

Western Australia

**Iron Ore Agreements Legislation (Amendment,  
Termination and Repeals) Act 2011**

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As at 14 Dec 2011

No. 62 of 2011

Extract from [www.slp.wa.gov.au](http://www.slp.wa.gov.au), see that website for further information



# Iron Ore Agreements Legislation (Amendment, Termination and Repeals) Act 2011

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## Iron Ore Agreements Legislation (Amendment, Termination and Repeals) Act 2011

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No. 62 of 2011

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An Act —

- to amend these Acts —
  - the *Iron Ore (Mount Newman) Agreement Act 1964*;
  - the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*;
  - the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*;
  - the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*;
  - the *Iron Ore (Marillana Creek) Agreement Act 1991*;

and

- to ratify an agreement between the State and BHP Billiton Direct Reduced Iron Pty. Ltd. and others that provides for the termination of an agreement made on 16 October 1995 and subsequently varied by an agreement made on 11 April 2000, between the State and BHP Billiton Direct Reduced Iron Pty. Ltd. (under its former name, BHP Direct Reduced Iron Pty. Ltd.);

**and**

- **to repeal these Acts —**
  - ***the Iron Ore Beneficiation (BHP) Agreement Act 1996;***
  - ***the Iron Ore - Direct Reduced Iron (BHP) Agreement Act 1996;***
  - ***the Iron Ore Processing (BHP Minerals) Agreement Act 1994.***

[Assented to 14 December 2011]

The Parliament of Western Australia enacts as follows:



## Part 1 — Preliminary

### 1. Short title

This is the *Iron Ore Agreements Legislation (Amendment, Termination and Repeals) Act 2011*.

### 2. Commencement

This Act comes into operation as follows —

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

**Part 2 — *Iron Ore (Mount Newman) Agreement  
Act 1964* amended**

**3. Act amended**

This Part amends the *Iron Ore (Mount Newman) Agreement Act 1964*.

**4. Section 2 amended**

- (1) In section 2 insert in alphabetical order:

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

- (2) In section 2 in the definition of *the Agreement* delete “Part 8 and the Sixth Variation Agreement;” and insert:

Part 8, the Sixth Variation Agreement and the Seventh Variation Agreement;

**5. Section 4D inserted**

After section 4C insert:

**4D. Seventh Variation Agreement**

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

**6. Eighth Schedule inserted**

After the Seventh Schedule insert:

**Eighth Schedule — Seventh Variation Agreement**

[s. 2]

**2011**

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

**AND**

**BHP BILLITON MINERALS PTY. LTD.**

**ACN 008 694 782**

**MITSUI-ITOCHU IRON PTY. LTD.**

**ACN 008 702 761**

**ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.**

**ACN 009 256 259**

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**IRON ORE (MOUNT NEWMAN) AGREEMENT 1964**

**RATIFIED VARIATION AGREEMENT**

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[Solicitor's details]

**THIS AGREEMENT** is made this 7<sup>th</sup> day of November 2011

**BETWEEN**

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

**AND**

**BHP BILLITON MINERALS PTY. LTD.** ACN 008 694 782 of Level 17, St Georges Square, 225 St Georges Terrace, Perth, Western Australia, **MITSUI-ITOCHU IRON PTY. LTD.** ACN 008 702 761 of Level 16, Exchange Plaza, 2 The Esplanade, Perth, Western Australia and **ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.** ACN 009 256 259 of Level 22, 221 St Georges Terrace, Perth, Western Australia (**Joint Venturers**).

**RECITALS:**

- A. The State and the Joint Venturers are now the parties to the agreement dated 26 August 1964, approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B. The State and the Joint Venturers wish to vary the Principal Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

**1. Interpretation**

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

**2. Ratification and Operation**

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

**3. Variation of Principal Agreement**

The Principal Agreement is varied as follows:

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

"Eligible Existing Tenure" means:

  - (a)
    - (i) a miscellaneous licence or general purpose lease granted to the Company under the Mining Act 1978; or
    - (ii) a lease or easement granted to the Company under the LAA,  
and not clearly, to the satisfaction of the Minister, granted under or pursuant to or held pursuant to this Agreement; or
  - (b) an application by the Company for the grant to it of a tenement referred to in paragraph (a)(i) (which application

has not clearly, to the satisfaction of the Minister, been made under or pursuant to this Agreement) and as the context requires the tenement granted pursuant to such an application,

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

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

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

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

"Special Advance Tenure" means:

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

and as the context requires such tenure if granted;

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

**"Community development plan**

7D. (1) In this Clause, the term "community and social benefits" includes:

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

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

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

**Local participation plan**

- 7E. (1) In this Clause, the term "local industry participation benefits" means:
- (a) the use and training of labour available within the said State;
  - (b) the use of the services of engineers, surveyors, architects and other professional consultants, experts, specialists, project



managers and contractors available within the said State; and

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

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

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

- (4) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.
- (5) At least 6 months before the anticipated submission of proposals relating to a proposed development pursuant to any of Clauses 7A, 9A or 9E, the Company must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this Clause in relation to the proposed development. This obligation operates in relation to all proposals submitted on or after the date that is 7 months after the date when a plan is first provided under this Clause.
- (6) During the currency of this Agreement the Company shall implement the plan provided under this Clause.

(7) The Company shall:

- (a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this Clause; and
- (b) use reasonable endeavours to ensure that the third party complies with those provisions.";

(3) in clause 8:

- (a) by inserting after paragraph (b)(ii) of subclause (1) the following new paragraph:

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

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

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

- (2a) (a) The Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Eligible Existing Tenure becoming held pursuant to this Agreement on such conditions as the Minister sees fit (including, without limitation and notwithstanding the Mining Act 1978 and

the LAA, as to the surrender of land, the submission of detailed proposals and the variation of the terms and conditions of the Eligible Existing Tenure (including for the Eligible Existing Tenure to be held pursuant to this Agreement and for the more efficient use of the Relevant Land)) and the Minister may from time to time vary such conditions in order to extend any specified time for the doing of any thing or otherwise with the agreement of the Company.

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

such implementation is consistent with the then terms and conditions of the Eligible Existing Tenure pending the satisfaction of any conditions relating to the variation of the terms or conditions of the Eligible Existing Tenure. Where this paragraph (iii) applies, prior to any approval of proposals and satisfaction of other conditions, the relevant tenure will be treated for (but only for) the purposes of clause 9C(2)(b)(iv) as tenure held pursuant to this Agreement.

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

- (2b) Without limiting clause 8(1)(c), the Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Special Advance Tenure being granted to the Company pursuant to this Agreement if:
- (a) the Company proposes to submit detailed proposals under this Agreement (other than under clause 9E) to construct works installations or facilities on the Relevant Land and the Company's request is so far as is practicable made, unless the Minister approves otherwise, no less than 6 months before the submission of those detailed proposals; and
  - (b) the Minister is satisfied that it is necessary and appropriate that Special Advance Tenure, rather than tenure granted under or pursuant to the other provisions of this Agreement, be used for the purposes of the proposed works installations or facilities on the Relevant Land,

and if the Minister does so approve:

- (c) notwithstanding the Mining Act 1978 or the LAA, the appropriate authority or instrumentality of the State shall obtain the consent of the Minister to the form and substance of the Special Advance Tenure prior to its grant (which for the avoidance of doubt neither the State nor the Minister is obliged to cause) to the Company; and
- (d) if the Company does not submit detailed proposals relating to construction of the relevant works installations or facilities on the Relevant Land within 24 months after the date of the Minister's approval or such later time subsequently allowed by the Minister, or if submitted the Minister does not approve such detailed proposals, the Special Advance Tenure (if then granted) shall be surrendered at the request of the Minister.

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

- (c) in subclause (3), by deleting "subclause (2)" and substituting "subclauses (2), (2a) and (2b)";
  - (d) in subclause (3B), by deleting "subclause (1)" and inserting "subclauses (1), (2a) and (2b)";
- (4) in clause 9(2) by:
- (a) in paragraph (a), deleting "allow crossing places for roads stock and other railways and"; and

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

**"Crossings over Railway**

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

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

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

- (c) in paragraph (j), deleting subparagraphs (ii) and (ia) and substituting the following paragraph:

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

**s. 6**

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



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

"(l) The provisions of clause 9(2)(aa) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause."

**Iron Ore Agreements Legislation (Amendment, Termination and Repeals)  
Act 2011**

**Part 2** Iron Ore (Mount Newman) Agreement Act 1964 amended

**s. 6**

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**EXECUTED** as a deed.

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

[Signature]

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Signature of witness

Peter Goodall

---

Name of witness

[Signature]

---

**EXECUTED** by **BHP BILLITON** )  
**MINERALS PTY. LTD.** ACN 008 694 782 )  
in accordance with section 127(1) of )  
the Corporations Act )

[Signature]

---

Signature of Director

Uvashni Raman

---

Full Name

[Signature]

---

Signature of Secretary

Robin Lees

---

Full Name

**EXECUTED** by **MITSUI-ITOCHU IRON** )  
**PTY. LTD** ACN 008 702 761 )  
in accordance with section )  
127(1) of the Corporations Act )

\_\_\_\_\_  
[Signature]

Signature of Director

\_\_\_\_\_  
Ryuzo Nakamura

Full Name

\_\_\_\_\_  
[Signature]

Signature of Secretary

\_\_\_\_\_  
Jiahe He

Full Name

**SIGNED** by **Shuzaburo Tsuchihashi** )  
as attorney for **ITOCHU MINERALS &** )  
**ENERGY OF AUSTRALIA PTY. LTD.** )  
ACN 009 256 259 under power )  
of attorney dated 27 October 2011 )  
in the presence of: )

\_\_\_\_\_  
[Signature]

Signature of witness

\_\_\_\_\_  
Yasushi Fukumura

Name

\_\_\_\_\_  
[Signature]

Signature of Attorney

\_\_\_\_\_  
Shuzaburo Tsuchihashi

Name

**Part 3 — Iron Ore (Mount Goldsworthy) Agreement  
Act 1964 amended**

**7. Act amended**

This Part amends the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*.

**8. Section 3 amended**

- (1) At the end of section 3 insert:

*the fifth Variation Agreement* means the agreement a copy of which is set out in the Sixth Schedule.

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

Schedule;

**9. Section 5D inserted**

After section 5C insert:

**5D. Fifth Variation Agreement**

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

**10. Sixth Schedule inserted**

After the Fifth Schedule insert:

**Sixth Schedule — Fifth Variation Agreement**

[s. 3]

**2011**

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

**AND**

**BHP BILLITON MINERALS PTY. LTD.**

**ACN 008 694 782**

**MITSUI IRON ORE CORPORATION PTY. LTD.**

**ACN 050 157 456**

**ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.**

**ACN 009 256 259**

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**IRON ORE (MOUNT GOLDSWORTHY) AGREEMENT 1964  
RATIFIED VARIATION AGREEMENT**

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[Solicitor's details]

**THIS AGREEMENT** is made this 7<sup>th</sup> day of November 2011

**BETWEEN**

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

**AND**

**BHP BILLITON MINERALS PTY. LTD.** ACN 008 694 782 of Level 17, St Georges Square, 225 St Georges Terrace, Perth, Western Australia, **MITSUI IRON ORE CORPORATION PTY. LTD.** ACN 050 157 456 of Level 16, Exchange Plaza, 2 The Esplanade, Perth, Western Australia and **ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.** ACN 009 256 259 of Level 22, Forrest Centre, 221 St Georges Terrace, Perth, Western Australia (**Joint Venturers**).

**RECITALS**

- A.** The State and the Joint Venturers are now the parties to the agreement dated 15 October 1964 approved by and scheduled to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B.** The State and the Joint Venturers wish to vary the Principal Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

**1. Interpretation**

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

**2. Ratification and Operation**

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

**3. Variation of Principal Agreement**

The Principal Agreement is varied as follows:

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

"Eligible Existing Tenure" means:

- (a) (i) a miscellaneous licence or general purpose lease granted to the Joint Venturers under the Mining Act 1978; or

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(ii) a lease or easement granted to the Joint Venturers under the LAA,

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

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

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

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

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

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

"Special Advance Tenure" means:

(a) a miscellaneous licence or general purpose lease requested under clause 8(3b) to be granted to the Joint Venturers under the Mining Act 1978; or

(b) an easement or a lease requested under clause 8(3b) to be granted to the Joint Venturers under the LAA,

and as the context requires such tenure if granted;

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

**"Community development plan**

7D. (1) In this Clause, the term "community and social benefits" includes:

(a) assistance with skills development and training opportunities to promote work



- readiness and employment for persons living in the Pilbara region of the said State;
- (b) regional development activities in the Pilbara region of the said State, including partnerships and sponsorships;
  - (c) contribution to any community projects, town services or facilities; and
  - (d) a regionally based workforce.
- (2) The Joint Venturers acknowledge the need for community and social benefits flowing from this Agreement.
- (3) The Joint Venturers agree that:
- (a) they shall prepare a plan which describes the Joint Venturers' proposed strategies for achieving community and social benefits in connection with their activities under this Agreement; and
  - (b) the Joint Venturers shall, not later than 3 months after the second variation date, submit to the Minister the plan prepared under paragraph (a) and confer with the Minister in respect of the plan.
- (4) The Minister shall within 2 months after receipt of a plan submitted under subclause (3)(b), either notify the Joint Venturers that the Minister approves the plan as submitted or notify the Joint Venturers of changes which the Minister requires be made to the plan. If the Joint Venturers are unwilling to accept the changes which the Minister requires they shall notify the Minister to that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes required by the Minister.
- (5) The effect of an award made on an arbitration pursuant to subclause (4) shall be that the relevant

plan submitted by the Joint Venturers pursuant to subclause (3)(b) shall, with such changes required by the Minister under subclause (4) as the arbitrator determines to be reasonable (with or without modification by the arbitrator), be deemed to be the plan approved by the Minister under this clause.

