



Western Australia

Iron Ore (Yandicoogina) Agreement Act 1996

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Defined terms

Iron Ore (Yandicoogina) Agreement Act 1996

An Act to ratify, and authorise the implementation of, an agreement between the State and Hamersley Iron-Yandi Pty. Ltd. and Hamersley Iron Pty. Ltd. relating to the establishment and operation of an iron ore mine in the central Hamersley Range.

1. Short title

This Act may be cited as the *Iron Ore (Yandicoogina) Agreement Act 1996*.

2. Commencement

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

3. Terms used

In this Act —

Agreement means the agreement, a copy of which is set out in Schedule 1 and, except in section 4(1), includes that agreement as amended from time to time in accordance with clause 33 of the agreement and by the First Variation Agreement, the Second Variation Agreement and the Third Variation Agreement;

the First Variation Agreement means the agreement a copy of which is set out in Schedule 2;

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

the Third Variation Agreement means the agreement a copy of which is set out in Schedule 4.

s. 4

*[Section 3 amended: No. 61 of 2010 s. 22; No. 61 of 2011 s. 20;
No. 38 of 2024 s. 27.]*

4. Agreement ratified and implementation authorised

- (1) The Agreement is ratified.
- (2A) The First Variation Agreement is ratified.
- (2B) The Second Variation Agreement is ratified.
- (2C) The Third Variation Agreement is ratified.
- (2) The implementation of the Agreement is authorised.
- (3) Without limiting or otherwise affecting the *Government Agreements Act 1979*, the Agreement operates and takes effect despite any other written law or law.
- (4) To avoid doubt, it is declared that the provisions of the *Public Works Act 1902* section 96 do not apply to a railway constructed under the Agreement.

*[Section 4 amended: No. 61 of 2010 s. 23; No. 61 of 2011 s. 21;
No. 38 of 2024 s. 28.]*

5. State empowered under clause 12C(9)(a)

The State has power in accordance with clause 12C(9)(a) of the Agreement.

[Section 5 inserted: No. 61 of 2010 s. 24.]

Schedule 1 — Agreement

[s. 3]

THIS AGREEMENT is made this day 22 of October 1996

BETWEEN

THE HONOURABLE RICHARD FAIRFAX COURT, B. Com., M.L.A.,
Premier of the State of Western Australia, acting for and on behalf of the said
State and its instrumentalities from time to time (hereinafter called “the State”)
of the first part

HAMERSLEY IRON-YANDI PTY LIMITED A.C.N. 009 181 793 a
company incorporated in Western Australia and having its registered office at
Level 22, Central Park, 152 - 158 St George’s Terrace, Perth (hereinafter called
“the Company” in which term shall be included its successors and permitted
assigns) of the second part and

HAMERSLEY IRON PTY LIMITED A.C.N. 004 558 276 a company
incorporated in the State of Victoria and having its registered office in the State
of Western Australia at Level 22, Central Park 152 - 158 St. George’s Terrace,
Perth (hereinafter called “Hamersley”) of the third part.

W H E R E A S:

- (a) the Company has established within the lands the subject of Exploration
Licences Nos. E47/4 and E47/6 to E47/10 inclusive iron ore of
tonneages and grades sufficient to warrant economic recovery and
marketing;
- (b) the Company has put forward a project outline for a mining operation
which will have capacity to produce up to 15,000,000 tonnes of iron ore
per annum for transportation from the mining lease as markets develop
and which will provide accommodation for the mine workforce by way
of facilities established in the vicinity of the mining lease; and
- (c) the parties hereto have agreed to enter into this Agreement for the
purpose of assisting the establishment of the mining operation as
described above and providing a framework for managing future
changes to the project, particularly in relation to production and
workforce increases and changes in workforce accommodation
arrangements.

NOW THIS AGREEMENT WITNESSES:

Definitions

1. In this Agreement subject to the context —

“accommodation area” means an area or areas on or in the vicinity of the mining lease for accommodation and ancillary facilities for the mine workforce;

“Acquisition Act” means the *Land Acquisition and Public Works Act 1902*;

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

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

“beneficiated ore” means iron ore which has been concentrated or upgraded otherwise than by washing, drying, crushing or screening or a combination thereof by the Company in a plant constructed pursuant to an approved proposal or such other plant as is approved by the Minister after consultation with the Minister for Mines and **“beneficiation”** and **“beneficiate”** have corresponding meanings;

“Clause” means a clause of this Agreement;

“commencement date” means the date the Bill referred to in Clause 3 comes into operation as an Act;

“Commonwealth” means the Commonwealth of Australia and includes the Government for the time being thereof;

“Company’s workforce” means the persons (and the dependants of those persons) connected directly with the Company’s activities under this Agreement, whether or not such persons are employed by the Company;

“EP Act” means the *Environmental Protection Act 1986*;

“fine ore” means iron ore excluding beneficiated ore which is nominally sized minus six millimetres;

“iron ore” includes beneficiated ore;

“Land Act” means the *Land Act 1933*;

“Land Tenure Plan” means the plan marked “A” initialled by or on behalf of the parties hereto for the purpose of identification;

“laws relating to native title” means laws applicable from time to time in Western Australia in respect of native title and includes the NTA;

“loading port” means the port of Dampier or if iron ore is not shipped, or is not shipped from that port, then such port (which may include the port of Dampier) as the Minister may determine for the purpose of this definition;

“local authority” means the council of a municipality that is a city, town or shire constituted under the *Local Government Act 1995*;

“lump ore” means iron ore excluding beneficiated ore which is nominally sized plus six millimetres minus thirty millimetres;

“metallised agglomerates” means the product of a pyrometallurgical iron ore reduction process which has a composition of not less than 85% (eighty five per cent) total iron excluding carbon;

“mine site” means the mining lease, the accommodation area and other areas provided for the facilities of the Company in the vicinity of the mining lease;

“mine workforce” means the Company’s workforce engaged for the Company’s activities on the mine site but does not include persons visiting the mine site in connection with the Company’s mining activities on a short term basis only or employed for a specific task of limited duration;

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

“mining lease” means the mining lease, granted pursuant to Clause 11 and includes any renewal thereof and according to the requirements of the context describes the area of land demised as well as the instrument by which it is demised;

“**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;

“**native title**” and “**native title rights and interests**” have the meaning given to them in the NTA;

“**notice**” means notice in writing;

“**NTA**” means the *Native Title Act 1993* (Commonwealth);

“**person**” or “**persons**” includes bodies corporate;

“**private roads**” means the roads referred to in subclause (1) of Clause 15 and any other roads (whether within or outside the mining lease) constructed by the Company in accordance with an approved proposal or agreed by the State and the Company to be a private road for the purposes of this Agreement;

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

“**said State**” means the State of Western Australia;

“**subclause**” means subclause of the Clause in which the term is used;

“**this Agreement**” “**hereof**” and “**hereunder**” refer to this Agreement whether in its original form or as from time to time added to varied or amended;

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

Interpretation

2. (1) In this Agreement —

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- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
 - (b) power given under any clause other than Clause 35 to extend any period or date shall be without prejudice to the power of the Minister under Clause 35;
 - (c) clause headings do not affect the interpretation or construction;
 - (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
 - (e) one gender includes the other genders; and
 - (f) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.
- (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 pursuant to the EP Act.

Ratification and Operation

- 3. (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1996 or such later date as may be agreed between the parties hereto.

- (2) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation until the Bill referred to in subclause (1) has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (3) If before 31 December 1996 the said Bill has not commenced to operate as an Act then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (4) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

Initial obligations of the Company

- 4. (1) The Company shall continue its field and office engineering, environmental, heritage, market and finance studies and other matters necessary for the purposes of this Clause and to enable it to finalise and to submit to the Minister the detailed proposals referred to in Clause 6.
- (2) The Company shall keep the State fully informed in writing quarterly as to the progress and results of its operations under subclause (1) and shall supply to the State such information in relation thereto as the Minister may request.
- (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 to undertake.

Surveys of lands

- 5. (1) For the purposes of Clause 4 and to the extent reasonably necessary to enable the Company to carry out its obligations under that Clause and to carry out surveys of land and other

works in relation to its proposed activities under this Agreement and for the purpose of complying with and making applications with respect to land under the *Aboriginal Heritage Act 1972* (for all of which purposes the Company shall be deemed to be within the expression “the owner of any land” in section 18 of that Act), but subject to the adequate protection of the environment (including flora and fauna) and the land affected (including improvements thereon) the Company and its agents and contractors in relation to its proposed activities under this Agreement may, subject to sections 82 and 83A of the Acquisition Act and authorisations pursuant to those sections, exercise the powers set out in those sections as if such activities were a work under that Act.

- (2) The land to be granted pursuant to this Agreement, whether under the Land Act or the Mining Act, will be drawn from within the areas coloured red and blue on the Land Tenure Plan and such other land as may be agreed between the State and the Company.

Company to submit proposals

6. (1) Subject to the provisions of this Agreement the Company shall on or before 31 December 1997 submit to the Minister to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect to the production of up to 15,000,000 tonnes of iron ore per annum for transportation from the mining lease and the transport and shipment of iron ore produced which proposals shall make provision for the Company’s workforce and associated population required to enable the Company to mine and recover iron ore from the mining lease and transport and ship the iron ore and shall include the location, area, lay-out, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely —

- (a) the mining and recovery of iron ore including mining, crushing, screening, handling, transport and storage of iron ore and plant facilities and any beneficiation or further processing of iron ore proposed to be carried out;
- (b) a railway between the mining lease and Hamersley's existing railway from Dampier to Marandoo and works ancillary to or connected with the railway including fencing (if any) and crossing places;
- (c) roads within the mining lease and roads serving the mining lease;
- (d) temporary accommodation and ancillary facilities for the mine workforce on or in the vicinity of the mining lease and housing or other appropriate accommodation and facilities elsewhere for the Company's workforce;
- (e) water supply and disposal;
- (f) energy supplies;
- (g) storage and ship loading of iron ore;
- (h) mine aerodrome on or in the vicinity of the mining lease and any other aerodrome facilities and services;
- (i) any other works, services or facilities desired by the Company;
- (j) 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;
- (k) any leases, licences, easements and other titles to land required from the State; and
- (l) an environmental management programme as to measures to be taken, in respect of the Company's activities under this Agreement, for rehabilitation and the protection and management of the environment.

Order of proposals

- (2) Each of the proposals pursuant to subclause (1) may with the approval of the Minister or, if so required by him, shall be submitted separately and in any order as to any matter or matters mentioned in subclause (1).

Additional submissions

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

Consideration of proposals

7. (1) In respect of each proposal pursuant to subclause (1) of Clause 6 the Minister shall —
- (a) approve of the proposal without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 6 not covered by the said proposal; or
 - (c) require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable, and in such a case the Minister shall disclose his reasons for such conditions,

PROVIDED ALWAYS that where implementation of any proposals hereunder 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.

Advice of Minister's decision

- (2) The Minister shall within two months after receipt of proposals pursuant to subclause (1) of Clause 6 give notice to the Company of his decision in respect to the proposals, PROVIDED THAT —
- (a) where a proposal is to be assessed under section 40(1)(b) of the EP Act the Minister shall only give notice to the Company of this decision in respect to the proposal within 2 months after service on him of an authority under section 45(7) of the EP Act; and
- (b) where implementation of a proposal by the State will require the State to take any native title rights and interests the Minister shall only give notice to the Company of his decision in respect to the proposal within 2 months of the process of taking such native title rights and interests by the State being completed.

Consultation with Minister

- (3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.

Minister's decision subject to arbitration

- (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) and the Company considers that the decision is unreasonable the Company within two months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister

pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder.

Arbitration award

- (5) An award made on an arbitration pursuant to subclause (4) shall have force and effect as follows —
 - (a) if by the award the dispute is decided against the Company then unless the Company within 3 months after delivery of the award gives notice to the Minister of its acceptance of the award 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.

Effect of non-approval of proposals

- (6) Notwithstanding that under subclause (1) any proposals of the Company are approved by the Minister or determined by arbitration award, unless each and every such proposal and matter is so approved or determined by 31st December 1997 or by such extended date or period if any as the Company shall be granted pursuant to the provisions of this Agreement then the Minister may give to the Company 12 months notice of intention to determine this Agreement and unless before the expiration of the said 12 months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of Clause 39.

Implementation of proposals

- (7) The Company shall implement the approved proposals in accordance with the terms thereof.

Variation of proposals

- (8) Notwithstanding Clause 33 the Minister may during the implementation of approved proposals approve variations to those proposals.

Extension of periods

- (9) The periods set forth in subclause (1) of Clause 6 and subclause (6) of this Clause will be extended (in addition to any extension granted pursuant to Clause 34 or 35) upon request of either the Company or the State for such reasonable period or periods as may be necessary from time to time to enable either of them to comply with laws relating to native title.

Termination of Agreement

- (10) If either the Company or the State considers the establishment of the mining operations as envisaged in subclause (1) of Clause 6 should not proceed having regard to matters arising out of laws relating to native title or by reason of claims or objections lodged under laws relating to native title, that party shall consult with the other in regard thereto. Subject to such consultation, either of them may, at any time before production of iron ore in commercial quantities is commenced, for reasons the subject of such consultation, determine this Agreement by notice to the other, whereupon this Agreement shall determine and the provisions of Clause 39 will apply.

Overall development

8. (1) Having regard to the geographical relationship and physical association of the mining lease with other iron ore deposits in and to the general development of the central Hamersley Range area, the Company in its initial proposals under Clause 6 and any additional proposals pursuant to Clause 9 (other than a proposal under that Clause to increase production of iron ore where the total production after such increase will not exceed 15,000,000 tonnes of iron ore per annum for transportation from the mining lease and the proposal does not involve any significant variation to the mine infrastructure) or Clause 10

shall take into account and make provision where it is reasonably practicable so to do for —

- (a) the economic and orderly overall development of the lands the subject of this Agreement and those other iron ore deposits;
 - (b) appropriate infrastructure development in the central Hamersley Range area having regard to then existing iron ore operations and facilities and to other existing infrastructure including the Great Northern Highway; and
 - (c) an open town or other appropriate housing and accommodation arrangements to service the iron ore mines and other developments in the central Hamersley Range area.
- (2) The Company and the State shall co-operate and consult with each other regarding the matters referred to in subclause (1), State Government policies, planning and development objectives, the Company's commercial requirements and any other relevant matters that the Minister or the Company may wish to consider.

Additional proposals

9. (1) If the Company at any time during the continuance of this Agreement desires to significantly modify, expand or otherwise vary its activities carried on pursuant to this Agreement beyond those activities specified in any approved proposals it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in subclause (1) of Clause 6 as the Minister may require.
- (2) The provisions of Clause 6 and Clause 7 (other than subclauses (5)(a) and (6) of Clause 7) shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause with the proviso that the Company may withdraw such proposals at any time before approval thereof or, where any

decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same.

Limits on mining

10. (1) The Company shall not produce more than 15,000,000 tonnes of iron ore per annum for transportation from the mining lease nor shall the total number of the mine workforce exceed 150 without the prior consent of the Minister and approval of detailed proposals in regard thereto in accordance with this Clause.
- (2) (a) If the Company desires to increase the annual tonnage or the mine workforce beyond that specified in subclause (1) it shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of its proposals in respect thereto (including the matters mentioned in subclause (1) of Clause 6).
- (b) The Minister shall within one month of a notice under paragraph (a) of this subclause advise the Company whether or not he approves in principle the proposed increase. An approval by the Minister under this subclause may be given subject to conditions including a condition requiring variations of or additions to this Agreement PROVIDED THAT any such condition shall not without the consent of the Company require variations of —
- (i) the term of the mining lease or the railway lease or the rental thereunder;
- (ii) the rentals payable under any other lease or licence hereunder;
- (iii) the rates of or method of calculating royalty;
- (iv) the provisions of Clause 20; or
- (v) the provisions of Clause 23.

- (3) The Company shall not seek approval in principle to proposals in regard to the production of more than 30 million tonnes of iron ore per annum for transportation from the mining lease unless the Minister in accordance with subclause (4) of Clause 23 has approved or is deemed to have approved proposals submitted under subclause (2) of that Clause for the establishment within the State of plant for the production of metallised agglomerates or under subclause (6) of that Clause for an alternative project in lieu of the Company's obligations in respect of the establishment of plant for the production of metallised agglomerates under that Clause or unless the Minister otherwise agrees for the purpose of this subclause to receive a notice under subclause (2)(a).
- (4)
 - (a) If the Minister approves in principle a proposed increase the Company must within three months of that approval submit to the Minister detailed proposals in respect thereof in accordance with any conditions of that approval otherwise that approval shall lapse.
 - (b) The provisions of subclause (2) of Clause 9 shall apply to detailed proposals submitted pursuant to this subclause.
- (5) Any proposal under this Clause to increase the annual tonnage to be produced or the number of the mine workforce shall specify the proposed increase and on and after approval or determination of any such proposal pursuant to paragraph (b) of subclause (4) the provisions of this Clause shall apply mutatis mutandis to the increased tonnage or number of the mine workforce as the case may be and also to any subsequent desires of the Company for an increase in the tonnage or mine workforce.

Mining lease

- 11. (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 subclause (1) of Clause 6 have been approved or determined and the Company has complied with the provisions of subclause (3) of Clause 6,

for a mining lease of land within the land depicted by the area coloured red on the Land Tenure Plan then held by the Company or by Hamersley under the exploration licences referred to in recital (a) of this Agreement the State shall subject to the conditions set out in the following subclauses and insofar as is permitted by laws relating to native title cause a mining lease of the land so applied for to be granted to the Company.

