



Western Australia

**Railway (BBI Rail Aus Pty Ltd)
Agreement Act 2017**

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Railway (BBI Rail Aus Pty Ltd) Agreement Act 2017

Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2

Part 2 — General provisions about the Agreement

3.	Terms used	3
4.	Ratification and authorisation	3
5.	State empowered under clause 21	3
6.	Effect on other laws	3

Schedule 1 — Railway (BBI Rail Aus Pty Ltd) Agreement 2017

Schedule 2 — 2020 variation agreement

Notes

Compilation table	84
Uncommenced provisions table	84

Defined terms

Western Australia

Railway (BBI Rail Aus Pty Ltd) Agreement Act 2017

An Act —

- **to ratify, and authorise the implementation of, an agreement between the State and BBI Rail Aus Pty Ltd, Todd Petroleum Mining Company Limited, Todd Offshore Limited and Todd Minerals Limited relating to the development of a railway in the Pilbara region of the State; and**
 - **to modify the operation of the *Railways (Access) Act 1998* and the *Railways (Access) Code 2000*,**
- and for incidental and other purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Railway (BBI Rail Aus Pty Ltd) Agreement Act 2017*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) Part 2 and Schedule 1 — on the day after that day;
- (c) Part 3 — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — General provisions about the Agreement

3. Terms used

In this Part —

2020 variation agreement means the agreement a copy of which is set out in Schedule 2;

Agreement means the scheduled agreement —

- (a) as varied from time to time in accordance with its terms;
and
- (b) as varied by the 2020 variation agreement;

scheduled agreement means the agreement a copy of which is set out in Schedule 1.

[Section 3 amended: No. 10 of 2021 s. 4.]

4. Ratification and authorisation

- (1) The scheduled agreement is ratified.
- (1A) The 2020 variation agreement is ratified.
- (2) The implementation of the Agreement is authorised.

[Section 4 amended: No. 10 of 2021 s. 5.]

5. State empowered under clause 21

The State has power in accordance with clause 21 of the Agreement.

6. Effect on other laws

- (1) The Agreement operates and takes effect despite any enactment or other law.
- (2) If a provision of the scheduled agreement or the 2020 variation agreement expressly or by implication purports to modify or exclude the application or operation of an enactment for a purpose or in relation to a person or thing, the application or

s. 6

operation of the enactment is modified or excluded for that purpose, or in relation to that person or thing, to the extent or for the period mentioned in the provision or necessary for the provision to have effect.

- (3) To avoid doubt, it is declared that the provisions of the *Public Works Act 1902* section 96 do not apply to the railway constructed pursuant to the Agreement.
- (4) This section does not limit or otherwise affect the application of the *Government Agreements Act 1979*.

[Section 6 amended: No. 10 of 2021 s. 6.]

[Pt. 3 has not come into operation.]

**Schedule 1 — Railway (BBI Rail Aus Pty Ltd)
Agreement 2017**

[s. 3]

2017

THE STATE OF WESTERN AUSTRALIA

and

**BBI RAIL AUS PTY LTD
ABN 44 604 857 392**

and

**TODD PETROLEUM MINING COMPANY LIMITED
NZBN 9429040945767**

**TODD OFFSHORE LIMITED
NZBN 9429030115989**

**TODD MINERALS LIMITED
NZBN 9429030762596**

RAILWAY (BBI RAIL AUS PTY LTD) AGREEMENT 2017

[Solicitor's details]

THIS AGREEMENT is made this 23 day of January 2017

BETWEEN

THE HONOURABLE COLIN JAMES BARNETT, M.Ec., 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 first part,

BBI RAIL AUS PTY LTD ABN 44 604 857 392 of Level 3, 151 Macquarie Street, Sydney, New South Wales (hereinafter called "**the Company**") in which term shall be included its successors and permitted assigns) of the second part, and

TODD PETROLEUM MINING COMPANY LIMITED NZBN 9429040945767 of Level 15, The Todd Building, 95 Customhouse Quay, Wellington, New Zealand, **TODD OFFSHORE LIMITED** NZBN 9429030115989 of Level 15, The Todd Building, 95 Customhouse Quay, Wellington, New Zealand and **TODD MINERALS LIMITED** NZBN 9429030762596 of Level 15, The Todd Building, 95 Customhouse Quay, Wellington, New Zealand (hereinafter each called "**Guarantor**" and collectively "**the Guarantors**") of the third part.

WHEREAS:

- A.** The Guarantors and the Company are investigating the feasibility of the Company constructing and operating a railway from the PIOP mining area loading point to within the proposed Port of Balla Balla on the Pilbara coast of Western Australia for the transport by the Company of iron ore products to the Port with such railway having an initial design capacity of not less than 50 million tonnes per annum.
- B.** The Company and associated companies are also investigating the feasibility of constructing and operating iron ore train unloading, materials handling, stockpiling and transshipment facilities at the Port with such facilities having an initial design capacity of not less than 50 million tonnes per annum.
- C.** The State for the purposes of promoting development of the iron ore industry and employment opportunity generally in Western Australia and for the purpose of promoting the development of multi-user infrastructure facilities in the Pilbara region of Western Australia has

agreed to assist the development of the abovementioned railway and associated facilities upon and subject to the terms of this Agreement.

- D.** For illustrative purposes and without limiting the terms of this Agreement, the anticipated route and corridor for the railway and associated facilities from the PIOP mining area loading point to the Port is described by the indicative plan in Schedule 1 to this Agreement.

NOW THIS AGREEMENT WITNESSES:

1. Definitions

In this Agreement subject to the context:

"**Access Act**" means the *Railways (Access) Act 1998* (WA);

"**Access Code**" means the *Railways (Access) Code 2000* (WA);

"**Additional Infrastructure**" means conveyors, stockpile areas, blending and screening facilities, stackers, re-claimers and other infrastructure reasonably required for the loading of iron ore products onto the Railway for transport upon the Railway to the Port;

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

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

"**Australian Consumer Law**" means the *Competition and Consumer Act 2010* (Cth);

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

"**EP Act**" means the *Environmental Protection Act 1986* (WA);

"**Government agreement**" has the meaning given in the *Government Agreements Act 1979* (WA);

"**Government agreement product**" means iron ore produced, or products derived from the processing of iron ore produced, from

mining tenements, or other titles, granted under or pursuant to, or held pursuant to, a Government agreement;

"**iron ore products**" includes iron ore of all grades and all products from the processing of iron ore;

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

"**LAA Minister**" means the Minister for Lands, a body corporate under section 7 of the LAA;

"**Lateral Access Roads**" has the meaning given in clause 7(1);

"**Lateral Access Road Licence**" means a miscellaneous licence granted pursuant to clause 14(1)(b) or clause 14(2) 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;

"**laws relating to native title**" means laws applicable from time to time in Western Australia in respect of native title and includes the *Native Title Act 1993* (Commonwealth);

"**local government**" means a local government established under the *Local Government Act 1995* (WA);

"**Mining Act**" means the *Mining Act 1978* (WA);

"**Minister**" means the Minister in the Government of the State for the time being responsible for the administration of the Act to ratify this Agreement and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of the Minister;

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

"**month**" means calendar month;

"**Operative Date**" has the meaning given to it in clause 3(2);

"**Pilbara Iron Ore Railways**" means each railway constructed under a Government agreement which is located wholly or substantially in one or more of the local government districts of Ashburton, East Pilbara, Port Hedland and Roebourne at the date of this Agreement;

"PIOP mining area" means the areas which, at the date of this Agreement, are the subject of Mining Lease 47/1451 and Exploration Licence 47/1560;

"PIOP mining area loading point" means the proposed northerly end point of the conveyor system intended to be constructed upon the land the subject of application for Miscellaneous Licence L47/733 and application for Miscellaneous Licence L47/753 by or for the benefit of the PIOP mining area proponent;

"PIOP mining area proponent" means one or more project proponents undertaking, or who propose to develop, an iron ore mining project within the PIOP mining area;

"Port" means a port comprising the area or substantially the area depicted in Schedule 5 hereto proposed to be described pursuant to section 24 of the Port Authorities Act and constituted as the Port of Balla Balla under the management and control of the Port Authority and following any such establishment shall mean the area comprising that port from time to time;

"Port Authorities Act" means the *Port Authorities Act 1999* (WA);

"Port Authorities Minister" means the Minister in the Government of the State for the time being responsible for the administration of the Port Authorities Act;

"Port Authority" means the Pilbara Ports Authority, a body corporate under the Port Authorities Act;

"Port Facilities" means the facilities (excluding the Port Railway and associated access roads within the Port Railway Area) within the Port for the unloading of iron ore products from the Railway and for the transport of iron ore products and, with the consent of the Port Authority, other products to a transshipment vessel loading wharf for shipment from the Port;

"Port Railway" means that part of the Railway within the Port;

"Port Railway Area" means before the grant of the Port Railway Lease that part or those parts (as the case may be) of the Port the subject of a subsisting agreement pursuant to clause 8(1)(a) and after the grant of

the Port Railway Lease, that area or those areas (as the case may be) of the Port from time to time the subject of that lease;

"Port Railway Lease" means:

- (a) a lease granted to the Company pursuant to the Port Authorities Act in respect of all or part of the area or areas (as the case may be) comprising the Port Railway Area immediately prior to such grant and which lease provides for the operation and maintenance of the Port Railway, and the use and maintenance of the access roads to be used by the Company in operating and maintaining the Port Railway, within the area or areas (as the case may be) of the Port the subject of that lease and the term of which lease ends at the same time as the Special Railway Licence; and
- (b) according to the requirements of the context describes the area or areas (as the case may be) from time to time the subject of that lease;

"Private Roads" means Lateral Access Roads and the Company's access roads within the Railway Corridor;

"Project" means the construction and operation under this Agreement, and in accordance with approved proposals, of the SRL Railway, associated infrastructure within the Railway Corridor including access roads and Additional Infrastructure (if any), and of the Lateral Access Roads;

"Rail Safety Act" means the *Rail Safety National Law (WA) Act 2015* (WA);

"Railway" means a standard gauge heavy haul railway initially from the PIOP mining area loading point to the area on which the Port Facilities are or will be located for the transport of iron ore products to the Port 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 clauses 11 and 12 of this Agreement and includes any expansion or extension thereof outside the Port which is the subject of additional proposals approved in accordance with clause 13 and any expansion or extension thereof within the Port which has been approved under the provisions of the Port Railway Lease;

"Railway Corridor" means, prior to the grant of the Special Railway Licence, the land for the route of the SRL Railway, access roads (other than Lateral Access Roads), Additional Infrastructure (if any), temporary accommodation facilities for the railway workforce, water bores and areas from which stone, sand, clay and gravel may be taken, which land is the subject of a subsisting agreement pursuant to clause 7(1) and after the grant of the Special Railway Licence the land from time to time the subject of the Special Railway Licence;

"Railway Operation Date" means the date of the first carriage of iron ore products over the initial railway line from the PIOP mining area loading point to the Port Facilities (other than for construction or commissioning purposes);

"said State" means the State of Western Australia;

"Special Railway Licence" means the miscellaneous licence for railway and, if applicable, other purposes, granted to the Company pursuant to clause 14(1)(a), as varied in accordance with clause 14(8) and according to the requirements of the context describes the area of land from time to time the subject of that licence;

"SRL Railway" means that part of the Railway which is or is to be (as the case may be) located outside the Port;

"SRL Railway spur line" means a standard gauge heavy haul railway spur line of any length from a mine, or in the vicinity of a mine, in the Pilbara region of the said State connecting to the SRL Railway (and whether to the initial railway line the subject of approved proposals under clauses 11 and 12 or to an expansion or extension thereof which is the subject of additional proposals approved in accordance with clause 13) for the transport of iron ore products upon the Railway to the Port;

"SRL Railway spur line Operation Date" means in respect of a SRL Railway spur line, the date of the first carriage of iron ore products over that spur line (other than for construction or commissioning purposes); and

"this Agreement", **"hereof"** and **"hereunder"** refer to this Agreement, whether in its original form or as from time to time added to, varied or amended.