- (6) At least 3 months before the anticipated submission of proposals relating to a proposed development pursuant to any of Clauses 7A, 9E, 11 or 12, the Joint Venturers must, unless the Minister otherwise requires, give to the Minister information about how the proposed development may affect the plan approved or deemed to be approved by the Minister under this Clause. This obligation operates in relation to all proposals submitted on or after the date that is 4 months after the date when a plan is first approved or deemed to be approved under this Clause.
- (7) The Joint Venturers shall at least annually report to the Minister about the Joint Venturers' implementation of the plan approved or deemed to be approved by the Minister under this Clause.
- (8) At the request of either of them made at any time and from time to time, the Minister and the Joint Venturers shall confer as to any amendments desired to any plan approved or deemed to be approved by the Minister under this Clause and may agree to amendment of the plan or adoption of a new plan. Any such amended plan or new plan will be deemed to be the plan approved by the Minister under this Clause in respect of the development to which it relates.
- (9) During the currency of this Agreement, the Joint Venturers shall implement the plan approved or deemed to be approved by the Minister under this Clause.

**Local participation plan**

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

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

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

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

- (4) At the request of either of them made at any time and from time to time, the Minister and the Joint Venturers shall confer as to any amendments desired to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.
- (5) At least 6 months before the anticipated submission of proposals relating to a proposed development pursuant to any of Clauses 7A, 9E, 11 or 12, the Joint

Venturers must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this Clause in relation to the proposed development. This obligation operates in relation to all proposals submitted on or after the date that is 7 months after the date when a plan is first provided under this Clause.

(6) During the currency of this Agreement the Joint Venturers shall implement the plan provided under this Clause.

(7) The Joint Venturers shall:

- (a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this Clause; and
- (b) use reasonable endeavours to ensure that the third party complies with those provisions.";

(3) by inserting after clause 8(2)(b)(ii) the following new paragraph:

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

- (4) by inserting after clause 8(3) the following new subclauses:

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

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

have been satisfied, but the Joint Venturers are authorised to implement any approved proposal to the extent such implementation is consistent with the then terms and conditions of the Eligible Existing Tenure pending the satisfaction of any conditions relating to the variation of the terms or conditions of the Eligible Existing Tenure. Where this paragraph (iii) applies, prior to any approval of proposals and satisfaction of other conditions, the relevant tenure will be treated for (but only for) the purposes of clause 9C(2)(b)(iv) as tenure held pursuant to this Agreement.

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

- (3b) Without limiting clause 8(2)(c), the Minister may at the request of the Joint Venturers from time to time made during the continuance of this Agreement approve Special Advance Tenure being granted to the Joint Venturers pursuant to this Agreement if:
- (a) the Joint Venturers propose to submit detailed proposals under this Agreement (other than under clause 9E) to construct works installations or facilities on the Relevant Land and the Joint Venturers' request is so far as is practicable made, unless the Minister approves otherwise, no less than 6 months before the submission of those detailed proposals; and
  - (b) the Minister is satisfied that it is necessary and appropriate that Special Advance Tenure, rather than tenure granted under or pursuant to the other provisions of this Agreement, be used for the purposes of the proposed works installations or facilities on the Relevant Land,

and if the Minister does so approve:

- (c) notwithstanding the Mining Act 1978 or the LAA, the appropriate authority or instrumentality of the State shall obtain the consent of the Minister to the form and substance of the Special Advance Tenure prior to its grant (which for the avoidance of doubt neither the State nor the Minister is obliged to cause) to the Joint Venturers as tenants in common in equal shares; and
  - (d) if the Joint Venturers do not submit detailed proposals relating to construction of the relevant works installations or facilities on the Relevant Land within 24 months after the date of the Minister's approval or such later time subsequently allowed by the Minister, or if submitted the Minister does not approve such detailed proposals, the Special Advance Tenure (if then granted) shall be surrendered at the request of the Minister.
- (3c) The decisions of the Minister under subclauses (3a) and (3b) shall not be referable to arbitration and any approval of the Minister under this clause shall not in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.";
- (5) in subclauses (4) and (4a) of clause 8 by deleting "subclause (2)" and substituting "subclauses (2), (3a) and (3b)";
- (6) in clause 8(5) by:
- (a) deleting "and" after the semicolon at the end of paragraph (e);
  - (b) inserting "and" after the semicolon at the end of paragraph (f); and



- (c) inserting after paragraph (f) the following new paragraph:

**"Reservation of land within the Port of Port Hedland for leases**

- (g) without limiting the State's obligations under clause 8(2)(b), shall ensure that the land within the areas coloured red and green on the plan marked 'Plan D' (initialled by or on behalf of the parties hereto for the purposes of identification) is reserved until 31 December 2030 for the purposes of the Port Authority granting from time to time to the Joint Venturers in accordance with proposals approved or determined under clauses 7B, 11 or 12 leases of that reserved land:

- (i) at commercial rental; and
- (ii) upon such other terms and conditions as approved by the Minister responsible for the Port Authorities Act (acting with the concurrence of the Minister) including as to the facilitation and allowance on reasonable terms and conditions of future crossings of the land within the area coloured green on the plan marked 'Plan D' so long as such crossings do not unduly prejudice or interfere with the operations of the Joint Venturers under this Agreement,

provided that this obligation to ensure reservation of the land shall cease:

- (iii) if the Joint Venturers do not submit detailed proposals prior to 31 December 2013 (or such later date prior to 31 December 2014 as the Minister may allow) under and in accordance with clause 7B, 11 or 12 relating to the construction of at least a two berth wharf facility and associated jetty within the area the subject of the reservation;

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- (iv) if a lease or leases are granted to the Joint Venturers as contemplated by this clause in relation to a two berth wharf facility and associated jetty development, in respect of the land within the areas coloured red and green on the plan marked 'Plan D' that are subject to such lease or leases or laterally adjacent to the area of the lease or leases; and
- (v) progressively thereafter if a lease is granted as contemplated by this clause, or any existing lease relating to the wharf facility is varied, to accommodate additional berths, in respect of the land within the area coloured red on the plan marked 'Plan D' that is subject to such lease (including as varied) or laterally adjacent to the area of the lease (including as varied).

The parties agree that clause 24 shall not apply to this paragraph (g).";

- (7) in clause 9(2)(a) by deleting "allow crossing places for roads stock and other railways and also";
- (8) by inserting after clause 9(2)(a) the following new paragraph:

**"Crossings over Railway**

- (aa) for the purposes of livestock and infrastructure such as roads, railways, conveyors, pipelines, transmission lines and other utilities proposed to cross the land the subject of the Joint Venturers' railway the Joint Venturers shall:
  - (i) if applicable, give their consent to, or otherwise facilitate the grant by the State or any agency, instrumentality or other authority of the State of any lease, licence or other title over land the subject of the Joint Venturers' railway so long as such grant does not in the Minister's opinion unduly prejudice or interfere with the activities of the Joint Venturers under this Agreement; and

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

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

- (9) by deleting clause 9(2)(j)(ii) and substituting the following new subparagraph:

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

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

- (10) by deleting clause 9(2)(j)(iia);

- (11) by inserting after clause 9D the following new clause:

**"Transfer of rights to section of Goldsworthy-Nimingarra Railway**

9DA (1) The Joint Venturers may as an additional proposal pursuant to clause 7A propose that they be granted a lease under the LAA and pursuant to this Agreement over the section of the railway held pursuant to the agreement ratified by the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972* that is:

- (a) near the Port of Port Hedland; and
- (b) west of the intersection of that railway with the railway constructed pursuant to the agreement approved by the *Iron Ore (Mount Newman) Agreement Act 1964*,

subject to and conditional upon the Joint Venturers (as defined in the former agreement) surrendering wholly or in part (and upon such terms as the Minister considers reasonable) its lease or leases over that section of railway.

- (2) The provisions of clause 7B shall mutatis mutandis apply to any such additional proposal, except that the Minister's right to refuse to approve a proposal under clause 7B(1) does not apply to a proposal contemplated by this clause.
- (3) The Joint Venturers acknowledge that the lease referred to in subclause (1) will on reasonable terms and conditions allow for crossings relating to the proposed Boodarie industrial estate infrastructure corridor (including the grant of tenure and rights reasonably necessary for infrastructure and utilities proposed to be constructed and operated within such corridor).";

(12) in clause 9E by:

- (a) deleting in subclause (1) "'LAA" means the *Land Administration Act 1997* (WA)";
- (b) inserting after subclause (3)(c) the following new paragraph:
  - "(d) Without limiting subclause (9), the Minister may waive the requirement under this clause for the Joint Venturers to obtain and to furnish the consent of a title holder if the title holder has refused to give the required consent and the Minister is satisfied that:
    - (i) the title holder's affected land is or was subject to a miscellaneous licence granted under the Mining Act 1978 for the purpose of a railway to be constructed and operated in accordance with this Agreement; and
    - (ii) in the Minister's opinion, the title holder's refusal to give the required consent is not

reasonable in all the circumstances including having regard to

- (A) the rights of the Joint Venturers in relation to the affected land as the holders of the miscellaneous licence, relative to their rights as the holders of the sought Special Railway Licence or Lateral Access Road Licence (as the case may be); and
  - (B) the terms of any agreement between the Joint Venturers and the title holder.";
- (c) deleting in subclause (4)(a) the comma after "the provisions of this Agreement" and substituting "and"; and
- (d) in subclause (7):
- (i) deleting all words in paragraph (c) after "at the date of such inclusion"; and
  - (ii) inserting after paragraph (k) the following new paragraph:
    - "(1) The provisions of clause 9(2)(aa) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause.";
- (13) in clause 12 by:
- (a) in subclause (1), deleting the definition of "approved production limit under this clause";
  - (b) in subclause (5)(a):
    - (i) deleting "Subject to subclauses (6) to (9) of this Clause if" and substituting "If"; and
    - (ii) deleting "produce more than the approved production limit under this Clause or to"; and

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- (c) deleting subclauses (6), (7), (8) and (9) and substituting the following new subclause:

"(6) For the avoidance of doubt, nothing in this clause 12 requires the Joint Venturers to seek or obtain the Minister's approval or consent (by submitting proposals or otherwise) to a mere increase in production limits."; and

- (14) by deleting clause 12A.

**EXECUTED** as a deed.

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

[Signature]

[Signature]

Signature of witness

Peter Goodall

Name of witness

**EXECUTED** by **BHP BILLITON** )  
**MINERALS PTY. LTD.** ACN 008 694 782 )  
in accordance with section 127(1) of )  
the Corporations Act )

[Signature]

[Signature]

Signature of Director

Signature of Secretary

Uvashni Raman

Robin Lees

Full Name

Full Name

**Iron Ore Agreements Legislation (Amendment, Termination and Repeals)  
Act 2011**

**Part 3** Iron Ore (Mount Goldsworthy) Agreement Act 1964 amended

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**EXECUTED** by **MITSUI IRON ORE** )  
**CORPORATION PTY. LTD** )  
ACN 050 157 456 in accordance with section )  
127(1) of the Corporations Act )

\_\_\_\_\_  
[Signature]

Signature of Director

\_\_\_\_\_  
Ryuzo Nakamura

Full Name

\_\_\_\_\_  
[Signature]

Signature of Secretary

\_\_\_\_\_  
Jiahe He

Full Name

**SIGNED** by **Shuzaburo Tsuchihashi** )  
as attorney for **ITOCHU MINERALS &** )  
**ENERGY OF AUSTRALIA PTY. LTD.** )  
ACN 009 256 259 under power )  
of attorney dated 27 October 2011 )  
in the presence of: )

\_\_\_\_\_  
[Signature]

Signature of witness

\_\_\_\_\_  
Yasushi Fukumura

Name

\_\_\_\_\_  
[Signature]

Signature of Attorney

\_\_\_\_\_  
Shuzaburo Tsuchihashi

Name



**Part 4 — Iron Ore (Goldsworthy-Nimingarra)  
Agreement Act 1972 amended**

**11. Act amended**

This Part amends the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*.