Conditions of grant of mining lease

- (2) The grant of the mining lease referred to in subclause (1) shall be subject to the conditions that —
- (a) the mining lease may be in respect of one or more pieces of land whether contiguous or not provided that the total area leased shall not exceed 777 square kilometres, and each piece of land shall be in the form of a rectangle or as near thereto as is practicable;
 - (b) the mining lease may be granted before the area leased has been surveyed but in that case shall be granted subject to the condition that the area leased shall be surveyed by or on behalf of the State at the Company's expense and shall accord with that survey;
 - (c) the mining lease shall permit the Company to mine iron ore only;
 - (d) the mining lease shall only be granted on the surrender of Exploration Licences Nos. E47/4 and E47/7 to E47/10 and any part of Exploration Licence No. E47/6 which is to be included in the mining lease;
 - (e) the rental payable in respect of the mining lease shall be that prescribed from time to time in the Mining Act otherwise than under regulation 28A;
 - (f) from and after the date 15 years after the first transportation from the mining lease of iron ore on which royalty is payable under subclause (2) of Clause 12 the Company, in addition to the rental already referred to in paragraph (e), shall pay to the State an additional rental in respect of the mining lease equal to 25 cents per tonne on

all iron ore in respect of which royalty is payable under subclause (2) of Clause 12, such additional rental to be paid in respect of the same periods and at the same times as such royalty is payable; and

- (g) the mining lease shall be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but in the form of the Schedule hereto.

Term of mining lease

- (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 mining lease shall be for a period of 21 years commencing from the date of receipt of the application therefor under subclause (1) with the right during the currency of this Agreement to take two successive renewals of the said term each for a further period of 21 years upon the same terms and conditions, subject to the sooner determination of the said term upon cessation or determination of this Agreement, such right to be exercisable by the Company making written application for any such renewal not later than one month before the expiration of the current term of the mining lease.

Exemption from expenditure conditions

- (4) The State shall ensure that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the expenditure conditions imposed by or under the Mining Act in regard to the mining lease.

Reports

- (5) The Company shall lodge with the Department of Minerals and Energy at Perth mineral exploration reports in accordance with section 115A of the Mining Act but shall not be required to lodge any operations reports in accordance with that section.

Access over mining lease

- (6) The Company shall at all times permit the State and third parties with the consent of the State (with or without stock, vehicles and rolling stock) to have access to and to pass over the mining lease (by separate route, road or railway) so long as that access and passage does not unduly prejudice or interfere with the activities of the Company under this Agreement.

Surrender of part of mining lease

- (7) Notwithstanding the provisions of this Clause and the Mining Act with the approval of the Minister the Company may from time to time (with abatement of future rent in respect to the area surrendered but without any abatement of rent already paid or any rent which has become due and has been paid in advance) surrender to the State all or any portion or portions of the mining lease.

Additional areas

- (8) Notwithstanding the provisions of the Mining Act the Company may from time to time during the currency of this Agreement apply to the Minister for areas held by the Company under a mining tenement granted under the Mining Act to be included in the mining lease but so that the total area of the mining lease shall not at any time exceed 777 square kilometres. The Minister shall confer with the Minister for Mines in regard to any such application and if they in their discretion approve the application the Minister for Mines shall upon the surrender of the relevant mining tenement include the area the subject thereof in the mining lease subject to such of the conditions of the surrendered mining tenement as the Minister for Mines determines but otherwise subject to the same terms covenants and conditions as apply to the mining lease (with such apportionment of rents as is necessary) and notwithstanding that the survey of such additional land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.
- (9) The Company shall not mine or carry out other activities (other than exploration, bulk sampling and testing) on any area of

areas added to the mining lease pursuant to subclause (8) of this Clause unless and until proposals with respect thereto are approved or determined pursuant to the subsequent provisions of this Clause.

- (10) If the Company desires to commence mining of iron ore or to carry out any other activities (other than as aforesaid) on the said areas it shall give notice of such desire to the Minister and shall within 2 months of the date of such notice (or thereafter within such extended time as the Minister may allow as hereinafter provided) and subject to the provisions of this Agreement submit to the Minister to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister) with respect to such mining or other activities as additional proposals pursuant to Clause 9.

Other mining tenements

- (11) (a) Notwithstanding anything contained or implied in this Agreement or in the mining lease or the Mining Act, mining tenements may subject to the provisions of this Clause be granted to or registered in favour of persons other than the Company under the Mining Act in respect of the areas the subject of the mining lease unless the Minister for Mines determines that such grant or registration is likely unduly to prejudice or interfere with the current or prospective operations of the Company hereunder with respect to iron ore, assuming the taking by the Company of reasonable steps to avoid the prejudice or interference, or is likely unduly to reduce the quantity of economically extractable iron ore available to the Company.
- (b) A mining tenement granted or registered as a result of this Clause shall not confer any right to mine or otherwise obtain rights to iron ore on the tenement.
- (c) (i) In respect of any application for a mining tenement made under the Mining Act in respect of an area the subject of the mining lease the Minister for

Mines shall consult with the Minister and the Company with respect to the significance of iron ore deposits in, on or under the land the subject of the application and any effect the grant of a mining tenement pursuant to such application might have on the current or prospective iron ore operations of the Company under this Agreement.

- (ii) Where the Minister for Mines, after taking into account any matters raised by the Minister or the Company determines that the grant or registration of the application is likely to have the effect on the operations of the Company or the iron ore referred to in paragraph (a) of this subclause, he shall notwithstanding any recommendation of any mining registrar or warden, by notice served on the mining registrar with whom the application was lodged, refuse the application.
- (iii) Before making a determination pursuant to subparagraph (ii) of this paragraph the Minister for Mines may request the warden of the mineral field or district thereof in which is situated the mining tenement for which the application was made to hear the application and any objections thereto and as soon as practicable after the hearing of the application to report to the Minister for Mines on the application and the objections and the effect on the current or prospective operations of the Company or the quantity of economically extractable iron ore that a grant of the application might have.
- (d) (i) Except as provided in paragraph (c) of this subclause no mining registrar shall deal with an application for a mining tenement in respect of an area the subject of the mining lease unless and until the Minister for Mines has notified him that it is not intended to refuse the application pursuant to paragraph (c) of this subclause. Following such advice to the mining registrar the application shall

be disposed of under and in accordance with the Mining Act save that where the warden has heard the application and objections thereto pursuant to subparagraph (iii) of paragraph (c) of this subclause, the application may be dealt with by the warden without further hearing.

- (ii) The Company may exercise in respect of any application for a mining tenement lodged with a mining registrar any right that it may have under the Mining Act to object to the granting of the application.
 - (iii) Any mining tenement granted pursuant to such application shall, in addition to any covenants and conditions that may be prescribed or imposed, be granted subject to such conditions as the Minister for Mines may determine having regard to the matters the subject of the consultations with the Minister and the Company pursuant to subparagraph (i) of paragraph (c) of this subclause and any matters raised by the Company before the warden pursuant to subparagraph (iii) of paragraph (c) of this subclause or to subparagraph (ii) of this paragraph.
- (e) (i) On the grant of any mining tenement pursuant to an application to which this subclause applies the land the subject thereof shall thereupon be deemed excised from the mining lease (with abatement of future rent in respect of the area excised but without any abatement of rent already paid or of rent which has become due and has not been paid in advance).
- (ii) On the expiration or sooner determination of any such mining tenement or, if that tenement is a prospecting licence, exploration licence or retention licence and a substitute tenement is granted in respect thereof pursuant to an application made under section 49 or section 67 or

section 70L of the Mining Act, then on the expiration or sooner determination of the substitute title the land the subject of such mining tenement or substitute title as the case may be shall thereupon be deemed to be part of the land in the mining lease (with appropriate adjustment of rental) and unless the Minister otherwise directs shall be subject to the terms and conditions of the mining lease and this Agreement.

Royalties

12. (1) In this Clause —

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

“deemed f.o.b. point” means on ship at the loading port;

“deemed f.o.b. value” means an agreed or determined value of the iron ore as if the iron ore was sold f.o.b. at the deemed f.o.b. point as at —

- (i) in the case of iron ore the property of the Company which is shipped out of the said State, the date of shipment;
- (ii) in any other case, the date of sale, transfer of ownership, disposal or use as the case may be;

“f.o.b. value” means —

- (i) in the case of iron ore shipped and sold by the Company, the price which is payable for the iron ore by the purchaser thereof to the Company or, where the Minister is not satisfied that the price payable in respect of the iron ore represents a fair and reasonable market value for that iron ore assessed at an arm’s length basis, such amount as is agreed or determined, less all export duties and export taxes payable to the Commonwealth on the export of the iron ore and all costs and charges properly incurred and payable by the Company from the time the iron ore shall be placed on ship at the loading port to the time the same is delivered and accepted by the purchaser including —
 - (1) ocean freight;
 - (2) marine insurance;
 - (3) port and handling charges at the port of discharge;
 - (4) all costs properly incurred in delivering the iron ore from port of discharge to the smelter and evidenced by relevant invoices;
 - (5) all weighing sampling assaying inspection and representation costs;
 - (6) all shipping agency charges after loading on and departure of ship from the loading port;
 - (7) all import taxes by the country of the port of discharge; and
 - (8) such other costs and charges as the Minister may in his discretion consider reasonable in respect of any shipment or sale;
- (ii) in all other cases, the deemed f.o.b. value.

For the purpose of subparagraph (i) of this definition, it is acknowledged that the consideration payable in an arm’s length transaction for iron ore sold solely for testing purposes may be less than the fair and reasonable market value for that iron ore

and in this circumstance where the Minister in his discretion is satisfied such consideration represents the entire consideration payable, the Minister shall be taken to be satisfied that such entire consideration represents the fair and reasonable market value.

- (2) The Company shall during the continuance of this Agreement pay to the State royalty on all iron ore from the mining lease (other than iron ore shipped solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) as follows —
- (a) for the period ending on 31 December 2010 —
 - (i) on lump ore at the rate of 7.5% of the f.o.b. value;
 - (ii) on fine ore at the rate of 5.625% of the f.o.b. value;
 - (iii) on beneficiated ore at the rate of 5.0% of the f.o.b. value; and
 - (iv) on any other iron ore at the rate of 7.5% of the f.o.b. value,
 - (b) for the period commencing on 1 January 2011 — on all iron ore at the rate or rates from time to time prescribed under the Mining Act,

PROVIDED HOWEVER in respect to paragraphs (a) and (b) of this subclause —

- (c) where iron ore sold or intended to be sold as fine ore includes lump ore nominally sized minus 10 millimetres the royalty payable on such iron ore shall be the royalty payable on fine ore; and
- (d) where iron ore from the mining lease is processed in the said State into pellets, sinter, metallised agglomerates or steel by the Company or a third party the rates applicable pursuant to this subclause shall be reduced in respect of that iron ore by —
 - (i) 0.5% in respect of iron ore processed into pellets or sinter;

- (ii) 1.0% in respect of iron ore processed into metallised agglomerates;
 - (iii) 2.0% in respect of iron ore processed into steel.
- (3) The Company shall —
 - (a) within fourteen days after the quarter days the last days of March, June, September and December in each year commencing with the quarter day next following the first transportation of iron ore from the mining lease furnish to the Minister a return showing the quantity of all beneficiated ore produced and all fine ore, lump ore and other iron ore the subject of royalty hereunder and sold, transferred or otherwise disposed of or used (as the case may be) during the quarter immediately preceding the due date of the return and shall not later than 2 months after such due date pay to the Minister the royalty payable in respect thereof or if the f.o.b. value is not then finally calculated, agreed or determined pay to the Minister on account of the royalty payable hereunder a sum calculated on the basis of invoices or provisional invoices (as the case may be) rendered by the Company to the purchaser (which invoices the Company shall render without delay simultaneously furnishing copies thereof to the Minister) of such iron ore or on the basis of estimates as agreed or determined and shall from time to time in the next following appropriate return and payment make (by return and by cash) all such necessary adjustments (and give to the Minister full details thereof) when the f.o.b. value shall have been finally calculated, agreed or determined;
 - (b) permit the Minister or his nominee to inspect at all reasonable times the books of account and records of the Company including contracts relative to any shipment or sale of iron ore hereunder and records of iron ore in stockpile or transit and to take copies of extracts therefrom and for the purpose of determining the f.o.b. value in respect of any shipment sale transfer or other

disposal or use or production of iron ore hereunder the Company will take reasonable steps —

- (i) to provide the Minister with current prices for iron ore and other details and information that may be required by the Minister for the purpose of agreeing or determining the f.o.b. value; and
- (ii) to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the Minister's reasonable satisfaction as to all relevant weights and analyses and will give due regard to any objection or representation made by the Minister or his nominee as to any particular weight or assay or iron ore which may affect the amount of royalty payable hereunder;

and

- (c) as and when required by the Minister for Mines from time to time install and thereafter maintain in good working order and condition meters for measuring quantities of iron ore and iron ore products of such design or designs and at such places as the Minister for Mines may require.

Protection and management of the environment

- 13. (1) The Company shall in respect of the matters referred to in paragraph (l) of subclause (1) of Clause 6 which are the subject of approved proposals, carry out a continuous programme of investigation research and monitoring to ascertain the effectiveness of the measures it is taking both generally and pursuant to such approved proposals as the case may be for rehabilitation and the protection and management of the environment.
- (2) The Company shall during the currency of this Agreement submit to the Minister —

- (a) not later than the 30th day of June, 1998 and the 30th day of June in each year thereafter (except those years in which a comprehensive report is required to be submitted pursuant to paragraph (b) of this subclause) a brief report concerning investigations and research carried out pursuant to subclause (1) and the implementation by the Company of the elements of the approved proposals relating to the rehabilitation, protection and management of the environment in the year ending the 30th day of April immediately preceding the due date for the brief report; and
 - (b) not later than the 30th day of June 2000 and the 30th day of June in each third year thereafter if so requested by the Minister from time to time, a comprehensive report on the result of such investigations and research and the implementation by the Company of the elements of the approved proposals relating to the rehabilitation, protection and management of the environment during the three year period ending the 30th day of April immediately preceding the due date for the detailed report and the programme proposed to be undertaken by the Company during the following three year period in regard to investigation and research under subclause (1) and the implementation by the Company of the elements of the approved proposals relating to the rehabilitation protection and management of the environment.
- (3) The Minister may within 2 months of receipt of a detailed report pursuant to paragraph (b) of subclause (2) notify the Company that he —
- (a) approves the report and programme (if any); or
 - (b) requires amendment of the report and/or programme (if any) for the ensuing 3 years; or
 - (c) requires additional detailed proposals to be submitted for the rehabilitation, protection and management of the environment.

- (4) The Company shall within 2 months of receipt of a notice pursuant to paragraph (b) of subclause (3) submit to the Minister an amended report and/or programme as required. The Minister shall afford the Company full opportunity to consult with him on his requirements during the preparation of any amended report or programme.
- (5) The Minister may within 1 month of receipt of an amended report or programme pursuant to subclause (4) notify the Company that he requires additional detailed proposals to be submitted for the rehabilitation, protection and management of the environment.
- (6) The Company shall within 2 months of receipt of a notice pursuant to paragraph (c) of subclause (3) or subclause (5) of this Clause submit to the Minister additional detailed proposals as required and the provisions of subclauses (1), (2), (3), (4) (5) and (7) of Clause 7 shall *mutatis mutandis* apply to those proposals.

Use of local labour professional services and materials

14. (1) The Company shall, for the purposes of this Agreement —
- (a) except in those cases where the Company can demonstrate it is impracticable so to do, use labour available within Western Australia (using all reasonable endeavours to ensure that as many as possible of the contractor's workforce be recruited from the Pilbara) or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;
 - (b) as far as it is reasonable and economically practicable so to do, use the services of engineers, surveyors, architects and other professional consultants, experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within Western Australia or if such services are not available within Western Australia then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;

- (c) during design and when preparing specifications, calling for tenders and letting contracts for works, materials, plant, equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that suitably qualified Western Australian and Australian suppliers, manufacturers and contractors are given fair and reasonable opportunity to tender or quote;
 - (d) give proper consideration and where possible preference to Western Australian suppliers, manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price, quality, delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and where possible preference to other Australian suppliers, manufacturers and contractors; and
 - (e) if notwithstanding the foregoing provisions of this subclause a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and where possible preference to tenders, arrangements or proposals that include Australian participation.
- (2) Except as otherwise agreed by the Minister the Company shall in every contract entered into with a third party for the supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) and shall report to the Company concerning such third party's implementation of that condition.
- (3) The Company shall submit a report to the Minister at monthly intervals or such longer period as the Minister determines commencing from the date of this Agreement concerning its implementation of the provisions of this Clause together with a copy of any report received by the Company pursuant to

subclause (2) during that month or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine.

- (4) The Company shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations, design, and management) and any works, materials, plant, equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia together with its reasons therefor and shall as and when required by the Minister consult with the Minister with respect thereto.

Roads — Private roads

15. (1) Except with the consent of the Minister private roads providing access to the mining lease shall be restricted to —
- (a) a road between the mining lease and the accommodation area;
 - (b) a road between the mining lease and the mine aerodrome serving the mining lease; and
 - (c) a railway maintenance road within the railway lease.