2. Interpretation

(1) In this Agreement:

- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
- (b) power given under any clause other than clause 28 to extend any period or date shall be without prejudice to the power of the Minister under clause 28;
- (c) clause headings do not affect interpretation or construction;
- (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
- (e) one gender includes the other genders;
- (f) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (g) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;
- (h) reference to the Access Code includes the amendments to that code for the time being in force and also any code established or made in substitution therefor or in lieu thereof;
- (i) reference in this Agreement to any other document includes that document as from time to time added to, varied or

amended and notwithstanding any change in the identity of the parties;

- (j) reference to a clause or schedule is a reference to a clause or schedule to this Agreement, and a reference to a subclause or paragraph is a reference to the subclause of the clause or paragraph of the clause or subclause as the case may be in, or in relation to, which the reference is made;
 - (k) "including" means "including, but not limited to"; and
 - (l) reference to a "person" includes a body corporate.
- (2) Nothing in this Agreement shall be construed to exempt the State or the Company from compliance with or to require the State or the Company to do anything contrary to any law 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 law relating to native title.
- (3) Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made by or under the EP Act.

3. Ratification and operation

- (1) This Agreement, other than this clause and clauses 1 and 2, does not come into operation except in accordance with subclause (2).
- (2) This Agreement, other than this clause and clauses 1 and 2, comes into operation on the day after the date on which it is ratified by an Act of the Parliament of Western Australia (**Operative Date**) unless, before that day, it terminates under subclause (4).
- (3) The State must introduce in the Parliament of Western Australia before 30 September 2017, or a later date agreed between the parties to this Agreement, a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.
- (4) If by 30 March 2018 or such later date agreed between the parties to this Agreement, this Agreement has not been ratified by an Act of the Parliament of Western Australia then, unless the parties otherwise agree, this Agreement terminates on that date 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. Initial obligations of the State

- (1) The State shall subject to subclause (3) and the adequate protection of the environment (including flora and fauna) and the land affected (including improvements thereon) arrange for the issue of requisite authority under any one or both of (as determined by the State in its discretion):

- (a) section 91 of the LAA; or
- (b) section 182 of the LAA,

to allow the Company to enter upon Crown land (within the meaning of the LAA and including, if applicable, land the subject of a pastoral lease but excluding land within the Port) to carry out all works to the extent reasonably necessary for the purposes of undertaking its obligations under clause 5(1) (including as applying pursuant to clause 13(2)).

- (2) For the purposes of paragraph (b) of subclause (1), section 182 of the LAA shall apply as if the Project (including a significant modification, expansion or other variation of it for which proposals are required pursuant to clause 13) is a proposed public work for which the LAA Minister is under that section authorised to take interests in land within the meaning of that section.
- (3) The Company acknowledges that it shall be responsible for obtaining all consents of each person whose consent the LAA Minister (acting with the concurrence of the Minister in respect of any such Crown land the subject of a Government agreement) requires for the grant of any requisite authority referred to in subclause (1) and in a form and substance acceptable to the LAA Minister.

5. Initial obligations of the Company

- (1) The Company shall continue field and office geological, geophysical, geotechnical, engineering and environmental investigations and studies and marketing and finance studies and other matters necessary for the purposes of clauses 7 and 8 and to enable it to finalise and to submit to the Minister the detailed proposals referred to in clause 11.

- (2) The Company shall keep the State fully informed in writing at quarterly intervals from the Operative Date as to the progress and results of its operations under subclause (1) and supply to the Minister such information in relation thereto as the Minister may request from time to time.
- (3) The Company shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclauses (1) and (2) and any other relevant studies in relation to those subclauses that the Minister may wish the Company to undertake.

6. *Aboriginal Heritage Act 1972 (WA)*

For the purposes of this Agreement 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 its capacity as such under the agreement made on or about 23 January 2017 between The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, BBI Rail Aus Pty Ltd ABN 44 604 857 392, Todd Petroleum Mining Company Limited NZBN 9429040945767, Todd Offshore Limited NZBN 9429030115989 and Todd Minerals Limited NZBN 9429030762596, as varied from time to time, in relation to the use or proposed use of land pursuant to that agreement after and in accordance with approved proposals under 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 Project (as defined in 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 clause 6 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.

7. Railway Corridor

- (1) As soon as practicable during its studies under clause 5, and from time to time during those studies as required by either the Company or the State, the Company shall consult with the Minister to seek the agreement of the Minister as to:
- (a) where the SRL Railway will begin and end;
 - (b) a route for the SRL Railway and access roads to be within the Railway Corridor and the land required for that route, as well as for Additional Infrastructure (if any), temporary accommodation facilities for the railway workforce, water bores and areas from which stone, sand, clay and gravel may be taken; and

- (c) the routes of, and the land required for, roads outside the Railway Corridor for access to it to construct the SRL 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 SRL Railway, and the access roads for the construction and maintenance of the SRL Railway which are to be within the Railway Corridor, 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 must be no more than 500 metres unless otherwise agreed by the Minister having regard to the need for the Railway Corridor to vary along its route to accommodate associated infrastructure, including access roads, temporary accommodation facilities for the railway workforce, water bores and areas from which stone, sand, clay and gravel may be taken. The provisions of clause 33 shall not apply to this subclause.

- (2) If the date by which the Company must submit detailed proposals under clause 11(1) is extended or varied by the Minister pursuant to clause 28, any agreement made pursuant to subclause (1) 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.
- (3) 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:
- (a) the grant of the Special Railway Licence for the construction, operation and maintenance within the Railway Corridor of the SRL Railway and access roads to be within the Railway Corridor;
 - (b) 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 clause 7(1) (including as applying pursuant to clause 13(2)); and

- (c) the inclusion of additional land in the Special Railway Licence as referred to in clause 14(8),

in accordance with this Agreement. For the purposes of this subclause (3), "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, licence or easement 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, licence or easement 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 clause 11(5)(b) (including as applying pursuant to clause 13(2)).

8. Port Railway and Port Facilities

- (1) As soon as practicable during its studies under clause 5, and from time to time during those studies as required by either the Company or the State, the Company shall consult with the Minister to seek the agreement of the Minister (acting with the concurrence of the Port Authorities Minister) as to:
 - (a) the area or areas (as the case may be) of the Port within which the Port Railway and the access roads to be used by the Company in constructing, operating and maintaining the Port Railway are to be constructed; and
 - (b) the nature and characteristics of the Port Railway, including a design capacity which enables the transport of not less than 50 million tonnes of iron ore products per annum over the Port Railway.

In considering the matters in paragraphs (a) and (b) above, the Minister (and the Port Authorities Minister) may have regard to the proposed nature and characteristics of the proposed Port Facilities and the Minister (acting with the concurrence of the Port Authorities Minister) may make his agreement as to one or more of those matters conditional

upon the Port Facilities having a specified nature and specified characteristics, including a specified transshipment design capacity of not less than 50 million tonnes per annum.

- (2) If the date by which the Company must submit detailed proposals under clause 11(1) is extended or varied by the Minister pursuant to clause 28, any agreement made pursuant to subclause (1) 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.
- (3) Notwithstanding any agreement (including for the avoidance of doubt pursuant to clauses 7(1) or 8(1)), representation or understanding between the Company or a Guarantor and any one or more of the State, the Minister, the Port Authorities Minister or the Port Authority in connection with the establishment of the Port as a port under the Port Authorities Act, none of the State, the Minister, the Port Authorities Minister or the Port Authority:
 - (a) has any obligation, whether under this Agreement or otherwise, to cause or ensure the establishment of the Port as a port under the Port Authorities Act is pursued, completed or completed without delay; or
 - (b) is liable to any person (including the Company, a Guarantor or the PIOP mining area proponent) for any loss or damage of any kind whatsoever and howsoever arising out of or in connection with the failure of the Port to be so established.
- (4) Nothing in this Agreement, including any agreement between the Company and the Minister pursuant to subclause (1), shall be construed to oblige the State or any Minister in the Government of the said State to cause the grant to the Company or any other person (whether for the initial Project or as expanded from time to time) of tenure or other rights including the Port Railway Lease.
- (5) The provisions of clause 33 shall not apply to this clause.

9. Community development plan

- (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) training and guaranteed employment for indigenous and non-indigenous persons living in the Pilbara region of the said State;
 - (c) regional development activities in the Pilbara region of the said State, including partnerships and sponsorships and local procurement of goods and services;
 - (d) contribution to any community projects, town services or facilities; and
 - (e) a regionally based workforce.
- (2) The Company acknowledges the need for community and social benefits flowing from this Agreement.
- (3) The Company agrees that, prior to the time at which it submits any proposals pursuant to clause 11, and, if required by the Minister, prior to the time at which it submits any additional proposals pursuant to clause 13, it shall:
 - (a) prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with the developments proposed; and
 - (b) submit to the Minister the plan prepared pursuant to subclause (3)(a) and confer with the Minister in respect of the plan.
- (4) The Minister shall within one month 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 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) During the currency of this Agreement, the Company shall implement the plan approved or deemed to be approved by the Minister 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.

10. Local industry participation plan

- (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 within 3 months after the Operative Date it shall prepare and provide to the Minister a plan which contains in

connection with the development proposed or to be proposed as the case may be pursuant to clause 11:

- (a) a clear statement on the strategies which the Company will use, and require a third party as referred to in clause 19(2) 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 clause 19(2) to adopt, in calling for tenders and letting contracts for works, materials, plant, equipment and supplies 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 clause 19(2) 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 clause 19(2) 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) During the currency of this Agreement the Company shall implement the plan provided under this clause.
- (5) 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.

- (6) The provisions of subclauses (3) and (4) shall apply mutatis mutandis to any development proposed or to be proposed as the case may be pursuant to clause 13 (unless the Minister otherwise requires) but with any required plan to be submitted by no later than the giving of notice by the Company under clause 13(1).

