



Western Australia

Iron Ore (Robe River) Agreement Act 1964

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Iron Ore (Robe River) Agreement Act 1964

An Act relating to an Agreement between the State of Western Australia and Basic Materials Pty. Limited with respect to certain iron ore deposits, and for other purposes.

1. Short title

This Act may be cited as the *Iron Ore (Robe River) Agreement Act 1964*¹.

[Section 1 amended: No. 87 of 1987 s. 4.]

2. Terms used

In this Act, unless the contrary intention appears —

Agreement means the agreement a copy of which is set out in the First Schedule to this Act and, except in section 3, includes that agreement as so altered from time to time in accordance with its provisions or by any agreement between the parties thereto approved by an Act;

Company has the same meaning as it has in the Agreement;

fifth variation agreement means the agreement a copy of which is set forth in the Sixth Schedule to this Act;

first variation agreement means the agreement a copy of which is set forth in the Second Schedule to this Act;

fourth variation agreement means the agreement a copy of which is set forth in the Fifth Schedule to this Act;

second variation agreement means the agreement which is executed under the authority of section 3B of this Act;

s. 2A

seventh variation agreement means the agreement a copy of which is set forth in the Eighth Schedule to this Act;

sixth variation agreement means the agreement a copy of which is set forth in the Seventh Schedule to this Act;

third variation agreement means the agreement of which a copy is set forth in the Fourth Schedule to this Act.

[Section 2 amended: No. 35 of 1970 s. 3; No. 68 of 1973 s. 3; No. 37 of 1984 s. 2; No. 95 of 1985 s. 3; No. 87 of 1987 s. 5; No. 61 of 2010 s. 8; No. 61 of 2011 s. 8.]

2A. Repeal of Act No. 79 of 1969, and Act and variation agreement declared inoperative

- (1) The *Iron Ore (Cleveland-Cliffs) Agreement Act Amendment Act 1969*¹, is hereby repealed and shall be deemed never to have come into operation.
- (2) The variation agreement set forth in that Act is hereby declared never to have had any force or effect.

[Section 2A inserted: No. 35 of 1970 s. 2.]

3. Approval of Agreement

The Agreement is approved.

3A. First variation agreement

The first variation agreement is approved on and from 31 December 1970 or on and from the 60th day after the commencement date referred to in clause 7(3) of the agreement, whichever day is the earlier.

[Section 3A inserted: No. 35 of 1970 s. 4; amended: No. 68 of 1973 s. 4.]

3B. Second variation agreement

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 the Third

Schedule to this Act is authorised and when so executed is approved.

[Section 3B inserted: No. 68 of 1973 s. 5.]

3C. Third variation agreement

- (1) The third variation agreement is ratified.
- (2) The implementation of the third variation agreement is authorised.
- (3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the third variation agreement shall operate and take effect notwithstanding any other Act or law.

[Section 3C inserted: No. 37 of 1984 s. 3.]

3D. Fourth variation agreement

- (1) The fourth variation agreement is approved and 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 shall operate and take effect notwithstanding any other Act or law.

[Section 3D inserted: No. 95 of 1985 s. 4.]

3E. Fifth variation agreement

- (1) The fifth variation agreement is approved and 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

s. 4A

shall operate and take effect notwithstanding any other Act or law.

[Section 3E inserted: No. 87 of 1987 s. 6.]

4A. Variation of Agreement to increase rates of royalty

(1) In this section —

Agreement means the agreement a copy of which is set out in the First Schedule —

- (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;
 - (iv) the fourth variation agreement;
 - (v) the fifth variation agreement.

(2) Clause 9(2)(j) of the Agreement is varied —

- (a) in subparagraph (ii) by deleting “three and three quarter per centum (3¾%)” and inserting —

5.625%

- (b) in subparagraph (iii) by deleting “aforesaid);” and inserting —

aforesaid) until 30 June 2010 and thereafter at the rate of 5.625% of the f.o.b. value (computed as aforesaid);

- (c) in subparagraph (iv) by deleting “one shilling and sixpence (1/6d) per ton;” and inserting —

5% of the f.o.b. value (computed as aforesaid);

- (3) Clause 9(2)(j)(ii), (iii) and (iv) of the Agreement as varied 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 9 of the Agreement in respect of any period before the commencement of the *Iron Ore Agreements Legislation Amendment Act 2010* Part 10¹.

[Section 4A inserted: No. 34 of 2010 s. 23.]

4B. Sixth variation agreement

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

[Section 4B inserted: No. 61 of 2010 s. 9.]

4C. State empowered under clause 9D(9)(a)

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

[Section 4C inserted: No. 61 of 2010 s. 9.]

4D. Seventh variation agreement

- (1) The seventh variation agreement is ratified.

s. 4

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

[Section 4D inserted: No. 61 of 2011 s. 9.]

4. Declaration as to — entry on Crown lands

It is hereby declared that —

- (a) notwithstanding any other Act or law, the Company may enter upon the Crown lands referred to in clause 2(c) of the Agreement in accordance with and for the purposes therein mentioned; and
- (b) section 277(5) of the *Mining Act 1904*², does not apply to any renewal of the rights of occupancy granted pursuant to clause 2(a) of the Agreement; and
- (c) section 96 of the *Public Works Act 1902*, does not apply to any railway agreed to be constructed under the Agreement; and
- (d) the Governor may, on the recommendation of the Company, make, alter and repeal by-laws, in accordance with and for the purposes referred to in clause 9 of the Agreement, and the by-laws —
 - (i) shall be published in the *Gazette*;
 - (ii) shall take effect and have the force of law from the date they are so published or from a later date fixed by the order making the by-laws;
 - (iii) may prescribe penalties not exceeding \$100 for a breach of any of the by-laws;
 - (iv) are not subject to section 36 of the *Interpretation Act 1918*³,

but shall be laid before each House of Parliament within the 6 sitting days of such House next following the publication of the by-laws in the *Gazette*.