Construction of private roads

- (2) The Company shall —
- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in its activities hereunder;
 - (b) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles other than those engaged upon the Company's activities and its invitees and licensees from using the private roads; and

- (c) at any place where any private roads are constructed by the Company so as to cross any public roads or private railways provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the owner of the private railway as the case may be.

Maintenance of public roads

- (3) The State shall maintain or cause to be maintained those public roads under the control of the Commissioner of Main Roads or a local authority which may be used by the Company for the purposes of this Agreement to a standard similar to comparable public roads maintained by the Commissioner of Main Roads or a local authority as the case may be.

Upgrading of public roads

- (4) In the event that for or in connection with the Company's activities hereunder the Company or any person engaged by the Company uses or wishes to use a public road (whether referred to in subclause (3) or otherwise) which is inadequate for the purpose, or any use by the Company or any person engaged by the Company of any public road results in excessive damage to or deterioration thereof (other than fair wear and tear) the Company shall pay to the State or the local authority as the case may require the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads having regard to the use of such public road by others.

Acquisition of private roads

- (5) Where a road constructed by the Company for its own use is subsequently required for public use, the State may, after consultation with the Company and so long as resumption thereof shall not unduly prejudice or interfere with the activities of the Company under this Agreement, resume and dedicate such road as a public road. Upon any such resumption the State shall pay to the Company such amount as is reasonable.

Aerodrome

16. (1) The Company shall confer with the Minister on any upgrading of existing aerodrome facilities and services in the Pilbara region that the Minister after consultation with the relevant local authority may consider to be required as a result of the Company's activities under this Agreement.
- (2) The Company shall not without the approval of the Minister propose or construct any mine aerodrome of a standard greater than the standard requirements for aircraft with a maximum take off weight of 20,000 kg.

Electricity — purchase of electricity

17. The Company may in accordance with its approved proposals hereunder and subject to the provisions of the *Electricity Act 1945* and any other relevant Act —
- (a) install and operate without cost to the State, at an appropriate location or locations equipment of sufficient capacity to generate electricity for its activities on the mine site; and
- (b) transmit power within the mine site subject to the provisions of the *Electricity Act 1945* and any other relevant Act.

Water — mining lease

18. (1) (a) To the fullest extent reasonably practicable the Company shall use water obtained from dewatering on the mining lease for its purposes under this Agreement.
- (b) Nothing in this Agreement shall be construed to exempt the Company from any liability to the State or to third parties arising out of or caused by extraction of water from the mining lease by dewatering or any discharge or escape from the mining lease of water obtained by dewatering.

Water requirements

- (2) The State and the Company shall agree upon the amounts (and qualities thereof) of the Company's annual and maximum daily water requirements for use in its activities hereunder at the mine site (which amounts or such other amounts as shall from time to time be agreed between them to be reasonable are hereinafter called "the mining water requirements") and amounts required to be withdrawn in dewatering.

Rights to water and water services

- (3) Except as otherwise specifically provided for under this Clause the mining water requirements shall be obtained in accordance with laws applicable from time to time in Western Australia in respect of rights in water and the supply of water and water services.

Grant of licence

- (4) Subject to and in accordance with the approved proposals and the *Rights in Water and Irrigation Act 1914* the State shall grant or cause to be granted to the Company a licence to develop and draw from the source specified in those proposals, at the Company's cost but without fee, the mining water requirements (less any withdrawal amounts included therein) and withdrawal amounts on such terms and conditions as are necessary to ensure good water resource management as the Minister may from time to time require and during the continuance of this Agreement grant renewals of any such licence PROVIDED HOWEVER that should that source prove hydrologically inadequate to meet the mining water requirements on a continuous basis, the State may on at least 6 months prior notice to the Company (or on at least 48 hours prior notice if in the opinion of the Minister an emergency situation exists) limit the amount of water which may be taken from that source at any one time or from time to time to the maximum which in the opinion of the Minister that source is hydrologically capable of meeting as aforesaid.

Minimisation of water consumption

- (5) The Company shall to the extent that it is practical and economical design, construct and operate all plant and equipment used in its activities under this Agreement so as to minimise water consumption and shall at all times use its best endeavours to minimise the consumption of water in its activities under this Agreement and ensure the most efficient use of the available water resources.

Provision of accommodation/housing

19. (1) Accommodation for the mine workforce at the mine site when the Company is producing not more than 15,000,000 tonnes of iron ore per annum for transportation from the mining lease and the total number of the mine workforce is not more than 150 shall be by way of temporary accommodation units (not caravans) and ancillary facilities of a standard generally used in the mining industry located in the vicinity of the mining lease and —
- (a) the accommodation units and facilities ancillary to the accommodation units (which may include a mess/wet mess, amenities blocks and offices for Company management personnel) may be provided by the Company or a contractor to the Company but shall be subject to the prior approval of the Minister as to nature and type;
- (b) all accommodation units on the mine site shall be removed from the mine site upon the mine workforce being accommodated elsewhere than at the mine site;
- (c) only the mine workforce and persons visiting the mine site in connection with the Company's mining activities on a short term basis or employed for a specific task of limited duration shall be permitted to stay at the accommodation area; and
- (d) no dependants or pets shall be allowed on the mine site.

- (2) If and whenever the Company proposes —
- (a) to give a notice of proposed increase of tonneages or workforce pursuant to Clause 10;
 - (b) to substantially add to, upgrade, replace or relocate accommodation units; or
 - (c) to use its own workforce in place of a contractor workforce or to use a contractor workforce in place of its own workforce in its mining activities; or
 - (d) to construct an additional accommodation area separate from that already established
- it shall confer with the Minister with respect to the future accommodation of the mine workforce (including those members of the mine workforce then accommodated at the accommodation area) which may include expansion or alteration of the accommodation area, establishment of or assimilation into a new townsite, and assimilation into an existing town before submitting any proposal in regard thereto to the Minister.
- (3) The Company shall likewise confer with the Minister at the request of the Minister if the State proposes an open town in the central Hamersley Range area and shall co-operate with the State on any studies in relation to such a proposal that may be required to select a site for the town.
- (4) If the State and the Company agree that the mine workforce can be located in the proposed open town then the Company will relocate the workforce to the open town within an agreed period of time at no cost to the State and make such contributions to the infrastructure and community facilities in the open town as are agreed between the State and the Company to be required to service the needs of the Company's workforce.
- (5) As and when required by the Minister after consultation with the relevant local authority, the Company shall confer with the Minister with a view to assisting in the cost of providing any appropriate community, recreation, civic or social amenities at

any existing town required for the Company's workforce and associated population.

Railway

20. (1) Subject to and in accordance with approved proposals 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 along the route specified in the approval proposals (but subject to the provisions of the Acquisition Act, to the extent that they are applicable) a standard gauge railway specified in the approved proposals connecting the mining lease to Hamersley's existing Dampier - Marandoo railway and shall also construct inter alia any necessary deviations, loops, spurs, 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 (all of which together with the specified railway is referred to in this Agreement as "the railway") and shall operate the railway with sufficient and adequate locomotives, freight cars and other railway stock and equipment for the purposes of the Company's activities under this Agreement.
- (2) The Company shall during the continuance of this Agreement operate the railway in a safe and proper manner and shall provide crossings for livestock and also for any roads and other railways which now exist and where it can do so without unduly prejudicing or interfering with its activities hereunder the Company shall allow such crossings for roads and railways which may be constructed for future needs and which may be required to cross the railway.
- (3) The Company shall if and when reasonably required so to do transport passengers and carry the freight of the State and third parties over the railway where it can do so without unduly prejudicing or interfering with its activities under this Agreement and subject to the payment to it of the charges prescribed by and for the time being payable under any by-laws made by the Company in respect of the transporting of

passengers and the carriage of freight over the railway and subject to the due compliance with the other requirements and conditions prescribed by such by-laws or, should there be no such by-laws for the time being in force, then subject to the payment of such charges and the due compliance with such requirements and conditions as in either case shall be reasonable having regard to the cost to the Company of the construction and operation of the railway.

- (4) In relation to its use of the railway when transporting passengers or carrying freight pursuant to subclause (3) the Company shall not be deemed to be a common carrier at law or otherwise.
- (5) The Company shall not enter into any agreement or other arrangement for the use of or the carriage of iron ore or iron ore products of the Company over any railway not established by the Company pursuant to this Agreement (other than Hamersley's existing Dampier - Marandoo railway) without the prior approval of the State thereto and to the proposed terms and conditions (including charges) for such use or carriage.
- (6) The Minister may upon recommendation by the Company make, alter and repeal by-laws for the purpose of enabling the Company to fulfil its obligations under this Clause upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Company) as set out in such by-laws consistent with the provisions hereof. Should the Minister at any time consider that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Company shall recommend such alteration or repeal thereof as the Minister may reasonably require or (in the event of there being any dispute as to the reasonableness of such requirement) then as may be decided by arbitration hereunder.
- (7) (a) Where the railway crosses the Great Northern Highway the Company shall be responsible at its cost for the construction, operation and maintenance of level crossing warning signs and such extra warnings to Highway users

as may be reasonably required by the Commissioner of Main Roads.

- (b) The Company and the State shall co-operate and consult with each other on additional works and actions which may be required from time to time to ensure safe operation of the railway crossing referred to in paragraph (a) and the Company shall be responsible at its cost for carrying out such additional works and actions.

Lands

21. (1) On application made by the Company, not later than 3 months after a proposal submitted pursuant to subclause (1) of Clause 6 has been approved or determined or not later than 3 months after proposals submitted under subclause (1) of Clause 9 or subclause (3) of Clause 10 have been approved or determined the State shall in accordance with the Company's approved proposals and insofar as is permitted by laws relating to native title grant to the Company, or arrange to have the appropriate authority or other interested instrumentality of the State grant from within the land depicted by the area coloured blue on the Land Tenure Plan and in respect of other land approved for the purposes of this Clause by the Minister, for such periods and on such terms and conditions including rentals and renewal rights as shall be reasonable having regard to the requirements of the Company, leases and where applicable licences for the use of land, easements and rights of way for all or any of the purposes of the Company's activities hereunder including any of the following namely — accommodation area, aerodrome, railway, private roads, tailing areas, water pipelines, pumping installations and reservoirs, power transmission lines, radio and communication sites, plant site areas and pits for obtaining stone, sand, clay and gravel.

Modification of Land Act

- (2) For the purpose of this Agreement in respect of any land the subject of or proposed to be the subject of a lease or licence granted by the State to the Company under subclause (1) —

- (a) the Minister for Lands may lease to the Company any lot being town or suburban lands without offering that land to the public;
- (b) the Minister for Lands may grant a lease of land to the Company without giving notice of the Company's application for that land or of the purpose or term for which it is proposed to be granted;
- (c) an application for land made by the Company under subclause (1) shall take priority over any other application made for that land under the Land Act;
- (d) it shall not be a prerequisite to the validity of any transfer, mortgage or sublease permitted under this Agreement of any lease or licence that the approval to the transfer, mortgage or sublease of the Minister for Lands or of an officer of the department of the State government assisting him in the administration of the Land Act be obtained;
- (e) the Minister for Lands may grant occupancy rights over land on such terms and conditions as the Minister for Lands may determine;
- (f) the Minister for Lands may grant leases or licences for terms or periods and on terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, terms and conditions and forms referred to in the Land Act.

The provisions of this subclause shall not operate so as to prejudice the rights of the State to determine any lease, licence or other right or title in accordance with the other provisions of this Agreement.

Stone, sand, clay and gravel

- (3) The State shall in accordance with approved proposals grant to the Company a mining lease or mining leases for the obtaining of stone, sand, clay and gravel for the construction of works the subject of approved proposals, such mining lease or mining

leases to be granted under and except as otherwise provided herein subject to the Mining Act but limited in term to a reasonable period required for construction of the works and rehabilitation in accordance with the proposals. No royalty shall be payable under the Mining Act in respect of stone, sand, clay and gravel obtained from any such mining lease.

Resumption for the purposes of this Agreement

22. (1) The State, pursuant to the Acquisition Act may, for the purpose of conferring interests therein on the Company, take and resume any land within the areas coloured red and blue on the Land Tenure Plan the subject of approved proposals and any other land as specified in approved proposals and may grant leases, licences or easements in respect of the whole or portions of that land to the Company. The Company shall pay to the State, on demand, the costs to the State of and incidental to the taking of any land pursuant to this Clause, including the cost of any compensation due to any holder of native title or native title rights and interests in the land.
- (2) For the purposes of this Agreement and in the Acquisition Act when construed for the purposes of this Agreement, a reference to “land” shall be read as extending to any land or to any portion of any land and to the subsoil, surface or airspace relating thereto and to any estate, right, title, easement, lease, licence, privilege, native title right or interest or other interest, in, over, under, affecting, or in connection with that land or any portion, stratum or other specified sector of that land.

Further processing

23. (1) During the continuance of this Agreement, the Company shall undertake ongoing investigations into the technical and economic feasibility of establishing within the said State plant for the production of metallised agglomerates and shall on or before the earlier of —

-
- (a) the date 7 years after the date on which iron ore from the mining lease (other than iron ore transported solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) is first transported from the mining lease; and
- (b) the date on which the 100 millionth tonne of such iron ore from the mining lease is transported from the mining lease submit to the Minister detailed reports of such investigations to the date of the report and its program, budget and timetable for the preparation of the proposals referred to in subclause (2).
- (2) The Company shall —
- (a) on or before the earlier of —
- (i) the date 10 years after the date on which iron ore from the mining lease (other than iron ore transported solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) is first transported from the mining lease; and
- (ii) the date on which the 150 millionth tonne of such iron ore from the mining lease is transported from the mining lease (which date is hereinafter called “the m.a. date”); or
- (b) if proposals under this subclause are postponed for a 3 year period pursuant to subclause (3), on or before the third or subsequent third anniversary as the case may require of the m.a. date,

submit to the Minister detailed proposals for the establishment within the said State of plant for the production of metallised agglomerates containing provisions that such plant will within 3 years of the date on which the proposals are submitted have the capacity to produce not less than two million tonnes of metallised agglomerates per annum and will within 8 years of the date on which the proposals are submitted have the capacity to produce not less than three million tonnes of metallised agglomerates per annum.

- (3) (a) If the Company believes that the submission of proposals pursuant to subclause (2) on the m.a. date or a third anniversary of the m.a. date where a 3 year postponement has been allowed pursuant to this subclause should be postponed because the establishment of the said plant is not then economically feasible, the Company may apply to the Minister not more than 6 months nor less than 3 months before the date for submission of those proposals for postponement for a period of 3 years of the date for submission of proposals under subclause (2) and shall provide to the Minister with such application all relevant information and supporting data available to the Company relating to such application.
- (b) The Company shall supply to the Minister such other information and data as the Minister may reasonably require in relation to its application.
- (c) If the Minister is satisfied that there are reasonable grounds for the postponement applied for the requirement on the Company to submit proposals under this subclause shall be postponed for a period of 3 years.
- (d) If the Minister notifies the Company that he does not agree with its submission then at the request of the Company made within two (2) months after receipt of the Company of the notification from the Minister, the Minister will appoint a tribunal (hereinafter called “the Tribunal”) consisting of one person if the Company and the State agree on that person or, failing such agreement consisting of three persons (one of whom shall be a Judge of the Supreme Court of Western Australia or failing him or her a Commissioner appointed pursuant to section 49 of the *Supreme Court Act 1935* or a Queens Counsel and the others of whom shall have appropriate technical or economic qualifications) to decide in accordance with clause 37 whether or not the metallising operation is feasible and the Tribunal in reaching its decision shall take into account (*inter alia*) the Company’s submission, the amount of capital required for the metallising operation, the availability of that capital at that time on

reasonable terms and conditions, the likelihood of the Company being able to sell metallised agglomerates at sufficient prices and in sufficient quantities and for a sufficient period to justify the metallising operation having regard to the amount and rate of return on total funds that would be involved in or in connection with the production and sale of metallised agglomerates and the weighted average cost of capital to the Company.

- (4) The Minister shall within two (2) months of receipt of proposals under subclause (2) give to the Company notice of his approval of those proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto, and in the latter case shall afford the Company an opportunity to consult with and to submit new proposals to the Minister. If within two (2) months of receipt of such notice agreement is not reached as to the proposals, the Company may within a further period of two (2) months elect by notice to the State to refer to arbitration as provided in Clause 37 any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have approved the proposals of the Company.
- (5) The Company shall (except to the extent otherwise agreed with the Minister) before the end of the respective times specified in subclause (2) complete the construction of plant in accordance with the Company's proposals as finally approved or determined under this Clause and shall thereafter continue to produce metallised agglomerates from such plant at not less than the rates provided for in subclause (2) for so long as the Company continues to ship from the said State iron ore from the mining lease.
- (6) (a) The Company may at any time before the time for submission of proposals pursuant to subclause (2) apply to the Minister for approval that an alternative project be accepted by the State in lieu of all or some part of the Company's obligations in respect of the establishment of plant for the production of metallised agglomerates pursuant to this Clause.

- (b) Where the Minister approves an application under paragraph (a) of this subclause the Company shall implement the alternative project in accordance with that approval and upon completion thereof, or earlier with the agreement of the Minister, the provisions of subclause (2) or that part of those provisions which pursuant to the said approval are to be satisfied by the alternative project shall cease to apply PROVIDED FURTHER that the provisions of subclause (2) shall cease to apply upon completion of an alternative project which represents, or alternative projects which together represent, economic development in the said State (either alone or in the aggregate with other alternative projects) of value approximately equivalent to a plant for the production of two million tonnes of metallised agglomerates per annum.
- (7) For the purposes of subclause (6) “alternative project” means a project under which the Company or a related body corporate (within the meaning of the Corporations Law) of the Company undertakes to establish and operate plant in the said State which processes and adds to the value of minerals mined in the said State.

