and
- (d) the parties wish to vary the Principal Agreement and the Paraburdoo Agreement.

NOW THIS AGREEMENT WITNESSETH —

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

3. The subsequent clauses of this Agreement shall not operate unless and until —
 - (a) the Bill to ratify this Agreement referred to in clause 2 hereof; and
 - (b) a Bill to ratify the Agreement referred to in the Schedule heretoare passed as Acts before the 31st day of December, 1987 or such later date if any as the parties may agree.
4. The Principal Agreement is hereby varied as follows —
 - (1) Clause 1 —

by inserting after the definition of “associated company” the following definition —

“ “Channar Agreement” means the agreement scheduled to the *Iron Ore (Channar Joint Venture) Agreement Act 1987* and any amendments to that agreement;”.
 - (2) Clause 9 sub-clause (1) —

by inserting in the proviso to paragraph (b) after “clause 10(2)(j)” the following —

“or clause 10(2)(ja)”.
 - (3) Clause 10 sub-clause (2) —
 - (a) by deleting in subparagraph (viii) of paragraph (j) “proportionately to the variation of the average of the prices payable for foundry pig iron f.o.b. Adelaide during the last full calendar year preceding the date at which the adjustment is to be made as compared with the average of those prices during the calendar year 1963.” and substituting the following —

“proportionately to the weighted average of sales (invoice prices) per ton of foundry pig iron sold in Adelaide by The Broken Hill Proprietary Company Limited or any subsidiary thereof from time to time during the calendar year immediately preceding the date at which the adjustment is required to be made as compared with \$44.33 PROVIDED THAT where information required to determine any price or other amount for the purposes of this paragraph is not available such price or other amount shall be agreed between

the Company and the State or, failing agreement, determined by the Minister.”;

- (b) by inserting after paragraph (j) the following paragraph —
- “(ja) pay to the State royalty in accordance with this Agreement on all iron ore mined by or supplied to the Company from the mining lease granted pursuant to the Channar Agreement as if such iron ore were iron ore from the mineral lease;”.

- (4) By inserting after clause 10F the following clauses —

“10G. If the Company at any time during the continuance of this Agreement desires to —

- (a) significantly modify expand or otherwise vary any of its works installations facilities equipment or services under this Agreement for or in connection with the provision of services for the purposes of the Channar Agreement; or
- (b) enter into any agreement with respect to the mining of iron ore from the mining lease granted under the Channar Agreement,

the Company shall give notice of such desire to the Minister and within two months thereafter shall subject to the provisions of this Agreement submit detailed proposals with respect to such services or to the mining and recovery of such iron ore including mining crushing screening handling transport and storage of the iron ore and plant facilities as the case may be and in each case measures to be taken for the protection and management of the environment and such other matters as the minister may require. The provisions of clause 7(1) hereof shall mutatis mutandis apply to proposals submitted pursuant to this clause.

- 10H. (1) If the Channar Agreement ceases or determines during the currency of this Agreement the Company may upon the cessation or determination of the Channar Agreement provided the Company is at that date the holder of Mineral Lease 4SA pursuant to this Agreement —

- (a) apply to the Minister for Minerals and Energy for inclusion in Mineral Lease 4SA of so much

of the land which was immediately before such cessation or determination within the mining lease granted under the Channar Agreement as the Company desires and the Minister for Minerals and Energy shall include the land so applied for in Mineral Lease 4SA subject to such of the conditions of the said mining lease as he determines but otherwise subject to the same terms and conditions as apply to Mineral Lease 4SA (with such apportionment of rents as is necessary), notwithstanding that the survey of such additional land has not been completed (but subject to correction to accord with the survey when completed at the Company's expense); and

- (b) in respect of any lease licence easement grant or other title made under the Channar Agreement which has ceased or determined pursuant to clause 40(1)(a) of that Agreement, apply for similar rights for the purpose of facilitating mining from areas to be included in Mineral Lease 4SA pursuant to paragraph (a) of this clause and the State shall grant or arrange to have the appropriate authority or other interested instrumentality of the State grant, for such periods and on such terms and conditions (including rental and renewal rights) as shall be reasonable having regard to the requirements of the Company, leases and where applicable licences easements and rights of way for all or any of the purposes of the Company's operations within those mining areas.
- (2) The rental or other consideration charged in respect of any lease licence easement or right of way granted under the provisions of this clause shall not take into account the value of any improvements effected to the land the subject thereof by the Joint Venturers under the Channar Agreement.”.

- (5) Clause 11 —
- (a) paragraph (a) —
by inserting after “townsite” the following —
“and subject to and in accordance with proposals approved under the Channar Agreement the Company for purposes related to the Channar Agreement”;
- (b) by inserting after paragraph (a) the following paragraph —
“(aa) that the Company may use or permit to be used any works installations facilities equipment and services provided by the Company hereunder for the purpose of this Agreement for or in connection with the implementation of proposals approved under the Channar Agreement;”.
5. The Paraburdoo Agreement is hereby varied as follows —
- (1) Clause 7 sub-clause (4) —
by inserting after “(j),” the following —
“(ja),”.
- (2) Clause 11 sub-clause (1) —
by inserting after “8(1),” the following —
“10G,”.

THE SCHEDULE

The Agreement of even date herewith between THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities of the first part CMIEC (CHANNAR) PTY. LTD. and CHANNAR MINING PTY. LIMITED of the second part and HAMERSLEY IRON PTY. LIMITED of the third part.

Tenth Schedule — Ninth Supplementary Agreement

[s. 2]

[Heading inserted: No. 32 of 1990 s. 6; amended: No. 19 of 2010 s. 4.]

THIS AGREEMENT is made this 14th day of June 1990

BETWEEN:

THE HONOURABLE CARMEN MARY LAWRENCE, B.Psych., Ph.D., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part

AND

HAMERSLEY IRON PTY. LIMITED a company incorporated in Victoria and having its principal office in the State of Western Australia at 191 St. George’s Terrace, Perth (hereinafter called “the Company” in which term shall be included its successors and assigns) of the other part.

WHEREAS:

- (a) the State and the Company are the parties to the agreement dated the 30th day of July, 1963 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*;
- (b) the said agreement has been varied by the following agreements made between the parties hereto —
 - (i) an agreement dated the 27th day of October, 1964 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1964*;
 - (ii) an agreement dated the 8th day of October, 1968 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*;
 - (iii) an agreement dated the 9th day of May, 1979 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1979*;

- (iv) an agreement dated the 26th day of April, 1982 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Amendment Act 1982*;
 - (v) an agreement dated the 28th day of May, 1987 which agreement was ratified by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Amendment Act 1987*; and
 - (vi) an agreement dated the 27th day of October, 1987 which agreement was ratified by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act (No. 2) 1987*,
and as so varied is referred to in this Agreement as “the Principal Agreement”;
- (c) the agreement dated the 8th day of October, 1968 referred to in paragraph (ii) of recital (b) hereof has been varied by the following agreements made between the State and the Company —
- (i) an agreement dated the 10th day of March, 1972 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1972*;
 - (ii) an agreement dated the 5th day of October, 1976 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1976*;
 - (iii) the agreement dated the 26th day of April, 1982 referred to in paragraph (iv) of recital (b) hereof;
 - (iv) the agreement dated the 28th day of May, 1987 referred to in paragraph (v) of recital (b) hereof; and
 - (v) the agreement dated the 27th day of October, 1987 referred to in paragraph (vi) of recital (b) hereof,
and as so varied is referred to in this Agreement as “the Paraburdoo Agreement”; and
- (d) the parties wish to vary the Principal Agreement and the Paraburdoo Agreement.

NOW THIS DEED WITNESSETH —

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

2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.
3. The subsequent clauses of this Agreement shall not operate unless and until the Bill to ratify this Agreement referred to in clause 2 hereof is passed as an Act before the 30th day of June, 1990 or such later date if any as the parties hereto may agree.
4. The Principal Agreement is hereby varied as follows —
 - (1) Clause 1 —
 - (a) by deleting the definitions of “direct shipping ore”, “fine ore”, “fines”, “f.o.b. revenue” and “iron ore concentrates”;
 - (b) by inserting, in the appropriate alphabetical positions, the following definitions —

“ “agreed or determined” means agreed between the Company and the Minister or, failing agreement within three months of the Minister giving notice to the Company that he requires the value of a quantity of iron ore to be agreed or determined, as determined by the Minister (following, if requested by the Company, consultation with the Company and its consultants in regard thereto) and in agreeing or determining a fair and reasonable market value of such iron ore assessed at an arm’s length basis the Company and/or the Minister as the case may be shall have regard to the prices for that type of iron ore prevailing at the time the price for such iron ore was agreed between the Company and the purchaser in relation to the type of sale and the market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value; “deemed f.o.b. point” means on ship at the Company’s wharf;

“deemed f.o.b. value” means an agreed or determined value of the iron ore at the time the iron ore becomes liable to royalty established on the basis that the iron ore was sold f.o.b. at the deemed f.o.b. point;

“fine ore” means iron ore (not being iron ore concentration products) which is nominally sized minus six millimetres;

“f.o.b. value” means —

- (i) in the case of iron ore shipped and sold by the Company, the price which is payable for the iron ore by the purchaser thereof to the Company or an associated company or, where the Minister considers, following advice from the appropriate Government department, that the price payable in respect of the iron ore does not represent a fair and reasonable market value for that type of iron ore assessed at an arm’s length basis, such amount as is agreed or determined as representing such a fair and reasonable market value, less all export duties and export taxes payable to the Commonwealth on the export of the iron ore and all costs and charges properly incurred and payable by the Company from the time the iron ore shall be placed on ship at the Company’s wharf to the time the same is delivered and accepted by the purchaser including —
 - (1) ocean freight;
 - (2) marine insurance;
 - (3) port and handling charges at the port of discharge;
 - (4) all costs properly incurred in delivering the iron ore from port of discharge to the smelter and evidenced by relevant invoices;
 - (5) all weighing sampling assaying inspection and representation costs;
 - (6) all shipping agency charges after loading on and departure of ship from the Company’s wharf;
 - (7) all import taxes by the country of the port of discharge; and

(8) such other costs and charges as the Minister may in his discretion consider reasonable in respect of any shipment or sale;

(ii) in all other cases, the deemed f.o.b. value.

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

“iron ore” includes iron ore concentration products;

“iron ore concentration products” means saleable products from iron ore which has —

- (i) been treated in the Heavy Medium Drum Plants, the Heavy Medium Cyclone Plant or the Wet High Intensity Magnetic Separation Plant of the Mount Tom Price concentration plant; or
- (ii) passed through the primary wet screens of the Mount Tom Price concentration plant with the intention that it would be treated in the said Heavy Medium Drum Plants, Heavy Medium Cyclone Plant or Wet High Intensity Magnetic Separation Plant but which was not able to be so treated in the normal course of operating practice because of malfunction in any of those plants or maintenance or repair of or operational plant surges of the feed to any of those plants.

The Minister may approve other iron ore upgrading plants of the Company for the purpose of this definition;

“lump ore” means iron ore (not being iron ore concentration products) which is nominally sized plus six millimetres minus thirty millimetres;”;

- (c) in the definition of “associated company”, by deleting “section 6 of the *Companies Act 1961*” and substituting the following —
“section 7 of the *Companies (Western Australia) Code*”;
 - (d) in the definition of “metallised agglomerates”, by deleting “iron ore concentrates” and substituting the following —
“iron ore concentration products”;
 - (e) in the definition of “mineral lease”, by inserting after “10F” the following —
“or 10I”.
- (2) Clause 9(1)(b) —
in the proviso, by deleting “concentrates” and substituting the following —
“concentration products”.
- (3) Clause 10(2)(j) —
by deleting paragraph (j) of clause 10(2) and substituting the following paragraph —
- “(j) pay to the State royalty on all iron ore from the mineral lease (other than iron ore shipped solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) as follows —
 - (i) on lump ore and on fine ore where such fine ore is not sold or shipped separately as such at the rate of 7.5% of the f.o.b. value;
 - (ii) on fine ore sold or shipped separately as such at the rate of 3.75% of the f.o.b. value;
 - (iii) on iron ore concentration products at the rate of 3.25% of the f.o.b. value;
 - (iv) on all other iron ore of whatever kind at the rate of 7.5% of the f.o.b. value.

Where iron ore concentration products are produced from an admixture of iron ore from the mineral lease and other iron ore a portion (and a portion only) of the iron ore concentration products so produced being equal to the proportion that the amount of iron in the iron ore from the mineral lease used in the production of those iron ore concentration products bears to the total amount

of iron in the iron ore so used shall be deemed to be produced from iron ore from the mineral lease;”.

(4) Clause 10(2)(k) —

- (a) by deleting “or iron ore concentrates the subject of royalty hereunder and shipped sold” and substituting the following —

“(and in respect of iron ore concentration products specifying whether they fall within paragraph (i) or (ii) of the definition of iron ore concentration products) the subject of royalty hereunder and shipped sold transferred or otherwise disposed of”;

- (b) by deleting “of iron ore concentrates produced or iron ore used and in respect of all iron ore shipped or sold” and substituting the following —

“thereof or if the f.o.b. value is not then finally calculated, agreed or determined”;

- (c) by inserting after “of such iron ore” the following —

“or on the basis of estimates as agreed or determined”;

- (d) by deleting “f.o.b. revenue realised in respect of the shipments shall have been ascertained” and substituting the following —

“f.o.b. value shall have been finally calculated, agreed or determined”.

(5) Clause 10(2)(n) —

- (a) by inserting after “the Company” the following —

“including contracts”;

- (b) deleting “f.o.b. revenue payable in respect of any shipment of iron ore hereunder the Company will take reasonable steps” and substituting the following —

“f.o.b. value in respect of any shipment sale transfer or other disposal or use or production of iron ore hereunder the Company will take reasonable steps (i) to provide the Minister with current prices for iron ore and other details and information that may be required by the Minister for the purpose of agreeing or determining the f.o.b. value and (ii)”;

- (c) by deleting “hereunder; and” and substituting the following -
“hereunder.”.
- (6) By deleting clause 10(2)(o).
- (7) By inserting after clause 10H the following clause —
Brockman No. 2 Detritals Deposit
- “10I. (1) Notwithstanding the provisions of the Mining Act or the *Mining Act 1978* the Company may on or before the 1st day of October, 1990 or such later date as the parties may agree apply to the Minister for Mines for inclusion in the mineral lease of such of the land coloured red on the plan marked ‘D’ (initialled by or on behalf of the parties hereto for the purpose of identification) as the Company at the time of such application holds under exploration licences granted under the *Mining Act 1978* and the Minister for Mines shall, subject to the Company surrendering the lands so applied for out of the exploration licences include the land so applied for (hereinafter called “the Brockman No. 2 Detritals Deposit”) in the mineral lease by endorsement on the mineral lease subject to such of the conditions of the surrendered exploration licences as the Minister for Mines determines but otherwise subject to the same terms covenants and conditions as apply to the mineral lease (with such apportionment of rents as is necessary) and notwithstanding that the survey of the Brockman No. 2 Detritals Deposit has not been completed but subject to correction to accord with the survey when completed at the Company’s expense.
- (2) On or before the 1st day of October, 1990 (or thereafter within such extended time as the Minister may allow as hereinafter provided) the Company shall submit to the Minister to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister) with respect to the mining of iron ore from the Brockman No. 2 Detritals Deposit and the

transportation of iron ore mined to the Company's Paraburdoo-Dampier railway which proposals shall make provision for the necessary workforce and associated population required to enable the Company to mine and recover iron ore from the Brockman No. 2 Detritals Deposit and shall include the location, area, layout, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely

- (a) the mining and recovery of iron ore including mining crushing screening handling transport and storage of iron ore and plant facilities;
- (b) roads;
- (c) housing and accommodation for the persons engaged in the development and/or mining of the Brockman No. 2 Detritals Deposit and associated activities including the provision of utilities, services and associated facilities;
- (d) water supply;
- (e) power supply;
- (f) iron ore transportation;
- (g) airstrip and other airport facilities and services;
- (h) any other works, services or facilities desired by the Company;
- (i) use of local labour professional services manufacturers suppliers contractors and materials and measures to be taken with respect to the engagement and training of employees by the Company its agents and contractors;
- (j) any leases licences or other tenures of land required from the State; and
- (k) an environmental management programme as to measures to be taken, in respect of the Company's activities at the Brockman No. 2 Detritals Deposit, for rehabilitation and

the protection and management of the environment.

- (3) The proposals pursuant to subclause (2) of this clause may with the approval of the Minister or if so required by him be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (k) of that subclause.
- (4) On receipt of the said proposals the Minister shall subject to the *Environmental Protection Act 1986* —
- (a) approve of the said proposals either wholly or in part without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (2) of this clause not covered by the said proposals; or
 - (c) require as a condition precedent to the giving of his approval to the said proposals that the Company makes such alteration thereto or complies with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use of other parties as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions

PROVIDED ALWAYS that where implementation of any proposals hereunder has been approved pursuant to the *Environmental Protection Act 1986* subject to conditions or procedures, any approval or decision of the Minister under this clause shall if the case so requires incorporate a requirement that the Company make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

- (5) The Minister shall within two months after receipt of the said proposals or, if applicable, within two months of service on him of an authority under section 45(7) of the *Environmental Protection Act 1986* give notice to the Company of his decision in respect of the same.
- (6) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (4) of this clause the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (7) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (4) of this clause and the Company considers that the decision is unreasonable the Company within two months after receipt of the notice mentioned in subclause (5) of this clause may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision
PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (4) of this clause shall not be referable to arbitration hereunder.
- (8) The Company may withdraw its proposals submitted pursuant to subclause (2) of this clause at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the proposed mining of the Brockman No. 2 Detritals Deposit.
- (9) The Company shall implement the proposals as approved by the Minister or an award made on arbitration (except where the proposals are withdrawn) as the case may be in accordance with the terms thereof and in such implementation shall comply with all requirements in connection with the protection of the environment that may be made by the State or by any State agency or instrumentality or any local or

other authority or statutory body of the State pursuant to any Act from time to time in force.

- (10) (a) If the Company at any time during the continuance of this Agreement desires to significantly modify expand or otherwise vary its activities at the Brockman No. 2 Detritals Deposit beyond those specified in any proposals approved or determined under this clause it shall give notice of such desire to the Minister and if required by the Minister within two months of the giving of such notice shall submit to the Minister within such period as the Minister may reasonably allow detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (k) of subclause (2) of this clause as the Minister may require. The provisions of subclauses (3) to (8) of this clause shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause. The Company shall implement the proposals as approved by the Minister or an award made on arbitration as the case may be in accordance with the terms thereof and the provisions of subclause (9) of this clause.
- (b) If the Minister does not require the Company to submit proposals under paragraph (a) of this subclause the Company may, subject to compliance with all applicable laws, proceed with the modification expansion or variation of its activities the subject of the notice to the Minister under that paragraph.
- (11) (a) The Company shall, in respect of the matters referred to in paragraph (k) of subclause (2) of this clause and which are the subject of proposals approved or determined under this clause carry out a continuous programme including monitoring to ascertain the effectiveness of the measures it is taking pursuant to such proposals for rehabilitation and

- the protection and management of the environment and shall as and when reasonably required by the Minister from time to time (but not more frequently than once in every twelve months) submit to the Minister a detailed report thereon.
- (b) Whenever as a result of its monitoring under paragraph (a) of this subclause or otherwise information becomes available to the Company which in order to more effectively rehabilitate, protect or manage the environment may necessitate or could require any changes or additions to any proposals approved or determined under this clause or require matters not addressed in any such proposals to be addressed the Company shall forthwith notify the Minister thereof and with such notification shall submit a detailed report thereon.
 - (c) The Minister may within two (2) months of the receipt of a detailed report pursuant to paragraphs (a) or (b) of this subclause notify the Company that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the report and such other matters as the Minister may require.
 - (d) The Company shall within two months of the receipt of a notice given pursuant to paragraph (c) of this subclause submit to the Minister additional detailed proposals as required and the provisions of subclauses (4), (5), (6), (7), (9) and (10) of this clause and this subclause shall *mutatis mutandis* apply in respect of such proposals.
- (12) The Company shall, in respect of its activities at the Brockman No. 2 Detritals Deposit in lieu of the provisions of clause 10(2)(i) of this Agreement —
- (a) except in those cases where the Company can demonstrate it is impracticable so to do, use labour available within Western Australia or if

- such labour is not available then, except as aforesaid, use labour otherwise available within Australia;
- (b) as far as it is reasonable and economically practicable so to do, use the services of engineers surveyors architects and other professional consultants experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within Western Australia or if such services are not available within Western Australia then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;
 - (c) during design and when preparing specifications calling for tenders and letting contracts for works materials plant equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that Western Australian and Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote;
 - (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and where possible preference to other Australian suppliers manufacturers and contractors;
 - (e) if notwithstanding the foregoing provisions of this subclause a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and

where possible preference to tenders
arrangements or proposals that include
Australian participation;

- (f) except as otherwise agreed by the Minister in every contract entered into with a third party for the supply of services labour works materials plant equipment and supplies require as a condition thereof that such third party shall undertake the same obligations as are referred to in paragraphs (a) — (e) of this subclause and shall report to the Company concerning such third party's implementation of that condition;
- (g) submit a report to the Minister at monthly intervals or such longer period as the Minister determines commencing from the 1st day of October, 1990 concerning its implementation of the provisions of this subclause together with a copy of any report received by the Company pursuant to paragraph (f) of this subclause during that month or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine; and
- (h) keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia together with its reasons therefor and shall as and when required by the Minister consult with the Minister with respect thereto.

- (13) The Company shall be responsible for the provision at no cost to the State in Tom Price of suitable accommodation if required for its employees and the dependants of its employees and for other persons (and dependants of those persons) engaged in the development and/or mining of the Brockman No. 2 Detritals Deposit and associated activities.
- (14) The Company shall except as otherwise agreed by the Minister pay to the State or the appropriate authority the capital cost of establishing and providing additional services and facilities and associated equipment including sewerage and water supply schemes, main drains, education, police and hospital services in Tom Price to the extent to which those additional works and services are made necessary by reason of the persons (and their dependants) engaged in the development and/or mining of the Brockman No. 2 Detritals Deposit and associated activities residing therein or by reason of the Company's activities in relation to the Brockman No. 2 Detritals Deposit or such proportion of any such cost as may be agreed by the Minister taking into account the permanent or temporary nature of the services or facilities. The additional services, works and associated equipment referred to in this subclause shall be provided by the State (or the State shall cause the same to be provided) to a standard normally adopted by the State in providing new services works and associated equipment in similar cases in comparable towns.
- (15) The Company shall confer with the Minister and the relevant local authority with a view to assisting in the cost of providing at Tom Price appropriate community recreation, civic, social and commercial amenities if required as a result of the development and/or mining of the Brockman No. 2 Detritals Deposit and associated activities.”.

5. The Paraburdoo Agreement is hereby varied as follows —
- (1) Clause 6(2)(b) —
in the proviso, by deleting “concentrates” in both cases where it occurs and substituting in each place the following —
“concentration products”.
 - (2) Clause 7(4) —
 - (a) by deleting “, (n) and (o)” and substituting the following —
“and (n)”;
 - (b) in paragraph (f), by deleting “therefrom:” and substituting the following —
“therefrom.”;
 - (c) by deleting paragraph (g).

IN WITNESS WHEREOF these presents have been executed the day and the year first hereinbefore written.

SIGNED by the said
THE HONOURABLE CARMEN
MARY LAWRENCE, B.Psych.,
Ph.D., M.L.A., in the
presence of:

}

CARMEN LAWRENCE

J. M BERINSON
MINISTER FOR RESOURCES

THE COMMON SEAL of
HAMERSLEY IRON PTY.
LIMITED was hereunto
affixed by authority
of the Directors in the
presence of:

}

[C.S.]

Director M. A. O’LEARY

Secretary G. BABON

[Tenth Schedule inserted: No. 32 of 1990 s. 6.]