[Section 4 amended: No. 113 of 1965 s. 8(1).]

[5. *Deleted: No. 87 of 1987 s. 7.*]

First Schedule — Iron Ore (Robe River) Agreement

[s. 2]

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

THIS AGREEMENT under seal made the eighteenth day of November, One thousand nine hundred and sixty-four BETWEEN THE HONOURABLE DAVID BRAND M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called “the State”) of the one part AND BASIC MATERIALS PTY. LIMITED a company incorporated under *Companies Act 1961* of the State of Western Australia and having its registered office and principal place of business at 25 William Street Perth in the State of Western Australia (hereinafter called “the Company” which expression will include the successors and assigns the Company including where the context so admits the assignees and appointees of the company under clause 13 hereof) of the other part.

and

WHEREAS:

- (a) The Company is a wholly owned subsidiary of Cliffs International Inc. a Delaware Corporation registered in Western Australia as a foreign corporation under the provisions of the *Companies Act 1961*. Cliffs International Inc. is a wholly owned subsidiary of The Cleveland-Cliffs Iron Company an Ohio Corporation. The Company is the holder of the Mining Areas defined in Clause 1 hereof.
- (b) The parties hereto believe that the mining areas contain large deposits of iron ore with an average iron content appreciably below 60% and with physical characteristics which render such iron ore unsaleable as direct shipping ore (as defined in clause 1 hereof) under the quality requirements of the world steel industry.
- (c) Attempts were made to improve and upgrade the said iron ore but test work indicated that either such iron ore was not amenable to then known concentrating techniques or the degree of beneficiation was very slight and consequently uneconomic.
- (d) Exhaustive research in Western Australia and in the United States of America (culminating in full scale pilot plant tests) satisfied the Company that iron ore pellets equal to or superior to pellets currently produced in the

United States of America could be produced from this iron ore by the Pelletisation process.

(e) The pelletisation process is an advanced treatment process of iron ore and requires considerable technical organisation and skill. As contrasted to mining of direct shipping ore (as defined in clause 1) the process requires extensive additional facilities and utilises a process with vastly increased technical and consumable supply and electric power requirements. The necessary pelletisation plant or plants crushing and fine grinding facilities electric power generating plant petroleum handling and storage facilities represent a very large investment which amounts to approximately one half of the total investment including port railroad mining and other facilities needed to commercially develop the iron ore deposits included in the mining areas to the extent hereinafter mentioned.

(f) Power requirements are expected to amount to 75,000,000 kilo watt hours per annum for the initial plant and to increase to 225,000,000 kilo watt hours when the proposed pellet plant capacity is expanded. Fuel oil used as the fuel media for the thermal application portion of the process will amount to approximately 10,000,000 gallons per annum initially and will increase to 30,000,000 gallons per annum when the proposed production capacity is installed. Other consumable industrial supplies and materials such as iron, steel, oil and lubricants will also be used in substantial quantities.

(g) Raymond International Inc. (consulting and construction Engineers) has made a feasibility study of possible port sites and railroad facilities, plant sites, townsites and necessary auxiliary facilities.

(h) The Company has informed the State that it is prepared to carry out the works referred to in clause 9 hereof provided that:

- (i) contracts satisfactory to the Company are concluded for the sale of not less than 1,800,000 tons of iron ore pellets during the first two years from the export date (as hereinafter defined in clause 1) and not less than 3,000,000 tons in subsequent years;
- (ii) arrangements, satisfactory to the Company, are made for financing by any means the works referred to in clause 9 hereof; and
- (iii) a grant is made to the Company of a licence or licences under Commonwealth law for the export of iron ore pellets of not less than 3,000,000 tons per annum.

(i) The State acknowledges that prior to the 22nd day of October 1964 an agreement was entered into between the Company and the State whereby (subject to the provisions of this agreement relating to the submission of

detailed proposals and matters referred to in clause 5(2) hereof) the State had agreed to make the grants of lands referred to in clause 8(1)(b) of this Agreement and that prior to such date the State had consented to the Company making the improvements set out in clause 9 hereof on the land comprised in any lease granted by the State to the Company pursuant to this Agreement.

NOW THIS AGREEMENT WITNESSETH: —

Interpretation ⁴

1. In this Agreement subject to the context —

“associated company” means —

- (a) any company having a paid-up capital of not less than one million pounds (£1,000,000) notified in writing by the Company to the Minister which is incorporated in the United Kingdom the United States of America or the Commonwealth of Australia and which —
 - (i) is a subsidiary of the parent Company within the meaning of the term “subsidiary” in section 6 of the *Companies Act 1961*;
 - (ii) holds directly or indirectly not less than twenty per cent (20%) of the issued ordinary share capital of the Company;
 - (iii) is promoted by the parent company or by any company that holds directly or indirectly not less than twenty per cent (20%) of the issued ordinary share capital of the parent company for all or any of the purposes of this Agreement and in which the parent company or such other company holds not less than twenty per cent (20%) of the issued ordinary share capital; or
 - (iv) is related within the meaning of that term in the aforesaid section to the parent company or to any company in which the parent company holds not less than twenty per cent (20%) of the issued ordinary share capital, and
- (b) any company approved in writing by the Minister for the purposes of this Agreement which is associated directly or

indirectly with the parent company in its business or operations hereunder;

“commencement date” means the date referred to as the commencement date in clause 7(3) hereof;

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

“Company’s wharf” means the wharf to be constructed by the Company pursuant to this Agreement for the shipment of iron ore from the mineral lease and includes the commercial wharf to be constructed by the Company for the reception of inward cargoes or (except for the purposes of definition of “harbour”) other the temporary wharf for the time being approved by the Minister as the Company’s wharf for the purposes hereof during the period to which such approval relates;

