

WESTERN AUSTRALIA

IRON ORE (CHANNAR JOINT VENTURE) AGREEMENT ACT

No. 61 of 1987

AN ACT to ratify an Agreement on behalf of the State with CMIEC (Channar) Pty. Ltd. and Channar Mining Pty. Limited and Hamersley Iron Pty. Limited relating to the development and treatment of iron ore and for incidental and other purposes.

[Assented to 13 November 1987]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short Title

1. This Act may be cited as the *Iron Ore (Channar Joint Venture) Agreement Act 1987*.

Commencement

2. This Act shall come into operation on the day that it receives the Royal Assent.

Interpretation

3. In this Act unless the contrary intention appears—

“the Agreement” means the Agreement a copy of which is set out in the Schedule and includes that Agreement as varied from time to time in accordance with its provisions;

“the Joint Venturers” has the same meaning as that expression has in and for the purposes of the Agreement.

Agreement ratified and implementation authorized

4. (1) The Agreement is hereby ratified.

(2) The implementation of the Agreement is authorized.

(3) Without affecting the *Government Agreements Act 1979*, the Agreement has effect notwithstanding any other Act or law.

By-laws

5. (1) The Governor may, on the recommendation of the Joint Venturers, make by-laws in accordance with and for the purposes referred to in the Agreement.

(2) By-laws made pursuant to this section—

(a) are not subject to section 42 of the *Interpretation Act 1984* but shall be laid before each House of Parliament within 6 sitting days of such House next following publication of the by-laws in the *Government Gazette*;

(b) may provide that contravention of or failure to comply with a by-law constitutes an offence and provide penalties not exceeding \$100 for offences against the by-laws.

SCHEDULE

(section 3)

THIS AGREEMENT made this 27th day of October 1987 BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, 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 CMIEC (CHANNAR) PTY. LTD. a company incorporated in Western Australia and having its registered office at 140 St. George's Terrace, Perth and CHANNAR MINING PTY. LIMITED a company incorporated in Western Australia and having its registered office at 191 St. George's Terrace, Perth (hereinafter together called the "Joint Venturers" in which term shall be included their respective successors and permitted assigns) of the second part and HAMERSLEY IRON PTY. LIMITED a company incorporated in Victoria and having its registered office in the State of Western Australia at 191 St George's Terrace, Perth (hereinafter called "Hamersley") of the third part.

WHEREAS:

- (a) the Joint Venturers, having established the economic viability thereof, desire to recover and market to the People's Republic of China iron ore from the land shown bordered green on the plan marked "A" (which has been initialled by or on behalf of the parties hereto for the purpose of identification) through a joint venture in which CMIEC (Channar) Pty. Ltd. will hold an undivided 40% Participating Interest and Channar Mining Pty. Limited will hold an undivided 60% Participating Interest; and
- (b) the Joint Venturers intend to provide such facilities and services as may be necessary for their operations under this Agreement and for the accommodation and welfare of their workforce at or in the vicinity of the land referred to in recital (a) hereof or elsewhere within the Pilbara region.

NOW THIS AGREEMENT WITNESSETH:

1. In this Agreement subject of the context—

Definitions

"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 any proposal approved under this Agreement;

"associated company" means CMIEC and Hamersley;

"Clause" means a clause of this Agreement;

"CMIEC" means China Metallurgical Import and Export Corporation a corporation existing under the laws of the People's Republic of China;

"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;

"Dampier" includes East Intercourse Island and Parker Point;

“direct shipping ore” means iron ore which has an average pure iron content of not less than 60% which will not pass through a 6 millimetre mesh screen and which is sold without concentration or other beneficiation other than crushing and screening;

“fine ore” means iron ore which has an average pure iron content of not less than 60% which will pass through a six millimetre mesh screen and which is sold without concentration or other beneficiation other than crushing and screening;

“fines” means iron ore (not being direct shipping ore or fine ore) which will pass through a six millimetre mesh screen;

“f.o.b. revenue” means the price for iron ore the subject of any shipment or sale which is payable by the purchaser thereof to the Joint Venturers or either of them as the case may be or, where there is no price paid for iron ore the subject of any shipment or where the Minister is not satisfied that a price paid for iron ore the subject of a shipment or sale represents a fair and reasonable price therefor, such amount as is agreed between the Joint Venturers or the relevant Joint Venturer and the State or, failing agreement, as determined by the Minister, after deducting all export duties and export taxes payable to the Commonwealth on the export of the iron ore and all costs and charges reasonably and properly incurred and payable by the Joint Venturers or the relevant Joint Venturer to the State or a third party from the time the iron ore shall be placed on ship at the point of loading to the time the same is delivered to the port of discharge, including:

- (1) ocean freight;
- (2) marine insurance;
- (3) weighing, sampling, assaying, inspection and representation costs incurred on discharge or delivery;
- (4) shipping agency charges; and
- (5) such other costs and charges as the Minister may in his discretion consider reasonable in respect of any shipment or sale.

For the purposes of this definition—

- (a) the Minister may (in respect of costs or charges as set out in items (1) to (4) inclusive of this definition) notify the Joint Venturers or either of them as the case may require in writing that in respect of any shipment or sale he does not regard a cost or charge as having been reasonably and properly incurred and in such case the Joint Venturers or the relevant Joint Venturer may refer the matter to arbitration hereunder and unless and until such matter is resolved in favour of the Joint Venturers or the relevant Joint Venturer, such cost or charge shall not be deemed to have been reasonably and properly incurred;
- (b) notwithstanding anything contained in this definition to the contrary, a cost or charge as set out in items (1) to (4) inclusive of this definition shall not (unless the Minister so determines in accordance with the provisions of paragraph (c) of this definition) be deemed to be reasonably and properly incurred if such charge is directly or indirectly imposed upon or incurred by

the Joint Venturers or either of them pursuant to an arrangement entered into between the Joint Venturers or either of them and the State:

- (c) costs or charges other than those set out in items (1) to (4) inclusive of this definition and costs and charges to which paragraph (b) of this definition applies shall be deemed to be reasonably and properly incurred if the Minister in his discretion so determines and in making his determination the Minister shall have regard to such matters as the parties to and the bona fide nature of the transaction resulting in the cost or charge.

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

“Land Act” means the Land Act 1933;

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

“Mining Act” means the Mining Act 1978;

“mining lease” means the mining lease granted pursuant to Clause 15 and according to the requirements of the context shall describe 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 (under whatsoever title) 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 Joint Venturers and includes the successors in office of the Minister;

“Minister for Minerals and Energy” 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;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“private road” means a road which is either constructed by the Joint Venturers in accordance with approved proposals or agreed by the State and the Joint Venturers to be a private road for the purposes of this Agreement;

“said State” means the State of Western Australia;

“State Energy Commission” means The State Energy Commission of Western Australia as described in section 7 of the State Energy Commission Act 1979;

“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;

“tonne” means a tonne of one thousand kilograms net dry weight;

“wharf” includes any jetty structure.

Interpretation

2. In this Agreement—

- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
- (b) power given under any clause other than Clause 38 to extend any period or date shall be without prejudice to the power of the Minister under Clause 38;
- (c) marginal notes 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) 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; and
- (f) any covenant or agreement on the part of the Joint Venturers hereunder shall be deemed to be a joint and several covenant or agreement as the case may be.