Eleventh Schedule — Tenth Supplementary Agreement

[s. 2]

*[Heading inserted: No. 42 of 1992 s. 6; amended: No. 19 of 2010
s. 4.]*

THIS AGREEMENT is made this 25th day of May 1992

B E T W E E N :

THE HONOURABLE CARMEN MARY LAWRENCE, B. Psych., Ph.D., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part

AND

HAMERSLEY IRON PTY. LIMITED A.C.N. 004 558 276 a company incorporated in Victoria and having its principal office in the State of Western Australia at 191 St. George’s Terrace, Perth (hereinafter called “the Company” in which term shall be included its successors and assigns) of the other part.

WHEREAS :

- (a) the State and the Company are the parties to the agreement dated the 30th day of July, 1963 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*;
- (b) the said agreement has been varied by the following agreements made between the parties hereto —
 - (i) an agreement dated the 27th day of October, 1964 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1964*;
 - (ii) an agreement dated the 8th day of October, 1968 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*;
 - (iii) an agreement dated the 9th day of May, 1979 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1979*;

- (iv) an agreement dated the 26th day of April, 1982 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Amendment Act 1982*;
 - (v) an agreement dated the 28th day of May, 1987 which agreement was ratified by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Amendment Act 1987*;
 - (vi) an agreement dated the 27th day of October, 1987 which agreement was ratified by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act (No. 2) 1987*, and
 - (vii) an agreement dated the 14th day of June, 1990 which agreement was ratified by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Amendment Act 1990*,
and as so varied is referred to in this Agreement as “the Principal Agreement”;
- (c) the agreement dated the 8th day of October, 1968 referred to in paragraph (ii) of recital (b) hereof has been varied by the following agreements made between the State and the Company —
- (i) an agreement dated the 10th day of March, 1972 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1972*;
 - (ii) an agreement dated the 5th day of October, 1976 which agreement was approved by and is scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1976*;
 - (iii) the agreement dated the 26th day of April, 1982 referred to in paragraph (iv) of recital (b) hereof;
 - (iv) the agreement dated the 28th day of May, 1987 referred to in paragraph (v) of recital (b) hereof;
 - (v) the agreement dated the 27th day of October, 1987 referred to in paragraph (vi) of recital (b) hereof; and
 - (vi) the agreement dated the 14th day of June, 1990 referred to in paragraph (vii) of recital (b) hereof,
and as so varied is referred to in this Agreement as “the Paraburdoo Agreement”; and
- (d) the parties wish to vary the Principal Agreement and the Paraburdoo Agreement.

NOW THIS DEED WITNESSETH —

1. Subject to the context the words and expressions used in this Agreement have the same meanings as they have in and for the purpose of the Principal Agreement and the Paraburdoo Agreement respectively.
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.
3. The subsequent clauses of this Agreement shall not operate unless and until —
 - (a) the Bill to ratify this Agreement as referred to in clause 2 hereof is passed as an Act before the 31st day of December, 1992 or such later date if any as the parties hereto may mutually agree upon; and
 - (b) a Bill to ratify an agreement of even date herewith between the State of the first part the Company and Hamersley Resources Limited of the second part and Australian Mining and Smelting Limited of the third part is passed as an Act before the 31st day of December, 1992 or such later date if any as the parties hereto may mutually agree upon.

If the said Bills are not passed before that date or later date or dates (as the case may be) this Agreement will then cease and determine and neither of the parties hereto will have any claim against the other of them with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement.

4. The Principal Agreement is hereby varied as follows —
 - (1) Clause 1 —
 - (a) in the definition of “mineral lease”, by deleting “or 10I” and substituting the following —

“ , 10I or 10J”;
 - (b) by deleting the definition of “Mining Act” and substituting the following definitions —

“ “*Mining Act 1904*” means the *Mining Act 1904* and the amendments thereto and the regulations made thereunder as in force on the 31st day of December, 1981;

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

- (c) in the definition of “Minister for Mines”, by inserting after “Act” the following —
“1904 and the *Mining Act 1978*”;
 - (d) in the paragraph commencing “reference in this Agreement to an Act”, by inserting after “Mining Act” the following —
“1904”;
 - (e) by inserting, in the appropriate alphabetical positions, the following definitions —
 - “ “mining lease” means the mining lease referred to in clause 10K hereof and includes any renewal thereof and according to the requirements of the context shall describe the area of land from time to time demised thereby as well as the instrument by which it is demised;
 - “Wittenoom mining areas” means the areas delineated and coloured red on the plan marked “E” initialled by or on behalf of the parties hereto for the purpose of identification;
 - “Wittenoom rights of occupancy” means the rights of occupancy of the Wittenoom mining areas granted in respect of Temporary Reserves Nos. 5617H, 5618H, 5619H, 5620H, 5623H, 5624H, 5625H, 5585H and 5587H and includes any renewals thereof;”.
- (2) Clause 2 paragraph (a) —
by inserting after “Act” the following —
“1904”.
- (3) Clause 9 subclause (1) —
- (a) in paragraph (b), by inserting after “Mining Act” the following —
“1904”;
 - (b) in paragraph (c) —
 - (i) by deleting “machinery and tailings leases (including leases for the dumping of overburden) and such other leases licenses reserves and tenements under the Mining Act or” and substituting the following —

- “general purpose leases, miscellaneous licences and mining leases (but not for iron) under the *Mining Act 1978* and such other leases licences and reserves”;
- (ii) by deleting “lease;” and substituting the following —
“lease and as the Minister may approve. Notwithstanding the *Mining Act 1978* —
- (i) the Company may with the prior approval of the Minister for Mines apply from time to time for general purpose leases for the purposes of its operations under this Agreement in respect of areas of land greater than the maximum area provided for under that Act;
- (ii) where land applied for by the Company as a general purpose lease, miscellaneous licence or mining lease under this paragraph is vacant Crown land or land held by the Company under a pastoral lease, the application may be dealt with and granted by the Minister for Mines as if the land applied for was land that had been exempted from the provisions of Part IV of the *Mining Act 1978* pursuant to section 19 of that Act.”.
- (4) Clause 9 subclause (4)(a) —
- (a) by deleting “Mining Act” and substituting the following —
“*Mining Act 1904* or the *Mining Act 1978*”.
- (b) by inserting after “mineral lease” the following —
“or the mining lease”.
- (5) Clause 10 subclause (2)(e) —
by inserting after “mineral lease” the following —
“and all iron ore mined from the mining lease”.
- (6) Clause 10 subclause (2)(g) —
by inserting after “mineral lease” the following —
“and the mining lease”.

- (7) Clause 10 subclause (2)(j) —
- (a) by inserting after “mineral lease”, where it first occurs, the following —
“and all iron ore from the mining lease”;
- (b) by inserting after “mineral lease”, where it secondly occurs, the following -
“and the mining lease or either of them”;
- (c) by inserting after “mineral lease”, where it thirdly and fourthly occurs, the following —
“and the mining lease or such one of them as the case may be”.
- (8) Clause 10E subclause (1) —
by deleting “in a form to be approved by the Minister”.
- (9) Clause 10F —
by inserting after “Act” the following —
“1904 or the *Mining Act 1978*”.
- (10) Clause 10H subclause (1)(a) —
by deleting “Minerals and Energy” in both places where it occurs and substituting in each place the following —
“Mines”.
- (11) Clause 10I subclause (1) —
by deleting “Mining Act or” and substituting the following —
“*Mining Act 1904* or”.
- (12) Clause 10I subclause (11) —
by deleting subclause (11) and substituting the following subclause —
“(11) (a) The Company shall, in respect of the matters referred to in paragraph (k) of subclause (2) of this clause and which are the subject of proposals approved or determined under this clause (hereinafter called “the approved proposals”) carry out a continuous programme of investigation, research and monitoring to ascertain the effectiveness of the measures it is taking both generally and pursuant to the approved

proposals as the case may be for protection and management of the environment.

- (b) The Company shall during the currency of this Agreement submit to the Minister —
- (i) not later than the 30th day of June, 1993 and the 30th day of June in each year thereafter (except those years in which a comprehensive report is required to be submitted pursuant to subparagraph (ii) of this paragraph) a brief report concerning investigations and research carried out pursuant to paragraph (a) of this subclause and the implementation by the Company of the elements of the approved proposals relating to the protection and management of the environment in the year ending the 30th day of April immediately preceding the due date for the brief report; and
 - (ii) not later than the 30th day of June, 1995 and the 30th day of June in each third year thereafter if so requested by the Minister from time to time, a comprehensive report on the result of such investigations and research and the implementation by the Company of the elements of the approved proposals relating to the protection and management of the environment during the three year period ending the 30th day of April immediately preceding the due date for the detailed report and the programme proposed to be undertaken by the Company during the following three year period in regard to investigation and research under paragraph (a) of this subclause and the implementation by the Company of the elements of the approved proposals relating to the protection and management of the environment.

- (c) The Minister may within two (2) months of receipt of a report pursuant to subparagraph (ii) of paragraph (b) of this subclause notify the Company that he —
 - (i) requires amendment of the report and/or programme for the ensuing 3 years; or
 - (ii) requires additional detailed proposals to be submitted for the protection and management of the environment.
 - (d) The Company shall within two (2) months of receipt of a notice pursuant to subparagraph (i) of paragraph (c) of this subclause submit to the Minister an amended report and/or programme as required. The Minister shall afford the Company full opportunity to consult with him on his requirements during the preparation of any amended report or programme.
 - (e) The Minister may within 1 month of receipt of an amended report or programme pursuant to paragraph (d) of this subclause notify the Company that he requires additional detailed proposals to be submitted for the protection and management of the environment.
 - (f) The Company shall within two months of the receipt of a notice given pursuant to subparagraph (ii) of paragraph (c) or paragraph (e) of this subclause submit to the Minister additional detailed proposals as required and the provisions of subclauses (4), (5), (6), (7), (9) and (10) of this clause and this subclause shall *mutatis mutandis* apply in respect of such proposals.”.
- (13) By inserting after Clause 10I the following clause —
- Additional areas
- “10J. (1) Notwithstanding the provisions of the *Mining Act 1904* or the *Mining Act 1978* the Company may from time to time during the currency of this Agreement apply to the Minister for areas held by the Company or an associated company under a mining tenement granted under the *Mining Act 1978* to be included in the mineral lease but so that the total area

of the mineral lease shall not at any time exceed 300 square miles. The Minister shall confer with the Minister for Mines in regard to any such application and if they approve the application the Minister for Mines shall upon the surrender of the relevant mining tenement include the area the subject thereof in the mineral lease subject to such of the conditions of the surrendered mining tenement as the Minister for Mines determines but otherwise subject to the same terms covenants and conditions as apply to the mineral lease (with such apportionment of rents as is necessary) and notwithstanding that the survey of such additional land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.

- (2) The Company shall not mine or carry out other activities (other than exploration, bulk sampling and testing) on any area or areas added to the mineral lease pursuant to subclause (1) of this clause unless and until proposals with respect thereto are approved or determined pursuant to the subsequent provisions of this clause.
- (3) If the Company desires to commence mining of iron ore or to carry out any other activities (other than as aforesaid) on the said areas it shall give notice of such desire to the Minister and shall within 2 months of the date of such notice (or thereafter within such extended time as the Minister may allow as hereinafter provided) and subject to the provisions of this Agreement submit to the Minister to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister) with respect to such mining or other activities.
- (4) The provisions of subclauses (2) - (15) of clause 10I of this Agreement shall apply to proposals under this clause and mining and other activities carried on the areas the subject of proposals under this clause *mutatis mutandis* and as if —

- (a) references in those subclauses to the Brockman No. 2 Detritals Deposit were references to the areas added to the mineral lease pursuant to this clause; and
 - (b) the words “the 1st day of October, 1990” in sub-clause (12)(g) thereof were substituted by the words “the date of the Company’s notice under subclause (3) of this clause”.
- (14) By inserting after Clause 10J the following clause —
- Wittenoom mining areas
- “10K. (1) From and after the coming into operation of the agreement ratified by the *Iron Ore (Hamersley Range) Agreement Amendment Act 1992* and the release and surrender by Hamersley Resources Limited to the State of all its right title and interest in and to the Wittenoom rights of occupancy to the intent that thereafter the rights of occupancy shall be vested solely in the Company, the Company shall hold the Wittenoom rights of occupancy pursuant to this Agreement and as though they had been originally granted under this Agreement and the State shall thereafter cause to be granted to the Company as may be necessary successive renewals of such rights of occupancy as have not been surrendered by the Company pursuant to subclause (5) of this clause (each renewal for a period of twelve (12) months at the same rental and on the same terms as the existing rights of occupancy) the last of which renewals notwithstanding its currency shall expire —
- (i) on the date of application for inclusion of land in the mining lease by the Company under subclause (8) of this clause;
 - (ii) on the 31st day of December, 1999; or
 - (iii) on the determination of this Agreement pursuant to its terms;
- whichever shall first happen.
- (2) (a) Insofar as has not already been done to the satisfaction of the Minister the Company will

commence forthwith and carry out at its expense (with the assistance of experienced consultants where appropriate) —

- (i) a thorough geological and (as necessary) geophysical investigation of the iron ore deposits in the Wittenoom mining areas and the testing and sampling of such deposits;
 - (ii) a general reconnaissance of the various sites of proposed operations pursuant to the Agreement together with the preparation of suitable maps and drawings;
 - (iii) an engineering investigation of the route for a railway or other means of transport to serve the Wittenoom mining areas and other areas the subject of this clause;
 - (iv) a study of the technical and economic feasibility of the mining transporting processing and shipping of iron ore from Wittenoom mining areas;
 - (v) housing and accommodation for the workforce for operations on the Wittenoom mining areas and other areas the subject of this clause;
 - (vi) the investigation in areas approved by the Minister of suitable water supplies for mining industrial and townsite purposes;
 - (vii) metallurgical and market research.
- (b) The Company shall collaborate with and keep the State fully informed at least annually with the first report on or before the 1st day of December 1992 as to the progress and results of the Company's operations under paragraph (a) of this subclause. The Company shall furnish the Minister with copies of all reports received by it from consultants in connection with the matters referred to in paragraph (a) of this

- subclause and with copies of all findings made and reports prepared by them.
- (c) If the State concurrently carries out its own investigations and reconnaissances in regard to all or any of the matters mentioned in paragraph (a) of this subclause the Company shall cooperate with the State therein and so far as reasonably practicable will consult with the representatives or officers of the State and make full disclosures and expressions of opinion regarding matters referred to in this subclause.
- (d) On and after the grant of the mining lease the provisions of paragraphs (a), (b) and (c) of this subclause shall not apply to the land the subject of the mining lease.
- (3) On or before the 28th day of February, 1993 (or thereafter within such extended time as the Minister may allow as hereinafter provided) the Company shall submit to the Minister its detailed proposals with respect to the mining of iron ore within that part or those parts of the Wittenoom mining areas as the Company then desires to commence mining operations.
- (4) The provisions of subclauses (2) - (15) of clause 10I of this Agreement shall apply to proposals under subclause (3) of this clause and mining and other activities carried on the areas the subject of proposals under that subclause *mutatis mutandis* and as if —
- (a) references in those subclauses to the Brockman No.2 Detritals Deposit were references to the Wittenoom mining areas or, after the grant of the mining lease, to the mining lease;
- (b) there were inserted in subclause (2)(f) thereof after “transportation” the following —
“and a railway within portion of the land shown coloured blue on the said plan marked “E” and associated borrow pits within that land”; and

- (c) the words “October, 1990” in subclause (12)(g) thereof were substituted by the words “November, 1992”.
- (5) On application made by the Company not later than 14 days after all its proposals submitted pursuant to subclause (3) of this clause have been approved or determined for a mining lease for the mining of iron ore of the part or parts (not exceeding in total area 65 square miles and in the shape of a rectangular parallelogram or rectangular parallelograms or as near thereto as is practicable) of the Wittenoom mining areas as are the subject of the proposals the State shall, upon the surrender by the Company of the Wittenoom rights of occupancy if the area applied for is 65 square miles or if the area applied for is less than 65 square miles then upon the surrender of the rights of occupancy in respect of the Temporary Reserves which or any part of which is included in the application for the mining lease, cause to be granted to the Company a mining lease of such land (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed at the Company’s expense) for the mining of iron ore only such mining lease to be granted under and, except as otherwise provided in this Agreement, subject to the *Mining Act 1978* but in the form of the Second Schedule hereto.
- (6) Subject to the performance by the Company of its obligations under this Agreement and the *Mining Act 1978* and notwithstanding any provisions of the *Mining Act 1978* to the contrary the term of the mining lease shall be for a period of 21 years commencing from the date of receipt of the application therefor under subclause (5) of this clause with the right during the currency of this Agreement to take two successive renewals of the said term each for a further period of 21 years upon the same terms and conditions, subject to the sooner determination of the said term upon cessation or determination of this

Agreement such right to be exercisable by the Company making written application for any such renewal not later than one month before the expiration of the current term of the mining lease.

- (7) The Company shall —
- (a) by way of rent for the mining lease pay to the State annually in advance a sum equal to seventy (70) cents per acre of the area for the time being the subject of the mining lease commencing on and accruing from the date of application for the mining lease by the Company;
 - (b) from and after the fifteenth (15th) anniversary of the first transport of iron ore from the mining lease or the twentieth (20th) anniversary of the approval or determination of the Company's proposals submitted pursuant to subclause (3) of this clause whichever shall first occur pay an additional rental in respect of the mining lease equal to twenty five (25) cents per ton on all iron ore in respect of which royalty is payable under clause 10(2)(j) hereof in any financial year in relation to iron ore from the mining lease such additional rental to be paid within three (3) months after shipment sale or use as the case may be of the iron ore SO NEVERTHELESS that the additional rental to be paid under this proviso shall be not less than three hundred thousand dollars (\$300,000) in respect of any such year and the Company will within three (3) months after expiration of that year pay to the State as further rental the difference between three hundred thousand dollars (\$300,000) and the additional rental actually paid in respect of that year but any amount so paid in respect of any financial year in excess of the rental payable for that year at the rate of twenty five (25) cents per ton as aforesaid shall be offset by the Company against any amount payable by them to the

State above the minimum amounts payable to the State under this paragraph in respect of the two (2) financial years immediately following the financial year in respect of which the said minimum sum was paid.

- (8) (a) If the land in respect of which the mining lease is originally granted is less than 65 square miles in area then notwithstanding the *Mining Act 1978* the Company may once during the period from the grant of the mining lease to the 31st day of December, 1999 apply to the Minister for Mines for inclusion in the mining lease of such part or parts of the Wittenoom mining areas as the Company nominates and in respect of which it then holds rights of occupancy (not exceeding in total area 65 square miles less the area of the land in respect of which the mining lease was originally granted and in the shape of a rectangular parallelogram or rectangular parallelograms or as near thereto as is practicable) and the Minister for Mines shall include the land applied for in the mining lease upon the surrender by the Company of all rights of occupancy then held by the Company in respect of the Wittenoom mining areas subject to the same terms covenants and conditions as apply to the mining lease (with such apportionment of rents as is necessary) and notwithstanding that the survey of such additional land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.
- (b) The Company shall not mine or carry out other activities (other than exploration, bulk sampling and testing) on any area or areas added to the mining lease pursuant to paragraph (a) of this subclause unless and until proposals with respect thereto are approved or determined pursuant to this clause.

- (c) The provisions of subclauses (2) - (15) of clause 10I of this Agreement shall apply to proposals under this subclause and mining and other activities carried on the areas the subject of proposals under this subclause mutatis mutandis and as if —
 - (a) reference in those subclauses to the Brockman No.2 Detritals Deposit were references to the mining lease;
 - (b) the words “the 1st day of October 1990” in subclause (12)(g) thereof were substituted by the words “the date of submission of proposals under this subclause”.
- (9) The Company shall so conduct their operations in respect of the Wittenoom mining areas and the mining lease as to meet the reasonable requirements of the State in preserving and protecting National Park Reserve No. 30082.
- (10) The State shall ensure that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the expenditure conditions imposed by or under the *Mining Act 1978* in regard to the mining lease.
- (11) The Company shall lodge with the Department of Mines at Perth —
 - (a) such periodical reports (except reports in the form of Form 5 of the *Mining Regulations 1981* or other reports relating to expenditure on the mining lease) and returns as may be prescribed in respect of mining leases pursuant to regulations under the *Mining Act 1978* provided that the Minister for Mines may waive any requirement for lodgment of exploration data in respect of areas within the mining lease;
 - (b) on an annual basis, a report on iron ore reserves within the mining lease (using the scheme

- recommended by the Australasian Institute of Mining and Metallurgy and the Australian Mining Industry Council or future equivalent) together with a list of any geotechnical, metallurgical, geochemical and geophysical investigations carried out during the year and, if requested by the Department, details of any of those investigations;
- (c) reports on drilling operations and drill holes where the main purpose of the drilling was to discover or define future iron ore reserves on the mining lease and, if requested by the Department, reports on drilling done within blocks of proven iron ore for the purpose of mine planning.
- (12) Notwithstanding the provisions of this clause and the *Mining Act 1978* with the approval of the Minister the Company may from time to time (with abatement of future rent in respect to the area surrendered but without any abatement of rent already paid or any rent which has become due and has been paid in advance) surrender to the State all or any portion or portions of the mining lease.
- (13) The Company in accordance with approved proposals may without payment of royalty obtain stone sand clay and gravel from the mining lease for the construction of works (and the maintenance thereof) for the purposes of this Agreement and from the land shown coloured blue on the said plan marked "E" for the construction of the railway over that land.
- (14) (a) Notwithstanding anything contained or implied in this Agreement or in the mining lease or the *Mining Act 1978* mining tenements may subject to the provisions of this clause be granted to or registered in favour of persons other than the Company under the *Mining Act 1978* in respect of the areas subject to the mining lease unless the Minister for Mines determines that such grant or registration is likely unduly to

prejudice or interfere with the current or prospective operations of the Company hereunder with respect to iron ore assuming the taking by the Company of reasonable steps to avoid the prejudice or interference or is likely unduly to reduce the quantity of economically extractable iron ore available to the Company.

- (b) A mining tenement granted or registered as a result of this Clause shall not confer any right to mine or otherwise obtain rights to iron ore on the tenement.
- (c)
 - (i) In respect of any application for a mining tenement made under the *Mining Act 1978* in respect of an area the subject of the mining lease the Minister for Mines shall consult with the Minister and the Company with respect to the significance of iron ore deposits in, on or under the land the subject of the application and any effect the grant of a mining tenement pursuant to such application might have on the current or prospective iron ore operations of the Company under this Agreement.
 - (ii) Where the Minister for Mines, after taking into account any matters raised by the Minister or the Company determines that the grant or registration of the application is likely to have the effect on the operations of the Company or the iron ore referred to in paragraph (a) of this subclause, he shall, by notice served on the Warden to whom the application was made, refuse the application.
 - (iii) Before making a determination pursuant to subparagraph (ii) of this paragraph the Minister for Mines may request the Warden to hear the application and any objections thereto and as soon as

practicable after the hearing of the application to report to the Minister for Mines on the application and the objections and the effect on the current or prospective operations of the Company or the quantity of economically extractable iron ore that a grant of the application might have.

- (d) (i) Except as provided in paragraph (c) of this subclause a Warden shall not hear or otherwise deal with an application for a mining tenement in respect of an area the subject of the mining lease unless and until the Minister for Mines has notified him that it is not intended to refuse the application pursuant to paragraph (c) of this subclause. Following such advice to the Warden the application shall be disposed of under and in accordance with the *Mining Act 1978* save that where the Warden has heard the application and objections thereto pursuant to paragraph (c) of this subclause, the application may be dealt with by the Warden without further hearing.
- (ii) The Company may exercise in respect of any application heard by the Warden any right that it may have under the *Mining Act 1978* to object to the granting of the application.
- (iii) Any mining tenement granted pursuant to such application shall, in addition to any covenants and conditions that may be prescribed or imposed, be granted subject to such conditions as the Minister for Mines may determine having regard to the matters the subject of the consultations with the Minister and the Company pursuant to paragraph (c)(i) of

- this subclause and any matters raised by the Company before the Warden.
- (e) (i) On the grant of any mining tenement pursuant to an application to which this subclause applies the land the subject thereof shall thereupon be deemed excised from the mining lease (with abatement of future rent in respect of the area excised but without any abatement of rent already paid or of rent which has become due and has not been paid in advance).
- (ii) On the expiration or sooner determination of any such mining tenement or, if that tenement is a prospecting licence or exploration licence and a substitute tenement is granted in respect thereof pursuant to an application made under section 49 or section 67 of the *Mining Act 1978*, then on the expiration or sooner determination of the substitute title the land the subject of such mining tenement or substitute title as the case may be shall thereupon be deemed to be part of the land in the mining lease (with appropriate adjustment of rental) and shall be subject to the terms and conditions of the mining lease and this Agreement.
- (15) (a) In this subclause —
- “further processing” means the production of products, other than iron ore concentrates, from iron ore and includes the production of iron or steel, metallised agglomeration, sintering, pelletisation or other comparable changes in the physical character of iron ore;
- “iron ore concentrates” means products resulting from the concentration or other beneficiation of iron ore, other than by crushing

or screening, and includes thermal electrostatic magnetic and gravity processing, but excludes the production of iron or steel, metallised agglomeration, sintering, pelletisation or other comparable changes in the physical character of iron ore.