Training levy exemption

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

Commonwealth licences and consents

25. (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).

Subcontracting

26. The State shall ensure that without affecting the liabilities of the parties under this Agreement the State and the Company shall have the right from time to time to entrust to third parties the carrying out of any portions of the activities which it is authorised or obliged to carry out hereunder.

Zoning

27. The State shall ensure after consultation with the relevant local authority that the mining lease and any lands the subject of any lease, licence, easement or other title granted to the Company under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the activities of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State or by any State agency or instrumentality or by any local or other authority of the State on the ground that such activities are contrary to any zoning by-law, regulation or order.

Rating

28. The State shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands the subject of this Agreement (except the accommodation area and any other parts of the lands the subject of this Agreement on which accommodation units or housing for the Company's workforce is erected or which is occupied in connection with such accommodation units or housing and except as to any part upon which there stands any improvements that are used in connection with a commercial

undertaking not directly related to the mining activities carried out by the Company pursuant to approved proposals) shall for rating purposes under the *Local Government Act 1995*, be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate.

No discriminatory charges

29. Except as provided in this Agreement the State shall not impose, nor shall it permit or authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes, rates or charges of any nature whatsoever on or in respect of the titles, property or other assets, products, materials or services used or produced by or through the activities of the Company in the conduct of its business hereunder nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement.

No resumption

30. Subject to the performance by the Company of its obligations under this Agreement the State shall not during the currency of this Agreement without the consent of the Company resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the State any of the works, installations, plant, equipment or other property for the time being belonging to the Company and the subject of or used for the purpose of this Agreement or any of the works on the lands the subject of any lease or licence granted to the Company in terms of this Agreement 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 instrumentality or authority of the State as aforesaid any road, right-of-way, water right or easement of any nature or kind whatsoever over or in respect of any such lands which may unduly prejudice or interfere with the Company's activities under this Agreement.

Indemnity

31. 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 other relevant Act such indemnity shall not apply in circumstances where the State or its servants, agents, or contractors are negligent in carrying out work for the Company pursuant to this Agreement.

Assignment

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

easement or other title the subject of an assignment, mortgage, subletting or disposition under subclause (1) PROVIDED THAT the Minister may agree to release the Company from such liability where the Minister considers such release will not be contrary to the interests of the State.

- (3) Notwithstanding the provisions of the Mining Act, and the *Transfer of Land Act 1893*, insofar as the same or any of them may apply —
- (a) no assignment, mortgage, charge, sublease or disposition made or given pursuant to this Clause of or over the mining lease or any other lease, licence, easement or other title granted under or pursuant to this Agreement by the Company or any assignee, sublessee or disponent who has executed and is for the time being bound by deed of covenant made pursuant to this Clause; and
 - (b) no transfer, assignment, mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge

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

Variation

33. (1) The parties to this Agreement may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement or of any lease, licence, easement or other title granted under or pursuant to 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) in respect of any addition, substitution,

cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.

- (3) Either House may, within 12 sitting days of that House after the agreement has been laid before it, pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

Force majeure

34. 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, inability to sell iron ore or metallised agglomerates profitably, factors due to overall world economic conditions, factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

Power to extend periods

35. Notwithstanding any provision of this Agreement the Minister may at the request of the Company from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement or in any approved proposal for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

Consultation

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

Arbitration

37. (1) 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 shall 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 1985* and notwithstanding section 20(1) of that Act each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.
- (2) Except where otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State, the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.

- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of either of the parties to the arbitration 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.

Determination of Agreement

38. (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 mining lease or any other lease, licence, easement or other title or document granted or assigned under this Agreement on its part to be performed or observed; or
- (ii) the Company abandons or repudiates this Agreement or 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 32

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

- (2) The notice to be given by the State in terms of paragraph (a) of subclause (1) shall specify the nature of the default, abandonment or repudiation 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 32 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 disponee.
- (3)
 - (a) If the Company contests the alleged default abandonment or repudiation referred to in paragraph (a) of subclause (1) the Company shall within 60 days after notice given by the State as provided in subclause (2) refer the matter in dispute to arbitration.
 - (b) If the question is decided against the Company, the Company shall comply with the arbitration award within a reasonable time to be fixed by that award PROVIDED THAT if the arbitrator finds that there was a bona fide dispute and that the Company was not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.
- (4) If the default referred to in paragraph (a) of subclause (1) shall not have been remedied within 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.

Effect of cessation or determination of Agreement

39. (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 of any assignee of the Company or any mortgagee to, in or under the mining lease and any other lease, licence, easement or other title or right granted hereunder or pursuant hereto (but excluding townsite lots which have been granted to or acquired by the Company and which are no longer owned by it) 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 indemnity given under this Agreement;
 - (b) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
 - (c) save as aforesaid and as otherwise provided in this Agreement neither the State nor the Company shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.
- (2) Except as otherwise determined by the Minister and subject to the provisions of subclause (3), upon the cessation or determination of this Agreement all buildings, erections and other improvements erected on any land then occupied by the Company under the mining lease or any other lease, licence, easement or other title made under or pursuant to 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.

- (3) (a) In the event of the Company immediately prior to the cessation or determination of this Agreement or within 3 months thereafter desiring to remove any of its fixed or movable plant and equipment or any part thereof from any part of the land occupied by it at the date of such cessation or determination it shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within 3 months thereafter to purchase in situ such fixed or moveable plant and equipment at a fair valuation to be agreed between the State and the Company or failing agreement determined by arbitration under this Agreement.
- (b) If the State does not exercise the right or option referred to in paragraph (a) the Company may on the expiry of the 3 month period referred to, or sooner with the consent of the Minister, remove the fixed or movable plant and equipment to which the right or option refers.

Term of Agreement

40. Subject to the provisions of subclauses (6) and (10) of Clause 7 and Clauses 38 and 39, this Agreement shall expire on the expiration or sooner determination or surrender of the mining lease.

Notices

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

deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

Stamp Duty

42. The State shall exempt the following instruments from any stamp duty which, but for the operation of this Clause, would or might be assessed as chargeable on them —
- (a) this Agreement;
 - (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee, any licence, lease, easement or other title;
 - (c) any assignment, sublease or disposition (other than by way of mortgage or charge) made by the Company arising from a proposal submitted to the Minister and consented to by the Minister under subclause (1) of Clause 32,

PROVIDED THAT this Clause shall not apply to any instrument or other document executed or made more than 2 years after the commencement date.

Guarantee

43. Notwithstanding any addition to or deletion or variation of the provisions of this Agreement or any time or other indulgence granted by the State to the Company whether or not notice thereof is given to Hamersley by the State, Hamersley hereby guarantees to the State the due performance by the Company of all of the Company's obligations to be performed hereunder.

Applicable law

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

THE SCHEDULE
WESTERN AUSTRALIA
MINING ACT 1978
IRON ORE (YANDICOOGINA) AGREEMENT ACT 1996
MINING LEASE

MINING LEASE NO.

The Minister for Mines a corporation sole established by the *Mining Act 1978* with power to grant leases of land for the purposes of mining in consideration of the rents hereinafter reserved and of the covenants on the part of the Lessee described in the First Schedule to this lease and of the conditions hereinafter contained and pursuant to the *Mining Act 1978* (except as otherwise provided by the Agreement (hereinafter called “the Agreement”) described in the Second Schedule to this lease) hereby leases to the Lessee the land more particularly delineated and described in the Third Schedule to this lease for iron ore subject however to the exceptions and reservations set out in the Fourth Schedule to this lease and to any other exceptions and reservations which subject to the Agreement are by the *Mining Act 1978* and by any Act for the time being in force deemed to be contained herein to hold to the Lessee this lease for a term of twenty one years commencing on the date set out in the Fifth Schedule to this lease (subject to the sooner determination of the said term upon the cessation or determination of the Agreement) upon and subject to such of the provisions of the *Mining Act 1978* except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the terms covenants and conditions set out in the Agreement and to the covenants and conditions herein contained or implied and any further conditions or stipulations set out in the Sixth Schedule to this lease the Lessee paying therefor the rents for the time being and from time to time prescribed pursuant to the provisions of the *Mining Act 1978* at the times and in the manner so prescribed and royalties as provided in the Agreement with the right during the currency of the Agreement and in accordance with the provisions of the Agreement to take two successive renewals of the term each for a further period of 21 years upon the same terms and conditions subject to the sooner determination of the term upon cessation or determination of the Agreement PROVIDED ALWAYS that this lease shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this lease —

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

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

FIRST SCHEDULE

HAMERSLEY IRON-YANDI PTY LIMITED ACN 009 181 793 a company incorporated in Western Australia and having its registered office at Level 22, Central Park, 152 - 158 St. George's Terrace, Perth.

SECOND SCHEDULE

The Agreement made between the State of Western Australia and Hamersley Iron-Yandi Pty Limited and ratified by the *Iron Ore (Yandicoogina) Agreement Act 1996*.

THIRD SCHEDULE

(Description of land:)

Locality:

Mineral Field: Area, etc.:

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

FOURTH SCHEDULE

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

FIFTH SCHEDULE

(Date of commencement of the lease).

SIXTH SCHEDULE

(Any further conditions or stipulations).

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

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

SIGNED by the said)
THE HONOURABLE)
RICHARD FAIRFAX COURT) R F Court
in the presence of:)

W Ireland

MINISTER FOR RESOURCES DEVELOPMENT
Colin Barnett

THE COMMON SEAL of)
HAMERSLEY IRON-YANDI)
PTY LIMITED was hereunto)
affixed by authority of the) C.S.
Directors in the presence of:)

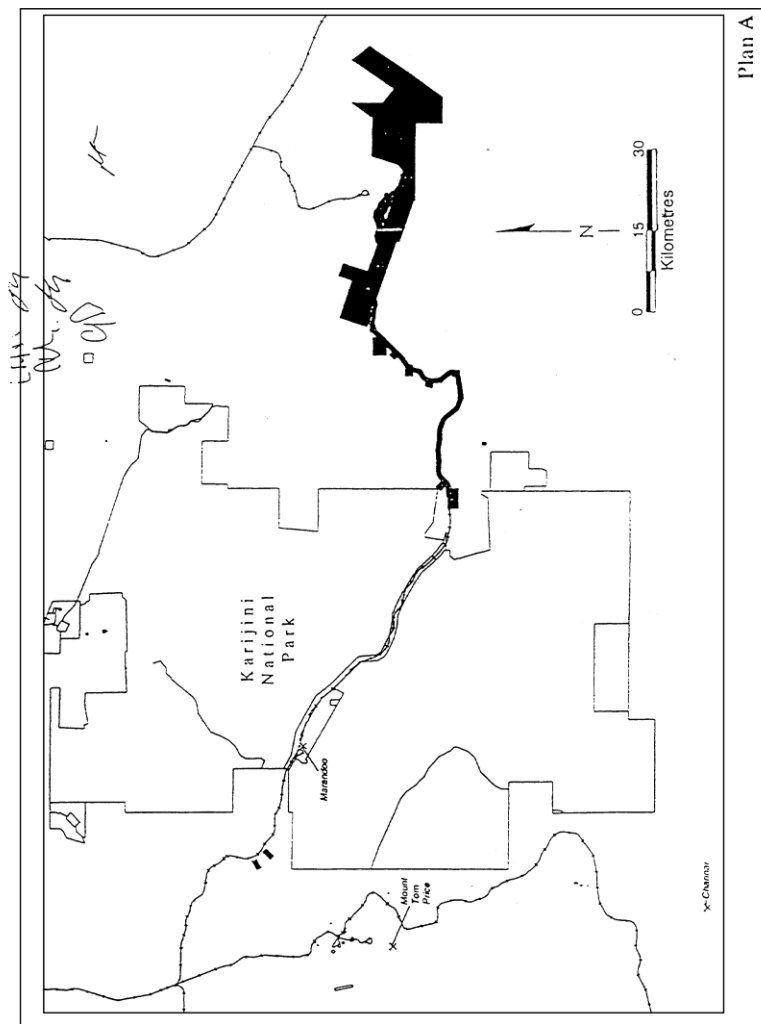
Director M Richmond

Secretary L M Graefe

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

Director M Richmond

Secretary L M Graefe



Schedule 2 — First Variation Agreement

[s. 3]

[Heading inserted: No. 61 of 2010 s. 25.]

2010

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

AND

HAMERSLEY IRON-YANDI PTY. LIMITED

ACN 009 181 793

AND

HAMERSLEY IRON PTY. LIMITED

ACN 004 558 276

IRON ORE (YANDICOOGINA) AGREEMENT 1996
RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 17th day of November 2010

BETWEEN

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

AND

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

AND

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

RECITALS

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

THE PARTIES AGREE AS FOLLOWS:

- 1.** Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
- 2.** The State shall sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and shall endeavour to secure its passage as an Act prior to 31 December 2010 or such later date as the parties may agree.
- 3.**
 - (a)** Clause 4 does not come into operation unless or until an Act passed in accordance with clause 2 ratifies this Agreement.
 - (b)** If by 30 June 2011, or such later date as may be agreed pursuant to clause 2, clause 4 has not come into operation then unless the parties hereto otherwise agree this Agreement shall cease and determine and

none of the parties shall have any claim against the other parties with respect to any matter or thing arising out of or done or performed or omitted to be done or performed under this Agreement.

4. The Principal Agreement is hereby varied as follows:

(1) in clause 1:

- (a) by deleting the existing definitions of "beneficiated ore", "fine ore", "loading port", "lump ore" and "metallised agglomerates";
- (b) by inserting in the appropriate alphabetical positions the following new definitions:

"associated company" means:

- (a) any company notified in writing by the Company to the Minister which is incorporated in the United Kingdom, the United States of America or Australia and which is:
 - (i) a subsidiary of the Company within the meaning of the term "subsidiary" in section 46 of the *Corporations Act 2001* (Commonwealth);
 - (ii) promoted by the Company for all or any of the purposes of this Agreement and in which the Company holds not less than \$2,000,000 of the issued ordinary capital;
 - (iii) a company in which the Company holds not less than 20% of the issued ordinary share capital;
 - (iv) a related body corporate (within the meaning of the term "related body corporate" in section 9 of the *Corporations Act 2001* (Commonwealth)) of the Company or of any company in which the Company holds not less than 20% of the issued ordinary share capital; and
- (b) any other company approved in writing by the Minister for the purpose of this Agreement which is associated directly or indirectly with the Company in its business or operations under this Agreement;

"beneficiated ore" means iron ore that has been concentrated or upgraded otherwise than solely by crushing, screening, separating by hydrocycloning or a similar technology which uses primarily size as a criterion, washing, scrubbing, trommelling or drying, or by a combination of 2 or more of those processes by the Company in a plant constructed pursuant to proposal approved pursuant to an Integration Agreement or such other plant as is approved by the Minister after consultation with the Minister for Mines and "beneficiation" and "beneficiate" have corresponding meanings;

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

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

"Integration Agreement" means:

- (a) the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*, as from time to time added to, varied or amended; or
- (b) the agreement approved by and scheduled to the *Iron Ore (Robe River) Agreement Act 1964*, as from time to time added to, varied or amended; or
- (c) the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended; or
- (d) the agreement ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972*, as from time to time added to, varied or amended; or
- (e) the agreement ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended; or

- (f) the agreement ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996*, as from time to time added to, varied or amended; or
- (g) the agreement approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended; or
- (h) the agreement approved by and scheduled to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*, as from time to time added to, varied or amended; or
- (i) the agreement ratified by and scheduled to the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*, as from time to time added to, varied or amended; or
- (j) the agreement authorised by as scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended; or
- (k) the agreement ratified by and scheduled to the *Iron Ore (Marillana Creek) Agreement Act 1991*, as from time to time added to, varied or amended;

"Integration Proponent" means in relation to an Integration Agreement, "the Company" or "the Joint Venturers" as the case may be as defined in, and for the purpose of, that Integration Agreement;

"loading port" means:

- (a) the Port of Dampier; or
- (b) Port Walcott; or
- (c) the Port of Port Hedland; or
- (d) any other port constructed after the variation date under an Integration Agreement; or
- (e) such other port approved by the Minister at the request of the Company from time to time for the shipment of iron ore from the mining lease;

"lump ore" means iron ore (not being beneficiated ore or pisolite fine ore) which is screened and will not pass through a 6.3 millimetre mesh screen;

"metallised agglomerates" means products resulting from the reduction of iron ore by any method whatsoever and having an iron content of not less than 85%;

"pisolite fine ore" means iron ore (not being beneficiated ore) derived from channel iron deposits that appear to be chemically precipitated sedimentary deposits comprised of a pisolitic texture of hematite grains rimmed with goethite in a goethitic matrix and:

- (a) having a product grade loss on ignition of 8.5% or greater; and
- (b) which is screened and will pass through an 9.5 millimetre mesh screen;

"Related Entity" means a company in which:

- (a) as at 21 June 2010; and
- (b) after 21 June 2010, with the approval of the Minister, a direct or (through a subsidiary or subsidiaries within the meaning of the *Corporations Act 2001* (Commonwealth)) indirect shareholding of 20% or more is held by:
 - (c) Rio Tinto Limited ABN 96 004 458 404; or
 - (d) BHP Billiton Limited ABN 49 004 028 077; or
 - (e) those companies referred to in paragraphs (c) and (d) in aggregate;

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

- (c) in the definition of "iron ore" by inserting ", without limitation," after "includes";

- (d) in the definition of "mining lease" by inserting "and includes any areas added to it pursuant to clause 11(8)";
- (2) by inserting after clause 2(3) the following new subclause:
 - "(4) Nothing in this Agreement shall be construed to exempt the Company from compliance with the provisions of the *Aboriginal Heritage Act 1972* (WA).";
- (3) in clause 9(1) by:
 - (a) deleting "If" and substituting "Subject to clause 10, if"; and
 - (b) inserting "(other than under clause 12C)" after "pursuant to this Agreement";
- (4) by deleting subclause (2) of clause 9 and substituting the following new subclauses:
 - "(2) A proposal may with the consent of the Minister (except in relation to an Integration Agreement) and that of any parties concerned (being in respect of an Integration Agreement the Integration Proponent for that agreement) provide for the use by the Company of any works installations or facilities constructed or established under a Government agreement.
 - (3) Each of the proposals pursuant to subclause (1) may with the approval of the Minister, or shall if so required by the Minister, be submitted separately and in any order as to any matter or matters in respect of which such proposals are required to be submitted.
 - (4) At the time when the Company submits the said proposals it shall submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with its reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto.