Initial obligations
of the State

3. The State shall—

- (a) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1987; and
- (b) to the extent reasonably necessary for the purposes of this Agreement allow the Joint Venturers to enter upon Crown Lands (including, if applicable, land the subject of a pastoral lease).

Ratification and
operation

4.

- (1) The provisions of this Agreement other than this Clause and Clauses 1, 2 and 3 shall not come into operation until the Bill referred to in Clause 3 has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (2) If before 31st December 1987 the said Bill has not commenced to operate as an Act this Agreement will, unless the parties hereto otherwise agree, then cease and determine.
- (3) 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.

5. (1) The Joint Venturers shall continue their field and office engineering, environmental, market and finance studies and other matters necessary to enable them to finalise and to submit to the Minister the detailed proposals referred to in Clause 7 and their proposed marketing arrangements pursuant to Clause 6. Initial obligations
of the Joint
Venturers
- (2) The Joint Venturers shall keep the State fully informed in writing quarterly as to the progress and results of their operations under subclause (1). The first quarterly report shall be lodged during the month of April 1988 and shall be in respect of the quarter ending on the last day of March 1988 and thereafter the quarterly reports shall be in respect of the quarter ending on the last day of the month preceding the month in which they are lodged.
- (3) The Joint Venturers shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclause (1) and any other relevant studies in relation to that subclause that the Minister may wish to undertake.
6. Prior to or at the time of the submission of the proposals required pursuant to subclause (1) of Clause 7 the Joint Venturers shall furnish to the State's satisfaction evidence that contracts are in place for the sale or supply by the Joint Venturers severally of iron ore from the land referred to in recital (a) hereof to the People's Republic of China together with details of the tonnages involved and the duration of the respective contracts and of the proposed marketing arrangements (including the provision of marketing services) relative thereto and such other details as the Minister may require. Marketing
arrangements
7. (1) The Joint Venturers shall on or before 30th June 1988 (or by such extended date 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 their detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect to the mining of iron ore from the land referred to in recital (a) hereof and the transport and shipment of iron ore mined which proposals shall make provision for the necessary workforce and associated population required to enable the Joint Venturers to mine and recover iron ore from the land referred to in recital (a) hereof. Joint Venturers
to submit
proposals
- (2) The said proposals may, with the approval of the Minister and Hamersley, or any third parties concerned, as the case may be, provide for the use by the Joint Venturers upon reasonable terms and conditions of any existing works installations facilities equipment and services belonging to Hamersley, wherever possible, or to any third party instead of providing for the construction of new facilities. Use of existing
infrastructure
- (3) The said proposals shall include the location, area, layout, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely—
- (a) the mining and recovery of iron ore including mining crushing screening handling transport and storage of iron ore and plant facilities;
- (b) roads;

- (c) housing and accommodation for the Joint Venturers' workforce including the provision of utilities, services and associated facilities;
- (d) water supply;
- (e) power supply;
- (f) any other works, services or facilities desired by the Joint Venturers;
- (g) 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 Joint Venturers their agents and contractors;
- (h) any leases licences or other tenures of land required from the State; and
- (i) an environmental management programme as to measures to be taken, in respect of the Joint Venturers' activities under this Agreement, for the protection and management of the environment.

Order of proposals

(4) The proposals pursuant to subclause (3) may with the approval of the Minister or if so required by him be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (i) of subclause (3).

(5) At the time when the Joint Venturers submit the said proposals they shall—

(a) submit to the Minister—

Work outside Australia

(i) details of those elements of the project engineering design and management, equipment procurement and installation, materials, fabrication, services and construction that they propose to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia other than work concerning internal organisational activities and services to be commissioned by CMIEC in the People's Republic of China together with their reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto;

Iron ore reserves

(ii) a summary of measured, indicated and inferred reserves of iron ore within the land referred to in recital (a) hereof; and

(b) furnish to the State's satisfaction evidence of—

Financial arrangements

(i) the availability of finance necessary for the fulfilment of the operations to which the said proposals refer;

Readiness to proceed

(ii) the readiness of the Joint Venturers to embark upon and proceed to carry out the operations referred to in the said proposals.

(6) If the Joint Venturers do not submit the said proposals by 30th June 1988 or such extended date as aforesaid this Agreement shall on such date or such extended date as the case may be cease and determine.

8. If this Agreement shall cease and determine by virtue of the provisions of Clause 4 or subclause (6) of Clause 7 none of the parties hereto will have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement. Effect of early determination
9. (1) On receipt of the said proposals pursuant to subclause (1) of Clause 7 the Minister shall— Consideration of proposals
- (a) approve of the said proposals either wholly or in part without qualification or reservation; or
- (b) defer consideration of or decision upon the same until such time as the Joint Venturers submit a further proposal or proposals in respect of some other of the matters mentioned in subclause (3) of Clause 7 not covered by the said proposals; or
- (c) require as a condition precedent to the giving of his approval to the said proposals that the Joint Venturers make such alteration thereto or comply with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Joint Venturers of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions.
- (2) The Minister shall within two months after receipt of the said proposals pursuant to subclause (1) give notice to the Joint Venturers of his decision in respect to the same. Advice of Minister's decision
- (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 Joint Venturers full opportunity to consult with him and should they so desire to submit new or revised proposals either generally or in respect to some particular matter. Consultation with Minister
- (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) and the Joint Venturers consider that the decision is unreasonable the Joint Venturers 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. Minister's decision subject to arbitration
- (5) An award made on an arbitration pursuant to subclause (4) shall have force and effect as follows— Arbitration award
- (a) if by the award the dispute is decided against the Joint Venturers then unless the Joint Venturers within 3 months after delivery of the award give notice to the Minister of their 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 Joint Venturers 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 detailed proposals of the Joint Venturers are approved by the Minister or determined by arbitration award, unless each and every such proposal and matter is so approved or determined by 30th June 1989 or by such extended date if any as the Joint Venturers shall be granted pursuant to the provision of this Agreement then the Minister may give to the Joint Venturers 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 40.

Implementation of proposals

(7) The Joint Venturers shall implement the approved proposals in accordance with the terms thereof.

Additional proposals

10. If the Joint Venturers at any time during the continuance of this agreement desire to significantly modify expand or otherwise vary their activities carried on pursuant to this Agreement beyond those specified in any approved proposals they 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 paragraphs (a) to (i) of subclause (3) of Clause 7 as the Minister may require. The provisions of Clause 7 (other than subclause (6)) and Clause 9 (other than subclauses (5) and (6)) shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause with the proviso that the Joint Venturers 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 they shall not be proceeding with the same. The Joint Venturers shall implement the approved proposals in accordance with the terms thereof.

Protection and management of the environment

11. (1) The Joint Venturers shall in respect of the matters referred to in paragraph (i) of subclause (3) of Clause 7 and which are the subject of approved proposals under this Agreement, carry out a continuous programme including monitoring and the study of sample areas to ascertain the effectiveness of the measures they are taking pursuant to such approved proposals for rehabilitation and the protection and management of the environment and shall as and when reasonably required by the Minister from time to time submit to the Minister a detailed report thereon.

