



Western Australia

Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972

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Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972

An Act to authorise the execution on behalf of the State of an agreement with Consolidated Gold Fields Australia Limited, Cyprus Mines Corporation, Utah Development Company, Hancock Prospecting Pty. Ltd., Wright Prospecting Pty. Ltd. and M.I.M. Holdings Limited relating to the exploration for and the development and treatment of iron ore and for incidental and other purposes.

1. Short title

This Act may be cited as the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*¹.

2A. Term used: current Agreement

In this Act —

current Agreement means the agreement referred to in section 2 as varied from time to time.

[Section 2A inserted by No. 61 of 2010 s. 39.]

2. Execution of agreement authorised

The execution by the Premier of the State of Western Australia acting for and on behalf of the State of an agreement in or substantially in accordance with the form set out in Schedule 1 is authorised.

[Section 2 amended by No. 45 of 1986 s. 4.]

3. Executed agreement to operate and take effect

- (1) When the agreement referred to in section 2 is duly executed by all the parties thereto, the agreement (in this Act called “**the Principal Agreement**”) shall, subject to its provisions, operate and take effect as though those provisions were enacted in this Act.
- (2) To avoid doubt, it is declared that the provisions of the *Public Works Act 1902* section 96 do not apply to a railway constructed under the current Agreement.

[Section 3 amended by No. 45 of 1986 s. 5; No. 61 of 2010 s. 40.]

4. First Variation Agreement

- (1) The agreement (in this section called “**the first Variation Agreement**”), a copy of which is set out in Schedule 2, is ratified and its implementation is authorised.
- (2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the first Variation Agreement shall operate and take effect notwithstanding any other Act or law.
- (3) Without limiting section 3(1), on the commencement of the *Iron Ore (McCamey's Monster) Agreement Authorisation Amendment Act 1986*¹ the Principal Agreement, as amended by the first Variation Agreement, shall, subject to its provisions, operate and take effect as though those provisions were enacted in this Act.

[Section 4 inserted by No. 45 of 1986 s. 6; amended by No. 29 of 1994 s. 8; No. 61 of 2010 s. 41.]

5. Second Variation Agreement

- (1) The agreement (in this section called “**the second Variation Agreement**”), a copy of which is set out in Schedule 3, is ratified and its implementation is authorised.

- (2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the second Variation Agreement shall operate and take effect notwithstanding any other Act or law.
- (3) Without limiting section 3(1), on the commencement of the *Acts Amendment (Mount Goldsworthy, McCamey's Monster and Marillana Creek Iron Ore Agreements) Act 1994*¹, the Principal Agreement, as amended by the first Variation Agreement and the second Variation Agreement, shall, subject to its provisions, operate and take effect as though those provisions were enacted in this Act.

[Section 5 inserted by No. 29 of 1994 s. 9; amended by No. 61 of 2010 s. 41.]

6. Third Variation Agreement

- (1) The agreement (*third Variation Agreement*) a copy of which is set out in Schedule 4 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.
- (4) Without limiting section 3(1), on the commencement of the *Acts Amendment (Iron Ore Agreements) Act 2000*¹, the Principal Agreement, as amended by the first Variation Agreement, the second Variation Agreement and the third Variation Agreement, is to operate as if it were enacted in this Act.

[Section 6 inserted by No. 57 of 2000 s. 13; amended by No. 61 of 2010 s. 41.]

7. Variation of Agreement to increase rates of royalty

- (1) In this section —

the Agreement means the Principal Agreement —

- (a) as varied from time to time in accordance with its provisions; and
 - (b) as varied by these agreements —
 - (i) the first Variation Agreement;
 - (ii) the second Variation Agreement;
 - (iii) the third Variation Agreement.
- (2) Clause 31(1) of the Agreement is varied —
- (a) in paragraph (aa)(ii) by deleting “3.75%” and inserting —

5.625%
 - (b) after paragraph (aa) by inserting —
 - (ab) on iron ore products being fine ore and fines where such fine ore or fines are sold or shipped separately as such — at the rate of 5.625% of the f.o.b. revenue (computed as mentioned in paragraph (a) of this subclause);
 - (ac) on iron ore products being iron ore concentrates — at the rate of 5% of the f.o.b. revenue (computed as mentioned in paragraph (a) of this subclause);
- (3) Clause 31(1)(aa)(ii) of the Agreement as varied, and clause 31(1)(ab) and (ac) as inserted in the Agreement, by subsection (2) operate and take effect despite —
- (a) any other provision of the Agreement; and
 - (b) any other agreement or instrument; and
 - (c) any other Act or law.

- (4) Nothing in this section affects the amount of royalty payable under clause 31 of the Agreement in respect of any period before the commencement of the *Iron Ore Agreements Legislation Amendment Act 2010* Part 5.

[Section 7 inserted by No. 34 of 2010 s. 11.]

8. Fourth Variation Agreement

- (1) The agreement (***fourth Variation Agreement***) a copy of which is set out in Schedule 5 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.

[Section 8 inserted by No. 61 of 2010 s. 42.]

9. State empowered under clause 11E(9)(a)

The State has power in accordance with clause 11E(9)(a) of the current Agreement.

[Section 9 inserted by No. 61 of 2010 s. 42.]

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.

[Section 10 inserted by No. 62 of 2011 s. 16.]

Schedule 1 — Iron Ore (McCamey's Monster) Agreement

[s. 2]

[Heading inserted by No. 45 of 1986 s. 7; amended by No. 19 of 2010 s. 4.]

THIS AGREEMENT made the _____ day of _____
One thousand nine hundred and seventy-two BETWEEN THE HONOURABLE JOHN TREZISE TONKIN, M.L.A., THE PREMIER OF THE STATE OF WESTERN AUSTRALIA acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the one part and CONSOLIDATED GOLD FIELDS AUSTRALIA LIMITED a company incorporated under the Companies Ordinances of the Australian Capital Territory and having its executive office at Gold Fields House Sydney Cove in the State of New South Wales and its registered office in the State of Western Australia (hereinafter referred to as "the said State") at 156 Saint George's Terrace Perth CYPRUS MINES CORPORATION a corporation incorporated in the State of New York in the United States of America and having its executive offices situate at 1234 Pacific Mutual Building 523 West Sixth Street Los Angeles California in the United States of America UTAH DEVELOPMENT COMPANY a corporation incorporated under the laws of the State of Nevada in the United States of America with its executive offices situate at 550 California Street San Francisco in the said United States of America and having its registered office in the State of Queensland at Pearl Assurance House at the corner of Queen and Eagle Streets Brisbane HANCOCK PROSPECTING PTY LTD a company incorporated in the said State and having its registered office situate at the 14th floor Lombard House 251 Adelaide Terrace Perth WRIGHT PROSPECTING PTY LTD a company incorporated in the said State and having its registered office situate at the 14th floor Lombard House 251 Adelaide Terrace Perth and M.I.M. HOLDINGS LIMITED a company incorporated in the State of Queensland and having its registered office situate at 363 Adelaide Street, Brisbane (hereinafter called "the Joint Venturers" which expression shall where the context so admits or requires extend to include the Joint Venturers jointly and each of them severally their and each of their successors and permitted assigns and appointees) of the other part.

WHEREAS:

- (a) The Joint Venturers are exploring and investigating the possibility of the mining areas hereinafter defined containing large deposits of iron ore and as a result of such exploration and investigation the

parties believe that in the mining areas there are substantial deposits of iron ore having an average grade of 60% Fe or better.

- (b) Research is being conducted by the Joint Venturers with the object of establishing satisfactory ore crushing, screening, and upgrading procedures in the treatment of iron ore.
- (c) The Joint Venturers are conducting engineering studies as to the technical feasibility of the construction of a railway between the mining areas and possible port sites.

NOW THIS AGREEMENT WITNESSETH as follows —

Definitions²

1. In this Agreement subject to the context —

“apply”, “appoint”, “approve”, “approval”, “consent”, “certify”, “direct”, “notify”, “require”, or “request” means apply, appoint, approve, approval, consent, certify, direct, notify, require, or request in writing as the case may be;

“approved proposals” means proposals which are approved by the Minister as provided in paragraph (a) of subclause (1) of Clause 8 and proposals which are deemed to have been approved as provided in paragraph (b) of subclause (6) of Clause 8;

“associated company” means —

- (a) any company notified by the Joint Venturers or any of them to the Minister which has a paid-up capital of not less than two million dollars and is incorporated in the United Kingdom, the United States of America, or the Commonwealth of Australia and which —
 - (i) is promoted by the Joint Venturers or any of them for all or any of the purposes of this Agreement and in which the Joint Venturers or any of them hold not less than twenty per centum of the issued ordinary share capital or —
 - (ii) is related within the meaning of the term “subsidiary” in section 6 of the *Companies Act 1961* to any company in which the Joint Venturers or any of them hold not less than twenty per centum of the issued ordinary share capital and —

- (b) any other company which the Minister approves as an associated company for the purposes of this Agreement.

“Clause” means a clause of this Agreement.

“commencement date” means the date on which this Agreement is executed by all the parties hereto;

“Commission” means the State Electricity Commission of Western Australia;

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

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

“export date” means the date on which the ship carrying the first shipment of iron ore products shipped by the Joint Venturers under this Agreement (other than iron ore shipped solely for testing purposes) sails from the port at which it has been loaded;

“financial year” means a year commencing on and including the 1st day of July;

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

“fines” means iron ore (not being direct shipping ore or fine ore) which will pass through a 6 millimetre mesh screen;

“f.o.b. revenue” means the price for iron ore products the subject of any shipment or sale which is payable by the purchaser thereof to the Joint Venturers or an associated company, less all export duties and export taxes payable on such iron ore products and less all costs and charges properly incurred and payable on such iron ore products by the Joint Venturers or an associated company to the State or a third party from the time when the iron ore products are placed on ship at the Joint Venturers' wharf to the time when the iron ore products are delivered and accepted by the purchaser, there being included in such costs and charges —

- (1) ocean freight;
- (2) marine insurance;
- (3) port and handling charges at port of discharge;
- (4) costs of delivery from port of discharge to a smelter nominated by the purchaser;
- (5) weighing, sampling, assaying, inspection and representation costs incurred on discharge or delivery;
- (6) shipping agency charges;
- (7) import taxes payable to the country of the port of discharge;
- (8) demurrage incurred after loading and at port of discharge; and
- (9) such other costs and charges as the parties (having regard *inter alia* to such matters as the parties to and the *bona fide* nature of the transaction as the result of which the cost or charge was incurred) shall agree to include or failing agreement as fixed by arbitration as hereinafter provided.

For the purpose of this definition —

- (a) the Minister may from time to time in respect of any of the costs or charges mentioned in items (1) to (9) (inclusive) above incurred in relation to any particular shipment or sale notify the Joint Venturers that he does not regard the cost or charge as being properly incurred and in that event should the Joint Venturers disagree with the Minister's decision they may refer the matter in question to arbitration as hereinafter provided but unless and until it is otherwise determined such cost or charge shall be treated as being not properly incurred and if otherwise determined the State will refund to the Joint Venturers any royalty paid by the Joint Venturers on the basis that the charge was not properly incurred;
- (b) notwithstanding anything contained in this definition to the contrary, a cost or charge as set out in items (1) to (8) inclusive or this definition shall not (unless and until the

Minister so determines) be deemed to be properly incurred if such charge is directly or indirectly imposed upon or incurred by the Joint Venturers or an associated company pursuant to an arrangement entered into between the Joint Venturers and the State;

- (c) in the event of the parties failing to agree to the inclusion of a cost or charge which might be included pursuant to item (9) and referring the matter to arbitration then unless and until it is otherwise determined such cost or charge shall be excluded but if it is determined that the same should be included the State shall refund to the Joint Venturers any royalty paid by reason of the same having been excluded;

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

“iron ore” means iron ore from the mining areas;

“iron ore concentrates” means products (whether in pellet or other form) resulting from secondary processing but does not include metallised agglomerates;

“iron ore pellets” means iron ore in pellet or other form produced by pelletisation or a more advanced reduction or other treatment or process from iron ore mined on the mineral lease;

“iron ore products” is an inclusive term covering iron ore of all grades obtained from the mineral lease and also all products produced by secondary and tertiary processing any part of such iron ore;

“Joint Venturers’ wharf” means any wharf utilised by the Joint Venturers for the purpose of shipping iron ore products produced as the result of the operation of this Agreement and whether the same be a wharf constructed by or on behalf of the Joint Venturers a wharf used by the Joint Venturers in conjunction with another or others (including the State) or any temporary structure approved by the Minister as the Joint Venturers’ wharf for the time being for the purposes of this Agreement;

“Land Act” means the *Land Act 1933*;

- “locally used ore” means iron ore used by the Joint Venturers or an associated company within the Commonwealth for secondary processing or in an integrated iron and steel industry or any plant for the production of steel;
- “metallised agglomerates” means products resulting from the reduction of iron ore or iron ore concentrates by any method whatsoever and having an iron content of not less than eighty-five percentum;
- “mineral lease” means the mineral lease or mineral leases referred to in Clause 11(1) and includes any renewal thereof and where the context so permits shall describe the area of land demised as well as the instrument by which it is demised;
- “mine townsite” means a townsite or townsites established by the Joint Venturers on or near the mining areas pursuant to this Agreement and may include any existing townsite approved by the Minister;
- “Mining Act” means the *Mining Act 1904*;
- “mining areas” means the area delineated and coloured blue on the plan marked “A” initialled by or on behalf of the parties for the purpose of identification and comprising Temporary Reserves Nos. 4194H, 4326H, 5004H and 5006H;
- “Minister” means the Minister of the Government of the said State for the time being responsible for the administration of this Agreement;
- “Minister for Mines” means the Minister in the Government of the said State for the time being responsible for the administration of the Mining Act;
- “month” means calendar month;
- “notice” means notice in writing;
- “ore” means iron ore;
- “parties” means the parties to this Agreement;
- “person” or “persons” includes bodies corporate;
- “the port” means a new port to be established in implementation of proposals made by the Joint Venturers pursuant to Clause 7 whether the same be established by the Joint Venturers exclusively or by them in conjunction with another or others (including the State) and should no such new port be established the term means

any existing port developed or used by the Joint Venturers for the purposes of this Agreement by arrangement with another or others (including the State) and in either case the term extends to and includes as well as the land upon which the Joint Venturers' wharf is erected also the adjacent land serving the Joint Venturers' wharf and the adjacent land on which it is proposed to locate or on which could be located or in fact is located secondary and tertiary processing plants crushing grinding and screening facilities stockpiling yards electric power generating plant petroleum storage and other ancillary facilities;

“port townsite” means the townsite to be expanded or developed near the port;

“said State” means the State of Western Australia;

“secondary processing” means the concentration or other beneficiation of iron ore otherwise than by crushing or screening and includes thermal electrostatic magnetic and gravity processing and the production of pellets iron ore concentrates metallised agglomerates and sponge iron;

“steel” means steel in the form of steel billets or manufactured steel products;

“tertiary processing” means the production of pig iron by blast furnace smelting the production of steel by any means whatsoever and the further processing of steel into special shapes and alloys;

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

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

“Transfer of Land Act” means *Transfer of Land Act 1893*;

“wharf” includes any jetty structure;

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

Interpretation²

2. (1) In this Agreement —
- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
 - (b) power given under any clause other than Clause 46 to extend any period or date shall be without prejudice to the power of the Minister under Clause 46;
 - (c) marginal notes do not affect the interpretation or construction²; and
 - (d) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

(2) Where any provision of this Agreement constitutes an Agreement or undertaking by one of the parties to make a payment or to perform some act or to carry out some obligation or to assume some responsibility or liability or to grant some right concession or advantage that party shall by its execution hereof be deemed to have covenanted and agreed with the other party accordingly.

(3) The State and the Minister shall be deemed to have power and authority to exercise all such powers and discretions and to do all such other acts matters and things as may be required or be necessary to be exercised or done in order to carry out and give effect to the provisions of this Agreement and in particular the State and the Minister shall be deemed to have power —

- (i) to close or vary the alignments or boundaries of any public road and —
- (ii) to resume as and for a public work any land or other estate right or interest in land.

Effect on existing Acts²

3. (1) As from the date hereof all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any other Act or any law to the contrary and for the purposes of this Agreement and without limiting the generality of the foregoing the undermentioned Acts shall be deemed modified and amended to the extent indicated namely —

- (a) the Mining Act — by deleting Sections 277 and 282 thereof;

- (b) the Land Act —
- (i) by deleting subsections (1) and (2) of Section 45A thereof and by substituting the following —
- “45A. (1) Notwithstanding anything contained in the last preceding Sections of this Part (Part IV) of this Act the Governor may dispense with the requirements thereof as to the sale of town or country lands and may approve of any lot being offered for sale or for leasing in the manner prescribed in subsection (2) of this Section;
- (2) Upon the Governor signifying approval pursuant to subsection (1) of this Section in respect of any such lands the Minister may offer the said lands or any part thereof for sale or may grant leases or licences thereof for such price or prices and for such period or periods (including rights of renewal) and upon and subject to such other terms and conditions and in such form as the Minister may think fit provided that the price period or other terms and conditions shall not be inconsistent with the provisions of any agreement executed by the Premier of the State of Western Australia acting for and on behalf of the said State pursuant to the authority in that behalf given by an Act of the Parliament of the said State.”
- (ii) by deleting the proviso to Section 116 thereof;
- (iii) by deleting Sections 135 and 143 thereof;
- (c) the Public Works Act — by deleting subsections (2) to (7) inclusive of Section 17 thereof and also the whole of Section 17A thereof;
- (d) Section 82 of the Mining Act and Section 81D of the Transfer of Land Act shall not apply to a mortgage or charge in the form commonly known as a floating charge given by the Joint Venturers or an associated company pursuant to Clause 40 or to a transfer or assignment in exercise of a power of sale contained in any such mortgage or charge;
- (e) no lease sublease licence or other title or right granted or assigned under or pursuant to this Agreement shall be subject

to or capable of partition and the provisions of Part XIV of the *Property Law Act 1969* shall not apply thereto.

Right to enter Crown land²

4. To the extent reasonably necessary for the purpose of the investigations and studies and subject to the adequate protection of the environment (including flora and fauna) and the affected land and improvements thereon the State shall permit the Joint Venturers to enter into and upon Crown land other than the mining areas (including the lands the subject of a pastoral lease) and to survey possible sites for their proposed operations under this Agreement.

Rights of occupancy of mining areas²

5. As soon as practicable after the commencement date the State shall upon application by the Joint Venturers cause to be granted to the Joint Venturers the sole and exclusive right to search and prospect for iron ore in the mining areas (but excluding therefrom any existing prospecting areas, claims, leases, or authorised holdings under the Mining Act and any land alienated or in the course of alienation and any land reserved (not being Crown land within the meaning of the Mining Act)) by granting to the Joint Venturers rights of occupancy pursuant to section 276 of the Mining Act over the Temporary Reserves contained in the mining areas for the period and upon and subject to the following terms and conditions —

Existing rights to be surrendered²

- (a) the rights of occupancy shall be granted subject to the condition precedent that the Joint Venturers acquire by transfer all existing rights of occupancy in respect of the mining areas and surrender them to the Minister for Mines;

Period of rights of occupancy²

- (b) the rights of occupancy shall be for a period expiring five years after the commencement date;

Consideration for rights of occupancy²

- (c) the Joint Venturers shall within one month after the commencement date and thereafter on the first and every subsequent anniversary of the commencement date during the continuance of the period of the rights of occupancy pay to the State as consideration for the rights of occupancy in advance an annual fee of one thousand dollars for each Temporary Reserve comprised in the mining areas and in

addition ten dollars and four cents for each square kilometre or part of a square kilometre of the mining areas for the time being subject to the rights of occupancy;

Obligation to prospect²

- (d) the Joint Venturers shall (in so far as they have not already done so) at their expense and in accordance with a programme first approved by the Minister for Mines prospect the mining areas to the satisfaction of the Minister for Mines during the term of such rights;

Reports²

- (e) the Joint Venturers shall during the term of the rights of occupancy furnish to both the Minister and the Minister for Mines an annual report on all operations carried out in the mining areas by or on behalf of the Joint Venturers;

Other mining tenements²

- (f) the Minister for Mines may grant to any person (including the Joint Venturers) mining tenements pursuant to the Mining Act for any mineral other than iron ore within the mining areas if the Minister is satisfied that such grant would be unlikely to materially prejudice or interfere with the Joint Venturers' operations under this Agreement;

Determination of occupancy²

- (g) the rights of occupancy shall forthwith cease and determine on the happening of any of the following events namely —
 - (i) upon the Joint Venturers by notice to the Minister relinquishing the same; or
 - (ii) upon the period of the rights of occupancy expiring by effluxion of time; or
 - (iii) upon the State granting to the Joint Venturers a mineral lease pursuant to Clause 11 (notwithstanding that the instrument of such lease may not be issued); or
 - (iv) upon the Joint Venturers making default in the due and punctual payment of any annual fee payable pursuant to paragraph (c) of this Clause and failing to comply with a notice from the State specifying such

default and calling upon the Joint Venturers to remedy the same within a period of fourteen days of the service of such notice; or

- (v) upon the Joint Venturers making default in the due performance or observance of any of the other of the terms and conditions upon and subject to which the rights of occupancy were granted and failing to comply with a notice from the State specifying such default and calling upon the Joint Venturers to remedy the same within a period of fourteen days of the service of such notice; and

Surrender of areas²

- (h) notwithstanding the provisions of paragraph (b) of this Clause the Joint Venturers may from time to time (with abatement of future annual fees in respect of the area surrendered but without abatement of annual fees already paid or annual fees which have become due and have been paid in advance) surrender to the State all or any portion or portions (of reasonable size and shape) of the mining areas.

Investigations and studies²

6. (1) The Joint Venturers shall insofar as they have not already done so to the satisfaction of the Minister, commence forthwith and carry out at their expense (with the assistance of experienced consultants where appropriate) —

- (a) a thorough geological and (as necessary) geophysical investigation and proving of the iron ore deposits in the mining areas and the testing and sampling of such deposits;
- (b) a reconnaissance of sites of the operations proposed pursuant to this Agreement together with the preparation of suitable maps and drawings;
- (c) an engineering investigation of the route for a railway from the mining areas to the port or (in consultation with the owner) to connect with any existing or proposed railway operated or to be operated by any other party under an agreement with the State;
- (d) a general survey and preliminary engineering investigation of possible port sites in the vicinity of Port Hedland, Cape

Lambert and the Dampier Archipelago including Legendre Island;

- (e) a study of the technical and economic feasibility of the mining transporting handling and shipping of iron ore from the mining areas;
- (f) the planning for the development of a suitable mine townsite and a suitable port townsite (including design of housing utilities and associated facilities and social cultural and civic facilities) in consultation with the State having due regard to the possible or probable use of the same by others as well as the Joint Venturers;
- (g) the investigation, in areas approved by the Minister (which approval shall not be unreasonably withheld) of suitable water supplies for mining industrial and mine townsite purposes;
- (h) metallurgical and market research; and
- (i) an assessment of the environmental effects likely to result from operations pursuant to this Agreement together with outlines of proposals to minimise any deleterious effects on the environment;

Port investigations²

(2) After consultation with the Minister concerning the result of the investigations and surveys mentioned in paragraph (d) of subclause (1) of this Clause the Joint Venturers shall employ or retain experienced consultant engineers to investigate report upon and make recommendations as to the best overall development of a port at such location as appears to be most suitable. The Joint Venturers shall require such engineers when making such report and recommendations to have full regard for the general development of the port with a view to its reasonable use by others and the Joint Venturers shall furnish to the State copies of such reports and recommendations. When submitting to the Minister pursuant to Clause 7 detailed proposals in regard to the matters mentioned in this subclause the Joint Venturers shall so far as reasonably practicable ensure that the detailed proposals —

- (a) do not materially depart from the reports and recommendations of such engineers;

- (b) provide for the best overall development of the port so far as the same relates to the Joint Venturers' activities;
- (c) disclose any conditions of user; and
- (d) where alternative proposals are submitted the Joint Venturers' preferences in regard thereto;

(3) The Joint Venturers shall collaborate with and keep the State fully informed by quarterly reports as to the progress and results of the Joint Venturers' operations under subclauses (1) and (2) of this Clause. The Joint Venturers shall as and when the Minister may reasonably require furnish the Minister with copies of all appropriate reports received by them from consultants in connection with the matters referred to in this Clause and with copies of all relevant findings made and reports prepared by them.