**12. Section 2 amended**

- (1) In section 2 insert in alphabetical order:

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

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

Schedule 3;

**13. Section 8 inserted**

After section 7 insert:

**8. Third Variation Agreement**

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

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**14. Schedule 4 inserted**

After Schedule 3 insert:

**Schedule 4 — Third Variation Agreement**

[s. 2]

**2011**

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

**AND**

**BHP BILLITON MINERALS PTY. LTD.**

**ACN 008 694 782**

**MITSUI IRON ORE CORPORATION PTY. LTD.**

**ACN 050 157 456**

**ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.**

**ACN 009 256 259**

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**IRON ORE (GOLDSWORTHY-NIMINGARRA) AGREEMENT 1972  
RATIFIED VARIATION AGREEMENT**

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[Solicitor's details]

**THIS AGREEMENT** is made this 7<sup>th</sup> day of November 2011

**BETWEEN**

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

**AND**

**BHP BILLITON MINERALS PTY. LTD.** ACN 008 694 782 of Level 17, St Georges Square, 225 St Georges Terrace, Perth, Western Australia, **ITSUI IRON ORE CORPORATION PTY. LTD.** ACN 050 157 456, of Level 16, Exchange Plaza, 2 The Esplanade, Perth, Western Australia and **ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.** ACN 009 256 259 of Level 22, Forrest Centre, 221 St Georges Terrace, Perth, Western Australia (**Joint Venturers**).

**RECITALS:**

- A. The State and the Joint Venturers are now the parties to the agreement dated 12 April 1972 approved by and scheduled to the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B. The State and the Joint Venturers wish to vary the Principal Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

**1. Interpretation**

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

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**2. Ratification and Operation**

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

**3. Variation of Principal Agreement**

The Principal Agreement is varied as follows:

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

"Eligible Existing Tenure" means:

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

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

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

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

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

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

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

"Special Advance Tenure" means:

- (a) a miscellaneous licence or general purpose lease requested under clause 11(5b) to be granted to the Joint Venturers under the Mining Act 1978; or
- (b) an easement or a lease requested under clause 11(5b) to be granted to the Joint Venturers under the LAA,

and as the context requires such tenure if granted;

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

**"Community development plan**

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

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

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

- (6) At least 3 months before the anticipated submission of proposals relating to a proposed development pursuant to Clauses 8 or 16C, the Joint Venturers must, unless the Minister otherwise requires, give to the Minister information about how the proposed development may affect the plan approved or deemed to be approved by the Minister under this Clause. This obligation operates in relation to all proposals submitted on or after the date that is 4 months after the date when a plan is first approved or deemed to be approved under this Clause.
- (7) The Joint Venturers shall at least annually report to the Minister about the Joint Venturers' implementation of the plan approved or deemed to be approved by the Minister under this Clause.
- (8) At the request of either of them made at any time and from time to time, the Minister and the Joint Venturers shall confer as to any amendments desired to any plan approved or deemed to be approved by the Minister under this Clause and may agree to amendment of the plan or adoption of a new plan. Any such amended plan or new plan will be deemed to be the plan approved by the Minister under this Clause in respect of the development to which it relates.
- (9) During the currency of this Agreement, the Joint Venturers shall implement the plan approved or deemed to be approved by the Minister under this Clause.

**Local participation plan**

- 8D. (1) In this Clause, the term "local industry participation benefits" means:
- (a) the use and training of labour available within the said State;
  - (b) the use of the services of engineers, surveyors, architects and other professional

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consultants, experts, specialists, project managers and contractors available within the said State; and

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



suppliers, manufacturers and contractors seeking such introduction; and

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

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

- (4) At the request of either of them made at any time and from time to time, the Minister and the Joint Venturers shall confer as to any amendments desired to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.
- (5) At least 6 months before the anticipated submission of proposals relating to a proposed development pursuant to Clauses 8 or 16C, the Joint Venturers must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this Clause in relation to the proposed development. This obligation operates in relation to all proposals submitted on or after the date that is 7 months after the date when a plan is first provided under this Clause.

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- (6) During the currency of this Agreement the Joint Venturers shall implement the plan provided under this Clause.
- (7) The Joint Venturers shall:
  - (a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this Clause; and
  - (b) use reasonable endeavours to ensure that the third party complies with those provisions.";
- (3) by inserting after clause 11(3) the following new subclause:
  - "(3a) Notwithstanding clause 16A(2)(b)(iv), detailed proposals may refer to activities on tenure which is proposed to be granted pursuant to subclause (1) as if that tenure was granted pursuant to this Agreement (but this does not limit the powers or discretions of the Minister under this Agreement or the Minister responsible for the administration of any relevant Act with respect to the grant of the tenure).";
- (4) by inserting after clause 11(5) the following new subclauses:
  - "Application for Eligible Existing Tenure to be held pursuant to this Agreement**
  - (5a) (a) The Minister may at the request of the Joint Venturers from time to time made during the continuance of this Agreement approve Eligible Existing Tenure becoming held pursuant to this Agreement on such conditions as the Minister sees fit (including, without limitation and notwithstanding the Mining Act 1978 and the LAA, as to the surrender of

land, the submission of detailed proposals and the variation of the terms and conditions of the Eligible Existing Tenure (including for the Eligible Existing Tenure to be held pursuant to this Agreement and for the more efficient use of the Relevant Land)) and the Minister may from time to time vary such conditions in order to extend any specified time for the doing of any thing or otherwise with the agreement of the Joint Venturers.

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

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of other conditions, the relevant tenure will be treated for (but only for) the purposes of clause 16A(2)(b)(iv) as tenure held pursuant to this Agreement.

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

(5b) Without limiting clause 11(4), the Minister may at the request of the Joint Venturers from time to time made during the continuance of this Agreement approve Special Advance Tenure being granted to the Joint Venturers pursuant to this Agreement if:

- (a) the Joint Venturers propose to submit detailed proposals under this Agreement (other than under clause 16C) to construct works installations or facilities on the Relevant Land and the Joint Venturers' request is so far as is practicable made, unless the Minister approves otherwise, no less than 6 months before the submission of those detailed proposals; and
- (b) the Minister is satisfied that it is necessary and appropriate that Special Advance Tenure, rather than tenure granted under or pursuant to the other provisions of this Agreement, be used for the purposes of the proposed works installations or facilities on the Relevant Land,

and if the Minister does so approve:

- (c) notwithstanding the Mining Act 1978 or the LAA, the appropriate authority or instrumentality of the State shall obtain the consent of the Minister to the form and substance of the Special Advance Tenure prior to its grant (which for the avoidance of doubt neither the State nor the Minister is obliged to cause) to the Joint Venturers as tenants in common in equal shares; and
- (d) if the Joint Venturers do not submit detailed proposals relating to construction of the relevant works installations or facilities on the Relevant Land

within 24 months after the date of the Minister's approval or such later time subsequently allowed by the Minister, or if submitted the Minister does not approve such detailed proposals, the Special Advance Tenure (if then granted) shall be surrendered at the request of the Minister.

- (5c) The decisions of the Minister under subclauses (5a) and (5b) shall not be referable to arbitration and any approval of the Minister under this clause shall not in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.";
- (5) in clause 11 by:
- (a) deleting in subclause (6) "subclause (5)" and substituting "subclauses (5), (5a) and (5b); and
  - (b) deleting in subclause (6a) "and (4)" and substituting ", (4), (5a) and (5b)";
- (6) in clause 12A by deleting " allow crossing places for roads stock and other railways and also";
- (7) by inserting after clause 12A the following new clause:

**"Crossings over Railway**

- 12B. For the purposes of livestock and infrastructure such as roads, railways, conveyors, pipelines, transmission lines and other utilities proposed to cross the land the subject of the railway of the Joint Venturers, the Joint Venturers shall:
- (a) if applicable, give their consent to, or otherwise facilitate the grant by the State or any agency, instrumentality or other authority of the State of any lease, licence or other title over land the subject of the railway so long as such grant does not in the Minister's opinion unduly prejudice or interfere with the activities of the Joint Venturers under this Agreement; and

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

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

- (8) by inserting after clause 16B the following new clause:

**"Transfer of rights to section of Goldsworthy-Nimingarra Railway**

16BA. The Joint Venturers may surrender their lease or leases over the section of the railway held pursuant to this Agreement that is described in clause 9DA of the agreement approved by the Iron Ore (Mount Goldsworthy) Agreement Act 1964 in accordance with and as contemplated by that clause.";

- (9) in clause 16C by:

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

- (b) inserting after subclause (3)(c) the following new paragraph:

"(d) Without limiting subclause (9), the Minister may waive the requirement under this clause for the Joint Venturers to obtain and to furnish the consent of a title holder if the title holder has refused to give the required consent and the Minister is satisfied that:

- (i) the title holder's affected land is or was subject to a miscellaneous licence granted under the Mining Act 1978 for the purpose of a railway to be constructed and operated in accordance with this Agreement; and

- (ii) in the Minister's opinion, the title holder's refusal to give the required consent is not reasonable in all the circumstances including having regard to:

- (A) the rights of the Joint Venturers in relation to the affected land as the

holders of the miscellaneous licence, relative to their rights as the holders of the sought Special Railway Licence or Lateral Access Road Licence (as the case may be); and

- (B) the terms of any agreement between the Joint Venturers and title holder.";
- (c) deleting in subclause (4)(a) the comma after "the provisions of this Agreement" and substituting "and"; and
- (d) in subclause (7):
- (i) deleting all words in paragraph (c) after "at the date of such inclusion"; and
- (ii) inserting after paragraph (k) the following new paragraph:
- "(l) The provisions of clause 12B shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause."; and
- (10) by deleting clause 33(1)(ii) and substituting the following paragraph:
- "(ii) on fine ore sold or shipped separately as such at the rate of:
- (A) 5.625% of the f.o.b. value, for ore shipped prior to or on 30 June 2012;
- (B) 6.5% of the f.o.b. value, for ore shipped during the period from 1 July 2012 to 30 June 2013 (inclusive of both dates); and
- (C) 7.5% of the f.o.b. value, for ore shipped on or after 1 July 2013;"

**Iron Ore Agreements Legislation (Amendment, Termination and Repeals)  
Act 2011**

**Part 4** Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972  
amended

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**EXECUTED** as a deed.

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

[Signature]

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Signature of witness

Peter Goodall

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Name of witness

[Signature]

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**EXECUTED** by **BHP BILLITON** )  
**MINERALS PTY. LTD.** ACN 008 694 782 )  
in accordance with section 127(1) of )  
the Corporations Act )

[Signature]

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Signature of Director

Uvashni Raman

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Full Name

[Signature]

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Signature of Secretary

Robin Lees

---

Full Name



**EXECUTED** by **MITSUI IRON ORE** )  
**CORPORATION PTY. LTD** )  
ACN 050 157 456 in accordance with section )  
127(1) of the Corporations Act )

\_\_\_\_\_  
[Signature]

Signature of Director

\_\_\_\_\_  
Ryuzo Nakamura

Full Name

\_\_\_\_\_  
[Signature]

Signature of Secretary

\_\_\_\_\_  
Jiahe He

Full Name

**SIGNED** by **Shuzaburo Tsuchihashi** )  
as attorney for **ITOCHU MINERALS &** )  
**ENERGY OF AUSTRALIA PTY. LTD.** )  
ACN 009 256 259 under power )  
of attorney dated 27 October 2011 )  
in the presence of: )

\_\_\_\_\_  
[Signature]

Signature of witness

\_\_\_\_\_  
Yasushi Fukumura

Name

\_\_\_\_\_  
[Signature]

Signature of Attorney

\_\_\_\_\_  
Shuzaburo Tsuchihashi

Name

**Part 5 — *Iron Ore (McCamey's Monster) Agreement  
Authorisation Act 1972* amended**

**15. Act amended**

This Part amends the *Iron Ore (McCamey's Monster)  
Agreement Authorisation Act 1972*.

**16. Section 10 inserted**

After section 9 insert:

**10. Fifth Variation Agreement**

- (1) The agreement (***fifth Variation Agreement***) a copy of which is set out in Schedule 6 is ratified.
- (2) The implementation of the fifth Variation Agreement is authorised.
- (3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the fifth Variation Agreement is to operate and take effect despite any other Act or law.

**17. Schedule 6 inserted**

After Schedule 5 insert:

**Schedule 6 — Fifth Variation Agreement**

[s. 10]

**2011**

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

**AND**

**BHP IRON ORE (JIMBLEBAR) PTY. LTD.**

**ACN 009 114 210**

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**IRON ORE (McCAMEY'S MONSTER) AGREEMENT 1972  
RATIFIED VARIATION AGREEMENT**

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[Solicitor's details]

**s. 17**

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**THIS AGREEMENT** is made this 7<sup>th</sup> day of November 2011

**BETWEEN**

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

**AND**

**BHP IRON ORE (JIMBLEBAR) PTY. LTD.** ACN 009 114 210 of Level 17, St Georges Square, 225 St Georges Terrace, Perth, Western Australia (**Company**).