- (5) The Company may withdraw its proposals pursuant to subclause (1) at any time before approval thereof, or where any decision in respect thereof is referred to arbitration as referred to in clause 9A, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same.";

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

Consideration of Company's proposals under clause 9

- 9A. (1) In respect of each proposal pursuant to subclause (1) of clause 9 the Minister shall:
- (a) subject to the limitations set out below, refuse to approve the proposal (whether it requests the grant of new tenure or not) if the Minister is satisfied on reasonable grounds that it is not in the public interest for the proposal to be approved; or
 - (b) approve of the proposal without qualification or reservation; or
 - (c) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in clause 9(1) not covered by the said proposal; or
 - (d) require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable, and in such a case the Minister shall disclose his reasons for such conditions,

PROVIDED ALWAYS that where implementation of any proposals hereunder has been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this clause shall if the case so requires incorporate a requirement that the Company make

such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

In considering whether to refuse to approve a proposal the Minister is to assess whether or not the implementation of the proposal by itself, or together with any one or more of the other submitted proposals, will:

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

The right to refuse to approve a proposal conferred by paragraph (a) may only be exercised in respect of a proposal where the Minister is satisfied on reasonable grounds that a purpose of the proposal is the integrated use of works installations or facilities (as defined in subclause (7) of clause 12A for the purpose of that clause) as contemplated by clause 12A. It may not be so exercised in respect of a proposal if pursuant to clause 9B(5) the Minister, prior to the submission of the proposal, advised the Company in writing that the Minister has no public interest concerns (as defined in that clause) with the single preferred development (as referred to in clause 9B(5)(a)) the subject of the submitted proposals and those proposals are consistent (as to their substantive scope and content) with the information provided to the Minister pursuant to clause 9B(5) in respect of that single preferred development.

- (2) The Minister shall within 2 months after receipt of proposals pursuant to clause 9(1) give notice to the Company of his decision in respect to the proposals, PROVIDED THAT where a proposal is to be assessed under Part IV of the EP Act

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

- (3) If the decision of the Minister is as mentioned in either of paragraphs (a), (c) or (d) of subclause (1) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (4) If the decision of the Minister is as mentioned in either of paragraphs (c) or (d) of subclause (1) and the Company considers that the decision is unreasonable the Company within 2 months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder. A decision of the Minister under paragraph (a) of subclause (1) shall not be referable to arbitration under this Agreement.
- (5) If by the award made on the arbitration pursuant to subclause (4) the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.
- (6) The Company shall implement the approved proposals in accordance with the terms thereof.
- (7) Notwithstanding clause 33, the Minister may during the implementation of approved proposals approve variations to those proposals.

Notification of possible proposals

- 9B. (1) If the Company, upon completion of a pre-feasibility study in respect of any matter that would require the submission and approval of proposals pursuant to this Agreement (being proposals which will have as their purpose, the integrated use of works installations or facilities as contemplated by clause

12A) for the matter to be undertaken, intends to further consider the matter with a view to possibly submitting such proposals it shall promptly notify the Minister in writing giving reasonable particulars of the relevant matter.

- (2) Within one (1) month after receiving the notification the Minister may, if the Minister so wishes, inform the Company of the Minister's views of the matter at that stage.
- (3) If the Company is informed of the Minister's views, it shall take them into account in deciding whether or not to proceed with its consideration of the matter and the submission of proposals.
- (4) Neither the Minister's response nor the Minister choosing not to respond shall in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.
- (5)
 - (a) This subclause applies where the Company has settled upon a single preferred development a purpose of which is the integrated use of works installations or facilities (as defined in subclause (7) of clause 12A for the purpose of that clause) as contemplated by clause 12A.
 - (b) For the purpose of this subclause "public interest concerns" means any concern that implementation of the single preferred development or any part of it will:
 - (i) detrimentally affect economic and orderly development in the said State, including without limitation, infrastructure development in the said State; or
 - (ii) be contrary to or inconsistent with the planning and development policies and objectives of the State; or
 - (iii) detrimentally affect the rights and interests of third parties; or

- (iv) detrimentally affect access to and use by others of lands the subject of any grant or proposed grant to the Company.
- (c) At any time prior to submission of proposals the Company may give to the Minister notice of its single preferred development and request the Minister to confirm that the Minister has no public interest concerns with that single preferred development.
- (d) The Company shall furnish to the Minister with its notice reasonable particulars of the single preferred development including, without limitation:
 - (i) as to the matters that would be required to be addressed in submitted proposals; and
 - (ii) its progress in undertaking any feasibility or other studies or matters to be completed before submission of proposals; and
 - (iii) its timetable for obtaining required statutory and other approvals in relation to the submission and approval of proposals; and
 - (iv) its tenure requirements.
- (e) If so required by the Minister, the Company will provide to the Minister such further information regarding the single preferred development as the Minister may require from time to time for the purpose of considering the Company's request and also consult with the Minister or representatives or officers of the State in regard to the single preferred development.
- (f) Within 2 months after receiving the notice (or if the Minister requests further information, within 2 months after the provision of that information) the Minister must advise the Company:
 - (i) that the Minister has no public interest concerns with the single preferred development; or

- (ii) that he is not then in a position to advise that he has no public interest concerns with the single preferred development and the Minister's reasons in that regard.
- (g) If the Minister gives the advice mentioned in paragraph (f)(ii) the Company may, should it so desire, give a further request to the Minister in respect of a revised or alternate single preferred development and the provisions of this subclause shall apply mutatis mutandis thereto.";
- (6) in clause 10(4)(b) by deleting "subclause (2) of Clause 9" and substituting "clauses 9(2) to (5) and 9A";
- (7) in clause 11(8) by:
 - (a) inserting after "total area of the mining lease" the words ", any land that may be included in the mining lease pursuant to this Agreement and of any other mining lease granted under or pursuant to this Agreement (as aggregated)";
 - (b) inserting "by endorsement" after "thereof in the mining lease"; and
 - (c) by inserting the following sentence at the end of the clause:

"The Minister may approve, upon application by the Company from time to time, for the total area referred to in this subclause to be increased up to a limit not exceeding 1,000 square kilometres;"
- (8) in clause 11(10) by inserting "or clause 10 as the case may be" before the full stop;
- (9) by inserting after subclause (11) of clause 11 the following new subclauses:

"Blending of iron ore"

 - (12) (a) The Company may blend iron ore mined from the mining lease with any:

- (i) iron ore mined from a mining tenement or other mining title granted under, or pursuant to, an Integration Agreement; or
 - (ii) iron ore mined from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement); or
 - (iii) with the prior approval of the Minister, iron ore mined in, or proximate to, the Pilbara region of the said State under a Government agreement (excluding an Integration Agreement); or
 - (iv) with the prior approval of the Minister, iron ore mined by a third party from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by an Integration Proponent from the third party.
- (b) The authority given under paragraph (a) is subject to the Minister being reasonably satisfied that there are in place adequate systems and controls for the correct apportionment of the quantities of iron ore being blended as between each of the sources referred to in paragraph (a), which systems and controls monitor production, processing, transportation, stockpiling and shipping of all such iron ore. If at any time the Minister ceases to be so satisfied he may, after consulting the Company and provided the Company has not within three (3) months after the commencement of such consultation addressed the matters of concern to the Minister

to his satisfaction, by notice in writing to the Company suspend the above authority in respect of the relevant blending arrangements until he is again satisfied in terms of this paragraph (b).

- (c) If any blending of iron ore occurs as contemplated by this subclause, then for the purposes of clauses 12(2) and (3)(a), a portion of the iron ore so blended being equal to the proportion that the amount of iron ore from the mining lease used in the admixture of iron ore bears to the total amount of iron ore so blended, shall be deemed to be produced from the mining lease.

Shipment of and price for iron ore

- (13) The Company shall during the continuance of this Agreement ship, or procure the shipment of all iron ore mined from the mining lease and sold:
 - (a) from a wharf in a loading port which has been constructed under an Integration Agreement; or
 - (b) with the Minister's approval given before submission of proposals in that regard, from any other wharf in a loading port which wharf has been constructed under another Government agreement (excluding the Integration Agreements),

and use its best endeavours to obtain for all iron ore from the mining lease the best price possible having regard to market conditions from time to time prevailing provided that iron ore from the mining lease may be sold by the Company prior to or at the time of the shipment under this Agreement at a price equal to the production costs in respect of that iron ore up to the point of sale, if:

- (i) the Minister is notified before the time of shipment that the sale is to be made at cost, providing details of the proposed sale; and

- (ii) the Minister is notified of the proposed arm's length purchaser in the relevant international seaborne iron ore market of the iron ore the subject of the proposed sale at cost; and
- (iii) there is included in the return lodged pursuant to clause 12(3)(a) particulars of the transaction in which the ore sold at cost was subsequently purchased in the relevant international seaborne iron ore market by an arm's length purchaser specifying the purchaser, the seller, the price and the date when the sale was agreed between the arm's length purchaser and the seller; and
- (iv) the arm's length purchaser referred to in (iii) above is not then a designated purchaser as referred to below.

If required by notice in writing from the Minister, the Company must provide the Minister within 30 days after receiving the notice with evidence that the transaction as included in the return pursuant to paragraph (iii) of the proviso above was a sale in the relevant international seaborne iron ore market to an independent participant in that market. If no evidence is provided or the Minister is not so satisfied on the evidence provided or other information obtained, the Minister may by notice to the Company designate the purchaser to be a designated purchaser and that designation will remain in force unless and until lifted by further notice from the Minister to the Company. For the avoidance of doubt, the parties acknowledge that marketing entities forming part of the corporate group including the Company (or part of the parallel corporate group if the Company is part of a dual-listed corporate structure) are not independent participants for the purposes of this subclause.";

- (10) in clause 12(1) by
 - (a) in the definition of "agreed or determined":

- (i) inserting "(following if requested by the Company, consultation with the Company and its consultants in regard thereto)" after "determined by the Minister";
- (ii) deleting "assessed at" and substituting "assessed on"; and
- (iii) deleting all the words after "shall have regard to" and substituting a colon followed by:
 - "(i) in the case of iron ore initially sold at cost pursuant to the proviso to clause 11(13), the prices for that type of iron ore prevailing at the time the price for such iron ore was agreed between the arm's length purchaser referred to in paragraph (iii) of that proviso and the seller in relation to the type of sale and the relevant international seaborne iron ore market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value; and
 - (ii) in any other case, the prices for that type of iron ore prevailing at the time the price for such iron ore was agreed between the Company and the purchaser in relation to the type of sale and the market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value;"
- (b) in the definition of "deemed f.o.b. point" by inserting "relevant" before "loading port";
- (c) in the definition of "f.o.b. value" by:
 - (i) in paragraph (i):

- (A) inserting "subject to paragraph (ii)," before "in the case of";
- (B) deleting "assessed at" and substituting "assess on"; and
- (C) inserting "relevant" before each reference to "loading port";
- (ii) renumbering paragraph (ii) as paragraph (iii); and
- (iii) inserting after paragraph (i) the following new paragraph:
 - "(ii) in the case of iron ore initially sold at cost pursuant to the proviso to clause 11(13), the price which is payable for the iron ore by the arm's length purchaser as referred to in paragraph (iii) of that proviso or, where the Minister considers, following advice from the appropriate Government department, that the price payable in respect of the iron ore does not represent a fair and reasonable market value for that type of iron ore assessed on an arm's length basis in the relevant international seaborne iron ore market, such amount as is agreed or determined as representing such a fair and reasonable market value, less all duties, taxes, costs and charges referred to in paragraph (i) above;"
- (11) after clause 12(1) by deleting the heading "period to 31 December 2010";
- (12) in clause 12(2) by:
 - (a) deleting "(a) for the period ending on 31 December 2010";

- (b) inserting in paragraph (i) "and on fine ore and pisolite fine ore where such fine ore and pisolite fine ore is not sold or shipped separately as such "after "lump ore";
- (c) inserting in paragraph (ii) "and on pisolite fine ore sold or shipped separately as such" after "fine ore";
- (d) deleting paragraphs (b); and (c); and
- (e) deleting "paragraphs (a) and (b) of" after "PROVIDED HOWEVER"; and
- (f) inserting after paragraph (d) the following new paragraphs:
 - "(e) Where beneficiated ore is produced from an admixture of iron ore from the mining lease and iron ore from elsewhere, a portion (and a portion only) of the beneficiated ore so produced being equal to the proportion that the amount of the iron in the iron ore from the mining lease used in the production of that beneficiated ore bears to the total amount of iron in the iron ore so used shall be deemed to be produced from iron ore from the mining lease.
 - (f) Where for the purpose of determining f.o.b. value it is necessary to convert an amount or price to Australian currency, the conversion is to be calculated using a rate (excluding forward hedge or similar contract rates) that has been approved by the Minister at the request of the Company and in the absence of such request as determined by the Minister to be a reasonable rate for the purpose.
 - (g) The provisions of regulations 85AA (Effect of GST etc. on royalties) of the *Mining Regulations 1981* (WA) shall apply mutatis mutandis to the calculation of royalties under this clause.";

(13) in clause 12(3) by:

(a) in paragraph (a):

(i) inserting "and also showing such other information in relation to the abovementioned iron ore as the Minister may from time to time reasonably require in regard to, and to assist in verifying, the calculation of royalties in accordance with subclause (2)" after "the due date of the return"; and

(ii) deleting all the words after "calculated on the basis of" and substituting a colon followed by:

"(i) in the case of iron ore initially sold at cost pursuant to the proviso to clause 11(13), at the price notified pursuant to paragraph (iii) of that proviso;

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

and shall from time to time in the next following appropriate return and payment make (by return and by cash) all such necessary adjustments (and give to the Minister full details thereof) when the f.o.b. value shall have been finally calculated, agreed or determined;"

(b) in paragraph (b) by:

(i) deleting "books of account and records of the Company including contracts relative" and substituting "books, records, accounts, documents (including contracts), data and

information of the Company stored by any means relating"; and

(ii) inserting "(in whatever form)" after "copies or extracts";

(iii) inserting "the subject of royalty" before each reference to "hereunder"; and

(c) by inserting after paragraph (b) the following new paragraph:

"(ba) The Company shall cause to be produced in Perth in the said State all books, records, accounts, documents (including contracts), data and information of the kind referred to in paragraph (b) to enable the exercise of rights by the Minister or the Minister's nominee under paragraph (b), regardless of the location in which or by whom those books, records, accounts, documents (including contracts), data and information are stored from time to time."; and

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

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

12A. (1) Subject to subclauses (2) to (7) of this clause and to the other provisions of this Agreement, the Company may during the continuance of this Agreement:

(a) use any existing or new works installations or facilities constructed or held:

(i) under this Agreement; or

(ii) under any other Integration Agreement which are made available for such use and during

the continuance of such
Integration Agreement; or

- (iii) with the approval of the Minister,
under a Government agreement
(excluding an Integration
Agreement) which are made
available for such use and during
the continuance of that agreement,

(wholly or in part) in the activities of the
Company carried on by it pursuant to this
Agreement including, without limitation,
as part of those activities, transporting by
railway and shipping from a loading port
and undertaking any ancillary and
incidental activities in doing so
(including, without limitation, blending
permitted by clause 11(12)) of:

- (A) iron ore mined from a Mining Act
1978 mining lease located in, or
proximate to, the Pilbara region of
the said State which is held by a
Related Entity alone or with a
third party or parties (excluding
any mining lease granted pursuant
to, or held under, a Government
agreement);
- (B) with the prior approval of the
Minister, iron ore mined in, or
proximate to, the Pilbara region of
the said State under a Government
agreement (excluding an
Integration Agreement);
- (C) with the prior approval of the
Minister, iron ore mined by a third
party from a Mining Act 1978
mining lease located in, or
proximate to, the Pilbara region of

the said State (excluding under a Government agreement) which has been purchased by the Company from the third party;

- (D) iron ore mined under an Integration Agreement;
- (b) make any existing or new works installations or facilities constructed or held under this Agreement available for use (wholly or partly) by another Integration Proponent during the continuance of its Integration Agreement in the activities of that Integration Proponent carried on by it pursuant to its Integration Agreement including, without limitation, as part of those activities, transporting by railway and shipping from a loading port and undertaking any ancillary and incidental activities in doing so (including, without limitation, blending permitted by that Integration Agreement) of:
 - (i) iron ore mined from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement);
 - (ii) with the prior approval of the Minister (as defined in that Integration Agreement), iron ore mined in, or proximate to, the Pilbara region of the said State under a Government agreement

- (excluding an Integration Agreement);
- (iii) with the prior approval of the Minister (as defined in that Integration Agreement), ore mined by a third party from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by that Integration Proponent from the third party;
 - (iv) iron ore mined under an Integration Agreement;
- (c) make any existing or new works installations or facilities constructed or held under this Agreement available for use (wholly or partly) in connection with operations under:
- (i) a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State, for iron ore, which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under a Government agreement); or
 - (ii) with the approval of the Minister, a Government agreement (other than an Integration Agreement) for the mining of iron ore in, or proximate to, the Pilbara region of the said State;

- (d) subject to subclause (2), under this Agreement and for the purpose of any use or making available for use referred to in paragraph (a), (b) or (c) connect any existing or new works installations or facilities constructed or held under this Agreement to any existing or new works installations or facilities constructed or held under another Integration Agreement;
- (e) subject to subclause (2), under this Agreement and for the purpose of any use or making available for use referred to in paragraph (a), (b) or (c) or making of any connection referred to in paragraph (d) construct new works installations or facilities and expand modify or otherwise vary any existing and new works installations or facilities constructed or held under this Agreement;
- (f) allow a railway or rail spur line (not being a railway or rail spur line constructed or held under an Integration Agreement) to be connected to a railway or rail spur line or other works installations or facilities constructed or held under this Agreement for the delivery of iron ore to an Integration Proponent for transport by railway and shipping from a loading port (together with any ancillary and incidental activities in doing so) as part of its activities under its Integration Agreement; and
- (g) allow an electricity transmission line (not being an electricity transmission line constructed or held under an Integration Agreement) to be connected to an electricity transmission line constructed

or held under this Agreement for the supply of electricity permitted to be made under an Integration Agreement.