(2) Whenever as a result of their monitoring under subclause (1) or otherwise information becomes available to the Joint Venturers which in order to more effectively rehabilitate, protect or manage the environment may necessitate or could require any changes or additions to any approved proposals or require matters not addressed in approved proposals to be addressed the Joint Venturers shall forthwith notify the Minister thereof and with such notification shall submit a detailed report thereon.

(3) The Minister may within 2 months of the receipt of a detailed report pursuant to subclauses (1) or (2) notify the Joint Venturers that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the report and such other matters as the Minister may require.

(4) The Joint Venturers shall within 2 months of the receipt of a notice given pursuant to subclause (3) submit to the Minister additional detailed proposals as required and the provisions of Clause 7 (other

than subclause (6)) and Clause 9 (other than subclauses (5) and (6)) where applicable shall mutatis mutandis apply in respect of such proposals.

- (5) The Joint Venturers shall implement the decision of the Minister or an award made on arbitration as the case may be in accordance with the terms thereof.

12. (1) The Joint Venturers shall, for the purposes of this Agreement—

Use of local
labour services
and materials

- (a) except in those cases where the Joint Venturers can demonstrate it is impracticable so to do, use labour available within the said State;
- (b) as far as it is reasonable and economically practicable so to do use the services of engineers surveyors architects and other professional consultants, project managers manufacturers suppliers and contractors resident and available within the said State;
- (c) when preparing specifications calling for tenders and letting contracts for works materials plant equipment and supplies ensure that suitably qualified Western Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote; and
- (d) give proper consideration and where possible preference to Western Australian manufacturers suppliers and contractors when letting contracts or placing orders for works materials plant equipment and supplies where performance price quality delivery and service are equal to or better than that obtainable elsewhere.
- (2) Except as otherwise agreed by the Minister the Joint Venturers shall in every contract entered into with a third party for the supply of services labour works materials plant equipment and 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 Joint Venturers concerning such third party's implementation of that condition.
- (3) The Joint Venturers shall submit a report to the Minister at quarterly intervals commencing from the date of this Agreement or such longer periods as the Minister may from time to time determine concerning their implementation of the provisions of this Clause and the performance of third parties in relation thereto pursuant to subclause (2) together with a copy of any report received by the Joint Venturers pursuant to that subclause during that quarter.

13. (1) The Joint Venturers shall—

Roads—Private
roads

- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in their operations hereunder;
- (b) ensure that all private roads (other than any such roads specified in approved proposals as not for use by the public) are constructed and maintained in accordance with the requirements from time to time of the Commissioner of Main Roads; and

(c) at any place where such private roads cross any roads or railways used by the public provide at their cost such reasonable protection as may be required by the Railways Commission or the Commissioner of Main Roads as the case may be.

Maintenance of public roads

(2) 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 Joint Venturers 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

(3) In the event that for or in connection with the Joint Venturers' operations hereunder the Joint Venturers or any person engaged by the Joint Venturers uses or wishes to use a public road referred to in subclause (2) which is inadequate for the purpose, or any use by the Joint Venturers or any person engaged by the Joint Venturers of any such public road results in excessive damage thereto or deterioration thereof (other than fair wear and tear) the Joint Venturers shall pay to the State 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.

Liability

(4) The State and the Joint Venturers further covenant and agree with each other that—

(a) for the purposes of determining whether and if so the extent to which—

(i) the Joint Venturers are liable to any person or body corporate (other than the State); or

(ii) an action is maintainable by any such person or body corporate

in respect of the death or injury of any person or damage to any property arising out of the use of any of the such roads for the maintenance of which the Joint Venturers are responsible hereunder and for no other purpose the Joint Venturers shall be deemed to be a municipality and the said roads shall be deemed to be streets under the care control and management of the Joint Venturers; and

(b) for the purposes of this Clause the terms "municipality" "street" and "care control and management" shall have the meaning which they respectively have in the Local Government Act 1960.

Airport

14. In the event that any upgrading of the existing airport facilities and services at Paraburdoo are necessary for the Joint Venturers' operations hereunder, the Joint Venturers shall confer with Hamersley and/or the Shire of West Pilbara as the case may require with a view to reaching agreement on that upgrading.

Mining lease

15. (1) Notwithstanding the provisions of the Mining Act the State shall, on application made by the Joint Venturers not later than 3 months after all their proposals submitted pursuant to subclause (1) of Clause 7 have been approved or determined and the Joint Venturers have complied with the provisions of Clause 6 and subclause (5) of Clause 7 for a mining lease of the land referred to in recital (a) hereof

for the mining of iron ore but subject to the surrender to the State by the holder of Mineral Lease 252 SA of so much of the land within that Mineral Lease as is within the land referred to in recital (a) hereof and subject also to the surrender to the State by Hamersley of so much of the land within Mineral Lease 4 SA as is within the land referred to in recital (a) hereof, cause to be granted to the Joint Venturers at a rental of 86.5 cents per hectare per annum (payable in advance) a mining lease of such land (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed at the Joint Venturers' expense) for the mining of iron ore only such mining lease to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but in the form of the Schedule hereto.

- (2) Subject to the performance by the Joint Venturers of their 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 30 years commencing from the date of approval of the proposals made pursuant to Clause 7. The provisions of section 78 of the Mining Act shall not apply to the mining lease. Term
- (3) The State shall ensure that during the currency of this Agreement and subject to compliance with their obligations hereunder the Joint Venturers shall not be required to comply with the expenditure conditions imposed by or under the Mining Act in regard to the mining lease. Exemption from expenditure conditions
- (4) The Joint Venturers 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 operations of the Joint Venturers under this Agreement. Access over mining lease
- (5) Notwithstanding the provisions of this Clause and the Mining Act the Joint Venturers 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) subject to them first obtaining the consent of Hamersley thereto surrender to the State all or any portion or portions of the mining lease. Surrender of part of mining lease
- (6) Notwithstanding anything contained or implied in the Mining Act, this Agreement, the mining lease or any agreement entered into pursuant to subclause (7) the State may grant to or register in favour of persons other than the Joint Venturers leases and other mining tenements in respect of the area (or any part or parts thereof) subject to the mining lease for minerals other than iron ore unless the Minister for Minerals and Energy reasonably determines that such grant or registration is likely unduly to prejudice or interfere with the operations of the Joint Venturers hereunder or, having regard to any relevant provisions of the agreement referred to in paragraph (b) subclause (3) of Clause 40, any likely future mining by Hamersley assuming the taking by the Joint Venturers or Hamersley as the case may be of reasonable steps to avoid the prejudice or interference. The Minister before making any determination under this subclause shall consult with the Joint Venturers and Hamersley as the case may require in respect thereto. Upon the grant of any Other mining tenements

such lease or other mining tenement the land contained therein shall be deemed to be automatically excised from the mining lease (with abatement of future rent in respect to the area excised but without any abatement of rent already paid or any rent which has become due and has been paid in advance).