- (b) The Company shall from time to time renew the investigations already commenced by it as to the technical and economic feasibility of establishing within the said State a plant or plants for the production of iron ore concentrates and for further processing.
- (c) The Company shall not later than ten (10) years after the first transport of iron ore from the mining lease or such earlier time as the Company has transported or sold a total of one hundred and fifty million (150,000,000) tons of iron ore from the mining lease submit to the Minister detailed proposals for the establishment of the said plant or plants of such design and dimensions that will have the capacity to process into iron ore concentrates annually —
 - (i) iron ore of a tonnage not less than twenty per cent (20%) of the average of the transports or sales of iron ore from the mining lease during the five (5) years immediately preceding the date of the submission of the said proposals; or
 - (ii) two million (2,000,000) tons of iron ore whichever is the greater.
- (d) The plant or plants to be established by the Company pursuant to paragraph (c) of this subclause shall commence operation not later than two (2) years after the date of the submission of the said proposals referred to in paragraph (c) hereof and shall continue in operation until the Company provide new or

expanded plant or plants pursuant to the provisions of this subclause.

- (e) The Company shall not later than twenty (20) years after the first transport of iron ore from the mining lease or such earlier time as the Company has transported or sold a total of three hundred million (300,000,000) tons of iron ore submit to the Minister detailed proposals for the expansion of the said plant or plants or the establishment of a new plant of such design and dimensions that will have the capacity (inclusive of the existing capacity provided under paragraph (c) of this subclause to process into iron ore concentrates annually —
 - (i) iron ore of a tonnage not less than twenty per cent (20%) of the average of the transports or sales of iron ore by the Company during the five (5) years immediately preceding the date of the submission of the said proposals; or
 - (ii) four million (4,000,000) tons of iron ore whichever is the greater.
- (f) The plant or plants expanded or established by the Company pursuant to paragraph (e) of this subclause shall commence operation not later than two (2) years after the date of the submission of the said proposals referred to in paragraph (e) of this subclause and shall continue in operation until the Company provides new or expanded plant or plants pursuant to the provisions of this clause.
- (g) The Company shall not later than thirty (30) years after the first transport of iron ore from the mining lease or such earlier time as the Company have transported or sold a total of four hundred and fifty million (450,000,000) tons of iron ore submit to the Minister detailed

proposals for the expansion of the said plant or plants or the establishment of a new plant of such design and dimensions that will have the capacity (inclusive of the existing capacity provided under paragraphs (c) and (e) of this subclause to process into iron ore concentrates annually —

- (i) iron ore of a tonnage not less than twenty per cent (20%) of the average of the transports or sales of iron ore by the Company during the five (5) years immediately preceding the date of the submission of the said proposals; or
 - (ii) six million (6,000,000) tons of iron ore whichever is the greater.
- (h) The plant or plants expanded or established by the Company pursuant to paragraph (g) of this subclause shall commence operation not later than two (2) years after the date of the submission of the said proposals referred to in paragraph (g) of this subclause hereof and shall be operated by the Company until the expiration or sooner determination of this Agreement.
- (i) If the detailed proposals referred to in this subclause are submitted by the Company to the Minister within the times mentioned the Minister shall in each case within two (2) months of the receipt thereof give to the Company notice either of his approval of the said proposals or of any objections he has or alterations he desires thereto. In the latter case the Minister shall afford the Company an opportunity to consult with and to submit new or further proposals to him and if within thirty (30) days after receipt of such notice agreement is not reached as to the said proposals the Company may within a further period of thirty (30) days by notice to the State elect to refer to arbitration as hereinafter

provided any question as to the reasonableness of the Minister's decision. If by the award on the arbitration the question is decided in favour of the Company the Minister shall be deemed to have approved of the said proposals as submitted by the Company.

- (j) The Company shall implement the decision of the Minister or an award made on an arbitration as the case may be in accordance with the terms thereof.
- (k) In the event that the Company undertake further processing at any of the said plants referred to in this clause, the Minister may after consultation with the Company make such reductions to the capacity requirements of any plant specified in paragraphs (c), (e) and (g) of this subclause as he considers appropriate having regard to the extent to which such further processing provides benefits to the State in terms of capital investment employment and utilisation of the iron ore resource within the mining lease by the Company.
- (l) References in this subclause to iron ore do not include manganiferous ore and manganese ore.
- (m) The provisions of clause 23 hereof shall apply to the performance of the Company's obligations under this subclause with the following amendments —
 - (i) the insertion after "sell ore" of the following —

"or iron ore concentrates and products of further processing";
 - (ii) the insertion after "economic conditions" of the following —

"or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State)".

- (n) The provisions of clause 11(l) hereof relating to a default by the Company in the due performance or observance of its covenants or obligations to the State shall not apply to the covenants and obligations of the Company under this subclause and in lieu thereof the following provisions shall apply —

If the Company shall make default in the due performance or observance of any of the covenants or obligations to the State in this subclause on its part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to it by the State then the State may by notice to the Company determine the mining lease and the rights of the Company thereunder and under any lease (except any lease of the railway to be constructed by the Company over portion of the land shown coloured blue on the said plan marked “E”) licence easement or right granted in respect of or for the purposes of the Company’s activities on the mining lease PROVIDED THAT if the State gives the Company a notice specifying a default on the part of the Company and the Company promptly refers to arbitration the question whether such alleged default has taken place then if upon the arbitration it is decided that the Company has made such default but that there has been a bona fide dispute and that the Company has not been dilatory in pursuing the arbitration then neither the mining lease nor any of the rights hereinbefore referred to may be determined unless and until a reasonable time fixed by the award upon the arbitration as the time within which the Company must remedy such default has elapsed without such default having been remedied.”.

- (15) Clause 11 —
- (a) in paragraph (a), by deleting “clause 7 hereof” and substituting the following —
“this Agreement”;
 - (b) in paragraph (b)(ii), by inserting after “mineral lease” the following —
“or the mining lease”;
 - (c) in paragraph (d)(i), by inserting after “mineral lease” the following —
“, the mining lease”.
 - (d) in paragraph (g), by inserting after “mineral lease” the following —
“, the mining lease”;
 - (e) in paragraph (i), by inserting after “Act” the following —
“1904”;
 - (f) in paragraph (k) —
 - (i) by inserting after “therewith” the following —
“and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the mining of iron ore”; and
 - (ii) by inserting after “rate” the following —
“PROVIDED THAT nothing in this paragraph shall prevent the Company making the election provided for by section 533B of the *Local Government Act 1960*”;
 - (g) in paragraph (l) by inserting after “clause 9(1)(a)” the following —
“and the entire mining lease as permitted under clause 10K”.
- (16) Clause 20A —
- (a) by inserting after “Act”, in the first place where it occurs, the following —
“1904”;

- (b) by inserting after “thereunder” the following —
“, of regulations 77 and 110 made under the *Mining Act 1978*”;
 - (c) by deleting “1904;” and substituting the following —
“1904 or the *Mining Act 1978*.”
- (17) Clause 20C(1) —
by inserting after “mineral lease” the following —
“or the mining lease”.
- (18) Clause 21 —
by inserting after “mineral lease” the following —
“and the mining lease”.
- (19) by inserting after the Schedule a second schedule as follows —

“ THE SECOND SCHEDULE
 WESTERN AUSTRALIA
 MINING ACT 1978
 IRON ORE (HAMERSLEY RANGE)
 AGREEMENT ACT 1963
 MINING LEASE

MINING LEASE NO.

The Minister for Mines a corporation sole established by the *Mining Act 1978* with power to grant leases of land for the purposes of mining in consideration of the rents hereinafter reserved and of the covenants on the part of the Lessee described in the First Schedule to this lease and of the conditions hereinafter contained and pursuant to the *Mining Act 1978* (except as otherwise provided by the Agreement (hereinafter called “the Agreement”) described in the Second Schedule to this lease) hereby leases to the Lessee the land more particularly delineated and described in the Third Schedule to this lease for iron ore subject however to the exceptions and reservations set out in the Fourth Schedule to this lease and to any other exceptions and reservations which subject to the Agreement are by the *Mining Act 1978* and by any Act for the time being in force deemed to be contained herein to hold to the Lessee this lease for a term of twenty one (21) years commencing on the date set out in the Fifth Schedule to this lease (subject to the sooner determination of the said term

upon the cessation or determination of the Agreement) upon and subject to such of the provisions of the *Mining Act 1978* except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the terms covenants and conditions set out in the Agreement and to the covenants and conditions herein contained or implied and any further conditions or stipulations set out in the Sixth Schedule to this lease the Lessee paying therefor the rents and royalties as provided in the Agreement with the right during the currency of the Agreement and in accordance with the provisions of the Agreement to take two successive renewals of the term each for a further period of 21 years upon the same terms and conditions subject to the sooner determination of the term upon cessation or determination of the Agreement PROVIDED ALWAYS that this lease shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this lease —

“Lessee” includes the successors and permitted assigns of the Lessee.

If the Lessee be more than one the liability of the Lessee hereunder shall be joint and several.

Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and to the regulations and by-laws for the time being in force thereunder.

FIRST SCHEDULE

HAMERSLEY IRON PTY. LIMITED ACN 004 558 276 a company incorporated in Victoria and having its principal office in the State of Western Australia at 191 St. George’s Terrace, Perth.

SECOND SCHEDULE

The Agreement (as amended from time to time) made between the State of Western Australia and HAMERSLEY IRON PTY. LIMITED and ratified by the *Iron Ore (Hamersley Range) Agreement Act 1963*.

THIRD SCHEDULE

(Description of land:)

Locality:

Mineral Field: Area, etc.:

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

FOURTH SCHEDULE

All petroleum as defined in the *Petroleum Act 1967* on or below the surface of the land the subject of this lease is reserved to the Crown in right of the State of Western Australia with the right of the Crown in right of the State of Western Australia and any person lawfully claiming thereunder or otherwise authorized to do so to have access to the land the subject of this lease for the purpose of searching for and for the operations of obtaining petroleum (as so defined) in any part of the land.

FIFTH SCHEDULE

(Date of commencement of the lease).

SIXTH SCHEDULE

(Any further conditions or stipulations).

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

5. The Paraburdoo Agreement is hereby varied as follows —
 - (1) Clause 1 —

in the paragraph commencing “Reference in this Agreement to an Act”, by inserting after “Mining Act” the following —
“1904”.

- (2) Clause 6 subclause (1) —
by inserting after “Act” the following —
“1904”.
- (3) Clause 6 subclause (2) —
- (a) in paragraph (b)(i), by inserting after “Mining Act” the following —
“1904”;
- (b) in paragraph (c) —
- (i) by deleting “machinery and tailings leases (including leases for dumping of overburden) and such other leases licences reserves and tenements under the Mining Act or” and substituting the following —
“general purpose leases, miscellaneous licences and mining leases (but not for iron) under the *Mining Act 1978* and such other leases licences and reserves”;
- (ii) by deleting “lease” and substituting the following —
“lease and as the Minister may approve. Notwithstanding the *Mining Act 1978* —
- (i) the Company may with the prior approval of the Minister for Mines apply from time to time for general purpose leases for the purposes of its operations under this Agreement in respect of areas of land greater than the maximum area provided for under that Act;
- (ii) where land applied for by the Company as a general purpose lease, miscellaneous licence or mining lease under this paragraph is vacant Crown land or land held by the Company under a pastoral lease, the application may be dealt with and granted by the Minister for Mines as if the land applied for was land that had been exempted from the provisions of Part IV of the *Mining Act 1978* pursuant to section 19 of that Act.”.

6. The amendments effected to clause 11(k) of the Principal Agreement by clause 4(15)(f) of this Agreement (and also applicable to the Paraburdoo Agreement by virtue of clause 8 of that Agreement) shall have effect, and shall be deemed to have had effect, from and after the 1st day of July, 1991.
7. The State shall exempt from any stamp duty which but for the operation of this Clause would or might be assessed and chargeable on the release and surrender by Hamersley Resources Limited of rights of occupancy referred to in clause 10K(1) of the Principal Agreement inserted by clause 4(14) of this Agreement.

IN WITNESS WHEREOF these presents have been executed the day and year first hereinbefore written.

SIGNED by the said
THE HONOURABLE CARMEN
MARY LAWRENCE in the
presence of:

}

CARMEN LAWRENCE

I. TAYLOR
MINISTER FOR STATE DEVELOPMENT

THE COMMON SEAL of
HAMERSLEY IRON PTY.
LIMITED was hereunto affixed
by authority of the Directors
in the presence of:

}

Director I. J. WILLIAMS

Secretary G. B. BABON

[Eleventh Schedule inserted: No. 42 of 1992 s. 6.]

Twelfth Schedule — Eleventh Supplementary Agreement

[s. 2]

[Heading inserted: No. 61 of 2010 s. 6.]

2010

**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 17th day of November 2010

BETWEEN

THE HONOURABLE COLIN JAMES BARNETT MLA., Premier of the State of Western Australia acting for and on behalf of the said State and 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.** Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
- 2.** The State shall sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and shall endeavour to secure its passage as an Act prior to 31 December 2010 or such later date as the parties may agree.
- 3.** (a) Clause 4 does not come into operation unless or until an Act passed in accordance with clause 2 ratifies this Agreement.

 (b) If by 30 June 2011, or such later date as may be agreed pursuant to clause 2, clause 4 has not come into operation then unless the parties hereto otherwise agree this Agreement shall cease and determine and neither party shall have any claim against the other party with respect to any matter or thing

arising out of or done or performed or omitted to be done or performed under this Agreement.

4. The Principal Agreement is hereby varied as follows:

(1) in clause 1:

- (a) by deleting the existing definitions of “fine ore” and “lump ore”;
- (b) by inserting in the appropriate alphabetical positions the following new definitions:

“approved proposal” means a proposal approved or determined under this Agreement;

“beneficiated ore”:

- (a) means iron ore that has been concentrated or upgraded (otherwise than solely by crushing, screening, separating by hydrocycloning or a similar technology which uses primarily size as a criterion, washing, scrubbing, trommelling or drying or by a combination of 2 or more of those processes) by the Company in a plant constructed pursuant to a proposal approved pursuant to an Integration Agreement or in such other plant as is approved by the Minister after consultation with the Minister for Mines and “beneficiation” and “beneficiate” have corresponding meanings; and
- (b) for the avoidance of doubt, includes iron ore concentration products from the Mount Tom Price concentration plant;

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

“Integration Agreement” means:

- (a) the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*, as from time to time added to, varied or amended; or

- (b) the agreement approved by and scheduled to the *Iron Ore (Robe River) Agreement Act 1964*, as from time to time added, to varied or amended; or
- (c) the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended; or
- (d) the agreement ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972*, as from time to time added to, varied or amended; or
- (e) the agreement ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended; or
- (f) the agreement ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996*, as from time to time added to, varied or amended; or
- (g) the agreement approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended; or
- (h) the agreement approved by and scheduled to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*, as from time to time added to, varied or amended; or
- (i) the agreement ratified by and scheduled to the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*, as from time to time added to, varied or amended; or
- (j) the agreement authorised by and as scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended; or
- (k) the agreement ratified by and scheduled to the *Iron Ore (Marillana Creek) Agreement Act 1991*, as from time to time added to, varied or amended;

“Integration Proponent” means in relation to an Integration Agreement, “the Company” or “the Joint

Venturers” as the case may be as defined in, and for the purpose of, that Integration Agreement;

“laws relating to native title” means laws applicable from time to time in the said State in respect of native title and includes the *Native Title Act 1993* (Commonwealth);

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

“Related Entity” means a company in which:

- (a) as at 21 June 2010; and
- (b) after 21 June 2010, with the approval of the Minister,

a direct or (through a subsidiary or subsidiaries within the meaning of the *Corporations Act 2001* (Commonwealth)) indirect shareholding of 20% or more is held by:

- (c) Rio Tinto Limited ABN 96 004 458 404; or
- (d) BHP Billiton Limited ABN 49 004 028 077; or
- (e) those companies referred to in paragraphs (c) and (d) in aggregate;

“variation date” means the date on which clause 4 of the variation agreement made on or about 17 November 2010 between the State and the Company comes into operation;

“washing” means a process of separation by water using only size as a criterion;

- (c) in the definition of “agreed or determined” by:
 - (I) deleting “assessed at” and substituting “assessed on”; and
 - (II) deleting all the words after “shall have regard to” and substituting a colon followed by:
 - “(i) in the case of iron ore initially sold at cost pursuant to paragraph (B) of the proviso to clause 10(2)(e), the prices for that type of

iron ore prevailing at the time the price for such iron ore was agreed between the arm's length purchaser referred to in paragraph (B)(iii) of that proviso and the seller in relation to the type of sale and the relevant international seaborne iron ore market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value; and

- (ii) in any other case, the prices for that type of iron ore prevailing at the time the price for such iron ore was agreed between the Company and the purchaser in relation to the type of sale and the market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value;”;
- (d) in the definition of “Company’s wharf” by inserting “and in clauses 10(2)(e) and (f) also any additional wharf constructed by the Company pursuant to this Agreement” before the semi colon;
- (e) in the definition “f.o.b. value” by:
 - (i) in paragraph (i):
 - (A) inserting “subject to paragraph (ii),” before “in the case”; and
 - (B) deleting “assessed at” and substituting “assessed on”;
 - (ii) renumbering the existing paragraph (ii) as paragraph (iii); and
 - (iii) inserting after paragraph (i) the following new paragraph:
 - “(ii) in the case of iron ore initially sold at cost pursuant to paragraph (B) of the proviso to

clause 10(2)(e), the price which is payable for the iron ore by the arm's length purchaser as referred to in paragraph (B)(iii) of that proviso or, where the Minister considers, following advice from the appropriate Government department, that the price payable in respect of the iron ore does not represent a fair and reasonable market value for that type of iron ore assessed on an arm's length basis in the relevant international seaborne iron ore market, such amount as is agreed or determined as representing such a fair and reasonable market value, less all duties, taxes, costs and charges referred to in paragraph (i) above;"

- (f) in the definition of "iron ore" by deleting "iron ore concentration products" and substituting " , without limitation, beneficiated ore";
- (g) in the definition of "loading port" by:
 - (i) renumbering the existing paragraph (c) as paragraph (e); and
 - (ii) inserting after paragraph (b) the following new paragraphs:
 - "(c) the Port of Port Hedland; or
 - (d) any other port constructed after the variation date under an Integration Agreement; or";
- (h) in the definition of "metallised agglomerates" by deleting "or iron ore concentration products";
- (i) in the definition of "mineral lease" by inserting "10H," after "10F";
- (j) in the definition of "secondary processing" by deleting "concentration or other beneficiation of iron ore other than by crushing or screening" and substituting "beneficiation of iron ore";

(k) in the sentence regarding marginal notes by inserting “and clause headings” after “marginal notes”; and

(l) by inserting after that sentence the following new sentences:

“Words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context.

Nothing in this Agreement shall be construed:

(a) to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made by or under the EP Act; or

(b) to exempt the State or the Company from compliance with or to require the State or the Company to do anything contrary to any laws relating to native title or any lawful obligation or requirement imposed on the State or the Company as the case may be pursuant to any laws relating to native title; or

(c) to exempt the Company from compliance with the provisions of the *Aboriginal Heritage Act 1972* (WA).”;

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

“Additional Proposals

8A. (1) If the Company, at any time during the continuance of this Agreement after the variation date, desires to significantly modify, expand or otherwise vary its activities carried on pursuant to this Agreement (other than under clauses 10A, 10G, 10I, 10K or 10N) beyond those activities specified in any proposals approved pursuant to clauses 6 and 7 it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters

covered by such notice and such of the other matters mentioned in clause 5(1)(a) as the Minister may require.

- (2) A proposal may with the consent of the Minister (except in relation to an Integration Agreement) and that of any parties concerned (being in respect of an Integration Agreement the Integration Proponent for that agreement) provide for the use by the Company of any works installations or facilities constructed or established under a Government agreement.
- (3) Each of the proposals pursuant to subclause (1) may with the approval of the Minister, or shall if so required by the Minister, be submitted separately and in any order as to any matter or matters in respect of which such proposals are required to be submitted.
- (4) At the time when the Company submits the said proposals it shall submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with its reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto.
- (5) The Company may withdraw its proposals pursuant to subclause (1) at any time before approval thereof, or where any decision in respect thereof is referred to arbitration as referred to in clause 8B, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same.

Consideration of Company's proposals under clause 8A

- 8B. (1) In respect of each proposal pursuant to subclause (1) of clause 8A the Minister shall:
- (a) subject to the limitations set out below, refuse to approve the proposal (whether it requests the grant of new tenure or not) if the Minister is satisfied on reasonable grounds that it is not in the public interest for the proposal to be approved; or
 - (b) approve of the proposal without qualification or reservation; or
 - (c) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in clause 8A(1) not covered by the said proposal; or
 - (d) require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable, and in such a case the Minister shall disclose his reasons for such conditions,

PROVIDED ALWAYS that where implementation of any proposals hereunder has been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this clause shall if the case so requires incorporate a requirement that the Company make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

In considering whether to refuse to approve a proposal the Minister is to assess whether or not the implementation of the proposal by itself, or

together with any one or more of the other submitted proposals, will:

- (i) detrimentally affect economic and orderly development in the said State, including without limitation, infrastructure development in the said State; or
- (ii) be contrary to or inconsistent with the planning and development policies and objectives of the State; or
- (iii) detrimentally affect the rights and interests of third parties; or
- (iv) detrimentally affect access to and use by others of the lands the subject of any grant or proposed grant to the Company.

The right to refuse to approve a proposal conferred by paragraph (a) may only be exercised in respect of a proposal where the Minister is satisfied on reasonable grounds that a purpose of the proposal is the integrated use of works installations or facilities (as defined in subclause (7) of clause 10L for the purpose of that clause) as contemplated by clause 10L. It may not be so exercised in respect of a proposal if pursuant to clause 8C(5) the Minister, prior to the submission of the proposal, advised the Company in writing that the Minister has no public interest concerns (as defined in that clause) with the single preferred development (as referred to in clause 8C(5)(a)) the subject of the submitted proposals and those proposals are consistent (as to their substantive scope and content) with the information provided to the Minister pursuant to clause 8C(5) in respect of that single preferred development.

- (2) The Minister shall within 2 months after receipt of proposals pursuant to clause 8A(1) give notice to the Company of his decision in respect to the proposals, PROVIDED THAT where a proposal is

to be assessed under Part IV of the EP Act the Minister shall only give notice to the Company of his decision in respect to the proposal within 2 months after service on him of an authority under section 45(7) of the EP Act.

- (3) If the decision of the Minister is as mentioned in either of paragraphs (a), (c) or (d) of subclause (1) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (4) If the decision of the Minister is as mentioned in either of paragraphs (c) or (d) of subclause (1) and the Company considers that the decision is unreasonable the Company within 2 months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder. A decision of the Minister under paragraph (a) of subclause (1) shall not be referable to arbitration under this Agreement.
- (5) If by the award made on the arbitration pursuant to subclause (4) the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.
- (6) The Company shall implement the approved proposals in accordance with the terms thereof.
- (7) Notwithstanding clause 21, the Minister may during the implementation of approved proposals approve variations to those proposals.