“deposits townsite” means the townsite to be established on or near the mining areas pursuant to this Agreement;

“direct shipping ore” means iron ore which has an average pure iron content of not less than sixty per cent (60%) which will not pass through a one half (½) inch mesh screen and which is sold without concentration or other beneficiation other than crushing and screening;

“export date” means the earlier of the following dates namely —

- (a) the date or extended date if any referred to in clause 9(1) of this Agreement;
- (b) the date when the Company first exports iron ore or iron ore pellets hereunder (other than iron ore shipped solely for testing purposes);

“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 cent (60%) which will pass through a one half (½) inch mesh screen and which is sold without concentration or other benefaction other than crushing and screening;

“fines” means iron ore (not being direct shipping ore or fine ore) which will pass through a one half (½) inch mesh screen;

“f.o.b. revenue” means the price for iron ore from the mineral lease the subject of any shipment or sale and payable by the purchaser thereof to the Company or an associated company less all export duties and export taxes payable to the Commonwealth on the export of the iron ore and all costs and charges properly incurred and payable by the Company from the time the ore shall be placed on ship at the Company’s wharf 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 ore from port of discharge to the smelter and evidenced by relevant invoices;
- (5) all weighing sampling assaying inspection and representation costs;
- (6) all shipping agency charges after loading on and departure of ship from the Company’s wharf; and
- (7) all import taxes by the country of the port of discharge;

“harbour” means the port or harbour at or near Cape Preston or such other port or place mutually agreed on and serving the Company’s wharf;

“iron ore pellet contracts” means the contract or contracts referred to in clause 5(1) hereof;

“iron ore pellets” means iron ore in pellet or other form produced by Pelletisation or more advanced reduction or other more advance treatment process from iron bearing material mined from the mining areas.

“Land Act” means the *Land Act 1933*;

“mineral lease” means the mineral lease referred to in clause 8(1)(a) hereof and includes any renewal thereof;

“Mining Act” means the *Mining Act 1904*;

“mining areas” means the areas delineated and coloured red on the Plan marked “A” initialled by or on behalf of the parties hereto for the purposes of identification;

“Minister” means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the

administration of the Ratifying Act and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of the Minister;

“month” means calendar month;

“notice” means notice in writing;

“parent company” means and includes both Cliffs International Inc. and The Cleveland-Cliffs Iron Company;

“person” or “persons” includes bodies corporate;

“plant site” means the area near the harbour at Cape Preston on which the pellet plant or plants crushing and grinding facilities stockpiling yards electric power generating plant petroleum storage and other ancillary facilities there to (or such other site as shall be approved by the State) shall be situated;

“port townsite” means the townsite to be established pursuant to this Agreement near the harbour;

“Ratifying Act” means the Act to ratify this Agreement and referred to in clause 3 hereof;

“said State” means the State of Western Australia;

“special lease” means a special lease or license to be granted in terms of this Agreement under the Ratifying Act the Land Act or the *Jetties Act 1926* and includes any renewal thereof;

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

“ton” means a ton of two thousand two hundred and forty (2,240) lbs. net dry weight;

“townsite” in relation to the townsite to be established near the harbour means a townsite (whether or not constituted and defined under section 10 of the Land Act) primarily to facilitate the Company’s operations in and near the harbour and for employees of the Company and in relation to the mining areas means such a townsite or townsites or any other townsite or townsites which is or are established by the Company for the purposes of its operations and employees on or near the mining areas in lieu of a townsite constituted and defined under section 10 of the Land Act;

“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;

reference in this Agreement to an Act shall include the amendments to such 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;

power given under any clause of this Agreement other than clause 17 hereof to extend any period or date shall be without prejudice to the power of the Minister under the said clause 17;

marginal notes shall not affect the interpretation or construction hereof⁴;
the phases in which it is contemplated that this Agreement will operate are as follows —

- (a) Phase 1 — the period from the execution hereof by the parties hereto until the commencement date; and
- (b) Phase 2 — the period thereafter.

Obligations of the State during Phase 1⁴

2. The State shall —

- (a) upon application by the Company at any time prior to the 31st day of March, 1965 (and surrender of the then existing rights of occupancy already granted in respect of any portions of the mining areas) cause to be granted to the Company and to the Company alone rights of occupancy for the purposes of this Agreement (including the sole right to search and prospect for iron ore) over the whole of the mining areas under section 276 of the Mining Act at a rental at the rate of four pounds (4) per square mile per annum payable quarterly in advance for the period expiring on the 31st December, 1965 and shall then and thereafter subject to the continuance of this Agreement cause to be granted to the Company as may be necessary successive renewals of such last-mentioned rights of occupancy (each renewal for a period of twelve (12) months at the same rental and on the same terms) the last of which renewals notwithstanding its currency shall expire —
 - (i) on the date of application for a mineral lease by the Company under clause 8(1)(a) hereof;
 - (ii) at the expiration of one month from the commencement date;

- (iii) on the determination of this Agreement pursuant to its terms; or
 - (iv) on the day of the receipt by the State of a notice from the Company to the effect that the Company abandons and cancels this Agreement,
- whichever shall first happen;
- (b) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage prior to the 30th day of November, 1964;
 - (c) to the extent reasonably necessary for the purposes of clause 5 hereof allow the Company to enter upon Crown lands (including land the subject of a pastoral lease) and survey possible sites for a plant site and harbour wharf railway townsite (both in or near the harbour and on or near the mining areas) and other areas required for the purposes of this Agreement; and
 - (d) take the administrative steps set out in Clause 5(5)(b) hereof.