**RECITALS:**

- A. The State and the Company are now the parties to the agreement authorised by and scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B. The State and the Company wish to vary the Principal Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

**1. Interpretation**

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

**2. Ratification and Operation**

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

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

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

### **3. Variation of Principal Agreement**

The Principal Agreement is varied as follows:

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

"Eligible Existing Tenure" means:

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

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

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

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

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

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

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

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

"Special Advance Tenure" means:

- (a) a miscellaneous licence or general purpose lease requested under clause 13(2b) to be granted to the Joint Venturers under the Mining Act 1978; or
- (b) an easement or a lease requested under clause 13(2b) to be granted to the Joint Venturers under the LAA,

and as the context requires such tenure if granted;

(2) in clause 9 by:

- (a) in subclause (1):
  - (i) deleting "Subject to Clause 11A, if" and substituting "If"; and
  - (ii) deleting ", 11A"; and
- (b) in subclause (6), deleting "or Clause 11A";

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

**"Community development plan**

- 9BA. (1) In this Clause, the term "community and social benefits" includes:

- (a) assistance with skills development and training opportunities to promote work readiness and employment for persons living in the Pilbara region of the said State;
- (b) regional development activities in the Pilbara region of the said State, including partnerships and sponsorships;
- (c) contribution to any community projects, town services or facilities; and
- (d) a regionally based workforce.

- (2) The Joint Venturers acknowledge the need for community and social benefits flowing from this Agreement.

- (3) The Joint Venturers agree that:

- (a) they shall prepare a plan which describes the Joint Venturers' proposed strategies for achieving community and social benefits in connection with their activities under this Agreement; and
- (b) the Joint Venturers shall, not later than 3 months after the second variation date, submit to the Minister the plan prepared under paragraph (a) and confer with the Minister in respect of the plan.

- (4) The Minister shall within 2 months after receipt of a plan submitted under subclause (3)(b), either notify the Joint Venturers that the Minister approves the plan as submitted or notify the Joint Venturers of changes which the Minister requires be made to the

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plan. If the Joint Venturers are unwilling to accept the changes which the Minister requires they shall notify the Minister to that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes required by the Minister.

- (5) The effect of an award made on an arbitration pursuant to subclause (4) shall be that the relevant plan submitted by the Joint Venturers pursuant to subclause (3)(b) shall, with such changes required by the Minister under subclause (4) as the arbitrator determines to be reasonable (with or without modification by the arbitrator), be deemed to be the plan approved by the Minister under this clause.
- (6) At least 3 months before the anticipated submission of proposals relating to a proposed development pursuant to Clauses 9 or 11E, the Joint Venturers must, unless the Minister otherwise requires, give to the Minister information about how the proposed development may affect the plan approved or deemed to be approved by the Minister under this Clause. This obligation operates in relation to all proposals submitted on or after the date that is 4 months after the date when a plan is first approved or deemed to be approved under this Clause.
- (7) The Joint Venturers shall at least annually report to the Minister about the Joint Venturers' implementation of the plan approved or deemed to be approved by the Minister under this Clause.
- (8) At the request of either of them made at any time and from time to time, the Minister and the Joint Venturers shall confer as to any amendments desired to any plan approved or deemed to be approved by the Minister under this Clause and may agree to amendment of the plan or adoption of a new plan. Any such amended plan or new plan will be deemed to be the plan approved by the Minister under this



Clause in respect of the development to which it relates.

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

**Local participation plan**

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

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subclause (7) to adopt, in calling for tenders and letting contracts for works, materials, plant, equipment and supplies stages in relation to a proposed development and how such practices will provide fair and reasonable opportunity for suitably qualified Western Australian suppliers, manufacturers and contractors to tender or quote for works, materials, plant, equipment and supplies;

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

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

- (4) At the request of either of them made at any time and from time to time, the Minister and the Joint Venturers shall confer as to any amendments desired

to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.

- (5) At least 6 months before the anticipated submission of proposals relating to a proposed development pursuant to Clauses 9 or 11E, the Joint Venturers must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this Clause in relation to the proposed development. This obligation operates in relation to all proposals submitted on or after the date that is 7 months after the date when a plan is first provided under this Clause.
  - (6) During the currency of this Agreement the Joint Venturers shall implement the plan provided under this Clause.
  - (7) The Joint Venturers shall:
    - (a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this Clause; and
    - (b) use reasonable endeavours to ensure that the third party complies with those provisions.";
- (4) by deleting clause 11A;
  - (5) in clause 11B(4) by deleting "clauses 9 or 11A as the case may be" and substituting "clause 9";

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- (6) in clause 11C(2)(a) by deleting "clauses 11A or" and substituting "clause";
- (7) in clause 11E by:
  - (a) deleting in subclause (1) "'LAA" means the *Land Administration Act 1997* (WA)";
  - (b) inserting after subclause (3)(c) the following new paragraph:
    - "(d) Without limiting subclause (9), the Minister may waive the requirement under this clause for the Joint Venturers to obtain and to furnish the consent of a title holder if the title holder has refused to give the required consent and the Minister is satisfied that:
      - (i) the title holder's affected land is or was subject to a miscellaneous licence granted under the Mining Act 1978 for the purpose of a railway to be constructed and operated in accordance with this Agreement; and
      - (ii) in the Minister's opinion, the title holder's refusal to give the required consent is not reasonable in all the circumstances including having regard to:
        - (A) the rights of the Joint Venturers in relation to the affected land as the holders of the miscellaneous licence, relative to their rights as the holders of the sought Special Railway Licence or Lateral Access Road Licence (as the case may be); and
        - (B) the terms of any agreement between the Joint Venturers and the the title holder.";
  - (c) deleting in subclause (4)(a) the comma after "the provisions of this Agreement" and substituting "and"; and

(d) in subclause (7):

(i) deleting all words in paragraph (c) after "at the date of such inclusion"; and

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

"(l) The provisions of clause 19(2aa) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause.";

(8) in clause 13 by:

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

"Notwithstanding clause 11C(2)(b)(iv), detailed proposals may refer to activities on tenure which is proposed to be granted pursuant to this subclause as if that tenure was granted pursuant to this Agreement (but this does not limit the powers or discretions of the Minister under this Agreement or the Minister responsible for the administration of any relevant Act with respect to the grant of the tenure).";

(b) renumbering subclause (2a) as subclause (2d) and inserting the following new subclauses before the renumbered subclause (2d):

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

(2a) (a) The Minister may at the request of the Joint Venturers from time to time made during the continuance of this Agreement approve Eligible Existing Tenure becoming held pursuant to this Agreement on such conditions as the Minister sees fit (including, without limitation and notwithstanding the Mining Act 1978 and the LAA, as to the surrender of land, the submission of detailed proposals and the

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variation of the terms and conditions of the Eligible Existing Tenure (including for the Eligible Existing Tenure to be held pursuant to this Agreement and for the more efficient use of the Relevant Land)) and the Minister may from time to time vary such conditions in order to extend any specified time for the doing of any thing or otherwise with the agreement of the Joint Venturers.

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

implementation is consistent with the then terms and conditions of the Eligible Existing Tenure pending the satisfaction of any conditions relating to the variation of the terms or conditions of the Eligible Existing Tenure. Where this paragraph (iii) applies, prior to any approval of proposals and satisfaction of other conditions, the relevant tenure will be treated for (but only for) the purposes of clause 11C(2)(b)(iv) as tenure held pursuant to this Agreement.

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

- (2b) The Minister may at the request of the Joint Venturers from time to time made during the continuance of this Agreement approve Special Advance Tenure being granted to the Joint Venturers pursuant to this Agreement if:
- (a) the Joint Venturers propose to submit detailed proposals under this Agreement (other than under clause 11E) to construct works installations or facilities on the Relevant Land and the Joint Venturers' request is so far as is practicable made, unless the Minister approves otherwise, no less than 6 months before the submission of those detailed proposals; and
  - (b) the Minister is satisfied that it is necessary and appropriate that Special Advance Tenure, rather than tenure granted under or pursuant to the other provisions of this Agreement, be used for the purposes of the proposed works installations or facilities on the Relevant Land,

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and if the Minister does so approve:

- (c) notwithstanding the Mining Act 1978 or the LAA, the appropriate authority or instrumentality of the State shall obtain the consent of the Minister to the form and substance of the Special Advance Tenure prior to its grant (which for the avoidance of doubt neither the State nor the Minister is obliged to cause) to the Joint Venturers; and
  - (d) if the Joint Venturers do not submit detailed proposals relating to construction of the relevant works installations or facilities on the Relevant Land within 24 months after the date of the Minister's approval or such later time subsequently allowed by the Minister, or if submitted the Minister does not approve such detailed proposals, the Special Advance Tenure (if then granted) shall be surrendered at the request of the Minister.
- (2c) The decisions of the Minister under subclauses (2a) and (2b) shall not be referable to arbitration and any approval of the Minister under this clause shall not in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.";
- (c) in the renumbered subclause (2d), deleting "and (2)" and inserting ", (2), (2a) and (2b)";
- (9) in clause 19(2) by:
- (a) deleting all words in subclause (2) after "other railways which now exist"; and



- (b) inserting after subclause (2) the following new subclause:

**"Crossings over Railway**

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

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

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

- (10) in clause 31(1), by deleting paragraphs (aa) and (ab) and substituting the following paragraph:

"(ab) on iron ore products being fine ore where such fine ore is sold or shipped separately as such – at the rate of:

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

**Iron Ore Agreements Legislation (Amendment, Termination and Repeals)  
Act 2011**

**Part 5** Iron Ore (McCamey's Monster) Agreement Authorisation Act  
1972 amended

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**EXECUTED** as a deed.

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

[Signature]

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Signature of witness

[Signature]

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Peter Goodall

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Name of witness

**EXECUTED** by **BHP IRON ORE** )  
**(JIMBLEBAR) PTY LTD** )  
ACN 009 114 210 )  
in accordance with section 127(1) of )  
the Corporations Act )

[Signature]

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Signature of Director

[Signature]

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Signature of Secretary

Uvashni Raman

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Full Name

Robin Lees

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Full Name

**Part 6 — *Iron Ore (Marillana Creek) Agreement Act 1991* amended**

**18. Act amended**

This Part amends the *Iron Ore (Marillana Creek) Agreement Act 1991*.

**19. Section 3 amended**

- (1) At the end of section 3 insert:

*Fourth Variation Agreement* means the agreement a copy of which is set out in Schedule 5.

- (2) In section 3 in the definition of *Third Variation Agreement* delete “Schedule 4.” and insert:

Schedule 4;

**20. Section 10 inserted**

After section 9 insert:

**10. Fourth Variation Agreement**

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

**21. Schedule 5 inserted**

After Schedule 4 insert:

**Schedule 5 — Fourth Variation Agreement**

[s. 3]

**2011**

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

**AND**

**BHP BILLITON MINERALS PTY. LTD.**

**ACN 008 694 782**

**ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.**

**ACN 009 256 259**

**MITSUI IRON ORE CORPORATION PTY. LTD.**

**ACN 050 157 456**

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**IRON ORE (MARILLANA CREEK) AGREEMENT 1991  
RATIFIED VARIATION AGREEMENT**

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[Solicitor's Details]

**THIS AGREEMENT** is made this 7<sup>th</sup> day of November 2011

**BETWEEN**

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

**AND**

**BHP BILLITON MINERALS PTY. LTD.** ACN 008 694 782 of Level 17, St Georges Square, 225 St Georges Terrace, Perth, Western Australia, **ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.** ACN 009 256 259 of Level 22, 221 St Georges Terrace, Perth, Western Australia and **MITSUMI IRON ORE CORPORATION PTY. LTD.** ACN 050 157 456 of Level 24, 221 St Georges Terrace, Perth, Western Australia (**Joint Venturers**).