State investigations²

(4) If the State concurrently carries out its own investigations and reconnaissances in regard to all or any of the matters mentioned in subclauses (1) and (2) of this Clause the Joint Venturers shall co-operate with the State therein and so far as it is reasonably practicable so to do shall consult with the representatives or officers of the State and make full disclosures and give expressions of opinion regarding the matters referred to in those subclauses.

State assistance²

(5) The State shall if required assist the Joint Venturers in completing their investigations and studies pursuant to this Clause and shall furnish such advice and commentaries as the Joint Venturers may require and as may be practicable for the State so to do.

Joint Venturers' proposals²

7. (1) As soon as practicable after the completion of the investigations mentioned in Clause 6 the Joint Venturers shall submit to the Minister proposals as to the location of the port and an outline in sufficient detail to enable the Minister to satisfy himself as to the suitability, technical feasibility and practicability, of the proposed development of the port (having regard to the matters mentioned in paragraph (a) of subclause (2) of this Clause). The Minister shall within two months after such submission notify the Joint Venturers whether he approves or otherwise of such proposals or the Minister may within that time himself suggest an alternative proposal. If the Minister does not approve of the Joint Venturers' proposals or if he himself submits an

alternative proposal the Minister shall disclose his reasons for so doing in the said notice and afford the Joint Venturers ample opportunity to consult with him and themselves to submit further or alternative proposals and to consider any alternative proposal suggested by the Minister. When considering any of the Joint Venturers' proposals and in making his own proposal the Minister shall have regard to the possible future requirements of others (including the State) and no preference or other priority shall be given to the Joint Venturers or their proposals by reason only that the proposals were submitted for consideration before proposals from any other party.

Detailed proposals²

(2) Subject to the proposals or any alternative proposals as to the location and development of the port being approved the Joint Venturers shall on or before the fifth anniversary of the commencement date or on or before such later date as the Minister may approve or as may be determined by arbitration as hereinafter provided submit to the Minister detailed proposals which shall include (where practicable) appropriate plans and (where reasonably required by the Minister) appropriate specifications in respect of the mining of iron ore on and the future development of the mining areas (or so much thereof as is likely to be comprised in the mineral lease mentioned in Clause 11) and detailed particulars as to the measures proposed to be taken for the protection of the environment should the said proposal be approved or deemed to be approved and also (to the fullest extent reasonably practicable) detailed particulars as to the location area layout design number materials to be used in and time programme for the commencement and completion of the construction or the provision (as the case may be) of each of the following matters —

- (a) (to the extent not already covered by the proposals mentioned in subclause (1) of this Clause) the port and port development including the dredging thereof and the disposal and depositing of the spoil the provision of navigational aids and a fair contribution to their maintenance, the Joint Venturers' wharf, the berth and swinging basin proposed in connection with the Joint Venturers' use thereof and the port installations facilities and services to be available all of which are to be of such nature and extent as to be capable of and suitable for adaptation to permit use of the Joint Venturers' wharf by ships having a capacity to carry 60,000 tonnes of iron ore;
- (b) the railway from the mining areas to the port or to connect with an existing railway and its proposed operation including

- joint user conditions (if any) fencing (if any) crossing places and grade separation or other forms of acceptable protection at intersections with public roads;
- (c) the development of the mine townsite and the port townsite including services and facilities in relation thereto;
 - (d) housing;
 - (e) water supply;
 - (f) roads;
 - (g) generation transmission and distribution of electricity;
 - (h) airfields;
 - (i) the leases licences or other tenures of land jetty structures and mooring areas (if any) required from the State;
 - (j) disposal of waste materials;
 - (k) drainage;
 - (l) dust control measures; and
 - (m) any other works, services or facilities proposed or required by the Joint Venturers.

Order of proposals²

(3) The proposals may and shall if so required by the State be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (m) of subclause (2) of this Clause.

Use of existing infrastructure²

(4) The proposals relating to any of the matters mentioned in subclause (2) of this Clause may with the agreement of the Minister and that of any third parties concerned instead of providing for the construction of new facilities of the kind therein mentioned provide for the use by the Joint Venturers upon reasonable terms and conditions of any existing facilities of such kind.

Marketing and financial arrangements²

(5) At the time when the Joint Venturers submit the said proposals they shall furnish to the Minister's reasonable satisfaction evidence of —

- (a) marketing arrangements demonstrating the Joint Venturers' ability to sell iron ore and iron ore products in accordance with the said proposals;
- (b) the availability of finance necessary for the fulfilment of the operations to which the said proposals refer; and
- (c) the readiness of the Joint Venturers to embark upon and proceed to carry out the operations referred to in the said proposals.

Port Location²

(6) Notwithstanding anything contained in this Agreement the State's determination in respect of the Joint Venturers' proposals relating to the location of the port and in respect of proposals relating to the development of the port (in so far as such proposals concern the development of the port for use by or in conjunction with others) and the location of the port townsite shall be final and no such determination may be referred to arbitration by the Joint Venturers.

Consideration of proposals²

8. (1) On receipt of the said proposals the Minister may —
- (a) approve of the said proposals either wholly or in part without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Joint Venturers submit a further proposal or proposals in respect of some other of the matters mentioned in subclause (2) of Clause 7 not covered by the said proposals; or
 - (c) require as a condition precedent to the giving of his approval to the said proposals that the Joint Venturers make such alteration thereto or comply with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Joint Venturers of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions.

Advice of Minister's decision²

(2) The Minister shall within two months after receipt of the said proposals give notice to the Joint Venturers of his decision in respect to the

same, and shall disclose to the Joint Venturers by such notice the reasons for such decision.

Consultation with Minister²

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

Ministers' decision subject to arbitration²

(4) If the decision of the Minister is as mentioned in the said paragraph (c) and the Joint Venturers consider that the condition precedent is unreasonable the Joint Venturers may within two months after receipt of the notice mentioned in subclause (2) of this Clause elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the condition precedent.

Reasonableness of Minister's decision²

(5) In addition to any other matter to which the arbitrator is required (whether pursuant to the provisions of Clause 49 or otherwise) to have regard in considering the reasonableness of any decision of the Minister made pursuant to subclause (1) of this Clause the Minister shall not be regarded to have acted unreasonably if he shall defer his decision on a proposal made in relation to the matters mentioned in paragraph (i) of subclause (2) of Clause 7 until the said proposals in relation to the matters mentioned in the other paragraphs of subclause (2) of Clause 7 have become or are deemed to have become approved proposals and the Joint Venturers have complied with the provisions of subclause (5) of Clause 7.

Arbitration Award²

(6) An award made on an arbitration pursuant to subclause (4) of this Clause shall have force and effect as follows —

- (a) if by the award it is adjudged that the condition precedent is reasonable then the decision of the Minister in respect to the said proposals shall stand; or
- (b) if by the award it is adjudged that the condition precedent is unreasonable then the said proposals shall be deemed to have been approved by the Minister in the form in which the same were submitted.

Additional proposals²

9. (1) If the Joint Venturers at any time during the continuance of this Agreement desire to modify expand or otherwise vary their activities beyond those specified in any approved proposals they shall give notice of such desire to the Minister and within two months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (m) of subclause (2) of Clause 7 as the Minister may require. The provisions of Clauses 7 and 8 shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause.

Basis of submission²

(2) In the event of the Joint Venturers submitting detailed proposals pursuant to subclause (1) of this Clause or if as a consequence of their submitting detailed proposals pursuant to Clause 33 the Minister requires further detailed proposals to be submitted on any of the said matters mentioned in paragraphs (a) to (m) of subclause (2) of Clause 7 then subject as provided in subclause (3) of this Clause the additional proposals shall be submitted on the basis that should the same become approved proposals the provisions of Clause 25 shall apply *mutatis mutandis* in respect of any increase in the extent of the services and facilities mentioned in subclause (1) of Clause 25 and also in respect of the provision of the additional services or facilities (whether of the kind mentioned in subclause (1) of Clause 25 or not) occasioned in either case by the additional proposals becoming approved proposals.

Determination of extent of Joint Venturers' obligations²

(3) The extent of the Joint Venturers responsibilities under Clause 25 to provide the capital cost of and to maintain any increased or additional services and facilities of the kind mentioned in subclause (1) of that Clause occasioned by the additional proposals or any of them becoming approved proposals shall be determined by the Minister after discussion and negotiation on such matters with the Joint Venturers and in making such determination the Minister shall have regard *inter alia* to the current and anticipated composition of any mining or other town affected and the extent to which the ordinary responsibilities of the State with respect to the provision of the capital cost of such services and facilities are to be assumed by the State in the light of the State's current capital resources at that time.

Determination before implementation of proposals²

10. In any of the following events namely —

- (a) if all of the rights of occupancy cease and determine pursuant to the provisions of paragraph (g) of Clause 5 (other than subparagraph (iii)); or
- (b) if the Joint Venturers give to the State notice of their intention to abandon or discontinue the investigations and the studies; or
- (c) if the Joint Venturers fail within the time (or any extension thereof) limited by subclause (2) of Clause 7 to submit any proposals and fail to satisfy the Minister that they are then diligently and actively conducting the necessary investigations and studies incidental to the preparation of the proposals; or
- (d) if the effect of an award made upon an arbitration under subclause (4) of Clause 8 is that the decision of the Minister is to stand and the Joint Venturers fail within three months after the making of the award to give notice that they accept the same and propose forthwith to implement the proposals in respect of which the award was made —

the State may give to the Joint Venturers one month's notice determining this Agreement and on the expiration of such notice this Agreement shall cease and determine and neither party shall have any claim against the other in respect of any matter or thing arising out of or done or performed or omitted to be done or performed under this Agreement except as provided under Clause 43.

Mineral Lease²

11. (1) As soon as practicable after the said proposals become approved proposals and the Joint Venturers have complied with the provisions of subclause (5) of Clause 7 the State shall in accordance with the relevant approved proposal on the application of the Joint Venturers cause to be granted to them a mineral lease in the form set out in the Schedule to this Agreement for the mining of iron ore from such part or parts of the land comprised in the mining areas as is or are then subject to the rights of occupancy and referred to in the said proposals. The following provisions shall apply to the mineral lease —

Provisions²

- (a) the total area of the land the subject thereof shall not exceed seven hundred and seventy seven square kilometres;
- (b) the boundaries of the land comprising such area shall be so located as to form either a single parallelogram or a number of parallelograms;
- (c) the rent reserved thereby shall be that fixed in subclause (4) of this Clause;
- (d) the Joint Venturers shall therein covenant to pay to the State in addition to the said rent the royalties fixed in Clause 31;
- (e) subject to the due payment by the Joint Venturers of the said rent and royalties and to the due performance and observance by them of their other obligations thereunder and of their obligations under this Agreement the term thereof will be twenty one years as from the date of the granting thereof but the Joint Venturers shall during the continuance of this Agreement have the right to take successive renewals of the said term each for a period of twenty one years upon the same terms and conditions subject to the sooner determination of the said term upon the cessation or determination of this Agreement. The said right shall be exercisable by the Joint Venturers making written application for any such renewal not later than one month before the expiration of the current term of the mineral lease;
- (f) subject to paragraphs (a) to (e) inclusive of this subclause and as in this Agreement otherwise provided all relevant provisions of the Mining Act and the Regulations thereunder will apply but subject to their discharging and carrying out their obligations under this Agreement the Joint Venturers shall not be required to comply with the labour conditions imposed by the said Act in respect of mineral leases.

Survey²

(2) The State shall cause to be made any survey necessary to define the area and boundaries of the land to be comprised in the mineral lease and the Joint Venturers shall upon demand made on or after the completion of such survey pay to the State the cost thereof. The Minister for Mines may decline to issue the instrument for the mineral lease until such survey is completed.

Surrender of part of mineral lease²

(3) Notwithstanding the provisions of paragraph (e) of subclause (1) of this Clause the Joint Venturers may from time to time (with abatement of future rent in respect to the area surrendered but without any abatement of rent already paid or any rent which has become due and has been paid in advance) surrender to the State all or any portion or portions (of reasonable size and shape) of the mineral lease.

Rent²

(4) The rent payable by the Joint Venturers under the mineral lease shall be an annual rent (payable annually in advance) of a sum equal to 1.7297 dollars per hectare per annum calculated on the total area of land for the time being the subject of the mineral lease. The said rent shall run as from the date of the granting of the mineral lease and the first payment of rent shall become due and payable within one month of the grant of the mineral lease notwithstanding that the survey mentioned in subclause (2) of this Clause may not have been commenced or completed or the instrument for the mineral lease may not have been issued.

Rights to other minerals²

(5) The State shall to such extent as may be reasonably practicable on the application of the Joint Venturers from time to time grant to the Joint Venturers or assist them in obtaining the grant of leases and other rights for limestone, dolomite, granite, diorite, silica sand and other minerals and substances reasonably required by the Joint Venturers for the purposes of this Agreement.

Other mining tenements²

(6) The State shall not during the continuance of this Agreement register any claim or grant any lease or other mining tenement under the Mining Act or otherwise whereby any person other than the Joint Venturers might under the laws relating to mining or otherwise obtain any rights to mine or take natural substances (other than petroleum as defined by the *Petroleum Act 1967*) from within the mineral lease unless the Minister reasonably determines that the registration or grant is not likely materially to prejudice or interfere with the Joint Venturers' operations hereunder.

Access over mineral lease²

(7) The Joint Venturers shall at all times permit the State and third parties (with or without stock vehicles and rolling stock) to have access to and to pass over the mineral lease (by separate route, road or railway) so long as that

access and passage does not materially prejudice or interfere with the operations of the Joint Venturers under this Agreement.

State may resume land²

12. The State may as and for a public work under the *Public Works Act 1902*, resume any land required for the purposes of this Agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of the land to the Joint Venturers. The Joint Venturers shall pay to the State on demand the costs of and incidental to any land resumed at the request of and on behalf of the Joint Venturers pursuant to this Clause.

Other Leases²

13. (1) The State shall in accordance with the approved proposals as and when required by the Joint Venturers so to do cause to be granted to the Joint Venturers such other leases of Crown lands as the parties may consider reasonable and necessary for all or any of the following purposes namely town sites, private roads, railway lines and sidings, tailing areas, over-burden areas, water pipelines, pumping installations and reservoirs, airport, power transmission lines and stockpile areas and for any other of the purposes of this Agreement. Such leases shall be granted for such periods at such rentals and upon and subject to such other terms and conditions as shall be reasonable having regard to the obligations of the Joint Venturers under this Agreement.

Special Leases²

(2) Pursuant to subclause (1) of this Clause the State shall when required by the Joint Venturers so to do cause to be granted to them —

- (a) a special lease (or special leases) of Crown land at the mine townsite for residential, professional, business, commercial and industrial purposes and for the purpose of providing communal facilities. Such special lease shall be granted upon all usual terms and conditions and in particular shall contain the following provisions —
 - (i) the term thereof (unless sooner determined) shall expire on the same date as that on which the term of the mineral lease or any renewal thereof terminates or is determined;
 - (ii) the rental payable thereunder shall be one peppercorn per annum payable if and when demanded;

- (iii) the Joint Venturers shall have the right during the continuance thereof to purchase (for a price comparable with that charged by the State for other Crown land released for freehold sale in similar towns in the general region of the Joint Venturers' operations) the fee simple of any parcel or lot being part of the land thereby demised on which the Joint Venturers have erected buildings or structures (net being dwellings) costing at least ten thousand dollars or dwellings costing at least seven thousand dollars.
- (b) a special lease (or special leases) of Crown land at or near the port for industrial stockpiling, ship loading, power generation and other similar purposes. Such special lease shall be granted upon all usual terms and conditions and in particular shall contain the following provisions —
 - (i) the term thereof shall (unless sooner determined) expire on the same date as that on which the term of the mineral lease or any renewal thereof terminates or is determined;
 - (ii) the rental payable thereunder shall be an annual rental payable in advance of 4.9421 dollars per hectare during the first twenty one years and thereafter shall be reviewed and fixed by agreement between the parties or failing agreement referred to arbitration hereunder at seven year intervals.

Additional rent²

- (c) notwithstanding the provisions contained in the mineral lease or any other lease granted pursuant to either of paragraphs (a) or (b) of this subclause whereby the rent payable thereunder and the times at which such rent is so payable are fixed the Joint Venturers shall during the continuance of this Agreement from and after the commencement of Year 16 pay to the State as and by way of an additional annual rent to that payable under such one or more of such leases as the Joint Venturers may from time to time at their option in a notice to the State designate a sum equal to 24.6052 cents per tonne on all iron ore products sold and shipped after the commencement of Year 16 in respect of which a royalty is

payable under this Agreement such additional rent to be paid at the same times and in the same manner as the said royalty.

No resumption²

14. The State agrees that subject to the performance by the Joint Venturers of their obligations hereunder the State shall not resume or suffer or permit to be resumed by any instrumentality or by any local or other authority of the said State any portion of the land the subject of any special lease mentioned in subclause (2) of Clause 13 the resumption of which would materially impede the Joint Venturers' works and activities thereon or any portion of the land the subject of the mineral lease whereon any of the Joint Venturers' works are situate the resumption of which would materially impede the Joint Venturers' mining or other activities thereon nor shall the State create or grant or permit or suffer to be created or granted by an instrumentality or authority of the said State any road right of way or easement of any nature or kind whatsoever over or in respect of the land comprised in the said leases whereon any of the Joint Venturers' works are situate without the consent in writing of the Joint Venturers' first had and obtained which consent the Joint Venturers agree they shall not arbitrarily or unreasonably withhold.

No discriminatory rates²

15. Except as provided by this Agreement the State shall not impose or permit or suffer any instrumentality of the said State or any local or other authority to impose discriminatory taxes, rates or charges of any nature whatever on or in respect of the titles, property or other assets, products, materials or services used or produced by or through the operations of the Joint Venturers hereunder and the State shall not take or permit any such instrumentality or any local or other authority to take any other discriminatory action that would deprive the Joint Venturers of any rights granted or intended to be granted to them under this Agreement.

Zoning²

16. The State shall ensure that the mineral lease and any lands the subject of any Crown grant lease licence or easement granted to the Joint Venturers under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Joint Venturers hereunder may be undertaken and carried out thereon without any interference or interruption by the State by any State agency or instrumentality or by any local or other authority of the State on the ground that such operations are contrary to any zoning by-law regulation or order.

Rating²

17. The State shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection with that residence and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the mining transportation processing and shipment of iron ore or iron ore products) shall for rating purposes under the *Local Government Act 1960* be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate, PROVIDED THAT nothing in this Clause shall prevent the Joint Venturers making the election provided for by Section 533B of the *Local Government Act 1960*.

Construction of plant²

18. The Joint Venturers shall within four years next following the date on which all the said proposals required to be submitted hereunder have become approved proposals or at such later date as the Minister may approve at a cost of not less than sixty million dollars construct install provide and do all things necessary to enable them to mine from the mineral lease to transport by rail to the Joint Venturers' wharf and to commence shipment therefrom in commercial quantities at an annual rate of not less than one million tonnes of iron ore and without lessening the generality of this provision the Joint Venturers shall within the aforesaid period or extended period as the case may be —

- (a) construct install and provide upon the mineral lease or in the vicinity thereof or at the port (as the case may be) mining plant and equipment crushing screening stock-piling and car loading plant and facilities power house workshop and other things of a design and capacity adequate to enable the Joint Venturers to meet and discharge their obligations hereunder and to mine handle load and deal with not less than three thousand tonnes of iron ore per day such capacity to be built up progressively to not less than ten thousand tonnes of iron ore per day within three years next following the export date;

Commencement of operations²

- (b) actually commence to mine transport by rail and ship from the Joint Venturers' wharf iron ore from the mineral lease so

that the average annual rate during the first two years after export date shall not be less than one million tonnes.

Construction of Railway²

19. (1) Subject to the State having assured to the Joint Venturers all necessary rights in or over Crown Lands available for the purpose the Joint Venturers shall in a proper and workmanlike manner and in accordance with recognised standards for railways of a similar nature operating under similar conditions construct along the route specified in the approved proposals (but subject to the provisions of the *Public Works Act 1902*, to the extent that they are applicable) the standard gauge railway (1.4351 metres) specified in the approved proposals and shall also construct *inter alia* any necessary deviations, loops, spurs, sidings, crossings, points, bridges signalling switches and other works and appurtenances and provide for crossing places and (where appropriate and required by the Minister) grade separation or other protective devices including flashing lights and boom gates at places where the specified railway crosses or intersects with major roads or existing railways (all of which together with the specified railway being hereinafter referred to as "the said railway") and shall operate the said railway with sufficient and adequate locomotives freight cars and other railway stock and equipment to haul at least one million tonnes of iron ore per annum.

Operation of Railway²

(2) The Joint Venturers shall during the continuance of this Agreement operate the said railway in a safe and proper manner and where they can do so without materially prejudicing or interfering with their operations hereunder they shall provide crossing places for livestock and also for any roads and other railways which now exist or in the future may be constructed and which cross or may be required to cross the said railway.

Passengers and freight²

(3) Where they can do so without materially prejudicing or interfering with their operations hereunder and subject to the payment to them of the charges prescribed by and for the time being payable under any by-laws made by the Joint Venturers in respect of the transporting of passengers and the carriage of freight over the said railway and subject to the due compliance with the other requirements and conditions prescribed by such by-laws (or should there be no such by-laws for the time being in force then subject to the payment of such charges and the due compliance with such requirements and conditions as in either case shall be reasonable having regard to the cost to the Joint Venturers of the construction and operation of the said railway) the Joint

Venturers shall if and when reasonably required so to do transport passengers and carry the freight of the State and third parties over the said railway but in relation to their use of the said railway the Joint Venturers shall not be deemed to be a common carrier at law or otherwise.

Roads Construction²

20. (1) Subject to the State having assured to the Joint Venturers all necessary rights in or over Crown Lands available for the purpose the Joint Venturers shall at their own cost and expense construct such new roads as they may reasonably require for the purposes of this Agreement, such roads to be of such widths, of such materials, with such gates and warning devices, crossings (level or grade separated where required) and pass-overs for cattle sheep and other livestock and along such routes as the parties shall agree after consideration of the requirements of the Commissioner of Main Roads. Except to the extent that the Joint Venturers' relevant approved proposal otherwise provides, the Joint Venturers shall allow the public to use free of charge any roads constructed or upgraded pursuant to or for the purposes of this Agreement so long as such use shall not materially prejudice or interfere with the Joint Venturers' operations hereunder.

Use of public roads²

(2) The Joint Venturers shall have the right to use any public roads that may from time to time exist in the area of their operations under this Agreement both prior to the commencement date and also in the course of their operations hereunder. If the exercise by the Joint Venturers of such right results in or is likely to result in intensive use of any public road whereby excessive damage or deterioration is caused thereto or whereby the road becomes inadequate for use by the Joint Venturers and the public the Joint Venturers shall upon demand (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or part of such cost) pay to the State or the local authority concerned or other authority having control of such road the cost (or an equitable proportion thereof having regard to the use of such road by others) of preventing or making good such damage or deterioration or of upgrading the road to a standard commensurate with the increased traffic.

Upgrading of roads²

(3) If required by the Joint Venturers the State shall at the Joint Venturers' cost and expense (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or any part of the cost) widen upgrade or realign any public road existing from time to time which the Joint Venturers desire to use for their operations hereunder over which the State

has control subject to the prior approval of the Commissioner of Main Roads to the proposed work.

Liability for use of roads²

- (4) (a) For the purpose of determining whether and the extent to which —
- (i) the Joint Venturers are liable to any person or body corporate (other than the State) or
 - (ii) an action is maintainable by any such person or body corporate

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

- (b) For the purposes of this subclause the terms “municipality” “street” and “care control and management” shall have the meanings which they respectively have in the *Local Government Act 1960*.

Water Coastal water requirements²

21. (1) The Joint Venturers shall from time to time give to the State not less than two years' notice in the form required by the Minister of their estimated water consumption at the port and port townsite other than for construction purposes (which amounts or such other amounts as shall be agreed between the parties are hereinafter called “the Joint Venturers' coastal water requirements”).

Coastal water search²

(2) Upon receipt of any such notice the State shall in collaboration with the Joint Venturers and in accordance with an agreed programme and budget at the expense of the Joint Venturers search for suitable subterranean water sources in areas agreed to by the parties.