Ratification and operation ⁴

3. (1) Clauses 8 9 10 (other than paragraphs (d) and (1) of clause 10) 11-15 both inclusive and 17 of this Agreement shall not operate unless and until the Bill to ratify this Agreement as referred to in clause 2(b) hereof is passed as an Act before the thirtieth day of November, 1964 or such later date if any as the parties hereto may mutually agree upon. If the Bill is not so passed before that date or later date (as the case may be) this Agreement will then cease and determine and neither of the parties hereto will have any claim against the other of them with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement except as hereinafter provided in clause 10(d) hereof.

(2) If the Bill to ratify this Agreement is passed as an Act before the date or later date if any referred to in subclause (1) of this clause the following provisions of this clause shall notwithstanding the provisions of any Act or law thereupon operate and take effect namely —

- (a) the provisions of subclauses (1) (2) (3) and (4) of clause 8 the proviso to paragraph (a) of subclause (2) of clause 9 subclause (3) of clause 9 paragraphs (a) (f) (g) (h) (i) (k) and (m) of clause 10 and clauses 14 16 17 and 20 shall take effect as though the same had been brought into force and had been enacted by the Ratifying Act;

- (b) subject to paragraph (a) of this subclause the State and the Minister respectively shall have all the powers discretions and authorities necessary or requisite to enable them to carry out and perform the powers discretions authorities and obligations conferred or imposed upon them respectively hereunder;
- (c) no future Act of the said State will operate to increase the Company's liabilities or obligations hereunder with respect to rents or royalties; and
- (d) the State may as for a public work under the *Public Works Act 1902*, resume any land or any estate or interest in land required for the purposes of this Agreement and may lease or otherwise dispose of the same to the Company.

Initial obligations of Company ⁴

4. The company will actively and conscientiously endeavour to conclude the contracts and make the arrangements set out in Clause 5(1) hereof and will from time to time and on request keep the State informed on these matters.

Company to give notice ⁴

5. (1) At any time prior to the 31st December, 1965, the Company may give notice to the Minister that:
- (a) The Company has entered into or intends to enter into contracts satisfactory to the Company for the sale by the Company of iron ore pellets.
 - (b) The Company has made or is about make arrangements satisfactory to the Company for financing by any means the works referred to in clause 9 hereof and that the Company proposes to proceed with the works set out in clause 9 hereof.

Company to submit proposals ⁴

- (2) The Company may at any time and shall as soon as possible after giving the notice referred to in Clause 5(1) hereof submit to the Minister:
- (a) to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect so far as relevant to the mining from the mining areas (or so much thereof as shall be comprised within the mineral lease) by the Company during the three (3) years next following the commencement of such mining with a view to the transport to the plant site of iron ore the

pelletisation and shipment before or after pelletisation of the iron ore mined and its outline proposals with respect to such mining during the next following seven (7) years including the location area lay-out design number materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters namely —

- (i) the harbour and harbour development including dredging the depositing of spoil the provision of navigational aids the Company's wharf (the plans and specifications for which wharf shall be submitted to and be subject to the approval of the State) the berth and swinging basin for the Company's use and harbour installations facilities and services all of which shall permit of adaptation so as to enable the use of the harbour and wharf by vessels having a draught of 42 feet;
 - (ii) the railway between the mining areas and the Company's wharf and works ancillary to or connected with the railway and its proposed operation including fencing (if any) and crossing places;
 - (iii) townsites on the mining areas and near the harbour and development services and facilities in relation thereto;
 - (iv) housing;
 - (v) water supply;
 - (vi) roads (including details of roads in respect of which it is not intended that the provisions of clause 9(2)(b) shall operate); and
 - (vii) any other works services or facilities proposed or desired by the Company other than those set out in sub-paragraph (b) of this subclause; and
- (b) the location and respective production and storage capacities of the pelletisation plant and facilities.

(3) (a) If, within one (1) month of the 31st December, 1965 the Company gives notice to the Minister that it has been unable to make the contracts and arrangements set out in clause 5(1) hereof the Minister will grant such extension of time as the Company requests, up to the 31st December, 1969.

(b) If an extension is granted under paragraph (a) of this subclause and if within one (1) month of the 31st December, 1969 the Company demonstrates to the reasonable satisfaction of the Minister that the Company has duly complied with its other obligations and has genuinely and actively but unsuccessfully endeavoured to make the contracts and arrangements set out in clause 5(1) hereof and the Company reasonably requires an additional period up to the 31st December, 1972 for the purpose of making such contracts and arrangements and has reasonable prospects in that regard if granted an extension the Minister will grant such extension as is warranted in the circumstances up to the 31st December, 1972.

(c) If an extension is granted under paragraph (b) of this subclause then prior to the date such extension expires the Company shall give notice to the Minister whether or not it has concluded the contracts and arrangements set out in clause 5(1) hereof. If the notice is to the effect that such matters have been concluded the Company will within twelve (12) months after such notice commence and within four (4) years after commencement complete the works set out in clause 9 hereof and will be ready to commence production therefrom.

If the notice is to the effect that such matters have not been concluded then the Minister may at any time after the expiration of the extension granted under paragraph (b) of this subclause give notice to the Company requiring it within twelve (12) months thereafter to conclude the iron ore pellet contracts and arrangements for finance referred to in clause 5(1) hereof and to give notice accordingly to the Minister. If the Company gives such notice the Company will within twelve (12) months of the giving of the notice commence and within four (4) years thereafter complete the construction referred to above. If the company fails to give such notice and no other agreement is made between the State and the Company in regard to the matter then at any time after the expiration of twelve (12) months from the giving of the notice by the State either party may by notice to the other terminate this agreement.