Mining by
Hamersley

(7) (a) During the term of the mining lease the Joint Venturers may enter into agreements with Hamersley for the mining by Hamersley or the supply to Hamersley by the Joint Venturers of iron ore from the mining lease PROVIDED THAT royalty on any iron ore produced by such mining or so supplied shall be computed and payable as if such iron ore were produced under a mineral lease granted pursuant to the agreement (as amended from time to time) ratified by the Iron Ore (Hamersley Range) Agreement Act 1963.

(b) The Joint Venturers shall forthwith after entering into any agreement of the kind referred to in paragraph (a) of this subclause notify the Minister thereof and provide to the Minister full details of such agreement and, if required by the Minister, a copy thereof.

Stone, sand, clay
and gravel

(8) The Joint Venturers in accordance with approved proposals may for the construction of works (and the maintenance thereof) for the purposes of this Agreement and without payment of royalty, obtain stone sand clay or gravel from the mining lease.

Power

16. (1) Subject to subclause (2), the Joint Venturers shall obtain their power requirements for their operations on the mining lease (other than operations connected with the constructional phase of the mine), the housing of the Joint Venturers' workforce and the Joint Venturers' other activities in Paraburdoo, Dampier or elsewhere in the Pilbara region from Hamersley on conditions to be agreed between the Joint Venturers and Hamersley.

(2) Where or to the extent to which from time to time power for any of the purposes referred to in subclause (1) is or becomes available from the State Energy Commission the Joint Venturers shall enter into negotiations with the State Energy Commission with a view to obtaining their power requirements for such purpose or purposes from the State Energy Commission on terms and conditions to be agreed.

Water- mining
lease

17. (1) The State and the Joint Venturers shall agree upon the amounts (and qualities thereof) of the Joint Venturers' annual and maximum daily water requirements for their purposes hereunder at the mining lease (which amounts or such other amounts as shall from time to time be agreed between the parties to be reasonable are hereinafter called "the mining water requirements").

(2) The Joint Venturers shall confer with Hamersley with a view to entering into an agreement (in a form acceptable to the Minister) for the supply by Hamersley to the Joint Venturers of the mining water requirements. If the Joint Venturers do not enter into an agreement with Hamersley pursuant to this subclause the provisions of subclauses (3) to (16) shall apply to the supply of the mining water requirements.

- (3) The Joint Venturers shall at their cost and in collaboration with the State search for underground water within the mining lease. Where appropriate the Joint Venturers shall employ and retain experienced groundwater consultants. The Joint Venturers shall furnish to the Minister details of the results of their investigations and copies of the reports of such consultants as they become available. Search in mining lease
- (4) If in the opinion of the Minister, the details and reports of the consultants pursuant to subclause (3) indicate that any source of underground water in the mining lease is likely to be inadequate or unsuitable to supply the mining water requirements the State and the Joint Venturers shall (having due regard to the then present or likely future requirements of third parties for water) collaborate and agree on a programme which shall be carried out by the State at the cost of the Joint Venturers to search for water inside and outside the mining lease. Search outside mining lease
- (5) If the investigations referred to in subclauses (3) and (4) prove to the satisfaction of the Minister the availability of any suitable underground water source in or near the mining lease which can continue to be drawn on by the Joint Venturers without seriously affecting the water level in that water source beneath the mining lease or adjacent areas or the availability of water in the adjacent areas the State shall grant to the Joint Venturers a licence to develop and draw from that source at the Joint Venturers' cost but without fee, the mining water requirements 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 in the opinion of the Minister prove hydrologically inadequate to meet the mining water requirements, the State may on at least 6 months prior notice to the Joint Venturers (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 that source is hydrologically capable of meeting as aforesaid. Grant of licence
- (6) In the event of water supplies from available underground sources proving insufficient to meet the mining water requirements the Joint Venturers shall notwithstanding the provisions of subclause (5) collaborate with the State in an investigation of surface water, water catchments and storage dams. The Joint Venturers shall if they propose to utilise such surface water, water catchments and storage dams pay to the State a sum or sums to be agreed towards the cost of such investigation. Investigation of surface water
- (7) Should the State at any time pursuant to the proviso to subclause (5) limit the amount of water to be taken from any underground water source or if otherwise the mining water requirements cannot be met from any water source on a continuous basis the State shall with all reasonable expedition and in conjunction with and upon the request of the Joint Venturers search for new or additional water sources with a view to restoring or ensuring the full quantity of the mining water requirements. The Joint Venturers shall pay to the State a fair and reasonable proportion of the cost of investigating and developing such new and additional water sources as agreed between the Joint Venturers and the State. Alternative water source

Development of
water sources

- (8) The Joint Venturers shall provide at their cost or with finance arranged by them and construct to standards and in accordance with designs approved by the State and operate and maintain in accordance with the relevant approved proposals all necessary dams, bores, valves, pipelines, meters, tanks, equipment and appurtenances necessary to draw transport use and dispose of water obtained by the Joint Venturers pursuant to this Clause.

State's
acquisition of
water facilities

- (9) If during the currency of this Agreement the Minister is of the opinion that it would be desirable for water conservation purposes or water management purposes that sources of water utilised by the Joint Venturers be controlled and operated by the State as part of a regional water supply scheme, the Minister may, on giving 6 months prior notice to the Joint Venturers of his intention to do so, acquire the Joint Venturers' water supply facilities for a monetary consideration to be determined by the Minister. Immediately thereafter the State shall, subject only to the continued hydrological availability of water from such sources (as determined by the Minister) commence and thereafter continue to supply water of the relevant qualities up to the amount and at the rates required by the Joint Venturers being the amounts and rates to which the Joint Venturers were previously entitled and the proviso to subclause (5) and the provisions of subclause (6) shall in like manner apply to this subclause.

Enlarged water
capacity

- (10) The State, after first having due regard to the mining water requirements and to the hydrological adequacy of existing water sources, may in its discretion develop all or any of the surface and/or the underground water resources referred to in this Clause or construct any works in connection therewith to a greater capacity than that required to supply the mining water requirements but in that event the Joint Venturers shall pay to the State a share of the cost of the system as so enlarged as may be agreed between the State and the Joint Venturers to be fair in all the circumstances.

Third party use

- (11) The State may after first having due regard to the mining water requirements and to the hydrological adequacy of the applicable water source, upon not less than 3 months prior notice to the Joint Venturers specifying the identity of the third party including where applicable the State and the estimated maximum daily and total quantity of water to be drawn by that third party and the period over which such drawing is to occur, grant to a third party rights to draw water or itself draw water from that source PROVIDED HOWEVER that—

- (a) where the Joint Venturers have paid (in whole or in part) any moneys in respect of the investigation development and utilisation of that water source the State shall require as a condition of the grant that where the third party is or will be a substantial drawer of water from that water source within 5 years of the commencement date the third party (but not the State) shall reimburse to the Joint Venturers prior to the third party exercising its rights to draw water, such proportion of those moneys as the Minister determines is fair and reasonable; and

- (b) where the Joint Venturers draw water from that water source the State shall ensure that it is a condition of the grant to third parties that in the event that the capacity of that water source is reduced, such reduction shall be first applied to the third parties

and thereafter if further reduction is necessary the State's and the Joint Venturers' requirements shall be reduced in such proportion as may be agreed.