Notification of possible proposals

- 8C. (1) If the Company, upon completion of a pre-feasibility study in respect of any matter that would require the submission and approval of proposals pursuant to this Agreement (being proposals which will have as their purpose, or one of their purposes, the integrated use of works installations or facilities as contemplated by clause 10L) for the matter to be undertaken, intends to further consider the matter with a view to possibly submitting such proposals it shall promptly notify the Minister in writing giving reasonable particulars of the relevant matter.
- (2) Within one (1) month after receiving the notification the Minister may, if the Minister so wishes, inform the Company of the Minister's views of the matter at that stage.
- (3) If the Company is informed of the Minister's views, it shall take them into account in deciding whether or not to proceed with its consideration of the matter and the submission of proposals.
- (4) Neither the Minister's response nor the Minister choosing not to respond shall in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.
- (5) (a) This subclause applies where the Company has settled upon a single preferred development a purpose of which is the integrated use of works installations or facilities (as defined in subclause (7) of clause 10L for the purpose of that clause) as contemplated by clause 10L.
- (b) For the purpose of this subclause "public interest concerns" means any concern that

implementation of the single preferred development or any part of it will:

- (i) detrimentally affect economic and orderly development in the said State, including without limitation, infrastructure development in the said State; or
 - (ii) be contrary to or inconsistent with the planning and development policies and objectives of the State; or
 - (iii) detrimentally affect the rights and interests of third parties; or
 - (iv) detrimentally affect access to and use by others of lands the subject of any grant or proposed grant to the Company.
- (c) At any time prior to submission of proposals the Company may give to the Minister notice of its single preferred development and request the Minister to confirm that the Minister has no public interest concerns with that single preferred development.
- (d) The Company shall furnish to the Minister with its notice reasonable particulars of the single preferred development including, without limitation:
- (i) as to the matters that would be required to be addressed in submitted proposals; and
 - (ii) its progress in undertaking any feasibility or other studies or matters to be completed before submission of proposals; and
 - (iii) its timetable for obtaining required statutory and other approvals in

relation to the submission and approval of proposals; and

- (iv) its tenure requirements.
 - (e) If so required by the Minister, the Company will provide to the Minister such further information regarding the single preferred development as the Minister may require from time to time for the purpose of considering the Company's request and also consult with the Minister or representatives or officers of the State in regard to the single preferred development.
 - (f) Within 2 months after receiving the notice (or if the Minister requests further information, within 2 months after the provision of that information) the Minister must advise the Company:
 - (iv) that the Minister has no public interest concerns with the single preferred development; or
 - (v) that he is not then in a position to advise that he has no public interest concerns with the single preferred development and the Minister's reasons in that regard.
 - (g) If the Minister gives the advice mentioned in paragraph (f)(ii) the Company may, should it so desire, give a further request to the Minister in respect of a revised or alternate single preferred development and the provisions of this subclause shall apply *mutatis mutandis* thereto.”;
- (3) in paragraph (b) of clause 9(1):
- (i) by deleting “Clause 6 or Clause 7” and substituting “clauses, 6, 7, 8B, 10I or 10K”;

- (ii) in subparagraph (i) by:
 - (A) inserting “cause to be granted” after “grant”;
 - (B) in the paragraph beginning “for nominal consideration”, deleting “the harbour area”;
 - (C) inserting after that paragraph the following new paragraph:

“at commercial rentals, licence or easement fees as applicable - leases, licences or easements within the Port of Dampier; and”;
 - (D) deleting “and” before “the Jetties Act” and substituting a comma;
 - (E) inserting “, the *Port Authorities Act 1999 (WA)*” after “1926”; and
 - (F) inserting “installations or facilities” after “as the Company reasonably requires for its works”; and
- (iii) in the proviso by deleting “or (as the case may be) all iron ore concentration products”;
- (4) by inserting after subclause (3) of clause 9 the following new subclause:

“(3a) The provisions of subclause (1) of this clause shall not operate so as to require the State to grant or vary, or cause to be granted or varied, any lease licence or other right or title until all processes necessary under any laws relating to native title to enable that grant or variation to proceed, have been completed.”;
- (5) by deleting paragraph (e) of clause 10(2) and substituting the following new paragraphs:
 - “(e) ship, or procure the shipment of, all iron ore mined from the mineral lease, all iron ore mined from the mining lease and all iron ore referred to in clause 10(2)(ja) and (in each case) sold:
 - (i) from the Company’s wharf; or

- (ii) from any other wharf in a loading port which wharf has been constructed under an Integration Agreement; or
- (iii) with the Minister's approval given before submission of proposals in that regard, from any other wharf in a loading port which wharf has been constructed under another Government agreement (excluding the Integration Agreements),

and use its best endeavours to obtain therefor the best price possible having regard to market conditions from time to time prevailing PROVIDED THAT:

- (A) this paragraph shall not apply to iron ore used for secondary processing or for the manufacture of iron or steel in any part of the said State lying north of the twenty sixth parallel of latitude; and
- (B) iron ore from the mineral lease or the mining lease may be sold by the Company prior to or at the time of the shipment under this Agreement at a price equal to the production costs in respect of that iron ore up to the point of sale, if:
 - (i) the Minister is notified before the time of shipment that the sale is to be made at cost, providing details of the proposed sale; and
 - (ii) the Minister is notified of the proposed arm's length purchaser in the relevant international seaborne iron ore market of the iron ore the subject of the proposed sale at cost; and
 - (iii) there is included in the return lodged pursuant to subclause (2)(k) particulars of the transaction in which the ore sold at cost was subsequently purchased in the relevant international seaborne iron ore market by an arm's length purchaser specifying the purchaser, the seller, the price and the date

when the sale was agreed between the arm's length purchaser and the seller; and

- (iv) the arm's length purchaser referred to in (iii) above is not then a designated purchaser as referred to in subclause (2)(ea);

Designated purchaser

- (ea) if required by notice in writing from the Minister, provide the Minister within 30 days after receiving the notice with evidence that the transaction as included in the return pursuant to paragraph (B)(iii) of subclause (2)(e) was a sale in the relevant international seaborne iron ore market to an independent participant in that market. If no evidence is provided or the Minister is not so satisfied on the evidence provided or other information obtained, the Minister may by notice to the Company designate the purchaser to be a designated purchaser and that designation will remain in force unless and until lifted by further notice from the Minister to the Company. For the avoidance of doubt, the parties acknowledge that marketing entities forming part of the corporate group including the Company (or part of the parallel corporate group if the Company is part of a dual-listed corporate structure) are not independent participants for the purposes of this subclause;";
- (6) in paragraph (j) of clause 10(2) by:
 - (i) in subparagraph (iii) deleting "iron ore concentration products" and substituting "beneficiated ore";
 - (ii) in the paragraph after subparagraph (iv):
 - “(A) deleting “iron ore concentration products are” and substituting “beneficiated ore is”;
 - (B) deleting the second reference to “iron ore concentration products” and substituting “beneficiated ore”; and

(C) deleting “those iron ore concentration products”
and substituting “that beneficiated ore”; and

(iii) inserting at the end of the paragraph:

“Where for the purpose of determining f.o.b. value it is necessary to convert an amount or price to Australian currency, the conversion is to be calculated using a rate (excluding forward hedge or similar contract rates) that has been approved by the Minister at the request of the Company and in the absence of such request as determined by the Minister to be a reasonable rate for the purpose.

The provisions of regulation 85AA (Effect of GST etc on royalties) of the *Mining Regulations* 1981 (WA) shall apply mutatis mutandis to the calculation of royalties under this clause.”;

(7) in paragraph (k) of clause 10(2) by:

(a) inserting “, and also showing such other information in relation to the abovementioned iron ore as the Minister may from time to time reasonably require in regard to, and to assist in verifying, the calculation of royalties in accordance with paragraphs (j) and (ja)” after “the due date of the return”; and

(b) deleting all the words after “calculated on the basis of” and substituting a colon followed by:

“(i) in the case of iron ore initially sold at cost pursuant to paragraph (B) of the proviso to subclause (2)(e), at the price notified pursuant to paragraph (B)(iii) of that proviso;

(ii) in any other case, invoices or provisional invoices (as the case may be) rendered by Company to the purchaser (which invoices the Company shall render without delay simultaneously furnishing copies thereof to the Minister) of such iron ore or on the basis of estimates as agreed or determined,

and shall from time to time in the next following appropriate return and payment make (by the return and

by cash) all such necessary adjustments (and give to the Minister full details thereof) when the f.o.b. value shall have been finally calculated, agreed or determined;”;

- (8) in paragraph (n) of clause 10(2) by:
- (a) deleting “books of account and records of the Company including contracts relative” and substituting “books, records, accounts, documents (including contracts), data and information of the Company stored by any means relating”;
 - (b) inserting “(in whatever form)” after “copies or extracts”; and
 - (c) inserting “the subject of royalty” before the first two references to “hereunder”;
- (9) by inserting after paragraph (n) of clause 10(2) the following new paragraph:
- “(o) The Company shall cause to be produced in Perth in the said State all books, records, accounts, documents (including contracts), data and information of the kind referred to in paragraph (n) to enable the exercise of rights by the Minister or the Minister’s nominee under paragraph (n), regardless of the location in which or by whom those books, records, accounts, documents (including contracts), data and information are stored from time to time.”;
- (10) in clause 10(4):
- (a) by deleting paragraph (a) and substituting the following new paragraph (a):
 - “(a) The Company may blend iron ore mined from the mineral lease and the mining lease or either of them with any:
 - (i) iron ore mined from a mining tenement or other mining title granted under, or pursuant to, an Integration Agreement; or

- (ii) iron ore mined from a *Mining Act 1978* mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement); or
 - (iii) with the prior approval of the Minister, iron ore mined in, or proximate to the Pilbara region of the said State under a Government agreement (excluding an Integration Agreement); or
 - (iv) with the prior approval of the Minister, iron ore mined by a third party from a *Mining Act 1978* mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by an Integration Proponent from the third party.”;
- (b) in paragraph (b) by:
- (i) deleting “there is” and substituting “there are”;
 - (ii) deleting “between the relevant Government agreements”;
 - (iii) deleting “blended and” and substituting “blended as between each of the sources referred to in paragraph (a),”; and
 - (iv) inserting a comma after “processing”;
- (11) in clause 10A by:
- (a) inserting in its heading “for townsites” after “Additional Proposals”;
 - (b) deleting “The” at the beginning of subclause (2) and “If” at the beginning of subclause (3) and in each case substituting:
“Subject to subclause (3a),”;

- (c) inserting after subclause (3) the following new subclause:
 - “(3a) After the variation date, the provisions of clauses 8A(2) to (5) and of 8B shall *mutatis mutandis* apply to proposals submitted pursuant to this clause.”; and
- (d) deleting subclause (4);
- (12) in clause 10I(10) by deleting “subclauses (3) to (8) of this clause” and substituting “clauses 8A(2) to (5) and of 8B”;
- (13) in clause 10I(11) by:
 - (a) inserting “environmental” before each reference to “approved proposals”; and
 - (b) deleting “subclauses (4), (5), (6), (7), (9) and” in paragraph (f) and substituting “clause 8B and subclause”;
- (14) in clause 10J(1) by:
 - (a) inserting “, the mining lease, any land that may be included in the mineral lease or the mining lease pursuant to clauses 10F, 10H, 10I or 10K and of any other mineral lease or mining lease granted under or pursuant to this Agreement (as aggregated)” after “total area of the mineral lease”;
 - (b) deleting “300 square miles” and substituting “777 square kilometres”; and
 - (c) inserting “by endorsement” after “the subject thereof in the mineral lease”;
- (15) by inserting after subclause (1) of clause 10J the following new subclause:
 - “(1a) The Minister may approve, upon application by the Company from time to time, for the total area referred to in subclause (1) to be increased up to a limit not exceeding 1,000 square kilometres.”;

- (16) in clause 10J(3) by inserting “as additional proposals pursuant to clause 8A” before the full stop;
- (17) by deleting clause 10J(4);
- (18) in clause 10K(4) by deleting the full stop at the end of paragraph (c), substituting a semi colon followed by the following new paragraphs:
 - “(d) under subclause (4) thereof the Minister could refuse to approve a submitted proposal as provided in clause 8B(1);
 - (e) subclause (6) thereof also applied to a decision of the Minister to refuse to approve a proposal; and
 - (f) the following sentence was inserted at the end of subclause (7) thereof:

“A decision of the Minister to refuse to approve a submitted proposal shall not be referable to arbitration under this Agreement.”;
- (19) in paragraph (c) of clause 10K(8) by deleting the full stop at the end of subparagraph (b), substituting a semi colon followed by the following new paragraphs:
 - “(c) under subclause (4) thereof the Minister could refuse to approve a submitted proposal as provided in clause 8B(1);
 - (d) subclause (6) thereof also applied to a decision of the Minister to refuse to approve a proposal; and
 - (e) the following sentence was inserted at the end of subclause (7) thereof:

“A decision of the Minister to refuse to approve a submitted proposal shall not be referable to arbitration under this Agreement.”;

(20) by inserting after clause 10K the following new clauses:

“Integrated use of works installations or facilities under the Integration Agreements

10L. (1) Subject to subclauses (2) to (7) of this clause and to the other provisions of this Agreement, the Company may during the continuance of this Agreement:

- (a) use any existing or new works installations or facilities constructed or held:
 - (i) under this Agreement; or
 - (ii) under any other Integration Agreement which are made available for such use and during the continuance of such Integration Agreement; or
 - (iii) with the approval of the Minister, under a Government agreement (excluding an Integration Agreement) which are made available for such use and during the continuance of that agreement,

(wholly or in part) in the activities of the Company carried on by it pursuant to this Agreement including, without limitation, as part of those activities, transporting by railway and shipping from a loading port and undertaking any ancillary and incidental activities in doing so (including, without limitation, blending permitted by clause 10(4)) of:

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

- granted pursuant to, or held under, a Government agreement);
- (B) with the prior approval of the Minister, iron ore mined in, or proximate to, the Pilbara region of the said State under a Government agreement (excluding an Integration Agreement);
 - (C) with the prior approval of the Minister, iron ore mined by a third party from a *Mining Act 1978* mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by the Company from the third party;
 - (D) iron ore mined under an Integration Agreement;
- (b) make any existing or new works installations or facilities constructed or held under this Agreement available for use (wholly or partly) by another Integration Proponent during the continuance of its Integration Agreement in the activities of that Integration Proponent carried on by it pursuant to its Integration Agreement including, without limitation, as part of those activities, transporting by railway and shipping from a loading port and undertaking any ancillary and incidental activities in doing so (including, without limitation, blending permitted by that Integration Agreement) of:
- (i) iron ore mined from a *Mining Act 1978* mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or

- parties (excluding any mining lease granted pursuant to, or held under, a Government agreement);
- (ii) with the prior approval of the Minister (as defined in that Integration Agreement), iron ore mined in, or proximate to, the Pilbara region of the said State under a Government agreement (excluding an Integration Agreement);
 - (iii) with the prior approval of the Minister (as defined in that Integration Agreement), iron ore mined by a third party from a *Mining Act 1978* mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by that Integration Proponent from the third party;
 - (iv) iron ore mined under an Integration Agreement;
- (c) make any existing or new works installations or facilities constructed or held under this Agreement available for use (wholly or partly) in connection with operations under:
- (i) a *Mining Act 1978* mining lease located in, or proximate to, the Pilbara region of the said State, for iron ore, which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under a Government agreement); or
 - (ii) with the approval of the Minister, a Government agreement (other than an Integration Agreement) for the mining

of iron ore in, or proximate to, the
Pilbara region of the said State;

- (d) subject to subclause (2), under this Agreement and for the purpose of any use or making available for use referred to in paragraph (a), (b) or (c) connect any existing or new works installations or facilities constructed or held under this Agreement to any existing or new works installations or facilities constructed or held under another Integration Agreement;
- (e) subject to subclause (2), under this Agreement and for the purpose of any use or making available for use referred to in paragraph (a), (b) or (c) or making of any connection referred to in paragraph (d) construct new works installations or facilities and expand modify or otherwise vary any existing and new works installations or facilities constructed or held under this Agreement;
- (f) allow a railway or rail spur line (not being a railway or rail spur line constructed or held under an Integration Agreement) to be connected to a railway or rail spur line or other works installations or facilities constructed or held under this Agreement for the delivery of iron ore to an Integration Proponent for transport by railway and shipping from a loading port (together with any ancillary and incidental activities in doing so) as part of its activities under its Integration Agreement; and
- (g) allow an electricity transmission line (not being an electricity transmission line constructed or held under an Integration Agreement) to be connected to an electricity transmission line constructed or held under

this Agreement for the supply of electricity permitted to be made under an Integration Agreement.

- (2) (a) A connection referred to in clause (1)(d) or construction, expansion, modification or other variation referred to in subclause (1)(e) by the Company shall, to the extent not already authorised under this Agreement as at the variation date, be regarded as a significant modification expansion or other variation of the Company's activities carried on by it pursuant to this Agreement and may only be made in accordance with proposals submitted and approved or determined under this Agreement in accordance with clauses 8A and 8B or clauses 10A, 10I, 10K or 10N as the case may require and otherwise in compliance with the provisions of this Agreement and the laws from time to time of the said State. For the avoidance of doubt, the parties acknowledge that any use or making available for use contemplated by subclause (1)(a), (1)(b) or (1)(c) shall not otherwise than as required by this paragraph (a) require the submission and approval of further proposals under this Agreement.
- (b) The Company shall not be entitled to:
- (i) submit proposals to construct any new port or to establish harbour or port works installations or facilities, or to expand modify or otherwise vary harbour or works installations or facilities otherwise than at or near the town of Dampier within the boundaries of the Port of Dampier; or
 - (ii) generate and supply power, take and supply water or dispose of water

otherwise than in accordance with the other clauses of this Agreement and subject to any restrictions contained in those clauses; or

- (iii) without limiting subparagraphs (i) and (ii) submit proposals to construct or establish works installations or facilities of a type, or to make expansions, modifications or other variations of works installations or facilities of a type, which in the Minister's reasonable opinion this Agreement, immediately before the variation date, did not permit or contemplate the Company constructing, establishing or making as the case may be otherwise than for integration use as contemplated by subclauses (1)(a), (1)(b) or (1)(c) or as permitted by clause 10N; or
- (iv) submit proposals to make a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) otherwise than on tenure granted under or pursuant to this Agreement from time to time or held pursuant to this Agreement from time to time; or
- (v) submit proposals to make a connection referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) for the purpose of use as contemplated by subclause (1)(c)(i), if in the reasonable opinion of the Minister the activity

which is the subject of the proposals would give to the holder or holders of the relevant *Mining Act 1978* mining lease the benefit of rights or powers granted to the Company under this Agreement, over and above the right of access to and use of the relevant works, installations or facilities; or

- (vi) submit proposals to make a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) for the purpose of use as contemplated by subclause (1)(c) and involving the grant of tenure without the prior approval of the Minister; or
 - (vii) submit proposals to assign, sublet, transfer or dispose of any works installations or facilities constructed or held under this Agreement or any leases, licences, easements or other titles under or pursuant to this Agreement for any purpose referred to in this clause.
- (c) Notwithstanding the provisions of clauses 8B, 10I, 10K and 10N, the Minister may defer consideration of, or a decision upon, a proposal submitted by the Company for a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e), for the purpose of use or making available for use as referred to in subclauses (1)(a) or (1)(b), until relevant corresponding proposals under the relevant Integration Agreement have been submitted and those proposals can be

approved under that Integration Agreement concurrently with the Minister's approval under this Agreement of the Company's proposal.

- (3) Any use or making available for use as referred to in subclause (1), or submission of proposals as referred to in subclause (2), in respect of a Related Entity shall be subject to the Company first confirming with the Minister that the Minister is satisfied that the relevant company is a Related Entity.
- (4) The Company shall give the Minister prior written notice of any significant change (other than a temporary one for maintenance or to respond to an emergency) proposed in its use, or in it making available for use, works installations or facilities as referred to in this clause:
- (a) from that authorised under this Agreement immediately before the variation date; and
 - (b) subsequently from that previously notified to the Minister under this subclause,

as soon as practicable before such change occurs.

The Company shall also keep the Minister fully informed with respect to any proposed connection as referred to in subclause (1)(f) or (1)(g) or request of the Company for such connection to be allowed.

- (5) Nothing in this Agreement shall be construed to:
- (a) exempt another Integration Proponent from complying with, or the application of, the provisions of its Integration Agreement; or
 - (b) restrict the Company's rights under clause 20.

For the avoidance of doubt the approval of proposals under this Agreement shall not be construed as authorising another Integration Proponent to undertake any activities under this Agreement or under another Integration Agreement.

- (6) Nothing in this clause shall be construed to exempt the Company from complying with, or the application of, the other provisions of this Agreement including, without limitation, clauses 11 and 20 and of relevant laws from time to time of the said State.
- (7) For the purpose of this clause “works installations or facilities” means any:
 - (a) harbour or port works installations or facilities including, without limitation, stockpiles, reclaimers, conveyors and wharves;
 - (b) railway or rail spur lines;
 - (c) track structures and systems associated with the operation and maintenance of a railway including, without limitation, sidings, train control and signalling systems, maintenance workshops and terminal yards;
 - (d) train loading and unloading works installations or facilities;
 - (e) conveyors;
 - (f) private roads;
 - (g) mine aerodrome and associated aerodrome works installations and facilities;
 - (h) iron ore mining, crushing, screening, beneficiation or other processing works installations or facilities;
 - (i) mine administration buildings including, without limitation, offices, workshops and medical facilities;
 - (j) borrow pits;
 - (k) accommodation and ancillary facilities including, without limitation, construction camps and in townsites constructed pursuant to and held under any Integration Agreement;
 - (l) water, sewerage, electricity, gas and telecommunications works installations and facilities

including, without limitation, pipelines, transmission lines and cables; and

- (m) any other works installations or facilities approved of by the Minister for the purpose of this clause.

Transfer of rights to shared works installations or facilities

10M (1) For the purposes of this clause “Relevant Infrastructure” means any works installations or facilities (as defined in clause 10L(7)):

- (a) constructed or held under another Integration Agreement;
- (b) which the Company is using in its activities pursuant to this Agreement;
- (c) which the Minister is satisfied (after consulting with the Company and the Integration Proponent for that other Integration Agreement):
 - (i) are no longer required by that other Integration Proponent to carry on its activities pursuant to its Integration Agreement because of the cessation of the Integration Proponent’s mining operations in respect of which such Relevant Infrastructure was constructed or held or because of any other reason acceptable to the Minister; and
 - (ii) are required by the Company to continue to carry on its activities pursuant to this Agreement; and
- (d) in respect of which that other Integration Proponent has notified the Minister it consents to the Company submitting proposals as referred to in subclause (2).

- (2) The Company may as an additional proposal pursuant to clause 8A propose:
- (a) that it be granted a lease licence or other title over the Relevant Infrastructure pursuant to this Agreement subject to and conditional upon the other Integration Proponent surrendering wholly or in part (and upon such terms as the Minister considers reasonable including any variation of terms to address environmental issues) its lease licence or other title over the Relevant Infrastructure; or
 - (b) that the other Integration Proponent's lease licence or other title (not being a mineral lease, mining lease or other right to mine title granted under a Government agreement, the *Mining Act 1904* or the *Mining Act 1978*) to the Relevant Infrastructure be transferred to this Agreement (to be held by the Company pursuant to this Agreement) with such surrender of land from it and variations of its terms as the Minister considers reasonable for that title to be held under this Agreement including, without limitation, to address environmental issues and outstanding obligations of that other Integration Proponent under its Integration Agreement in respect of that Relevant Infrastructure.

The provisions of clause 8B shall mutatis mutandis apply to any such additional proposal. In addition the Company acknowledges that the Minister may require variations of the other Integration Agreement and/or proposals under it or of this Agreement in order to give effect to the matters contemplated by this clause.

- (3) This clause shall cease to apply in the event the State gives any notice of default to the Company

pursuant to clause 11(l) and while such notice remains unsatisfied.