(4) If the Company fails within the time or extended time as the case may be hereinbefore in this clause mentioned to give the notice referred to in subclause (1) of this clause or to submit the proposals referred to in subclause (2) of this clause or fails duly and punctually to carry out its proposals as agreed or determined hereunder and to remedy the failure within reasonable time after notice specifying the failure is given to the Company by the State (or — if the alleged failure is contested by the Company and promptly submitted to arbitration — within a reasonable time fixed by the arbitration award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration) then subject to the provisions of clause 16 hereof

(relating to delays) the State may by notice to the Company given at any time thereafter determine this Agreement whereupon the rights of the Company hereunder and under any lease licence easement or right granted hereunder or pursuant thereto shall cease and determine but without prejudice to any liability on the part of the Company for any antecedent breach of or liability under any of the provisions hereof.

Reservation of harbour site⁴

(5) (a) At any time prior to the 31st December, 1965 the Company may give notice to the State that it reasonably requires the reservation until the 31st December, 1966 of an area or areas of Crown Land and or land the subject of a pastoral lease at or near Cape Preston for possible development by the Company for the plant site the Company's wharf and harbour and road and rail access thereto from the mining areas.

(b) Until the 31st December, 1965 (or if such notice is given until the 31st December, 1966) the State (unless the Company otherwise agrees) shall take all practicable administrative steps to prevent any development at Cape Preston which would be likely to interfere with the development by the Company of the plant site wharf harbour and road and rail access thereto under the terms of this Agreement.

(c) If the Company should desire to establish the Company's wharf at Cape Preston it will consult with a company to be nominated by the State (hereinafter called "the nominated company") and will not without the consent of the nominated company submit proposals in regard thereto without providing and ensuring therein —

- (i) that a plant site suitable for a pelletising plant and ancillary facilities capable of producing not less than four million (4,000,000) tons of iron ore pellets for shipment from the Company's wharf remains available to the nominated company;
- (ii) that suitable road and rail access from the nominated company's mining areas to its plant site and from the plant site to the Company's wharf remains available to the nominated company;
- (iii) that the Company's wharf and associated facilities will be so constructed as to cater for the berthing of ships requiring at least forty-two feet (42') of water and so as to be adequate to handle the outward shipment of an aggregate of at least ten million (10,000,000) tons of iron ore and iron ore pellets per annum and to make suitable provision for inward cargo

and except with the consent of the Minister the Company in developing the Cape Preston area will ensure that effect is given to the factors in this paragraph mentioned.

(d) If no agreement is reached between the Company and the nominated company and if at any time after the 31st December, 1966 the Company has not submitted its own full and acceptable proposals to the State including the requirements of paragraph (c) of this subclause and the nominated company submits proposals to the Minister for the construction of a wharf and associated facilities at Cape Preston then subject to the remaining paragraphs of this subclause and provided this Agreement is still in force the Minister shall require that such proposals provide and ensure —

- (i) that there remains available to the Company a plant site suitable for a pelletising plant and ancillary facilities capable of producing not less than four million (4,000,000) tons of iron ore pellets for shipment from the wharf to be constructed by the nominated company;
- (ii) that there remains available to the Company suitable road and rail access from the Company's mining areas to such plant site and from the plant site to the wharf of the nominated company;
- (iii) that the wharf and associated facilities of the nominated company will be so constructed as to cater for the berthing of ships requiring at least forty-two feet (42') of water and subject to paragraph (f) of this subclause will be adequate to handle the outward shipment of an aggregate of at least ten million (10,000,000) tons of iron ore and iron ore pellets per annum and to make suitable provision for inward cargo.

(e) The proposals of the nominated company (insofar as they relate to the matters referred to in paragraph (d) of this subclause) shall before approval by the Minister be submitted by him to the Company to enable it to make such representations thereon as it sees fit either to the Minister or to the nominated company as to requiring the nominated company to —

- (i) extend or enlarge the wharf so as to be adequate to handle a greater capacity than ten million (10,000,000) tons per annum;
- (ii) make provision for the facilities associated with the wharf in excess of the facilities stated by the nominated company in its proposals as desired for its purposes and for the wharf to be so constructed and with such facilities as may be required to handle additional inward cargoes for the Company;

but subject to the Company making arrangements which are mutually satisfactory with the nominated company for payment of the cost of such additional work. In the event of the Company and the nominated company being unable to agree on the basis for such payment the Minister shall determine the method of payment and the necessary security. In the event of a dispute as to the cost of such additional work the matter shall be referred to arbitration. The Minister may require accordingly.

(f) If either company demonstrates to the State that at Cape Preston it would not be reasonably practicable for the proposals to include the matters or all matters referred to in paragraphs (c) (d) and (e) (as the case may be) of this subclause the Minister shall either waive compliance with the whole or part of the matters or shall submit alternative proposals for an equitable sharing of the harbour's capacity by both companies. The nominated company may accept the alternative proposals failing which the nominated company shall refer the matter to arbitration in which event the Company may be joined as a party to the arbitration.

(g) If prior to the 31st December, 1966 any company desires to submit proposals to the Minister for the establishment of a wharf at Onslow the Minister shall require it to first consult with the Company and that subject to paragraph (j) of this subclause such company does not (without the consent of the Company) submit proposals in regard thereto unless such proposals provide and ensure for the matters set out in paragraph (h) of this subclause.

(h) If the Company should after the 31st December, 1966 desire to establish the Company's wharf at Onslow it will consult with the nominated company and subject to paragraph (j) of this subclause will not without the consent of the nominated company submit proposals in regard thereto if the nominated company has previously submitted its own full and acceptable proposals to the State pursuant to an agreement with the State relating to the mining within the said State and shipment from Onslow of iron ore. If the nominated company has not so submitted proposals and no agreement is reached between the Company and the nominated company within three (3) months from the commencement of consultations the Company may submit proposals under clause 5(2) of this Agreement for the construction of a wharf and harbour at Onslow but subject to the remaining subclauses the Minister may require that any such proposals shall provide and ensure —

- (i) that a plant site suitable for a pelletising plant and ancillary facilities capable of producing not less than four million (4,000,000) tons of iron ore pellets per annum for shipment from the wharf to be constructed by the Company

remains available to the nominated company provided that this does not unduly prejudice the selection of a site by the Company;

- (ii) that suitable road and rail access from the nominated company's mining areas to such plant site and from the plant site to the Company's wharf remains available to the nominated company provided that this does not unduly prejudice the selection of road and rail access by the Company;
- (iii) that the Company's wharf and associated facilities will be so constructed that they will cater for the berthing of ships of forty thousand (40,000) tons and also make provision for inward cargo required by the nominated company.