- (12) The Joint Venturers shall pay to the State for water supplied by the State pursuant to subclauses (6) and (9) a fair price to be agreed between the parties hereto having regard to the actual cost to the State of establishing operating and maintaining the supply and provision for replacement of the water supply facilities. Payment for water
- (13) The Joint Venturers shall to the extent that it is practical and economical design construct and operate all plant required under this Clause so as to ensure the most efficient use of the available water resources including if required by the Minister the use of brackish or saline water. Design of plant
- (14) The State shall ensure that no rights to mine minerals petroleum or other substances are granted over the area of any water source from which the Joint Venturers are drawing water or from time to time have the right to draw water hereunder unless the Minister reasonably determines that such grant is not likely to unduly prejudice or to interfere with the operations of the Joint Venturers hereunder and is not likely to render the water source incapable of supplying the mining water requirements on a continuous basis. State to restrict adverse grants
- (15) The Joint Venturers may supply water to third parties including the State at a charge to be approved by the Minister after consultation with the Joint Venturers. The Joint Venturers shall have all the powers and authorities with respect to such water as are determined by the Minister which may include all or any of the powers of a water board under the Water Boards Act 1904 and, with the consent of the Minister for Local Government, a local authority. Charges for supply of water to third parties
- (16) Any reference in the foregoing provisions of this Clause to a licence is a reference to a licence under the Rights in Water and Irrigation Act 1914 and the provisions of that Act relating to water rights and licences shall except where inconsistent with the provisions of this Agreement apply to any water source developed for the Joint Venturers' purposes under this Agreement. Rights in Water and Irrigation Act
18. (1) The supply of water for the Joint Venturers' operations hereunder (other than at the mining lease) and for the Joint Venturers' workforce shall where the same is available from the State or a State instrumentality be subject to the provisions of the Country Areas Water Supply Act 1947 or other relevant Act. Water—Housing and other purposes
- (2) Where or to the extent to which water for any of the purposes referred to in subclause (1) is not available from the State or a State instrumentality the Joint Venturers shall obtain their water requirements for such purposes from Hamersley on conditions to be agreed between the Joint Venturers and Hamersley.
19. (1) The Joint Venturers shall be responsible for the provision at no cost to the State in Paraburdoo of suitable accommodation for their employees and the dependants of their employees and, as necessary, for other persons (and dependants of those persons) connected directly with the Joint Venturers' activities under this Agreement. Township and housing

- (2) The Joint Venturers shall except as otherwise agreed by the Minister pay to the State or the appropriate authority (including Hamersley where it is acting as a supply authority) the capital cost of establishing and providing additional services and facilities and associated equipment including sewerage and water supply schemes, main drains, education, police and hospital services in Paraburdoo to the extent to which those additional works and services are made necessary by reason of the Joint Venturers' workforce residing therein or by reason of the Joint Venturers' activities under this Agreement or such proportion of any such cost as may be agreed by the Minister taking into account the permanent or temporary nature of the services or facilities. The additional services, works and associated equipment referred to in this subclause shall be provided by the State (or the State shall cause the same to be provided) to a standard normally adopted by the State in providing new services works and associated equipment in similar cases in comparable towns.
- (3) The Joint Venturers shall confer with the Minister and the relevant local authority with a view to assisting in the cost of providing appropriate community recreation, civic, social and commercial amenities required for the Joint Venturers' workforce hereunder.
- (4) The State shall, in accordance with the Joint Venturers' approved proposals cause to be made available lots of land in Paraburdoo for purchase by the Joint Venturers at prices to be fixed by the State (having regard to the price of similar lots then being made available by the State to others) which will include the cost to the State of developing and servicing such land including the provision of roads and adjacent local headworks in respect of water and sewerage.

Lands

20. The State shall in accordance with the Joint Venturers' approved proposals grant to the Joint Venturers, or arrange to have the appropriate authority or other interested instrumentality of the State grant, for such periods (not exceeding the term of the mining lease) and on such terms and conditions (including rental and renewal rights) as shall be reasonable having regard to the requirements of the Joint Venturers, leases and where applicable licences easements and rights of way for all or any of the purposes of the Joint Venturers' operations hereunder including any of the following namely—

private roads, water pipelines, pumping installations and reservoirs, airstrip, railways, conveyors, power transmission lines, plant site areas and industrial areas and borrow pits for stone sand clay and gravel.

Modification of
Land Act

21. For the purpose of this Agreement in respect of any land sold or leased to the Joint Venturers by the State the Land Act shall be deemed to be modified by—
- (a) the substitution for subsection (2) of section 45A of the following subsection—
- “(2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased.”;
- (b) the deletion of the proviso to section 116;
- (c) the deletion of section 135;

- (d) the deletion of section 143;
- (e) the inclusion of a power to grant occupancy rights over land on such terms and conditions as the Minister responsible for the administration of the Land Act may determine; and
- (f) the inclusion of a power to offer for sale or grant leases or licences for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, the terms and conditions and the forms referred to in the Land Act.

The provisions of this Clause 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.

22. Commencing on and from 10 March 1992 the Joint Venturers shall pay to the State during the currency of this Agreement in addition to the rentals payable in respect of leases granted under or pursuant to this Agreement a rental (which if the Joint Venturers so request shall be allocated in respect of such one or more of the leases granted to the Joint Venturers hereunder and remaining current) equal to 24.605 2 cents per tonne on all iron ore in respect of which royalty is payable under Clause 23 such additional rental to be paid—
- Additional rental
- (a) in respect of the period from and including 10 March 1992 to 31 March 1992, not later than 14 May 1992; and
 - (b) in respect of each successive period of three months after 31 March 1992, not later than one month and fourteen days after the expiration of each such period.

SO NEVERTHELESS that the additional rental to be paid under this Clause shall be not less than \$300 000 in respect of the year commencing 1 April 1992 and each year commencing 1 April thereafter and the Joint Venturers will within three (3) months after expiration of each such year pay to the State as further rental the difference between \$300 000 and the additional rental actually paid in respect of that year but any amount so paid in respect of any such year in excess of the rental payable for that year at the rate of 24.605 2 cents per tonne as aforesaid shall be offset by the Joint Venturers against any amount payable by them to the State above the minimum amounts payable to the State under this paragraph in respect of the two (2) years immediately following the year in respect of which the said minimum sum was paid.