11. Company to submit proposals

- (1) 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 clauses 7(1) and 8(1), approval of a plan as referred to in clause 9, provision of a plan as referred to in clause 10 and, unless otherwise agreed with the State during the currency of this Agreement, the establishment of the Port under the Port Authorities Act, submit to the Minister by 31 March 2019 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 Project, 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:
- (a) the SRL Railway including fencing (if any) and crossing places within the Railway Corridor and the matters referred to in subclause (2)(a);
 - (b) Additional Infrastructure (if any) to be constructed within the Railway Corridor;
 - (c) temporary accommodation and ancillary temporary facilities for the railway construction workforce on, or in the vicinity of, the Railway Corridor;
 - (d) water supply;
 - (e) energy supplies;
 - (f) telecommunications;

- (g) 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 clause 7(1);
 - (h) 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; and
 - (i) any other works, services or facilities desired by the Company.
- (2) (a) Proposals as to the matters specified in subclause (1)(a) must provide for the SRL Railway to have:
- (i) a design capacity which enables the transport of not less than 50 million tonnes of iron ore products per annum over the SRL Railway; and
 - (ii) a railway track configuration which enables:
 - (A) rail operations of the kind carried out on the Pilbara Iron Ore Railways to be carried out on the Railway, and vice versa; and
 - (B) connection of the SRL Railway outside the Port to any one or more of the Pilbara Iron Ore Railways.
- (b) Proposals pursuant to subclause (1) must specify the matters agreed for the purpose pursuant to clauses 7(1) and must not be contrary to or inconsistent with such agreed matters.
- (3) Each of the proposals pursuant to subclause (1) 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 paragraphs (a) to (i) of subclause (1), and until all of its proposals under this clause 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 clause in respect of the subject matter of the withdrawn proposal.
- (4) 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 clause), 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) At the time when the Company submits the last of the said proposals pursuant to this clause, it shall:
- (a) furnish to the Minister's reasonable satisfaction evidence of:
 - (i) the financial capability of the Company to undertake the operations to which the said proposals refer;
 - (ii) 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 SRL Railway;
 - (iii) the Company having a binding agreement or agreements with the PIOP mining area proponent or proponents (as the case may be) for the transport by the Company upon the Railway to the Port, for not less than 20 years from the Railway Operation Date, of not less than 25 million tonnes in aggregate per annum, commencing from the Railway Operation Date, of iron ore produced, or products derived from iron ore produced by such proponent or proponents, after the date of this Agreement from a project or projects (as the case may be) within the PIOP mining area, which agreement may be conditional upon the grant of the Port Railway Lease and the Special Railway Licence;
 - (iv) the PIOP mining area proponent(s) being ready to embark upon and to proceed to carry out its or their abovementioned project or projects (as the case may be) in a timeframe consistent with the commencement of the undertaking of the Project, including:
 - (A) evidence of there being in place a binding agreement or agreements which assures to such proponent or proponents access as and

when required to capacity within the Port for the handling at and shipment from the Port of iron ore products that may be transported upon the Railway under the agreement referred to in paragraph (a)(iii) above, which agreement or agreements may be conditional upon the grant of the Port Railway Lease and the Special Railway Licence;

- (B) evidence that both Miscellaneous Licence L47/733 and Miscellaneous Licence L47/753 have been granted and remain in force and of any consents required to pass over any Pilbara Iron Ore Railway in order to transport iron ore to the PIOP mining area loading point, which consents may be conditional upon the grant of the Special Railway Licence; and
 - (C) if the PIOP mining area proponent(s) is not the owner of the proposed conveyor to the PIOP loading point, having in place a binding agreement for the transport of iron ore products to the PIOP mining area loading point, which agreement may be conditional upon the grant of the Special Railway Licence;
- (v) the capacity within the Port as referred to in paragraph (a)(iv)(A) above being available over the term of this Agreement and in a timeframe consistent with the commencement and undertaking of the Project;
 - (vi) all other arrangements and agreements the Company has at that time made or proposes to make in respect of access (as defined in clause 16) to the Railway or in respect of transport of any iron ore products over the Railway;

- (vii) the readiness of the Company to embark upon and proceed to carry out the operations referred to in the said proposals; and
 - (viii) the Company holding, or the readiness of relevant authorities and agencies to grant, upon the Minister's approval of the Company's proposals, all approvals, consents, licences or other rights required to implement the proposals;
- (b) furnish to the Minister the written consents referred to in clause 7(3)(a) and 7(3)(b); and
- (c) furnish to the Minister's reasonable satisfaction evidence that the Company and the Port Authority have entered into a binding agreement for the grant to the Company of the Port Railway Lease, which agreement may be conditional upon the grant of the Special Railway Licence and which shall provide that the term of the Port Railway Lease will commence within 3 months after construction of the Port Railway.

12. Consideration of proposals

- (1) In respect of each proposal pursuant to clause 11(1) the Minister shall, subject to the EP Act:
- (a) approve of the proposal without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in clause 11(1) not covered by the said proposal or until such time as clause 11(5) has been complied with by the Company; or
 - (c) 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 (having regard to the circumstances, including the overall development of and the use by others 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:

- (d) where implementation of any proposals hereunder have been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this clause shall if the case so requires incorporate a requirement that the Company make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures; and
 - (e) the Minister shall not consider a purported proposal or proposals (as the case may be) if the Minister is of the opinion that the purported proposal or proposals does not or do not (as the case may be) comply with clause 11 or this Agreement generally and in such circumstances:
 - (i) this subclause (1) (other than this paragraph (e)) and subclause (2) shall not apply to the purported proposal or proposals;
 - (ii) subject to this Agreement, the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit a new or revised proposal or proposals either generally or in respect to some particular matter; and
 - (iii) the Minister's opinion is not subject to arbitration under clause 33.
- (2) Subject to subclause (1), the Minister shall within 2 months after the later of:
- (a) receipt of proposals pursuant to clause 11(1);
 - (b) where the proposals are to be assessed under Part IV of the EP Act, service on the Minister of an authority under section 45(7) of the EP Act; and
 - (c) where a proposal will or may require the State to do any act which affects any native title rights and interests, completion of all processes required by laws relating to native title to be undertaken by the State before that act may be done by the State,

give notice to the Company of his decision in respect to the proposals.

- (3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) and the Company considers that the decision is unreasonable, the Company within 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.
- (5) An award made on an arbitration pursuant to subclause (4) shall have force and effect as follows:
 - (a) if by the award the dispute is decided against the Company then unless the Company within 3 months after delivery of the award gives notice to the Minister of its acceptance of the award, this Agreement shall on the expiration of that period of 3 months cease and determine; or
 - (b) if by the award 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) Notwithstanding any provision of this Agreement (other than clause 28) or that any matter required to be agreed pursuant to clauses 7(1) and 8(1) has not been agreed, or that the plan required to be approved pursuant to clause 9 has not been approved, or that the plan required to be provided pursuant to clause 10 has not been provided, or that the Port has not been established under the Port Authorities Act, or that under this clause any proposals of the Company are approved by the Minister or determined by arbitration award, unless each and every proposal and matter required pursuant to clause 11 is so approved or determined by 1 October 2019, then without limiting the provisions of clause 30:

- (a) subject to paragraph (b), the Minister may give the Company 12 months' notice of intention to determine this Agreement and unless before the expiration of the said 12 month notice period all the detailed proposals and matters are so approved or determined, this Agreement shall on the expiration of that period cease and determine; or
 - (b) if the State has determined or determines that the Port (or part thereof) will not be established or completed for any reason whatsoever and the Company's right to submit proposals pursuant to clause 11 is still subject to such establishment having first occurred, the Minister may give the Company notice of intention to determine this Agreement immediately and this Agreement shall cease and determine on the date the notice is given to the Company.
- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement the approved proposals in accordance with the terms thereof.
 - (8) Notwithstanding clause 26, the Minister may during the implementation of approved proposals approve variations to those proposals.
 - (9) The Minister may extend the periods set forth in clause 11(1) and subclause (6) of this clause (in addition to any extension granted under clauses 27 and 28) upon request of the Company for such reasonable period or periods as the Minister considers appropriate to enable the Company to comply with laws relating to native title.

13. Expansion of Project outside the Port

- (1) If the Company at any time during the currency of this Agreement desires to construct outside the Port a SRL Railway spur line, Additional Infrastructure or otherwise desires to significantly modify, expand or otherwise vary its activities that are the subject of this Agreement and that may be carried on by it pursuant to this Agreement beyond those activities specified in any approved proposals, it shall give notice of such desire to the Minister and furnish to the Minister with that notice:

- (a) an outline of its proposals in respect thereto (including such matters mentioned in clause 11(1) as are relevant or as the Minister otherwise requires);
 - (b) in the case of the proposed construction of a SRL Railway spur line, the proposed design capacity of such spur line;
 - (c) the expected consequent increase in the capacity of the Railway or part of it (as the case may be), as a result of the construction of the spur line or other modification, expansion or variation of the Company's activities (as the case may be); and
 - (d) to the Minister's reasonable satisfaction evidence that capacity within the Port, and access for the Company to such capacity, will be available over the remaining term of this Agreement, and in a timeframe consistent with the commencement and completion of the construction of the spur line or other modification, expansion or variation of the Company's activities (as the case may be), for the handling at and shipment from it of the additional tonnages of iron ore products that may be transported upon the Railway to the Port as a result of the expected consequent increase in the capacity of the Railway or part of it (as the case may be).
- (2) 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, Additional Infrastructure (if any) or other modification, expansion or variation of the Company's activities (as the case may be) or whether he requires the proposal to be modified (in which case, subclause (1) shall mutatis mutandis apply to such modified proposal). If the Minister gives in-principle approval the Company may (but not otherwise) submit detailed proposals in respect thereof provided that the provisions of clauses 4, 5, 7 (in respect of any proposed spur line), 9 and 10 shall mutatis mutandis apply prior to submission of detailed proposals in respect thereof.
- (3) 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 clause 7(1) (as referred to in subclause (2)), approval of a plan as referred to in clause 9 and provision of a plan as referred to in clause 10 (in each case if the Minister so requires), the Company shall

submit to the Minister within a reasonable timeframe, as determined by the Minister after receipt of the notice referred to in subclause (1) (or in the case of a notice referred to in subclause (2), the giving of the Minister's in-principle approval as referred to in that subclause), detailed proposals in respect of the proposed construction of such spur line, Additional Infrastructure (if any) or the other proposed modification, expansion or variation of its activities (as the case may be) including such of the matters mentioned in clause 11(1) as the Minister may require.

- (4) The provisions of clause 11 (other than subclause (2)(a)(i), 5(a)(iii), 5(a)(iv), 5(a)(v) and 5(c)) and with the reference in subclause (5)(b) to clause 7(3)(a) being read as a reference to clause 7(3)(c) and clause 12 (other than subclauses (5)(a), (6), (7) and (9) of clause 12) shall mutatis mutandis apply to detailed proposals submitted pursuant to this clause provided that the Company may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same. Subject to and in accordance with the EP Act and any approvals or licences required under that Act, the Company shall implement approved proposals pursuant to this clause in accordance with the terms thereof.

14. Grant of Tenure

- (1) 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 clause 11(1) have been approved or deemed to be approved and the Company has complied with the provisions of clause 11(5), the State, notwithstanding the Mining Act, shall cause to be granted to the Company:
- (a) 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 SRL Railway, Additional Infrastructure (if any) and access roads ("**the Special Railway Licence**"), such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act in the form of Schedule 2 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:

- (i) prior to the Railway Operation Date, as if the width of the Railway Corridor were 100 metres; and
 - (ii) on and from the Railway Operation Date, at the rentals from time to time prescribed under the Mining Act; and
- (b) a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under clause 7(1) (each a "**Lateral Access Road Licence**"), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act in the form of Schedule 3 hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the Mining Act.
- (2) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after its proposals submitted pursuant to clause 13(2) for the construction of Lateral Access Roads for access to the Railway Corridor to construct a SRL Railway spur line have been approved or deemed to be approved and the Company has complied with the provisions of clause 11(5)(b) (as applying pursuant to clause 13(4)), the State notwithstanding the Mining Act shall cause to be granted to the Company a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under clause 7(1) (as applying pursuant to clause 13(2) (each a "**Lateral Access Road Licence**"), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act in the form of Schedule 4 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.