Miscellaneous Licences for Railways

10N. (1) In this clause subject to the context:

“Additional Infrastructure” means:

- (a) Train Loading Infrastructure;
- (b) Train Unloading Infrastructure;
- (c) a conveyor, train unloading and other infrastructure necessary for the transport of iron ore, freight goods or other products from the Railway (directly or indirectly) to port facilities within a loading port,

in each case located outside a Port;

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

“Lateral Access Roads” has the meaning given in subclause (3)(a)(iv);

“Lateral Access Road Licence” means a miscellaneous licence granted pursuant to subclause (6)(a)(ii) or subclause (6)(b) as the case may be and according to the requirements of the context describes the area of land from time to time the subject of that licence;

“Port” means any port the subject of the *Port Authorities Act 1999* (WA) or the *Shipping and Pilotage Act 1967* (WA);

“Private Roads” means Lateral Access Roads and the Company’s access roads within a Railway Corridor;

“Rail Safety Act” means the *Rail Safety Act 1998* (WA);

“Railway” means a standard gauge heavy haul railway or railway spur line, located or to be

located as the case may be in, or proximate to, the Pilbara region of the said State (but outside the boundaries of a Port) for the transport of iron ore, freight goods and other products together with all railway track, associated track structures including sidings, turning loops, over or under track structures, supports (including supports for equipment or items associated with the use of a railway) tunnels, bridges, train control systems, signalling systems, switch and other gear, communication systems, electric traction infrastructure, buildings (excluding office buildings, housing and freight centres), workshops and associated plant, machinery and equipment and including rolling stock maintenance facilities, terminal yards, depots, culverts and weigh bridges which railway is or is to be (as the case may be) the subject of approved proposals under subclause (4) and includes any expansion or extension thereof outside a Port which is the subject of additional proposals approved in accordance with subclause (5);

“Railway Corridor” means, prior to the grant of a Special Railway Licence, the land for the route of the Railway the subject of that licence, access roads (other than Lateral Access Roads), areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce, water bores and Additional Infrastructure (if any) which is the subject of a subsisting agreement pursuant to subclause (3)(a) and after the grant of the Special Railway Licence the land from time to time the subject of that Special Railway Licence;

“Railway Operation” means the construction and operation under this Agreement of the relevant Railway and associated access roads and Additional Infrastructure (if any) within the relevant Railway Corridor and of the associated

Lateral Access Roads, in accordance with approved proposals;

“Railway spur line” means a standard gauge heavy haul railway spur line located or to be located in, or proximate to, the Pilbara region of the said State (but outside a Port) connecting to a Railway for the transport of iron ore, freight goods and other products upon the Railway to (directly or indirectly) a loading port;

“Railway Operation Date” means the date of the first carriage of iron ore, freight goods or other products over the relevant Railway (other than for construction or commissioning purposes);

“Railway spur line Operation Date” means the date of the first carriage of iron ore, freight goods or other products over the relevant Railway spur line (other than for construction or commissioning purposes);

“Special Railway Licence” means the relevant miscellaneous licence for railway and, if applicable, other purposes, granted to the Company pursuant to subclause (6)(a)(i) as varied in accordance with subclause (6)(h) or subclause (6)(i) and according to the requirements of the context describes the area of land from time to time the subject of that licence;

“Train Loading Infrastructure” means conveyors, stockpile areas, blending and screening facilities, stackers, re-claimers and other infrastructure reasonably required for the loading of iron ore, freight goods or other products onto the relevant Railway for transport (directly or indirectly) to a loading port; and

“Train Unloading Infrastructure” means train unloading infrastructure reasonably required for the unloading of iron ore from the Railway to be processed, or blended with other iron ore, at processing or blending facilities in the vicinity of

that train unloading infrastructure and with the resulting iron ore products then loaded on to the Railway for transport (directly or indirectly) to a loading port.

Company to obtain prior Ministerial in-principle approval

- (2) (a) If the Company wishes, from time to time during the continuance of this Agreement, to proceed under this clause with a plan to develop a Railway it shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of its plan.
- (b) The Minister shall within one month of a notice under paragraph (a) advise the Company whether or not he approves in-principle the proposed plan. The Minister shall afford the Company full opportunity to consult with him in respect of any decision of the Minister under this paragraph.
- (c) The Minister's in-principle approval in respect of a proposed plan shall lapse if the Company has not submitted detailed proposals to the Minister in respect of that plan in accordance with this clause within 18 months of the Minister's in-principle approval.

Railway Corridor

- (3) (a) If the Minister gives in-principle approval to a plan of the Company to develop a Railway it shall consult with the Minister to seek the agreement of the Minister as to:
- (i) where the Railway will begin and end; and
- (ii) a route for the Railway, access roads to be within the Railway Corridor and the land required for that route as well as Additional Infrastructure (if any) including, without limitation, areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce and water bores; and

- (iii) in respect of Additional Infrastructure (if any) the nature and capacity of such Additional Infrastructure; and
- (iv) the routes of, and the land required for, roads outside the Railway Corridor (and also outside a Port) for access to it to construct the Railway (such roads as agreed being “Lateral Access Roads”).

In seeking such agreement, regard shall be had to achieving a balance between engineering matters including costs, the nature and use of any lands concerned and interests therein and the costs of acquiring the land (all of which shall be borne by the Company). The parties acknowledge the intention is for the Company to construct the Railway, the access roads for the construction and maintenance of the Railway which are to be within the Railway Corridor and the relevant Additional Infrastructure (if any) along the centreline of the Railway Corridor subject to changes in that alignment to the extent necessary to avoid heritage, environmental or poor ground conditions that are not identified during preliminary investigation work, and recognise the width of the Railway Corridor may need to vary along its route to accommodate Additional Infrastructure (if any), access roads, areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce and water bores. The provisions of clause 25 shall not apply to this subclause.

- (b) If the date by which the Company must submit detailed proposals under subclause (4)(a) (as referred to in subclause (2)(c)) is extended or varied by the Minister pursuant to clause 24, any agreement made pursuant to paragraph (a) before such date is extended or varied shall unless the Minister notifies the Company otherwise be

deemed to be at an end and neither party shall have any claim against the other in respect of it.

- (c) The Company acknowledges that it shall be responsible for liaising with every title holder in respect of the land affected and for obtaining in a form and substance acceptable to the Minister all unconditional and irrevocable consents of each such title holder to, and all statutory consents required in respect of the land affected for:
- (i) the grant of the Special Railway Licence for the construction, operation and maintenance within the Railway Corridor of the Railway, access roads and Additional Infrastructure (if any) to be within the Railway Corridor; and
 - (ii) the grant of Lateral Access Road Licences for the construction, use and maintenance of Lateral Access Roads over the routes for the Lateral Access Roads agreed pursuant to paragraph (a); and
 - (iii) the inclusion of additional land in the Special Railway Licence as referred to in subclause (6)(h) or subclause (6)(i),

in accordance with this clause. For the purposes of this subclause (3)(c), “title holder” means a management body (as defined in the LAA) in respect of any part of the affected land, a person who holds a mining, petroleum or geothermal energy right (as defined in the LAA) in respect of any part of the affected land, a person who holds a lease or licence under the LAA in respect of any part of the affected land, a person who holds any other title granted under or pursuant to a Government agreement in respect of any part of the affected land, a person who holds a lease or licence in respect of any part of the affected land under any other Act applying in the said State and a person in whom any part of the affected land is vested,

immediately before the provision of such consents to the Minister as referred to in subclause (4)(e)(ii) (including as applying pursuant to subclause 5(d)).

Company to submit proposals for Railway

- (4) (a) The Company shall, subject to the EP Act, the provisions of this Agreement, agreement at that time subsisting in respect of the matters required to be agreed pursuant to subclause 3(a), submit to the Minister by the latest date applying under subclause (2)(c) to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister and any other details normally required by a local government in whose area any works are to be situated) with respect to the undertaking of the relevant Railway Operation, which proposals shall include the location, area, layout, design, materials and time program for the commencement and completion of construction or the provision (as the case may be) of each of the following matters namely:
- (i) the Railway including fencing (if any) and crossing places within the Railway Corridor;
 - (ii) Additional Infrastructure (if any) within the Railway Corridor;
 - (iii) temporary accommodation and ancillary temporary facilities for the railway workforce on, or in the vicinity of, the Railway Corridor and housing and other appropriate facilities elsewhere for the Company's workforce;
 - (iv) water supply;
 - (v) energy supplies;
 - (vi) access roads within the Railway Corridor and Lateral Access Roads both along the routes for those roads agreed between the

Minister and the Company pursuant to
subclause 3(a);

- (vii) any other works, services or facilities desired by the Company; and
 - (viii) use of local labour, professional services, manufacturers, suppliers contractors and materials and measures to be taken with respect to the engagement and training of employees by the Company, its agents and contractors.
- (b) Proposals pursuant to paragraph (a) must specify the matters agreed for the purpose pursuant to subclause (3)(a) and must not be contrary to or inconsistent with such agreed matters.
- (c) Each of the proposals pursuant to paragraph (a) may with the approval of the Minister, or must if so required by the Minister, be submitted separately and in any order as to the matter or matters mentioned in one or more of subparagraphs (i) to (viii) of paragraph (a) and until all of its proposals under this subclause have been approved the Company may withdraw and may resubmit any proposal but the withdrawal of any proposal shall not affect the obligations of the Company to submit a proposal under this subclause in respect of the subject matter of the withdrawn proposal.
- (d) The Company shall, whenever any of the following matters referred to in this subclause are proposed by the Company (whether before or during the submission of proposals under this subclause), submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia, together with

its reasons therefor and shall, if required by the Minister consult with the Minister with respect thereto.

- (e) At the time when the Company submits the last of the said proposals pursuant to this subclause, it shall:
 - (i) furnish to the Minister's reasonable satisfaction evidence of all accreditations under the Rail Safety Act which are required to be held by the Company or any other person for the construction of the Railway; and
 - (ii) furnish to the Minister the written consents referred to in subclause (3)(c)(i) and (3)(c)(ii).
- (f) The provisions of clause 8B shall apply mutatis mutandis to detailed proposals submitted under this subclause.

Additional Railway Proposals

- (5) (a) If the Company at any time during the currency of a Special Railway Licence desires to construct a Railway spur line (connecting to the Railway the subject of that Special Railway Licence) or desires to significantly modify, expand or otherwise vary its activities within the land the subject of the Special Railway Licence that are the subject of this Agreement and that may be carried on by it pursuant to this Agreement (other than by the construction of a Railway spur line) beyond those activities specified in any approved proposals for that Railway, it shall give notice of such desire to the Minister and furnish to the Minister with that notice an outline of its proposals in respect thereto (including, without limitation, such matters mentioned in subclause (4)(a) as are relevant or as the Minister otherwise requires).

- (b) If the notice relates to a Railway spur line, or to the construction of Train Loading Infrastructure or Train Unloading Infrastructure on land outside the then Railway Corridor, the Minister shall within one month of receipt of such notice advise the Company whether or not he approves in-principle the proposed construction of such spur line, Train Loading Infrastructure or Train Unloading Infrastructure. If the Minister gives in-principle approval the Company may (but not otherwise) submit detailed proposals in respect thereof provided that the provisions of subclause (3) shall mutatis mutandis apply prior to submission of detailed proposals in respect thereof.
- (c) Subject to the EP Act, the provisions of this Agreement and agreement at that time subsisting in respect of any matters required to be agreed pursuant to subclause (3)(a) (as referred to in paragraph (b)), the Company shall submit to the Minister within a reasonable timeframe, as determined by the Minister after receipt of the notice referred to in paragraph (a) (or in the case of a notice referred to in paragraph (b) the giving of the Minister's in-principle consent as referred to in that paragraph), detailed proposals in respect of the proposed construction of such Railway spur line, Train Loading Infrastructure, Train Unloading Infrastructure or other proposed modification, expansion or variation of its activities including such of the matters mentioned in subclause (4)(a) as the Minister may require.
- (d) The provisions of subclause (4) (with the date for submission of proposals being read as the date or time determined by the Minister under paragraph (c) and the reference in subclause (4)(e)(ii) to subclause (3)(c)(i) being read as a reference to subclause (3)(c)(iii)) and of clause 8B shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause.

Grant of Tenure

- (6) (a) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after all its proposals submitted pursuant to subclause (4)(a) have been approved or deemed to be approved and the Company has complied with the provisions of subclause (4)(e), the State notwithstanding the *Mining Act 1978* shall cause to be granted to the Company:
- (i) a miscellaneous licence to conduct within the Railway Corridor and in accordance with its approved proposals all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce and, subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance within the Railway Corridor of the Railway, access roads and Additional Infrastructure (if any) (“the Special Railway Licence”) such licence to be granted under and subject to, except as otherwise provided in this Agreement, the *Mining Act 1978* in the form of the Third Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at a rental calculated in accordance with the *Mining Act 1978*:
- (A) prior to the Railway Operation Date, as if the width of the Railway Corridor were 100 metres; and
- (B) on and from the Railway Operation Date, at the rentals from time to time

prescribed under the *Mining Act 1978*;
and

- (ii) a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under subclause (3)(a) (each a “Lateral Access Road Licence”), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the *Mining Act 1978* in the form of the Fourth Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the *Mining Act 1978*.
- (b) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after its proposals submitted pursuant to subclause (5)(a) for the construction of Lateral Access Roads for access to the Railway Corridor to construct a Railway spur line have been approved or deemed to be approved and the Company has complied with the provisions of subclause (4)(e) (as applying pursuant to subclause (5)(d)), the State notwithstanding the *Mining Act 1978* shall cause to be granted to the Company a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under subclause (3)(a) (as applying pursuant to subclause (5)(b)) (each a “Lateral Access Road Licence”), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the *Mining Act 1978* in the form of the Fifth Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals

from time to time prescribed under the *Mining Act 1978*.

- (c) Notwithstanding the *Mining Act 1978*, the term of the Special Railway Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 50 years commencing on the date of grant thereof.
- (d) Notwithstanding the *Mining Act 1978*, the term of any Lateral Access Road Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 4 years commencing on the date of grant thereof.
- (e) Notwithstanding the *Mining Act 1978*, and except as required to do so by the terms of the Special Railway Licence, the Company shall not be entitled to surrender the Special Railway Licence or any Lateral Access Road Licence or any part or parts of them without the prior consent of the Minister.
- (f)
 - (i) The Company may in accordance with approved proposals take stone, sand, clay and gravel from the Railway Corridor for the construction, operation and maintenance of the Railway constructed within or approved for construction within the Railway Corridor.
 - (ii) Notwithstanding the *Mining Act 1978* no royalty shall be payable under the Mining Act in respect of stone, sand, clay and gravel which the Company is permitted by subparagraph (i) to obtain from the land the subject of the Special Railway Licence.
- (g) For the purposes of this Agreement and without limiting the operation of paragraphs (a) to (f) inclusive above, the application of the *Mining*

Act 1978 and the regulations made thereunder are specifically modified;

- (i) in section 91(1) by:
 - (A) deleting “the mining registrar or the warden, in accordance with section 42 (as read with section 92)” and substituting “the Minister”;
 - (B) deleting “any person” and substituting “the Company (as defined in the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*, as from time to time added to, varied or amended)”;
 - (C) deleting “for any one or more of the purposes prescribed” and substituting “for the purpose specified in clause 10N(6)(a)(i), clause 10N(6)(a)(ii) or clause 10N(6)(b), of the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*, as from time to time added to, varied or amended”;
- (ii) in section 91(3)(a), by deleting “prescribed form” and substituting “form required by the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*, as from time to time added to, varied or amended”;
- (iii) by deleting sections 91(6), 91(9), 91(10) and 91B;
- (iv) in section 92, by deleting “Sections 41, 42, 44, 46, 46A, 47 and 52 apply,” and inserting “Section 46A (excluding in subsection (2)(a) “the mining registrar, the warden or”) applies,” and by deleting “in those provisions” and inserting “in that provision”;

- (v) by deleting the full stop at the end of the section 94(1) and inserting, “except to the extent otherwise provided in, or to the extent that such terms and conditions are inconsistent with, the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*, as from time to time added to, varied or amended”;
 - (vi) by deleting sections 94(2), (3) and (4);
 - (vii) in section 96(1), by inserting after “miscellaneous licence” the words “(not being a miscellaneous licence granted pursuant to the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*, as from time to time added to, varied or amended”;
 - (viii) by deleting mining regulations 37(2), 37(3), 42 and 42A; and
 - (ix) by inserting at the beginning of mining regulations 41(c) and (f) the words “subject to the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*, as from time to time added to, varied or amended”.
- (h) If additional proposals are approved in accordance with subclause (5) for the construction of a Railway spur line outside the then Railway Corridor, the Minister for Mines shall include the area of land within which such construction is to occur in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company’s expense.

- (i) If additional proposals are approved in accordance with subclause (5) for the construction of Train Loading Infrastructure or Train Unloading Infrastructure outside the then Railway Corridor, the Minister for Mines shall include the area of such land within which such infrastructure is approved for construction in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.
- (j) The provisions of this subclause shall not operate so as to require the State to cause a Special Railway Licence or a Lateral Access Road Licence to be granted or any land included in the Special Railway Licence as mentioned above until all processes necessary under any laws relating to native title to enable that grant or inclusion of land to proceed, have been completed.

Construction and operation of Railway

- (7) (a) Subject to and in accordance with approved proposals, the Rail Safety Act and the grant of the relevant Special Railway Licence and any associated Lateral Access Road Licences the Company shall in a proper and workmanlike manner and in accordance with recognised standards for railways of a similar nature operating under similar conditions construct the Railway and associated Additional Infrastructure and access roads within the Railway Corridor and shall also construct inter alia any necessary sidings, crossing points, bridges, signalling switches and other works and appurtenances and provide for crossings and (where appropriate and required by the Minister) grade separation or other protective devices including flashing lights and boom gates at places where the Railway crosses or intersects with major roads or existing railways.

- (b) The Company shall while the holder of a Special Railway Licence:
- (i) keep the Railway the subject of that licence in an operable state; and
 - (ii) ensure that the Railway the subject of that licence is operated in a safe and proper manner in compliance with all applicable laws from time to time; and
 - (iii) without limiting subparagraph (ii) ensure that the obligations imposed under the Rail Safety Act on an owner and an operator (as those terms are therein defined) are complied with in connection with the Railway the subject of that licence.

Nothing in this Agreement shall be construed to exempt the Company or any other person from compliance with the Rail Safety Act or limit its application to the Company's operations generally (except as otherwise may be provided in that Act or regulations made under it).

- (c) The Company shall provide crossings for livestock and also for any roads, other railways, conveyors, pipelines and other utilities which exist at the date of grant of the relevant Special Railway Licence or in respect of land subsequently included in it at the date of such inclusion and the Company shall on reasonable terms and conditions allow such crossings for roads, railways, conveyors, pipelines and other utilities which may be constructed for future needs and which may be required to cross a Railway constructed pursuant to this clause.
- (d) Subject to clause 10M, the Company shall at all times be the holder of Special Railway Licences and Lateral Access Road Licences granted pursuant to this clause and (without limiting clause 11(j) but subject to clause 10M) shall at all times own manage and control the use of each

Railway the subject of a Special Railway Licence held by the Company.

- (e) The Company shall not be entitled to exclusive possession of the land the subject of a Special Railway Licence or Lateral Access Road Licence granted pursuant to this clause to the intent that the State, the Minister, the Minister for Mines and any persons authorised by any of them from time to time shall be entitled to enter upon the land or any part of it at all reasonable times and on reasonable notice with all necessary vehicles, plant and equipment and for purposes related to this Agreement or such other purposes as they think fit but in doing so shall be subject to the reasonable directions of the Company so as not to unreasonably interfere with the Company's operations.
- (f) The Company's ownership of a Railway constructed pursuant to this clause shall not give it an interest in the land underlying it.
- (g) The Company shall not at any time without the prior consent of the Minister dismantle, sell or otherwise dispose of any part or parts of any Railway constructed pursuant to this clause, or permit this to occur, other than for the purpose of maintenance, repair, upgrade or renewal.
- (h) The Company shall, subject to and in accordance with approved proposals, in a proper and workmanlike manner, construct any Additional Infrastructure, access roads, Lateral Access Roads and other works approved for construction under this clause.
- (i) The Company shall while the holder of a Special Railway Licence at all times keep and maintain in good repair and working order and condition (which obligation includes, where necessary, replacing or renewing all parts which are worn out or in need of replacement or renewal due to their

age or condition) the Railway, access roads and Additional Infrastructure (if any) the subject of that licence and all such other works installations plant machinery and equipment for the time being the subject of this Agreement and used in connection with the operation use and maintenance of that Railway, access roads and Additional Infrastructure (if any).

- (j) Subject to clause 10M, the Company shall:
- (i) be responsible for the cost of construction and maintenance of all Private Roads constructed pursuant to this clause; and
 - (ii) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles (other than those engaged upon the Company's activities and its invitees and licensees) from using the Private Roads; and
 - (iii) at any place where any Private Roads are constructed by the Company so as to cross any railways or public roads provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the Public Transport Authority as the case may be.
- (k) The provisions of clauses 10(2)(a) and (3) regarding third party access as well as the proviso to clause 10(2)(a) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause except that the Company shall not be obliged to transport passengers upon any such Railway or Railway spur line.

Aboriginal Heritage Act 1972 (WA)

- (8) For the purposes of this clause the *Aboriginal Heritage Act 1972 (WA)* applies as if it were modified by:

- (a) the insertion before the full stop at the end of section 18(1) of the words:

“and the expression “the Company” means the persons from time to time comprising “the Company” in their capacity as such under the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*, as from time to time added to, varied or amended in relation to the use or proposed use of land pursuant to clause 10N of that agreement after and in accordance with approved proposals under clause 10N of that agreement and in relation to the use of that land before any such approval of proposals where the Company has the requisite authority to enter upon and so use the land”;

- (b) the insertion in sections 18(2), 18(4), 18(5) and 18(7) of the words “or the Company as the case may be” after the words “owner of any land”;

- (c) the insertion in section 18(3) of the words “or the Company as the case may be” after the words “the owner”;

- (d) the insertion of the following sentences at the end of section 18(3):

“In relation to a notice from the Company the conditions that the Minister may specify can as appropriate include, among other conditions, a condition restricting the Company’s use of the relevant land to after the approval or deemed approval as the case may be under the abovementioned agreement of all of the Company’s submitted initial proposals thereunder for the Railway Operation (as defined in clause 10N(1) of the abovementioned agreement), or in the case of additional

proposals submitted or to be submitted by the Company to after the approval or deemed approval under that agreement of such additional proposals, and to the extent so approved.”; and

- (e) the insertion in sections 18(2) and 18(5) of the words “or it as the case may be” after the word “he”.

The Company acknowledges that nothing in this subclause (8) nor the granting of any consents under section 18 of the *Aboriginal Heritage Act 1972* (WA) will constitute or is to be construed as constituting the approval of any proposals submitted or to be submitted by the Company under this Agreement or as the grant or promise of land tenure for the purposes of this Agreement.

Taking of land for the purposes of this clause

- (9) (a) The State is hereby empowered, as and for a public work under Parts 9 and 10 of the LAA, to take for the purposes of this clause any land (other than any part of a Port) which in the opinion of the Company is necessary for the relevant Railway Operation and which the Minister determines is appropriate to be taken for the relevant Railway Operation (except any land the taking of which would be contrary to the provisions of a Government agreement entered into before the submission of the proposals relating to the proposed taking) and notwithstanding any other provisions of that Act may license that land to the Company.
- (b) In applying Parts 9 and 10 of the LAA for the purposes of this clause:
 - (i) “land” in that Act includes a legal or equitable estate or interest in land;

- (ii) sections 170, 171, 172, 173, 174, 175 and 184 of that Act do not apply; and
- (iii) that Act applies as if it were modified in section 177(2) by inserting -
 - (A) after “railway” the following -

“or land is being taken pursuant to a Government agreement as defined in section 2 of the *Government Agreements Act 1979 (WA)*”; and
 - (B) after “that Act” the following -

“or that Agreement as the case may be”.
- (c) The Company shall pay to the State on demand the costs of or incidental to any land taken at the request of and on behalf of the Company including but not limited to any compensation payable to any holder of native title or of native title rights and interests in the land.