(i) The Minister shall refer the Company's proposals under paragraph (h) before approval thereof to the nominated company to enable it to make such representations thereon as it sees fit to the Minister as to requiring the Company to —

- (i) extend or enlarge the wharf;
- (ii) make provision for facilities associated with the Company's wharf in excess of the facilities stated by the Company in its proposals as desired by it for its purposes and for the wharf to be so constructed and with such facilities as may be required to handle additional inward cargoes for the nominated company;

but subject to the Company making arrangements which are mutually satisfactory with the nominated company for payment for the cost of such additional work. In the event of the Company and the nominated company being unable to agree on the basis for such payment the Minister shall determine the method of payment and the necessary security. In the event of a dispute as to the cost of such additional work the matter shall be referred to arbitration. The Minister may require accordingly.

(j) If either company demonstrates to the State that at Onslow it would not be reasonably practicable for the proposals to include all or any of the matters referred to in paragraphs (h) and (i) of this subclause the Minister shall either waive compliance with the whole or part of the matters or shall submit alternative proposals for an equitable sharing of the harbour's capacity by both companies. The Company may accept the alternative proposals failing which the Company shall refer the matter to arbitration in which event the nominated company may be joined as a party to the arbitration.

Consideration of other proposals under clause 5(2) ⁴

6. (1) Within two (2) months after receipt of the detailed proposals of the Company in regard to any of the matters mentioned in clause 5(2) hereof the Minister shall give to the Company notice either of his approval of the proposals or of alterations desired thereto and in the latter case shall afford to the Company opportunity to consult with and to submit new proposals to the Minister. The Minister may make such reasonable alterations to or impose such reasonable conditions on the proposals or new proposals (as the case may be) as he shall think fit having regard to the circumstances including the overall development and use by others as well as the Company of the port and other facilities but the Minister shall in any notice to the Company disclose his reasons for any such alteration or condition. Within two (2) months of the receipt of the notice the Company may elect by notice to the State to refer to arbitration and within two (2) months thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Company then (subject to clause 5(3) hereof) unless the Company within three (3) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period of three (3) months cease and determine (save as provided in clause 10(d) hereof) but if the question is decided in favour of the Company the decision will 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.

Extension of time ⁴

7. (1) The arbitrator arbitrators or umpire (as the case may be) of any submission to arbitration hereunder is hereby empowered upon application by either party hereto to grant any interim extension of time or date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of either or both parties hereunder and an award in favour of the Company may in the name of the Minister grant any further extension of time for that purpose.

(2) Notwithstanding that under clause 6 hereof any detailed proposals of the Company are approved by the State or the Minister or determined by arbitration award unless each and every such proposal and matter is so approved or determined by the 31st day of December, 1965 or by such extended date if any as the Company shall be entitled to or shall be granted pursuant to the provisions hereof then at any time after the said 31st day of December, 1965 or if any extension or extensions should be granted under clause 5(3) hereof or any

other provision of this Agreement then on or after the expiration of the last of such extensions the Minister may give to the Company twelve (12) months notice of intention to determine this Agreement and unless before the expiration of the said twelve (12) months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of clause 10(d) hereof.

Commencement date⁴

(3) Subject to the approval of the Minister or determination by arbitration as herein provided of each hand every of the detailed proposals and matters referred to in clause 5(2) hereof the date upon which the last of those proposals of the Company shall have been so approved or determined or the date upon which the Company gives notice to the Minister that it proposes to proceed with the works set out in clause 9 hereof (whichever shall be the later) shall be the commencement date for the purposes of this Agreement.

(4) If under any arbitration under clause 6 hereof the dispute is decided against the Company and subsequently but before the commencement date this Agreement ceases and determines the State will not for a period of three (3) years after such determination enter into a contract with any other party for the mining transport and shipment of iron ore from the mining areas on terms more favourable on the whole to the other party than those which would have applied to the Company hereunder if the question had been determined in favour of the Company.

Terms “not more favourable”⁴

(5) In deciding whether for the purposes of clause 7(4) or clause 12 hereof 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 Company regard shall be had *inter alia* to all the obligations which would have continued to devolve on the Company had it proceeded with the works set out in clause 9 hereof including its obligations to mine transport by rail and ship iron ore pellets and restrictions relating thereto to pay rent additional rental and royalty 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 under paragraph (e) of clause 10 hereof 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.

Phase 2. Obligations of State Mineral Lease ⁴

8. (1) As soon as conveniently may be after the commencement date the state shall —

- (a) after application is made by the Company for a mineral lease of any part or parts (not exceeding in total area three hundred (300) square miles and in the shape of a parallelogram or parallelograms) of the mining areas in conformity with the Company's detailed proposals under clause 5(2) hereof as finally approved or determined cause any necessary survey to be made of the land so applied for (the cost of which survey to the State will be recouped or repaid to the State by the Company on demand after completion of the survey) and shall cause to be granted to the Company a mineral lease thereof for iron ore in the form of the Schedule hereto for a term which subject to the payment of rents and royalties hereinafter mentioned and to the performance and observance by the Company of its obligations under the mineral lease and otherwise under this Agreement shall be for a period of twenty-one (21) years commencing from the commencement date with rights to successive renewals of twenty-one (21) years upon the same terms and conditions but subject to earlier determination upon the cessation or determination of this Agreement PROVIDED HOWEVER that the Company may from time to time (without abatement of any rent then paid or payable in advance) surrender to the State all or any portion or portions (of reasonable size and shape) of the mineral lease;