- (2) (a) A connection referred to in clause (1)(d) or construction, expansion, modification or other variation referred to in subclause (1)(e) by the Company shall, to the extent not already authorised under this Agreement as at the variation date, be regarded as a significant modification expansion or other variation of the Company's activities carried on by it pursuant to this Agreement and may only be made in accordance with proposals submitted and approved or determined under this Agreement in accordance with clauses 9 and 9A or clauses 10 or 12C as the case may require and otherwise in compliance with the provisions of this Agreement and the laws from time to time of the said State. For the avoidance of doubt, the parties acknowledge that any use or making available for use contemplated by subclause (1)(a), (1)(b) or (1)(c) shall not otherwise than as required by this paragraph (a) require the submission and approval of further proposals under this Agreement.
- (b) The Company shall not be entitled to:
 - (i) submit proposals to construct any port or to establish harbour or port works installations or facilities; or
 - (ii) generate and supply power, take and supply water or dispose of water otherwise than in accordance with the other clauses of this Agreement and subject to

any restrictions contained in those clauses; or

- (iii) without limiting subparagraphs (i) and (ii) submit proposals to construct or establish works installations or facilities of a type, or to make expansions, modifications or other variations of works installations or facilities of a type, which in the Minister's reasonable opinion this Agreement, immediately before the variation date, did not permit or contemplate the Company constructing, establishing or making as the case may be otherwise than for integration use as contemplated by subclauses (1)(a), (1)(b) or (1)(c) or as permitted by clause 12C; or
- (iv) submit proposals to make a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) otherwise than on tenure granted under or pursuant to this Agreement from time to time or held pursuant to this Agreement from time to time; or
- (v) submit proposals to make a connection referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) for the purpose of use as contemplated by subclause (1)(c)(i), if in the reasonable

opinion of the Minister the activity which is the subject of the proposals would give to the holder or holders of the relevant Mining Act 1978 mining lease the benefit of rights or powers granted to the Company under this Agreement, over and above the right of access to and use of the relevant works, installations or facilities; or

- (vi) submit proposals to make a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) for the purpose of use as contemplated by subclause (1)(c) and involving the grant of tenure without the prior approval of the Minister; or
 - (vii) submit proposals to assign, sublet, transfer or dispose of any works installations or facilities constructed or held under this Agreement or any leases, licences, easements or other titles under or pursuant to this Agreement for any purpose referred to in this clause.
- (c) Notwithstanding the provisions of clauses 9A, 10 and 12C, the Minister may defer consideration of, or a decision upon, a proposal submitted by the Company for a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e), for the purpose of use or making available for use as referred to in

subclauses (1)(a) or (1)(b), until relevant corresponding proposals under the relevant Integration Agreement have been submitted and those proposals can be approved under that Integration Agreement concurrently with the Minister's approval under this Agreement of the Company's proposal.

- (3) Any use or making available for use as referred to in subclause (1), or submission of proposals as referred to in subclause (2), in respect of a Related Entity shall be subject to the Company first confirming with the Minister that the Minister is satisfied that the relevant company is a Related Entity.
- (4) The Company shall give the Minister prior written notice of any significant change (other than a temporary one for maintenance or to respond to an emergency) proposed in its use, or in it making available for use, works, installations or facilities as referred to in this clause:
 - (a) from that authorised under this Agreement immediately before the variation date; and
 - (b) subsequently from that previously notified to the Minister under this subclause,

as soon as practicable before such change occurs.

The Company shall also keep the Minister fully informed with respect to any proposed connection as referred to in subclause (1)(f) or (1) (g) or request of the Company for such connection to be allowed.

- (5) Nothing in this Agreement shall be construed to:
- (a) exempt another Integration Proponent from complying with, or the application of, the provisions of its Integration Agreement; or
 - (b) restrict the Company's rights under clause 32.

For the avoidance of doubt the approval of proposals under this Agreement shall not be construed as authorising another Integration Proponent to undertake any activities under this Agreement or under another Integration Agreement.

- (6) Nothing in this clause shall be construed to exempt the Company from complying with, or the application of, the other provisions of this Agreement including, without limitation, clause 32 and of relevant laws from time to time of the said State.
- (7) For the purpose of this clause "works installations or facilities" means any:
- (a) harbour or port works installations or facilities including, without limitation, stockpiles, reclaimers, conveyors and wharves;
 - (b) railway and rail spur lines;
 - (c) track structures and systems associated with the operation and maintenance of a railway including, without limitation, sidings, train control and signalling systems, maintenance workshops and terminal yards;
 - (d) train loading and unloading works installations or facilities;

- (e) conveyors;
- (f) private roads;
- (g) mine aerodrome and associated aerodrome works installations and facilities;
- (h) iron ore mining, crushing, screening, beneficiation or other processing works installations or facilities;
- (i) mine administration buildings including, without limitation, offices, workshops and medical facilities;
- (j) borrow pits;
- (k) accommodation and ancillary facilities including, without limitation, construction camps and in townsites constructed pursuant to and held under any Integration Agreement;
- (l) water, sewerage, electricity, gas and telecommunications works installations and facilities including, without limitation, pipelines, transmission lines and cables; and
- (m) any other works installations or facilities approved of by the Minister for the purpose of this clause.

Transfer of rights to shared works installations or facilities

12B. (1) For the purposes of this clause "Relevant Infrastructure" means any works installations or facilities (as defined in clause 12A(7)):

- (a) constructed or held under another Integration Agreement;

- (b) which the Company is using in its activities pursuant to this Agreement;
 - (c) which the Minister is satisfied (after consulting with the Company and the Integration Proponent for that other Integration Agreement):
 - (i) are no longer required by that other Integration Proponent to carry on its activities pursuant to its Integration Agreement because of the cessation of the Integration Proponent's mining operations in respect of which such Relevant Infrastructure was constructed or held or because of any other reason acceptable to the Minister; and
 - (ii) are required by the Company to continue to carry on its activities pursuant to this Agreement; and
 - (d) in respect of which that other Integration Proponent has notified the Minister it consents to the Company submitting proposals as referred to in subclause (2).
- (2) The Company may as an additional proposal pursuant to clause 9 propose:
- (a) that it be granted a lease licence or other title over the Relevant Infrastructure pursuant to this Agreement subject to and conditional upon the other Integration Proponent surrendering wholly or in part (and upon such terms as the Minister considers reasonable including any variation of terms to address environmental issues) its lease licence or other title over the Relevant Infrastructure; or

- (b) that the other Integration Proponent's lease licence or other title (not being a mineral lease, mining lease or other right to mine title granted under a Government agreement, the Mining Act 1904 or the Mining Act 1978) to the Relevant Infrastructure be transferred to this Agreement (to be held by the Company pursuant to this Agreement) with such surrender of land from it and variations of its terms as the Minister considers reasonable for that title to be held under this Agreement including, without limitation, to address environmental issues and outstanding obligations of that other Integration Proponent under its Integration Agreement in respect of that Relevant Infrastructure.

The provisions of clause 9A shall mutatis mutandis apply to any such additional proposal. In addition the Company acknowledges that the Minister may require variations of the other Integration Agreement and/or proposals under it or of this Agreement in order to give effect to the matters contemplated by this clause.

- (3) This clause shall cease to apply in the event the State gives any notice of default to the Company pursuant to clause 38(1) and while such notice remains unsatisfied.

Miscellaneous Licences for Railways

12C. (1) In this clause subject to the context:

"Additional Infrastructure" means:

- (a) Train Loading Infrastructure;
- (b) Train Unloading Infrastructure;

- (c) a conveyor, train unloading and other infrastructure necessary for the transport of iron ore, freight goods or other products from the Railway (directly or indirectly) to port facilities within a loading port,

in each case located outside a Port;

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

"Lateral Access Roads" has the meaning given in subclause (3)(a)(iv));

"Lateral Access Road Licence" means a miscellaneous licence granted pursuant to subclause (6)(a)(ii) or subclause (6)(b) as the case may be and according to the requirements of the context describes the area of land from time to time the subject of that licence;

"Port" means any port the subject of the *Port Authorities Act 1999* (WA) or the *Shipping and Pilotage Act 1967* (WA);

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

"Rail Safety Act" means the *Rail Safety Act 1998* (WA);

"Railway" means a standard gauge heavy haul railway or railway spur line, located or to be located as the case may be in, or proximate to, the Pilbara region of the said State (but outside the boundaries of a Port) for the transport of iron ore, freight goods and other products together with all railway track, associated track structures including sidings, turning loops, over or under track structures, supports (including supports for equipment or items associated with the use of a railway) tunnels, bridges, train control systems,

signalling systems, switch and other gear, communication systems, electric traction infrastructure, buildings (excluding office buildings, housing and freight centres), workshops and associated plant, machinery and equipment and including rolling stock maintenance facilities, terminal yards, depots, culverts and weigh bridges which railway is or is to be (as the case may be) the subject of approved proposals under subclause (4) and includes any expansion or extension thereof outside a Port which is the subject of additional proposals approved in accordance with subclause (5);

"Railway Corridor" means, prior to the grant of a Special Railway Licence, the land for the route of the Railway the subject of that licence, access roads (other than Lateral Access Roads), areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce, water bores and Additional Infrastructure (if any) which is the subject of a subsisting agreement pursuant to subclause (3)(a) and after the grant of the Special Railway Licence the land from time to time the subject of that Special Railway Licence;

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

"Railway spur line" means a standard gauge heavy haul railway spur line located or to be located in, or proximate to, the Pilbara region of the said State (but outside a Port) connecting to a Railway for the transport of iron ore, freight

goods and other products upon the Railway to (directly or indirectly) a loading port;

"Railway Operation Date" means the date of the first carriage of iron ore, freight goods or other products over the relevant Railway (other than for construction or commissioning purposes);

"Railway spur line Operation Date" means the date of the first carriage of iron ore, freight goods or other products over the relevant Railway spur line (other than for construction or commissioning purposes);

"Special Railway Licence" means the relevant miscellaneous licence for railway and, if applicable, other purposes, granted to the Company pursuant to subclause (6)(a)(i) as varied in accordance with subclause (6)(h) or subclause (6)(i) and according to the requirements of the context describes the area of land from time to time the subject of that licence;

"Train Loading Infrastructure" means conveyors, stockpile areas, blending and screening facilities, stackers, re-claimers and other infrastructure reasonably required for the loading of iron ore, freight goods or other products onto the relevant Railway for transport (directly or indirectly) to a loading port; and

"Train Unloading Infrastructure" means train unloading infrastructure reasonably required for the unloading of iron ore from the Railway to be processed, or blended with other iron ore, at processing or blending facilities in the vicinity of that train unloading infrastructure and with the resulting iron ore products then loaded on to the Railway for transport (directly or indirectly) to a loading port.

Company to obtain prior Ministerial in-principle approval

- (2) (a) If the Company wishes, from time to time during the continuance of this Agreement, to proceed under this clause with a plan to develop a Railway it shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of its plan.
- (b) The Minister shall within one month of a notice under paragraph (a) advise the Company whether or not he approves in-principle the proposed plan. The Minister shall afford the Company full opportunity to consult with him in respect of any decision of the Minister under this paragraph.
- (c) The Minister's in-principle approval in respect of a proposed plan shall lapse if the Company has not submitted detailed proposals to the Minister in respect of that plan in accordance with this clause within 18 months of the Minister's in-principle approval.

Railway Corridor

- (3) (a) If the Minister gives in-principle approval to a plan of the Company to develop a Railway it shall consult with the Minister to seek the agreement of the Minister as to:
- (i) where the Railway will begin and end; and
- (ii) a route for the Railway, access roads to be within the Railway Corridor and the land required for that route as well as Additional Infrastructure (if any) including, without

limitation, areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce and water bores; and

- (iii) in respect of Additional Infrastructure (if any) the nature and capacity of such Additional Infrastructure; and
- (iv) the routes of, and the land required for, roads outside the Railway Corridor (and also outside a Port) for access to it to construct the Railway (such roads as agreed being "Lateral Access Roads").

In seeking such agreement, regard shall be had to achieving a balance between engineering matters including costs, the nature and use of any lands concerned and interests therein and the costs of acquiring the land (all of which shall be borne by the Company). The parties acknowledge the intention is for the Company to construct the Railway, the access roads for the construction and maintenance of the Railway which are to be within the Railway Corridor and the relevant Additional Infrastructure (if any) along the centreline of the Railway Corridor subject to changes in that alignment to the extent necessary to avoid heritage, environmental or poor ground conditions that are not identified during preliminary investigation work, and recognise the width of the Railway Corridor may need to vary along its route to accommodate Additional Infrastructure (if any), access roads, areas from which stone, sand, clay and gravel

may be taken, temporary accommodation facilities for the railway workforce and water bores. The provisions of clause 37 shall not apply to this subclause.

- (b) If the date by which the Company must submit detailed proposals under subclause (4)(a) (as referred to in subclause (2)(c)) is extended or varied by the Minister pursuant to clause 35, any agreement made pursuant to paragraph (a) before such date is extended or varied shall unless the Minister notifies the Company otherwise be deemed to be at an end and neither party shall have any claim against the other in respect of it.
- (c) The Company acknowledges that it shall be responsible for liaising with every title holder in respect of the land affected and for obtaining in a form and substance acceptable to the Minister all unconditional and irrevocable consents of each such title holder to, and all statutory consents required in respect of the land affected for:
 - (i) the grant of the Special Railway Licence for the construction, operation and maintenance within the Railway Corridor of the Railway, access roads and Additional Infrastructure (if any) to be within the Railway Corridor; and
 - (ii) the grant of Lateral Access Road Licences for the construction, use and maintenance of Lateral Access Roads over the routes for the Lateral Access Roads agreed pursuant to paragraph (a); and

- (iii) the inclusion of additional land in the Special Railway Licence as referred to in subclause (6)(h) or subclause (6)(i),

in accordance with this clause. For the purposes of this subclause (3)(c), "title holder" means a management body (as defined in the LAA) in respect of any part of the affected land, a person who holds a mining, petroleum or geothermal energy right (as defined in the LAA) in respect of any part of the affected land, a person who holds a lease or licence under the

LAA in respect of any part of the affected land, a person who holds any other title granted under or pursuant to a Government agreement in respect of any part of the affected land, a person who holds a lease or licence in respect of any part of the affected land under any other Act applying in the said State and a person in whom any part of the affected land is vested, immediately before the provision of such consents to the Minister as referred to in subclause (4)(e)(ii) (including as applying pursuant to subclause 5(d)).