Development of water sources²

(3) In the event that the search referred to in subclause (2) of this Clause identifies and proves subterranean water sources which the parties agree

are adequate to supply the Joint Venturers' coastal water requirements the State shall, in accordance with an agreed programme and budget, construct or arrange to have constructed at the Joint Venturers' expense all bores, valves, pipelines, meters, tanks, equipment and appurtenances (in this Clause called "the water works") necessary to supply the Joint Venturers' coastal water requirements.

Additional capacity²

(4) The State may in its discretion construct the water works to achieve a capacity greater than that needed to meet the Joint Venturers' coastal water requirements and in that event the Joint Venturers shall pay to the State a sum or sums to be agreed between the parties as being the Joint Venturers' fair share of the cost of providing the said facilities works or appurtenances.

State to supply water²

(5) The State shall supply the Joint Venturers with water from sources developed by the State pursuant to subclauses (3) and (4) of this Clause up to the amount and rate set forth in the last notice given pursuant to subclause (1) of this Clause PROVIDED HOWEVER that should such sources prove hydrologically inadequate to meet the Joint Venturers' coastal water requirements the State may limit the amount of water which may be taken from such sources at any one time or from time to time to the maximum which such sources are hydrologically capable of meeting.

Inland water requirements²

(6) The Joint Venturers shall from time to time give to the State not less than six months notice in the form required by the Minister in respect of their requirements of water other than for construction purposes both at the mine townsite and elsewhere associated with the mine development (but excluding the Joint Venturers' coastal water requirements) and within the mineral lease to implement their obligations hereunder (which amounts or such other amounts as shall be agreed between the parties are hereinafter called "the Joint Venturers' inland water requirements").

Inland water search²

(7) The Joint Venturers shall in collaboration with the State search for and make investigations to establish the availability of suitable subterranean water sources within the mineral lease or at other locations approved by the Minister (which approval shall not be unreasonably withheld) and shall employ and retain experienced ground water consultants where appropriate and shall furnish the Minister with copies of the consultants reports or alternatively if so

requested by the Joint Venturers the State shall carry out the said search and investigations at the Joint Venturers' expense.

Construction of water works²

(8) In the event that the search referred to in subclause (7) of this Clause identifies and proves subterranean water sources which the parties agree are adequate to supply the Joint Venturers' inland water requirements, the Joint Venturers shall provide and construct at their own expense to standards and in accordance with designs approved by the Minister and in accordance with their relevant proposals the water works necessary to draw transport use and dispose of water drawn from sources licensed to the Joint Venturers pursuant to subclause (9) of this Clause.

Licence²

(9) The Joint Venturers shall make application to the State for a licence to draw water up to the amount and at a rate not greater than that set forth in the last notice given pursuant to subclause (6) of this Clause from suitable subterranean water sources identified pursuant to the search and investigation mentioned in subclause (7) of this Clause and as are agreed to be adequate and the State shall grant to the Joint Venturers such licence PROVIDED HOWEVER that should such sources should prove hydrologically inadequate to meet the Joint Venturers' inland water requirements, the State may limit the amount of water which may be taken from such sources at any one time or from time to time to the maximum which such sources are hydrologically capable of meeting.

Revocation of licence²

(10) If during the currency of a licence granted under the provisions of this Clause the Minister is of the opinion that it is desirable that the sources of water licensed to the Joint Venturers and the water works established by the Joint Venturers pursuant to subclause (8) of this Clause be made available to the State for such purposes, *inter alia* as water conservation, water management, utilisation of unused hydrological capacity, supply of water to third parties (where such supply will not materially prejudice the Joint Venturers' operations hereunder) and establishment of a regional water supply system incorporating the area of operations of the Joint Venturers, the Minister shall, (after first affording the Joint Venturers an opportunity to consult with him), so notify the Joint Venturers and the Joint Venturers shall after the expiration of six months from the date of such notice relinquish to the State the ownership control and operation of the water works. The State shall thereupon assume the ownership control and operation of the water works and shall revoke all relevant licenses

previously issued to the Joint Venturers for the purpose of enabling them to draw subterranean water. The State shall not be liable to pay the Joint Venturers compensation in respect of the water works relinquished or the licenses so revoked. immediately after the revocation of such licenses the State shall (subject only to the continued hydrological availability of water from such sources previously licensed to the Joint Venturers), commence and thereafter continue to supply water to the Joint Venturers up to the same amount and at the same rate as that which the Joint Venturers would have been entitled to draw under such revoked licenses and the proviso to subclause (9) of this Clause shall in like manner apply to this subclause.

Regional water supply²

(11) The State may in its discretion develop any district or regional water supply and for the purposes thereof construct water works to a greater capacity than that required to supply the Joint Venturers' inland water requirements but in that event the cost of the water works so constructed shall be shared by the parties in such manner as may be agreed to be fair in all the circumstances.

Non-potable water²

(12) The Joint Venturers shall so design and construct their plant and facilities for the mining handling processing and transportation of iron ore that as far as practicable non-potable water may be used therein.

Charges for water²

(13) The Joint Venturers shall pay to the State for all water supplied by it for the purposes of this Agreement a fair price to be negotiated between the parties which shall be equal to the actual cost incurred by the State in supplying water to the Joint Venturers including operating maintenance and overhead costs and a provision for replacement of the necessary water works. Notwithstanding the foregoing the Joint Venturers shall pay to the State in respect of water supplied by the State to the Joint Venturers for townsite purposes such charges and rates as are levied from time to time pursuant to the provisions of the *Country Areas Water Supply Act 1947*.

Additional water search²

(14) Should the State at any time pursuant to the provisos to subclauses (5) and (9) of this Clause limit the amount of water to be taken from the water sources therein mentioned, the Joint Venturers shall collaborate with the State in a search at the Joint Venturers' expense for new or additional subterranean water sources with a view to restoring the full quantity or quantities of water required by the Joint Venturers and such search shall (if

necessary and agreed between the parties) extend to and include investigations into surface water resources pursuant to subclause (15) of this Clause.

Surface water²

(15) Without prejudice to the provisions of subclause (9) of this Clause the Joint Venturers shall collaborate with the State in an investigation of surface water catchments storage dams and reticulation facilities should water supplies from available underground sources prove insufficient to meet the Joint Venturers' coastal water requirements and the Joint Venturers' inland water requirements and the Joint Venturers shall if they propose to utilise such water catchments and/or storage dams pay to the State a sum or sums to be agreed towards the cost of such investigation and towards the cost of constructing any water storage dam or dams and reticulation facilities required PROVIDED THAT the State may in its sole discretion elect to construct a water storage dam or dams and reticulation facilities having a capacity in excess of that required to supply the Joint Venturers' needs and in that event the Joint Venturers' contribution shall be limited to a fair and reasonable proportion of the total cost of constructing such water storage dam or dams and reticulation facilities.

Rights in Water and Irrigation Act²

(16) Any reference in this Clause to a licence is a reference to a licence under the *Rights in Water and Irrigation Act 1914* and the provisions of that Act relating to water rights and licences shall except where inconsistent with the provisions of this Agreement apply to any water sources developed for the Joint Venturers' purposes under this Agreement.

Electricity²

Electrical facilities²

22. (1) The Joint Venturers shall in accordance with the approved proposals construct without cost or expense to the State the necessary plant equipment and systems (in this Clause called "electricity facilities") for the generation and transmission of electricity needed to enable the Joint Venturers to carry out their obligations hereunder. The Joint Venturers shall so design and construct the electricity facilities as to facilitate their ultimate connection with similar facilities owned by the Commission or other third parties.

Purchase of electricity²

(2) Notwithstanding the provisions of subclause (1) of this Clause (and for the purpose of facilitating integration of electricity generation and transmission facilities in areas where the Joint Venturers operate) the Joint

Venturers shall be at liberty to purchase electricity from the Commission and third parties or to negotiate with the Commission or third parties for the augmentation of the facilities of the Commission and such third parties to enable them to supply the Joint Venturers in lieu of the Joint Venturers providing electricity facilities pursuant to subclause (1) of this Clause.

Acquisition of facilities²

(3) The State may at any time give to the Joint Venturers twelve months' notice of its intention to acquire and may thereafter acquire the Joint Venturers' electricity facilities or any part thereof up to the first point of voltage breakdown or such other appropriate point as may be agreed, at a price to be agreed between the parties and the Joint Venturers shall take all such steps as may be necessary to effect the acquisitions. The State undertakes that in such event the Joint Venturers shall for their purposes hereunder have first call on the power generated and transmitted by such electricity facilities so acquired and the State undertakes subject only to its inability to supply power for any of the reasons set forth in Clause 39 to supply the Joint Venturers with power for their purposes hereunder up to the normal continuous full load capacity of the electricity facilities so acquired and that in the event of such inability to supply power occurring the State shall take all possible steps to restore such supply regardless of the time or day when such inability arises and may call upon the Joint Venturers to provide employees for that purpose at the State's expense.

Charges for electricity²

(4) In the event of the State acquiring the Joint Venturers' electricity facilities the Joint Venturers shall pay to the Commission the cost of all electricity supplied to the Joint Venturers by the Commission at a rate equal to the standard tariff from time to time applying to the Commission's system less the difference (if any) between the Commission's standard tariff in force at the time of the State's acquisition of the electricity facilities and the Joint Venturers' costs of operating the electricity facilities (including *inter alia* appropriate capital charges) at the time of the said acquisition. The Commission's rate for electricity supplied calculated as aforesaid shall apply only in respect of an amount of electricity equal to the continuous full load capacity of the electricity facilities so acquired and the Joint Venturers shall pay for all electricity supplied to them by the Commission in excess of such amount at the Commission's standard tariff applicable from time to time.

Bulk supply to State²

(5) Should the Joint Venturers' relevant approved proposal provide for the Commission to reticulate electricity to houses occupied by the Joint

Venturers' work-force and by any other persons connected directly with the Joint Venturers' operations whether employees or not and to commercial establishments directly connected with such operations, the Joint Venturers shall sell to the Commission in bulk electricity in sufficient quantities to meet the needs of such workforce persons and establishments at a price equal to the Joint Venturers' actual cost of generating and transmitting such electricity including, *inter alia*, appropriate capital charges.

Port and Joint Venturers' wharf²

23. (1) (a) The Joint Venturers shall develop the port, construct the Joint Venturers' wharf and carry out all necessary dredging of approach channels, swinging basin and berth at the Joint Venturers wharf and provide all necessary buoys, beacons, markers, navigational aids, lighting equipment and services and facilities (including where necessary tugs pilot boats and accommodation for the crews involved) in accordance with the Joint Venturers' relevant approved proposal.
- (b) Notwithstanding the provisions of paragraph (a) of this subclause, the parties recognise that it may be to their advantage for the State to provide all or some of the said works mentioned in the said paragraph and in such case the State shall confer with the Joint Venturers and the other users and potential users of the port as to the manner in which and the terms and conditions upon which the State should provide such works. The Joint Venturers shall pay to the State such sum or sums as the parties agree (not exceeding the amount that would have been payable had the Joint Venturers carried out the said works) towards the cost of the said works provided by the State.

Use of wharf and facilities²

- (2) (a) Subject to the payment to them of the charges prescribed by and for the time being payable under any by-laws made by the Joint Venturers in respect of the use by others of the Joint Venturers' wharf and subject to the due compliance with the other requirements and conditions prescribed by such by-laws or should there be no such by-laws for the time being in force then subject to the payment of such charges and the due compliance with such requirements and conditions as in either case shall be reasonable having regard to the cost to the Joint Venturers of the construction and operation of the Joint Venturers' wharf the

Joint Venturers shall permit the State and third parties to use the Joint Venturers' wharf and the port installations, wharf machinery equipment and wharf and port services and port facilities constructed or provided and maintained by the Joint Venturers in connection therewith if and for so long as such user shall not materially prejudice or interfere with the operations of the Joint Venturers under this Agreement.

- (b) Subject to the provisions of Clause 24 nothing in this Agreement shall be construed to limit the application of the *Shipping and Pilotage Act 1967*.

No charge for the handling of cargoes²

24. The State undertakes that subject to the Joint Venturers at their expense providing all works buildings dredging and things of a capital nature reasonably required for their operations hereunder at or in the vicinity of the port no charge or levy shall be made by the State or by any State agency authority or instrumentality in relation to the loading of outward or the unloading of inward cargoes from the Joint Venturers' wharf whether such cargoes shall be the property of the Joint Venturers or of any other person or corporation but the State accepts no obligations to undertake such loading or unloading and may make the usual charges from time to time prevailing in respect of services rendered by the State or by any State agency authority or instrumentality or by any local or other authority on behalf of the State and may charge vessels using the Joint Venturers' wharf ordinary light conservancy and tonnage dues.

Townsites Establishment²

25. (1) (a) Should the approved proposals provide for the establishment of a new town at the port townsite or at the mine townsite or of new towns at both places, the Joint Venturers shall at their own cost and in accordance with the approved proposals —
- (i) provide at the townsite or at each townsite (as the case may be) such housing accommodation services and works (including sewerage reticulation and treatment works water supply works and main drainage works and also social cultural and civil facilities) as may be necessary in order to provide for the needs of persons (and the dependants of those persons) connected directly with the Joint Venturers' operations under this Agreement, whether or not such persons are employed by the Joint Venturers;

- (ii) provide at the townsite or at each townsite (as the case may be) all necessary public roads and buildings required for educational, hospital, medical, police, recreation, fire and other services;
- (iii) provide all equipment required for the operation and proper functioning of the services and works referred to in subparagraphs (i) and (ii) of this paragraph; and
- (iv) service maintain and where necessary repair and renovate the housing accommodation services and works mentioned in subparagraphs (i) and (ii) of this paragraph.
- (v) (subject to and in accordance with by-laws from time to time to be made and altered by the Joint Venturers which include provisions for fair and reasonable prices rentals or charges or if no such by-laws are made or in force then at such prices rentals or charges and upon and subject to such terms and conditions as are fair and reasonable) ensure that the said housing accommodation services and works are at all times readily available to persons requiring the same being employees licensees or agents of the Joint Venturers or persons engaged in providing a legitimate and normal service to or for the Joint Venturers or their employees licensees or agents including the dependants of such persons; and
- (vi) ensure that the roads buildings and other works mentioned in subparagraph (ii) of this paragraph and the equipment mentioned in subparagraph (iii) of this paragraph are readily available free of charge to those desiring to use the same.

Limitation on Joint Venturers' obligations²

- (b) Nothing contained in paragraph (a) of this subclause shall be construed as placing on the Joint Venturers an obligation to provide and pay for personnel required to operate the educational hospital medical or police services mentioned in that paragraph.

Equipment²

(2) The Joint Venturers shall at their own cost equip all the buildings mentioned in paragraph (a) of subclause (1) of this Clause to the extent and of a standard at least equal to that normally adopted by the State in similar types of buildings used for similar purposes in comparable townsites.

Staff Housing²

(3) The Joint Venturers shall at their own cost provide adequate housing accommodation for married and single staff directly connected with the educational hospital medical and police services mentioned in subparagraphs (i) and (ii) of paragraph (a) of subclause (1) of this Clause.

Existing Towns²

(4) If the approved proposals provide for the assimilation into any existing town of the whole or part of the Joint Venturers' workforce (including their dependants) and any other persons (including their dependants) connected directly with the Joint Venturers' operations (whether employees of the Joint Venturers or not) whereby the normal population of such existing town is increased then the Joint Venturers shall subject to the provisions of subclause (3) of Clause (9) bear the cost of the provision and maintenance at that existing town of the matters mentioned in subparagraphs (i) (ii) and (iii) of paragraph (a) of subclause (1) of this Clause to the extent as shall be necessary in order to provide for the needs of the said increase in population of such existing town. The said additional housing services works and equipment may be provided by the State or by another party under an agreement with the State and in either case shall be to the extent and of a standard at least equal to that normally adopted by the State in similar types of buildings used for similar purposes in comparable towns. The Joint Venturers shall pay to the State or such other party such proportion of the cost of such additional housing services works and equipment as is fair and reasonable having regard to the extent of the said increase in the population of such existing town.

State services²

(5) Should the approved proposals place an obligation on the State to provide for any of the matters mentioned in subparagraphs (i) (ii) and (iii) of paragraph (a) of subclause (1) of this Clause or require the State to procure and accept the responsibility of the provision of any services and facilities the State shall provide or procure the provision of the same but (unless the approved proposals otherwise provide) subject to the following conditions namely —

- (a) that the State is satisfied that the need to provide such services and facilities results from or is reasonably attributable to the Joint Venturers' operations under this Agreement; and
- (b) the Joint Venturers agree to bear the capital cost involved and thereafter to pay reasonable charges for the maintenance and operation of the said services or facilities other than the operation charges in respect of education hospital medical and police services.

Environmental protection²

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

Compliance with State laws²

27. The Joint Venturers shall in the construction operation maintenance and use of any work installation plant machinery equipment service or facility provided or controlled by the Joint Venturers comply with and observe the provisions of this Agreement and subject thereto the laws for the time being in force in the said State;

Maintenance of Installations²

28. The Joint Venturers shall at all times keep and maintain in good repair and working order and where necessary replace all such works installations plant machinery and equipment railways wharfs roads (other than public roads unless and to the extent otherwise provided herein) and water and power supplies for the time being the subject of this Agreement.

Use of local professional services labour and materials²

29. The Joint Venturers shall for the purposes of this Agreement as far as it is reasonably and economically practicable —

- (a) use the services of engineers, surveyors, architects and other professional consultants resident and available within the said State;
- (b) use labour available within the said State;

- (c) when calling for tenders and letting contracts for works materials plant equipment and supplies ensure that Western Australian suppliers manufacturers and contractors are given reasonable opportunity to tender or quote; and
- (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere.

Commonwealth licences and consents²

30. (1) The Joint Venturers shall from time to time make application to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to them of any licence or consent under the laws of the Commonwealth of Australia necessary to enable or permit them to enter into this Agreement and to perform any of their obligations hereunder.

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

Royalty²

31. (1) The Joint Venturers shall during the continuance of this Agreement pay to the State a royalty on all iron ore products (other than iron ore shipped solely for testing purposes) at the rates herein specified in respect of each particular class of iron ore product as follows —

- (a) on iron ore products (being direct shipping ore and fine ore and fines not sold or shipped separately as such) sold and shipped beyond the Commonwealth — at the rate of seven and one half per centum of the f.o.b. revenue (computed at the rate of exchange prevailing on date of receipt by the Joint Venturers of the purchase price of such iron ore products) PROVIDED NEVERTHELESS that subject as provided in paragraph (e) of this subclause the total royalty payable under this paragraph shall not be less than the sum ascertained by multiplying 59.0524 cents by the total weight in tonnes of such iron ore products the subject of any shipment or sale.
- (b) on iron ore products (being fine ore and fines so sold or shipped separately as such) sold and shipped beyond the

Commonwealth — at the rate of seven and one half percentum of the f.o.b. revenue (computed as mentioned in paragraph (a) of this subclause) PROVIDED NEVERTHELESS that subject as provided in paragraph (f) of this subclause the total royalty payable under this paragraph shall not be less than the sum ascertained by multiplying 29.5262 cents by the total weight in tonnes of such iron ore products the subject of any shipment or sale.

- (c) on iron ore products (being such as are produced by secondary processing locally used ore) sold and shipped beyond the Commonwealth — at the rate of 14.7631 cents per tonne.
- (d) on any other iron ore products —
 - (i) where the same are sold and shipped beyond the Commonwealth — at the rate of seven and one half percentum of the f.o.b. revenue (computed as aforesaid) without any minimum royalty;
 - (ii) where the same are not so sold and shipped — at the rate of 14.7631 cents per tonne.
- (e) if the amount ascertained by multiplying 59.0524 cents by the total weight in tonnes of direct shipping ore shipped or sold (and liable to royalty under paragraph (a) of this subclause) in any financial year is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that paragraph then that proviso shall not apply in respect of direct shipping ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made;
- (f) if the amount ascertained by multiplying 29.5262 cents by the total weight in tonnes of fine ore and fines shipped or sold separately as such (and liable to royalty under paragraph (b) of this subclause) in any financial year is less than the total royalty which would be payable in respect of that ore but for the operation of that proviso to that paragraph then that proviso shall not apply in respect of fine ore and fines shipped or sold separately as such in that year and at the expiration of that year any necessary adjustments shall be made;

- (g) the rate of royalty of 14.7631 cents per tonne mentioned in paragraph (c) and (d) of this subclause shall be adjusted up or down (as the case may be) as at the first day of January 1969 and as at the beginning of every fifth year thereafter in accordance with any variation in the average of the basic prices of foundry pig iron c.i.f. Australian capital city ports as announced by The Broken Hill Proprietary Company Limited or any subsidiary thereof from time to time during the calendar year immediately preceding the date at which the adjustment is required to be made as compared with such average for the calendar year 1963;
- (h) where iron ore products produced from secondary processing hereunder are so produced from an admixture of iron ore from the mineral lease and other iron ore, a portion (and a portion only) of the iron ore products so produced being equal to the proportion which the amount of iron in the iron ore from the mineral lease used in the production of those iron ore products bears to the total amount of iron in the iron ore so used, shall be deemed to be produced from iron ore from the mineral lease.

Payment of royalties²

(2) The Joint Venturers shall during the continuance of this Agreement within fourteen days after the following quarter days namely the last days of March June September and December in each year (commencing with the quarter day next following the export date) furnish to the Minister a return showing the quantity of all iron ore products on which royalty is payable hereunder and shipped sold or used (as the case may be) during the quarter immediately preceding the due date of the return and shall not later than two months after such due date pay to the Minister the royalty payable in respect of such of the iron ore products mentioned in subclause (1) of this Clause as are locally used and shall also pay to the Minister in respect of such of the said iron ore products as are shipped or sold a sum on account of the royalty payable hereunder calculated on the basis of the invoices or provisional invoices (as the case may be) rendered by the Joint Venturers to the purchaser (which invoices the Joint Venturers shall render without delay and simultaneously shall furnish copies thereof to the Minister) and shall from time to time when the f.o.b. revenue realised in respect of the shipments has been ascertained in the next following appropriate return and payment make (in the return and by cash) all such necessary adjustments and give to the Minister full details thereof.

Inspection of Records²

(3) The Joint Venturers shall permit the Minister or his nominee at all reasonable times to inspect the books of account and records of the Joint Venturers relative to the Joint Venturers operations hereunder and to any shipment sale or use of iron ore products hereunder including sales contracts and to take copies or extracts therefrom. For the purpose of determining the f.o.b. revenue payable in respect of any shipment or sale of iron ore products hereunder the Joint Venturers shall take reasonable steps (either by the certificate of a competent independent party or otherwise to the Minister's reasonable satisfaction) to satisfy the State as to the correctness of all relevant weights assays and analyses and shall give due regard to any objection or representation made by the Minister or his nominee as to any particular weight assay or analysis that may affect the amount of royalty payable hereunder. The information obtained by the Minister or his nominee as a result of any such inspection shall be used for the purposes of verifying the amount of royalty payable by the Joint Venturers and for no other purpose and shall not be disclosed by the State the Minister or his nominee to any other party for any other purpose.

Off-loading²

32. (1) Subject to the provisions of subclause (3) of this Clause the Joint Venturers shall not at any time during the continuance of this Agreement, unless the Minister otherwise permits, off-load or permit to be off-loaded any iron ore products shipped pursuant to this Agreement at a place within the Commonwealth.

(2) Where iron ore products are off-loaded in breach of subclause (1) of this Clause the Joint Venturers shall forthwith after becoming aware of that event notify the Minister and shall without prejudice to any other rights or remedies of the State by reason of the breach on demand pay to the State such sum as the Minister may determine but not more than a sum representing 98.4207 cents per tonne on the quantity of iron ore products off-loaded.

(3) The Joint Venturers shall not be deemed to have committed a breach of this Clause if iron ore products are off-loaded at a place within the Commonwealth in any of the following circumstances —

- (a) where the iron ore products are shipped in a vessel that is not owned by the Joint Venturers or an associated company and the Joint Venturers satisfy the Minister that they have taken appropriate steps to ensure that iron ore products will not again be off-loaded in breach of this Clause; or

- (b) because the vessel in which the iron ore products are being carried is unforeseeably diverted for necessary repairs or because of a *force majeure* or other unforeseeable cause and the Joint Venturers satisfy the Minister that because of any such event they could not take or be reasonably expected to have taken steps to prevent the off-loading; or
- (c) where the weight of iron ore products off-loaded in any part of the Commonwealth in any year and used by the Joint Venturers or an associated company within the Commonwealth but outside the said State does not exceed fifty per centum (or such other percentage as the Minister approves) of the weight of locally used ore consumed used or otherwise applied in the said State for that year.