**RECITALS:**

- A. The State and the Joint Venturers are now the parties to the agreement dated 20 December 1990 ratified by and scheduled to the *Iron Ore (Marillana Creek) Agreement Act 1991* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B. The State and the Joint Venturers wish to vary the Principal Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

**1. Interpretation**

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

**s. 21**

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**2. Ratification and Operation**

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

**3. Variation of Principal Agreement**

The Principal Agreement is varied as follows:

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

"Eligible Existing Tenure" means:

  - (a)
    - (i) a miscellaneous licence or general purpose lease granted to the Company under the Mining Act; or
    - (ii) a lease or easement granted to the Company under the LAA,  
  
and not clearly, to the satisfaction of the Minister, granted under or pursuant to or held pursuant to this Agreement; or
  - (b) an application by the Company for the grant to it of a tenement referred to in paragraph (a)(i) (which application has not clearly, to the satisfaction of the Minister, been made

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

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

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

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

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

"Special Advance Tenure" means:

- (a) a miscellaneous licence or general purpose lease requested under clause 22(2b) to be granted to the Company under the Mining Act; or
- (b) an easement or a lease requested under clause 22(2b) to be granted to the Company under the LAA,

and as the context requires such tenure if granted;

- (2) in clause 10(1) by deleting "produce more than 5,500,000 tonnes of iron ore per annum for transportation from the mining lease or to";
- (3) by inserting after clause 10B the following new clauses:

**"Community development plan**

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

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

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



- (6) At least 3 months before the anticipated submission of proposals relating to a proposed development pursuant to any of Clauses 10, 11 or 14C, the Company must, unless the Minister otherwise requires, give to the Minister information about how the proposed development may affect the plan approved or deemed to be approved by the Minister under this Clause. This obligation operates in relation to all proposals submitted on or after the date that is 4 months after the date when a plan is first approved or deemed to be approved under this Clause.
- (7) The Company shall at least annually report to the Minister about the Company's implementation of the plan approved or deemed to be approved by the Minister under this Clause.
- (8) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan approved or deemed to be approved by the Minister under this Clause and may agree to amendment of the plan or adoption of a new plan. Any such amended plan or new plan will be deemed to be the plan approved by the Minister under this Clause in respect of the development to which it relates.
- (9) During the currency of this Agreement, the Company shall implement the plan approved or deemed to be approved by the Minister under this Clause.

**Local participation plan**

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

**s. 21**

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managers and contractors available within the said State; and

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

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

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

- (4) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.
- (5) At least 6 months before the anticipated submission of proposals relating to a proposed development pursuant to any of Clauses 10, 11 or 14C, the Company must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this Clause in relation to the proposed development. This obligation operates in relation to all proposals submitted on or after the date that is 7 months after the date when a plan is first provided under this Clause.
- (6) During the currency of this Agreement the Company shall implement the plan provided under this Clause.

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- (7) The Company shall:
- (a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this Clause; and
  - (b) use reasonable endeavours to ensure that the third party complies with those provisions.";
- (4) in clause 11 by:
- (a) in subclause (1), deleting the definition of "approved production limit under this Clause";
  - (b) in subclause (2):
    - (i) deleting "produce iron ore under this Agreement for transportation in any calendar year in excess of the approved production limit nor shall" and substituting "increase";
    - (ii) deleting "exceed" and substituting "above";
  - (c) in subclause 3, deleting "the approved production limit under this Clause or";
  - (d) deleting subclause (5);
  - (e) in subclause (8)(a):
    - (i) deleting "approved production limit or"; and
    - (ii) deleting ", in respect of a consent in relation to a proposed increase in the approved mine workforce,"; and

- (f) inserting after subclause (8) a new subclause as follows:
- "(9) For the avoidance of doubt, nothing in this clause 11 requires the Company to seek or obtain the Minister's approval or consent (by submitting proposals or otherwise) to a mere increase in production limits.";
- (5) in clause 13(1) by:
- (a) deleting paragraph (aa); and
- (b) deleting paragraph (ac) and substituting the following paragraph:
- "(ac) on fine ore and on pisolite fine ore sold or shipped separately as such at the rate of:
- (i) 5.625% of the f.o.b. value, for ore shipped prior to or on 30 June 2012;
- (ii) 6.5% of the f.o.b. value, for ore shipped during the period from 1 July 2012 to 30 June 2013 (inclusive of both dates); and
- (iii) 7.5% of the f.o.b. value, for ore shipped on or after 1 July 2013;"
- (6) in clause 14C by:
- (a) deleting in subclause (1) "'LAA" means the *Land Administration Act 1997* (WA)";
- (b) inserting after subclause (3)(c) the following new paragraph:
- "(d) Without limiting subclause (9), the Minister may waive the requirement under this clause for the Company to obtain and to furnish the consent of a title holder if the title holder has refused to give the required consent and the Minister is satisfied that:
- (i) the title holder's affected land is or was subject to a miscellaneous licence granted under the Mining Act 1978 for the purpose

**s. 21**

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- of a railway to be constructed and operated in accordance with this Agreement; and
- (ii) in the Minister's opinion, the title holder's refusal to give the required consent is not reasonable in all the circumstances including having regard to:
    - (A) the rights of the Company in relation to the affected land as the holder of the miscellaneous licence, relative to its rights as the holder of the sought Special Railway Licence or Lateral Access Road Licence (as the case may be); and
    - (B) the terms of any agreement between the Company and the title holder.";
  - (c) deleting in subclause (4)(a) the comma after "the provisions of this Agreement" and substituting "and"; and
  - (d) in subclause (7):
    - (i) deleting all words in paragraph (c) after "at the date of such inclusion"; and
    - (ii) inserting after paragraph (k) the following new paragraph:
      - "(l) The provisions of clause 23A shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause.";
  - (7) in clause 21(2)(a) by deleting "the approved production limit or";

(8) in clause 22 by:

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

"Notwithstanding clause 14A(2)(b)(iv), detailed proposals may refer to activities on tenure which is proposed to be granted pursuant to this subclause (1) as if that tenure was granted pursuant to this Agreement (but this does not limit the powers or discretions of the Minister under this Agreement or the Minister responsible for the administration of any relevant Act with respect to the grant of the tenure).";

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

(c) renumbering subclause (2a) as subclause (2d) and inserting the following new subclauses before the renumbered subclause (2d):

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

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

**s. 21**

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



clause 14A(2)(b)(iv) as tenure held pursuant to this Agreement.

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

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

- (a) the Company proposes to submit detailed proposals under this Agreement (other than under clause 14C) to construct works installations or facilities on the Relevant Land and the Company's request is so far as is practicable made, unless the Minister approves otherwise, no less than 6 months before the submission of those detailed proposals; and
- (b) the Minister is satisfied that it is necessary and appropriate that Special Advance Tenure, rather than tenure granted under or pursuant to the other provisions of this Agreement, be used for the purposes of the proposed works installations or facilities on the Relevant Land,

and if the Minister does so approve:

- (c) notwithstanding the Mining Act or the LAA, the appropriate authority or instrumentality of the State shall obtain the consent of the Minister to the form and substance of the Special Advance Tenure prior to its grant (which for the avoidance of doubt neither the State nor the Minister is obliged to cause) to the Company; and
- (d) if the Company does not submit detailed proposals relating to construction of the

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

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

**"23A. Crossings over Rail Spur**

For the purposes of livestock and infrastructure such as roads, railways, conveyors, pipelines, transmission lines and other utilities proposed to cross the land the subject of the rail spur referred to in clause 23 the Company shall:

- (a) if applicable, give its consent to, or otherwise facilitate the grant by the State or any agency, instrumentality or other authority of the State of any lease, licence or other title over land the subject of the rail spur so long as such grant does not in the Minister's opinion unduly prejudice or interfere with the activities of the Company under this Agreement; and

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

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

**Iron Ore Agreements Legislation (Amendment, Termination and Repeals)  
Act 2011**

**Part 6** Iron Ore (Marillana Creek) Agreement Act 1991 amended

**s. 21**

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**EXECUTED** as a deed.

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

[Signature]

---

Signature of witness

Peter Goodall

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Name of witness

[Signature]

---

**EXECUTED** by **BHP BILLITON** )  
**MINERALS PTY. LTD.** ACN 008 694 782 )  
in accordance with section 127(1) of )  
the Corporations Act )

[Signature]

---

Signature of Director

Uvashni Raman

---

Full Name

[Signature]

---

Signature of Secretary

Robin Lees

---

Full Name

**EXECUTED** by **MITSUI IRON ORE** )  
**CORPORATION PTY. LTD** )  
ACN 050 157 456 in accordance with section )  
127(1) of the Corporations Act )

\_\_\_\_\_  
[Signature]

Signature of Director

\_\_\_\_\_  
Ryuzo Nakamura

Full Name

\_\_\_\_\_  
[Signature]

Signature of Secretary

\_\_\_\_\_  
Jiahe He

Full Name

**SIGNED** by **Shuzaburo Tsuchihashi** )  
as attorney for **ITOCHU MINERALS &** )  
**ENERGY OF AUSTRALIA PTY. LTD.** )  
ACN 009 256 259 under power )  
of attorney dated 27 October 2011 )  
in the presence of: )

\_\_\_\_\_  
[Signature]

Signature of witness

\_\_\_\_\_  
Yasushi Fukumura

Name

\_\_\_\_\_  
[Signature]

Signature of Attorney

\_\_\_\_\_  
Shuzaburo Tsuchihashi

Name

## **Part 7 — Port Hedland iron ore processing projects**

### **Division 1 — Termination agreement**

#### **22. Ratification and operation of termination agreement**

(1) In this section —

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

(2) The termination agreement is ratified.

(3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the termination agreement is to operate and take effect despite any other Act or law.

### **Division 2 — Repeal of Acts relating to the Port Hedland iron ore processing projects**

#### **23. Acts repealed**

These Acts are repealed:

- (a) the *Iron Ore Beneficiation (BHP) Agreement Act 1996*;
- (b) the *Iron Ore - Direct Reduced Iron (BHP) Agreement Act 1996*;
- (c) the *Iron Ore Processing (BHP Minerals) Agreement Act 1994*.

**Schedule 1 — Termination agreement**

[s. 22]

**2011**

**THE STATE OF WESTERN AUSTRALIA**

**and**

**BHP BILLITON DIRECT REDUCED IRON PTY. LTD.**

**ACN 058 025 960**

**and**

**BHP BILLITON MINERALS PTY. LTD.**

**ACN 008 694 782**

**MITSUI IRON ORE CORPORATION PTY. LTD.**

**ACN 050 157 456**

**ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.**

**ACN 009 256 259**

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**IRON ORE BENEFICIATION (BHP) AGREEMENT 1996  
TERMINATION AGREEMENT**

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[Solicitor's details]

**THIS AGREEMENT** is made this 7<sup>th</sup> day of November 2011

**BETWEEN**

**THE HONOURABLE COLIN JAMES BARNETT**, M.Ec., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "**the State**") of the first part,

**BHP BILLITON DIRECT REDUCED IRON PTY. LTD.** ACN 058 025 960 of Level 17, St Georges Square, 225 St Georges Terrace, Perth, Western Australia (hereinafter called "**the Company**" in which term shall be included its successors and permitted assigns) of the second part,

**BHP BILLITON MINERALS PTY. LTD.** ACN 008 694 782 of Level 17, St Georges Square, 225 St Georges Terrace, Perth, Western Australia, **MITSUMI IRON ORE CORPORATION PTY. LTD.** ACN 050 157 456 of Level 16, Exchange Plaza, 2 The Esplanade, Perth, Western Australia and **ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.** ACN 009 256 259 of Level 22, Forrest Centre, 221 St Georges Terrace, Perth, Western Australia (hereinafter called "**Joint Venturers**" in which term shall be included their successors and permitted assigns) of the third part.

**WHEREAS:**

- A. The State and the Company are the parties to the agreement dated 16 October 1995, which agreement was ratified by the *Iron Ore Beneficiation (BHP) Agreement Act 1996* (WA), as varied by an agreement dated 11 April 2000 which was ratified by the *Acts Amendment (Iron Ore Agreements) Act 2000*. The first mentioned agreement as so varied is referred to in this Agreement as "**the Beneficiation Agreement**".



- B. The State and the Joint Venturers are now the parties to the agreement dated 15 October 1964 approved by and scheduled to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Mount Goldsworthy Agreement**".
- C. The State and the Company wish to terminate the Beneficiation Agreement in the manner and on the terms set out in this Agreement, including the transfer to the Joint Venturers of rights in respect of certain land relating to the Beneficiation Agreement on the terms set out in this Agreement.

**NOW THIS AGREEMENT WITNESSES:**

**1. Definitions**

In this Agreement subject to the context:

"**Beneficiation Agreement Minister**" means the Minister in the Government of the State for the time being responsible for the administration of the Beneficiation Agreement;

"**Boodarie GPLs**" means the general purpose leases granted under the Mining Act and held by the Company as at the date of this Agreement as described in schedule A and "Boodarie GPL" means as the context requires any or a particular one of them and includes any tenement or title which is a renewal, replacement or successor of or which is granted in lieu of or in substitution for, any of them;

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

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

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

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

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

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

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

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

"**Ministerial Statement**" means the *Statement That a Proposal May be Implemented (Pursuant to the Provisions of the Environmental Protection Act 1986)* number 393 entitled "Hot Briquetted Iron Project, Port Hedland (899) BHP Direct Reduced Iron Pty Ltd" and issued by the then Minister for Environment on 4 September 1995;

"**Mount Goldsworthy Agreement Minister**" means the Minister in the Government of the State for the time being responsible for the administration of the Mount Goldsworthy Agreement;

"**Operative Date**" has the meaning given in clause 3(4);

"**PEP Agreement**" means the agreement ratified by the *Pilbara Energy Project Agreement Act 1994* (WA), as from time to time added to, varied or amended;

"**PEP Joint Venturers**" means the Joint Venturers as defined in the PEP Agreement;

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

"**Port Authority**" means the Port Hedland Port Authority established by the Port Authorities Act;

"**Surrender GPLs**" means the general purpose leases granted under the Mining Act and held by the Company as at the date of this Agreement as described in Schedule B; and

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

"**Utah Jild lease**" means registered lease K693814L of the land the subject of Deposited Plan 59462 being portion of Lot 370 on Deposited Plan 35619, part of the land in Crown Land Title Volume LR3118 Folio 753 granted to the Company by the Port Authority under the Port Authorities Act and pursuant to the Beneficiation Agreement; and

"**Water Agreement**" means the Water Supply Agreement dated 8 February 2000 between the Water Corporation and BHP Iron Ore Pty Ltd.