Company to submit proposals for Railway

- (4) (a) The Company shall, subject to the EP Act, the provisions of this Agreement, agreement at that time subsisting in respect of the matters required to be agreed pursuant to subclause 3(a), submit to the Minister by the latest date applying under subclause (2)(c) to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where

reasonably required by the Minister and any other details normally required by a local government in whose area any works are to be situated) with respect to the undertaking of the relevant Railway Operation, which proposals shall include the location, area, layout, design, materials and time program for the commencement and completion of construction or the provision (as the case may be) of each of the following matters namely:

- (i) the Railway including fencing (if any) and crossing places within the Railway Corridor;
- (ii) Additional Infrastructure (if any) within the Railway Corridor;
- (iii) temporary accommodation and ancillary temporary facilities for the railway workforce on, or in the vicinity of, the Railway Corridor and housing and other appropriate facilities elsewhere for the Company's workforce;
- (iv) water supply;
- (v) energy supplies;
- (vi) access roads within the Railway Corridor and Lateral Access Roads both along the routes for those roads agreed between the Minister and the Company pursuant to subclause 3(a);
- (vii) any other works, services or facilities desired by the Company; and

- (viii) use of local labour, professional services, manufacturers, suppliers contractors and materials and measures to be taken with respect to the engagement and training of employees by the Company, its agents and contractors.
- (b) Proposals pursuant to paragraph (a) must specify the matters agreed for the purpose pursuant to subclause (3)(a) and must not be contrary to or inconsistent with such agreed matters.
- (c) Each of the proposals pursuant to paragraph (a) may with the approval of the Minister, or must if so required by the Minister, be submitted separately and in any order as to the matter or matters mentioned in one or more of subparagraphs (i) to (viii) of paragraph (a) and until all of its proposals under this subclause have been approved the Company may withdraw and may resubmit any proposal but the withdrawal of any proposal shall not affect the obligations of the Company to submit a proposal under this subclause in respect of the subject matter of the withdrawn proposal.
- (d) The Company shall, whenever any of the following matters referred to in this subclause are proposed by the Company (whether before or during the submission of proposals under this subclause), submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it proposes to consider

obtaining from or having carried out or permitting to be obtained from or carried out outside Australia, together with its reasons therefor and shall, if required by the Minister consult with the Minister with respect thereto.

- (e) At the time when the Company submits the last of the said proposals pursuant to this subclause, it shall:
 - (i) furnish to the Minister's reasonable satisfaction evidence of all accreditations under the Rail Safety Act which are required to be held by the Company or any other person for the construction of the Railway; and
 - (ii) furnish to the Minister the written consents referred to in subclause (3)(c)(i) and (3)(c)(ii).
- (f) The provisions of clause 9A shall apply mutatis mutandis to detailed proposals submitted under this subclause.

Additional Railway Proposals

- (5) (a) If the Company at any time during the currency of a Special Railway Licence desires to construct a Railway spur line (connecting to the Railway the subject of that Special Railway Licence) or desires to significantly modify, expand or otherwise vary its activities within the land the subject of the Special Railway Licence that are the subject of this Agreement and that may be carried on by it pursuant to this Agreement (other than by the construction of a Railway spur line) beyond those activities specified in any approved

proposals for that Railway, it shall give notice of such desire to the Minister and furnish to the Minister with that notice an outline of its proposals in respect thereto (including, without limitation, such matters mentioned in subclause (4)(a) as are relevant or as the Minister otherwise requires).

- (b) If the notice relates to a Railway spur line, or to the construction of Train Loading Infrastructure or Train Unloading Infrastructure on land outside the then Railway Corridor, the Minister shall within one month of receipt of such notice advise the Company whether or not he approves in-principle the proposed construction of such spur line, Train Loading Infrastructure or Train Unloading Infrastructure. If the Minister gives in-principle approval the Company may (but not otherwise) submit detailed proposals in respect thereof provided that the provisions of subclause (3) shall mutatis mutandis apply prior to submission of detailed proposals in respect thereof.
- (c) Subject to the EP Act, the provisions of this Agreement and agreement at that time subsisting in respect of any matters required to be agreed pursuant to subclause (3)(a) (as referred to in paragraph (b)), the Company shall submit to the Minister within a reasonable timeframe, as determined by the Minister after receipt of the notice referred to in paragraph (a) (or in the case of a notice referred to in paragraph (b) the giving of the Minister's in-principle consent as referred to in that paragraph), detailed proposals in respect of the proposed construction of such Railway

spur line, Train Loading Infrastructure, Train Unloading Infrastructure or other proposed modification, expansion or variation of its activities including such of the matters mentioned in subclause (4)(a) as the Minister may require.

- (d) The provisions of subclause (4) (with the date for submission of proposals being read as the date or time determined by the Minister under paragraph (c) and the reference in subclause (4)(e)(ii) to subclause (3)(c)(i) being read as a reference to subclause (3)(c)(iii)) and of clause 9A shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause.

Grant of Tenure

- (6) (a) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after all its proposals submitted pursuant to subclause (4)(a) have been approved or deemed to be approved and the Company has complied with the provisions of subclause (4)(e), the State notwithstanding the Mining Act 1978 shall cause to be granted to the Company:
- (i) a miscellaneous licence to conduct within the Railway Corridor and in accordance with its approved proposals all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce and, subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of

water bores) necessary for the planning, design, construction, commissioning, operation and maintenance within the Railway Corridor of the Railway, access roads and Additional Infrastructure (if any) ("the Special Railway Licence") such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act 1978 in the form of the Second Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at a rental calculated in accordance with the Mining Act 1978:

- (A) prior to the Railway Operation Date, as if the width of the Railway Corridor were 100 metres; and
 - (B) on and from the Railway Operation Date, at the rentals from time to time prescribed under the Mining Act 1978; and
- (ii) a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under subclause (3)(a) (each a "Lateral Access Road Licence"), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the

Mining Act 1978 in the form of the Third Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the Mining Act 1978.

- (b) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after its proposals submitted pursuant to subclause (5)(a) for the construction of Lateral Access Roads for access to the Railway Corridor to construct a Railway spur line have been approved or deemed to be approved and the Company has complied with the provisions of subclause (4)(e) (as applying pursuant to subclause (5)(d)), the State notwithstanding the Mining Act 1978 shall cause to be granted to the Company a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under subclause (3)(a)) (as applying pursuant to subclause (5)(b)) (each a "Lateral Access Road Licence"), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act 1978 in the form of the Fourth Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the Mining Act 1978.
- (c) Notwithstanding the Mining Act 1978, the term of the Special Railway Licence shall,

subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 50 years commencing on the date of grant thereof.

- (d) Notwithstanding the Mining Act 1978, the term of any Lateral Access Road Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 4 years commencing on the date of grant thereof.
- (e) Notwithstanding the Mining Act 1978, and except as required to do so by the terms of the Special Railway Licence, the Company shall not be entitled to surrender the Special Railway Licence or any Lateral Access Road Licence or any part or parts of them without the prior consent of the Minister.
- (f)
 - (i) The Company may in accordance with approved proposals take stone, sand, clay and gravel from the Railway Corridor for the construction, operation and maintenance of the Railway constructed within or approved for construction within the Railway Corridor.
 - (ii) Notwithstanding the Mining Act 1978 no royalty shall be payable under the Mining Act in respect of stone, sand, clay and gravel which the Company is permitted by subparagraph (i) to obtain from the land the subject of the Special Railway Licence.

- (g) For the purposes of this Agreement and without limiting the operation of paragraphs (a) to (f) inclusive above, the application of the Mining Act 1978 and the regulations made thereunder are specifically modified;
 - (i) in section 91(1) by:
 - (A) deleting "the mining registrar or the warden, in accordance with section 42 (as read with section 92)" and substituting "the Minister";
 - (B) deleting "any person" and substituting "the Company (as defined in the agreement ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996*, as from time to time added to, varied or amended)";
 - (C) deleting "for any one or more of the purposes prescribed" and substituting "for the purpose specified in clause 12C(6)(a)(i), clause 12C(6)(a)(ii) or clause 12C(6)(b), of the agreement ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996*, as from time to time added to, varied or amended";
 - (ii) in section 91(3)(a), by deleting "prescribed form" and substituting "form required by the agreement ratified by and scheduled to the *Iron*

Ore (Yandicoogina) Agreement Act 1996, as from time to time added to, varied or amended";

- (iii) by deleting sections 91(6), 91(9), 91(10) and 91B;
- (iv) in section 92, by deleting "Sections 41, 42, 44, 46, 46A, 47 and 52 apply," and inserting "Section 46A (excluding in subsection (2)(a) "the mining registrar, the warden or") applies," and by deleting "in those provisions" and inserting "in that provision";
- (v) by deleting the full stop at the end of the section 94(1) and inserting, "except to the extent otherwise provided in, or to the extent that such terms and conditions are inconsistent with, the agreement ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996, as from time to time added to, varied or amended";*
- (vi) by deleting sections 94(2), (3) and (4);
- (vii) in section 96(1), by inserting after "miscellaneous licence" the words "(not being a miscellaneous licence granted pursuant to the agreement ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996, as from time to time added to, varied or amended";*
- (viii) by deleting mining regulations 37(2), 37(3), 42 and 42A; and

- (ix) by inserting at the beginning of mining regulations 41(c) and (f) the words "subject to the agreement ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996*, as from time to time added to, varied or amended".
- (h) If additional proposals are approved in accordance with subclause (5) for the construction of a Railway spur line outside the then Railway Corridor, the Minister for Mines shall include the area of land within which such construction is to occur in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.
- (i) If additional proposals are approved in accordance with subclause (5) for the construction of Train Loading Infrastructure or Train Unloading Infrastructure outside the then Railway Corridor, the Minister for Mines shall include the area of such land within which such infrastructure is approved for construction in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.
- (j) The provisions of this subclause shall not operate so as to require the State to cause a Special Railway Licence or a Lateral Access Road Licence to be granted or any

land included in the Special Railway Licence as mentioned above until all processes necessary under any laws relating to native title to enable that grant or inclusion of land to proceed, have been completed.

Construction and operation of Railway

- (7) (a) Subject to and in accordance with approved proposals, the Rail Safety Act and the grant of the relevant Special Railway Licence and any associated Lateral Access Road Licences the Company shall in a proper and workmanlike manner and in accordance with recognised standards for railways of a similar nature operating under similar conditions construct the Railway and associated Additional Infrastructure and access roads within the Railway Corridor and shall also construct inter alia any necessary sidings, crossing points, bridges, signalling switches and other works and appurtenances and provide for crossings and (where appropriate and required by the Minister) grade separation or other protective devices including flashing lights and boom gates at places where the Railway crosses or intersects with major roads or existing railways.
- (b) The Company shall while the holder of a Special Railway Licence:
- (i) keep the Railway the subject of that licence in an operable state; and
 - (ii) ensure that the Railway the subject of that licence is operated in a safe and proper manner in compliance

with all applicable laws from time to time; and

- (iii) without limiting subparagraph (ii) ensure that the obligations imposed under the Rail Safety Act on an owner and an operator (as those terms are therein defined) are complied with in connection with the Railway the subject of that licence.

Nothing in this Agreement shall be construed to exempt the Company or any other person from compliance with the Rail Safety Act or limit its application to the Company's operations generally (except as otherwise may be provided in that Act or regulations made under it).

- (c) The Company shall provide crossings for livestock and also for any roads, other railways, conveyors, pipelines and other utilities which exist at the date of grant of the relevant Special Railway Licence or in respect of land subsequently included in it at the date of such inclusion and the Company shall on reasonable terms and conditions allow such crossings for roads, railways, conveyors, pipelines and other utilities which may be constructed for future needs and which may be required to cross a Railway constructed pursuant to this clause.
- (d) Subject to clause 12B, the Company shall at all times be the holder of Special Railway Licences and Lateral Access Road Licences granted pursuant to this clause and (without limiting clause 26 but subject to clause 12B) shall at all times

own manage and control the use of each Railway the subject of a Special Railway Licence held by the Company.

- (e) The Company shall not be entitled to exclusive possession of the land the subject of a Special Railway Licence or Lateral Access Road Licence granted pursuant to this clause to the intent that the State, the Minister, the Minister for Mines and any persons authorised by any of them from time to time shall be entitled to enter upon the land or any part of it at all reasonable times and on reasonable notice with all necessary vehicles, plant and equipment and for purposes related to this Agreement or such other purposes as they think fit but in doing so shall be subject to the reasonable directions of the Company so as not to unreasonably interfere with the Company's operations.
- (f) The Company's ownership of a Railway constructed pursuant to this clause shall not give it an interest in the land underlying it.
- (g) The Company shall not at any time without the prior consent of the Minister dismantle, sell or otherwise dispose of any part or parts of any Railway constructed pursuant to this clause, or permit this to occur, other than for the purpose of maintenance, repair, upgrade or renewal.
- (h) The Company shall, subject to and in accordance with approved proposals, in a proper and workmanlike manner, construct any Additional Infrastructure, access roads, Lateral Access Roads and

other works approved for construction under this clause.

- (i) The Company shall while the holder of a Special Railway Licence at all times keep and maintain in good repair and working order and condition (which obligation includes, where necessary, replacing or renewing all parts which are worn out or in need of replacement or renewal due to their age or condition) the Railway, access roads and Additional Infrastructure (if any) the subject of that licence and all such other works installations plant machinery and equipment for the time being the subject of this Agreement and used in connection with the operation use and maintenance of that Railway, access roads and Additional Infrastructure (if any).
- (j) Subject to clause 12B, the Company shall:
 - (i) be responsible for the cost of construction and maintenance of all Private Roads constructed pursuant to this clause; and
 - (ii) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles (other than those engaged upon the Company's activities and its invitees and licensees) from using the Private Roads; and
 - (iii) at any place where any Private Roads are constructed by the Company so as to cross any railways or public roads provide at its cost such reasonable protection and signposting as may be required

by the Commissioner of Main
Roads or the Public Transport
Authority as the case may be.

- (k) The provisions of clauses 20(3) and (4) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause except that the Company shall not be obliged to transport passengers upon any such Railway or Railway spur line.

Aboriginal Heritage Act 1972 (WA)

- (8) For the purposes of this clause the *Aboriginal Heritage Act 1972 (WA)* applies as if it were modified by:
- (a) the insertion before the full stop at the end of section 18(1) of the words:
- "and the expression "the Company" means the persons from time to time comprising "the Company" in their capacity as such under the agreement ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996*, as from time to time added to, varied or amended in relation to the use or proposed use of land pursuant to clause 12C of that agreement after and in accordance with approved proposals under clause 12C of that agreement and in relation to the use of that land before any such approval of proposals where the Company has the requisite authority to enter upon and so use the land";
- (b) the insertion in sections 18(2), 18(4), 18(5) and 18(7) of the words "or the Company as the case may be" after the words "owner of any land";

- (c) the insertion in section 18(3) of the words "or the Company as the case may be" after the words "the owner";
- (d) the insertion of the following sentences at the end of section 18(3):

"In relation to a notice from the Company the conditions that the Minister may specify can as appropriate include, among other conditions, a condition restricting the Company's use of the relevant land to after the approval or deemed approval as the case may be under the abovementioned agreement of all of the Company's submitted initial proposals thereunder for the Railway Operation (as defined in clause 12C(1) of the abovementioned agreement), or in the case of additional proposals submitted or to be submitted by the Company to after the approval or deemed approval under that agreement of such additional proposals, and to the extent so approved. "; and
- (e) the insertion in sections 18(2) and 18(5) of the words "or it as the case may be" after the word "he".

The Company acknowledges that nothing in this subclause (8) nor the granting of any consents under section 18 of the *Aboriginal Heritage Act 1972* (WA) will constitute or is to be construed as constituting the approval of any proposals submitted or to be submitted by the Company under this Agreement or as the grant or promise of land tenure for the purposes of this Agreement.

Taking of land for the purposes of this clause

- (9) (a) The State is hereby empowered, as and for a public work under Parts 9 and 10 of the

LAA, to take for the purposes of this clause any land (other than any part of a Port) which in the opinion of the Company is necessary for the relevant Railway Operation and which the Minister determines is appropriate to be taken for the relevant Railway Operation (except any land the taking of which would be contrary to the provisions of a Government agreement entered into before the submission of the proposals relating to the proposed taking) and notwithstanding any other provisions of that Act may license that land to the Company.

- (b) In applying Parts 9 and 10 of the LAA for the purposes of this clause:
- (i) "land" in that Act includes a legal or equitable estate or interest in land;
 - (ii) sections 170, 171, 172, 173, 174, 175 and 184 of that Act do not apply; and
 - (iii) that Act applies as if it were modified in section 177(2) by inserting –
 - (A) after "railway" the following
-
"or land is being taken pursuant to a Government agreement as defined in section 2 of the *Government Agreements Act 1979* (WA)"; and
 - (B) after "that Act" the following
-

"or that Agreement as the case may be".

- (c) The Company shall pay to the State on demand the costs of or incidental to any land taken at the request of and on behalf of the Company including but not limited to any compensation payable to any holder of native title or of native title rights and interests in the land.