Notification of Railway Operation Date

- (10) (a) The Company shall from the date occurring 6 months before the date for completion of construction of a Railway specified in its time program for the commencement and completion of construction of that Railway submitted under subclause (4)(a), keep the Minister fully informed as to:
 - (i) the progress of that construction and its likely completion and commissioning; and
 - (ii) the likely Railway Operation Date.
- (b) The Company shall on the Railway Operation Date notify the Minister that the first carriage of iron ore, freight goods or other products as the case may be over the Railway (other than for construction or commissioning purposes) has occurred.

- (c) The Company shall from the date occurring 6 months before the date for completion of construction of a Railway spur line specified in its time program for the commencement and completion of construction of that spur line submitted under subclause (5)(c) keep the Minister fully informed as to:
 - (i) the progress of that construction and its likely completion and commissioning; and
 - (ii) in respect of it, the likely Railway spur line Operation Date.
 - (d) The Company shall on the Railway spur line Operation Date in respect of any Railway spur line notify the Minister that the first carriage of iron ore, freight goods or other products as the case may be over such spur line (other than for construction or commissioning purposes) has occurred.”;
- (21) In clause 11(a) by deleting the comma at the end of subparagraph (iv) and substituting a semi colon followed by:
- “(v) in relation to electrical energy but not water, the Company for the purpose of supply to:
 - (A) “the Company” or “Joint Venturers” as the case may be as defined in, and for the purpose of an Integration Agreement, for its or their purposes thereunder;
 - (B) the holders from time to time of a *Mining Act 1978* mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement) for the purpose of their iron ore mining operations on that mining lease; and
 - (C) with the prior approval of the Minister, “the Company” or “the Joint Venturers” as the

case may be as defined in, and for the purpose of a Government agreement (excluding an Integration Agreement) for the mining of iron ore in, or proximate to, the Pilbara region of the said State for the purpose of its or their operations under that agreement,”;

- (22) in clause 11(d)(1) by inserting “or held pursuant hereto after “granted hereunder or pursuant hereto”;
- (23) in clause 11(1)(e) by:
 - (a) inserting “or pursuant hereto” after “granted hereunder”; and
 - (b) inserting “or held pursuant hereto” after “clause 20 hereof of land”;
- (24) in clause 11(1) by:
 - (a) inserting “granted under or pursuant to this Agreement, or held pursuant to this Agreement” after the first reference to “licence or other title”;
 - (b) inserting “or held pursuant hereto” after the subsequent 2 references to “granted hereunder or pursuant hereto”; and
 - (c) deleting “occupied by the Company” and substituting “the subject of any lease, licence, easement or other title granted under or pursuant to this Agreement, or held pursuant to this Agreement”;
- (25) by inserting the following sentence at the end of clause 19:

“As a separate independent indemnity the Company will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any use, making available for use or other activities of the Company as referred to in clause 10L.”;
- (26) in clause 20A(a) by inserting “or held pursuant hereto” after “granted hereunder or pursuant hereto”;

- (27) in clause 21 inserting “or held pursuant hereto” after “granted hereunder or pursuant hereto”;
- (28) by deleting clause 30; and
- (29) by inserting after the Second Schedule the following new schedules:

“THIRD SCHEDULE

WESTERN AUSTRALIA

IRON ORE (HAMERSLEY RANGE) AGREEMENT ACT 1963

MINING ACT 1978

**MISCELLANEOUS LICENCE FOR A RAILWAY AND OTHER
PURPOSES**

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called “the Agreement”) approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called “the Company”) a miscellaneous licence for the construction operation and maintenance of a Railway (as defined in clause 10N(1) of the Agreement and otherwise as provided in the Agreement) and, if applicable, other purposes AND WHEREAS the Company pursuant to clause 10N(6)(a) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Hamersley Range) Agreement Act 1963*, as from time to time added to, varied or amended, the Company is hereby granted by this licence authority to conduct on the land the subject of this licence as more particularly delineated and described from time to time in the Schedule hereto all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce in accordance with the Agreement and, subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance on the land the subject of this licence of the Railway and Additional Infrastructure (as defined in clause 10N(1) of the Agreement) and

access roads to be located on the land the subject of this licence in accordance with the provisions of the Agreement and proposals approved under the Agreement, for the term of 50 years from the date hereof (subject to the sooner determination of the term upon the determination of the Agreement) and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 10N(6)(a)(i) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

- If the Company be more than one the liability of the Company hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution thereof or in lieu thereof and to the regulations and by-laws of the time being in force thereunder.
- Reference to “the Agreement” means such agreement as from time to time added to, varied or amended.
- The terms “approved proposals”, “Railway”, “Railway Operation Date”, and “Railway spur line” have the meanings given in the Agreement.

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.
2. The Company is permitted to, in accordance with approved proposals, take stone, sand, clay and gravel from the land the subject of this licence for the construction, operation and maintenance of the Railway (including any Railway spur line) constructed within or approved for construction within the area of land the subject of this licence.

3. Notwithstanding the *Mining Act 1978*, no royalty shall be payable under the *Mining Act 1978* in respect of stone, sand, clay and gravel which the Company is permitted by the Agreement to obtain from the land the subject of this licence.
4. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

1.
 - (a) Except as provided in paragraph (b), the Company shall within 2 years after the Railway Operation Date surrender in accordance with the provisions of the *Mining Act 1978* the area of this licence down to a maximum of 100 metres width or as otherwise approved by the Minister (as defined in the Agreement) for the safe operation of the Railway then constructed or approved for construction under approved proposals.
 - (b) Paragraph (a) shall not apply to land the subject of this licence that was included in this licence pursuant to clause 10N(6)(h) or clause 10N(6)(i) of the Agreement.
2. The Company shall as soon as possible after the construction of a Railway spur line or of an expansion or extension thereof as the case may be surrender in accordance with the *Mining Act 1978* the land the subject of this licence that was included in this licence pursuant to clause 10N(6)(h) of the Agreement for the purpose of such construction down to a maximum of 100 metres in width or as otherwise approved by the Minister (as defined in the Agreement) for the safe operation of that Railway spur line or expansion or extension thereof as the case may be then constructed or approved for construction under approved proposals.
3. [Any further conditions which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of this licence including during the term of the Agreement.]

SCHEDULE

Land description

endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 10N(6)(a)(ii) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

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

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.
2. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

[Such conditions which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of the licence, including during the term of the Agreement.]

SCHEDULE

Description of land

Locality:

Mineral Field:

EXECUTED as a deed.

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

[Signature]

STEPHEN WOOD

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

[Signature]

ALAN DAVIES

Director

[Signature]

HELEN FERNIHOUGH

Secretary

[Twelfth Schedule inserted: No. 61 of 2010 s. 6.]

Thirteenth Schedule — Twelfth Supplementary Agreement

[s. 2]

[Heading inserted: No. 61 of 2010 s. 6.]

2010

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 17th day of November 2010

BETWEEN

THE HONOURABLE COLIN JAMES BARNETT MLA., Premier of the State of Western Australia acting for and on behalf of the said State and 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 parties to the agreement dated 8 October 1968, approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968* 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. Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
- 2. The State shall sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and shall endeavour to secure its passage as an Act prior to 31 December 2010 or such later date as the parties may agree.
- 3.
 - (a) Clause 4 does not come into operation unless or until an Act passed in accordance with clause 2 ratifies this Agreement.
 - (b) If by 30 June 2011, or such later date as may be agreed pursuant to clause 2, clause 4 has not come in to operation then unless the parties otherwise agree this Agreement shall cease and determine and neither party shall have any claim against the other with respect to any matter or thing arising out of or done or performed or omitted to be done or performed under this Agreement.

4. The Principal Agreement is varied:

(1) in clause 1:

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

“approved proposal” means a proposal approved or determined under this Agreement;

“Integration Agreement” means:

- (a) the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*, as from time to time added to, varied or amended; or
- (b) the agreement approved by and scheduled to the *Iron Ore (Robe River) Agreement Act 1964*, as from time to time added to, varied or amended; or
- (c) the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended; or
- (d) the agreement ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972*, as from time to time added to, varied or amended; or
- (e) the agreement ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended; or
- (f) the agreement ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996*, as from time to time added to, varied or amended; or
- (g) the agreement approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended; or
- (h) the agreement approved by and scheduled to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*, as from time to time added to, varied or amended; or

- (i) the agreement ratified by and scheduled to the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*, as from time to time added to, varied or amended; or
- (j) the agreement authorised by and as scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended; or
- (k) the agreement ratified by and scheduled to the *Iron Ore (Marillana Creek) Agreement Act 1991*, as from time to time added to, varied or amended;

“Integration Proponent” means in relation to an Integration Agreement, “the Company” or “the Joint Venturers” as the case may be as defined in, and for the purpose of, that Integration Agreement;

“Related Entity” means a company in which:

- (a) as at 21 June 2010; and
- (b) after 21 June 2010, with the approval of the Minister, a direct or (through a subsidiary or subsidiaries within the meaning of the *Corporations Act 2001* (Commonwealth)) indirect shareholding of 20% or more is held by:
- (c) Rio Tinto Limited ABN 96 004 458 404; or
- (d) BHP Billiton Limited ABN 49 004 028 077; or
- (e) those companies referred to in paragraphs (c) and (d) in aggregate;

“variation date” means the date on which clause 4 of the variation agreement made on or about 17 November 2010 between the State and the Company comes into operation;

- (b) in the definition of “mineral lease” by inserting “and any areas added to it pursuant to clause 7B” before the semi colon;
- (c) in the sentence beginning “References to this Agreement” by deleting “amended” and inserting “added to, varied or amended” after “from time to time”;

- (d) in the sentence beginning “Words and phrases” by inserting “from time to time” after “meanings are”;
- (e) in the sentence beginning “Marginal notes” by inserting “and clause headings” after notes; and
- (f) by inserting after the sentence referred to in clause 4(1)(e) the following new sentences:

“Words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context.

Nothing in this Agreement shall be construed:

- (a) to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made by or under the EP Act; or
 - (b) to exempt the State or the Company from compliance with or to require the State or the Company to do anything contrary to any laws relating to native title or any lawful obligation or requirement imposed on the State or the Company as the case may be pursuant to any laws relating to native title; or
 - (c) to exempt the Company from compliance with the provisions of the *Aboriginal Heritage Act 1972* (WA).”;
- (2) by inserting after clause 5 the following new clauses:

“Additional proposals

- 5A. (1) If the Company, at any time during the continuance of this Agreement after the variation date, desires to significantly modify, expand or otherwise vary its activities carried on pursuant to this Agreement (other than under clause 7E) beyond those activities specified in any proposals approved pursuant to clause 5 it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister

detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in clause 4(1) as the Minister may require.

- (2) A proposal may with the consent of the Minister (except in relation to an Integration Agreement) and that of any parties concerned (being in respect of an Integration Agreement the Integration Proponent for that agreement) provide for the use by the Company of any works installations or facilities constructed or established under a Government agreement.
- (3) Each of the proposals pursuant to subclause (1) may with the approval of the Minister, or shall if so required by the Minister, be submitted separately and in any order as to any matter or matters in respect of which such proposals are required to be submitted.
- (4) At the time when the Company submits the said proposals it shall submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with its reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto.
- (5) The Company may withdraw its proposals pursuant to subclause (1) at any time before approval thereof, or where any decision in respect thereof is referred to arbitration as referred to in clause 5B, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same.

Consideration of Company's proposals under clause 5A

- 5B. (1) In respect of each proposal pursuant to subclause (1) of clause 5A the Minister shall:
- (a) subject to the limitations set out below, refuse to approve the proposal (whether it requests the

grant of new tenure or not) if the Minister is satisfied on reasonable grounds that is not in the public interest for the proposal to be approved; or

- (b) approve of the proposal without qualification or reservation; or
- (c) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in clause 5A(1) not covered by the said proposal; or
- (d) require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable, and in such a case the Minister shall disclose his reasons for such conditions,

PROVIDED ALWAYS that where implementation of any proposals hereunder has been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this clause shall if the case so requires incorporate a requirement that the Company make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

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

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

- (ii) be contrary to or inconsistent with the planning and development policies and objectives of the State; or
- (iii) detrimentally affect the rights and interests of third parties; or
- (iv) detrimentally affect access to and use by others of the lands the subject of any grant or proposed grant to the Company.

The right to refuse to approve a proposal conferred by paragraph (a) may only be exercised in respect of a proposal where the Minister is satisfied on reasonable grounds that a purpose of the proposal is the integrated use of works installations or facilities (as defined in subclause (7) of clause 7C for the purpose of that clause) as contemplated by clause 7C. It may not be so exercised in respect of a proposal if pursuant to clause 5C(5) the Minister, prior to the submission of the proposal, advised the Company in writing that the Minister has no public interest concerns (as defined in that clause) with the single preferred development (as referred to in clause 5C(5)(a)) the subject of the submitted proposals and those proposals are consistent (as to their substantive scope and content) with the information provided to the Minister pursuant to clause 5C(5) in respect of that single preferred development.

- (2) The Minister shall within 2 months after receipt of proposals pursuant to clause 5A(1) give notice to the Company of his decision in respect to the proposals, PROVIDED THAT where a proposal is to be assessed under Part IV of the EP Act the Minister shall only give notice to the Company of his decision in respect to the proposal within 2 months after service on him of an authority under section 45(7) of the EP Act.

- (3) If the decision of the Minister is as mentioned in either of paragraphs (a), (c) or (d) of subclause (1) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (4) If the decision of the Minister is as mentioned in either of paragraphs (c) or (d) of subclause (1) and the Company considers that the decision is unreasonable the Company within 2 months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder. A decision of the Minister under paragraph (a) of subclause (1) shall not be referable to arbitration under the Agreement.
- (5) If by the award made on the arbitration pursuant to subclause (4) the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.
- (6) The Company shall implement the approved proposals in accordance with the terms thereof.
- (7) Notwithstanding clause 21 of the Principal Agreement (as applying to this Agreement pursuant to clause 11(11)), the Minister may during the implementation of approved proposals approve variations to those proposals.

Notification of possible proposals

- 5C. (1) If the Company, upon completion of a pre-feasibility study in respect of any matter that would require the submission and approval of proposals pursuant to this Agreement (being proposals which will have as their purpose, or one of their purposes, the integrated use of works installations or facilities as contemplated by

clause 7C) for the matter to be undertaken, intends to further consider the matter with a view to possibly submitting such proposals it shall promptly notify the Minister in writing giving reasonable particulars of the relevant matter.

- (2) Within one (1) month after receiving the notification the Minister may, if the Minister so wishes, inform the Company of the Minister's views of the matter at that stage.
- (3) If the Company is informed of the Minister's views, it shall take them into account in deciding whether or not to proceed with its consideration of the matter and the submission of proposals.
- (4) Neither the Minister's response nor the Minister choosing not to respond shall in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.
- (5)
 - (a) This subclause applies where the Company has settled upon a single preferred development a purpose of which is the integrated use of works installations or facilities (as defined in subclause (7) of clause 7C for the purpose of that clause) as contemplated by clause 7C.
 - (b) For the purpose of this subclause "public interest concerns" means any concern that implementation of the single preferred development or any part of it will:
 - (i) detrimentally affect economic and orderly development in the said State, including without limitation, infrastructure development in the said State; or
 - (ii) be contrary to or inconsistent with the planning and development policies and objectives of the State; or

- (iii) detrimentally affect the rights and interests of third parties; or
 - (iv) detrimentally affect access to and use by others of lands the subject of any grant or proposed grant to the Company.
- (c) At any time prior to submission of proposals the Company may give to the Minister notice of its single preferred development and request the Minister to confirm that the Minister has no public interest concerns with that single preferred development.
- (d) The Company shall furnish to the Minister with its notice reasonable particulars of the single preferred development including, without limitation:
 - (i) as to the matters that would be required to be addressed in submitted proposals; and
 - (ii) its progress in undertaking any feasibility or other studies or matters to be completed before submission of proposals; and
 - (iii) its timetable for obtaining required statutory and other approvals in relation to the submission and approval of proposals; and
 - (iv) its tenure requirements.
- (e) If so required by the Minister, the Company will provide to the Minister such further information regarding the single preferred development as the Minister may require from time to time for the purpose of considering the Company's request and also consult with the Minister or representatives or officers of the State in regard to the single preferred development.

- (f) Within 2 months after receiving the notice (or if the Minister requests further information, within 2 months after the provision of that information) the Minister must advise the Company:
 - (i) that the Minister has no public interest concerns with the single preferred development; or
 - (ii) that he is not then in a position to advise that he has no public interest concerns with the single preferred development and the Minister's reasons in that regard.
 - (g) If the Minister gives the advice mentioned in paragraph (f)(ii) the Company may, should it so desire, give a further request to the Minister in respect of a revised or alternate single preferred development and the provisions of this subclause shall apply mutatis mutandis thereto.”;
- (3) in clause 6(2)(b):
- (a) by deleting in line 1 “the said proposals” and substituting “approved proposals”;
 - (b) in subparagraph (i) by:
 - (A) inserting “or cause to be granted” after “grant”;
 - (B) inserting after the paragraph beginning “at peppercorn rental” the following new paragraph:

“at commercial rentals, licence or easement fees as applicable – leases, licences or easements within the Port of Dampier; and”;
 - (C) inserting “or under the *Port Authorities Act 1999* (WA)” after “(3) of this clause provided”; and
 - (D) inserting “installations or facilities” after “as the Company reasonably requires for its works”; and

- (c) in the proviso by deleting “or (as the case may be) all iron ore concentration products” and “or iron ore concentration products”;
- (4) by inserting after subclause (4) of clause 6 the following new subclause:
 - “(4a) The provisions of subclause (2) of this clause shall not operate so as to require the State to grant or vary, or cause to be granted or varied, any lease licence or other right or title until all processes necessary under any laws relating to native title to enable that grant or variation to proceed, have been completed.”;
- (5) in clause 7(4):
 - (a) by inserting “(ea),” after “(e),”;
 - (b) after “(k)” by inserting a comma and deleting “and”; and
 - (c) after “(n)” by inserting “and (o)”;
- (6) in clause 7(7) by:
 - (a) deleting paragraph (a) and substituting the following new paragraph (a):
 - “(a) The Company may blend iron ore mined from the mineral lease with any:
 - (i) iron ore mined from a mining tenement or other mining title granted under, or pursuant to, an Integration Agreement; or
 - (ii) iron ore mined from a *Mining Act 1978* mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement); or
 - (iii) with the prior approval of the Minister, iron ore mined in, or proximate to, the Pilbara region of

the said State under a Government agreement
(excluding an Integration Agreement); or

- (iv) with the prior approval of the Minister, iron ore mined by a third party from a *Mining Act 1978* mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by an Integration Proponent from the third party.”; and

(b) in paragraph (b):

- (i) deleting “there is” and substituting “there are”;
- (ii) deleting “between the relevant Government agreements”; and
- (iii) deleting “blended and” and substituting “blended as between each of the sources referred to in paragraph (a),”;

(7) by inserting in clause 7A “and in clause 10A(3a) the references to “clauses 8A(2) to (5) and of 8B” were to “clauses 5A(2) to (5) and of 5B” before the full stop at the end of that clause;

(8) by inserting after clause 7A the following new clauses:

“Additional areas

- 7B. (1) Notwithstanding the provisions of the *Mining Act 1904* or the *Mining Act 1978* the Company may from time to time during the currency of this Agreement apply to the Minister for areas held by the Company or an associated company under a mining tenement granted under the *Mining Act 1978* to be included in the mineral lease but so that the total area of the mineral lease, any land that may be included in the mineral lease pursuant to this Agreement and of any other mineral lease or mining lease granted under or pursuant to this Agreement (as aggregated) shall not at any time exceed 777 square kilometres. The Minister shall confer with the Minister for Mines in regard to any such application and if they approve the

application the Minister for Mines shall upon the surrender of the relevant mining tenement include the area the subject thereof in the mineral lease by endorsement subject to such of the conditions of the surrendered mining tenement as the Minister for Mines determines but otherwise subject to the same terms covenants and conditions as apply to the mineral lease (with such apportionment of rents as is necessary) and notwithstanding that the survey of such additional land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.

- (2) The Minister may approve, upon application by the Company from time to time, for the total area referred to in subclause (1) to be increased up to a limit not exceeding 1,000 square kilometres.
- (3) The Company shall not mine or carry out other activities (other than exploration, bulk sampling and testing) on any area or areas added to the mineral lease pursuant to subclause (1) of this clause unless and until proposals with respect thereto are approved or determined pursuant to the subsequent provisions of this clause.
- (4) If the Company desires to commence mining of iron ore or to carry out any other activities (other than as aforesaid) on the said areas it shall give notice of such desire to the Minister and shall within 2 months of the date of such notice (or thereafter within such extended time as the Minister may allow as hereinafter provided) and subject to the provisions of this Agreement submit to the Minister to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister) with respect to such mining or other activities as additional proposals pursuant to clause 5A.

Integrated use of works installations or facilities under the Integration Agreements

7C. (1) Subject to subclauses (2) to (7) of this clause and to the other provisions of this Agreement, the Company may during the continuance of this Agreement:

- (a) use any existing or new works installations or facilities constructed or held:
 - (i) under this Agreement; or
 - (ii) under any other Integration Agreement which are made available for such use and during the continuance of such Integration Agreement; or
 - (iii) with the approval of the Minister, under a Government agreement (excluding an Integration Agreement) which are made available for such use and during the continuance of that agreement,

(wholly or in part) in the activities of the Company carried on by it pursuant to this Agreement including, without limitation, as part of those activities, transporting by railway and shipping from a loading port and undertaking any ancillary and incidental activities in doing so (including, without limitation, blending permitted by clause 7(7)) of:

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

- Government agreement (excluding an Integration Agreement);
- (C) with the prior approval of the Minister, iron ore mined by a third party from a *Mining Act 1978* mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by the Company from the third party;
 - (D) iron ore mined under an Integration Agreement.
- (b) make any existing or new works installations or facilities constructed or held under this Agreement available for use (wholly or partly) by another Integration Proponent during the continuance of its Integration Agreement in the activities of that Integration Proponent carried on by it pursuant to its Integration Agreement including, without limitation, as part of those activities, transporting by railway and shipping from a loading port and undertaking any ancillary and incidental activities in doing so (including, without limitation, blending permitted by that Integration Agreement) of:
- (i) iron ore mined from a *Mining Act 1978* mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement);
 - (ii) with the prior approval of the Minister (as defined in that Integration Agreement), iron ore mined in, or proximate to, the Pilbara region of the said State under a

- Government agreement (excluding an Integration Agreement);
- (iii) with the prior approval of the Minister (as defined in that Integration Agreement), iron ore mined by a third party from a *Mining Act 1978* mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by that Integration Proponent from the third party;
 - (iv) iron ore mined under an Integration Agreement;
- (c) make any existing or new works installations or facilities constructed or held under this Agreement available for use (wholly or partly) in connection with operations under:
- (i) a *Mining Act 1978* mining lease located in, or proximate to, the Pilbara region of the said State, for iron ore, which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under a Government agreement); or
 - (ii) with the approval of the Minister, a Government agreement (other than an Integration Agreement) for the mining of iron ore in, or proximate to, the Pilbara region of the said State;
- (d) subject to subclause (2), under this Agreement and for the purpose of any use or making available for use referred to in paragraph (a), (b) or (c) connect any existing or new works installations or facilities constructed or held under this Agreement to any existing or new works installations or facilities constructed or held under another Integration Agreement;

- (e) subject to subclause (2), under this Agreement and for the purpose of any use or making available for use referred to in paragraph (a), (b) or (c) or making of any connection referred to in paragraph (d) construct new works installations or facilities and expand modify or otherwise vary any existing and new works installations or facilities constructed or held under this Agreement;
 - (f) allow a railway or rail spur line (not being a railway or rail spur line constructed or held under an Integration Agreement) to be connected to a railway or rail spur line or other works installations for facilities constructed or held under this Agreement for the delivery of iron ore to an Integration Proponent for transport by railway and shipping from a loading port (together with any ancillary and incidental activities in doing so) as part of its activities under its Integration Agreement; and
 - (g) allow an electricity transmission line (not being an electricity transmission line constructed or held under an Integration Agreement) to be connected to an electricity transmission line constructed or held under this Agreement for the supply of electricity permitted to be made under an Integration Agreement.
- (2) (a) A connection referred to in clause (1)(d) or construction, expansion, modification or other variation referred to in subclause (1)(e) by the Company shall, to the extent not already authorised under this Agreement as at the variation date, be regarded as a significant modification expansion or other variation of the Company's activities carried on by it pursuant to this Agreement and may only be made in accordance with proposals submitted and approved or determined under this Agreement in accordance with clauses 5A and 5B or

clause 7E as the case may require and otherwise in compliance with the provisions of this Agreement and the laws from time to time of the said State. For the avoidance of doubt, the parties acknowledge that any use or making available for use contemplated by subclause (1)(a), (1)(b) or (1)(c) shall not otherwise than as required by this paragraph (a) require the submission and approval of further proposals under this Agreement.