## **2. Interpretation**

(1) In this Agreement:

- (a) clause headings do not affect interpretation or construction;
- (b) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
- (c) one gender includes the other genders;
- (d) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (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;
- (f) reference in this Agreement to any other document includes that document as from time to time added to, varied or amended and notwithstanding any change in the identity of the parties;
- (g) reference to a clause or schedule is a reference to a clause or schedule to this Agreement, and a reference to a subclause or paragraph is a reference to the subclause of the clause or

paragraph of the clause or subclause as the case may be in, or in relation to, which the reference is made; and

(h) "including" means "including, but not limited to".

- (2) Nothing in this Agreement shall be construed to exempt the State or the Company from compliance with or to require the State or the Company to do anything contrary to any law relating to native title or any lawful obligation or requirement imposed on the State or the Company as the case may be pursuant to any law relating to native title. The provisions of this Agreement shall not operate so as to require the State or the Port Authority to grant or vary, or cause to be granted or varied, any lease licence or other right or title until all processes necessary under any laws relating to native title to enable that grant or variation to proceed, have been completed.
- (3) Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made by or under the EP Act.

**3. Ratification and operation**

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

- (4) On the day after the day on which the said Bill commences to operate as an Act ("**Operative Date**") all the provisions of this Agreement will operate and take effect despite any enactment or other law.

**4. Termination of Agreement**

- (1) Subject to subclause (2), the Beneficiation Agreement is hereby terminated with effect on and from the Operative Date and, except as otherwise provided in this Agreement, neither the State nor the Company shall have any claim against the other with respect to any matter or thing in or arising out of the Beneficiation Agreement.

- (2) Notwithstanding subclause (1), the Company shall remain liable for any antecedent breach or default under the Beneficiation Agreement and in respect of any indemnity given under the Beneficiation Agreement.

- (3) (a) On and from the Operative Date:

- (i) for the avoidance of doubt, the holder of the Boodarie GPLs and the Surrender GPLs shall cease to have the benefit of any rights and privileges conferred by the Beneficiation Agreement; and

- (ii) each of the Boodarie GPLs is varied by deleting the following condition which it contains:

"The construction and operation of the project and measures to protect the environment being carried out generally in accordance with detailed proposals submitted and approved under Clauses 6 and 7 of the Iron Ore Processing (BHP Minerals) Agreement Act 1994".

- (b) The Joint Venturers and the Company acknowledge that the Minister for Environment has given the requisite approval for the purposes of condition 3-1 of the Ministerial Statement and has made the requisite nomination under section 38(7) of the EP Act in respect of the passing of responsibility for the proposal the subject of the Ministerial Statement to the Joint Venturers.

- (c) As soon as practicable after the Operative Date, the Company shall make application under the Mining Act to transfer the Boodarie GPLs to the Joint Venturers and the State shall, notwithstanding section 276 of the *Duties Act 2008* (WA) and without otherwise affecting the application of that Act, cause the Boodarie GPLs to be transferred to the Joint Venturers and:
- (i) upon and from the date such transfers are registered under the Mining Act the Boodarie GPLs shall be held by the Joint Venturers pursuant to the Mount Goldsworthy Agreement for the purposes of the Mount Goldsworthy Agreement; and
  - (ii) as soon as practicable after the date such transfers are registered under the Mining Act:
    - (A) the Company shall unconditionally surrender the Surrender GPLs; and
    - (B) in respect of each Boodarie GPL listed in Schedule C, the Joint Venturers shall unconditionally surrender that portion of the Boodarie GPL described in Schedule C.
- Section 114C of the Mining Act applies in respect of any land formerly the subject of a tenement surrendered pursuant to subparagraph (A) or (B) as if the reference in that section to "former holder" includes the Joint Venturers.
- (d) Notwithstanding the Mining Act and without limiting the operation of clause 21(1) of the Mount Goldsworthy Agreement, the Minister for Mines, acting with the concurrence of the Mount Goldsworthy Agreement Minister, may on and from the Operative Date from time to time make, vary or cancel such conditions in respect of the Boodarie GPLs as the Minister for Mines considers reasonable.
- (e) (i) The Joint Venturers and the Company acknowledge that with the Company's consent plant, facilities and other works have been constructed upon the land the subject of the Boodarie GPLs by other persons, including the PEP Joint Venturers pursuant to

proposals approved under the PEP Agreement, and that such plant, facilities and other works continue to be operated by and for the benefit of those other persons or their successors or assigns.

(ii) Upon the request of the Mount Goldsworthy Agreement Minister and subject to the prior transfer of the Boodarie GPLs to the Joint Venturers as referred to in subclause (3)(c), the Company and the Joint Venturers shall:

(A) facilitate the grant under the Land Administration Act of any lease that is reasonably necessary for the plant, facilities or other works identified in Plan C in Schedule D by:

(I) surrendering those portions of the Boodarie GPLs:

(i) described in Schedule D;  
and

(ii) such further areas as are reasonably required for the operation of the plant, facilities or other works identified in Plan C for which an easement or licence is not reasonably sufficient; and

(II) if reasonably required, on reasonable terms and conditions allowing the relevant third party access to the land the subject of any such lease and (if applicable) consenting to the grant to the relevant third party of an easement or licence under the Land Administration Act; and

- (B) facilitate (including if necessary by the Joint Venturers giving their consent where it is requested) the grant under the Land Administration Act of any licences or easements that are reasonably necessary for other plant, facilities and other works referred to in subparagraph (i).
- (iii) The Company and the Joint Venturers acknowledge that the State proposes to develop an industrial estate proximate to the land the subject of the Boodarie GPLs and an infrastructure corridor connecting the industrial estate to the Port of Port Hedland along or in the vicinity of the indicative corridor alignment set out in Plan D in Schedule E and the Company and Joint Venturers agree:
  - (A) to use their best and continuing endeavours to facilitate as soon as practicable the identification of and their agreement to the optimal infrastructure corridor area along or in the vicinity of the indicative corridor alignment having regard to the planned operations of the Joint Venturers in relation to the land the subject of the Boodarie GPLs and the planned requirements of the industrial estate and associated corridor (such agreed area being "**the Boodarie Industrial Estate Corridor Area**"); and
  - (B) that upon the request of the Mount Goldsworthy Agreement Minister and subject to the prior transfer of the Boodarie GPLs to the Joint Venturers as referred to in subclause 3(c), the Company and Joint Venturers shall facilitate the establishment and operation of the infrastructure corridor within the Boodarie Industrial Estate Corridor Area including by:
    - (I) the Joint Venturers surrendering any Boodarie GPLs to the extent



that they relate to land within the Boodarie Industrial Estate Corridor Area;

- (II) giving their consent (if applicable) to the grant of tenure or other rights for the construction and operation of infrastructure and utilities within the Boodarie Industrial Estate Corridor Area; and
- (III) on reasonable terms and conditions facilitating and allowing such crossings for the infrastructure corridor and any future infrastructure and utilities within the Boodarie Industrial Estate Corridor Area that may be required including in relation to the railway and associated facilities currently held pursuant to the Goldsworthy-Nimingarra Agreement,

and the State agrees that immediately after the Joint Venturers surrender the Boodarie GPLs to the extent referred to in subparagraph (I) it shall grant or cause the relevant agency, instrumentality or other authority of the State to grant appropriate and adequate tenure and access rights to the Joint Venturers in respect of any works, installations or facilities of the Joint Venturers located within the Boodarie Industrial Estate Corridor Area and that continue to be required for the purposes of the Mount Goldsworthy Agreement and that such tenure shall be held by the Joint Venturers pursuant to the Mount Goldsworthy Agreement for the purposes of the Mount Goldsworthy Agreement.

- (iv) The Joint Venturers further acknowledge that the Boodarie GPLs relate to land that is located proximate to the Port of Port Hedland and of strategic importance and that the State and third parties may in the future wish to construct and operate infrastructure such as roads, railways, conveyors, pipelines, transmission lines and other utilities on such land and to have access to such land for such purposes and in light of this acknowledgment the Joint Venturers shall:
- (A) if applicable, give their consent to, or otherwise facilitate the grant by the State or any agency, instrumentality or other authority of the State, of any lease, licence or other title over land the subject of the Boodarie GPLs so long as such grant does not unduly prejudice or interfere with the operations of the Joint Venturers under the Mount Goldsworthy Agreement; and
  - (B) on reasonable terms and conditions allow access for the construction and operation of such infrastructure.
- (v) The State acknowledges that the Joint Venturers plan to develop under the Mount Goldsworthy Agreement a conveyor and associated infrastructure corridor connecting planned stockpile facilities to be located upon the Boodarie GPLs to planned port facilities within the Port of Port Hedland upon the land described in Plan E in Schedule F and the State agrees, subject to and in accordance with any proposals approved or determined in that regard under the Mount Goldsworthy Agreement, to cause the Port Authority to grant from time to time to the Joint Venturers easements under the Port Authorities Act over so much of the described land as the Joint Venturers reasonably require:
- (i) at commercial rental; and

- (ii) upon such other terms and conditions as approved by the Minister responsible for the Port Authorities Act (acting with the concurrence of the Mount Goldsworthy Agreement Minister) including as to the facilitation and allowance on reasonable terms and conditions of future crossings of the corridor and the future location of infrastructure and utilities within the corridor so long as such crossings, infrastructure or utilities do not unduly prejudice or interfere with the operations of the Joint Venturers under the Mount Goldsworthy Agreement.

The State's obligation under this paragraph (v) shall cease upon the cessation of the State's obligation under clause 8(5)(g) of the Mount Goldsworthy Agreement.

- (vi) The Joint Venturers agree to surrender general purpose leases 45/65 and 45/69 (each being a Boodarie GPL) immediately prior to the Port Authority granting to them an easement under the Port Authorities Act in respect of the land the subject of general purpose leases 45/65 and 45/69 (or such lesser area as may be agreed between the Joint Venturers and the Port Authority) and the Joint Venturers acknowledge that such easement shall be:
  - (i) at commercial rental; and
  - (ii) upon such other terms and conditions as approved by the Minister responsible for the Port Authorities Act (acting with the concurrence of the Mount Goldsworthy Agreement Minister) including as to the facilitation and allowance on reasonable terms and conditions of future crossings of the land the subject of that easement and the future location of infrastructure and utilities upon that land so long as such

crossings, infrastructure or utilities do not unduly prejudice or interfere with the operations of the Joint Venturers under the Mount Goldsworthy Agreement,

and from the date such easement is registered under the *Transfer of Land Act 1893* (WA) the easement shall be held by the Joint Venturers pursuant to the Mount Goldsworthy Agreement for the purposes of:

- (iii) the Mount Goldsworthy Agreement; and
  - (iv) performing their obligations (to the extent not then performed) under subclause (5) and the EP Act and the Ministerial Statement generally to the extent such obligations are referable to that land.
- (f) The State shall cause an endorsement to be made in the register maintained under section 103F of the Mining Act that the provisions of this subclause apply to the Boodarie GPLs.
- (4) (a) On and from the Operative Date and subject to paragraph (b), the Utah Jild lease shall continue in force subject to its terms and conditions and for the avoidance of doubt the holder of the Utah Jild lease shall cease to have the benefit of any rights and privileges conferred by the Beneficiation Agreement.
- (b) For the purposes of clause 3.1(b) of the Utah Jild lease the Beneficiation Agreement Minister has approved and the Port Authority has consented to the Company allowing the Joint Venturers to use the land the subject of that lease for the purposes of:
- (i) performing their obligations under subclause (5) and the EP Act and the Ministerial Statement generally to the extent such obligations are referable to that land;
  - (ii) constructing a section of railway in accordance with proposals dated 27 May 2011 and entitled "Project Proposals for Goldsworthy Rail Infrastructure Expansion" submitted by the Joint Venturers under the Mount Goldsworthy Agreement; and