Secondary Processing proposals²

33. (1) The Joint Venturers shall from time to time renew the investigations already commenced by them as to the feasibility of establishing within the said State a plant for secondary processing of iron ore from the mineral lease and will by the end of Year 10 (or within such extended time as the Minister may allow) submit to the Minister detailed proposals for the establishment of such a plant on the following basis —

- (a) the plant to be of such design and dimensions that it will progressively have the capacity to process annually —
 - (i) by the end of Year 12 — not less than five hundred thousand tonnes of iron ore;
 - (ii) by the end of Year 13 — not less than one million tonnes of iron ore;
 - (iii) by the end of Year 16 — not less than two million tonnes of iron ore;
- (b) the capital cost involved to be not less than forty million dollars unless the Joint Venturers utilise a less expensive but at least equally satisfactory method of secondary processing of iron ore than any at present known to either party.

Consideration of proposals²

(2) If such detailed proposals are submitted by the Joint Venturers to the Minister within the time mentioned in subclause (1) of this Clause the Minister shall within two months of the receipt thereof give to the Joint Venturers notice

either of his approval of the said proposals or of any objections he has or alterations he desires thereto. In the latter case the Minister shall afford the Joint Venturers an opportunity to consult with and to submit new or further proposals to him and if within thirty days after receipt of such notice agreement is not reached as to the said proposals the Joint Venturers may within a further period of thirty days by notice to the State elect to refer to arbitration as hereinafter provided any question as to the reasonableness of the Minister's decision. If by the award on the arbitration the question is decided in favour of the Joint Venturers the Minister shall be deemed to have approved of the said proposals as submitted by the Joint Venturers.

Failure to submit proposals²

(3) If such detailed proposals are not submitted by the Joint Venturers to the Minister within the time mentioned in subclause (1) of this Clause or if such proposals are so submitted but are not approved by the Minister within two months of receipt thereof (or within such further time as the Minister may desire to take before delivering his decision) then the following provisions shall apply —

- (a) subject as provided in paragraph (c) of this subclause the Joint Venturers shall not after the end of Year 12 export iron ore hereunder at an annual rate in excess of five million tonnes unless prior to Year 10 the Minister has already approved of the Joint Venturers entering into a contract or contracts for the export of iron ore at an annual rate in excess of five million tonnes and —
- (b) if by the end of Year 13 the State gives to the Joint Venturers notice that some other company or party (hereinafter referred to as "the Third Party") has agreed to establish within the said State a plant for secondary processing of iron ore from the mineral lease on terms not more favourable on the whole to the Third Party than those proposed by or available to the Joint Venturers hereunder then this Agreement shall (subject as hereinafter provided) cease and determine at the end of Year 21 or at the date on which the Third Party shall substantially establish the said plant in accordance with terms agreed between the State and the Third Party whichever date is the later;
- (c) if by the end of Year 13 the State has not given to the Joint Venturers a notice pursuant to the provisions of paragraph (b) of this subclause then the provisions of paragraph (a) of this

subclause shall as from the end of Year 13 cease to operate and have effect;

Submission of proposals after Year 10²

(4) Notwithstanding the provisions of subclause (3) of this Clause the Joint Venturers may nevertheless at any time after the end of Year 10 submit proposals for the establishment of the said plant if at the time they have not received a notice pursuant to the provisions of paragraph (b) of the subclause (3) of this Clause and the provisions of subclause (2) of this Clause shall apply to such proposals but the Joint Venturers may not submit such proposals between the end of Year 10 and the end of Year 21 if during that time they receive notice from the Minister that he is negotiating with the Third Party and such notice is not subsequently withdrawn. In the event of negotiations between the Minister and the Third Party being terminated the Minister shall withdraw such notice.

Failure not a default²

(5) Notwithstanding anything contained herein the failure by the Joint Venturers to submit proposals to the Minister pursuant to subclause (1) of this Clause or the non-approval by the Minister of any proposals so submitted shall not constitute a breach of this Agreement by the Joint Venturers but subject as herein otherwise provided the only consequence arising from such failure or non-approval will be that set out in subclause (3) of this Clause.

Provisions applying to proposals²

(6) Subject as in this Clause otherwise provided the provisions of Clauses 7, 8 and 9 shall apply *mutatis mutandis* to detailed proposals made pursuant to this Clause.

Iron and Steel Industry²

34. (1) The Joint Venturers shall in due course during the continuance of this Agreement investigate the feasibility of establishing an integrated iron and steel industry within the said State and shall by the end of Year 20 (or within such extended time as the Minister may allow) submit to the Minister detailed proposals —

EITHER for the establishment of such an industry, to be capable ultimately of producing one million tonnes of steel per annum on the following basis —

- (a) the extent dimension design and construction thereof to be such that will permit the same having the capacity to produce progressively annually —

- (i) by the end of Year 25 — not less than five hundred thousand tonnes of processed products consisting of pig iron, foundry iron and steel of which not less than two hundred and fifty thousand tonnes shall be steel;
 - (ii) by the end of Year 29 — not less than one million tonnes of processed products of which not less than five hundred thousand tonnes shall be steel;
 - (iii) by the end of Year 31 — not less than one million tonnes of processed product which shall be comprised entirely of steel;
- (b) the capital cost involved to be not less than one hundred million dollars unless the Joint Venturers utilise a less expensive but at least equally satisfactory method of production than any at present known to either of the parties.

OR for joining with an existing or proposed iron and steel making venture within the said State to produce steel pursuant to an agreement with the State on a basis that the Joint Venturers' obligations in that venture are not less than the Joint Venturers' obligations referred to in the first alternative in this subclause.

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

(3) If such proposals are not submitted by the Joint Venturers to the Minister before the end of Year 20 or if such proposals are so submitted but are not approved by the Minister within two months after receipt thereof then if by the end of Year 23 (or extended date if any) the State gives to the Joint Venturers notice that some other company or party (hereinafter referred to as "the Fourth Party") has agreed to establish either —

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

then and in either case this Agreement shall cease and determine —

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

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

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

(6) Except as provided in subclause (3) of this Clause this Agreement shall continue in operation subject to compliance by the Joint Venturers with their obligations hereunder and with such proposals by the Joint Venturers as are approved by the Minister.

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

Substantial establishment²

35. For the purposes of this Agreement the Third Party or the Fourth Party shall be deemed to have substantially established a plant for secondary processing or an integrated iron and steel industry when and not before that party's secondary processing plant has the capacity to treat not less than two million tonnes of iron ore per annum or (as the case may be) that party's integrated iron and steel industry has the capacity to produce one million tonnes of steel per annum and in either case the Minister has notified the Joint Venturers that he is satisfied that that party will proceed *bona fide* to operate its plant or industry.

Terms "not more favourable"²

36. In deciding whether for the purposes of Clause 33 or Clause 34 the terms granted by the State to some Company or party are not more favourable on the whole than those proposed by or available to the Joint Venturers regard shall be had *inter alia* to all the obligations which would have continued to devolve on the Joint Venturers had they proceeded with secondary processing or (as the case may be) iron and steel manufacture or steel manufacture including their obligations to mine transport by rail and ship iron ore and restrictions relating thereto to pay rent additional rental and royalty and (in the case of secondary processing by a third party pursuant to Clause 33) to termination of rights as provided in Clause 34 if proposals for iron and steel manufacture or steel manufacture are not brought to fruition and also to the need for the other company or party to pay on a fair and reasonable basis for or for the use of property accruing to the State and made available by the State to that company or party but also to any additional or equivalent obligations to the State assumed by that company or party PROVIDED

HOWEVER that if after the end of Year 33 the Minister gives notice to the Joint Venturers under Clause 34 that another company or party has agreed to establish either secondary processing or an integrated iron and steel industry but not both then the latter company or party need not have any obligation to establish both.

Supply of iron ore to others²

37. The Joint Venturers covenant and agree with the State that should the Joint Venturers remain in possession of the mineral lease for any period during which the Third Party or the Fourth Party is operating or is ready to operate a plant for secondary processing of iron ore or an integrated iron and steel industry then during such period (whenever commencing) the Joint Venturers shall supply the Third Party or the Fourth Party or both (as the case may be) with iron ore (not exceeding in all five million tonnes per annum unless otherwise agreed) —

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

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

Protection for current contracts²

38. If this Agreement should cease and determine pursuant to the provisions of Clause 33 or Clause 34 and if at the date of such cessation or determination the Joint Venturers are under an obligation arising under a current contract or contracts with some other party originally entered into by them pursuant to proposals approved by the Minister to supply iron ore to that other party the Joint Venturers may give notice of that fact to the Minister and request the State to ensure that the Third Party or the Fourth Party (as the case may be) takes over and assumes liability for the due and punctual discharge of the Joint Venturers' said obligations or alternatively agrees to supply iron ore to enable them to discharge their said obligations and the State shall forthwith upon receipt of such notice or as soon as possible or practicable thereafter do or cause to be done all such acts matters or things as may be fair and reasonable in the circumstances to comply with the Joint Venturers' said request.

Delays²

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

Assignment²

40. (1) Subject to the provisions of this Clause the Joint Venturers or any of them may at any time —

- (a) assign mortgage charge sublet or dispose of to an associated company as of right or to any other company or person with the consent of the Minister the whole or any part of the rights of the Joint Venturers hereunder (including their rights to or as the holder of any lease licence easement grant or other title) and of the obligations of the Joint Venturers hereunder; and
- (b) appoint as of right an associated company or with the consent of the Minister any other company or person to exercise all or any of the powers functions and authorities that are or may be conferred on the Joint Venturers hereunder;

subject however to the assignee or the appointee (as the case may be) executing in favour of the State a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Joint Venturers to be complied with observed or performed in regard to the matter or matters the subject of such assignment mortgage charge subletting disposition or appointment.

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this Clause the Joint Venturers shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on their part contained herein and in any lease licence easement grant or other title the subject of an assignment mortgage subletting or disposition or appointment under subclause (1) of this Clause.

By-laws²

41. The Governor in executive Council may upon the recommendation of the Joint Venturers make alter and repeal by-laws for the purpose of enabling the Joint Venturers to fulfil their obligations under Clauses 19(2) 19(3) 22(5) and 23(2) and (unless and until the townsite concerned is declared a townsite pursuant to Section 10 of the Land Act) under Clause 25(1)(a)(v) upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Joint Venturers) consistent with the provisions hereof. If at any time it appears that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Joint Venturers shall recommend to the Governor that he makes such alteration or repeal thereof as the State may reasonably require or (in the event of there being any dispute as to the reasonableness of such requirement) as may be decided by arbitration as herein provided.

Determination of Agreement²

42. (1) In any of the following events namely —
- (a) If the Joint Venturers make default in the due performance or observance of any of their obligations hereunder or in any lease sublease licence easement or other title or document granted or assigned under this Agreement on their part to be performed or observed and fail to remedy that default within a reasonable time after notice specifying the default is given to them by the State (or, if the alleged default is contested by the Joint Venturers and promptly submitted to arbitration, within a reasonable time fixed by the arbitration award where the question is decided against the Joint Venturers and the Arbitrator finds that there was a *bona fide* dispute and that the Joint Venturers had not been dilatory in pursuing the arbitration); or
 - (b) If the Joint Venturers abandon their operations or repudiate their obligations under this Agreement; or

- (c) if any of the Joint Venturers go into liquidation (other than voluntary liquidation for the purpose of reconstruction) unless within three months next following the date of such liquidation the other or others of the Joint Venturers enter into an agreement with the Liquidator to acquire absolutely the share estate and interest of the Joint Venturer in liquidation in or under this Agreement and in or under the mineral lease and any other lease licence easement or right granted hereunder or pursuant hereto;

the State may by notice to the Joint Venturers determine this Agreement and the rights of the Joint Venturers hereunder and under any lease licence easement or right granted hereunder or pursuant hereto shall thereupon cease and determine.

(2) The State may, instead of determining this Agreement as provided in subclause (1) of this Clause, remedy or cause to be remedied any default on the part of the Joint Venturers for which purpose the State shall have full power and authority by its agents or workmen or otherwise to enter into and upon land occupied by the Joint Venturers and to use all or any plant, machinery, equipment and installations thereon and all costs and expenses incurred by the State in remedying such default or causing the same to be remedied shall be a debt due by the Joint Venturers to the State and be payable on demand.

Effect of cessation and determination of Agreement²

43. (1) Upon the cessation or determination of this Agreement —
- (a) except as otherwise agreed by the Minister the rights of the Joint Venturers and those of any assignee or mortgagee of the Joint Venturers under this Agreement or under the mineral lease or any other lease, licence, easement or right granted hereunder or pursuant hereto and all the right title and interest of the Joint Venturers and of any such assignee or mortgagee in and to any land wherever situated granted to the Joint Venturers or to such assignee for any other of the purposes of this Agreement shall thereupon cease and determine, but without prejudice to the liability of either of the parties in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder, and
 - (b) the Joint Venturers shall forthwith pay to the State all monies that may then have been payable or accrued due hereunder; and

- (c) except as provided in this Clause or otherwise provided in this Agreement neither of the parties shall have any claim against the other of them in respect to any matter or thing contained in or arising out of this Agreement.

(2) Subject to the provisions of subclause (3) of this Clause upon the cessation or determination of this Agreement all buildings erections and other improvements erected on any land then occupied by the Joint Venturers or any associated company or assignee of the Joint Venturers under the mineral lease or any other lease, licence, easement right or grant made hereunder for the purpose hereof (including the said railway and the appurtenances constructed pursuant to subclause (1) of Clause 19 and including also the Joint Venturers' wharf) shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Joint Venturers or any other party and freed and discharged from all mortgages and other encumbrances and the Joint Venturers shall do and execute all such deeds documents and other acts matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

(3) In the event of the Joint Venturers immediately prior to the cessation or determination of this Agreement or subsequently thereto desiring to remove any of their locomotives rolling stock, or their electricity generating plant and transmission system or any of their other fixed or movable plant and equipment (excluding the said railway and appurtenances and the Joint Venturers' wharf) from any part of the land occupied by them at the date of such cessation or determination they shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within three months thereafter to purchase *in situ* the said locomotives rolling stock electricity generating plant transmission system and other fixed or moveable plant and equipment or any part thereof at a fair valuation to be agreed between the parties or failing agreement determined by arbitration hereunder.

Indemnity²

44. The Joint Venturers shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Joint Venturers pursuant to this Agreement or relating to their operations or arising out of or in connection with the construction maintenance operation or use by them or their servants agents contractors appointees or assignees of the works or services constructed maintained operated or used by them under this Agreement or the plant apparatus or equipment installed in connection therewith.

Variation²

45. (1) The parties may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of any lease licence easement or right granted hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

(2) Where in the opinion of the Minister an agreement made pursuant to subclause (1) of this Clause constitutes a material or substantial alteration of the rights or obligations of either party, the agreement shall contain a declaration to that effect and the Minister shall cause that agreement to be laid upon the Table of each House of Parliament within the twelve sitting days next following its execution.

(3) If either House does not pass a resolution disallowing the agreement, within twelve sitting days of that House after the agreement has been laid before it, the agreement shall have effect as and from the last day on which the agreement might have been disallowed.

Power to extend periods²

46. The Minister may at the request of the Joint Venturers from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

Notices²

47. Any notice consent or other writing authorised by or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by a senior officer of the Public Service of the said State acting by the direction of the Minister and forwarded by prepaid post to the Joint Venturers at their respective registered offices for the time being in the said State or to a corporation nominated by a Joint Venturer by notice in that behalf pursuant to this Clause and at its registered office for the time being in the said State or as otherwise designated in that notice and by the Joint Venturers if executed by the Joint Venturers or signed on their behalf by any person or persons authorised by the Joint Venturers in that behalf or by their solicitors (which solicitors have been notified to the State from time to time) and forwarded by prepaid post to the Minister at his office in Perth in the said State and every such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered to the addressee in the ordinary course of post.

Exemption from Stamp Duty²

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

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Joint Venturers or any associated company or permitted assignee of the Joint Venturers any tenement lease easement licence or other right or interest;
- (c) any assignment sublease or disposition (other than by way of mortgage or charge) and any appointment to or in favour of the Joint Venturers or an associated company of any interest right obligation power function or authority made pursuant to the provisions of Clause 40.

(2) This Clause does not apply to any instrument or other document executed or made more than seven years after the date of the execution hereof.

(3) If prior to the date on which this Agreement comes into operation stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) of this Clause the State shall after the passing of the ratifying Act refund the stamp duty paid on any such instrument or other document to the person by whom it was paid.

Arbitration²

49. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights duties or liabilities of either party hereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to the arbitration of two arbitrators one to be appointed by each party the arbitrators to appoint their umpire before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the *Arbitration Act 1895* PROVIDED THAT except where this Agreement makes express provisions for arbitration hereunder or except whereby this Agreement the State or the Minister is required to act reasonably or not to act unreasonably this Clause shall not apply to any case where the State or the Minister is by this Agreement given either expressly or impliedly a power or discretion to approve consent direct or otherwise act in any particular way.

(2) The arbitrators or umpire (as the case may be) of any submission to arbitration hereunder are hereby empowered upon the application of either of the parties to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties hereunder and an award may in the name of the Minister grant any further extension or variation for that purpose.

Applicable Law²

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

THE SCHEDULE

WESTERN AUSTRALIA

Mining Act 1904-1971

MINERAL LEASE

LEASE No.

MINERAL FIELD

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

TO ALL TO WHOM THESE PRESENTS shall come, GREETING:

KNOW YE that —

WHEREAS by an Agreement made the _____ day of 1972 BETWEEN the Honourable JOHN TREZISE TONKIN MLA the Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities for the time being (hereinafter called "the State") of the one part and CONSOLIDATED GOLD FIELDS AUSTRALIA LIMITED a company incorporated under the Companies Ordinances of the Australian Capital Territory and having its executive office at Gold Fields House Sydney Cove in the State of New South Wales and its registered office in the said State at 156 Saint George's Terrace Perth CYPRUS MINES CORPORATION a corporation incorporated in the State of New York in the United States of America and having its executive offices situate at 1234 Pacific Mutual Building 523 West Sixth Street Los Angeles California in the United States of America UTAH DEVELOPMENT COMPANY a corporation incorporated under the laws of the State of Nevada in the United States of America with its

executive offices situate at 55 California Street San Francisco in the said United States of America and having its registered office in the State of Queensland at Pearl Assurance House at the corner of Queen and Eagle Streets Brisbane HANCOCK PROSPECTING PTY LTD a company incorporated in the said State and having its registered office situate at the 14th Floor Lombard House 251 Adelaide Terrace Perth in the said State WRIGHT PROSPECTING PTY LTD a company incorporated in the said State and having its registered office situate at the 14th Floor Lombard House 251 Adelaide Terrace Perth in the said State and M. I. M. HOLDINGS LIMITED a company incorporated in the State of Queensland and having its registered office situate at 363 Adelaide Street, Brisbane (in the said Agreement and herein called "the Joint Venturers" which expression shall where the context so admits or requires extend to and include the Joint Venturers jointly and each of them severally their and each of their successors and permitted assigns and appointees) of the other part (being the agreement referred to in section 2 of the *Iron Ore (McCameys Monster) Agreement Authorization Act 1972*) the State agreed to cause to be granted to the Joint Venturers a mineral lease or leases.

AND WHEREAS the said Agreement was executed by the State pursuant to the authority granted by the *Iron Ore (McCameys Monster) Agreement Authorization Act 1972* and the same operates and takes effect as provided in the said Act.

NOW WE in consideration of the rents and royalties reserved by and of the provisions of the said Agreement and in pursuance of the said Act DO BY THESE PRESENTS GRANT AND DEMISE unto the Joint Venturers as tenants in common in equal shares subject to the said provisions ALL THOSE pieces and parcels of land situated in the Mineral Field containing approximately hectares (subject to such corrections as may be necessary to accord with the survey when made) and particularly described and delineated on the plan in the Schedule hereto and all those mines, veins, seams, lodes and deposits of iron ore in on or under the said land (hereinafter called "the said mine") together with all rights, liberties easements advantages and appurtenances thereto belonging or appertaining to a lessee of a mineral lease under the *Mining Act 1904*, including all amendments thereof for the time being in force and all regulations made thereunder for the time being in force (which Act and regulations are hereinafter referred to as "the Mining Act") or to which the Joint Venturers are entitled under the said Agreement TO HOLD the said land and mine and all and singular the premises hereby demised for the full term of twenty-one years from the day of 19 with the right to renew the same from time to time for further periods each of twenty-one years as provided in but subject to the said Agreement for

the purposes of the said Agreement but upon and subject to the terms covenants and conditions set out in the said Agreement and to the Mining Act (as modified by the said Agreement) YIELDING and paying therefor the rent and royalties as set out in the said Agreement. AND WE do hereby declare that this lease is subject to the observance and performance by the Joint Venturers of the following covenants and conditions, that is to say —

- (1) That the Joint Venturers shall and will use the land '*bona fide*' exclusively for the purposes of the said Agreement.
- (2) Subject to the provisions of the said Agreement the Joint Venturers shall and will observe, perform, and carry out the provisions of the *Mines Regulation Act 1946*, and all amendments thereof for the time being in force and the regulations for the time being in force made thereunder and (subject to and as modified by the said Agreement) those of the Mining Act in so far as the same affect or have reference to this lease.
- (3) That the Joint Venturers shall if required by the Minister for Mines supply information of a geological nature relating to the Joint Venturers' operations on the demised land.

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

PROVIDED FURTHER that all petroleum on or below the surface of the demised land is reserved to Her Majesty with the right to Her Majesty or any person claiming under her or lawfully authorised in that behalf to have access to the demised land for the purpose of searching for and for the operations of obtaining petroleum in any part of the land under the provisions of the *Petroleum Act 1967*.

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

THE SCHEDULE ABOVE REFERRED TO

IN WITNESS WHEREOF this Agreement has been executed the day and year first hereinbefore written.

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

Minister for Development
and Decentralisation

Minister for Mines

SIGNED SEALED AND DELIVERED
for and on behalf of CONSOLIDATED
GOLD FIELDS AUSTRALIA LIMITED
by its duly authorised agent in the
presence of — }

SIGNED SEALED AND DELIVERED
for and on behalf of CYPRUS MINES
CORPORATION by its duly authorised
agent in the presence of — }

SIGNED SEALED AND DELIVERED
for and on behalf of UTAH
DEVELOPMENT COMPANY by its duly
authorised agent in the presence of — }

THE COMMON SEAL of M.I.M.
HOLDINGS LIMITED was hereunto
affixed with the authority of a resolution
of the Board of Directors in the presence
of — }

THE COMMON SEAL of HANCOCK
PROSPECTING PTY. LTD. was
hereunto affixed by the Governing
Director LANGLEY GEORGE
HANCOCK in accordance with the
Articles of Association }

THE COMMON SEAL of WRIGHT
PROSPECTING PTY. LTD. was
hereunto affixed by authority of the
Directors and in the presence of —

}

Director

Secretary

Schedule 2 — First Variation Agreement

[s. 4]

[Heading amended by No. 19 of 2010 s. 4.]

THIS AGREEMENT is made the 14th day of July 1986

BETWEEN:

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

HANCOCK MINING LIMITED a company incorporated in Western Australia and having its registered office at 1st Floor, 49 Stirling Highway, Nedlands (hereinafter called "the Company") of the other part.