- (3) Subject to the performance by the Company of its obligations under this Agreement and the Mining Act and notwithstanding any provisions of the Mining Act to the contrary, the term of the Special Railway Licence shall be for a period of 20 years commencing on the date of grant thereof (subject to sooner determination thereof upon the determination of this Agreement) with the right as provided herein for the Company to take during the currency of this Agreement 2 successive renewals each of 10 years (subject to sooner determination thereof upon the determination of this Agreement) upon the same terms and conditions PROVIDED THAT the Minister is satisfied that the SRL Railway is, at the date of the relevant renewal, operational and being used to transport iron ore products to the Port. The Company may exercise its right to renew the term of the Special Railway Licence as provided herein by making application for such renewal not later than 6 months before the expiration of the then current term of the Special Railway Licence.
- (4) Notwithstanding the Mining Act, 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 5 years commencing on the date of grant thereof.
- (5) Notwithstanding the Mining Act, 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.
- (6)
 - (a) The Company may in accordance with approved proposals take stone, sand, clay and gravel from the Railway Corridor (including any area of land included in the Special Railway Licence pursuant to subclause (8)) for the construction, operation and maintenance of the SRL Railway (including any SRL Railway spur line constructed within or approved for construction within the Railway Corridor).
 - (b) Notwithstanding the Mining Act, no royalty shall be payable under the Mining Act in respect of stone, sand, clay and gravel

which the Company is permitted by subclause (6)(a) to obtain from the land the subject of the Special Railway Licence.

- (7) For the purposes of this Agreement and without limiting the operation of the other subclauses of this clause, the application of the Mining Act and the regulations made thereunder are specifically modified;
- (a) in section 91(1) by:
 - (i) deleting "the mining registrar or the warden, in accordance with section 42 (as read with section 92)" and substituting "the Minister";
 - (ii) deleting "any person" and substituting "the Company (as defined in the agreement made on or about 23 January 2017 between The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, BBI Rail Aus Pty Ltd ABN 44 604 857 392, Todd Petroleum Mining Company Limited NZBN 9429040945767, Todd Offshore Limited NZBN 9429030115989 and Todd Minerals Limited NZBN 9429030762596, as varied from time to time)"; and
 - (iii) deleting "for any one or more of the purposes prescribed" and substituting "for the purpose specified in clause 14(1)(a), clause 14(1)(b) or clause 14(2), of the agreement made on or about 23 January 2017 between The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, BBI Rail Aus Pty Ltd ABN 44 604 857 392, Todd Petroleum Mining Company Limited NZBN 9429040945767, Todd Offshore Limited NZBN 9429030115989 and Todd Minerals Limited NZBN 9429030762596, as varied from time to time";
 - (b) in section 91(3)(a), by deleting "prescribed form" and substituting "form required by the agreement made on or about 23 January 2017 between The Honourable Colin James

Barnett, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, BBI Rail Aus Pty Ltd ABN 44 604 857 392, Todd Petroleum Mining Company Limited NZBN 9429040945767, Todd Offshore Limited NZBN 9429030115989 and Todd Minerals Limited NZBN 9429030762596, as varied from time to time";

- (c) by deleting sections 91(6), 91(9), 91(10) and 91B;
- (d) in section 92 by:
 - (i) 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
 - (ii) deleting "in those provisions" and inserting "in that provision";
- (e) 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 made on or about 23 January 2017 between The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, BBI Rail Aus Pty Ltd ABN 44 604 857 392, Todd Petroleum Mining Company Limited NZBN 9429040945767, Todd Offshore Limited NZBN 9429030115989 and Todd Minerals Limited NZBN 9429030762596, as varied from time to time.";
- (f) by deleting sections 94(2), (3) and (4);
- (g) in section 96(1), by inserting after "miscellaneous licence" the words "(not being a miscellaneous licence granted pursuant to the agreement made on or about 23 January 2017 between The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, BBI Rail Aus Pty Ltd ABN 44 604 857 392, Todd Petroleum Mining Company Limited NZBN 9429040945767, Todd Offshore Limited

NZBN 9429030115989 and Todd Minerals Limited NZBN 9429030762596, as varied from time to time");

- (h) by deleting mining regulations 37(2), 37(3), 42 and 42A; and
 - (i) by inserting at the beginning of mining regulations 41(c) and (f) the words "subject to the agreement made on or about 23 January 2017 between The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, BBI Rail Aus Pty Ltd ABN 44 604 857 392, Todd Petroleum Mining Company Limited NZBN 9429040945767, Todd Offshore Limited NZBN 9429030115989 and Todd Minerals Limited NZBN 9429030762596, as varied from time to time".
- (8) If additional proposals are approved in accordance with clause 13 for the construction of a SRL Railway spur line and Additional Infrastructure (if any) 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.

15. Construction and operation of Railway

- (1) Subject to and in accordance with approved proposals, the Rail Safety Act and the State having assured to the Company all necessary rights over Crown land (as defined in the LAA) available for the purpose, 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 SRL Railway, Additional Infrastructure (if any) and associated 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 SRL Railway crosses or intersects with major roads or existing railways.
- (2) The Company shall during the currency of this Agreement:

- (a) keep the Railway and Additional Infrastructure (if any) in an operable state;
- (b) ensure that the Railway and Additional Infrastructure (if any) is operated in a safe and proper manner in compliance with all applicable laws from time to time; and
- (c) without limiting subclause (2)(b) or clause 18, ensure that the obligations imposed under the Rail Safety Act on a rail transport operator (as that term is therein defined) are complied with in connection with the Railway and (from such time as the Access Act and the Access Code apply to the Railway) ensure that the obligations imposed under the Access Act and the Access Code on a railway owner (as that term is therein defined) are complied with in connection with the Railway.

Nothing in this Agreement shall be construed to exempt the Company or any other person from compliance with the Rail Safety Act and (from and during such time as they apply as referred to in clause 16(2)) the Access Act and the Access Code, or limit their application to the Company's operations generally.

- (3) The Company shall provide crossings for livestock and also for any roads, other railways, conveyors, pipelines, transmission lines and other utilities which in respect of a proposed crossing of land the subject of the Special Railway Licence exist at the date of grant of the Special Railway Licence or in respect of land subsequently included in it exist at the date of such inclusion or in respect of land the subject of a Lateral Access Road Licence exist at the date of grant of the Lateral Access Road Licence. In addition 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 Special Railway Licence or land the subject of a Lateral Access Road Licence (as the case may be) the Company shall:
 - (a) if applicable, give its consent to, and 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 Special Railway Licence or of a Lateral Access Road Licence (as the case may be) so long as such grant does not in the Minister's opinion unduly prejudice or

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

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

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

- (4) In relation to its use of the Railway when transporting passengers or carrying iron ore products, the Company shall not be deemed to be a common carrier at law or otherwise.
- (5) The Company shall at all times be the holder of the Special Railway Licence, the Port Railway Lease and Lateral Access Road Licences and (without limiting clause 32) shall, subject to any temporary emergency and statutory rights of a relevant authority or agency (including the Port Authority), at all times own manage and control the use of the Railway and Additional Infrastructure (if any).
- (6) The Company shall not be entitled to exclusive possession of the land the subject of the Special Railway Licence or any Lateral Access Road Licence 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.
- (7) The Company's ownership of the SRL Railway and Additional Infrastructure (if any) shall not give it an interest in the land underlying it.
- (8) 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 the Railway or Additional Infrastructure (if any), or permit this to occur, other than for the purpose of maintenance, repair, upgrade or renewal.

- (9) The Company shall use all reasonable endeavours to ensure that, during the currency of this Agreement, the SRL Railway has a railway track configuration which enables:
- (a) rail operations of the kind carried out on the Pilbara Iron Ore Railways to be carried out on the Railway, and vice versa; and
 - (b) connection of the SRL Railway to any one or more of the Pilbara Iron Ore Railways.
- (10) The Company shall not be entitled to surrender the Port Railway Lease or any part or parts of it without the prior consent of the Minister (acting with the concurrence of the Port Authorities Minister).
- (11) The Company shall, subject to and in accordance with approved proposals, in a proper and workmanlike manner, construct any access roads, Lateral Access Roads and other works approved for construction under this Agreement.
- (12) The Company shall:
- (a) be responsible for the cost of construction and maintenance of all Private Roads;
 - (b) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles (other than those engaged upon the Company's activities and its invitees and licensees and persons who have rights under the Access Act and the Access Code to use those roads) from using the Private Roads; and
 - (c) at any place where any Private Roads are constructed by the Company so as to cross any railways or public roads provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the Public Transport Authority as the case may be.
- (13) During the currency of this Agreement the Company shall not trade in iron ore products or permit any third party referred to in clause 32 to trade in iron ore products while so engaged by the Company.

16. Access Obligations for Railway

- (1) For the purposes of this clause:
- (a) "access" includes use by persons of the Railway and, in connection with such use, use by persons of the Company's access roads within the Railway Corridor and within the Port Railway Area but does not, for the purposes of subclause (10)(c) or (12) include use of the Company's rolling stock, rolling stock maintenance facilities, office buildings, housing, freight centres, terminal yards and depots or other facilities which are not railway infrastructure (as that term is defined in the Access Act) and, for the avoidance of doubt, does not include use of unloading facilities;
 - (b) "Access Date" means the date on which all of the documents and matters referred to in subclause (13)(c) are approved or determined under the relevant section of the Access Act or of the Access Code;
 - (c) "agreement" includes an agreement, commitment or arrangement which is binding or takes effect when made and an agreement, commitment or arrangement which becomes binding or takes effect during the currency of this Agreement with the giving of notice, lapse of time, occurrence of any event, passing of any date or for any other reason;
 - (d) "Commission" has the same meaning as in Australian Consumer Law;
 - (e) "Expansion Access Date" in relation to an expansion or extension (including any spur line) of the Railway means the date on which all of the documents and matters referred to in subclause (13)(d) are approved or determined under the relevant section of the Access Act or of the Access Code in connection with the expansion or extension of the Railway;
 - (f) "railway owner" has the same meaning as in the Access Act;
 - (g) "Regulator" has the same meaning as in the Access Act; and
 - (h) "ACL Undertaking Acceptance Date" means if the Company submits a written undertaking to the Commission under

Division 6 of Part IIIA of the Australian Consumer Law, the date on which, under section 44ZZBA of the Australian Consumer Law, the decision of the Commission to accept the Company's proposed undertaking for the provision of haulage services comes into operation; and

- (i) "year" means the period of 12 months commencing on the Railway Operation Date or any subsequent period of 12 months during the currency of this Agreement.
- (2) The State and the Company acknowledge that, unless the Company submits a written undertaking to the Commission under Division 6 of Part IIIA of the Australian Consumer Law for the provision of haulage services (including of iron ore) over the Railway and the Commission accepts the proposed undertaking under Division 6 of Part IIIA of the Australian Consumer Law, the Access Act and the Access Code shall apply:
- (a) to the Railway (as soon as possible after the Railway is constructed and commissioned and in any event before the Railway Operation Date); and
 - (b) to any expansion or extension thereof (including a spur line) (as soon as possible after such expansion or extension is constructed).
- (3) The Company shall from the date occurring 6 months before the date for completion of construction of the SRL Railway specified in its time program for the commencement and completion of construction of that SRL Railway submitted under clause 11(1), keep the Minister fully informed as to:
- (a) the progress of that construction and construction of the Port Railway;
 - (b) the likely completion and commissioning of the initial Railway; and
 - (c) the likely Railway Operation Date.
- (4) The Company shall on the Railway Operation Date notify the Minister that the first carriage of iron ore products over the initial railway line between the PIOP mining area loading point and the area on which the

Port Facilities are or will be located (other than for construction or commissioning purposes) has occurred.