Under Company's proposals ⁴

- (b) in accordance with the Company's proposals as finally approved or determined under clause 6 hereof and as required the State to accept obligations —

Lands ⁴

- (i) grant to the Company in fee simple or for such terms or periods and on such terms and conditions (including renewal rights) as subject to the proposals (as finally approved or determined as aforesaid) shall be reasonable having regard to the requirements of the Company hereunder and to the overall development of the harbour and access to and use by others of lands the subject of any grant to the Company and of services and facilities provided by the Company —
for nominal consideration — townsite lots;

at peppercorn rental — special leases of Crown lands within the harbour area the townsites and the railway; and

at rentals as prescribed by law or are otherwise reasonable —leases rights mining tenements easements reserves and licenses in on or under Crown lands

under the Mining Act the *Jetties Act 1926* or under the provisions of the Land Act modified as in subclause (2) of this clause provided (as the case may require) as the Company reasonably requires for its works and operations hereunder including the construction or provision of the railway wharf roads airstrip water supplies and stone and soil for construction purposes; and

Services and facilities ⁴

- (ii) provide any services or facilities subject to the Company's bearing and paying the capital cost involved and reasonable charges for maintenance and operation except operation charges in respect of education hospital and police services and except where and to the extent that the State otherwise agrees —

subject to such terms and conditions as may be finally approved or determined as aforesaid PROVIDED THAT from and after the thirtieth anniversary of the export date the Company will in addition to the rentals already referred to in this paragraph pay to the State during the currency of this Agreement after such anniversary as aforesaid a rental (which subject to its being payable by the Company to the State may from time to time at the option of the Company be payable in respect of such one or more of the special leases or other leases granted to the Company under this paragraph and remaining current as the Company may from time to time designate in a notice to the Minister) equal to two shillings and sixpence (2s. 6d.) per ton on all iron ore and iron ore concentrates and iron ore pellets in respect of which royalty is payable under clause 9(2)(j) hereof in any financial year such additional rental to be paid within three (3) months after shipment sale or use or in the case of iron ore concentrates production as the case may be of the iron ore or iron ore concentrates or iron ore pellets; and

Other rights⁴

- (c) on application by the Company cause to be granted to it such machinery and tailings leases (including leases for the dumping of overburden) and such other leases licenses reserves and tenements under the Mining Act or under the provisions of the Land Act modified as in subclause (2) of this clause provided as the Company may reasonably require and request for its purposes under this Agreement on or near the mineral lease.
- (2) For the purposes of subparagraph (i) of paragraph (b) and paragraph (c) of subclause (1) of this clause the Land Act shall be deemed to be modified by —
 - (a) the substitution for subsection (2) of section 45A of the following subsection:
 - (2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased;
 - (b) the deletion of the proviso to section 116;
 - (c) the deletion of section 135;
 - (d) the deletion of section 143;
 - (e) the inclusion of a power to offer for sale or leasing land within or in the vicinity of any townsite notwithstanding that the townsite has not been constituted a townsite under section 10; and
 - (f) the inclusion of a power to offer for sale or grant leases or licenses for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of for the terms or periods and upon the terms and conditions and in the forms referred to in the Act and upon application by the Company in forms consistent as aforesaid in lieu of in the forms referred to in the Act.
- (3) The provisions of subclause (2) of this clause shall not operate so as to prejudice the rights of the State to determine any lease license or other right or title in accordance with the other provisions of this Agreement.
- (4) The State further covenants with the Company that the State —

Non-interference with Company's rights⁴

- (a) shall not during the currency of this Agreement register any claim or grant any lease or other mining tenement under the Mining Act or otherwise by which any person other than the Company or an

associated company will obtain under the laws relating to mining or otherwise any rights to mine or take the natural substances (other than petroleum as defined in the *Petroleum Act 1936*) within the mineral lease unless the Minister reasonably determines that it is not likely to unduly prejudice or to interfere with the operations of the Company hereunder assuming the taking by the Company of all reasonable steps to avoid the interference;

No resumption⁴

- (b) subject to the performance by the Company of its obligations under this Agreement shall not during the currency hereof without the consent of the Company resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the said State any of the works installations plant equipment or other property for the time being belonging to the Company and the subject of or used for the purposes of this Agreement nor any of the lands the subject of any lease or license granted to the Company in terms of this Agreement AND without such consent (which shall not be unreasonably withheld) the State will not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road right-of-way or easement of any nature or kind whatsoever over or in respect of any such lands which may unduly prejudice or interfere with the Company's operations hereunder;

Labour requirements⁴

- (c) shall if so requested by the Company and so far as its powers and administrative arrangements permit use reasonable endeavours to assist the Company to obtain adequate and suitable labour for the construction and the carrying out of the works and operations referred to in this Agreement including suitable immigrants for that purpose;

No discriminatory rates⁴

- (d) except as provided in this Agreement shall not impose nor permit nor authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Company in the conduct of the Company's business hereunder nor will the State take or permit to be taken by any such State authority any other

discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement;

Rights to other minerals ⁴

- (e) shall where and to the extent reasonably practicable on application by the Company from time to time grant or assist in obtaining the grant to the Company of prospecting rights and mining leases with respect to limestone dolomite and other minerals and substances reasonably required by the Company for its purposes under this Agreement; and

Consents to improvements on leases ⁴

- (f) shall as and when required by the Company (but without prejudice to the foregoing provisions of this Agreement relating to the detailed proposals and matters referred to in clause 5(2) hereof) consent in writing where and to the extent that the Minister considers to be reasonably justified to the Company's making improvements other than those required in clause 5(2) hereof for the purposes of this Agreement on the land comprised in any lease granted by the State to the Company pursuant to this Agreement PROVIDED THAT the Company shall also obtain any other consents legally required in relation to such improvements.