WHEREAS:

- (a) the State of the one part entered into an agreement (hereinafter called "the Principal Agreement") dated 12th January, 1973 with CONSOLIDATED GOLD FIELDS AUSTRALIA LIMITED (hereinafter called "GCFA"), CYPRUS MINES CORPORATION (hereinafter called "Cyprus"), UTAH DEVELOPMENT COMPANY (now Utah Development Company Limited and hereinafter called "Utah"), HANCOCK PROSPECTING PTY. LTD. (hereinafter called "HPPL"), WRIGHT PROSPECTING PTY. LTD. (hereinafter called "WPPL"), and M.I.M. HOLDINGS LIMITED (hereinafter called "M.I.M.") of the other part the execution of which by the State was authorised pursuant to section 2 of the *Iron Ore (McCamey's Monster) Agreement Authorization Act 1972*;
- (b) by Deed dated 12th February, 1980 Cyprus assigned all of its right, title and interest in and to the Principal Agreement to M.I.M.;
- (c) by Deeds each dated 16th August, 1985 M.I.M. assigned all of its right, title and interest in and to the Principal Agreement to CGFA, Utah and HPPL and WPPL in the following proportions:

CGFA	38.5%
Utah	38.5%
HPPL and WPPL	23%;

- (d) CGFA, Utah, HPPL and WPPL have with the consent of the State assigned all their right, title and interest in and to the Principal Agreement to the Company;
- (e) the Company desires to recover and market (including by way of barter) iron ore from Temporary Reserve No. 4326H (being the lands now within the mining areas defined in the Principal Agreement) to inter alia Romania and the State and the Company have agreed to vary the Principal Agreement in manner hereinafter set out.

NOW THIS AGREEMENT WITNESSES.

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the said State and comes into operation as an Act.
3. The Principal Agreement is hereby varied as follows —
 - (1) By deleting in the statement of the names and addresses of the parties at the commencement of the Principal Agreement the following —
 - “ (hereinafter called “the Joint Venturers” which expression shall where the context so admits or requires extend to include the Joint Venturers jointly and each of them severally their and each of their successors and permitted assigns and appointees)”.
 - (2) Clause 1 —
 - (a) (i) in the definition “associated company”, by deleting “section 6 of the *Companies Act 1961*” and substituting the following —
 - “ section 7 of the *Companies (Western Australia) Code* ”;
 - (ii) in the definition of “Commission”, by deleting “State Electricity Commission” and substituting the following —
 - “ State Energy Commission ”;

(iii) in the definition of “direct shipping ore”, by inserting before “crushing” the following —

“ washing ”;

(iv) in the definition of “fine ore”, by inserting before “crushing” the following —

“ washing ”;

(v) in the definition of “f.o.b. revenue” —

(A) by deleting “or sale which is payable by the purchaser thereof to the Joint Venturers or an associated company less all export duties and export taxes payable on such iron ore products and less” and substituting the following —

“sale or other disposal which is payable by the purchaser or transferee thereof to the Joint Venturers or an associated company or where there is no price paid for iron ore products the subject of any shipment or other disposal or where the Minister is not satisfied that the price amount value or other consideration payable in respect of iron ore products the subject of a shipment sale or other disposal represents a fair and reasonable market price or value therefor, such amount as is agreed between the Joint Venturers and the State or, failing agreement within 3 months after lodgement of the relevant royalty return, as determined by the Minister, less where the iron ore products are shipped all export taxes payable on such iron ore products and less ”;

(B) in item (8) by deleting “and” where it last occurs;

(C) by deleting item (9) and inserting after item (8) the following —

“and less (whether the iron ore products are shipped or not) such other costs and charges as the Minister may in his discretion consider reasonable in respect of any shipment sale or other disposal.”;

- (D) in paragraph (a) by deleting “(9)” and substituting the following —
- “ (8) ”
- (E) by deleting paragraph (c);
- (vi) in the definition of “mineral lease”, by deleting “the mineral lease or mineral leases” and substituting the following —
- “ the mining lease for the mining of iron ore ”;
- (vii) by deleting the definition of “mine townsite” and substituting the following definition —
- “ “mine townsite” means the town of Newman or a townsite established by the Joint Venturers on or near the mining areas if the Minister approves that the Joint Venturers may establish such a townsite in lieu of assimilation of their workforce into the town of Newman; ”;
- (viii) by deleting the definitions of “Mining Act”, “mining areas” and “Minister for Mines”;
- (ix) in the definition of “secondary processing”, by deleting “crushing or screening” and substituting the following —
- “ washing crushing or screening or any combination thereof ”;
- (b) by substituting for the plan marked “A” referred to the Principal Agreement, the plan marked “B” initialled by or on behalf of the parties hereto for the purpose of identification;
- (c) by inserting, in their appropriate alphabetical positions, the following definitions —
- “ “Joint Venturers” means Hancock Mining Limited a company incorporated in the State of Western Australia and its successors, permitted assigns and appointees;
- “*Mining Act 1904*” means the *Mining Act 1904* and the amendments thereto and the regulations made thereunder as in force on 31st December, 1981;
- “*Mining Act 1978*” means the *Mining Act 1978*;

“mining areas” means the area delineated and coloured red on the plan marked “B” initialled by or on behalf of the parties hereto for the purpose of identification and comprising Temporary Reserve No. 4326H;

“Minister for Minerals and Energy” means the Minister in the Government of the State for the time being responsible for the administration of the *Mining Act 1904* and the *Mining Act 1978*.”.

- (3) Clause 2 subclause (1) —
- (a) paragraph (c) —
by deleting “and”;
- (b) paragraph (d) —
- (i) by inserting after “Act”, where it first occurs, the following —
“ other than the *Mining Act 1904* ”;
- (ii) by deleting “thereunder.” and substituting the following —
“ thereunder; ”
- (c) by inserting after paragraph (d) the following paragraphs —
- “(e) words in the singular number include the plural and words in the plural number include the singular;
- (f) any covenant or agreement on the part of the Joint Venturers hereunder shall, if they be more than one, be deemed to be a joint and several covenant or agreement as the case may be. ”.
- (4) Clause 3 —
- (a) by deleting the subclause designation (1);
- (b) by deleting “Mining Act”, wherever it occurs, and substituting the following —
“ *Mining Act 1904* ”.

- (5) Clause 5 —
- (a) by deleting “Mining Act”, wherever it occurs, and substituting —
 - (i) in the first three instances where it occurs “*Mining Act 1904*”; and
 - (ii) in the last instance where it occurs “*Mining Act 1978*”;
 - (b) by deleting paragraph (a);
 - (c) by deleting “Minister for Mines”, wherever it occurs, and substituting the following —
 - “ Minister for Minerals and Energy ”.
- (6) Clause 7 —
- (a) subclause (1) —

by deleting “As soon as practicable after the completion of the investigations mentioned in Clause 6” and substituting the following —

 - “ On or before 31st March, 1987 or such later date as the Minister may approve ”;
 - (b) subclause (2) —
 - (i) by deleting “Subject to the proposals or any alternative proposals as to the location and development of the port being approved the Joint Venturers shall on or before the fifth anniversary of the commencement date or on or before such later date as the Minister may approve or as may be determined by arbitration as hereinafter provided” and substituting the following —
 - “ On or before 30th June, 1987 or such later date as the Minister may approve the Joint Venturers shall ”;
 - (ii) by inserting after “protection”, where it first occurs, the following —
 - “ and management ”;

(iii) paragraph (d) —

by inserting after “housing” the following —

“ including, where the mine townsite is to be Newman, the provision of temporary accommodation on or near the mining areas for the Joint Venturers’ workforce (but not their dependants) during the development phase of the mine ”;

(c) by inserting after subclause (2) the following subclause —

“ (2a) The provisions of Clause 39 shall not apply to subclauses (1) and (2) of this Clause. ”.

(7) By inserting after Clause 9 the following clause —

“9A. (1) The Joint Venturers shall in respect of the measures for the protection and management of the environment and the matters referred to in paragraphs (j), (k) and (l) of subclause (2) of Clause 7 and which are the subject of approved proposals under this Agreement, carry out a continuous programme of investigation and research including monitoring and the study of sample areas to ascertain the effectiveness of the measures they are taking pursuant to such approved proposals for rehabilitation and the protection and management of the environment.

(2) The Joint Venturers shall during the currency of this Agreement at yearly intervals commencing from the date when the Joint Venturers’ proposals are finally approved submit an interim report to the Minister concerning investigations and research carried out pursuant to subclause (1) of this Clause and at 3 yearly intervals commencing from such date submit a detailed report to the Minister on the result of the investigations and research during the previous 3 years.

(3) The Minister may within 2 months of the receipt of any detailed report pursuant to subclause (2) of this Clause notify the Joint Venturers that he requires additional detailed proposals to be submitted in respect of all or any of the

matters the subject of the report and such other matters as the Minister may require.

- (4) The Joint Venturers shall within 2 months of the receipt of a notice given pursuant to subclause (3) of this Clause submit to the Minister additional detailed proposals as required and the provisions of Clauses 7 and 8 where applicable shall *mutatis mutandis* apply in respect of such proposals.
- (5) The Joint Venturers shall implement the decision of the Minister or an award made on arbitration as the case may be in accordance with the terms thereof.”.

(8) Clause 10 —

by inserting after paragraph (c) the following paragraph —

- “ (ca) if the Minister makes a decision as mentioned in paragraph (c) of subclause (1) of Clause 8 and the Joint Venturers fail within 2 months after receipt of the notice mentioned in subclause (2) of Clause 8 either to comply with the condition precedent or to elect to refer to arbitration the question of the reasonableness of the condition precedent; or ”.

(9) Clause 11 —

(a) subclause (1) —

- (i) by deleting “mineral lease”, where it first occurs. and substituting the following —

“ mining lease (the “mineral lease”) ”;

- (ii) by deleting paragraph (a);

- (iii) by deleting in paragraph (f) “Mining Act” and substituting the following —

“ *Mining Act 1978* ”;

- (iv) by deleting in paragraph (f) “the labour conditions imposed by the said Act in respect of mineral leases” and substituting the following —
 - “ the expenditure conditions imposed by the said Act in respect of mining leases ”;
 - (b) subclause (2) —
by deleting “Minister for Mines” and substituting the following —
 - “ Minister for Minerals and Energy ”;
 - (c) subclause (6) —
 - (i) by deleting “register any claim or grant any lease or other mining tenement under the Mining Act” and substituting the following —
 - “ grant any lease or other mining tenement under the *Mining Act 1978* ”;
 - (ii) by inserting at the end of the subclause the following —
 - “ Upon the grant of any such lease or other mining tenement the land contained therein shall be deemed to be automatically excised from the mineral lease (with abatement of future rent in respect to the area excised). ”;
 - (d) by inserting after subclause (7) the following subclause —
 - “ (8) the Joint Venturers shall not except where and to the extent that the Minister otherwise permits sell or otherwise dispose of iron ore products where the port of discharge thereof is within Japan, the Republic of Korea, the Federal Republic of Germany, the United Kingdom, France or Italy otherwise than for a consideration payable to the Joint Venturers in money. ”.
- (10) By inserting after Clause 11 the following clause —
- “12A. The State shall in accordance with the approved proposals cause to be made available lots of land in Newman for purchase by the Joint Venturers at prices to be fixed by the State (having

regard to the price of similar lots then being made available by the State to others) which will include the cost to the State of developing and servicing such land including the provision of adjacent local head works in respect of water and sewerage. ”.

(11) Clause 13 —

(a) subclause (1) —

(i) by deleting “such other leases of” and substituting the following —

“ such other leases or where applicable licences easements or rights of way of or over ”;

(ii) by inserting after “Such leases” the following —

“ licences easements and rights of way ”;

(b) subclause (2) —

(i) by deleting paragraph (a);

(ii) paragraph (c) —

(A) by deleting “either of paragraphs (a) or (b)” and substituting the following —

“ paragraph (b) ”;

(B) by deleting “sold and shipped” and substituting the following —

“ shipped sold used or produced ”.

(12) Clause 18 —

(a) by deleting “four years” and substituting the following —

“ two years ”;

(b) by deleting “at a cost of not less than sixty million dollars”;

- (c) by deleting “to commence shipment therefrom in commercial quantities at an annual rate of not less than one million tonnes” and substituting the following —
- “ to ship therefrom in commercial quantities at an annual rate of not less than three million tonnes ”;
- (d) by deleting paragraph (a).
- (13) Clause 19 —
- (a) by inserting after subclause (2) the following subclause —
- “ (2a) The Joint Venturers shall if and when required carry iron ore and iron ore products of third parties (being iron ore or iron ore products obtained from outside the mineral lease) over the said railway in accordance with arrangements (including provision for payment of charges by such third parties) to be entered into for the purpose of this subclause between the Joint Venturers and the State such arrangements unless the parties hereto otherwise agree to be similar in all material respects with any other arrangements for the carriage of iron ore or iron ore products of third parties made pursuant to any other agreement with the State relating to the mining of iron ore. ”;
- (b) subclause (3) —
- by inserting after “third parties” the following —
- “ (other than iron ore or iron ore products of third parties) ”;
- (c) by inserting after subclause (3) the following subclause —
- “ (4) The Joint Venturers shall not enter into any agreement or other arrangement for the use of or the carriage of the iron ore products of the Joint Venturers over any railway not established by the Joint Venturers pursuant to this Agreement without the prior approval of the State thereto and to the proposed terms and conditions (including charges) for such use or carriage. ”.
- (14) Clause 21 —
- (a) subclause (1) —

by inserting after “notice” the following —

“ or such shorter period as the Minister may approve ”;

(b) by inserting after subclause (16) the following subclause —

“ (17) The Joint Venturers shall design construct and operate all plant and equipment used in their operations under this Agreement so as to minimise water consumption and shall at all times use their best endeavours to minimise the consumption of water by themselves and their employees licensees and agents including the dependants of such persons within the, areas of mining operations hereunder, at the mine town and elsewhere. ”.

(15) Clause 22 —

(a) by deleting subclauses (1) and (2) and substituting the following subclauses —

“ (1) For the purposes of facilitating integration of electricity generation and transmission facilities in areas where the Joint Venturers carry on operations under this Agreement, the Joint Venturers shall purchase electricity if available from the Commission or, negotiate with the Commission for the payment by the Joint Venturers of an equitable contribution towards the augmentation of the facilities of the Commission to enable it to supply electricity to the Joint Venturers. Electricity supplied to the Joint Venturers pursuant to this subclause shall be on terms and conditions to be negotiated between the Commission and the Joint Venturers.

(2) In the event of the Joint Venturers demonstrating to the satisfaction of the Minister that the provisions of subclause (1) would be unduly prejudicial to their operations, or if the Commission is unable to provide supply, the Joint Venturers may —

(a) in accordance with their approved proposals hereunder and subject to the provisions of the *Electricity Act 1945* and the approval and requirements of the Commission, install and operate without cost to the State, at an

appropriate location equipment to generate electricity of sufficient capacity for their operations hereunder;

- (b) transmit power generated pursuant to paragraph (a) of this subclause to and within the areas of their mining operations and to the mine town or elsewhere subject to the provisions of the *Electricity Act 1945* and the approval and requirements of the Commission;
- (c) subject to the provisions of the *Electricity Act 1945* and the requirements of the Commission sell power transmitted pursuant to paragraph (b) of this subclause to third parties within the areas of their mining operations and to third parties elsewhere; and
- (d) the Joint Venturers shall be at liberty to negotiate with third parties for the augmentation of the facilities of such third parties to enable them to supply the Joint Venturers in lieu of the Joint Venturers providing electricity facilities pursuant to this subclause.

(2a) In the event that the Joint Venturers are unable to procure easements or other rights over land required for the purposes of subclause (2) of this Clause on reasonable terms the State shall assist the Joint Venturers to such extent as may be reasonably necessary to enable them to procure the said easements or other rights over land. ”;

(b) subclause (3) —

- (i) by inserting after “facilities so acquired”, where it first occurs, the following —
 - “ at levels of supply from time to time agreed between the State and the Company ”;
- (ii) by deleting “up to the normal continuous full load capacity of the electricity facilities so acquired” and substituting the following

“ at the said levels of supply ”;

(c) subclause (4) —

by deleting subclause (4) and substituting the following subclause —

“ (4) In the event of the State acquiring the Joint Venturers’ electricity facilities the Joint Venturers shall pay to the Commission the cost of all electricity supplied to the Joint Venturers by the Commission at rates to be agreed between the Commission and the Joint Venturers from time to time. Should the Joint Venturers desire to expand their operations hereunder and for that purpose require power beyond the level agreed pursuant to subclause (3) of this Clause the Joint Venturers shall give to the State 1 years notice of their additional power requirements and the State shall thereupon cause the Commission to negotiate with the Joint Venturers the terms and conditions under which the additional generation capacity required to meet the needs of such expansion is to be provided. ”;

(d) subclause (5) —

by deleting “at a price equal to the Joint Venturers’ actual cost of generating and transmitting such electricity including, *inter alia*, appropriate capital charges” and substituting the following —

“ on terms and conditions to be negotiated between the Commission and the Joint Venturers ”;

(e) by inserting after subclause (5) the following subclause —

“ (6) If the Commission desires to purchase power for its own use and the Joint Venturers have the ability to supply such power the Joint Venturers shall use their best endeavours to supply on terms and conditions to be negotiated between the Commission and the Joint Venturers, and the Joint Venturers shall in that event be empowered to supply such power. ”.

(16) Clause 25 —

(a) subclause (1)(a) —

by inserting in subparagraph (i) after “under this Agreement” the following —

“ or connected wholly or partly with any railway operations carried on for or on behalf of the Joint Venturers ”;

(b) subclause (4) —

by inserting after “Joint Venturers’ operations” the following —

“ or connected wholly or partly with any railway or port operations carried on for or on behalf of the Joint Venturers ”.

(17) Clause 29 —

by deleting Clause 29 and substituting the following clause —

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

- (a) except in those cases where the Joint Venturers can demonstrate it is impracticable so to do, use labour available within the said State;
- (b) as far as it is reasonable and economically practicable so to do use the services of engineers surveyors architects and other professional consultants, project managers manufacturers suppliers and contractors resident and available within the said State;
- (c) when preparing specifications calling for tenders and letting contracts for works materials plant equipment and supplies ensure that Western Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote; and
- (d) give proper consideration and where possible preference to Western Australian manufacturers suppliers and contractors when letting contracts or placing orders for works materials plant equipment an supplies where price quality

delivery and service are equal to or better than that obtainable elsewhere.

- (2) The Joint Venturers shall in every contract entered into with a third party for the supply of services labour works materials plant equipment and supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) of this clause and shall report to the Joint Venturers concerning such third party's implementation of that condition.
- (3) The Joint Venturers shall submit a report to the Minister at monthly intervals commencing from the 1st day of August, 1986 or such longer periods as the Minister may from time to time determine concerning their implementation of the provisions of this Clause and the performance of third parties in relation thereto pursuant to subclause (2) of this Clause together with a copy of any report received by the Joint Venturers pursuant to that subclause during that month.
- (4) The provisions of this Clause shall not prevent the Joint Venturers from using plant equipment and materials or, with the prior approval of the Minister, services where such plant equipment materials or services are part of the purchase consideration for the sale of iron ore or iron ore products by the Joint Venturers. ”.

(18) Clause 31 —

(a) subclause (1) —

by deleting paragraphs (a) to (g) inclusive and substituting the following paragraphs —

“ (a) on iron ore products being direct shipping ore and fine ore and fines where such fine ore or fines are not sold or shipped separately as such — at the rate of 7½% of the f.o.b. revenue (computed at the rate of exchange

prevailing on the date of receipt by the Joint Venturers of the purchase price of such iron ore products);

- (b) on all other iron ore products — at the rate of 3¾% of the f.o.b. revenue (computed as mentioned in paragraph (a) of this subclause);
- (c) notwithstanding the provisions of paragraphs (a) and (b) of this subclause where the manner of assessing royalty and/or the rates of royalty or any of them payable under this Agreement are substantially different from those payable to the State for like products by other producers of iron ore in the Pilbara region (being producers who in the opinion of the Minister are exporters of 60% or more of the total exports from time to time from the Pilbara region) the Minister may, after consultation with the Joint Venturers determine an alternative manner of assessing royalties and/or new rates of royalty under this Agreement consistent with those payable to the State for like products by such iron ore producers; ”;

- (b) subclause (2) —

by deleting “the Minister” wherever it occurs and substituting the following —

“ the Minister for Minerals and Energy ”;

- (c) subclause (3) —

by deleting subclause (3) and substituting the following subclause —

“(3) (a) The Joint Venturers shall permit the Minister for Minerals and Energy or his nominee —

- (i) at all reasonable times —

- (A) to inspect all books, records, accounts and other documents of the Joint Venturers relative to the Joint Venturers operations hereunder and to any sale, use, shipment, transfer or other disposal of minerals, including sales contracts;

- (B) to take and retain extracts and copies of books, records, accounts and other documents inspected under this subclause;
 - (C) to inspect, take stock of and value minerals in respect of which royalties are payable or, in the opinion of the Minister for Minerals and Energy, are likely to be payable; and
 - (D) to have access to the areas the subject of this Agreement and all other areas and facilities at which iron ore or iron ore products are stored or treated, to sample ore streams and to take and retain samples of iron ore and iron ore products for analysis; and
- (ii) to obtain all information necessary to ascertain the quantity or value of minerals produced or obtained from a mining tenement or from land the subject of an application for a mining tenement and to determine the amount of royalty payable with respect to those minerals.

For the purposes of determining the value for royalty purposes in respect of any minerals hereunder the Joint Venturers shall take reasonable steps (either by the certificate of a competent independent party acceptable to the Minister for Minerals and Energy or otherwise to his reasonable satisfaction) to satisfy the State as to all relevant matters including weights assays and analyses and shall give due regard to any objection or representation made by the Minister for Minerals and Energy or his nominee as to any matter and/or any particular weight assay or analysis which may affect the amount of royalty payable hereunder. The information obtained by the Minister for Minerals and Energy or his nominee as a result of any such inspection shall be used for the purposes of verifying the amount of royalty payable by the Joint Venturers

and for no other purpose and shall not be disclosed by the State the Minister for Minerals and Energy or his nominee to any other party for any other purpose.

- (b) The Joint Venturers shall as and when required by the Minister for Minerals and Energy from time to time install and thereafter maintain in good working order and condition meters for measuring movements of iron ore products of such design or designs and at such places as the Minister for Minerals and Energy may require. ”.

(19) Clause 34 —

subclause (3) —

by deleting subclause (3) and substituting the following subclause —

- “ (3) If such proposals are not submitted by the Joint Venturers to the Minister before the end of Year 20 or if such proposals are so submitted but are not approved by the Minister within two months after receipt thereof then if by the end of Year 23 (or extended date if any) the State gives to the Joint Venturers notice that some other company or party (hereinafter referred to as “the Fourth Party”) has agreed to establish an integrated iron and steel industry within the said State (using iron ore from the mineral lease) on terms not more favourable on the whole to the Fourth Party than those proposed by or available to the Joint Venturers hereunder then this Agreement shall cease and determine —
- (i) if proposals by the Joint Venturers for a plant for secondary processing have previously been submitted to and approved by the Minister, at the end of Year 30 or at the date by which the Fourth Party has substantially established an integrated iron and steel industry whichever is the later; and
 - (ii) if proposals by the Joint Venturers for a plant for secondary processing have not previously been submitted to and approved by the Minister, at the date by which the Fourth Party has substantially established an integrated iron and steel industry. ”.

- (20) Clause 39 —
by deleting “This Agreement” and substituting the following —
“ Subject to subclause (2a) of Clause 7 this Agreement ”.
- (21) Clause 40 subclause (2) —
by inserting after “Clause”, where it last occurs, the following —
“ PROVIDED THAT the Minister may agree to release the Joint Venturers and any former parties to this Agreement and permitted assigns of those parties or any of them from such liability where he considers such release will not be contrary to the interests of the State ”.
- (22) Clause 49 —
by deleting “*Arbitration Act 1895*” and substituting the following —
“ *Commercial Arbitration Act 1985* ”.
- (23) The Schedule is deleted and the following Schedule substituted —
“

THE SCHEDULE
WESTERN AUSTRALIA
MINING ACT 1978
IRON ORE (McCAMEY'S MONSTER)
AGREEMENT AUTHORIZATION ACT 1972
MINING LEASE

Mining Lease No.