23. (1) The Joint Venturers 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 iron ore on which royalty is paid by Hamersley pursuant to the proviso to paragraph (a) of subclause (7) of Clause 15) and on all other iron ore supplied to or sold or shipped by the Joint Venturers during the continuance of this Agreement as follows—
- Royalties
- (a) on direct shipping ore and on fine ore and fines where such fine ore or fines are not sold or shipped separately as such at the rate of 7.5% of the f.o.b. revenue (computed at the rate of exchange prevailing on date of receipt by the Joint Venturers of the purchase price in respect of ore shipped or sold hereunder) PROVIDED NEVERTHELESS that such royalty shall not be

less than 59.052 4 cents per tonne (subject to paragraph (f) of this subclause) in respect of ore the subject of any shipment or sale;

- (b) on fine ore sold or shipped separately as such at the rate of 3.75% of the f.o.b. revenue (computed as aforesaid) PROVIDED NEVERTHELESS that such royalty shall not be less than 29.526 2 cents per tonne (subject to paragraph (g) of this subclause) in respect of ore the subject of any shipment or sale;
- (c) on fines sold or shipped separately as such at the rate of 14.763 1 cents per tonne (subject to the provisions of paragraph (h) of this subclause);
- (d) on all other iron ore shipped at the rate of 7.5% of the f.o.b. revenue (computed as aforesaid) without any minimum royalty;
- (e) on all other iron ore at a rate per tonne equal to 7.5% of the average f.o.b. revenue per tonne in respect of ore to which paragraph (a) of this subclause relates for the immediately preceding quarter or, if no such average f.o.b. revenue can be ascertained, 7.5% of such amount as the Joint Venturers and the State agree or, failing agreement, as is determined by the Minister;
- (f) if the amount ascertained by multiplying the total tonnage of direct shipping ore shipped or sold (and liable to royalty under paragraph (a) of this subclause) in any financial year by 59.052 4 cents is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that paragraph then that proviso shall not apply in respect of direct shipping ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made accordingly;
- (g) if the amount ascertained by multiplying the total tonnage of fine ore shipped or sold separately as such (and liable to royalty under paragraph (b) of this subclause) in any financial year by 29.526 2 cents is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that paragraph then that proviso shall not apply in respect of fine ore shipped or sold separately as such in that year and at the expiration of that year any necessary adjustments shall be made accordingly;
- (h) the royalty at the rate of 14.763 1 cents per tonne referred to in paragraph (c) of this subclause shall be adjusted up or down (as the case may be) as at the first day of January 1969 and as at the beginning of every fifth year thereafter proportionately to the weighted average of sales (invoice prices) of foundry pig iron sold in Adelaide by The Broken Hill Proprietary Company Limited or any subsidiary thereof from time to time during the calendar year immediately preceding the date at which the adjustment is required to be made as compared with \$44.33 PROVIDED THAT where information required to determine any price or other amount for the purposes of this paragraph is not available such price or other amount shall be agreed between the Joint Venturers and the State or, failing agreement, determined by the Minister.

- (2) The Joint Venturers shall within 14 days after the quarter days the last days of March June September and December in each year furnish to the Minister for Minerals and Energy a return showing the quantity of all iron ore mined from the mining lease (whether mined by the Joint Venturers or by any other party) together with details of the iron content thereof and the anticipated or actual use of the ore (and the user or users thereof) and the anticipated or actual categorisation thereof for royalty purposes and the specific tonnages involved and details (including quantity category and grade) of all iron ore the subject of royalty hereunder during the quarter immediately preceding the due date of the return and shall not later than two months after such due date pay to the Minister for Minerals and Energy the royalty payable in respect of all iron ore the subject of royalty hereunder PROVIDED THAT in respect of iron ore shipped or sold the Joint Venturers shall pay to the Minister for Minerals and Energy 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 Joint Venturers to the purchaser or consignee (which invoices the Joint Venturers shall render without delay simultaneously furnishing copies thereof to the Minister for Minerals and Energy) of such iron ore and shall from time to time in the next following appropriate return and payment make (by the return and by cash) all such necessary adjustments (and give to the Minister for Minerals and Energy full details thereof) when the f.o.b. revenue realised in respect of the shipments shall have been ascertained. Payment of royalties
- (3) The Joint Venturers shall permit the Minister for Minerals and Energy or his nominee to inspect at all reasonable times the books of account and records of the Joint Venturers relative to any supply shipment or sale of iron ore hereunder (including iron ore mined by or supplied to Hamersley) and including sale contracts and to take copies or extracts therefrom and for the purposes of determining the f.o.b. revenue payable in respect of any shipment of ore hereunder the Joint Venturers will take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the reasonable satisfaction of the Minister for Minerals and Energy as to all relevant matters including weights and analyses and will give due regard to any objection or representation made by the Minister for Minerals and Energy or his nominee as to any matter and/or any particular weight or assay of ore which may affect the amount of royalty payable hereunder. Inspection
- (4) Returns pursuant to this Clause may, with the prior consent of the Minister, be lodged by the Joint Venturers individually. Lodgement of returns
24. The Joint Venturers shall ensure that unless with the prior written approval of the Minister to do otherwise all iron ore from the mining lease shipped by the Joint Venturers pursuant to this Agreement will be off-loaded at a place outside the Commonwealth and if they fail so to ensure the Joint Venturers will subject to the provisions of this Clause be in default hereunder. Where any such shipment is off-loaded within the Commonwealth without such prior written approval the Joint Venturers shall forthwith on becoming aware thereof give to the State notice of the fact and pay to the State in respect of the iron ore the subject of the shipment such further and additional rental calculated at a rate not exceeding 98.420 7 cents per tonne of the iron ore as the Minister shall demand without prejudice however to any other rights and remedies of the State hereunder arising from the breach by the Joint Venturers of the Export to places outside the Commonwealth

provisions hereof. If iron ore is shipped in a vessel not owned by the Joint Venturers or an associated company or any other company in which the Joint Venturers have a controlling interest and such ore is off-loaded in the Commonwealth the Joint Venturers will not be or be deemed to be in default hereunder if they take appropriate action to prevent a recurrence of such an off-loading PROVIDED FURTHER that the foregoing provisions of this paragraph shall not apply in any case (including any unforeseeable diversion of the vessel for necessary repairs or arising from force majeure or otherwise) where the Joint Venturers could not reasonably have been expected to take steps to prevent that particular off-loading.

25. Throughout the continuance of this Agreement the Joint Venturers shall—

Operation of conveyors

(a) operate any conveyor constructed by them in a safe and proper manner;

Operation of any railway

(b) in the event that the Joint Venturers construct any railway, operate that railway in a safe and proper manner and where and to the extent that they can do so without unduly prejudicing or interfering with their operations hereunder allow crossing places for roads stock and other railways and also transport the passengers and carry the freight of the State and of third parties on the railway subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made altered and repealed as provided in Clause 28 and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost of the railway to the Joint Venturers) PROVIDED THAT in relation to their use of the railway the Joint Venturers shall not be deemed to be a common carrier at common law or otherwise;

Maintenance

(c) at all times keep and maintain in good repair and working order and condition and where necessary replace all such works installations plant machinery and equipment and any railway, roads (other than the public roads referred to in subclause (2) of Clause 13) and water and power supplies for the time being the subject of this Agreement;

Price for ore

(d) use their best endeavours to obtain for all iron ore mined from the mining lease the best price possible having regard to the specific market and the market conditions from time to time prevailing and will not sell any direct shipping ore as fine ore or fines.

Joint Venturers' wharf and facilities

26. The Joint Venturers and the State recognise with respect to any wharf, port facilities and services proposed to be established for the purposes of this Agreement that it may be advantageous for the State to provide all or any of such works or services and in such case the Joint Venturers and the State shall together with other users and potential users of that wharf and/or those facilities or services confer as to the manner in and the conditions upon which the State should provide such works facilities or services to the mutual advantage of all. The Joint Venturers shall pay to the State a sum or sums to be agreed (not exceeding the amount that would have been payable had the Joint Venturers carried out the said works) towards the cost of the said works facilities or services provided by the State.