- (iii) conducting studies relevant to the formulation and submission of detailed proposals under the Mount Goldsworthy Agreement in respect of that land.
  - (c) Within 3 months after the Operative Date, the Joint Venturers shall make application to the State for the grant of a lease in respect of the land the subject of the Utah Jild lease (or such lesser area of that land as may be agreed between the Joint Venturers and the Port Authority) and, subject to the prior surrender of the Utah Jild lease by the Company, the State shall cause the Port Authority to grant to the Joint Venturers a lease under the Port Authorities Act of that land:
    - (i) at commercial rental; and
    - (ii) upon such other terms and conditions (including as to the assumption by the Joint Venturers of liabilities of the Company under or in relation to the Utah Jild lease) as approved by the Minister responsible for the Port Authorities Act (acting with the concurrence of the Mount Goldsworthy Agreement Minister),  
  
and from the date such lease is registered under the *Transfer of Land Act 1893* (WA) the lease shall be held by the Joint Venturers pursuant to the Mount Goldsworthy Agreement for the purposes of:
      - (iii) the Mount Goldsworthy Agreement; and
      - (iv) performing their obligations (to the extent not then performed) under subclause (5) and the EP Act and the Ministerial Statement generally to the extent such obligations are referable to that land.
  - (d) On and from the Operative Date the proposals referred to in subclause (4)(b)(ii) are approved for the purposes of clause 7B(1) of the Mount Goldsworthy Agreement, but only to the extent that they relate to construction of the relevant section of railway.
- (5) Upon the transfer of the Boodarie GPLs to the Joint Venturers as referred to in subclause (3)(c), the Joint Venturers shall in accordance

with the EP Act, the Ministerial Statement and (to the extent required by the Port Authority) the Utah Jild lease forthwith:

- (a) decommission and remove plant, facilities and other works established by the Company upon the land the subject of the Boodarie GPLs and the Utah Jild lease in accordance with and to the extent contemplated by the decommissioning plan prepared in accordance with clause 8 of the Ministerial Statement; and
  - (b) rehabilitate the land affected by the construction, operation and removal of such works in accordance with and to the extent contemplated by the rehabilitation plan prepared in accordance with clause 8 of the Ministerial Statement.
- (6) For the avoidance of doubt, termination of the Beneficiation Agreement effected pursuant to clause 4(1) shall not affect the operation of the Water Agreement.
- (7) (a) On and from the Operative Date the Joint Venturers will indemnify and keep indemnified the State and its employees, 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 the Company pursuant to the Beneficiation Agreement or relating to its operations under the Beneficiation Agreement or arising out of or in connection with the construction, maintenance or use by the Company or its employees, agents, contractors or assignees of the Company's works or services the subject of the Beneficiation Agreement or the plant, apparatus or equipment installed in connection with the Beneficiation Agreement.
- (b) The Joint Venturers will indemnify and keep indemnified the State and its employees, 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 the Joint Venturers or their employees, agents, contractors or assignees on or subsequent to the Operative Date in relation to their obligations under clause 4(5) of this Agreement.
- (c) The indemnities in paragraphs (a) and (b) shall remain in force for a period ending on the date which is 20 years after:

- (i) the date agreed between the State and the Joint Venturers; or
- (ii) if the parties fail to agree a date under paragraph (i), the date determined by the State,

as being the date upon which the Joint Venturers have performed their obligations under subclause (5).

- (d) The Joint Venturers acknowledge that clause 19 of the Mount Goldsworthy Agreement applies in relation to their use, making available for use or any other activities of the Joint Venturers upon or in relation to the land the subject of any of the Boodarie GPLs, the Utah Jild lease and the lease contemplated by subclause (4)(c) for the purposes of the Mount Goldsworthy Agreement and any tenure and access rights granted to the Joint Venturers as contemplated by subclauses (3)(e)(iii) and (v) for the purposes of the Mount Goldsworthy Agreement.

#### **5. Capacity of Joint Venturers**

The Joint Venturers enter into this Agreement in their capacity as the "Joint Venturers" as defined in, and for the purpose of, the Mount Goldsworthy Agreement save that in respect the obligations contained in clause 4(3)(e)(iii) the Joint Venturers accept such obligations also in their capacity as the "Joint Venturers" as defined in, and for the purpose of, the Goldsworthy-Nimingarra Agreement.

**SCHEDULE A**

**Boodarie GPLs**

**(to be transferred to the Joint Venturers pursuant to clause 4(3)(c))**

General Purpose Leases 45/62, 45/63, 45/64, 45/65, 45/66, 45/67, 45/68, 45/69, 45/70, 45/71, 45/72, 45/73, 45/74, 45/75, 45/76, 45/77, 45/78, 45/79, 45/80, 45/81, 45/82, 45/83, 45/84, 45/85, 45/86, 45/87, 45/88, 45/89, 45/90, 45/91, 45/92, 45/93, 45/94, 45/95, 45/96, 45/97, 45/98, 45/99, 45/100, 45/101, 45/102, 45/103, 45/104, 45/105, 45/106, 45/107, 45/108, 45/109, 45/110, 45/111, 45/112, 45/113, 45/114, 45/115, 45/116, 45/117, 45/118, 45/119, 45/120, 45/121, 45/122, 45/123, 45/124, 45/125, 45/126, 45/127, 45/128, 45/129, 45/130, 45/131, 45/132, 45/133, 45/134, 45/135, 45/136, 45/137, 45/138, 45/139, 45/140, 45/141, 45/142, 45/143, 45/144, 45/145, 45/146, 45/147, 45/148, 45/149, 45/150, 45/151, 45/152, 45/153, 45/154, 45/155, 45/156, 45/157, 45/158, 45/159, 45/160, 45/161, 45/162, 45/163, 45/164, 45/165, 45/166, 45/167, 45/168, 45/169, 45/170, 45/171, 45/172, 45/173, 45/174, 45/175, 45/176, 45/177, 45/178, 45/179, 45/180, 45/181, 45/182, 45/183, 45/184, 45/185, 45/186, 45/187, 45/189, 45/190, 45/191, 45/192, 45/193, 45/194, 45/197, 45/198, 45/199, 45/200, 45/220, 45/221, 45/222, 45/223, 45/224, 45/235, 45/236, 45/237, 45/238, 45/239, 45/240, 45/241, 45/242, 45/243, 45/244, 45/245, 45/246, 45/247, 45/248, 45/249, 45/250, 45/251, 45/252, 45/253, 45/254, 45/255, 45/256

**SCHEDULE B**

**Surrender GPLs**

**(to be surrendered by the Company pursuant to clause 4(3)(c)(ii)(A))**

General Purpose Leases, 45/188, 45/195, 45/196, 45/201, 45/202, 45/203, 45/204, 45/205, 45/207, 45/208, 45/209, 45/210, 45/211



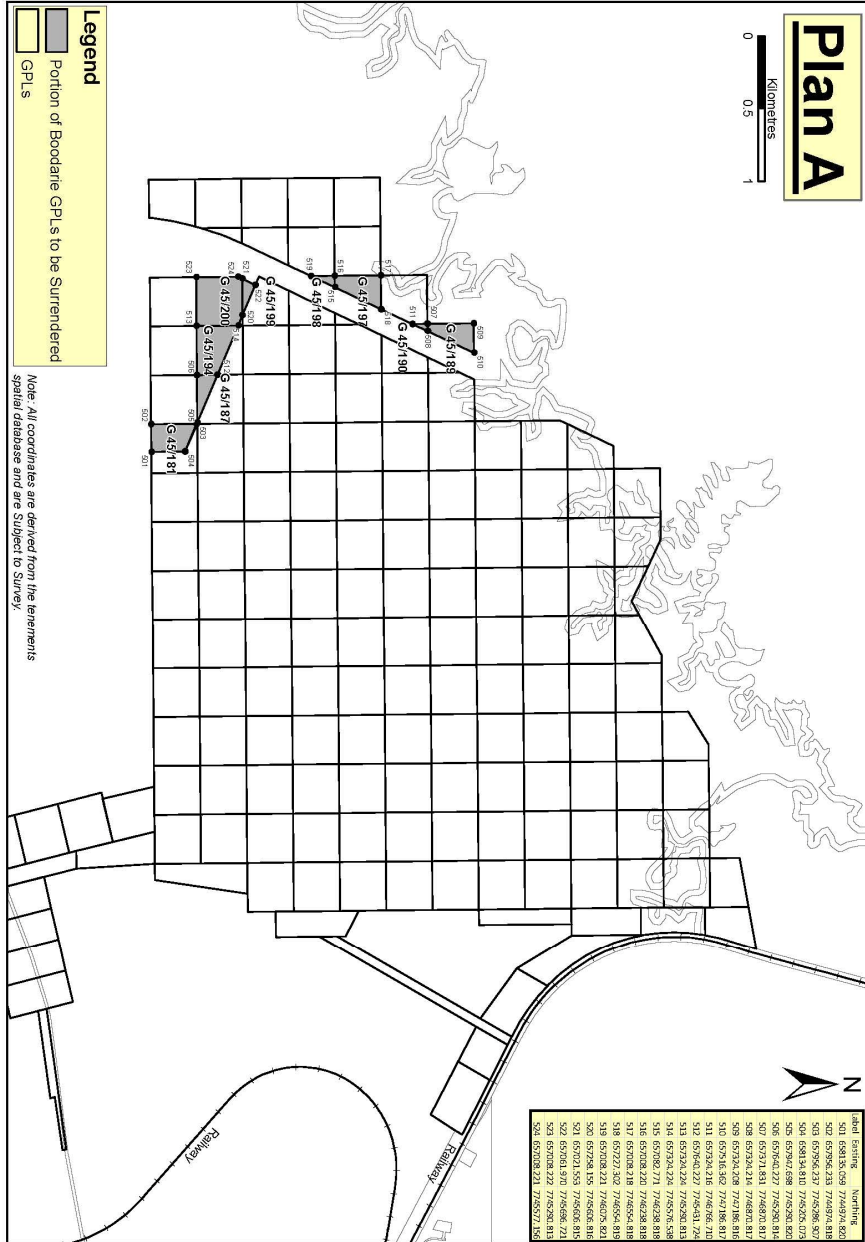
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**SCHEDULE C**

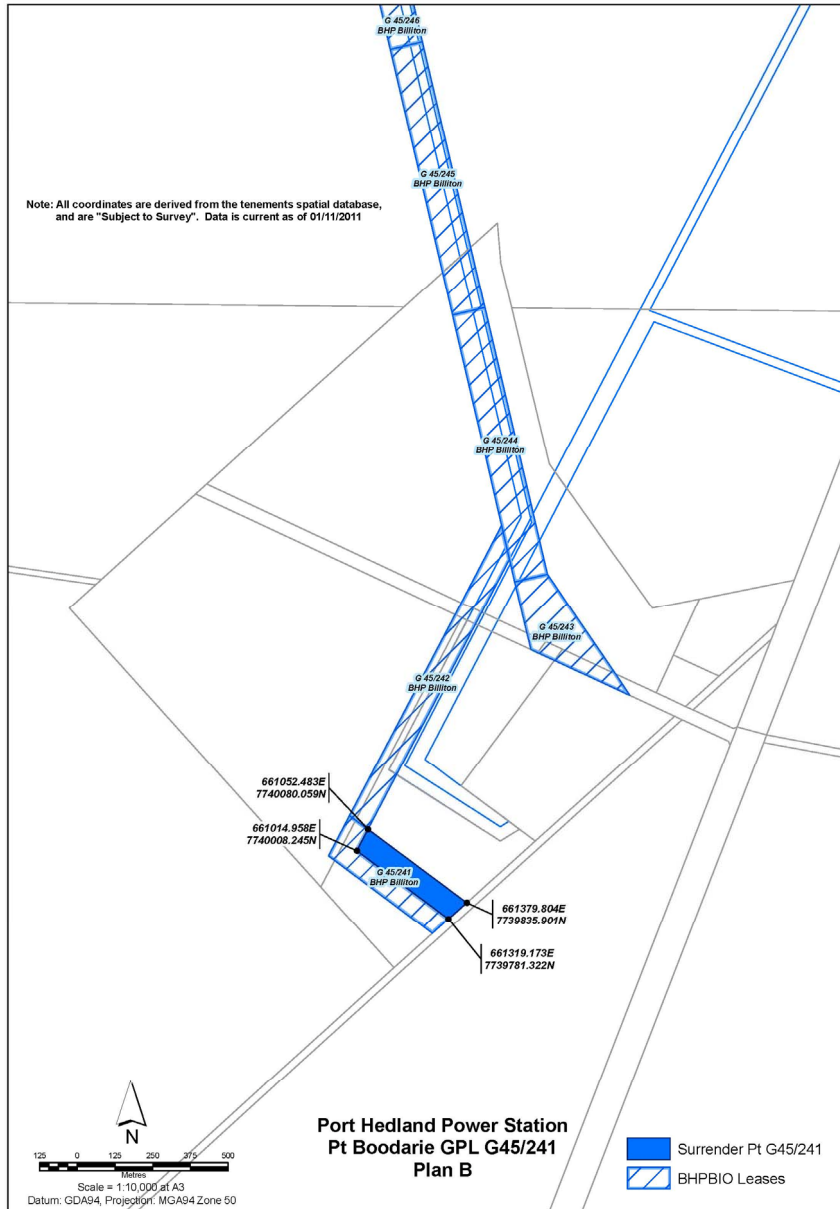
**Portions of Boodarie GPLs to be surrendered pursuant to  
clause 4(3)(c)(ii)(B)**