The Minister for Minerals and Energy a corporation sole established by the *Mining Act 1978* with power to grant leases of land for the purposes of mining in consideration of the rents hereinafter reserved and of the covenants on the part of the Lessee described in the First Schedule to this lease and of the conditions hereinafter contained and pursuant to the *Mining Act 1978* (except as otherwise provided by the Agreement (hereinafter called “the Agreement”) described in the Second Schedule to this lease) hereby leases to the Lessee the land more particularly delineated and described in the Third Schedule to this lease for iron ore

subject however to the exceptions and reservations set out in the Fourth Schedule to this lease and to any other exceptions and reservations which subject to the Agreement are by the *Mining Act 1978* and by any Act for the time being in force deemed to be contained herein to hold to the Lessee for a term of twenty one years commencing on the date set out in the Fifth Schedule to this lease with the right to renew the same as provided in but subject to the Agreement for further periods each of twenty one years (subject to sooner determination of the said term upon cessation or determination of the Agreement) upon and subject to such of the provisions of the *Mining Act 1978* except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the terms covenants and conditions set out in the Agreement and to the covenants and conditions herein contained or implied and any further conditions or stipulations set out in the Sixth Schedule to this lease the Lessee paying therefor the rents and royalties as provided in the Agreement PROVIDED ALWAYS that this lease is subject also to the following covenants and conditions that is to say —

- (1) that the Lessee shall use the land bona fide exclusively for the purposes of the Agreement;
- (2) subject to the provisions of the Agreement the Lessee shall observe perform and carry out the provisions of the *Mines Regulation Act 1946*; and
- (3) that the Lessee shall if required by the Minister for Minerals and Energy supply information of a geological nature relating to the Lessee's operations on the land the subject of this lease

and PROVIDED FURTHER that this lease and any renewal thereof shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this lease —

- “Lessee” includes the successors and permitted assigns of the Lessee and if the Lessee be more than one the respective successors and permitted assigns of each Lessee.
- If the Lessee be more than one the liability of the Lessee hereunder shall be joint and several.
- Reference to any Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefor

or in lieu thereof and the regulations and by-laws for the time being in force thereunder.

FIRST SCHEDULE

HANCOCK MINING LIMITED a company incorporated in Western Australia and having its registered office at 1st Floor, 49 Stirling Highway, Nedlands.

SECOND SCHEDULE

The Agreement authorized by the *Iron Ore (McCamey's Monster) Agreement Authorization Act 1972* including any amendments to that Agreement.

THIRD SCHEDULE

(Description of land)

Locality:

Mineral Field: Area, etc:

Being the land delineated on Original Plan(s) No. and recorded in the Department of Mines, Perth.

FOURTH SCHEDULE

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

FIFTH SCHEDULE

(Date of Commencement of the lease)

SIXTH SCHEDULE

(Any further conditions or stipulations)

In witness whereof the Minister for Minerals and Energy has affixed his seal and set his hand hereto this day of 19 .".

4. (1) The State shall exempt from any stamp duty which but for the operation of this Clause would or might be chargeable on —
- (a) transfers of exploration licences in respect of the lands formerly within Temporary Reserves Nos. 4194H, 5004H and 5006H by CGFA, Utah, HPPL and WPPL to Renison Limited and Utah;
 - (b) the assignment of the Principal Agreement and the rights of occupancy in respect of the lands within Temporary Reserve No. 4236H by CGFA, Utah, HPPL and WPPL to the Company.
- (2) If prior to the date on which the Bill referred to in Clause 2 of this Agreement to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) of this Clause the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document to the person who paid the same.

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

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

D. PARKER
MINISTER FOR MINERALS AND
ENERGY

THE COMMON SEAL of
HANCOCK MINING LIMITED was } (C.S.)
hereunto affixed by authority of the
Director in the presence of:

Director L. G. HANCOCK
Secretary R. H. WOODLAND

[Schedule 2 inserted by No. 45 of 1986 s. 8.]

Schedule 3 — Second Variation Agreement

[s. 5]

[Heading amended by No. 19 of 2010 s. 4.]

THIS AGREEMENT is made the 31st day of March 1994

B E T W E E N :

THE HONOURABLE RICHARD FAIRFAX COURT B.Com., M.L.A.,
Premier of the State of Western Australia, acting for and on behalf of the said
State and its instrumentalities from time to time (hereinafter called "the State")
of the one part **AND BHP IRON ORE (JIMBLEBAR) PTY. LTD.**
ACN 009 114 210 (formerly called Hancock Mining Limited) a company
incorporated in the State of Western Australia and having its registered office at
Level 18, 200 St George's Terrace, Perth (hereinafter called "the Company") of
the other part.

WHEREAS:

- (a) the State and the Company (pursuant to certain assignments) are now the parties to the agreement (as amended from time to time) the execution of which was authorized by *the Iron Ore (McCamey's Monster) Agreement Authorization Act 1972* (hereinafter called "the Principal Agreement");
- (b) the State and the Company wish to vary the Principal Agreement.

NOW THIS AGREEMENT WITNESSES —

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The State shall introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1994 or such later date as may be agreed between the parties hereto.
3. (1) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation unless and until —
 - (a) the Bill to ratify this Agreement as referred to in Clause 2;
and

- (b) Bills to ratify the following agreements of even date herewith, namely: —
- (i) an agreement between the State of the one part and BHP Minerals Pty. Ltd. of the other part called the Iron Ore Processing (BHP Minerals) Agreement;
 - (ii) an agreement between the State of the one part and BHP Iron Pty. Ltd., BHP Australia Coal Pty. Ltd., CI Minerals Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. of the other part to vary the Iron Ore (Mount Goldsworthy) Agreement; and
 - (iii) an agreement between the State of the one part and BHP (Minerals) Pty. Ltd., Mitsui Iron Ore Corporation Pty. Ltd. and CI Minerals Australia Pty. Ltd. of the other part to vary the Iron Ore (Marillana Creek) Agreement

are passed as Acts before 31 December 1994 or such later date if any as the parties hereto may agree upon.

- (2) If before 31 December 1994 or such later agreed date the said Bills have not commenced to operate as Acts then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (3) On the said Bills commencing to operate as Acts all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

4. The Principal Agreement is hereby varied as follows —

- (1) **Clause 1** —

in the definition of “**approved proposal**”, by inserting after “Clause 8”, where it secondly occurs, the following —

“and includes proposals approved or deemed to be approved under Clauses 9 or 11A”.

(2) **Clause 9(1)** —

by deleting “If” and substituting the following —

“Subject to Clause 11A, if”.

(3) **Clause 9(2)**

by deleting “or if as a consequence of their submitting detailed proposals pursuant to Clause 33 the Minister requires further detailed proposals to be submitted on any of the said matters mentioned in paragraphs (a) - (m) of subclause (2) of Clause 7” and substituting the following —

“or Clause 11A”.

(4) **Clause 11A**

by inserting after Clause 11 the following clause —

Limits on mining

“ 11A. (1) In this Clause —

“aggregate project cost under the Processing Agreement” means the sum of \$400,000,000 (June 1993 dollars) which is agreed or determined for the purposes of Clause 27 of the Processing Agreement to have been expended on the establishment of facilities for further processing or alternative investments pursuant to that Agreement;

“approved production limit under this Clause” means the production level (if any) of tonnes of iron ore per annum for transportation from the mineral lease which has been consented to from time to time by the Minister pursuant to subclauses (5) or (6) of this Clause and which is the subject of proposals approved or deemed to be approved pursuant to subclause (7) of this Clause;

“BHP” means BHP Minerals Pty. Ltd. and its successors and assigns who are parties with the State to the Processing Agreement;

“combined limit” means the aggregate of —

- (i) any approved production limit under this Clause;
- (ii) the approved production limit under Clause 11 of the Marillana Creek Agreement; and
- (iii) any approved production limit under Clause 12 of the Mount Goldsworthy Agreement

PROVIDED THAT if any of the approved production limits referred to in paragraphs (i), (ii) or (iii) exceeds 15,000,000 tonnes per annum then in calculating the combined limit such approved production limit shall be treated as being 15,000,000 tonnes per annum;

“Marillana Creek Agreement” means the agreement (as amended from time to time) ratified by the *Iron Ore (Marillana Creek) Agreement Act 1991*;

“Mount Goldsworthy Agreement” means the agreement (as amended from time to time) approved by the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*;

“Processing Agreement” means the agreement (as amended from time to time) ratified by the *Iron Ore Processing (BHP Minerals) Agreement Act 1994*.

- (2) After the 1st day of April 1994, except for the production of iron ore in accordance with the approval of the Minister of the 5th day of March 1993 the Joint Venturers shall not produce iron ore under this Agreement unless there is an approved production limit under this Clause.
- (3) Where there is an approved production limit under this Clause, the Joint Venturers shall not

produce iron ore under this Agreement for transportation in any calendar year in excess of the approved production limit without the prior consent in principle of the Minister and, subject to that consent, approval of detailed proposals in regard thereto in accordance with this Clause.

- (4) If the Joint Venturers desire to establish or increase an approved production limit under this Clause they shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of their proposals in respect thereto (including the matters mentioned in paragraphs (a) - (m) of subclause (2) of Clause 7).
- (5) The Minister shall advise the Joint Venturers within two months of receipt by the Minister of a notice under subclause (4) of this Clause whether or not he consents in principle to the proposed limit or increase PROVIDED THAT the Minister shall consent in principle to the proposed limit or increase —
- (a) if the aggregate project cost under the Processing Agreement has been expended;
or
 - (b) if the aggregate project cost under the Processing Agreement has not been expended and:
 - (i) the obligations of BHP under the Processing Agreement have been and are being properly performed and complied with; and
 - (ii) the proposed limit or increase would not result in the approved production limit under this Clause exceeding 15,000,000 tonnes per annum or the combined limit exceeding 30,000,000 tonnes per annum.

- (6) If the aggregate project cost under the Processing Agreement has not been expended and:
- (i) the obligations of BHP under the Processing Agreement have been and are being properly performed and complied with; and
 - (ii) the proposed limit or increase would result in the approved production limit under this Clause exceeding 15,000,000 tonnes per annum or the combined limit exceeding 30,000,000 tonnes per annum,

the Minister may consent in principle to the whole or part of a proposed limit or increase or withhold his approval of the proposed limit or increase. The Minister shall give reasons for his decision if he withholds his approval, but his decision shall not be referable to arbitration under this Agreement or otherwise be the subject of challenge by the Joint Venturers.

- (7) (a) If the Minister consents in principle to a proposed limit or increase the Joint Venturers must within three months of that consent submit to the Minister detailed proposals in respect thereof otherwise that consent shall lapse.
- (b) The provisions of Clause 7 (other than subclauses (1) and (6)) and Clause 8 shall apply to detailed proposals submitted pursuant to this subclause with the proviso that the Joint Venturers may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award, by notice to the Minister that they shall not be proceeding with the same.
- (c) If the Joint Venturers do not withdraw their proposals or give notice pursuant to

paragraph (b) of this subclause then, subject to and in accordance with the *Environmental Protection Act 1986* and any approvals and licences required under that Act, the Joint Venturers shall implement proposals approved or deemed to be approved pursuant to this Clause in accordance with the terms thereof.

- (5) Clause 22 —
- (a) by deleting the subclause designations (1), (2), 2a), (3), (4), (5) and (6) and substituting respectively the subclause designations (2), (3), (4), (5), (6), (7) and (8);
 - (b) by inserting as the first subclause the following —
 - “ (1) The Joint Venturers may purchase their electricity requirements from generating facilities established under the agreement (as amended from time to time) ratified by the *Pilbara Energy Project Agreement Act 1994* and may transmit power to and within the areas of their mining operations or elsewhere subject to the provisions of the *Electricity Act 1945* and the approval and requirements of the State Energy Commission pursuant to any Act. ”;
 - (c) in subclause (2), as renumbered by paragraph (a) of this clause, by deleting “For the purposes of facilitating integration of electricity generation and transmission facilities in the areas where the Joint Venturers carry on operations under this Agreement” and substituting the following —
 - “ Subject to subclause (1), ”;
 - (d) in subclause (3), as renumbered by paragraph (a) of this subclause, by deleting “subclause (1)” and substituting the following —
 - “ subclause (2) ”;

- (e) in subclause (4), as renumbered by paragraph (a) of this subclause, by deleting "subclause (2)" and substituting the following —
" subclause (3) ";
- (f) in subclause (6), as renumbered by paragraph (a) of this subclause, by deleting "subclause (3)" and substituting the following —
" subclause (5) ".

(6) By deleting Clauses 33, 34, 35, 36, 37 and 38.

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

SIGNED by THE HONOURABLE)	
RICHARD FAIRFAX COURT in)	R F COURT
the presence of —)	

Colin Barnett
MINISTER FOR RESOURCES DEVELOPMENT

THE COMMON SEAL of)	
BHP IRON ORE (JIMBLEBAR))	
PTY. LTD. was hereunto)	C.S.
affixed by authority of)	
the Directors —)	

Director R J Carter

Secretary Ada Lian Davies

[Schedule 3 inserted by No. 29 of 1994 s. 10.]

Schedule 4 — Third Variation Agreement

[s. 6]

[Heading amended by No. 19 of 2010 s. 4.]

THIS AGREEMENT is made the 11th day of April 2000.

B E T W E E N :

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

AND

BHP IRON ORE (JIMBLEBAR) PTY. LTD. ACN 009 114 210 a company
incorporated in the State of Western Australia and having its registered office at
Level 18, 200 St George's Terrace, Perth (hereinafter called "the Company") of
the other part.

W H E R E A S :

- (a) the State and the Company (pursuant to certain assignments) are now the parties to the agreement the execution of which was authorised by the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, which agreement as amended from time to time is hereinafter called "the Principal Agreement";
- (b) the State and the Company wish to vary the Principal Agreement.

NOW THIS AGREEMENT WITNESSES —

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The State shall introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 2000 or such later date as may be agreed between the parties hereto.

3. (1) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation unless and until —
- (a) the Bill to ratify this Agreement as referred to in Clause 2; and
 - (b) Bills to ratify the following agreements of even date herewith, namely: —
 - (i) an agreement between the State and BHP Direct Reduced Iron Pty. Ltd. to vary the Iron Ore Beneficiation (BHP) Agreement;
 - (ii) an agreement between the State and BHP Direct Reduced Iron Pty. Ltd. to vary the Iron Ore - Direct Reduced Iron (BHP) Agreement;
 - (iii) an agreement between the State and BHP Minerals Pty. Ltd., CI Minerals Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. to vary the Iron Ore (Marillana Creek) Agreement;
 - (iv) an agreement between the State and BHP Minerals Pty. Ltd., CI Minerals Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. to vary the Iron Ore (Mount Goldsworthy) Agreement;
 - (v) an agreement between the State and BHP Minerals Pty. Ltd., Mitsui-Itochu Iron Pty. Ltd. and CI Minerals Australia Pty. Ltd. to vary the Iron Ore (Mount Newman) Agreement; and
 - (vi) an agreement between the State and BHP Minerals Pty. Ltd., CI Minerals Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. to vary the Iron Ore (Goldsworthy-Nimingarra) Agreement
- are passed as Acts before 31 December 2000 or such later date if any as the parties hereto may agree upon.
- (2) If before 31 December 2000 or such later agreed date the said Bills have not commenced to operate as Acts then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of,

done, performed, or omitted to be done or performed under this Agreement.

- (3) On the said Bills commencing to operate as Acts all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

4. The Principal Agreement is hereby varied in Clause 31(1) as follows —

- (a) by inserting after paragraph (a) the following paragraph —

“ (aa) on iron ore products used in the beneficiation plant the subject of the Agreement ratified by the *Iron Ore Beneficiation (BHP) Agreement Act 1996* at the following rates —

- (i) in respect of lump ore, 7.5% of the f.o.b. revenue;
and
(ii) in respect of fine ore, 3.75% of the f.o.b. revenue. ”.

- (b) in paragraph (c), by inserting after “Agreement” the following —

“ pursuant to those paragraphs ”.

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

SIGNED by THE HONOURABLE
RICHARD FAIRFAX COURT in
the presence of —

} RICHARD COURT

COLIN BARNETT
MINISTER FOR RESOURCES DEVELOPMENT

THE COMMON SEAL of
BHP IRON ORE (JIMBLEBAR)
PTY. LTD. was hereunto affixed by
authority of the Directors —

} [C.S.]

STEFANO GIORGINI
Director

MICHAEL KNOWLES
Secretary

[Schedule 4 inserted by No. 57 of 2000 s. 14.]

Schedule 5 — Fourth Variation Agreement

[s. 8]

[Heading inserted by No. 61 of 2010 s. 43.]

2010

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

AND

**BHP IRON ORE (JIMBLEBAR) PTY. LTD.
ACN 009 114 210**

IRON ORE (McCAMEY'S MONSTER) AGREEMENT 1972

RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 17th day of November 2010

BETWEEN

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

AND

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

parties hereto otherwise agree this Agreement shall cease and determine and neither party shall have any claim against the other party with respect to any matter or thing arising out of or done or performed or omitted to be done or performed under this Agreement.

4. The Principal Agreement is varied as follows:

(1) in clause 1:

- (a) by deleting the current definitions of "approved proposals", "direct shipping ore", "fine ore", "fines", "f.o.b. revenue", "iron ore" and "Minister for Minerals and Energy" and;
- (b) by inserting in the appropriate alphabetical positions the following new definitions:

"agreed or determined" means agreed between the Joint Venturers and the Minister or, failing agreement within three months of the Minister giving notice to the Joint Venturers that he requires the value of a quantity of iron ore to be agreed or determined, as determined by the Minister (following, if requested by the Joint Venturers, consultation with the Joint Venturers and their consultants in regard thereto) and in agreeing or determining a fair and reasonable market value of such iron ore assessed on an arm's length basis the Joint Venturers and/or the Minister as the case may be shall have regard to:

- (i) in the case of iron ore initially sold at cost pursuant to the proviso to clause 11(10), the prices for that type of iron ore prevailing at the time the price for such iron ore was agreed between the arm's length purchaser referred to in paragraph (iii) of that proviso and the seller in relation to the type of sale and the relevant international seaborne iron ore market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value; and
- (ii) in any other case, the prices for that type of iron ore prevailing at the time the price for such iron ore was

agreed between the Joint Venturers and the purchaser in relation to the type of sale and the market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value;

"approved proposal" means a proposal approved or determined under this Agreement;

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

"deemed f.o.b. point" means on ship at the relevant loading port;

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

- (a) in the case of iron ore the property of the Joint Venturers which is shipped out of the said State, the date of shipment; and
- (b) in any other case, the date of sale, transfer of ownership, disposal or use as the case may be;

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

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

"f.o.b. value" means:

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

- (8) such other costs and charges as the Minister may in his discretion consider reasonable in respect of any shipment or sale;
- (ii) in the case of iron ore initially sold at cost pursuant to the proviso to clause 11(10), the price which is payable for the iron ore by the arm's length purchaser as referred to in paragraph (iii) of that proviso or, where the Minister considers, following advice from the appropriate Government department, that the price payable in respect of the iron ore does not represent a fair and reasonable market value for that type of iron ore assessed on an arm's length basis in the relevant international seaborne iron ore market, such amount as is agreed or determined as representing such a fair and reasonable market value, less all duties, taxes, costs and charges referred to in paragraph (i) above; and
- (iii) in all other cases, the deemed f.o.b. value.

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

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

"Integration Agreement" means:

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

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

"Integration Proponent" means in relation to an Integration Agreement, "the Company" or "the Joint Venturers" as the

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

"iron ore" includes, without limitation, beneficiated ore;

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

"loading port" means:

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

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

"Mount Newman Agreement" means the agreement approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended;

"Minister for Mines" means the Minister in the Government of the said State for the time being responsible for the administration of the Mining Act 1904 and the Mining Act 1978;

"Related Entity" means a company in which:

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

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

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

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

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

- (c) in the definition of "Joint Venturers' wharf" by inserting "and in clauses 11(10) and 23(2)(a) also any additional wharf constructed by the Joint Venturers pursuant to this Agreement" before the semi colon;
 - (d) in the definition of "metallised agglomerates" by deleting "or iron ore concentrates";
 - (e) in the definition of "mineral lease" by inserting "and any areas added to it pursuant to clause 11B" before the semi colon; and
 - (f) in the definition of "secondary processing" by deleting "the concentration or other beneficiation of iron ore otherwise than by washing crushing or screening or any combination thereof" and substituting "the beneficiation of iron ore";
- (2) in clause 2:
- (a) by inserting in subclause (1)(c) "and clause headings" after "marginal notes"; and
 - (b) by inserting after subclause (3) the following new subclause:
"(4) Nothing in this Agreement shall be construed:

- (a) to exempt the Joint Venturers from compliance with any requirement in connection with the protection of the environment arising out of or incidental to their activities under this Agreement that may be made by or under the EP Act; or
 - (b) to exempt the State or the Joint Venturers from compliance with or to require the State or the Joint Venturers to do anything contrary to any laws relating to native title or any lawful obligation or requirement imposed on the State or the Joint Venturers as the case may be pursuant to any laws relating to native title; or
 - (c) to exempt the Joint Venturers from compliance with the provisions of the *Aboriginal Heritage Act 1972 (WA)*.";
- (3) in clause 5 by deleting "Minister for Minerals and Energy" in paragraphs (d), (e) and (f) and substituting "Minister for Mines";
- (4) in clause 9(1):
- (a) by inserting "after the variation date" after "this Agreement";
 - (b) by inserting "significantly" before "modify";
 - (c) by inserting "carried on pursuant to this Agreement" after "vary their activities";
 - (d) by inserting "(other than under clauses 9C, 11A or 11E)" after "any approved proposals"; and
 - (e) by deleting the last sentence and substituting the following sentence:

"The provisions of clause 7(5) shall apply mutatis mutandis to detailed proposals submitted pursuant to this subclause.";
- (5) by renumbering subclauses (2) and (3) of clause 9 as (6) and (7) respectively;
- (6) by inserting after subclause (1) of clause 9 the following new subclauses:

- "(2) A proposal may with the consent of the Minister (except in relation to an Integration Agreement) and that of any parties concerned (being in respect of an Integration Agreement the Integration Proponent for that agreement) provide for the use by the Joint Venturers of any works installations or facilities constructed or established under a Government agreement.
- (3) Each of the proposals pursuant to subclause (1) may with the approval of the Minister, or shall if so required by the Minister, be submitted separately and in any order as to any matter or matters in respect of which such proposals are required to be submitted.
- (4) At the time when the Joint Venturers submit the said proposals they shall submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works materials, plant, equipment and supplies that they propose to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with their reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto.
- (5) The Joint Venturers may withdraw their proposals pursuant to subclause (1) at any time before approval thereof, or where any decision in respect thereof is referred to arbitration as referred to in clause 9A, within 3 months after the award by notice to the Minister that they shall not be proceeding with the same.";
- (7) by renumbering clause 9A as clause 9C and in subclause (4) deleting "Clauses 7 and 8" and substituting "clauses 9(2) to (5) and clause 9A";
- (8) by inserting after clause 9 the following new clauses:

"Consideration of Joint Venturers' proposals under clause 9

- 9A. (1) In respect of each proposal pursuant to subclause (1) of clause 9 the Minister shall:
- (a) subject to the limitations set out below, refuse to approve the proposal (whether it requests the

grant of new tenure or not) if the Minister is satisfied on reasonable grounds that it is not in the public interest for the proposals to be approved; or

- (b) approve of the proposal without qualification or reservation; or
- (c) defer consideration of or decision upon the same until such time as the Joint Venturers submit a further proposal or proposals in respect of some other of the matters mentioned in clause 9(1) not covered by the said proposal; or
- (d) require as a condition precedent to the giving of his approval to the said proposal that the Joint Venturers make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable, and in such a case the Minister shall disclose his reasons for such conditions,

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

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

- (i) detrimentally affect economic and orderly development in the said State, including without limitation, infrastructure development in the said State; or

- (ii) be contrary to or inconsistent with the planning and development policies and objectives of the State; or
- (iii) detrimentally affect the rights and interests of third parties; or
- (iv) detrimentally affect access to and use by others of the lands the subject of any grant or proposed grant to the Joint Venturers.

The right to refuse to approve a proposal conferred by paragraph (a) may only be exercised in respect of a proposal where the Minister is satisfied on reasonable grounds that a purpose of the proposal is the integrated use of works installations or facilities (as defined in subclause (7) of clause 11C for the purpose of that clause) as contemplated by clause 11C. It may not be so exercised in respect of a proposal if pursuant to clause 9B(5) the Minister, prior to the submission of the proposal, advised the Joint Venturers in writing that the Minister has no public interest concerns (as defined in that clause) with the single preferred development (as referred to in clause 9B(5)(a)) the subject of the submitted proposals and those proposals are consistent (as to their substantive scope and content) with the information provided to the Minister pursuant to clause 9B(5) in respect of that single preferred development.