- (5) The Company shall from the date occurring 6 months before the date for completion of construction of any SRL Railway spur line specified in its time program for the commencement and completion of construction of that spur line submitted under clause 13 keep the Minister fully informed as to:
 - (a) the progress of that construction and its likely completion and commissioning; and
 - (b) in respect of it, the likely SRL Railway spur line Operation Date.
- (6) The Company shall on the SRL Railway spur line Operation Date in respect of any SRL Railway spur line notify the Minister that the first carriage of iron ore products over such spur line (other than for construction or commissioning purposes) has occurred.
- (7) The Railway may not at any time, unless the Minister's prior consent is given, be subject to an agreement for the transport of, or access to it to transport, Government Agreement Product.
- (8) The Company acknowledges that one of the intentions of the State and the Company in entering into this Agreement is that the Access Act and the Access Code apply to and in respect of the Railway (but not to the Company's rolling stock, rolling stock maintenance facilities, office buildings, housing, freight centres, terminal yards and depots and any other facilities which are not railway infrastructure (as that term is defined in the Access Act)) and access roads of the Company within the Railway Corridor and within the Port Railway Area, unless the Company submits a written undertaking to the Commission under Division 6 of Part IIIA of the Australian Consumer Law for the provision of haulage services (including of iron ore) over the Railway and the Commission accepts the proposed undertaking under Division 6 of Part IIIA of the Australian Consumer Law (in which case the accepted undertaking shall apply). The Company:
 - (a) acknowledges that the State shall from time to time be entitled to make such legislative changes as are necessary to achieve that purpose; and

- (b) shall do all such things as the Minister reasonably requests for the purposes of the Access Code applying and continuing to apply to and in respect of the Railway which are not inconsistent with this Agreement.
- (9) During the period prior to the Access Date:
 - (a) subject to subclause (9)(b), no agreement for access to the Railway or provision of rail transport services over the Railway (including for purposes of transport of iron ore products) shall be made without the prior consent of the Minister; and
 - (b) one or more agreements for access to the Railway or provision of rail transport services over the Railway for the purposes of the transport of iron ore products may be made without the prior consent of the Minister, but such agreements:
 - (i) shall only be entered into by the Company;
 - (ii) shall not, either alone or when taken together, allow or provide for the transport (whether by the Company or any other person using the Railway) of more than 50 million tonnes of iron ore products over the Railway in any year during the currency of this Agreement; and
 - (iii) shall comply with subclause (10).
- (10) The Company shall ensure that each agreement for access to the Railway or provision of rail transport services over the Railway entered into prior to the Access Date:
 - (a) does not and will not in any way prevent alteration of practices or methods of operation in relation to control and management of the Railway and its use (including in respect of allocation and management of the use of train paths on the Railway and management of train control and operating standards for the Railway) to the extent necessary to comply with obligations of a railway owner in connection with the Railway under the Access Act and the Access Code after the Access Date (including obligations to comply with train management guidelines in connection with the Railway from time to time

approved or determined under section 43 of the Access Code and directions given under that section, statements of policy in connection with the Railway from time to time approved or determined under section 44 of the Access Code and an arrangement from time to time approved, and directions from time to time given, under section 29 of the Access Act for or to the railway owner in respect of the Railway);

- (b) without limiting subclause (10)(a):
 - (i) does not and will not in any way limit the discretion of the Regulator in approving, determining or giving a direction in respect of train management guidelines in connection with the Railway under section 43 of the Access Code or approving or determining a statement of policy in connection with the Railway under section 44 of the Access Code or under section 29 of the Access Act approving an arrangement for or issuing a direction to the railway owner in respect of the Railway; and
 - (ii) provides that, if any provision of the agreement is inconsistent with a provision of the Access Act or the Access Code in effect as at the Access Date (other than a provision in Schedule 4 of the Access Code), or inconsistent with any statement, document, determination or other requirement issued, made, approved or determined under either or both of the Access Act and the Access Code as at the Access Date, the relevant provision of the Access Act or the Access Code or the statement, document, determination or other requirement (as the case may be) shall prevail over the provision of the agreement to the extent of that inconsistency;
- (c) does not impose on the Company obligations, or create in favour of any other person any interest, in relation to use of the Railway (including in relation to allocation of train paths on the Railway and management of train control for the Railway) which may in effect preclude other entities from access to the

Railway in accordance with the Access Act and the Access Code;

- (d) would, if that agreement were an "access agreement" within the meaning of the Access Code, comply with sections 17(1)(a), 17(1)(c) and 36(2)(c) of the Access Code; and
- (e) is, with effect from the Access Date, altered to comply with and to be consistent with the Access Act and the Access Code (except Schedule 4 of the Access Code) as at that time and with each statement, document, determination and other requirement at that time issued, made, approved or determined under the Access Act or the Access Code as if the agreement were an access agreement (as that term is defined in the Access Code).

The above provisions of this subclause (10) shall apply mutatis mutandis in respect of any expansion or extension (including any spur line) of the Railway on the basis that references in the above provisions of this subclause (10) to "Railway" are to be read as including the relevant expansion or extension and to "Access Date" are to be read as references to "Expansion Access Date".

- (11)
 - (a) Without limiting clause 34, the Company must, during the currency of this Agreement, consult with and keep the State fully informed concerning any steps that the Company proposes to take or is taking, or concerning any steps which the Company is aware any other person proposes to take or is taking, to have the Railway made subject to Part IIIA of the Australian Consumer Law.
 - (b) If the Company intends to give a written undertaking to the Commission under Division 6 of Part IIIA of the Australian Consumer Law for the provision of haulage services (including of iron ore) over the Railway, it must provide the State with at least 12 months' notice of such intention.
 - (c) Without limiting its obligation under paragraph (a) the Company must consult with and keep the State fully informed with respect to the proposed provisions of such access undertaking.

- (d) If the Company gives a written undertaking to the Commission under Division 6 of Part IIIA of the Australian Consumer Law for the provision of haulage services (including of iron ore) over the Railway, then:
 - (i) from and including the ACL Undertaking Acceptance Date the Company shall be released from any outstanding obligation it may have under subclauses (8)(b), (9), (10) or (13) or to promote under subclause (12) use by persons of the Railway as formerly proposed by the application of the Access Act and the Access Code; and
 - (ii) from and including the ACL Undertaking Acceptance Date, the Company must, at all times, have in place during the currency of this Agreement an undertaking under Division 6 of Part IIIA of the Australian Consumer Law for the provision of haulage services (including of iron ore) over the Railway.
 - (e) Nothing in this clause shall be taken to limit rights of the State to make under the Australian Consumer Law or otherwise such submissions as it thinks fit in respect of any such access undertaking application by the Company.
- (12) The Company shall after the Railway Operation Date use all reasonable endeavours to promote access to, and attract customers for, the Railway.
- (13) The Company shall:
- (a) ensure that the publication referred to in Part 2A of the Access Code is prepared and made available for purchase no later than 7 days after the Access Act and the Access Code apply to the Railway;
 - (b) ensure the submission to the Regulator of the arrangement for the railway owner in respect of the Railway required to be approved by the Regulator under section 29 of the Access Act, each of the statements in connection with the Railway required to be prepared and submitted to the Regulator under sections 43(3), 44(2), 46(1) and 47(1) of the Access Code and any other document the subject of a notice from the Minister

to the Company, being a document which the Access Act or the Access Code requires to be submitted by a railway owner to the Regulator, no later than 7 days after the Access Act and the Access Code apply to the Railway or such earlier date specified in the Access Act or the Access Code (as the case may be) for preparation and submission of such arrangement or statements;

- (c) conduct itself in such a manner as to, and do all such things as are reasonable to, facilitate the approval or determination of:
- (i) train management guidelines in connection with the Railway under section 43 of the Access Code;
 - (ii) statements of policy in connection with the Railway under section 44 of the Access Code;
 - (iii) costing principles in connection with the Railway under section 46 of the Access Code;
 - (iv) over-payment rules in connection with the Railway under section 47 of the Access Code;
 - (v) an arrangement referred to in section 29(1) of the Access Act for the railway owner in respect of the Railway; and
 - (vi) any other document or matter the subject of a notice from the Minister to the Company, being a document or matter which the Access Act or the Access Code requires be approved or determined in connection with a railway owner,

as soon as possible after the Access Act and the Access Code apply to the Railway; and

- (d) ensure the submission to the Regulator within 3 months of the Access Act and the Access Code applying to any expansion or extension (including any spur line) of the Railway of new or amended guidelines, statements of policy, principles, rules, arrangements and other documents and matters referred to in this subclause (13) as may be required by the Access Act and the Access Code in respect of the relevant expansion or

extension of the Railway and conduct itself in such manner as to, and do all such things as are reasonable to, facilitate the approval or determination of new or amended document and matters.

- (14) Nothing in this clause shall be taken to exempt the railway owner in respect of the Railway from any obligation or requirement of the railway owner under the Access Act or the Access Code.
- (15) Nothing in this Agreement shall be taken to limit the rights of the State to regulate access to the Port or to the Port Facilities in the future, or the Company's obligations to comply in respect of any such regulation.

17. Compliance with Laws

- (1) In the construction operation maintenance and use of any work, installation, plant, machinery, equipment, service or facility provided or controlled by the Company, the Company shall throughout the currency of this Agreement comply with and observe the provisions hereof and subject thereto the laws for the time being in force in the said State.
- (2) Except as otherwise provided in this Agreement, the Company shall be responsible for obtaining such leases, authorities, permits and licences as it shall require for the obtaining of stone, sand, clay and gravel for the construction of the Railway and the Lateral Access Roads.

18. Maintenance

Throughout the currency of this Agreement the Company shall 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, Additional Infrastructure (if any), access roads, and all such other works, installations, plant, machinery and equipment for the time being the subject of this Agreement.

19. Use of local labour professional services and materials

- (1) Except as otherwise agreed by the Minister the Company shall, for the purposes of this Agreement:

- (a) except in those cases where the Company can demonstrate it is not reasonable and economically practicable so to do, use labour available within the said State (using all reasonable endeavours to ensure that as many as possible of the workforce be recruited from the Pilbara region) 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 the said State, or if such services are not available within the said State, then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;
- (c) during design and when preparing specifications, calling for tenders and letting contracts for works, materials, plant, equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that suitably qualified Western Australian and Australian suppliers, manufacturers and contractors are given fair and reasonable opportunity to tender or quote;
- (d) give proper consideration and, where possible, preference to Western Australian suppliers, manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price, quality, delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and, where possible, preference to other Australian suppliers, manufacturers and contractors; and
- (e) if, notwithstanding the foregoing provisions of this subclause, a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and, where possible, preference to tenders, arrangements or proposals that include

Australian participation where price, delivery and service are otherwise equal or better.