Use of wharf and facilities

27. The Joint Venturers shall subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made and altered as provided in Clause 28 and subject thereto, or if

no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Joint Venturers) allow the State and third parties to use any wharf and port installations wharf machinery and equipment and wharf and port services and port facilities constructed or provided by them PROVIDED THAT such use shall not unduly prejudice or interfere with the Joint Venturers' operations hereunder and that such use shall be subject to the prior approval of the Joint Venturers.

28. The Governor in Executive Council may upon recommendation by the Joint Venturers make alter and repeal by-laws for the purpose of enabling the Joint Venturers to fulfil the obligations under paragraph (b) of Clause 25 and under Clause 27 upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Joint Venturers) as set out in such by-laws consistent with the provisions hereof. Should the State at any time consider that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Joint Venturers shall recommend such alteration or repeal thereof as the State may reasonably require or (in the event of there being any dispute as to the reasonableness of such requirement) then as may be decided by arbitration hereunder. By-laws
29. If at any time the State finds it necessary to request the Joint Venturers to alter the situation of any of the installations or other works erected constructed or provided hereunder and gives to the Joint Venturers notice of the request the Joint Venturers shall within a reasonable time after receipt of the notice but at the expense in all things (including increased running costs) of the State (unless the alteration is rendered necessary by reason of a breach by the Joint Venturers of any of their obligations hereunder) alter the situation thereof accordingly. Alteration of works
30. The State shall ensure after consultation with the relevant local authority that the mining lease and any lands the subject of any Crown Grant lease licence or easement granted to the Joint Venturers under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Joint Venturers 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 operations are contrary to any zoning by-law regulation or order. Zoning
31. 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 (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection with that residence and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the mining of iron ore) shall for rating purposes under the Local Government Act 1960, be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate PROVIDED THAT nothing in this Clause shall prevent the Joint Venturers making the election provided for by section 533B of the Local Government Act 1960. Rating
32. 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 No discriminatory rates

or other assets products materials or services used or produced by or through the operations of the Joint Venturers in the conduct of their 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 Joint Venturers of full enjoyment of the rights granted and intended to be granted under this Agreement.

Resumption for
the purposes of
this Agreement

33. The State may as and for a public work under the Public Works Act 1902, resume any land required for the purposes of this Agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of that land to the Joint Venturers and the provisions of subsections (2) to (7) inclusive of section 17 and 17A of that Act shall not apply to or in respect of that land or the resumption thereof. The Joint Venturers shall pay to the State on demand the costs of and incidental to any land resumed at the request of and on behalf of the Joint Venturers.

No resumption

34. Subject to the performance by the Joint Venturers of their obligations under this Agreement the State shall not during the currency hereof without the consent of the Joint Venturers 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 Joint Venturers 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 Joint Venturers 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 Joint Venturers' operations hereunder.

Assignment

35. (1) Subject to the provisions of this Clause the Joint Venturers may at any time assign mortgage charge sublet or dispose of to an associated company as of right, or to any other company or persons with the consent of the Minister the whole or any part of the rights of the Joint Venturers hereunder (including their rights to or as the holder of the mining lease or any other lease licence easement grant or other title) and of the obligations of the Joint Venturers 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 Joint Venturers 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 Joint Venturers 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 their part contained herein and in the mining lease or any other lease licence easement grant or other title the subject of an assignment mortgage subletting or disposition under subclause (1) PROVIDED THAT the Minister may agree to release the Joint Venturers from such liability where he considers such release will not be contrary to the interests of the State.

(3) Notwithstanding the provisions of the Mining Act, the Transfer of Land Act 1893 and the land Act, 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 grant or other title granted hereunder or pursuant hereto by the Joint Venturers or any assignee sublessee or disponee 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.

36. (1) The parties hereto 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 grant or other title granted hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement. Variation

(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.

37. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations hereunder and to the temporary suspension of continuing obligations hereunder 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 or factors due to overall world economic conditions 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. Force majeure

Power to extend periods 38. Notwithstanding any provision of this Agreement the Minister may at the request of the Joint Venturers 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 hereunder 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.

Determination of Agreement 39. (1) In any of the following events namely if—

- (a) (i) the Joint Venturers make default which the State considers material in the due performance or observance of any of the covenants or obligations to the State herein or in the mining lease or any other lease licence easement grant or other title or document granted or assigned under this Agreement on their part to be performed or observed; or
- (ii) the Joint Venturers abandon or repudiate this Agreement or their operations under this Agreement

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

- (b) the Joint Venturers or either of them go 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 that Joint Venturer is assigned to the other Joint Venturer or to an assignee approved by the Minister under Clause 35

this Agreement shall cease and determine—

- (I) where paragraph (a) of this subclause is applicable, on the expiration of 180 days after the notice therein referred to or the expiration of the period referred to in subclause (3) as the case may be;

- (II) where paragraph (b) of this subclause is applicable, on the expiration of 3 months from the date of the liquidation

without further notice or action by the State.

- (2) The notice to be given by the State in terms of paragraph (a) of subclause (1) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and shall be given to the Joint Venturers and all such assignees mortgagees chargees and disponees for the time being of the Joint Venturers' said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 35 whose name and address for service of notice has previously been notified to the State by the Joint Venturers or any such assignee mortgagee chargee or disponee.

- (3) (a) If the Joint Venturers contest the alleged default abandonment or repudiation referred to in paragraphs (a) and (b) of subclause (1) the Joint Venturers 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 Joint Venturers, the Joint Venturers 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 Joint Venturers were 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.

40. (1) On the cessation or determination of this Agreement—

Effect of
cessation or
determination of
Agreement

- (a) except as otherwise agreed by the Minister the rights of the Joint Venturers to in or under this Agreement and the rights of the Joint Venturers or of any assignee of the Joint Venturers or any mortgagee to in or under the mining lease and any other lease licence easement grant or other title or right granted hereunder or pursuant hereto (but excluding townsite lots which have been granted to or acquired by the Joint Venturers and which are no longer owned by them) shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach of default under this Agreement or in respect of any indemnity given hereunder;
- (b) the Joint Venturers 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 of them the State and the Joint Venturers shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.
- (2) Upon the cessation or determination of this Agreement except as otherwise determined by the Minister all buildings erections and other improvements erected on any land then occupied by the Joint Venturers under the mining lease or any other lease, licence, easement, grant or other title made hereunder for the purpose hereof shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Joint Venturers or any other party and freed and discharged from all mortgages and other encumbrances and the Joint Venturers 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 Joint Venturers immediately prior to the cessation or determination of this Agreement or subsequently thereto desiring to remove any of their fixed or moveable plant and equipment or any part thereof from any part of the land occupied by them at the date of such cessation or determination, but without limiting the rights of the Joint Venturers to remove any such plant or equipment before the cessation or determination of this Agreement, they shall give to the State notice of such desire and thereby grant to the State the right or option exercisable within 3 months thereafter to purchase in situ such fixed or movable plant and equipment at a fair valuation to be agreed between the State and the Joint Venturers or failing agreement determined by arbitration hereunder.