<b>Boodarie GPL</b>	<b>Portion to be surrendered</b>
G45/181	That portion of GPL 45/181 shown on Plan "A"
G45/187	That portion of GPL 45/187 shown on Plan "A"
G45/189	That portion of GPL 45/189 shown on Plan "A"
G45/190	That portion of GPL 45/190 shown on Plan "A"
G45/194	That portion of GPL 45/194 shown on Plan "A"
G45/197	That portion of GPL 45/197 shown on Plan "A"
G45/198	That portion of GPL 45/198 shown on Plan "A"
G45/199	That portion of GPL 45/199 shown on Plan "A"
G45/200	That portion of GPL 45/200 shown on Plan "A"
G45/241	That portion of GPL 45/241 shown on Plan "B"

**Plan "A"**



Plan "B"

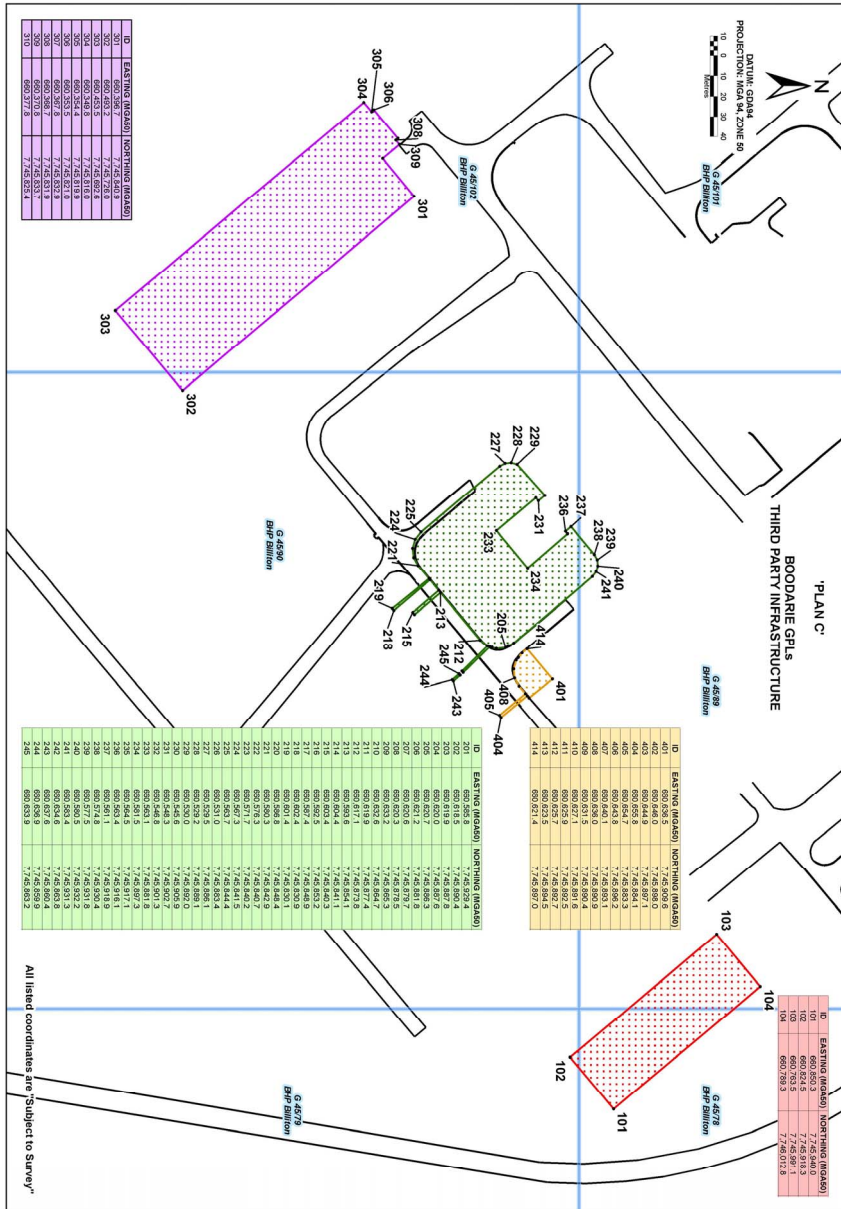


**SCHEDULE D**

**Portions of Boodarie GPLs to be surrendered pursuant to  
clause 4(3)(e)(ii)(A)(I)(i)**

<b>Boodarie GPL</b>	<b>Portion to be surrendered</b>
G45/78	That portion of GPL 45/78 shown on Plan "C"
G45/79	That portion of GPL 45/79 shown on Plan "C"
G45/89	That portion of GPL 45/89 shown on Plan "C"
G45/90	That portion of GPL 45/90 shown on Plan "C"
G45/102	That portion of GPL 45/102 shown on Plan "C"

Plan "C"

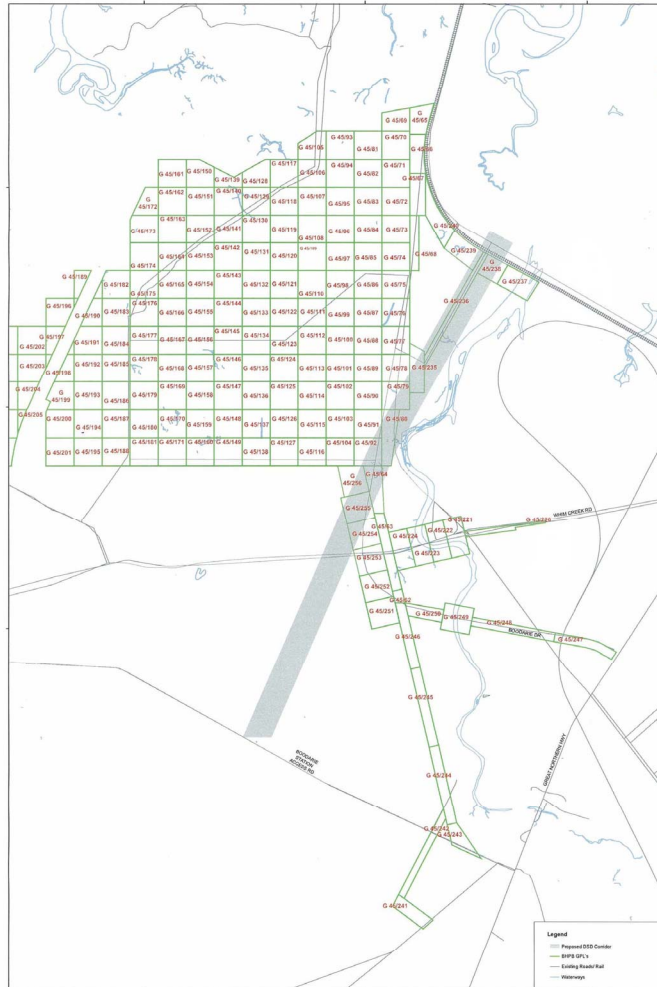


All listed coordinates are "Subject to Survey"

**SCHEDULE E**

**Proposed Boodarie Industrial Estate Corridor – Indicative Corridor  
Alignment**

**Plan "D"**



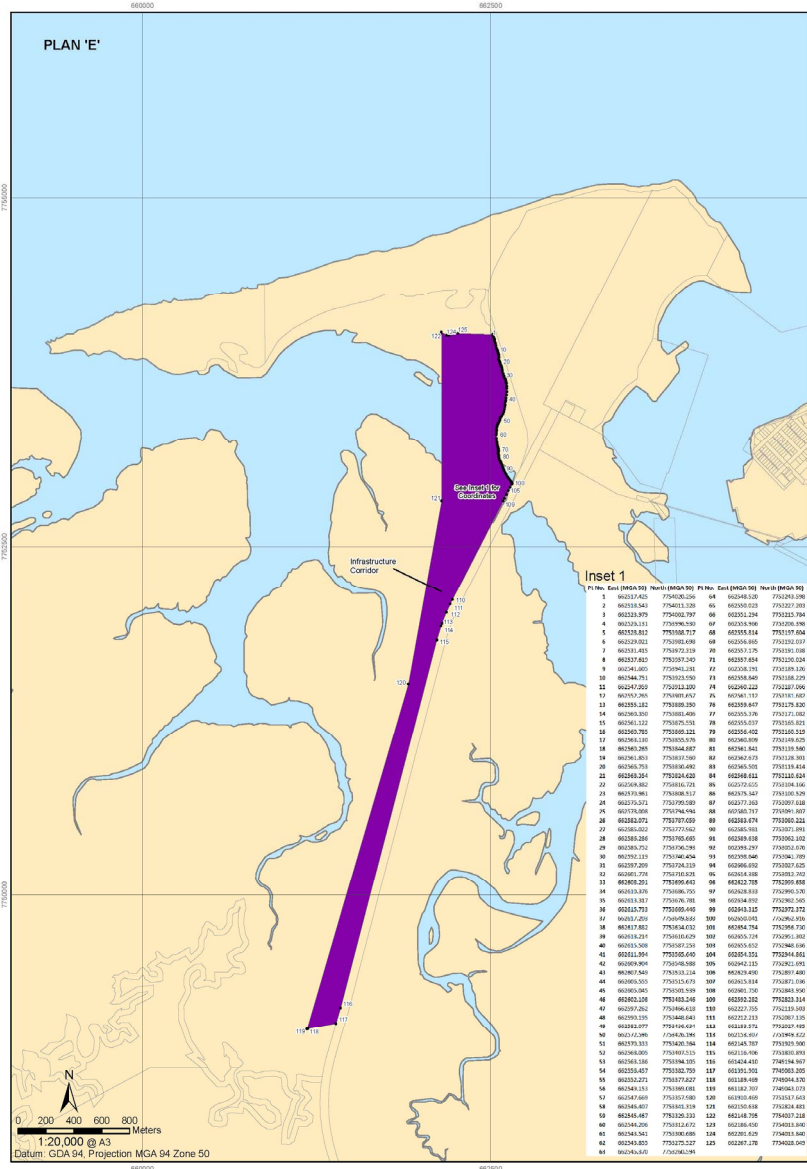
Boodarie proposed industrial corridor  
October 2011 edition

Scale 1:50,000  
Source: Information Mapping, BPPB Edition

SCHEDULE F

Joint Venturers' planned conveyer and associated infrastructure corridor

Plan "E"



**Iron Ore Agreements Legislation (Amendment, Termination and Repeals)  
Act 2011**

**Schedule 1** Termination agreement

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**EXECUTED** as a deed.

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

[Signature]

---

Signature of witness

Peter Goodall

---

Name of witness

[Signature]

---

**EXECUTED** by **BHP BILLITON DIRECT** )  
**REDUCED IRON PTY. LTD.** ACN 058 025 )  
960 in accordance with section 127(1) of )  
the Corporations Act )

[Signature]

---

Signature of Director

Uvashni Raman

---

Full Name

[Signature]

---

Signature of Secretary

Robin Lees

---

Full Name



**EXECUTED** by **BHP BILLITON** )  
**MINERALS PTY. LTD.** ACN 008 694 782 )  
in accordance with section 127(1) of )  
the Corporations Act )

\_\_\_\_\_  
[Signature]

Signature of Director

\_\_\_\_\_  
Uvashni Raman

Full Name

\_\_\_\_\_  
[Signature]

Signature of Secretary

\_\_\_\_\_  
Robin Lees

Full Name

**EXECUTED** by **MITSUI IRON ORE** )  
**CORPORATION PTY. LTD** )  
ACN 050 157 456 in accordance with section )  
127(1) of the Corporations Act )

\_\_\_\_\_  
[Signature]

Signature of Director

\_\_\_\_\_  
Ryuzo Nakamura

Full Name

\_\_\_\_\_  
[Signature]

Signature of Secretary

\_\_\_\_\_  
Jiahe He

Full Name

**Iron Ore Agreements Legislation (Amendment, Termination and Repeals)  
Act 2011**

**Schedule 1** Termination agreement

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**SIGNED** by **Shuzaburo Tsuchihashi** )  
as attorney for **ITOCHU MINERALS &** )  
**ENERGY OF AUSTRALIA PTY. LTD.** )  
ACN 009 256 259 under power )  
of attorney dated 27 October 2011 )  
in the presence of: )

\_\_\_\_\_  
[Signature]

Signature of witness

\_\_\_\_\_  
Yasushi Fukumura

Name

\_\_\_\_\_  
[Signature]

Signature of Attorney

\_\_\_\_\_  
Shuzaburo Tsuchihashi

Name

=====