- (2) Except as otherwise agreed by the Minister, the Company shall, in every contract entered into with a third party for the supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake:
- (a) the same obligations as are referred to in subclause (1) and shall report to the Company concerning such third party's implementation of that condition; and
 - (b) procurement activities in accordance with the plan provided under clause 10.
- (3) The Company shall:
- (a) in respect of developments the subject or to be the subject (as the case may be) of proposals submitted under clause 11, submit a report to the Minister at quarterly intervals from the date specified in clause 3(4) until commissioning of the Railway and Additional Infrastructure (if any) and thereafter as requested by the Minister from time to time; and
 - (b) in respect of developments the subject or to be the subject (as the case may be) of proposals submitted under clause 13 submit a report to the Minister at quarterly intervals from the date on which it gives notice under clause 13 until commissioning of the developments the subject of the proposals approved pursuant to clause 13 and thereafter as requested by the Minister from time to time,
- concerning its implementation of the provisions of this clause and of the relevant plan in connection with the development provided pursuant to clause 10, together with a copy of any report received by the Company pursuant to subclause (2) during that quarter or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine.
- (4) The Company shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as

reasonably required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia, together with its reasons therefor and shall, as and when required by the Minister, consult with the Minister with respect thereto.

20. No discriminatory charges

Except as provided in this Agreement the State must not impose, nor shall it permit or authorise any local government or any agency, instrumentality or other authority of the State to impose, discriminatory taxes, rates or charges of any nature whatsoever on or in respect of the titles, property or other assets, products, materials or services used or produced by or through the activities of the Company in the conduct of the Project, nor will the State take or permit to be taken by any such State agency, instrumentality or other authority of the State any other discriminatory action which would deprive the Company of full enjoyment of the rights granted or intended to be granted under this Agreement. In the application of this clause the conferral of rights upon parties to other Government agreements shall be disregarded.

21. Taking of land for the purposes of this Agreement

- (1) The State is hereby empowered, as and for a public work under Parts 9 and 10 of the LAA and the *Public Works Act 1902* (WA), to take for the purposes of this Agreement any land (other than any part of the Port) which in the opinion of the Company is necessary for the Project and which the Minister determines is appropriate to be taken for the Project (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 those Acts may license that land to the Company.
- (2) In applying Parts 9 and 10 of the LAA and the *Public Works Act 1902* (WA) for the purposes of this Clause -
 - (a) "land" in those Acts includes a legal or equitable estate or interest in land;

- (b) sections 170, 171, 172, 173, 174, 175 and 184 of the LAA do not apply; and
- (c) the LAA applies as if it were modified in section 177(2) by inserting -
 - (i) 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"; and
 - (ii) after "that Act" the following -

"or that agreement as the case may be".
- (3) 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.

22. No taking of land

Subject to the performance by the Company of its obligations under this Agreement, but without limiting clause 15(3), the State shall not, during the currency of this Agreement, without the consent of the Company, take or suffer or permit to be taken by any local government or by any agency, instrumentality or other authority of the State any of the works, installations, plant, equipment or other property for the time being belonging to the Company and the subject of or used for the purpose of this Agreement or any of the works on the lands the subject of the Special Railway Licence and, without such consent (which shall not be unreasonably withheld), the State shall not create or grant or permit or suffer to be created or granted by any agency, instrumentality or other authority of the State any road, right-of-way, water right or easement of any nature or kind whatsoever over or in respect of any such lands which may unduly prejudice or interfere with the Company's activities under this Agreement.

23. Commonwealth licences and consents

- (1) The Company shall from time to time make application to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to it of any licence or consent

under the laws of the Commonwealth necessary to enable or permit the Company to enter into this Agreement and to perform any of its obligations hereunder.

- (2) On request by the Company the State shall make representations to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to the Company of any licence or consent mentioned in subclause (1).

24. Zoning

The State shall ensure after consultation with the relevant local governments that the lands the subject of the Special Railway Licence or a Lateral Access Road Licence shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the activities of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State, by any agency, instrumentality or other authority of the State or by any local government on the ground that such activities are contrary to any zoning by-law, regulation or order.

25. Assignment

- (1) Subject to the provisions of this clause the Company may at any time with the consent of the Minister assign, mortgage, charge, sublet or dispose of to any person the whole or any part of the rights of the Company hereunder (including to ownership of the Railway, Additional Infrastructure (if any) and its right to or as the holder of the Special Railway Licence or a Lateral Access Road Licence) and of the obligations of the Company hereunder, subject however in the case of an assignment or disposition to the assignee or disponent (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with, observed or performed in regard to the matter or matters the subject of such assignment or disposition.
- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) the Company will at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained in this Agreement PROVIDED THAT

the Minister may agree to release the Company from such liability where the Minister considers such release will not be contrary to the interests of the State.

- (3) Notwithstanding the provision of the Mining Act insofar as the same may apply:
- (a) no assignment, mortgage, charge, sublease or disposition made or given of or over the Special Railway Licence or any other licence granted pursuant to this Agreement in accordance with the provisions of subclause (1) and the terms of consent thereunder; and
 - (b) no transfer, assignment, mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge,

shall require any approval or consent other than such consent as may be necessary under subclause (1) and no equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent (otherwise than as required by this clause) or because the same is not registered under the provisions of the Mining Act.

26. Variation or determination

- (1) The parties to this Agreement may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.
- (2) The Minister shall cause any agreement made pursuant to subclause (1) to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.
- (3) Either House may, within 12 sitting days of that House after the agreement has been laid before it, pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.
- (4) The parties may at any time by mutual agreement determine this Agreement, provided that no matter in connection with a failure by the

parties to agree under this subclause (4) shall be referable to arbitration hereunder.

27. Force majeure

This Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the temporary suspension of continuing obligations under this Agreement that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including (without limiting the generality of the foregoing) delays or any such temporary suspension as aforesaid caused by or arising from act of God, force majeure, earthquakes, floods, storms, tempest, washaways, fire (unless caused by the actual fault or privity of the party responsible for such performance), act of war, act of public enemies, riots, civil commotions, strikes, lockouts, stoppages, restraint of labour or other similar acts (whether partial or general), acts or omissions of the Commonwealth, shortages of labour or essential materials, reasonable failure to secure contractors, delays of contractors, factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any agency, instrumentality or other authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes must promptly give notice to the other party or parties of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

28. Power to extend periods

- (1) Notwithstanding any provision of this Agreement but subject to subclause (2), the Minister may at the request of the Company from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such later date as the Minister thinks fit, whether or not the period to be extended has expired or the date to be varied has passed.
- (2) The date specified in clause 11(1) for the submission of proposals under it may only be extended once pursuant to this clause and for a period not exceeding 18 months.

29. Determination of Agreement

(1) If:

- (a) (i) the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations of the Company in this Agreement or in the Special Railway Licence or in a Lateral Access Road Licence; or
- (ii) the Company abandons or repudiates this Agreement or abandons or repudiates its activities under this Agreement,

and such matter is not remedied within a period of 180 days after notice is given by the State as provided in subclause (2) or if the matter is referred to arbitration, then within the period mentioned in subclause (3); or

- (b) the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 3 months from the date of such liquidation the interest of the Company is assigned to an assignee approved by the Minister under clause 25; or
- (c) construction of the SRL Railway and Additional Infrastructure (if any) has not commenced within 2 years (or such longer period as the Minister may allow) of the approval of the proposals submitted pursuant to clause 11(1); or
- (d) the Railway Operation Date does not occur within 4 years (or such longer period as the Minister may allow) after the grant of the Special Railway Licence and the State has then given the Company notice that it may determine this Agreement if that date does not occur within a period of 180 days after such notice is given by the State and that date has not occurred within the said period of 180 days; or
- (e) iron ore products are not transported upon the Railway for a continuous period of 3 years (or such longer period, not exceeding 5 years, as in any particular instance the Minister may approve acting with the concurrence of the Port Authorities Minister) and the State has given the Company

notice that it may determine this Agreement if such transport does not resume within a period of 180 days after such notice is given by the State and such transport has not resumed within the said period of 180 days,

the State may by notice to the Company determine this Agreement.

- (2) The notice to be given by the State to the Company in terms of subclause (1)(a) must specify the nature of the default or other ground so entitling the State to exercise such right of determination and, where appropriate and known to the State, the party or parties responsible therefor and shall be given to the Company and all such assignees, mortgagees, chargees and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment, mortgage, charge or disposition has been effected in terms of clause 25, whose name and address for service of notice has previously been notified to the State by the Company or, any such assignee, mortgagee, chargee or donee.
- (3)
 - (a) If the Company contests the alleged default or other ground referred to in subclause (1)(a) the Company shall within 60 days after notice given by the State as provided in subclause (2) refer the matter in dispute to arbitration.
 - (b) If the question is decided against the Company, the Company must comply with the arbitration award within a reasonable time to be fixed by that award PROVIDED THAT if the arbitrator finds that there was a bona fide dispute and that the Company was not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.
- (4) If the default referred to in subclause (1)(a) has not been remedied within a period of 180 days after receipt of the notice referred to in that subclause or within the time fixed by the arbitration award as aforesaid, the State, instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents, workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant, machinery, equipment and installations thereon) and the actual costs and expenses incurred by the

State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

- (5) The State hereby waives its rights to seek by court action for specific performance to compel the Company to submit proposals or resubmit proposals under clause 11 in the event that before approval of proposals under clause 12, the Company repudiates this Agreement.

30. Effect of cessation or determination of Agreement

- (1) On the cessation or determination of this Agreement:

- (a) 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 any mortgagee or chargee to or in the SRL Railway, Additional Infrastructure (if any), access roads and other works constructed under this Agreement or to, in or under the Special Railway Licence or Lateral Access Road Licences (if still current), shall thereupon cease and determine but without prejudice to the liability of any of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any guarantee or indemnity given under this Agreement;
- (b) the Company shall forthwith pay to the State all money which may then have become payable or accrued due; and
- (c) save as aforesaid and as otherwise provided in this Agreement none of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.

- (2) Upon the cessation or determination of this Agreement;

- (a) the Minister may by notice to the Company require the Company to, at the Company's cost, remove the SRL Railway, Additional Infrastructure (if any) and any other works constructed under this Agreement from the Railway Corridor and return the land in the Railway Corridor to a condition as near as possible to the condition that land was in prior to the grant of authority under the LAA in respect of the land as contemplated by clause 4; and

- (b) unless the Minister gives notice under subclause (2)(a), the SRL Railway, Additional Infrastructure (if any) and the works constructed under this Agreement shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Company or any other party and freed and discharged from all mortgages and other encumbrances and the Company shall do and execute all such deeds, documents and other acts, matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

31. Indemnity

The Company shall indemnify and keep indemnified the State and its servants, agents and contractors in respect of all actions, suits, claims, demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Company pursuant to this Agreement or relating to its activities hereunder or arising out of or in connection with the construction, maintenance or use by the Company or its servants, agents, contractors or assignees of the Company's works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith PROVIDED THAT subject to the provisions of any relevant Act, such indemnity will not apply in circumstances where the State, its servants, agents, or contractors are negligent in carrying out work for the Company pursuant to this Agreement.

32. Subcontracting

Without affecting the liabilities of the parties under this Agreement each of the State and the Company will have the right from time to time to entrust to third parties the carrying out as their agent of any portions of the activities which it is authorised or obliged to carry out hereunder.

33. Arbitration

- (1) Except as provided in this Agreement, any dispute or difference between the State and the Company arising out of or in connection with this Agreement, the construction of this Agreement or as to the rights, duties or liabilities of either of them under this Agreement or as to any matter to be agreed upon between them under this Agreement must, in default of agreement between them and in the absence of any provision

in this Agreement to the contrary, be referred to and settled by arbitration under the provisions of the *Commercial Arbitration Act 2012* (WA) and each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.