- (b) The provisions of this subclause shall not apply to plant and equipment which at the date of cessation or determination of this Agreement are on any lands (within the mining lease or any other lease, licence, easement, grant or other title made hereunder) which following the cessation or determination of this Agreement are to be included by the State in Mineral Lease 4SA or otherwise leased or granted by the State to Hamersley pursuant to the provisions of the Agreement dated 30 July 1963 approved by the Iron Ore (Hamersley Range) Agreement Act 1963 and any amendments thereto from time to time.

Environmental
protection

41. Nothing in this Agreement shall be construed to exempt the Joint Venturers from compliance with any requirement in connection with the protection of the environment arising out of or incidental to their activities hereunder that may be made by the State or by any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act from time to time in force.

Indemnity

42. The Joint Venturers 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 Joint Venturers pursuant to this Agreement or relating to their operations hereunder or arising out of or in connection with the construction maintenance or use by the Joint Venturers or their servants agents contractors or assignees of the Joint Venturers' 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, its servants, agents, or contractors are negligent in carrying out work for the Joint Venturers pursuant to this Agreement.

Commonwealth
licences and
consents

43. (1) The Joint Venturers shall from time to time make application to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to them of any licence or consent under the laws of the Commonwealth necessary to enable or permit the Joint Venturers to enter into this Agreement and to perform any of their obligations hereunder.
- (2) On request by the Joint Venturers the State shall make representations to the Commonwealth or to the Commonwealth constituted agency authority or instrumentality concerned for the grant to the Joint Venturers of any licence or consent mentioned in subclause (1) or for the grant to the Joint Venturers of a licence or licences under Commonwealth law for the export of iron ore in such quantities and at such rate or rates as shall be reasonable having regard to the terms of this Agreement and the capabilities of the Joint Venturers and in a manner or terms not less favourable to the Joint Venturers (except as to rate or quantity) than the State has given or intends to give in relation to such licence or licences to any other exporter of iron ore from the said State.
- (3) The Joint Venturers shall be in default hereunder if at any time they fail to obtain any licence or licences under Commonwealth law for the export of iron ore as may be necessary for the purpose of enabling the Joint Venturers to fulfil their obligations hereunder or if any such licence is withdrawn or suspended by the Commonwealth and such failure to obtain or such withdrawal or suspension (as the case may be) is due to some act or default by the Joint Venturers or

to the Joint Venturers not being bona fide in their application to the Commonwealth or otherwise having failed to use their best endeavours to have the licence granted or restored (as the case may be) but save as aforesaid if at any time any necessary licence is not granted or any licence granted to the Joint Venturers shall be withdrawn or suspended by the Commonwealth and so that as a result thereof the Joint Venturers are not for the time being permitted to export at least the tonnage they have undertaken with the State they will export then the Joint Venturers shall not be obliged to export that tonnage during the period such licence is not granted or is withdrawn or suspended. The State shall at all times be entitled to apply on behalf of the Joint Venturers (and is hereby authorised by the Joint Venturers so to do) for any licence or licences under Commonwealth law for the export of iron ore as may from time to time be necessary for the purposes of this Agreement.

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

45. (1) The State shall exempt from any stamp duty which but for the operation of this Clause would or might be assessed and chargeable on— Stamp duty exemption

(a) this Agreement;

(b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Joint Venturers or any of them or any permitted assignee any tenement lease licence easement or other right or rights; and

(c) any assignment sublease or disposition (other than by way of mortgage or charge) made in conformity with the provisions of subclause (1) of Clause 35

PROVIDED THAT this subclause shall not apply to any instrument or other document executed or made more than 7 years from the date hereof.

(2) If prior to the date on which the Bill referred to in Clause 3 to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document to the person who paid the same.

46. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights duties or liabilities of a party hereunder or as to any matter to be agreed upon between the Joint Venturers and the State under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to the arbitration of two arbitrators one to be appointed by each party the arbitrators to appoint their umpire before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the Commercial Arbitration

Arbitration Act 1985 and notwithstanding section 20(1) of that Act each party may be represented by a duly qualified legal practitioner or other representative.

- (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 arbitrators or umpire (as the case may be) of any submission to arbitration hereunder are hereby empowered upon the application of either of the parties 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 hereunder and an award may in the name of the Minister grant any further extension or variation for that purpose.

Consultation

47. The Joint Venturers shall during the currency of this Agreement consult with and keep the State fully informed on a confidential basis concerning any action that the Joint Venturers 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.

Notices

48. 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 Civil Service of the said State acting by the direction of the Minister and forwarded by prepaid post or handed to the Joint Venturers at their addresses in the said State hereinbefore set forth or other address or addresses in the said State nominated by the Joint Venturers to the Minister from time to time for the purpose of this Clause and by the Joint Venturers if signed on their behalf by any person or persons authorised by the Joint Venturers or by their 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.

Expenditure indemnity

49. Hamersley hereby agrees to indemnify the State (which expression shall include the State's instrumentalities and authorities) and hold it harmless from and against all losses costs and expenses incurred or suffered by the State in carrying out its obligations under this Agreement or any approved proposal where those losses costs and expenses arise as a direct result of default by the Joint Venturers in the performance of their obligations under this Agreement (other than the obligations under Clause 23).

Term

50. Subject to the provisions of Clause 39, this Agreement shall expire on the date that is 30 years from the date of approval of the proposals made pursuant to Clause 7.

Applicable law

51. 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 (CHANNAR JOINT VENTURE) AGREEMENT ACT 1987

MINING LEASE

MINING LEASE No.

The Minister for Minerals and Energy 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 thirty years commencing on the date set out in the Fifth Schedule to this lease (subject to sooner determination of the said term upon cessation or determination of the Agreement) upon and subject to such of the provisions of the Mining Act 1978 except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the terms covenants and conditions set out in the Agreement and to the covenants and conditions herein contained or implied and any further conditions or stipulations set out in the Sixth Schedule to this lease the Lessee paying therefor the rents and royalties as provided in the Agreement PROVIDED ALWAYS that this lease and any renewal thereof shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this Lease—

- "Lessee" includes the respective successors and permitted assigns of each Lessee.
- 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

CMIEC (CHANNAR) PTY. LTD. a company incorporated in Western Australia and having its registered office at 140 St George's Terrace, Perth as to 40 (40/100ths) shares and CHANNAR MINING PTY. LIMITED a company incorporated in Western Australia and having its registered office at 191 St George's Terrace, Perth as to 60 (60/100th) shares.

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 BRIAN
THOMAS BURKE, M.L.A.
in the presence of:

BRIAN BURKE

D. PARKER
MINISTER FOR MINERALS AND ENERGY

THE COMMON SEAL of
CMIEC (CHANNAR) PTY. LTD.
was hereunto affixed by
authority of the Directors
in the presence of:

(C.S.)

Director ZHENG SHIQUAN

Director YAN DESHUN

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

(C.S.)

Director M. A. O'LEARY

Director P. KNOWLES

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

(C.S.)

Director M. A. O'LEARY

Director C. J. S. RENWICK