Notification of Railway Operation Date

- (10) (a) The Company shall from the date occurring 6 months before the date for completion of construction of a Railway specified in its time program for the commencement and completion of construction of that Railway submitted under subclause (4)(a), keep the Minister fully informed as to:
 - (i) the progress of that construction and its likely completion and commissioning; and
 - (ii) the likely Railway Operation Date.
- (b) The Company shall on the Railway Operation Date notify the Minister that the first carriage of iron ore, freight goods or other products as the case may be over the Railway (other than for construction or commissioning purposes) has occurred.
- (c) The Company shall from the date occurring 6 months before the date for completion of construction of a Railway spur line specified in its time program for the commencement and completion of construction of that spur line submitted under subclause (5)(c) keep the Minister fully informed as to:

- (i) the progress of that construction and its likely completion and commissioning; and
 - (ii) in respect of it, the likely Railway spur line Operation Date.
 - (d) The Company shall on the Railway spur line Operation Date in respect of any Railway spur line notify the Minister that the first carriage of iron ore, freight goods or other products as the case may be over such spur line (other than for construction or commissioning purposes) has occurred.";
- (15) In clause 17 by deleting the full stop at the end of paragraph (b), substituting "; and" and the following new paragraph:
- "(c) for the purpose of supply to:
- (i) "the Company" or "Joint Venturers" as the case may be as defined in, and for the purpose of an Integration Agreement, for its or their purposes thereunder;
 - (ii) the holders from time to time of a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement) for the purpose of their iron ore mining operations on that mining lease; and
 - (iii) with the prior approval of the Minister, "the Company" or "the Joint Venturers" as the case may be as defined in, and for the purpose of, a Government agreement (excluding an Integration Agreement) for the mining of iron ore in, or proximate to, the Pilbara region of the said State for the purpose of its or their operations under that agreement,

and to the extent determined by the Minister generate transmit and supply electricity.";

(16) deleting clause 20(5);

(17) by inserting after subclause (2) of clause 21 the following new subclause:

"(2a) The provisions of subclause (1) of this clause shall not operate to require the State to grant or vary, or cause to be granted or varied, any lease licence or other right or title until all processes required by laws relating to native title to enable that grant or variation to proceed, have been completed.";

(18) by deleting subclause (7) of clause 23 and substituting the following new subclause:

"(7) For the purposes of subclause (6) "alternate project" means:

- (a) a project to establish and operate within the said State plant for the production of metallised agglomerates;
- (b) a project to establish and operate within the said State plant which processes and adds value to minerals mined in the said State; or
- (c) any other project within the said State which the Minister approves as providing as equivalent benefits to the State to a project to establish and operate within the said State plant for the production of metallised agglomerates,

to be undertaken by:

- (d) the Company (excluding a project referred to in paragraph (a)): or
- (e) a related body corporate or related bodies corporate (within the meaning of the *Corporations Act 2001* (Cwth) of the Company solely or in conjunction with the Company; or

- (f) a joint venture in which the Company or its related body corporate has a majority participating interest; or
 - (g) any other third person or persons which the Company and the Minister accept as having the requisite financial and technical capacity and expertise to undertake solely, or in conjunction with the Company, the relevant project referred to in paragraph (a), (b) or (c).";
- (19) by inserting the following sentence at the end of clause 31:
- "As a separate independent indemnity the Company will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any use, making available for use or other activities of the Company as referred to in clause 12A.";
- (20) in clause 32(3)(a) by inserting "or held pursuant to this Agreement" after "under or pursuant to this Agreement";
- (21) in clause 33(1) by inserting "or held pursuant hereto" after "under or pursuant to this Agreement";
- (22) in clause 38(1)(a)(i) by inserting "granted under or pursuant to this Agreement or held pursuant to this Agreement" after "easement or other title";
- (23) in clause 38(4) by deleting "occupied by the Company" and substituting "the subject of any lease licence on other title granted under or pursuant to this Agreement or held pursuant to the Agreement";
- (24) in clause 39(1)(a) by inserting "or held pursuant hereto" after "granted hereunder or pursuant hereto";
- (25) in clause 39(2) by inserting "or held pursuant hereto" after "made under or pursuant to this Agreement"; and
- (25) by inserting after the Schedule the following new schedules:

" SECOND SCHEDULE

WESTERN AUSTRALIA
IRON ORE (YANDICOOGINA) AGREEMENT ACT 1996
MINING ACT 1978
MISCELLANEOUS LICENCE FOR A RAILWAY AND OTHER
PURPOSES

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called "the Company") a miscellaneous licence for the construction operation and maintenance of a Railway (as defined in clause 12C(1) of the Agreement and otherwise as provided in the Agreement) and, if applicable, other purposes AND WHEREAS the Company pursuant to clause 12C(6)(a) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Yandicoogina) Agreement Act 1996*, as from time to time added to, varied or amended, the Company is hereby granted by this licence authority to conduct on the land the subject of this licence as more particularly delineated and described from time to time in the Schedule hereto all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce in accordance with the Agreement and, subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance on the land the subject of this licence of the Railway and Additional Infrastructure (as defined in clause 12C(1) of the Agreement) and access roads to be located on the land the subject of this licence in accordance with the provisions of the Agreement and proposals approved under the Agreement, for the term of 50 years from the date hereof (subject to the sooner determination of the term upon the determination of the Agreement) and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 12C(6)(a)(i) of the Agreement

PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

- If the Company be more than one the liability of the Company hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefore or in lieu thereof and to the regulations and by-laws of the time being in force thereunder.
- Reference to "the Agreement" means such agreement as from time to time added to, varied or amended.
- The terms "approved proposals", "Railway", "Railway Operation Date", and "Railway spur line" have the meanings given in the Agreement.

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.
2. The Company is permitted to, in accordance with approved proposals, take stone, sand, clay and gravel from the land the subject of this licence for the construction, operation and maintenance of the Railway (including any Railway spur line) constructed within or approved for construction within the area of land the subject of this licence.
3. Notwithstanding the *Mining Act 1978*, no royalty shall be payable under the *Mining Act 1978* in respect of stone, sand, clay and gravel which the Company is permitted by the Agreement to obtain from the land the subject of this licence.
4. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determine and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

- ## SCHEDULE

MINISTER FOR MINES

THIRD SCHEDULE
WESTERN AUSTRALIA
IRON ORE (YANDICOOGINA) AGREEMENT ACT 1996
MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called "the Company") a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 12C(6)(a)(ii) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Yandicoogina) Agreement Act 1996*, as from time to time added to, varied or amended, the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 12C(6)(a)(ii) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

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

- ## ENDORSEMENTS AND CONDITIONS

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.
2. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of this licence including during the term of the Agreement.]

[Such conditions which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of the licence, including during the term of the Agreement.]

SCHEDULE

Description of land

Locality:

Mineral Field:

Area:

DATED at Perth this day of

MINISTER FOR MINES

FOURTH SCHEDULE
WESTERN AUSTRALIA
IRON ORE (YANDICOOGINA) AGREEMENT ACT 1996
MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called "the Company") a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 12C(6)(b) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Yandicoogina) Agreement Act 1996*, as from time to time added to, varied or amended, the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 12C(6)(b) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

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

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

- Reference to "the Agreement" means such agreement as from time to time added to, varied or amended.

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.
2. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

[Such conditions which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of the licence, including during the term of the Agreement.]

SCHEDULE

Description of land

Locality:

Mineral Field:

Area:

DATED at Perth this _____ day of _____

MINISTER FOR MINES ."

5. Hamersley confirms that its guarantee in favour of the State as contained in clause 43 of the Principal Agreement shall continue notwithstanding the abovementioned variations to the Principal Agreement.

EXECUTED as a deed.

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

[Signature]
STEPHEN WOOD

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

[Signature]	ALAN DAVIES
Director	

[Signature]_____	HELEN FERNIHOUGH_____
Secretary	

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

[Signature]_____	ALAN DAVIES_____
Director	

[Signature]_____	HELEN FERNIHOUGH_____
Secretary	

[Schedule 2 inserted: No. 61 of 2010 s. 25.]

Schedule 3 — Second Variation Agreement

[s. 3]

[Heading inserted: No. 61 of 2011 s. 22.]

2011

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

AND

HAMERSLEY IRON-YANDI PTY. LIMITED

ACN 009 181 793

AND

HAMERSLEY IRON PTY. LIMITED

ACN 004 558 276

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

[Solicitor's details]

THIS AGREEMENT is made this 7th day of November 2011

BETWEEN

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

AND

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

AND

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

RECITALS:

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

THE PARTIES AGREE AS FOLLOWS:

1. Interpretation

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

2. Ratification and Operation

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

3. Variation of Principal Agreement

The Principal Agreement is varied as follows:

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

"Eligible Existing Tenure" means:

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

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

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

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

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

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

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

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

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

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

"**Special Advance Tenure**" means:

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

and as the context requires such tenure if granted;

- (2) in clause 2(1) by inserting after "and the regulations for the time being in force thereunder" in paragraph (f) "(and for the avoidance of doubt this principle, subject to the context and without limitation to its application to other Acts, may apply in respect of references to the Land Act notwithstanding references in this Agreement to the LAA)";
- (3) by inserting after clause 9B the following new clauses:

"Community development plan

- 9C. (1) In this clause, the term "community and social benefits" includes:
- (a) assistance with skills development and training opportunities to promote work readiness and employment for persons living in the Pilbara region of the said State;
 - (b) regional development activities in the Pilbara region of the said State, including partnerships and sponsorships;
 - (c) contribution to any community projects, town services or facilities; and
 - (d) a regionally based workforce.
- (2) The Company acknowledges the need for community and social benefits flowing from this Agreement.
- (3) The Company agrees that:
- (a) it shall prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with its activities under this Agreement; and
 - (b) the Company shall, not later than 3 months after the second variation date, submit to the Minister the plan prepared under paragraph (a) and confer with the Minister in respect of the plan.
- (4) The Minister shall within 2 months after receipt of a plan submitted under subclause (3)(b), either notify the Company that the Minister approves the plan as submitted or notify the Company of changes which the Minister requires be made to the plan. If the Company is unwilling to accept the changes which the Minister requires it shall notify the Minister to that effect and either party may refer to arbitration hereunder the

question of the reasonableness of the changes required by the Minister.

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

Local participation plan

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

and contractors to tender or quote for works, materials, plant, equipment and supplies;

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

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

- (4) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.
- (5) At least 6 months before the anticipated submission of proposals relating to a proposed development pursuant to any of clauses 9, 10, 12C or 23, the Company must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this clause in relation to the

proposed development. This obligation operates in relation to all proposals submitted on or after the date that is 7 months after the date when a plan is first provided under this clause.

- (6) During the currency of this Agreement the Company shall implement the plan provided under this clause.
- (7) The Company shall:
 - (a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this clause; and
 - (b) use reasonable endeavours to ensure that the third party complies with those provisions.";
- (4) in clause 12(2) by deleting subparagraph (ii) and substituting the following subparagraph:
 - "(ii) on fine ore and on pisolite fine ore sold or shipped separately as such at the rate of:
 - (A) 5.625% of the f.o.b. value, for ore shipped prior to or on 30 June 2012;
 - (B) 6.5% of the f.o.b. value, for ore shipped during the period from 1 July 2012 to 30 June 2013 (inclusive of both dates); and
 - (C) 7.5% of the f.o.b. value, for ore shipped on or after 1 July 2013;"
- (5) in clause 12C by:
 - (a) deleting in subclause (1) ""LAA" means the *Land Administration Act 1997* (WA);";

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

"(l) The provisions of clause 20(2a) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause."

(6) in clause 20 by:

- (a) in subclause (2), deleting all words in the subclause after "and other railways which now exist"; and
- (b) inserting after subclause (2) the following new subclause:

"Crossings over Railway

(2a) For the purposes of livestock and infrastructure such as roads, railways, conveyors, pipelines, transmission lines and other utilities proposed to cross the land the subject of the railway the Company shall:

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

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

(7) at the end of clause 21(1) by inserting the following new paragraph:

"Notwithstanding clause 12A(2)(b)(iv), detailed proposals may refer to activities on tenure which is proposed to be granted pursuant to this subclause (1) as if that tenure was granted pursuant to this Agreement (but this does not limit the powers or discretions of the Minister under this Agreement or the Minister responsible for the administration of any relevant Act with respect to the grant of the tenure).";

- (8) in the last paragraph of clause 21(2) by inserting "and subclauses (2a) and (2b)" after "The provisions of this subclause";
- (9) in clause 21 by:
 - (a) renumbering subclause (2a) as subclause (2d) and inserting the following new subclauses before the renumbered subclause (2d):

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

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

subject to conditions, on the date on which all such conditions have been satisfied; and

- (iii) if the Minister's approval was given subject to a condition requiring that the Company submit detailed proposals in accordance with this Agreement, on the later of the date on which the Minister approves proposals submitted in discharge of that specified condition and the date upon which all other specified conditions have been satisfied, but the Company is authorised to implement any approved proposal to the extent such implementation is consistent with the then terms and conditions of the Eligible Existing Tenure pending the satisfaction of any conditions relating to the variation of the terms or conditions of the Eligible Existing Tenure. Where this paragraph (iii) applies, prior to any approval of proposals and satisfaction of other conditions, the relevant tenure will be treated for (but only for) the purposes of clause 12A(2)(b)(iv) as tenure held pursuant to this Agreement.

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

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

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

and if the Minister does so approve:

- (c) notwithstanding the Mining Act or the LAA, the appropriate authority or instrumentality of the State shall obtain the consent of the Minister to the form and substance of the Special Advance Tenure prior to its grant (which for the avoidance of doubt neither the State nor the Minister is obliged to cause) to the Company; and
- (d) if the Company does not submit detailed proposals relating to construction of the relevant works installations or facilities on the Relevant Land within 24 months after the date of the Minister's approval or such later time subsequently allowed by the Minister, or if submitted the Minister does not approve such detailed proposals, the Special Advance Tenure (if then granted) shall be surrendered at the request of the Minister.

- (2c) The decisions of the Minister under subclauses (2a) and (2b) shall not be referable to arbitration and any approval of the Minister under this clause shall not in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.";
- (b) in the renumbered subclause (2d), deleting "subclause (1)" and substituting "subclauses (1), (2a) and (2b)"; and
- (10) in clause 23 by:
 - (a) in the first line of subclause (2), deleting "The" and substituting "Subject to subclause (8) the"; and
 - (b) inserting after subclause (7) the following new subclause:

"Capacity to defer obligations of the Company under subclause (2) if "alternative project" is approved under the Mount Bruce Agreement
- (8) (a) Subject to paragraph (b), in the event that the Mount Bruce Agreement Minister approves in accordance with clause 41A(5) of the Mount Bruce Agreement that the carrying out of an alternative project (as defined in clause 41A(6) of that agreement) be accepted by the State in lieu of all of the obligations of the Company (as defined in that agreement) in respect of the establishment of plant for the production of steel pursuant to clause 41A of that agreement, the Minister may agree (including prior to and conditional upon such approval being given by the Mount Bruce Agreement Minister) to postpone the obligation of the Company to submit detailed proposals as contemplated by subclause (2) for a maximum period of 10 years from the third anniversary of the

m.a. date immediately following the date on which the Mount Bruce Agreement Minister so approves.

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

EXECUTED as a deed.

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

[Signature]

Signature of witness

[Signature]

Stephen Bombardieri

Name of witness

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

[C.S.]

[Signature]

Director

Robert Paul Shannon

[Signature]

Secretary

Helen Fernihough

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

Robert Paul Shannon

Helen Fernihough

[Schedule 3 inserted: No. 61 of 2011 s. 22.]

Schedule 4 — Third Variation Agreement

[s. 3]

[Heading inserted: No. 38 of 2024 s. 29.]

2024

**THE HONOURABLE ROGER COOK
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

AND

**HAMERSLEY IRON - YANDI PTY LIMITED
ACN 009 181 793**

AND

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

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

[Solicitor's details]

THIS AGREEMENT is made this 26 day of August 2024

BETWEEN

THE HONOURABLE ROGER COOK MLA., Premier of the State of Western Australia, acting for and on behalf of the said State and instrumentalities from time to time (the "**State**")

AND

HAMERSLEY IRON - YANDI PTY LIMITED ACN 009 181 793 of Level 18, Central Park, 152-158 St Georges Terrace, Perth, Western Australia (**Company**)

AND

HAMERSLEY IRON PTY. LIMITED ACN 004 558 276 of Level 18, Central Park, 152-158 St Georges Terrace, Perth, Western Australia (**Hamersley**).

RECITALS

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

THE PARTIES AGREE AS FOLLOWS:

- 1. 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 2024 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 31 December 2024 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

Clause 1 of the Principal Agreement is varied by inserting after paragraph (f) in the definition of "Integration Agreement" the following paragraph:

"(g) the agreement authorised by and as scheduled to the *Iron Ore (Rhodes Ridge) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended; or",

and renumbering the following paragraphs of that definition accordingly.

EXECUTED as a deed.

SIGNED by **THE HONOURABLE**)
ROGER COOK)
in the presence of:)

[Signature] _____
Signature of witness

[Signature] _____

SARAH GWEN KEEGAN
Name of witness

EXECUTED by)
HAMERSLEY IRON - YANDI PTY)
LIMITED ACN 009 181 793 in accordance)
with section 127(1) of the)
Corporations Act 2001 (Cth))

[Signature] _____
Director

SIMON RICHMOND

[Signature] _____
~~Director~~/Secretary

SOWMYA KOLLI

EXECUTED by)
HAMERSLEY IRON PTY. LIMITED)
ACN 004 558 276 in accordance with)
section 127(1) of the *Corporations Act 2001*)
(Cth))

[Signature] _____
Director

SIMON RICHMOND

[Signature] _____
~~Director~~/Secretary

SOWMYA KOLLI

[Schedule 4 inserted: No. 38 of 2024 s. 29.]

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Notes

This is a compilation of the *Iron Ore (Yandicoogina) Agreement Act 1996* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Iron Ore (Yandicoogina) Agreement Act 1996</i>	65 of 1996	11 Nov 1996	11 Nov 1996 (see s. 2)
Reprint 1: The <i>Iron Ore (Yandicoogina) Agreement Act 1996</i> as at 7 May 2004			
<i>Iron Ore Agreements Legislation Amendment Act (No. 2) 2010 Pt. 6</i>	61 of 2010	10 Dec 2010	11 Dec 2010 (see s. 2(c))
<i>Iron Ore Agreements Legislation Amendment Act 2011 Pt. 6</i>	61 of 2011	14 Dec 2011	15 Dec 2011 (see s. 2(b))
<i>Iron Ore Agreements Legislation Amendment Act 2024 Pt. 7</i>	38 of 2024	29 Oct 2024	30 Oct 2024 (see s. 2(b))

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
Agreement.....	3
the First Variation Agreement.....	3
the Second Variation Agreement	3
the Third Variation Agreement	3

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