- (2) The Minister shall within 2 months after receipt of proposals pursuant to clause 9(1) give notice to the Joint Venturers of his decision in respect to the proposals, PROVIDED THAT where a proposal is to be assessed under Part IV of the EP Act the Minister shall only give notice to the Joint Venturers of his decision in respect to the proposal within 2 months after service on him of an authority under section 45(7) of the EP Act.
- (3) If the decision of the Minister is as mentioned in either of paragraphs (a), (c) or (d) of subclause (1) the

Minister shall afford the Joint Venturers full opportunity to consult with him and should they so desire to submit new or revised proposals either generally or in respect to some particular matter.

- (4) If the decision of the Minister is as mentioned in either of paragraphs (c) or (d) of subclause (1) and the Joint Venturers consider that the decision is unreasonable the Joint Venturers within 2 months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder. A decision of the Minister under paragraph (a) of subclause (1) shall not be referable to arbitration under this Agreement.
- (5) If by the award made on the arbitration pursuant to subclause (4) the dispute is decided in favour of the Joint Venturers the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.
- (6) The Joint Venturers shall implement the approved proposals in accordance with the terms thereof.
- (7) Notwithstanding clause 45, the Minister may during the implementation of approved proposals approve variations to those proposals.

Notification of possible proposals

- 9B. (1) If the Joint Venturers, upon completion of a pre-feasibility study in respect of any matter that would require the submission and approval of proposals pursuant to this Agreement (being proposals which will have as their purpose, or one of their purposes, the integrated use of works installations or facilities as contemplated by clause 11C) for the matter to be undertaken, intends to further consider the matter with a view to possibly submitting such proposals they

shall promptly notify the Minister in writing giving reasonable particulars of the relevant matter.

- (2) Within one (1) month after receiving the notification the Minister may, if the Minister so wishes, inform the Joint Venturers of the Minister's views of the matter at that stage.
- (3) If the Joint Venturers are informed of the Minister's views, they shall take them into account in deciding whether or not to proceed with their consideration of the matter and the submission of proposals.
- (4) Neither the Minister's response nor the Minister choosing not to respond shall in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.
- (5)
 - (a) This subclause applies where the Joint Venturers have settled upon a single preferred development a purpose of which is the integrated use of works installations or facilities (as defined in subclause (7) of clause 11C for the purpose of that clause) as contemplated by clause 11C.
 - (b) For the purpose of this subclause "public interest concerns" means any concern that implementation of the single preferred development or any part of it will:
 - (i) detrimentally affect economic and orderly development in the said State, including without limitation, infrastructure development in the said State; or
 - (ii) be contrary to or inconsistent with the planning and development policies and objectives of the State; or

- (iii) detrimentally affect the rights and interests of third parties; or
 - (iv) detrimentally affect access to and use by others of lands the subject of any grant or proposed grant to the Joint Venturers.
- (c) At any time prior to submission of proposals the Joint Venturers may give to the Minister notice of their single preferred development and request the Minister to confirm that the Minister has no public interest concerns with that single preferred development.
- (d) The Joint Venturers shall furnish to the Minister with their notice reasonable particulars of the single preferred development including, without limitation:
 - (i) as to the matters that would be required to be addressed in submitted proposals; and
 - (ii) their progress in undertaking any feasibility or other studies or matters to be completed before submission of proposals; and
 - (iii) their timetable for obtaining required statutory and other approvals in relation to the submission and approval of proposals; and
 - (iv) their tenure requirements.
- (e) If so required by the Minister, the Joint Venturers will provide to the Minister such further information regarding the single preferred development as the Minister may require from time to time for the purpose of considering the Joint Venturers' request and also consult with the Minister or representatives or

officers of the State in regard to the single preferred development.

- (f) Within 2 months after receiving the notice (or if the Minister requests further information, within 2 months after the provision of that information) the Minister must advise the Joint Venturers:
 - (i) that the Minister has no public interest concerns with the single preferred development; or
 - (ii) that he is not then in a position to advise that he has no public interest concerns with the single preferred development and the Minister's reasons in that regard.
 - (g) If the Minister gives the advice mentioned in paragraph (f)(ii) the Joint Venturers may, should they so desire, give a further request to the Minister in respect of a revised or alternate single preferred development and the provisions of this subclause shall apply mutatis mutandis thereto.";
- (9) in clause 11(2) by deleting "Minister for Minerals and Energy" and substituting "Minister for Mines";
- (10) by inserting after subclause (8) of clause 11 the following new subclauses:

"Blending of iron ore

- (9) (a) The Joint Venturers may blend iron ore mined from the mineral lease with any:
 - (i) iron ore mined from a mining tenement or other mining title granted under, or pursuant to, an Integration Agreement; or
 - (ii) iron ore mined from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or

- parties (excluding any mining lease granted pursuant to, or held under, a Government agreement); or
- (iii) with the prior approval of the Minister, iron ore mined in, or proximate to, the Pilbara region of the said State under a Government agreement (excluding an Integration Agreement); or
 - (iv) with the prior approval of the Minister, iron ore mined by a third party from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by an Integration Proponent from the third party.
- (b) The authority given under paragraph (a) is subject to the Minister being reasonably satisfied that there are in place adequate systems and controls for the correct apportionment of the quantities of iron ore being blended as between each of the sources referred to in paragraph (a), which systems and controls monitor production, processing, transportation, stockpiling and shipping of all such iron ore. If at any time the Minister ceases to be so satisfied he may, after consulting the Joint Venturers and provided the Joint Venturers have not within three (3) months after the commencement of such consultation addressed the matters of concern to the Minister to his satisfaction, by notice in writing to the Joint Venturers suspend the above authority in respect of the relevant blending arrangements until he is again satisfied in terms of this paragraph (b).
- (c) If any blending of iron ore occurs as contemplated by this subclause, then for the purposes of clauses 31(1) and (2), a portion of the iron ore so blended being equal to the proportion that the amount of iron ore from the mineral lease used in the admixture of iron ore bears to the total amount of iron ore so blended,

shall be deemed to be produced from the mineral lease.

Shipment of and price for iron ore

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

and use their best endeavours to obtain therefor the best price possible having regard to market conditions from time to time prevailing PROVIDED THAT iron ore from the mineral lease may be sold by the Joint Venturers prior to or at the time of the shipment under this Agreement at a price equal to the production costs in respect of that iron ore up to the point of sale, if:

- (i) the Minister is notified before the time of shipment that the sale is to be made at cost, providing details of the proposed sale; and
- (ii) the Minister is notified of the proposed arm's length purchaser in the relevant international seaborne iron ore market of the iron ore the subject of the proposed sale at cost; and
- (iii) there is included in the return lodged pursuant to clause 31(2) particulars of the transaction in which the ore sold at cost was subsequently purchased in the relevant international seaborne iron ore market by an arm's length purchaser specifying the purchaser, the

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

- (iv) the arm's length purchaser referred to in (iii) above is not then a designated purchaser as referred to below.

If required by notice in writing from the Minister, the Joint Venturers must provide the Minister within 30 days after receiving the notice with evidence that the transaction as included in the return pursuant to paragraph (iii) above was a sale in the relevant international seaborne iron ore market to an independent participant in that market. If no evidence is provided or the Minister is not so satisfied on the evidence provided or other information obtained, the Minister may by notice to the Joint Venturers designate the purchaser to be a designated purchaser and that designation will remain in force unless and until lifted by further notice from the Minister to the Joint Venturers. For the avoidance of doubt and without limiting the Minister discretion above, the parties acknowledge that marketing entities forming part of a corporate group that includes the majority Joint Venturer (or part of a parallel corporate group if that Joint Venturer is part of a dual-listed corporate structure) are not independent participants for the purposes of this subclause.";

- (11) in subclause (7) of clause 11A by deleting paragraphs (b) and (c) and substituting the following new paragraph:

"(b) The provisions of clauses 7(2), 7(5), 9(2) to (5) and 9A shall apply to detailed proposals submitted pursuant to this subclause.";

- (12) by inserting after clause 11A the following new clauses:

"Additional areas

11B. (1) Notwithstanding the provisions of the Mining Act 1904 or the Mining Act 1978 the Joint Venturers may from time to time during the currency of this Agreement apply to the Minister for areas held by the Joint Venturers or an associated company under a mining tenement granted under the Mining Act 1978 to be included in the mineral lease but so that the total area of the mineral lease, any land that may be

included in the mineral lease pursuant to this Agreement and of any other mineral lease or mining lease granted under or pursuant to this Agreement (as aggregated) shall not at any time exceed 777 square kilometres. The Minister shall confer with the Minister for Mines in regard to any such application and if they approve the application the Minister for Mines shall upon the surrender of the relevant mining tenement include the area the subject thereof in the mineral lease by endorsement subject to such of the conditions of the surrendered mining tenement as the Minister for Mines determines but otherwise subject to the same terms covenants and conditions as apply to the mineral lease (with such apportionment of rents as is necessary) and notwithstanding that the survey of such additional land has not been completed but subject to correction to accord with the survey when completed at the Joint Venturers' expense.

- (2) The Minister may approve, upon application by the Joint Venturers from time to time, for the total area referred to in subclause (1) to be increased up to a limit not exceeding 1,000 square kilometres.
- (3) The Joint Venturers shall not mine or carry out other activities (other than exploration, bulk sampling and testing) on any area or areas added to the mineral lease pursuant to subclause (1) of this clause unless and until proposals with respect thereto are approved or determined pursuant to the subsequent provisions of this clause.
- (4) If the Joint Venturers desire to commence mining of iron ore or to carry out any other activities (other than as aforesaid) on the said areas they shall give notice of such desire to the Minister and shall within 2 months of the date of such notice (or thereafter within such extended time as the Minister may allow as hereinafter provided) and subject to the provisions of this Agreement submit to the Minister to the fullest extent reasonably practicable their detailed proposals (which proposals shall include plans where practicable

and specifications where reasonably required by the Minister) with respect to such mining or other activities as additional proposals pursuant to clauses 9 or 11A as the case may be.

Integrated use of works installations or facilities under the Integration Agreements

11C. (1) Subject to subclauses (2) to (7) of this clause and to the other provisions of this Agreement, the Joint Venturers may during the continuance of this Agreement:

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

(wholly or in part) in the activities of the Joint Venturers carried on by them pursuant to this Agreement including, without limitation, as part of those activities, transporting by railway and shipping from a loading port and undertaking any ancillary and incidental activities in doing so (including, without limitation, blending permitted by clause 11(9)) of:

- (A) iron ore mined from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any

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

- (ii) with the prior approval of the Minister (as defined in that Integration Agreement), iron ore mined in, or proximate to, the Pilbara region of the said State under a Government agreement (excluding an Integration Agreement);
 - (iii) with the prior approval of the Minister (as defined in the Integration Agreement), iron ore mined by a third party from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by that Integration Proponent from the third party;
 - (iv) iron ore mined under an Integration Agreement;
- (c) make any existing or new works installations or facilities constructed or held under this Agreement available for use (wholly or partly) in connection with operations under:
- (i) a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State, for iron ore, which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under a Government agreement); or
 - (ii) with the approval of the Minister, a Government agreement (other than an Integration Agreement) for the mining of iron ore in, or proximate to, the Pilbara region of the said State;
- (d) subject to subclause (2), under this Agreement and for the purpose of any use or making available for use referred to in paragraph (a),

- (b) or (c) connect any existing or new works installations or facilities constructed or held under this Agreement to any existing or new works installations or facilities constructed or held under another Integration Agreement;
- (e) subject to subclause (2), under this Agreement and for the purpose of any use or making available for use referred to in paragraph (a), (b) or (c) or making of any connection referred to in paragraph (d) construct new works installations or facilities and expand modify or otherwise vary any existing and new works installations or facilities constructed or held under this Agreement;
- (f) allow a railway or rail spur line (not being a railway or rail spur line constructed or held under an Integration Agreement) to be connected to a railway or rail spur line or other works installations or facilities constructed or held under this Agreement for the delivery of iron ore to an Integration Proponent for transport by railway and shipping from a loading port (together with any ancillary and incidental activities in doing so) as part of its activities under its Integration Agreement; and
- (g) allow an electricity transmission line (not being an electricity transmission line constructed or held under an Integration Agreement) to be connected to an electricity transmission line constructed or held under this Agreement for the supply of electricity permitted to be made under an Integration Agreement.
- (2) (a) A connection referred to in subclause (1)(d) or construction, expansion, modification or other variation referred to in subclause (1)(e) by the Joint Venturers shall, to the extent not already authorised under this Agreement as at the variation date, be regarded as a significant

modification expansion or other variation of the Joint Venturers' activities carried on by them pursuant to this Agreement and may only be made in accordance with proposals submitted and approved or determined under this Agreement in accordance with clauses 9 and 9A or clauses 11A or 11E as the case may require and otherwise in compliance with the provisions of this Agreement and the laws from time to time of the said State. For the avoidance of doubt, the parties acknowledge that any use or making available for use contemplated by subclause (1)(a), (1)(b) or (1)(c) shall not otherwise than as required by this paragraph (a) require the submission and approval of further proposals under this Agreement.

- (b) The Joint Venturers shall not be entitled to:
- (i) submit proposals to construct any new port or to establish harbour or port works installations or facilities, or to expand modify or otherwise vary harbour or works installations or facilities otherwise than in accordance with their rights (if any) under this Agreement as those rights stood immediately prior to the variation date; or
 - (ii) generate and supply power, take and supply water or dispose of water otherwise than in accordance with the other clauses of this Agreement and subject to any restrictions contained in those clauses; or
 - (iii) without limiting subparagraphs (i) and (ii) submit proposals to construct or establish works installations or facilities of a type, or to make expansions, modifications or other variations of works installations or facilities of a type,

which in the Minister's reasonable opinion this Agreement, immediately before the variation date, did not permit or contemplate the Joint Venturers constructing, establishing or making as the case may be otherwise than for integration use as contemplated by subclauses (1)(a), (1)(b) or (1)(c) or as permitted by clause 11E; or

- (iv) submit proposals to make a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) otherwise than on tenure granted under or pursuant to this Agreement from time to time or held pursuant to this Agreement from time to time; or
- (v) submit proposals to make a connection referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) for the purpose of use as contemplated by subclause (1)(c)(i), if in the reasonable opinion of the Minister the activity which is the subject of the proposals would give to the holder or holders of the relevant Mining Act 1978 mining lease the benefit of rights or powers granted to the Joint Venturers under this Agreement, over and above the right of access to and use of the relevant works installations or facilities; or
- (vi) submit proposals to make a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) for the purpose of use as contemplated by subclause (1)(c) and

- involving the grant of tenure without the prior approval of the Minister; or
- (vii) submit proposals to assign, sublet, transfer or dispose of any works installations or facilities constructed or held under this Agreement or any leases, licences, easements or other titles under or pursuant to this Agreement for any purpose referred to in this clause.
- (c) Notwithstanding the provisions of clauses 9B, 11B, and 11E, the Minister may defer consideration of, or a decision upon, a proposal submitted by the Joint Venturers for a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e), for the purpose of use or making available for use as referred to in subclauses (1)(a) or (1)(b), until relevant corresponding proposals under the relevant Integration Agreement have been submitted and those proposals can be approved under that Integration Agreement concurrently with the Minister's approval under this Agreement of the Joint Venturers' proposal.
- (3) Any use or making available for use as referred to in subclause (1), or submission of proposals as referred to in subclause (2), in respect of a Related Entity shall be subject to the Joint Venturers first confirming with the Minister that the Minister is satisfied that the relevant company is a Related Entity.
- (4) The Joint Venturers shall give the Minister prior written notice of any significant change (other than a temporary one for maintenance or to respond to an emergency) proposed in their use, or in their making available for use, works installations or facilities as referred to in this clause:

- (a) from that authorised under this Agreement immediately before the variation date; and
- (b) subsequently from that previously notified to the Minister under this subclause,

as soon as practicable before such change occurs.

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

- (5) Nothing in this Agreement shall be construed to:
 - (a) exempt another Integration Proponent from complying with, or the application of, the provisions of its Integration Agreement; or
 - (b) restrict the Joint Venturers' rights under clause 40.

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

- (6) Nothing in this clause shall be construed to exempt the Joint Venturers from complying with, or the application of, the other provisions of this Agreement including, without limitation, clause 40 and of relevant laws from time to time of the said State.
- (7) For the purpose of this clause "works installations or facilities" means any:
 - (a) harbour or port works installations or facilities including, without limitation, stockpiles, reclaimers, conveyors and wharves;
 - (b) railway or rail spur lines;
 - (c) track structures and systems associated with the operation and maintenance of a railway

including, without limitation, sidings, train control and signalling systems, maintenance workshops and terminal yards;

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

Transfer of rights to shared works installations or facilities

11D. (1) For the purposes of this clause "Relevant Infrastructure" means any works installations or facilities (as defined in clause 11C(7)):

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

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

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

- (3) This clause shall cease to apply in the event the State gives any notice of default to the Joint Venturers pursuant to clause 42(1) and while such notice remains unsatisfied.

Miscellaneous Licences for Railways

11E. (1) In this clause subject to the context:

"Additional Infrastructure" means:

- (a) Train Loading Infrastructure;
- (b) Train Unloading Infrastructure;
- (c) a conveyor, train unloading and other infrastructure necessary for the transport of iron ore, freight goods or other products from the

Railway (directly or indirectly) to port facilities within a loading port,

in each case located outside a Port;

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

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

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

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

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

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

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

including rolling stock maintenance facilities, terminal yards, depots, culverts and weigh bridges which railway is or is to be (as the case may be) the subject of approved proposals under subclause (4) and includes any expansion or extension thereof outside a Port which is the subject of additional proposals approved in accordance with subclause (5);

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

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

"Railway spur line" means a standard gauge heavy haul railway spur line located or to be located in, or proximate to, the Pilbara region of the said State (but outside a Port) connecting to a Railway for the transport of iron ore, freight goods and other products upon the Railway to (directly or indirectly) a loading port;

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

"Railway spur line Operation Date" means the date of the first carriage of iron ore, freight goods or other

products over the relevant Railway spur line (other than for construction or commissioning purposes);

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

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

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

Joint Venturers to obtain prior Ministerial in-principle approval

- (2) (a) If the Joint Venturers wish, from time to time during the continuance of this Agreement, to proceed under this clause with a plan to develop a Railway they shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of their plan.
- (b) The Minister shall within one month of a notice under paragraph (a) advise the Joint Venturers whether or not he approves in-principle the proposed plan. The Minister shall afford the Joint Venturers full opportunity to consult with

him in respect of any decision of the Minister under this paragraph.

- (c) The Minister's in-principle approval in respect of a proposed plan shall lapse if the Joint Venturers have not submitted detailed proposals to the Minister in respect of that plan in accordance with this clause within 18 months of the Minister's in-principle approval.

Railway Corridor

- (3) (a) If the Minister gives in-principle approval to a plan of the Joint Venturers to develop a Railway they shall consult with the Minister to seek the agreement of the Minister as to:
- (i) where the Railway will begin and end; and
 - (ii) a route for the Railway, access roads to be within the Railway Corridor and the land required for that route as well as Additional Infrastructure (if any) including, without limitation, areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce and water bores; and
 - (iii) in respect of Additional Infrastructure (if any) the nature and capacity of such Additional Infrastructure; and
 - (iv) the routes of, and the land required for, roads outside the Railway Corridor (and also outside a Port) for access to it to construct the Railway (such roads as agreed being "Lateral Access Roads").

In seeking such agreement, regard shall be had to achieving a balance between engineering matters including costs, the nature and use of

any lands concerned and interests therein and the costs of acquiring the land (all of which shall be borne by the Joint Venturers). The parties acknowledge the intention is for the Joint Venturers to construct the Railway, the access roads for the construction and maintenance of the Railway which are to be within the Railway Corridor and the relevant Additional Infrastructure (if any) along the centreline of the Railway Corridor subject to changes in that alignment to the extent necessary to avoid heritage, environmental or poor ground conditions that are not identified during preliminary investigation work, and recognise the width of the Railway Corridor may need to vary along its route to accommodate Additional Infrastructure (if any), access roads, areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce and water bores. The provisions of clause 49 shall not apply to this subclause.

- (b) If the date by which the Joint Venturers must submit detailed proposals under subclause (4)(a) (as referred to in subclause (2)(c)) is extended or varied by the Minister pursuant to clause 46, any agreement made pursuant to paragraph (a) before such date is extended or varied shall unless the Minister notifies the Joint Venturers otherwise be deemed to be at an end and neither party shall have any claim against the other in respect of it.
- (c) The Joint Venturers acknowledge that they shall be responsible for liaising with every title holder in respect of the land affected and for obtaining in a form and substance acceptable to the Minister all unconditional and irrevocable consents of each such title holder to, and all

statutory consents required in respect of the land affected for:

- (i) the grant of the Special Railway Licence for the construction, operation and maintenance within the Railway Corridor of the Railway, access roads and Additional Infrastructure (if any) to be within the Railway Corridor; and
- (ii) the grant of Lateral Access Road Licences for the construction, use and maintenance of Lateral Access Roads over the routes for the Lateral Access Roads agreed pursuant to paragraph (a); and
- (iii) the inclusion of additional land in the Special Railway Licence as referred to in subclause (6)(h) or subclause (6)(i),

in accordance with this clause. For the purposes of this subclause (3)(c), "title holder" means a management body (as defined in the LAA) in respect of any part of the affected land, a person who holds a mining, petroleum or geothermal energy right (as defined in the LAA) in respect of any part of the affected land, a person who holds a lease or licence under the LAA in respect of any part of the affected land, a person who holds any other title granted under or pursuant to a Government agreement in respect of any part of the affected land, a person who holds a lease or licence in respect of any part of the affected land under any other Act applying in the said State and a person in whom any part of the affected land is vested, immediately before the provision of such consents to the Minister as referred to in subclause (4)(e)(ii) (including as applying pursuant to subclause 5(d)).

Joint Venturers to submit proposals for Railway

- (4) (a) The Joint Venturers shall, subject to the EP Act, the provisions of this Agreement, agreement at that time subsisting in respect of the matters required to be agreed pursuant to subclause 3(a), submit to the Minister by the latest date applying under subclause (2)(c) to the fullest extent reasonably practicable their detailed proposals (including plans where practicable and specifications where reasonably required by the Minister and any other details normally required by a local government in whose area any works are to be situated) with respect to the undertaking of the relevant Railway Operation, which proposals shall include the location, area, layout, design, materials and time program for the commencement and completion of construction or the provision (as the case may be) of each of the following matters namely:
- (i) the Railway including fencing (if any) and crossing places within the Railway Corridor;
 - (ii) Additional Infrastructure (if any) within the Railway Corridor;
 - (iii) temporary accommodation and ancillary temporary facilities for the railway workforce on, or in the vicinity of, the Railway Corridor and housing and other appropriate facilities elsewhere for the Joint Venturers' workforce;
 - (iv) water supply;
 - (v) energy supplies;
 - (vi) access roads within the Railway Corridor and Lateral Access Roads both along the routes for those roads agreed between the

Minister and the Joint Venturers pursuant to subclause 3(a);

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

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

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

Additional Railway Proposals

- (5) (a) If the Joint Venturers at any time during the currency of a Special Railway Licence desire to construct a Railway spur line (connecting to the Railway the subject of that Special Railway Licence) or desire to significantly modify, expand or otherwise vary their activities within the land the subject of the Special Railway Licence that are the subject of this Agreement and that may be carried on by them pursuant to this Agreement (other than by the construction of a Railway spur line) beyond those activities specified in any approved proposals for that Railway, they shall give notice of such desire to the Minister and furnish to the Minister with that notice an outline of their proposals in respect thereto (including, without limitation, such matters mentioned in subclause (4)(a) as are relevant or as the Minister otherwise requires).

- (b) If the notice relates to a Railway spur line, or to the construction of Train Loading Infrastructure or Train Unloading Infrastructure on land outside the then Railway Corridor, the Minister shall within one month of receipt of such notice advise the Joint Venturers whether or not he approves in-principle the proposed construction of such spur line, Train Loading Infrastructure or Train Unloading Infrastructure. If the Minister gives in-principle approval the Joint Venturers may (but not otherwise) submit detailed proposals in respect thereof provided that the provisions of subclause (3) shall mutatis mutandis apply prior to submission of detailed proposals in respect thereof.
- (c) Subject to the EP Act, the provisions of this Agreement and agreement at that time subsisting in respect of any matters required to be agreed pursuant to subclause (3)(a) (as referred to in paragraph (b)), the Joint Venturers shall submit to the Minister within a reasonable timeframe, as determined by the Minister after receipt of the notice referred to in paragraph (a) (or in the case of a notice referred to in paragraph (b) the giving of the Minister's in-principle consent as referred to in that paragraph), detailed proposals in respect of the proposed construction of such Railway spur line, Train Loading Infrastructure, Train Unloading Infrastructure or other proposed modification, expansion or variation of its activities including such of the matters mentioned in subclause (4)(a) as the Minister may require.
- (d) The provisions of subclause (4) (with the date for submission of proposals being read as the date or time determined by the Minister under paragraph (c) and the reference in subclause (4)(e)(ii) to subclause (3)(c)(i) being read as a reference to subclause (3)(c)(iii)) and of clause 9A shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause.