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

34. Consultation

The Company must during the currency of this Agreement consult with and keep the State fully informed on a confidential basis concerning any action that the Company proposes to take with any third party (including the Commonwealth or any Commonwealth constituted agency, authority, instrumentality or other body) which might significantly affect the overall interest of the State under this Agreement.

35. Notices

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

the case may be), as notified to the State from time to time and forwarded by prepaid post or handed to the Minister and except in the case of personal service any such notice, consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

36. Guarantee of the Company's performance

- (1) Notwithstanding any addition to or deletion or variation of the provisions of this Agreement or any time or other indulgence granted by the State or by the Minister to the Company whether or not notice thereof is given to a Guarantor by the State, the Guarantors hereby guarantee to the State the due performance by the Company of all of the Company's obligations to be performed hereunder and, subject to subclause (2), this guarantee shall continue notwithstanding the cessation or determination of this Agreement.
- (2) The Minister may agree to release a Guarantor or the Guarantors (as the case may be) from this guarantee where:
 - (a) the Minister is reasonably satisfied that the Company has the financial capacity to perform its obligations under this Agreement; or
 - (b) one or more companies (including if applicable a continuing Guarantor) with the financial capacity to guarantee the due performance by the Company of all the Company's then outstanding obligations under this Agreement have assumed the obligations of the released Guarantor or Guarantors (as the case may be) under this clause on terms acceptable to the Minister.

37. Term of Agreement

- (1) Subject to the provisions of clauses 12(5), 12(6), 29 and 30, this Agreement shall expire on the expiration or sooner determination or surrender of the Special Railway Licence.
- (2) Unless this Agreement has already determined, at any time within 5 years prior to the expiry date of the Special Railway Licence the State shall, at the request of the Company, confer with the Company with respect to agreeing to commence negotiations for a new agreement or a variation of this Agreement involving an extension of the term of the

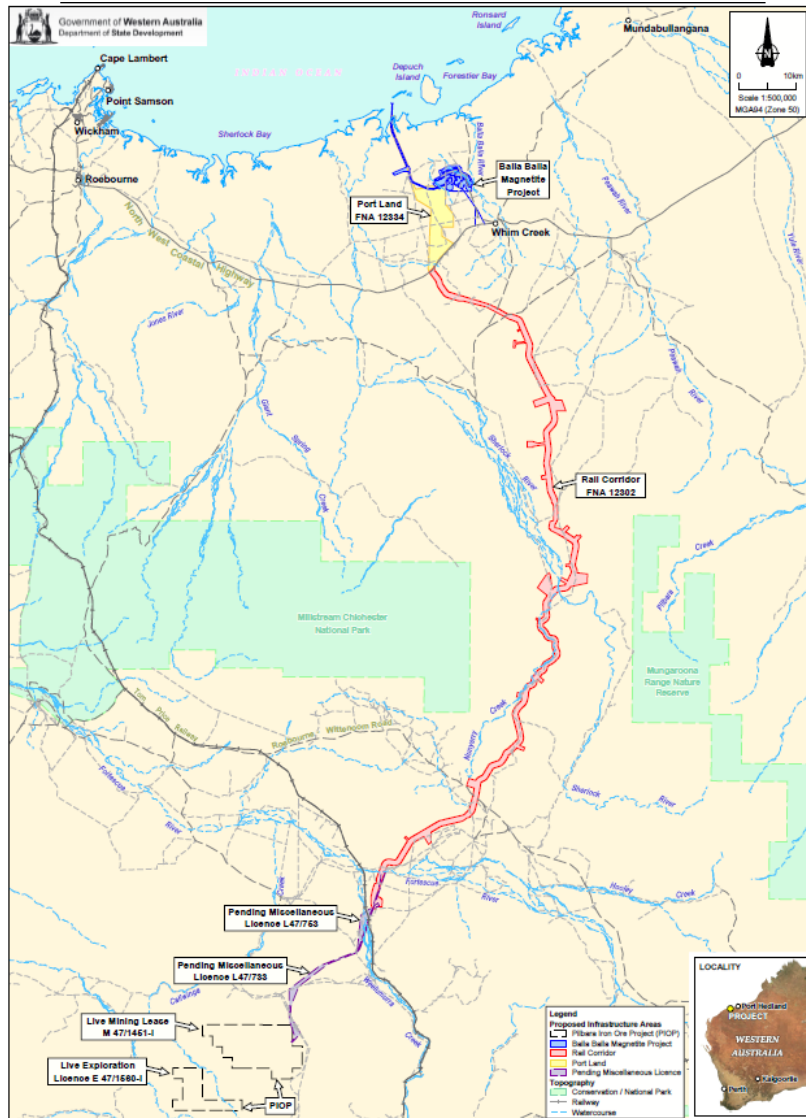
Special Railway Licence. The provisions of clause 33 shall not apply to this clause.

38. Applicable law and Submission to Jurisdiction

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

SCHEDULE 1

INDICATIVE PLAN OF ANTICIPATED RAIL ROUTE AND
CORRIDOR FROM THE PIOP MINING AREA LOADING POINT TO
THE PORT (ILLUSTRATIVE PURPOSES ONLY)



SCHEDULE 2

WESTERN AUSTRALIA

RAILWAY (BBI RAIL AUS PTY LTD) AGREEMENT ACT [DATE]

MINING ACT 1978

**MISCELLANEOUS LICENCE FOR A RAILWAY AND OTHER
PURPOSES**

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified by the *Railway (BBI Rail Aus Pty Ltd Agreement Act [Date]* the State agreed to grant to BBI Rail Aus Pty Ltd ABN 44 604 857 392 of Level 3, 151 Macquarie Street, Sydney, New South Wales (hereinafter with its successors and permitted assigns called "the Company") a miscellaneous licence for the construction, operation and maintenance of the SRL Railway (as defined in the Agreement and otherwise as provided in the Agreement) and, if applicable, other purposes AND WHEREAS the Company pursuant to clause 14(1) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Railway (BBI Rail Aus Pty Ltd) Agreement Act [Date]* 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 SRL Railway and access roads and Additional Infrastructure (if any) 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 20 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 14(1)(a) of the Agreement with the right as provided in the Agreement for the Company

during the currency of the Agreement to take 2 successive renewals of the term each for a further period of 10 years upon the same terms and conditions (subject to the sooner determination of the term upon the determination of the Agreement) PROVIDED THAT the Minister is satisfied that the SRL Railway is, at the date of the relevant renewal, operational and being used for the transport of iron ore products to the Port PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

- If the Company be more than one the liability of the Company hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and to the regulations and by-laws of the time being in force thereunder.
- Reference to "the Agreement" means such agreement as varied from time to time.
- The terms "Additional Infrastructure", "approved proposals", "Port", "Railway Operation Date", "SRL Railway" and "SRL 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 (including for the avoidance of doubt any area of land included in this licence pursuant to clause 14(8) of the Agreement) for the construction, operation and maintenance of the SRL Railway (including any SRL 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, determine 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 SRL 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 14(8) of the Agreement.
2. The Company shall as soon as possible after the construction of a SRL 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 14(8) 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 SRL 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, determine 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

SCHEDULE 3

WESTERN AUSTRALIA

RAILWAY (BBI RAIL AUS PTY LTD) AGREEMENT ACT [DATE]

MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified by the *Railway (BBI Rail Aus Pty Ltd) Agreement Act [Date]* the State agreed to grant to BBI Rail Aus Pty Ltd ABN 44 604 857 392] of Level 3, 151 Macquarie Street, Sydney, New South Wales (hereinafter with its successors and permitted assigns called "the Company") a miscellaneous licence for the construction, use and maintenance of the Lateral Access Roads (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 14(1) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Railway (BBI Rail Aus Pty Ltd) Agreement Act [Date]* 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 5 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 14(1)(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 therefor 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 varied from time to time.

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, determine 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, determine 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

SCHEDULE 4

WESTERN AUSTRALIA

RAILWAY (BBI RAIL AUS PTY LTD) AGREEMENT ACT [DATE]

MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified by the *Railway (BBI Rail Aus Pty Ltd) Agreement Act [Date]* the State agreed to grant to BBI Rail Aus Pty Ltd ABN 44 604 857 392] of Level 3, 151 Macquarie Street, Sydney, New South Wales (hereinafter with its successors and permitted assigns called "the Company") a miscellaneous licence for the construction, use and maintenance of the Lateral Access Roads (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 14(2) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Railway (BBI Rail Aus Pty Ltd) Agreement Act [Date]* 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 5 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 14(2) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

- If the Company be more than one the liability of the Company hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu

thereof and to the regulations and by-laws of the time being in force thereunder.

- Reference to "the Agreement" means such agreement as varied from time to time.

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, determine 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, determine and thereafter impose in respect of the licence, including during the term of the Agreement.]

SCHEDULE

Description of land

Locality:

Mineral Field:

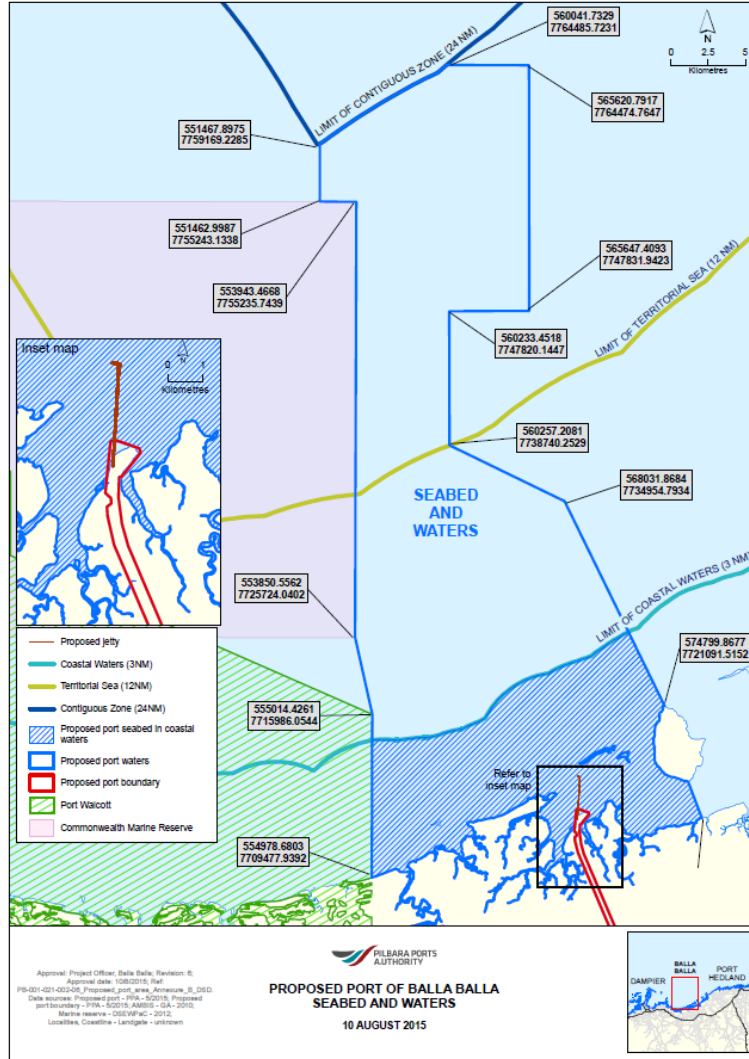
Area:

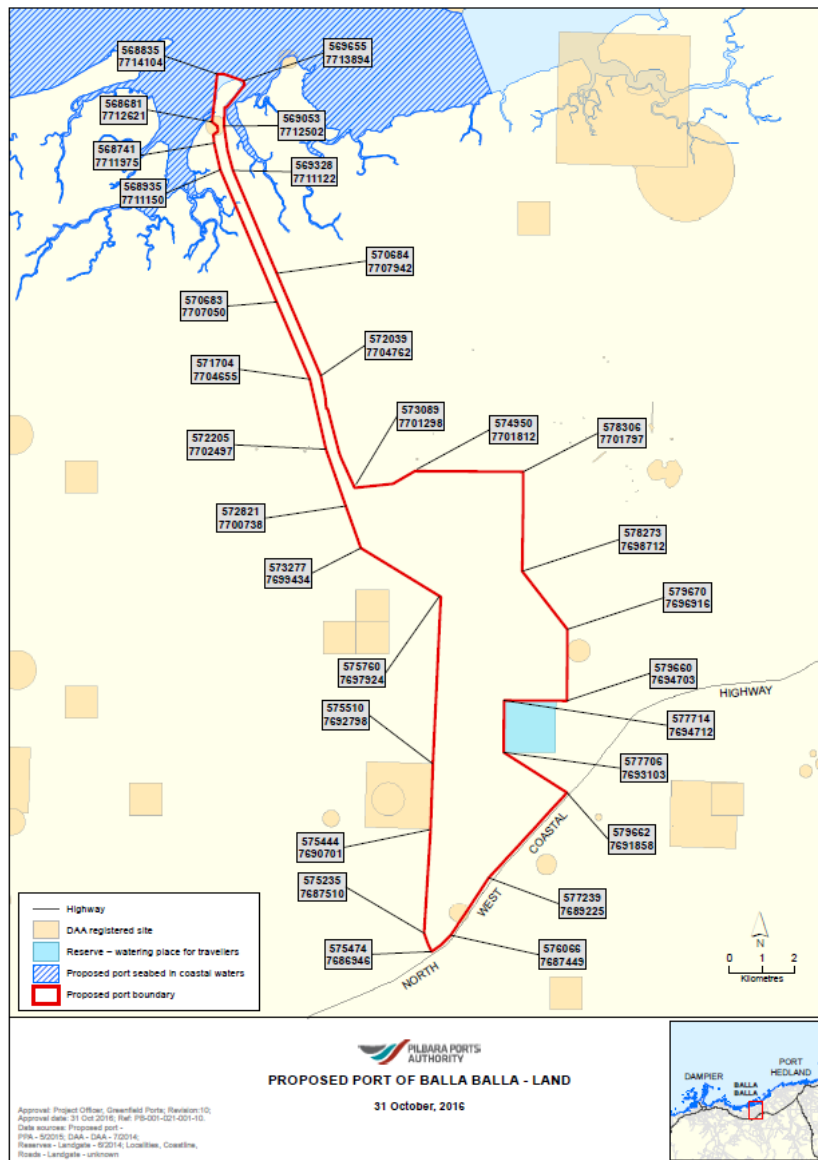
DATED at Perth this day of .

MINISTER FOR MINES

SCHEDULE 5

**PLANS OF LAND, WATER AND SEABED PROPOSED TO COMPRISE
 THE PORT OF BALLA BALLA**





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

[Signature]

.....
Witness:

Name: WILLIAM RICHARD MARMION

EXECUTED by **BBI RAIL AUS**)
PTY LTD ABN 44 604 857 392 in)
accordance with section 127(1) of)
the *Corporations Act 2001* (Cth) by)
authority of its directors:

[Signature]
.....
Signature of director

JONATHON TERENCE YOUNG
.....
Full name of director (block letters)

[Signature]
.....
Signature of director

NICHOLAS ANTHONY
CURTIS
.....
Full name of director (block
letters)

EXECUTED by **TODD**)
PETROLEUM **MINING**)
COMPANY LIMITED NZBN)
9429040945767 in accordance with)
section 180 of the *Companies*)
Act 1993 (New Zealand) by authority
of its directors:

[Signature]
.....
Signature of director

CHRISTOPHER BRIAN HALL
.....
Full name of director (block letters)

[Signature]
.....
Signature of director

NICHOLAS JOHN OLSON
.....
Full name of director (block
letters)

EXECUTED by **TODD**)
OFFSHORE LIMITED NZBN)
9429030115989 in accordance with)
section 180 of the *Companies*)
Act 1993 (New Zealand) by authority
of its directors:

[Signature]
.....
Signature of director

HENRY ALEXANDER BRYAN
TAIT
.....
Full name of director (block letters)

[Signature]
.....
Signature of director

MALCOLM ARTHUR
CHARLES WHYTE
.....
Full name of director (block
letters)

EXECUTED by **TODD**)
MINERALS LIMITED NZBN)
9429030762596 in accordance with)
section 180 of the *Companies*)
Act 1993 (New Zealand) by authority
of its directors:

[Signature]
.....
Signature of director

CHRISTOPHER BRIAN HALL
.....
Full name of director (block letters)

[Signature]
.....
Signature of director

NICHOLAS JOHN OLSON
.....
Full name of director (block
letters)

Schedule 2 — 2020 variation agreement

[s. 3]

[Heading inserted: No. 10 of 2021 s. 7.]

2020

**THE HONOURABLE MARK McGOWAN
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

AND

**BBI RAIL AUS PTY LTD
ABN 44 604 857 392**

AND

**TODD PETROLEUM MINING COMPANY LIMITED
NZBN 9429040945767**

**TODD OFFSHORE LIMITED
NZBN 9429030115989**

**TODD MINERALS LIMITED
NZBN 9429030762596**

**RAILWAY (BBI RAIL AUS PTY LTD) AGREEMENT 2017
RATIFIED VARIATION AGREEMENT**

[Solicitor's details]

THIS AGREEMENT is made this 10 day of September 2020

BETWEEN

THE HONOURABLE MARK McGOWAN, BA, LLB, 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 ("**the State**") of the first part,

AND

BBI RAIL AUS PTY LTD ABN 44 604 857 392 of Level 3, 151 Macquarie Street, Sydney, New South Wales ("**the Company**") of the second part,

AND

TODD PETROLEUM MINING COMPANY LIMITED NZBN 9429040945767 of Level 15, The Todd Building, 95 Customhouse Quay, Wellington, New Zealand, **TODD OFFSHORE LIMITED** NZBN 9429030115989 of Level 15, The Todd Building, 95 Customhouse Quay, Wellington, New Zealand and **TODD MINERALS LIMITED** NZBN 9429030762596 of Level 15, The Todd Building, 95 Customhouse Quay, Wellington, New Zealand (each a "**Guarantor**" and collectively "**the Guarantors**") of the third part.

RECITALS

- A.** The State, the Company and the Guarantors are the parties to the agreement dated 23 January 2017 ratified by and scheduled to the *Railway (BBI Rail Aus Pty Ltd) Agreement Act 2017* and which is referred to in this Agreement as the "**Principal Agreement**".
- B.** The parties 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 30 September 2020 or a later date agreed between the parties to this Agreement, a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.
- (4) If by 30 June 2021 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 varied as follows:

- (1) in clause 1 by deleting the word "and" after the definition of "SRL spur line Operation Date" and inserting the following definitions after the definition of "this Agreement", "hereof" and "hereunder":

"Variation Agreement" means the variation agreement made on or about 16 September 2020 between the Honourable Mark McGowan, Premier of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, the Company and the Guarantors; and

"Variation Date" means the date on which clause 2 of the Variation Agreement comes into operation;
- (2) in clause 11(1) by deleting "31 March 2019" and substituting "31 March 2022";

- (3) by inserting after clause 11(5) the following new subclause:
 - "(6) The provisions of clause 27 shall not apply to this clause.";
- (4) in clause 12(6) by deleting "1 October 2019" and inserting "1 October 2022";
- (5) by inserting after clause 19(4) the following new subclause:
 - "(5) The Company acknowledges that nothing in this Agreement shall be taken to limit the rights of the State to enact general legislation in substitution for or modification of, in whole or in part, the provisions of this Agreement (including clauses 9 and 10) relating to local participation."; and
- (6) in clause 28(2) by deleting "The" and substituting "After the Variation Date, the";

EXECUTED as a deed.

SIGNED by **THE HONOURABLE**)
MARK McGOWAN) [Signature]
in the presence of:)

[Signature]

Signature of witness

NADEEN LYN ROBERTS

Name of witness

EXECUTED by **BBI RAIL AUS**)
PTY LTD ABN 44 604 857 392 in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)

[Signature]

.....

Signature of director

JONATHON TERENCE YOUNG

.....

Full name of director (block letters)

[Signature]

.....

Signature of director

NICHOLAS CURTIS

.....

Full name of director (block letters)

EXECUTED by **TODD**)
PETROLEUM MINING)
COMPANY LIMITED)
NZBN 9429040945767 in accordance)
with section 180 of the *Companies*)
Act 1993 (New Zealand) by authority)
of its directors:)

[Signature]

.....

Signature of director

CHRISTOPHER BRIAN HALL

.....

Full name of director (block letters)

[Signature]

.....

Signature of director

JONATHON TERENCE YOUNG

.....

Full name of director (block letters)

EXECUTED by TODD)
OFFSHORE LIMITED)
NZBN 9429030115989 in accordance)
with section 180 of the *Companies*)
Act 1993 (New Zealand) by authority)
of its directors:)

[Signature]

.....
Signature of director

MICHAEL JOHN TODD

.....
Full name of director (block letters)

[Signature]

.....
Signature of director

HENRY ALEXANDER BRYAN TAIT

.....
Full name of director (block letters)

EXECUTED by TODD MINERALS)
LIMITED NZBN 9429030762596 in)
accordance with section 180 of the)
Companies Act 1993 (New Zealand))
by authority of its directors:)

[Signature]

.....
Signature of director

CHRISTOPHER BRIAN HALL

.....
Full name of director (block letters)

[Signature]

.....
Signature of director

JONATHON TERENCE YOUNG

.....
Full name of director (block letters)

[Schedule 2 inserted: No. 10 of 2021 s. 7.]



Notes

This is a compilation of the *Railway (BBI Rail Aus Pty Ltd) Agreement Act 2017* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Railway (BBI Rail Aus Pty Ltd) Agreement Act 2017</i> Pt. 1 and 2 and Sch. 1	15 of 2017	5 Dec 2017	Pt. 1: 5 Dec 2017 (see s. 2(a)); Pt. 2 and Sch. 1: 6 Dec 2017 (see s. 2(b))
<i>Railway (BBI Rail Aus Pty Ltd) Agreement Amendment Act 2021</i>	10 of 2021	17 Aug 2021	s. 1 and 2: 17 Aug 2021 (see s. 2(a)); Act other than s. 1 and 2: 18 Aug 2021 (see s. 2(b))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Railway (BBI Rail Aus Pty Ltd) Agreement Act 2017</i> Pt. 3	15 of 2017	5 Dec 2017	To be proclaimed (see. s. 2(c))

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)
2020 variation agreement.....	3
Agreement.....	3
scheduled agreement.....	3