- (b) The Company shall not be entitled to:
- (i) submit proposals to construct any new port or to establish harbour or port works installations or facilities, or to expand modify or otherwise vary harbour or works installations or facilities otherwise than at or near the town of Dampier within the boundaries of the Port of Dampier; or
 - (ii) generate and supply power, take and supply water or dispose of water otherwise than in accordance with the other clauses of this Agreement and subject to any restrictions contained in those clauses; or
 - (iii) without limiting subparagraphs (i) and (ii) submit proposals to construct or establish works installations or facilities of a type, or to make expansions, modifications or other variations of works installations or facilities of a type, which in the Minister's reasonable opinion this Agreement, immediately before the variation date, did not permit or contemplate the Company constructing, establishing or making as the case may be otherwise than for integration use as

contemplated by subclauses (1)(a), (1)(b) or (1)(c) or as permitted by clause 7E; or

- (iv) submit proposals to make a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) otherwise than on tenure granted under or pursuant to this Agreement from time to time or held pursuant to this Agreement from time to time; or
- (v) submit proposals to make a connection referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) for the purpose of use as contemplated by subclause (1)(c)(i), if in the reasonable opinion of the Minister the activity which is the subject of the proposals would give to the holder or holders of the relevant *Mining Act 1978* mining lease the benefit of rights or powers granted to the Company under this Agreement, over and above the right of access to and use of the relevant works, installations or facilities; or
- (vi) submit proposals to make a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) for the purpose of use as contemplated by subclause (1)(c) and involving the grant of tenure without the prior approval of the Minister; or
- (vii) submit proposals to assign, sublet, transfer or dispose of any works installations or facilities constructed or

held under this Agreement or any leases, licences, easements or other titles under or pursuant to this Agreement for any purpose referred to in this clause.

- (c) Notwithstanding the provisions of clauses 5B and 7E, the Minister may defer consideration of, or a decision upon, a proposal submitted by the Company for a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e), for the purpose of use or making available for use as referred to in subclauses (1)(a) or (1)(b), until relevant corresponding proposals under the relevant Integration Agreement have been submitted and those proposals can be approved under that Integration Agreement concurrently with the Minister's approval under this Agreement of the Company's proposal.
- (3) Any use or making available for use as referred to in subclause (1), or submission of proposals as referred to in subclause (2), in respect of a Related Entity shall be subject to the Company first confirming with the Minister that the Minister is satisfied that the relevant company is a Related Entity.
- (4) The Company shall give the Minister prior written notice of any significant change (other than a temporary one for maintenance or to respond to an emergency) proposed in its use, or in it making available for use, works, installations or facilities as referred to in this clause:
- (a) from that authorised under this Agreement immediately before the variation date; and
 - (b) subsequently from that previously notified to the Minister under this subclause,
- as soon as practicable before such change occurs.

The Company shall also keep the Minister fully informed with respect to any proposed connection as referred to in subclause (1)(f) or 1(g) or request of the Company for such connection to be allowed.

- (5) Nothing in this Agreement shall be construed to:
- (a) exempt another Integration Proponent from complying with, or the application of, the provisions of its Integration Agreement; or
 - (b) restrict the Company's rights under clause 20 of the Principal Agreement (as applying pursuant to clause 11(1)).

For the avoidance of doubt the approval of proposals under this Agreement shall not be construed as authorising another Integration Proponent to undertake any activities under this Agreement or under another Integration Agreement.

- (6) Nothing in this clause shall be construed to exempt the Company from complying with, or the application of, the other provisions of this Agreement including, without limitation, clause 20 of the Principal Agreement (as applying pursuant to clause 11(1)) and of relevant laws from time to time of the said State.
- (7) For the purpose of this clause "works installations or facilities" means any:
- (a) harbour or port works installations or facilities including, without limitation, stockpiles, reclaimers, conveyors and wharves;
 - (b) railway or rail spur lines;
 - (c) track structures and systems associated with the operation and maintenance of a railway including, without limitation, sidings, train control and signalling systems, maintenance workshops and terminal yards;

- (d) train loading and unloading works installations or facilities;
- (e) conveyors;
- (f) private roads;
- (g) mine aerodrome and associated aerodrome works installations and facilities;
- (h) iron ore mining, crushing, screening, beneficiation or other processing works installations or facilities;
- (i) mine administration buildings including, without limitation, offices, workshops and medical facilities;
- (j) borrow pits;
- (k) accommodation and ancillary facilities including, without limitation, construction camps and in townsites constructed pursuant to and held under any Integration Agreement;
- (l) water, sewerage, electricity, gas and telecommunications works installations and facilities including, without limitation, pipelines, transmission lines and cables; and
- (m) any other works installations or facilities approved of by the Minister for the purpose of this clause.

Transfer of rights to shared works installations or facilities

- 7D. (1) For the purposes of this clause “Relevant Infrastructure” means any works installations or facilities (as defined in clause 7C(7)):
- (a) constructed or held under another Integration Agreement;
 - (b) which the Company is using in its activities pursuant to this Agreement;

- (c) which the Minister is satisfied (after consulting with the Company and the Integration Proponent for that other Integration Agreement):
 - (i) are no longer required by that other Integration Proponent to carry on its activities pursuant to its Integration Agreement because of the cessation of the Integration Proponent's mining operations in respect of which such Relevant Infrastructure was constructed or held or because of any other reason acceptable to the Minister; and
 - (ii) are required by the Company to continue to carry on its activities pursuant to this Agreement; and
 - (d) in respect of which that other Integration Proponent has notified the Minister it consents to the Company submitting proposals as referred to in subclause (2).
- (2) The Company may as an additional proposal pursuant to clause 5A propose:
- (a) that it be granted a lease licence or other title over the Relevant Infrastructure pursuant to this Agreement subject to and conditional upon the other Integration Proponent surrendering wholly or in part (and upon such terms as the Minister considers reasonable including any variation of terms to address environmental issues) its lease licence or other title over the Relevant Infrastructure; or
 - (b) that the other Integration Proponent's lease licence or other title (not being a mineral lease, mining lease or other right to mine title granted under a Government agreement, the *Mining Act 1904* or the *Mining Act 1978*) to the Relevant Infrastructure be transferred to this

Agreement (to be held by the Company pursuant to this Agreement) with such surrender of land from it and variations of its terms as the Minister considers reasonable for that title to be held under this Agreement including, without limitation, to address environmental issues and outstanding obligations of that other Integration Proponent under its Integration Agreement in respect of that Relevant Infrastructure.

The provisions of clause 5B shall mutatis mutandis apply to any such additional proposal. In addition the Company acknowledges that the Minister may require variations of the other Integration Agreement and/or proposals under it or of this Agreement in order to give effect to the matters contemplated by this clause.

- (3) This clause shall cease to apply in the event the State gives any notice of default to the Company pursuant to clause 12 and while such notice remains unsatisfied.

Miscellaneous Licences for Railways

7E. (1) In this clause subject to the context:

“Additional Infrastructure” means:

- (a) Train Loading Infrastructure;
- (b) Train Unloading Infrastructure;
- (c) a conveyor, train unloading and other infrastructure necessary for the transport of iron ore, freight goods or other products from the Railway (directly or indirectly) to port facilities within a loading port,

in each case located outside a Port;

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

“Lateral Access Roads” has the meaning given in subclause (3)(a)(iv);

“Lateral Access Road Licence” means a miscellaneous licence granted pursuant to subclause (6)(a)(ii) or subclause (6)(b) as the case may be and according to the requirements of the context describes the area of land from time to time the subject of that licence;

“Port” means any port the subject of the *Port Authorities Act 1999* (WA) or the *Shipping and Pilotage Act 1967* (WA);

“Private Roads” means Lateral Access Roads and the Company’s access roads within a Railway Corridor;

“Rail Safety Act” means the *Rail Safety Act 1998* (WA);

“Railway” means a standard gauge heavy haul railway or railway spur line, located or to be located as the case may be in, or proximate to, the Pilbara region of the said State (but outside the boundaries of a Port) for the transport of iron ore, freight goods and other products together with all railway track, associated track structures including sidings, turning loops, over or under track structures, supports (including supports for equipment or items associated with the use of a railway) tunnels, bridges, train control systems, signalling systems, switch and other gear, communication systems, electric traction infrastructure, buildings (excluding office buildings, housing and freight centres), workshops and associated plant, machinery and equipment and including rolling stock maintenance facilities, terminal yards, depots, culverts and weigh bridges which railway is or is to be (as the case may be) the subject of approved proposals under subclause (4) and includes any expansion or extension thereof outside a Port which is the subject of additional proposals approved in accordance with subclause (5);

“Railway Corridor” means, prior to the grant of a Special Railway Licence, the land for the route of the

Railway the subject of that licence, access roads (other than Lateral Access Roads), areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce, water bores and Additional Infrastructure (if any) which is the subject of a subsisting agreement pursuant to subclause (3)(a) and after the grant of the Special Railway Licence the land from time to time the subject of that Special Railway Licence;

“Railway Operation” means the construction and operation under this Agreement of the relevant Railway and associated access roads and Additional Infrastructure (if any) within the relevant Railway Corridor and of the associated Lateral Access Roads, in accordance with approved proposals;

“Railway spur line” means a standard gauge heavy haul railway spur line located or to be located in, or proximate to, the Pilbara region of the said State (but outside a Port) connecting to a Railway for the transport of iron ore, freight goods and other products upon the Railway to (directly or indirectly) a loading port;

“Railway Operation Date” means the date of the first carriage of iron ore, freight goods or other products over the relevant Railway (other than for construction or commissioning purposes);

“Railway spur line Operation Date” means the date of the first carriage of iron ore, freight goods or other products over the relevant Railway spur line (other than for construction or commissioning purposes);

“Special Railway Licence” means the relevant miscellaneous licence for railway and, if applicable, other purposes, granted to the Company pursuant to subclause (6)(a)(i) as varied in accordance with subclause (6)(h) or subclause (6)(i) and according to the requirements of the context describes the area of land from time to time the subject of that licence;

“Train Loading Infrastructure” means conveyors, stockpile areas, blending and screening facilities, stackers, re-claimers and other infrastructure reasonably required for the loading of iron ore, freight goods or other products onto the relevant Railway for transport (directly or indirectly) to a loading port; and

“Train Unloading Infrastructure” means train unloading infrastructure reasonably required for the unloading of iron ore from the Railway to be processed, or blended with other iron ore, at processing or blending facilities in the vicinity of that train unloading infrastructure and with the resulting iron ore products then loaded on to the Railway for transport (directly or indirectly) to a loading port.

Company to obtain prior Ministerial in-principle approval

- (2) (a) If the Company wishes, from time to time during the continuance of this Agreement, to proceed under this clause with a plan to develop a Railway it shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of its plan.
- (b) The Minister shall within one month of a notice under paragraph (a) advise the Company whether or not he approves in-principle the proposed plan. The Minister shall afford the Company full opportunity to consult with him in respect of any decision of the Minister under this paragraph.
- (c) The Minister’s in-principle approval in respect of a proposed plan shall lapse if the Company has not submitted detailed proposals to the Minister in respect of that plan in accordance with this clause within 18 months of the Minister’s in-principle approval.

Railway Corridor

- (3) (a) If the Minister gives in-principle approval to a plan of the Company to develop a Railway it shall consult with the Minister to seek the agreement of the Minister as to:
- (i) where the Railway will begin and end; and
 - (ii) a route for the Railway, access roads to be within the Railway Corridor and the land required for that route as well as Additional Infrastructure (if any) including, without limitation, areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce and water bores; and
 - (iii) in respect of Additional Infrastructure (if any) the nature and capacity of such Additional Infrastructure; and
 - (iv) the routes of, and the land required for, roads outside the Railway Corridor (and also outside a Port) for access to it to construct the Railway (such roads as agreed being “Lateral Access Roads”).

In seeking such agreement, regard shall be had to achieving a balance between engineering matters including costs, the nature and use of any lands concerned and interests therein and the costs of acquiring the land (all of which shall be borne by the Company). The parties acknowledge the intention is for the Company to construct the Railway, the access roads for the construction and maintenance of the Railway which are to be within the Railway Corridor and the relevant Additional Infrastructure (if any) along the centreline of the Railway Corridor subject to changes in that alignment to the extent necessary to avoid heritage, environmental or poor ground

conditions that are not identified during preliminary investigation work, and recognise the width of the Railway Corridor may need to vary along its route to accommodate Additional Infrastructure (if any), access roads, areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce and water bores. The provisions of clause 25 of the Principal Agreement (as applying pursuant to clause 11(2c)) shall not apply to this subclause.

- (b) If the date by which the Company must submit detailed proposals under subclause (4)(a) (as referred to in subclause (2)(c)) is extended or varied by the Minister pursuant to clause 24, of the Principal Agreement (as applying pursuant to clause 11(1)), any agreement made pursuant to paragraph (a) before such date is extended or varied shall unless the Minister notifies the Company otherwise be deemed to be at an end and neither party shall have any claim against the other in respect of it.
- (c) The Company acknowledges that it shall be responsible for liaising with every title holder in respect of the land affected and for obtaining in a form and substance acceptable to the Minister all unconditional and irrevocable consents of each such title holder to, and all statutory consents required in respect of the land affected for:
 - (i) the grant of the Special Railway Licence for the construction, operation and maintenance within the Railway Corridor of the Railway, access roads and Additional Infrastructure (if any) to be within the Railway Corridor; and
 - (ii) the grant of Lateral Access Road Licences for the construction, use and maintenance of Lateral Access Roads

over the routes for the Lateral Access Roads agreed pursuant to paragraph (a); and

- (iii) the inclusion of additional land in the Special Railway Licence as referred to in subclause (6)(h) or subclause (6)(i),

in accordance with this clause. For the purposes of this subclause (3)(c), “title holder” means a management body (as defined in the LAA) in respect of any part of the affected land, a person who holds a mining, petroleum or geothermal energy right (as defined in the LAA) in respect of any part of the affected land, a person who holds a lease or licence under the LAA in respect of any part of the affected land, a person who holds any other title granted under or pursuant to a Government agreement in respect of any part of the affected land, a person who holds a lease or licence in respect of any part of the affected land under any other Act applying in the said State and a person in whom any part of the affected land is vested, immediately before the provision of such consents to the Minister as referred to in subclause (4)(e)(ii) (including as applying pursuant to subclause 5(d)).

Company to submit proposals for Railway

- (4) (a) The Company shall, subject to the EP Act, the provisions of this Agreement, agreement at that time subsisting in respect of the matters required to be agreed pursuant to subclause 3(a), submit to the Minister by the latest date applying under subclause (2)(c) to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister and any other details normally required by a local government in

whose area any works are to be situated) with respect to the undertaking of the relevant Railway Operation, which proposals shall include the location, area, layout, design, materials and time program for the commencement and completion of construction or the provision (as the case may be) of each of the following matters namely:

- (i) the Railway including fencing (if any) and crossing places within the Railway Corridor;
- (ii) Additional Infrastructure (if any) within the Railway Corridor;
- (iii) temporary accommodation and ancillary temporary facilities for the railway workforce on, or in the vicinity of, the Railway Corridor and housing and other appropriate facilities elsewhere for the Company's workforce;
- (iv) water supply;
- (v) energy supplies;
- (vi) access roads within the Railway Corridor and Lateral Access Roads both along the routes for those roads agreed between the Minister and the Company pursuant to subclause 3(a);
- (vii) any other works, services or facilities desired by the Company; and
- (viii) use of local labour, professional services, manufacturers, suppliers contractors and materials and measures to be taken with respect to the engagement and training of employees by the Company, its agents and contractors.

- (b) Proposals pursuant to paragraph (a) must specify the matters agreed for the purpose pursuant to subclause (3)(a) and must not be contrary to or inconsistent with such agreed matters.
- (c) Each of the proposals pursuant to paragraph (a) may with the approval of the Minister, or must if so required by the Minister, be submitted separately and in any order as to the matter or matters mentioned in one or more of subparagraphs (i) to (viii) of paragraph (a) and until all of its proposals under this subclause have been approved the Company may withdraw and may resubmit any proposal but the withdrawal of any proposal shall not affect the obligations of the Company to submit a proposal under this subclause in respect of the subject matter of the withdrawn proposal.
- (d) The Company shall, whenever any of the following matters referred to in this subclause are proposed by the Company (whether before or during the submission of proposals under this subclause), submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia, together with its reasons therefor and shall, if required by the Minister consult with the Minister with respect thereto.
- (e) At the time when the Company submits the last of the said proposals pursuant to this subclause, it shall:
 - (i) furnish to the Minister's reasonable satisfaction evidence of all accreditations under the Rail Safety Act

which are required to be held by the Company or any other person for the construction of the Railway; and

- (ii) furnish to the Minister the written consents referred to in subclause (3)(c)(i) and (3)(c)(ii).
- (f) The provisions of clause 5B shall apply mutatis mutandis to detailed proposals submitted under this subclause.

Additional Railway Proposals

- (5) (a) If the Company at any time during the currency of a Special Railway Licence desires to construct a Railway spur line (connecting to the Railway the subject of that Special Railway Licence) or desires to significantly modify, expand or otherwise vary its activities within the land the subject of the Special Railway Licence that are the subject of this Agreement and that may be carried on by it pursuant to this Agreement (other than by the construction of a Railway spur line) beyond those activities specified in any approved proposals for that Railway, it shall give notice of such desire to the Minister and furnish to the Minister with that notice an outline of its proposals in respect thereto (including, without limitation, such matters mentioned in subclause (4)(a) as are relevant or as the Minister otherwise requires).
- (b) If the notice relates to a Railway spur line, or to the construction of Train Loading Infrastructure or Train Unloading Infrastructure on land outside the then Railway Corridor, the Minister shall within one month of receipt of such notice advise the Company whether or not he approves in-principle the proposed construction of such spur line, Train Loading Infrastructure or Train Unloading Infrastructure. If the Minister gives

in-principle approval the Company may (but not otherwise) submit detailed proposals in respect thereof provided that the provisions of subclause (3) shall *mutatis mutandis* apply prior to submission of detailed proposals in respect thereof.

- (c) Subject to the EP Act, the provisions of this Agreement and agreement at that time subsisting in respect of any matters required to be agreed pursuant to subclause (3)(a) (as referred to in paragraph (b)), the Company shall submit to the Minister within a reasonable timeframe, as determined by the Minister after receipt of the notice referred to in paragraph (a) (or in the case of a notice referred to in paragraph (b) the giving of the Minister's in-principle consent as referred to in that paragraph), detailed proposals in respect of the proposed construction of such Railway spur line, Train Loading Infrastructure, Train Unloading Infrastructure or other proposed modification, expansion or variation of its activities including such of the matters mentioned in subclause (4)(a) as the Minister may require.
- (d) The provisions of subclause (4) (with the date for submission of proposals being read as the date or time determined by the Minister under paragraph (c) and the reference in subclause (4)(e)(ii) to subclause (3)(c)(i) being read as a reference to subclause (3)(c)(iii)) and of clause 5B shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause.

Grant of Tenure

- (6) (a) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after all its proposals submitted pursuant to

subclause (4)(a) have been approved or deemed to be approved and the Company has complied with the provisions of subclause (4)(e), the State notwithstanding the *Mining Act 1978* shall cause to be granted to the Company:

- (i) a miscellaneous licence to conduct within the Railway Corridor and in accordance with its approved proposals all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce and, subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance within the Railway Corridor of the Railway, access roads and Additional Infrastructure (if any) (“the Special Railway Licence”) such licence to be granted under and subject to, except as otherwise provided in this Agreement, the *Mining Act 1978* in the form of the Third Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at a rental calculated in accordance with the *Mining Act 1978*:
 - (A) prior to the Railway Operation Date, as if the width of the Railway Corridor were 100 metres; and
 - (B) on and from the Railway Operation Date, at the rentals from time to time prescribed under the *Mining Act 1978*; and

- (ii) a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under subclause (3)(a) (each a “Lateral Access Road Licence”), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the *Mining Act 1978* in the form of the Fourth Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the *Mining Act 1978*.

- (b) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after its proposals submitted pursuant to subclause (5)(a) for the construction of Lateral Access Roads for access to the Railway Corridor to construct a Railway spur line have been approved or deemed to be approved and the Company has complied with the provisions of subclause (4)(e) (as applying pursuant to subclause (5)(d)), the State notwithstanding the *Mining Act 1978* shall cause to be granted to the Company a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under subclause (3)(a) (as applying pursuant to subclause (5)(b)) (each a “Lateral Access Road Licence”), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the *Mining Act 1978* in the form of the Fifth Schedule hereto and subject to such terms and conditions as the Minister for Mines may from

time to time consider reasonable and at the rentals from time to time prescribed under the *Mining Act 1978*.

- (c) Notwithstanding the *Mining Act 1978*, the term of the Special Railway Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 50 years commencing on the date of grant thereof.
- (d) Notwithstanding the *Mining Act 1978*, the term of any Lateral Access Road Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 4 years commencing on the date of grant thereof.
- (e) Notwithstanding the *Mining Act 1978*, and except as required to do so by the terms of the Special Railway Licence, the Company shall not be entitled to surrender the Special Railway Licence or any Lateral Access Road Licence or any part or parts of them without the prior consent of the Minister.
- (f)
 - (i) The Company may in accordance with approved proposals take stone, sand, clay and gravel from the Railway Corridor for the construction, operation and maintenance of the Railway constructed within or approved for construction within the Railway Corridor.
 - (ii) Notwithstanding the *Mining Act 1978* no royalty shall be payable under the Mining Act in respect of stone, sand, clay and gravel which the Company is permitted by subparagraph (i) to obtain from the land the subject of the Special Railway Licence.

- (g) For the purposes of this Agreement and without limiting the operation of paragraphs (a) to (f) inclusive above, the application of the *Mining Act 1978* and the regulations made thereunder are specifically modified;
 - (i) in section 91(1) by:
 - (A) deleting “the mining registrar or the warden, in accordance with section 42 (as read with section 92)” and substituting “the Minister”;
 - (B) deleting “any person” and substituting “the Company (as defined in the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended)”;
 - (C) deleting “for any one or more of the purposes prescribed” and substituting “for the purpose specified in clause 7E(6)(a)(i), clause 7E(6)(a)(ii) or clause 7E(6)(b), of the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended”;
 - (ii) in section 91(3)(a), by deleting “prescribed form” and substituting “form required by the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended”;

- (iii) by deleting sections 91(6), 91(9), 91(10) and 91B;
- (iv) in section 92, by deleting “Sections 41, 42, 44, 46, 46A, 47 and 52 apply,” and inserting “Section 46A (excluding in subsection (2)(a) “the mining registrar, the warden or”) applies,” and by deleting “in those provisions” and inserting “in that provision”;
- (v) by deleting the full stop at the end of the section 94(1) and inserting, “except to the extent otherwise provided in, or to the extent that such terms and conditions are inconsistent with, the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended”;
- (vi) by deleting sections 94(2), (3) and (4);
- (vii) in section 96(1), by inserting after “miscellaneous licence” the words “(not being a miscellaneous licence granted pursuant to the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended”;
- (viii) by deleting mining regulations 37(2), 37(3), 42 and 42A; and
- (ix) by inserting at the beginning of mining regulations 41(c) and (f) the words “subject to the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended”.