Grant of Tenure

- (6) (a) On application made by the Joint Venturers to the Minister in such manner as the Minister may determine, not later than 3 months after all their proposals submitted pursuant to subclause (4)(a) have been approved or deemed to be approved and the Joint Venturers have complied with the provisions of subclause (4)(e), the State notwithstanding the Mining Act 1978 shall cause to be granted to the Joint Venturers:
- (i) a miscellaneous licence to conduct within the Railway Corridor and in accordance with their approved proposals all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce and, subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance within the Railway Corridor of the Railway, access roads and Additional Infrastructure (if any) ("the Special Railway Licence") such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act 1978 in the form of the Second Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at a rental calculated in accordance with the Mining Act 1978:
 - (A) prior to the Railway Operation Date, as if the width of the Railway Corridor were 100 metres; and
 - (B) on and from the Railway Operation Date, at the rentals from time to time prescribed under the Mining Act 1978; and
 - (ii) a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral

Access Roads within the routes agreed for those Lateral Access Roads under subclause (3)(a) (each a "Lateral Access Road Licence"), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act 1978 in the form of the Third Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the Mining Act 1978.

- (b) On application made by the Joint Venturers to the Minister in such manner as the Minister may determine, not later than 3 months after their proposals submitted pursuant to subclause (5)(a) for the construction of Lateral Access Roads for access to the Railway Corridor to construct a Railway spur line have been approved or deemed to be approved and the Joint Venturers have complied with the provisions of subclause (4)(e) (as applying pursuant to subclause (5)(d)), the State notwithstanding the Mining Act 1978 shall cause to be granted to the Joint Venturers a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under subclause (3)(a)) (as applying pursuant to subclause (5)(b)) (each a "Lateral Access Road Licence"), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act 1978 in the form of the Fourth Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the Mining Act 1978.
- (c) Notwithstanding the Mining Act 1978, the term of the Special Railway Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 50 years commencing on the date of grant thereof.

- (d) Notwithstanding the Mining Act 1978, the term of any Lateral Access Road Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 4 years commencing on the date of grant thereof.
- (e) Notwithstanding the Mining Act 1978, and except as required to do so by the terms of the Special Railway Licence, the Joint Venturers shall not be entitled to surrender the Special Railway Licence or any Lateral Access Road Licence or any part or parts of them without the prior consent of the Minister.
- (f)
 - (i) The Joint Venturers may in accordance with approved proposals take stone, sand, clay and gravel from the Railway Corridor for the construction, operation and maintenance of the Railway constructed within or approved for construction within the Railway Corridor.
 - (ii) Notwithstanding the Mining Act 1978 no royalty shall be payable under the Mining Act 1978 in respect of stone, sand, clay and gravel which the Joint Venturers are permitted by subparagraph (i) to obtain from the land the subject of the Special Railway Licence.
- (g) For the purposes of this Agreement and without limiting the operation of paragraphs (a) to (f) inclusive above, the application of the Mining Act 1978 and the regulations made thereunder are specifically modified;
 - (i) in section 91(1) by:
 - (A) deleting "the mining registrar or the warden, in accordance with section 42 (as read with section 92)" and substituting "the Minister";
 - (B) deleting "any person" and substituting "the Joint Venturers (as defined in the agreement authorised by and as

scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended");

- (C) deleting "for any one or more of the purposes prescribed" and substituting "for the purpose specified in clause 11E(6)(a)(i), clause 11E(6)(a)(ii) or clause 11E(6)(b), of the agreement authorised by and as scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended";
- (ii) in section 91(3)(a), by deleting "prescribed form" and substituting "form required by the agreement authorised by and as scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended";
- (iii) by deleting sections 91(6), 91(9), 91(10) and 91B;
- (iv) in section 92, by deleting "Sections 41, 42, 44, 46, 46A, 47 and 52 apply," and inserting "Section 46A (excluding in subsection (2)(a) "the mining registrar, the warden or") applies," and by deleting "in those provisions" and inserting "in that provision";
- (v) by deleting the full stop at the end of the section 94(1) and inserting, "except to the extent otherwise provided in, or to the extent that such terms and conditions are inconsistent with, the agreement authorised by and as scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended";

- (vi) by deleting sections 94(2), (3) and (4);
 - (vii) in section 96(1), by inserting after "miscellaneous licence" the words "(not being a miscellaneous licence granted pursuant to the agreement authorised by and as scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended";
 - (viii) by deleting mining regulations 37(2), 37(3), 42 and 42A; and
 - (ix) by inserting at the beginning of mining regulations 41(c) and (f) the words "subject to the agreement authorised by and as scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended".
- (h) If additional proposals are approved in accordance with subclause (5) for the construction of a Railway spur line outside the then Railway Corridor, the Minister for Mines shall include the area of land within which such construction is to occur in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Joint Venturers' expense.
- (i) If additional proposals are approved in accordance with subclause (5) for the construction of Train Loading Infrastructure or Train Unloading Infrastructure outside the then Railway Corridor, the Minister for Mines shall include the area of such land within which such infrastructure is approved for construction in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Joint Venturers' expense.
- (j) The provisions of this subclause shall not operate so as to require the State to cause a Special Railway Licence or a

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

Construction and operation of Railway

- (7) (a) Subject to and in accordance with approved proposals, the Rail Safety Act and the grant of the relevant Special Railway Licence and any associated Lateral Access Road Licences the Joint Venturers shall in a proper and workmanlike manner and in accordance with recognised standards for railways of a similar nature operating under similar conditions construct the Railway and associated Additional Infrastructure and access roads within the Railway Corridor and shall also construct inter alia any necessary sidings, crossing points, bridges, signalling switches and other works and appurtenances and provide for crossings and (where appropriate and required by the Minister) grade separation or other protective devices including flashing lights and boom gates at places where the Railway crosses or intersects with major roads or existing railways.
- (b) The Joint Venturers shall while the holder of a Special Railway Licence:
- (i) keep the Railway the subject of that licence in an operable state; and
 - (ii) ensure that the Railway the subject of that licence is operated in a safe and proper manner in compliance with all applicable laws from time to time; and
 - (iii) without limiting subparagraph (ii) ensure that the obligations imposed under the Rail Safety Act on an owner and an operator (as those terms are therein defined) are complied with in connection with the Railway the subject of that licence.

Nothing in this Agreement shall be construed to exempt the Joint Venturers or any other person from compliance with the Rail Safety Act or limit its application to the Joint

Venturers' operations generally (except as otherwise may be provided in that Act or regulations made under it).

- (c) The Joint Venturers shall provide crossings for livestock and also for any roads, other railways, conveyors, pipelines and other utilities which exist at the date of grant of the relevant Special Railway Licence or in respect of land subsequently included in it at the date of such inclusion and the Joint Venturers shall on reasonable terms and conditions allow such crossings for roads, railways, conveyors, pipelines and other utilities which may be constructed for future needs and which may be required to cross a Railway constructed pursuant to this clause.
- (d) Subject to clause 11D, the Joint Venturers shall at all times be the holder of Special Railway Licences and Lateral Access Road Licences granted pursuant to this clause and (without limiting clause 40A but subject to clause 11D) shall at all times own manage and control the use of each Railway the subject of a Special Railway Licence held by the Joint Venturers.
- (e) The Joint Venturers shall not be entitled to exclusive possession of the land the subject of a Special Railway Licence or Lateral Access Road Licence granted pursuant to this clause to the intent that the State, the Minister, the Minister for Mines and any persons authorised by any of them from time to time shall be entitled to enter upon the land or any part of it at all reasonable times and on reasonable notice with all necessary vehicles, plant and equipment and for purposes related to this Agreement or such other purposes as they think fit but in doing so shall be subject to the reasonable directions of the Joint Venturers so as not to unreasonably interfere with the Joint Venturers' operations.
- (f) The Joint Venturers' ownership of a Railway constructed pursuant to this clause shall not give them an interest in the land underlying it.
- (g) The Joint Venturers shall not at any time without the prior consent of the Minister dismantle, sell or otherwise dispose

of any part or parts of any Railway constructed pursuant to this clause, or permit this to occur, other than for the purpose of maintenance, repair, upgrade or renewal.

- (h) The Joint Venturers shall, subject to and in accordance with approved proposals, in a proper and workmanlike manner, construct any Additional Infrastructure, access roads, Lateral Access Roads and other works approved for construction under this clause.
- (i) The Joint Venturers shall while the holder of a Special Railway Licence at all times keep and maintain in good repair and working order and condition (which obligation includes, where necessary, replacing or renewing all parts which are worn out or in need of replacement or renewal due to their age or condition) the Railway, access roads and Additional Infrastructure (if any) the subject of that licence and all such other works installations plant machinery and equipment for the time being the subject of this Agreement and used in connection with the operation use and maintenance of that Railway, access roads and Additional Infrastructure (if any).
- (j) Subject to clause 11D, the Joint Venturers shall:
 - (i) be responsible for the cost of construction and maintenance of all Private Roads constructed pursuant to this clause; and
 - (ii) at their own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles (other than those engaged upon the Joint Venturers' activities and their invitees and licensees) from using the Private Roads; and
 - (iii) at any place where any Private Roads are constructed by the Joint Venturers so as to cross any railways or public roads provide at their cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the Public Transport Authority as the case may be.

- (k) The provisions of clauses 19(2a) and (3) regarding third party access shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause except that the Joint Venturers shall not be obliged to transport passengers upon any such Railway or Railway spur line.

Aboriginal Heritage Act 1972 (WA)

- (8) For the purposes of this clause the *Aboriginal Heritage Act 1972 (WA)* applies as if it were modified by:

- (a) the insertion before the full stop at the end of section 18(1) of the words:

"and the expression "the Joint Venturers" means the persons from time to time comprising "the Joint Venturers" in their capacity as such under the agreement authorised by and scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended in relation to the use or proposed use of land pursuant to clause 11E of that agreement after and in accordance with approved proposals under clause 11E of that agreement and in relation to the use of that land before any such approval of proposals where the Joint Venturers have the requisite authority to enter upon and so use the land";

- (b) the insertion in sections 18(2), 18(4), 18(5) and 18(7) of the words "or the Joint Venturers as the case may be" after the words "owner of any land";

- (c) the insertion in section 18(3) of the words "or the Joint Venturers as the case may be" after the words "the owner";

- (d) the insertion of the following sentences at the end of section 18(3):

"In relation to a notice from the Joint Venturers the conditions that the Minister may specify can as appropriate include, among other conditions, a condition restricting the Joint Venturers' use of the relevant land to after the approval or deemed approval as the case may be under the abovementioned agreement of all of the Joint Venturers' submitted initial proposals thereunder for the Railway

Operation (as defined in clause 11E(1) of the abovementioned agreement), or in the case of additional proposals submitted or to be submitted by the Joint Venturers to after the approval or deemed approval under that agreement of such additional proposals, and to the extent so approved. "; and

- (e) the insertion in sections 18(2) and 18(5) of the words "or it as the case may be" after the word "he".

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

Taking of land for the purposes of this clause

- (9) (a) The State is hereby empowered, as and for a public work under Parts 9 and 10 of the LAA, to take for the purposes of this clause any land (other than any part of a Port) which in the opinion of the Joint Venturers is necessary for the relevant Railway Operation and which the Minister determines is appropriate to be taken for the relevant Railway Operation (except any land the taking of which would be contrary to the provisions of a Government agreement entered into before the submission of the proposals relating to the proposed taking) and notwithstanding any other provisions of that Act may license that land to the Joint Venturers.
- (b) In applying Parts 9 and 10 of the LAA for the purposes of this clause:
- (i) "land" in that Act includes a legal or equitable estate or interest in land;
 - (ii) sections 170, 171, 172, 173, 174, 175 and 184 of that Act do not apply; and
 - (iii) that Act applies as if it were modified in section 177(2) by inserting -

(A) after "railway" the following -

"or land is being taken pursuant to a Government agreement as defined in section 2 of the *Government Agreements Act 1979* (WA)"; and

(B) after "that Act" the following -

"or that Agreement as the case may be".

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

Notification of Railway Operation Date

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

- (ii) in respect of it, the likely Railway spur line Operation Date.
- (d) The Joint Venturers shall on the Railway spur line Operation Date in respect of any Railway spur line notify the Minister that the first carriage of iron ore, freight goods or other products as the case may be over such spur line (other than for construction or commissioning purposes) has occurred.";
- (13) in clause 13(2)(b)(ii) by deleting all the words after "the rental payable thereunder shall be" and substituting "a commercial rental";
- (14) by inserting after subclause (2) of clause 13 the following new subclause:
 - "(2a) The provisions of subclauses (1) and (2) of this clause shall not operate so as to require the State to grant or vary, or cause to be granted or varied, any lease licence or other right or title until all processes necessary under any laws relating to native title to enable that grant or variation to proceed, have been completed.";
- (15) by deleting clause 19(4).
- (16) by deleting clause 26;
- (17) in clause 31(1):
 - (a) by deleting "The" and substituting "Subject to subclause (1a), the";
 - (b) by in paragraph (a):
 - (i) deleting "direct shipping ore" and substituting "lump ore";
 - (ii) deleting "and fines";
 - (iii) deleting "or fines are" and substituting "is"; and
 - (iv) deleting "f.o.b. revenue (computed at the rate of exchange prevailing on the date of receipt by the Joint Venturers of the purchase price of such iron ore products)" and substituting "f.o.b. value";

- (c) by in paragraph (aa) deleting "f.o.b. revenue" in both subparagraphs (i) and (ii) and substituting "f.o.b. value";
- (d) by in paragraph (ab):
 - (i) deleting "and fines";
 - (ii) deleting "or fines are" and substituting "is"; and
 - (iii) deleting "f.o.b. revenue (computed as mentioned in paragraph (a) of this clause aforesaid)" and substituting "f.o.b. value";
- (e) by in paragraph (ac):
 - (i) deleting "iron ore concentrates" and substituting "beneficiated ore"; and
 - (ii) deleting "f.o.b. revenue (computed as mentioned in paragraph (a) of this subclause)" and substituting "f.o.b. value";
- (f) by in paragraph (b):
 - (i) deleting "3¾%" and substituting "7.5%"; and
 - (ii) deleting "f.o.b. revenue (computed as mentioned in paragraph (a) of this subclause)" and substituting "f.o.b. value"; and
- (g) inserting after paragraph (h) and the following new paragraphs:

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

Where for the purpose of determining f.o.b. value it is necessary to convert an amount or price to Australian currency, the conversion is to be calculated using a rate

(excluding forward hedge or similar contract rates) that has been approved by the Minister at the request of the Joint Venturers and in the absence of such request as determined by the Minister to be a reasonable rate for the purpose.

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

(18) by inserting after subclause (1) of clause 31 the following new subclause:

(1a) The Joint Venturers shall be relieved from liability to pay royalty under this Agreement on iron ore products purchased, shipped and sold by the Company (as defined in the Mount Newman Agreement) if and to the extent that royalty on such iron ore products has been paid in accordance with clause 9(2)(ja) of the Mount Newman Agreement.

(19) in clause 31(2):

(a) by inserting "and also showing such other information in relation to the abovementioned iron ore as the Minister may from time to time reasonably require in regard to, and to assist in verifying, the calculation of royalties in accordance with subclause (1)" after "due date of the return"; and

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

"(i) in the case of iron ore initially sold at cost pursuant to the proviso to clause 11(10), at the price notified pursuant to paragraph (iii) of that proviso;

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

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

- (c) deleting all references to "Minister for Minerals and Energy" and substituting "Minister for Mines";

(20) in clause 31(3):

- (a) in paragraph (a)

- (i) by in subparagraph (i)(A) deleting "and other documents of the Joint Venturers relative to the Joint Venturers' operations hereunder and" and substituting ", documents, data and information of the Joint Venturers stored by any means relating";

- (ii) by in subparagraph (i)(B) inserting "(in whatever form)" after "copies" and by deleting "and other documents" and substituting ", documents, data and information"; and

- (iii) by deleting all references to "Minister for Minerals and Energy" and substituting "Minister for Mines";

- (b) in paragraph (b) by deleting all references to "Minister for Minerals and Energy" and substituting "Minister for Mines"; and

- (c) by inserting a new paragraph (c) as follows:

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

(21) by inserting after clause 40 the following new clause:

" Subcontracting

40A. Without affecting the liabilities of the parties under this Agreement each of the State and the Joint Venturers will have the right from time to time to entrust to third parties the carrying out of any portions of the activities which it is authorised or obliged to carry out hereunder.";

- (22) in clause 42(1) by:
 - (a) in paragraph (a) inserting "granted hereunder or pursuant hereto or held pursuant hereto" after "easement or other title"; and
 - (b) in paragraph (c), and in the paragraph following it, inserting "or held pursuant hereto" after "granted hereunder or pursuant hereto";
- (23) in clause 42(2) by deleting "occupied by the Joint Venturers" and substituting "the subject of any lease licence easement or other title granted under or pursuant to this Agreement or held pursuant to this Agreement";
- (24) in clause 43(1)(a) by inserting "or held pursuant hereto" after "granted hereunder or pursuant hereto";
- (25) in clause 43(2) by inserting "or pursuant hereto or held pursuant hereto" after "grant made hereunder";
- (26) by inserting the following sentence at the end of clause 44:

"As a separate independent indemnity the Joint Venturers will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any use, making available for use or other activities of the Joint Venturers as referred to in clause 11C.";
- (27) in clause 45(1) by inserting "or held pursuant hereto" after "granted hereunder or pursuant hereto"; and
- (28) by inserting after the Schedule the following new schedules:

" SECOND SCHEDULE

WESTERN AUSTRALIA

**IRON ORE (McCAMEY'S MONSTER) AGREEMENT
AUTHORISATION ACT 1972**

MINING ACT 1978

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

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") authorised by and as scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with their successors and permitted assigns called "the Joint Venturers") a miscellaneous licence for the construction operation and maintenance of a Railway (as defined in clause 11E(1) of the Agreement and otherwise as provided in the Agreement) and, if applicable, other purposes AND WHEREAS the Joint Venturers pursuant to clause 11E(6)(a) of the Agreement have made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended, the Joint Venturers are hereby granted by this licence authority to conduct on the land the subject of this licence as more particularly delineated and described from time to time in the Schedule hereto all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce in accordance with the Agreement and,

subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance on the land the subject of this licence of the Railway and Additional Infrastructure (as defined in clause 11E(1) of the Agreement) and access roads to be located on the land the subject of this licence in accordance with the provisions of the Agreement and proposals approved under the Agreement, for the term of 50 years from the date hereof (subject to the sooner determination of the term upon the determination of the Agreement) and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 11E(6)(a)(i) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

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

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

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

- The terms "approved proposals", "Railway", "Railway Operation Date", and "Railway spur line" have the meanings given in the Agreement.

ENDORSEMENTS AND CONDITIONS

Endorsements

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

Conditions

1. (a) Except as provided in paragraph (b), the Joint Venturers shall within 2 years after the Railway Operation Date surrender in accordance with the provisions of the *Mining Act 1978* the area of this licence down to a maximum of 100 metres width or as otherwise approved by the Minister (as defined in the Agreement) for the safe operation of the

Railway then constructed or approved for construction under approved proposals.

(b) Paragraph (a) shall not apply to land the subject of this licence that was included in this licence pursuant to clause 11E(6)(h) or clause 11E(6)(i) of the Agreement.

2. The Joint Venturers shall as soon as possible after the construction of a Railway spur line or of an expansion or extension thereof as the case may be surrender in accordance with the *Mining Act 1978* the land the subject of this licence that was included in this licence pursuant to clause 11E(6)(h) of the Agreement for the purpose of such construction down to a maximum of 100 metres in width or as otherwise approved by the Minister (as defined in the Agreement) for the safe operation of that Railway spur line or expansion or extension thereof as the case may be then constructed or approved for construction under approved proposals.
3. [Any further conditions which the Minister for Mines may, consistent with the provisions of the Agreement, determine and thereafter impose in respect of this licence including during the term of the Agreement.]

SCHEDULE

Land description

Locality:

Mineral Field

Area:

DATED at Perth this day of .

MINISTER FOR MINES

THIRD SCHEDULE

WESTERN AUSTRALIA

**IRON ORE (McCAMEY'S MONSTER) AGREEMENT
AUTHORISATION ACT 1972**

MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") authorised by and as scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with their successors and permitted assigns called "the Joint Venturers") a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Joint Venturers pursuant to clause 11E(6)(a)(ii) of the Agreement have made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended, the Joint Venturers are hereby authorised to construct use and maintain a road on

the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 11E(6)(a)(ii) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

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

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

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

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.

2. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

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

SCHEDULE

Description of land

Locality:

Mineral Field:

Area:

DATED at Perth this day of .

MINISTER FOR MINES

FOURTH SCHEDULE

WESTERN AUSTRALIA

**IRON ORE (McCAMEY'S MONSTER) AGREEMENT
AUTHORISATION ACT 1972**

MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") authorised by and as scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with their successors and permitted assigns called "the Joint Venturers") a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Joint Venturers pursuant to clause 11E(6)(b) of the Agreement have made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended, the Joint Venturers are hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 11E(6)(b) of the Agreement

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

In this licence:

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

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

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

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.

2. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determine and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

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

SCHEDULE

Description of land

Locality:

Mineral Field:

Area:

DATED at Perth this day of .

MINISTER FOR MINES ".

EXECUTED as a deed.

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

[Signature]

STEPHEN WOOD

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

[Signature] [Signature]
Signature of Director Signature of ~~Director~~/Company Secretary

STEWART HART ROBIN B LEES
Signature of Director Signature of ~~Director~~/Company Secretary

[Schedule 5 inserted by No. 61 of 2010 s. 43.]

Schedule 6 — Fifth Variation Agreement

[s. 10]

[Heading inserted by No. 62 of 2011 s. 17.]

2011

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

AND

BHP IRON ORE (JIMBLEBAR) PTY. LTD.

ACN 009 114 210

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

[Solicitor's details]

THIS AGREEMENT is made this 7th day of November 2011

BETWEEN

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

AND

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 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 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 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";
 - (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 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,

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;"

EXECUTED as a deed.

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

[Signature]
Signature of witness

[Signature]

Peter Goodall
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]
Signature of Director

[Signature]
Signature of Secretary

Uvashni Raman
Full Name

Robin Lees
Full Name

[Schedule 6 inserted by No. 62 of 2011 s. 17.]

Notes

- ¹ This is a compilation of the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972</i>	104 of 1972	6 Dec 1972	6 Dec 1972
<i>Iron Ore (McCamey's Monster) Agreement Authorisation Amendment Act 1986</i>	45 of 1986	1 Aug 1986	1 Aug 1986 (see s. 2)
<i>Acts Amendment (Mount Goldsworthy, McCamey's Monster and Marillana Creek Iron Ore Agreements) Act 1994 Pt. 3</i>	29 of 1994	8 Jul 1994	8 Jul 1994 (see s. 2)
<i>Acts Amendment (Iron Ore Agreements) Act 2000 Pt. 4</i>	57 of 2000	7 Dec 2000	7 Dec 2000 (see s. 2)
Reprint 1: The <i>Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972</i> as at 11 Apr 2003 (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010 s. 4</i>	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Iron Ore Agreements Legislation Amendment Act 2010 Pt. 5</i>	34 of 2010	26 Aug 2010	1 Jul 2010 (see s. 2(b)(ii))
<i>Iron Ore Agreements Legislation Amendment Act (No. 2) 2010 Pt. 10</i>	61 of 2010	10 Dec 2010	11 Dec 2010 (see s. 2(c))
<i>Iron Ore Agreements Legislation (Amendment, Termination and Repeals) Act 2011 Pt. 5</i>	62 of 2011	14 Dec 2011	15 Dec 2011 (see s. 2(b))

- ² Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.