- (h) If additional proposals are approved in accordance with subclause (5) for the construction of a Railway spur line outside the then Railway Corridor, the Minister for Mines shall include the area of land within which such construction is to occur in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.
- (i) If additional proposals are approved in accordance with subclause (5) for the construction of Train Loading Infrastructure or Train Unloading Infrastructure outside the then Railway Corridor, the Minister for Mines shall include the area of such land within which such infrastructure is approved for construction in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.
- (j) The provisions of this subclause shall not operate so as to require the State to cause a Special Railway Licence or a Lateral Access Road Licence to be granted or any land included in the Special Railway Licence as mentioned above until all processes necessary under any laws relating to native title to enable that grant or inclusion of land to proceed, have been completed.

Construction and operation of Railway

- (7) (a) Subject to and in accordance with approved proposals, the Rail Safety Act and the grant of the relevant Special Railway Licence and any associated Lateral Access Road Licences the

Company shall in a proper and workmanlike manner and in accordance with recognised standards for railways of a similar nature operating under similar conditions construct the Railway and associated Additional Infrastructure and access roads within the Railway Corridor and shall also construct inter alia any necessary sidings, crossing points, bridges, signalling switches and other works and appurtenances and provide for crossings and (where appropriate and required by the Minister) grade separation or other protective devices including flashing lights and boom gates at places where the Railway crosses or intersects with major roads or existing railways.

- (b) The Company shall while the holder of a Special Railway Licence:
- (i) keep the Railway the subject of that licence in an operable state; and
 - (ii) ensure that the Railway the subject of that licence is operated in a safe and proper manner in compliance with all applicable laws from time to time; and
 - (iii) without limiting subparagraph (ii) ensure that the obligations imposed under the Rail Safety Act on an owner and an operator (as those terms are therein defined) are complied with in connection with the Railway the subject of that licence.

Nothing in this Agreement shall be construed to exempt the Company or any other person from compliance with the Rail Safety Act or limit its application to the Company's operations generally (except as otherwise may

be provided in that Act or regulations made under it).

- (c) The Company shall provide crossings for livestock and also for any roads, other railways, conveyors, pipelines and other utilities which exist at the date of grant of the relevant Special Railway Licence or in respect of land subsequently included in it at the date of such inclusion and the Company shall on reasonable terms and conditions allow such crossings for roads, railways, conveyors, pipelines and other utilities which may be constructed for future needs and which may be required to cross a Railway constructed pursuant to this clause.
- (d) Subject to clause 7D, the Company shall at all times be the holder of Special Railway Licences and Lateral Access Road Licences granted pursuant to this clause and (without limiting clause 11(j) of the Principal Agreement (as applying pursuant to clause 8) but subject to clause 7D) shall at all times own manage and control the use of each Railway the subject of a Special Railway Licence held by the Company.
- (e) The Company shall not be entitled to exclusive possession of the land the subject of a Special Railway Licence or Lateral Access Road Licence granted pursuant to this clause to the intent that the State, the Minister, the Minister for Mines and any persons authorised by any of them from time to time shall be entitled to enter upon the land or any part of it at all reasonable times and on reasonable notice with all necessary vehicles, plant and equipment and for purposes related to this Agreement or such other purposes as they think fit but in doing so shall be subject to the reasonable directions of the Company so as not to unreasonably interfere with the Company's operations.

- (f) The Company's ownership of a Railway constructed pursuant to this clause shall not give it an interest in the land underlying it.
- (g) The Company shall not at any time without the prior consent of the Minister dismantle, sell or otherwise dispose of any part or parts of any Railway constructed pursuant to this clause, or permit this to occur, other than for the purpose of maintenance, repair, upgrade or renewal.
- (h) The Company shall, subject to and in accordance with approved proposals, in a proper and workmanlike manner, construct any Additional Infrastructure, access roads, Lateral Access Roads and other works approved for construction under this clause.
- (i) The Company shall while the holder of a Special Railway Licence at all times keep and maintain in good repair and working order and condition (which obligation includes, where necessary, replacing or renewing all parts which are worn out or in need of replacement or renewal due to their age or condition) the Railway, access roads and Additional Infrastructure (if any) the subject of that licence and all such other works installations plant machinery and equipment for the time being the subject of this Agreement and used in connection with the operation use and maintenance of that Railway, access roads and Additional Infrastructure (if any).
- (j) Subject to clause 7D, the Company shall:
 - (i) be responsible for the cost of construction and maintenance of all Private Roads constructed pursuant to this clause; and
 - (ii) at its own cost erect signposts and take other steps that may be reasonable in the

circumstances to prevent any persons and vehicles (other than those engaged upon the Company's activities and its invitees and licensees) from using the Private Roads; and

- (iii) at any place where any Private Roads are constructed by the Company so as to cross any railways or public roads provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the Public Transport Authority as the case may be.
- (k) The provisions of clauses 10(2a) and (3) of the Principal Agreement (as applying pursuant to clause 7(4) regarding third party access as well as the proviso to clause 10(2)(a) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause except that the Company shall not be obliged to transport passengers upon any such Railway or Railway spur line.

Aboriginal Heritage Act 1972 (WA)

- (8) For the purposes of this clause the *Aboriginal Heritage Act 1972 (WA)* applies as if it were modified by:
 - (a) the insertion before the full stop at the end of section 18(1) of the words:

“and the expression “the Company” means the persons from time to time comprising “the Company” in their capacity as such under the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended in relation to the use or proposed use of land pursuant to clause 7E of that agreement after and in

accordance with approved proposals under clause 7E of that agreement and in relation to the use of that land before any such approval of proposals where the Company has the requisite authority to enter upon and so use the land”;

- (b) the insertion in sections 18(2), 18(4), 18(5) and 18(7) of the words “or the Company as the case may be” after the words “owner of any land”;
- (c) the insertion in section 18(3) of the words “or the Company as the case may be” after the words “the owner”;
- (d) the insertion of the following sentences at the end of section 18(3):

“In relation to a notice from the Company the conditions that the Minister may specify can as appropriate include, among other conditions, a condition restricting the Company’s use of the relevant land to after the approval or deemed approval as the case may be under the abovementioned agreement of all of the Company’s submitted initial proposals thereunder for the Railway Operation (as defined in clause 7E(1) of the abovementioned agreement), or in the case of additional proposals submitted or to be submitted by the Company to after the approval or deemed approval under that agreement of such additional proposals, and to the extent so approved.”; and

- (e) the insertion in sections 18(2) and 18(5) of the words “or it as the case may be” after the word “he”.

The Company acknowledges that nothing in this subclause (8) nor the granting of any consents under section 18 of the *Aboriginal Heritage Act 1972* (WA) will constitute or is to be construed as constituting

the approval of any proposals submitted or to be submitted by the Company under this Agreement or as the grant or promise of land tenure for the purposes of this Agreement.

Taking of land for the purposes of this clause

- (9) (a) The State is hereby empowered, as and for a public work under Parts 9 and 10 of the LAA, to take for the purposes of this clause any land (other than any part of a Port) which in the opinion of the Company is necessary for the relevant Railway Operation and which the Minister determines is appropriate to be taken for the relevant Railway Operation (except any land the taking of which would be contrary to the provisions of a Government agreement entered into before the submission of the proposals relating to the proposed taking) and notwithstanding any other provisions of that Act may license that land to the Company.
- (b) In applying Parts 9 and 10 of the LAA for the purposes of this clause:
- (i) “land” in that Act includes a legal or equitable estate or interest in land;
 - (ii) sections 170, 171, 172, 173, 174, 175 and 184 of that Act do not apply; and
 - (iii) that Act applies as if it were modified in section 177(2) by inserting -
 - (A) after “railway” the following -

“or land is being taken pursuant to a Government agreement as defined in section 2 of the *Government Agreements Act 1979 (WA)*”; and

- (B) after “that Act” the following -
 - “or that Agreement as the case may be”.
- (c) The Company shall pay to the State on demand the costs of or incidental to any land taken at the request of and on behalf of the Company including but not limited to any compensation payable to any holder of native title or of native title rights and interests in the land.

Notification of Railway Operation Date

- (10) (a) The Company shall from the date occurring 6 months before the date for completion of construction of a Railway specified in its time program for the commencement and completion of construction of that Railway submitted under subclause (4)(a), keep the Minister fully informed as to:
 - (i) the progress of that construction and its likely completion and commissioning; and
 - (ii) the likely Railway Operation Date.
- (b) The Company shall on the Railway Operation Date notify the Minister that the first carriage of iron ore, freight goods or other products as the case may be over the Railway (other than for construction or commissioning purposes) has occurred.
- (c) The Company shall from the date occurring 6 months before the date for completion of construction of a Railway spur line specified in its time program for the commencement and completion of construction of that spur line submitted under subclause (5)(c) keep the Minister fully informed as to:
 - (i) the progress of that construction and its likely completion and commissioning; and

- (ii) in respect of it, the likely Railway spur line Operation Date.
 - (d) The Company shall on the Railway spur line Operation Date in respect of any Railway spur line notify the Minister that the first carriage of iron ore, freight goods or other products as the case may be over such spur line (other than for construction or commissioning purposes) has occurred.”;
- (9) by inserting at the end of clause 11(1) the following new sentence:
- “In addition clause 19 of the Principal Agreement shall apply to and be deemed incorporated in this Agreement as if the reference in the last sentence of that clause to “10L” was to “7C”;
- (10) In clause 12:
- (a) by inserting “granted under or pursuant to this Agreement or held pursuant to this Agreement” after “any lease sublease licence or other title”;
 - (b) by inserting “or held pursuant hereto” before “shall thereupon determine”;
 - (c) in paragraph (a) by deleting “occupied by the Company” and substituting “the subject of any lease licence easement or other title granted under or pursuant to this Agreement or held pursuant to this Agreement”;
 - (d) in paragraph (c) by:
 - (i) inserting “granted under or pursuant to this Agreement or held pursuant to this Agreement” after “any lease sublease licence or other title”; and
 - (ii) inserting “or held pursuant thereto” after “granted thereunder or pursuant thereto”;
- (11) by deleting clause 16; and
- (12) by inserting after the Second Schedule the following schedules:

“THIRD SCHEDULE

WESTERN AUSTRALIA

**IRON ORE (HAMERSLEY RANGE) AGREEMENT
ACT AMENDMENT ACT 1968**

MINING ACT 1978

**MISCELLANEOUS LICENCE FOR A RAILWAY
AND OTHER PURPOSES**

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called “the Agreement”) approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called “the Company”) a miscellaneous licence for the construction operation and maintenance of a Railway (as defined in clause 7E(1) of the Agreement and otherwise as provided in the Agreement) and, if applicable, other purposes AND WHEREAS the Company pursuant to clause 7E(6)(a) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended, the Company is hereby granted by this licence authority to conduct on the land the subject of this licence as more particularly delineated and described from time to time in the Schedule hereto all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce in accordance with the Agreement and, subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance on the land the subject of this licence of the Railway and Additional Infrastructure (as defined in clause 7E(1) of the Agreement) and access roads to be located on the land the subject of this licence in accordance with the provisions of the Agreement and proposals approved under the Agreement, for the term of 50 years from the date hereof (subject to the sooner determination of the term upon the determination of the Agreement) and upon and subject to the terms

covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 7E(6)(a)(i) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

- If the Company be more than one the liability of the Company hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution thereof or in lieu thereof and to the regulations and by-laws of the time being in force thereunder.
- Reference to “the Agreement” means such agreement as from time to time added to, varied or amended.
- The terms “approved proposals”, “Railway”, “Railway Operation Date”, and “Railway spur line” have the meanings given in the Agreement.

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.
2. The Company is permitted to, in accordance with approved proposals, take stone, sand, clay and gravel from the land the subject of this licence for the construction, operation and maintenance of the Railway (including any Railway spur line) constructed within or approved for construction within the area of land the subject of this licence.
3. Notwithstanding the *Mining Act 1978*, no royalty shall be payable under the *Mining Act 1978* in respect of stone, sand, clay and

gravel which the Company is permitted by the Agreement to obtain from the land the subject of this licence.

4. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

1. (a) Except as provided in paragraph (b), the Company shall within 2 years after the Railway Operation Date surrender in accordance with the provisions of the *Mining Act 1978* the area of this licence down to a maximum of 100 metres width or as otherwise approved by the Minister (as defined in the Agreement) for the safe operation of the Railway then constructed or approved for construction under approved proposals.
(b) Paragraph (a) shall not apply to land the subject of this licence that was included in this licence pursuant to clause 7E(6)(h) or clause 7E(6)(i) of the Agreement.
2. The Company shall as soon as possible after the construction of a Railway spur line or of an expansion or extension thereof as the case may be surrender in accordance with the *Mining Act 1978* the land the subject of this licence that was included in this licence pursuant to clause 7E(6)(h) of the Agreement for the purpose of such construction down to a maximum of 100 metres in width or as otherwise approved by the Minister (as defined in the Agreement) for the safe operation of that Railway spur line or expansion or extension thereof as the case may be then constructed or approved for construction under approved proposals.
3. [Any further conditions which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of this licence including during the term of the Agreement.]

SCHEDULE

Land description

Locality:

Mineral Field

Area:

DATED at Perth this day of .

MINISTER FOR MINES

FOURTH SCHEDULE

WESTERN AUSTRALIA

**IRON ORE (HAMERSLEY RANGE) AGREEMENT ACT
AMENDMENT ACT 1968**

MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called “the Agreement”) approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called “the Company”) a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 7E(6)(a)(ii) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended, the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and

subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 7E(6)(a)(ii) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

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

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.
2. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

[Such conditions which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of the licence, including during the term of the Agreement.]

SCHEDULE

Description of land

Locality:

Mineral Field:

Area:

DATED at Perth this day of .

MINISTER FOR MINES

FIFTH SCHEDULE

WESTERN AUSTRALIA

**IRON ORE (HAMERSLEY RANGE) AGREEMENT
ACT AMENDMENT ACT 1968**

MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called “the Agreement”) approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called “the Company”) a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 7E(6)(b) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended, the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement

and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 7E(6)(b) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

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

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [/], and approved by the Minister (as defined in the Agreement) on [/], under the Agreement.
2. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

[Such conditions which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of the licence, including during the term of the Agreement.]

SCHEDULE

Description of land

Locality:

Mineral Field:

Area:

DATED at Perth this day of .

MINISTER FOR MINES”

EXECUTED as a deed.

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

[Signature]

STEPHEN WOOD

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

[Signature] ALAN DAVIES
Director

[Signature] HELEN FERNIHOUGH
Secretary

[Thirteenth Schedule inserted: No. 61 of 2010 s. 6.]

**Fourteenth Schedule — Thirteenth Supplementary
Agreement**

[s. 2]

[Heading inserted: No. 61 of 2011 s. 6.]

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)”;
 - (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.”.

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)
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

[Fourteenth Schedule inserted: No. 61 of 2011 s. 6.]

**Fifteenth Schedule — Fourteenth Supplementary
Agreement**

[s. 2]

[Heading inserted: No. 61 of 2011 s. 6.]

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)”;
 - (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

Sixteenth Schedule — Fifteenth Supplementary Agreement

[s. 2]

[Heading inserted: No. 13 of 2017 s. 11.]

2017

THE HONOURABLE MARK McGOWAN

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 29th day of September 2017

BETWEEN

THE HONOURABLE MARK McGOWAN, BA LLB MLA, Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called the "**State**") of the first part,

AND

HAMERSLEY IRON PTY. LIMITED ACN 004 558 276 of Level 22, Central Park, 152-158 St Georges Terrace, Perth, Western Australia, (hereinafter called the "**Company**" in which term shall be included its successors and permitted assigns) of the second part.

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 provisions of the Principal Agreement on the terms and conditions set out in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Ratification and operation

- (1) This Agreement, other than this clause, does not come into operation except in accordance with subclause (2).
- (2) This Agreement, other than this clause, comes into operation on the day on which it is ratified by an Act of the Parliament of Western Australia ("**Operative Date**") unless, before that day, it terminates under subclauses (4) or (5).

- (3) The State must introduce in the Parliament of Western Australia before 31 October 2017 or a later date agreed by the parties to this Agreement a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.
- (4) If by 31 December 2017 this Agreement has not been ratified by an Act of the Parliament of Western Australia then, unless the parties to this Agreement otherwise agree, this Agreement terminates on that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (5) The parties agree that if the Principal Agreement is otherwise determined in accordance with its provisions on a day prior to the Operative Date, then this Agreement shall also terminate on and from that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

2. Variations of the Principal Agreement

The Principal Agreement is hereby varied as follows:

- (1) in clause 1 by inserting after the definition of "Channar Agreement" the following new definition:

"Channar Joint Venture Completion Date" means the date (if it should occur prior to the cessation or determination of the Channar Agreement) upon which an associated company becomes, in accordance with clause 35 of the Channar Agreement, the sole entity comprising the 'Joint Venturers' for the purposes of that agreement;"

- (2) in clause 8E by inserting after subclause (7) the following new subclause:

"(8) The Company acknowledges that its obligations under this clause apply to its activities in connection with agreements contemplated by clause 15(7) of the Channar Agreement.";

- (3) in clause 10 by inserting:
- (a) after the word "practicable" in paragraph (i) of subclause (2) of clause 10 the following:

"(including in its activities in connection with agreements contemplated by clause 15(7) of the Channar Agreement)"; and
 - (b) after subparagraph (i) of paragraph (a) of subclause (4) the following new subparagraph:

"(ia) iron ore mined from the mining lease granted under the Channar Agreement; or"
- (4) in clause 10H:
- (a) in paragraph (b) of subclause (1) by replacing the second reference to "clause" with "subclause"; and
 - (b) inserting after subclause (1) the following new subclauses:

"(1A) On and from the Channar Joint Venture Completion Date and prior to the cessation or determination of the Channar Agreement the Company may from time to time:

 - (a) with the written consent of the Joint Venturers under the Channar Agreement and provided it is at that date the holder of Mineral Lease 4SA apply to the Minister for Mines for inclusion in Mineral Lease 4SA of so much of the land within the mining lease granted under the Channar Agreement as the Company then desires and the Minister for Mines shall upon the surrender of the land applied for include that land in Mineral Lease 4SA on terms and in the manner contemplated by subclause (1)(a) above; and

(b) with the written consent of the Joint Venturers under the Channar Agreement and provided that they are at that date the holder of any lease licence easement grant or other title made under the Channar Agreement, apply for a similar right or rights for the purpose of facilitating mining from areas included or to be included in Mineral Lease 4SA pursuant to paragraph (a) of this subclause and the State shall, consequent upon the registration of the relevant surrender or surrenders, grant or arrange to have the appropriate authority or other interested instrumentality of the State grant such right or rights on terms and in the manner contemplated by subclause (1)(b) above.

(1B) Except as otherwise agreed by the Minister, the Company shall undertake and complete any outstanding decommissioning, remediation, rehabilitation and other closure activities and works relating to land included in Mineral Lease 4SA or the subject of a right granted pursuant to this Clause in accordance with all laws and requirements applicable to that land immediately prior to the inclusion or grant including requirements under the Channar Agreement, the EP Act, the Mining Act 1978, the LAA and the terms and conditions of the former title."; and

(5) in clause 28 by adding the following after "State":

"and the parties to this Agreement submit to the jurisdiction of the courts of Western Australia in relation to any action or proceeding to settle any

dispute or question arising out of or in connection
with this Agreement".

EXECUTED AS A DEED.

SIGNED by **THE HONOURABLE**)
MARK McGOWAN, in the)
presence of:)

[Signature]
.....
Signature of witness

TRENA McDONALD
.....
Name of witness (block letters)

[Signature]
.....
Signature of **THE**
HONOURABLE MARK
McGOWAN

EXECUTED by **HAMERSLEY**)
IRON PTY. LIMITED)
ACN 004 558 276 in accordance)
with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)

[Signature]
.....
Signature of director

PAUL SHANNON
.....
Name of director (block letters)

[Signature]
.....
Signature of director/~~company~~
~~secretary~~*
*delete whichever is not applicable

MICHAEL GOLLSCHEWSKI
.....
Name of director/~~company~~
~~secretary~~* (block letters)
*delete whichever is not applicable

[Sixteenth Schedule inserted: No. 13 of 2017 s. 11.]

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Notes

- ¹ This is a compilation of the *Iron Ore (Hamersley Range) Agreement Act 1963* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Iron Ore (Hamersley Range) Agreement Act 1963</i>	24 of 1963 (12 Eliz. II No. 24)	13 Nov 1963	13 Nov 1963
<i>Iron Ore (Hamersley Range) Agreement Act Amendment Act 1964</i>	98 of 1964 (13 Eliz. II No. 98)	23 Dec 1964	23 Dec 1964
Reprint approved 1 Mar 1966 in Volume 19 of Reprinted Acts			
<i>Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968</i>	48 of 1968	12 Nov 1968	12 Nov 1968
<i>Iron Ore (Hamersley Range) Agreement Act Amendment Act 1972</i>	39 of 1972	16 Jun 1972	16 Jun 1972
<i>Iron Ore (Hamersley Range) Agreement Act Amendment Act 1976</i>	93 of 1976	12 Nov 1976	12 Nov 1976
<i>Iron Ore (Hamersley Range) Agreement Act Amendment Act 1979</i>	26 of 1979	11 Sep 1979	11 Sep 1979
<i>Iron Ore (Hamersley Range) Agreement Amendment Act 1982</i>	39 of 1982	27 May 1982	27 May 1982
<i>Iron Ore (Hamersley Range) Agreement Amendment Act 1987</i>	27 of 1987	29 Jun 1987	29 Jun 1987 (see s. 2)
<i>Iron Ore (Hamersley Range) Agreement Amendment Act (No. 2) 1987</i>	60 of 1987	13 Nov 1987	13 Nov 1987 (see s. 2)
<i>Iron Ore (Hamersley Range) Agreement Amendment Act 1990</i>	32 of 1990	9 Oct 1990	9 Oct 1990 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Iron Ore (Hamersley Range) Agreement Amendment Act 1992</i>	42 of 1992	2 Oct 1992	2 Oct 1992 (see s. 2)
Reprint of the Iron Ore (Hamersley Range) Agreement Act 1963 as at 10 Mar 2000 (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010 s. 4 and 42(2)</i>	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and Gazette 10 Sep 2010 p. 4341)
<i>Iron Ore Agreements Legislation Amendment Act 2010 Pt. 3</i>	34 of 2010	26 Aug 2010	1 Jul 2010 (see s. 2(b)(ii))
<i>Iron Ore Agreements Legislation Amendment Act (No. 2) 2010 Pt. 2</i>	61 of 2010	10 Dec 2010	11 Dec 2010 (see s. 2(c))
<i>Iron Ore Agreements Legislation Amendment Act 2011 Pt. 2</i>	61 of 2011	14 Dec 2011	15 Dec 2011 (see s. 2(b))
Reprint 3: The Iron Ore (Hamersley Range) Agreement Act 1963 as at 17 Jan 2014 (includes amendments listed above)			
<i>Iron Ore (Channar Joint Venture) (Hamersley Range) Agreements Amendment Act 2017 Pt. 3</i>	13 of 2017	5 Dec 2017	6 Dec 2017 (see s. 2(b))

² Repealed by the *Mining Act 1978*.

³ Repealed by the *Interpretation Act 1984*.

⁴ Marginal notes in the agreement have been represented as headnotes in this reprint but that does not change their status as marginal notes.

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
Agreement.....	2, 4A(1)
Company.....	2
Eighth Supplementary Agreement	2
Eleventh Supplementary Agreement	2
Fifteenth Supplementary Agreement	2
Fifth Supplementary Agreement	2
First Supplementary Agreement	2
Fourteenth Supplementary Agreement	2
Fourth Supplementary Agreement	2
Ninth Supplementary Agreement.....	2
Second Supplementary Agreement.....	2, 4B(1)
Seventh Supplementary Agreement.....	2
Sixth Supplementary Agreement	2
Tenth Supplementary Agreement	2
Third Supplementary Agreement.....	2
Thirteenth Supplementary Agreement	2
Twelfth Supplementary Agreement	2