(5) The Company shall not have any tenant rights in improvements made by the Company on the land comprised in any lease granted by the State to the Company pursuant to this Agreement in any case where pursuant to clause 10(e) hereof such improvements will remain or become the absolute property of the State.

Phase 2. Obligations of the Company to construct ⁴

9. (1) The Company shall within four (4) years next following the commencement date (or within such extended at period not exceeding a further two years as the Company may satisfy the Minister that the Company reasonably requires and the Minister approves) and at a total cost of not less than thirty-five million pounds (£35,000,000) construct install provide and do all things necessary to enable it to mine from the mineral lease to transport by rail to the plant site pelletise and transport to the Company's wharf and to commence shipment therefrom in commercial quantities at an annual rate of not less than one million (1,000,000) tons of iron ore pellets and will within a further period of five (5) years increase the capacity of such plant to a minimum of 3,000,000 tons of iron ore pellets per annum and without lessening the

generality of this provision the Company shall within the first mentioned period or extended period as the case may be —

On mining areas and plant site ⁴

- (a) construct install and provide upon the mineral lease or plant site or in the vicinity thereof mining plant and equipment crushing screening stockpiling and car loading plant and facilities power house workshop and other things of a design and capacity adequate to enable the Company to meet and discharge its obligations hereunder and under the iron ore pellet contracts and to mine handle load and deal with not less than three thousand (3,000) tons of iron ore per diem such capacity to be built up progressively to not less than ten thousand (10,000) tons of iron ore per diem within five (5) years next following the export date;

To commence exports ⁴

- (b) actually commence to mine transport by rail and ship from the Company's wharf iron ore pellets produced from iron ore from the mineral lease so that the average annual rate during the first two years shall not be less than one million (1,000,000) tons;

To construct railway ⁴

- (c) subject to the State having assured to the Company all necessary rights in or over Crown lands available for the purpose construct in a proper and workmanlike manner and in accordance with recognised standards of railways of a similar nature operating under similar conditions and along a route approved or determined under clause 6 hereof (but subject to the provisions of the *Public Works Act 1902* to the extent that they are applicable) a four feet eight and one-half inches (4' 8½") gauge railway (with all necessary signalling switch and other gear and all proper or usual works) from the mining areas to the plant site and will provide for crossing places and the running of such railway with sufficient and adequate locomotives freight cars and other railway stock and equipment to haul at least one million (1,000,000) tons of iron ore per annum to the Company's wharf or as required for the purposes of this Agreement;

To make roads ⁴

- (d) subject to the State having assured to the Company all necessary rights in or over Crown lands or reserves available for the purpose construct such new roads as the Company reasonably requires for

its purposes hereunder of such widths with such materials gates crossings and passovers for cattle and for sheep and along such routes as the parties hereto shall mutually agree after discussion with the respective shire councils through whose districts any such roads may pass and subject to prior agreement with the appropriate controlling authority (being a shire council or the Commissioner of Main Roads) as to terms and conditions the Company may at its own expense and risk except as otherwise so agreed upgrade or realign any existing road;

To construct wharf⁴

- (e) construct the Company's wharf in accordance with plans and specifications for the construction thereof previously approved or determined under clause 6 hereof on the site previously approved or determined for the purpose; and

To carry out proposals⁴

- (f) in accordance with the Company's proposals as finally approved or determined under clause 6 hereof and as require the Company to accept obligations —

- (i) dredge the berth at the Company's wharf and the channel and approaches thereto and any necessary swinging basin;
 - (ii) lay out and develop the townsites and provide adequate and suitable housing recreational and other facilities and services;
 - (iii) construct and provide roads housing school water and power supplies and other amenities and services; and
 - (iv) construct and provide other works (if any) including an airstrip.

- (2) Throughout the continuance of this Agreement the Company shall —

Operation of railway⁴

- (a) operate its railway in a safe and proper manner and where and to the extent that it can do so without unduly prejudicing or interfering with its operations hereunder allow crossing places for roads stock and other railways and transport the passengers and carry the freight of the State and of third parties on the railway subject to and in accordance with by-laws (which shall include

provision for reasonable charges) from time to time to be made altered and repealed as provided in subclause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost of the railway to the Company) PROVIDED THAT in relation to its use of the said railway the Company shall not be deemed to be a common carrier at common law or otherwise;

Use of roads by others ⁴

- (b) except to the extent that the Company's proposals as finally approved or determined under clause 6 hereof otherwise provide allow the public to use free of charge any roads constructed or upgraded under this clause PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder;

Compliance with laws ⁴

- (c) in the construction operation maintenance and use of any work installation plant machinery equipment service or facility provided or controlled by the Company comply with and observe the provisions hereof and subject thereto the laws for the time being in force in the said State;

Maintenance ⁴

- (d) at all times keep and maintain in good repair and working order and condition and where necessary replace all such works installations plant machinery and equipment and the railway wharf roads (other than the public roads referred to in clause 10(b) hereof) dredging and water and power supplies for the time being the subject of this Agreement;

Shipment of and price for ore ⁴

- (e) ship from the Company's wharf all iron ore mined from the mineral lease and sold and use its best endeavours to obtain therefor the best price possible having regard to market conditions from time to time prevailing PROVIDED THAT this paragraph shall not apply to iron ore used for the production of iron ore pellets or for the manufacture of iron or steel in any part of the said State lying north of the twenty-sixth parallel of latitude;

Use of wharf and facilities ⁴

- (f) subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made and altered as provided in subclause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Company) allow the State and third parties to use the Company's wharf and harbour installations wharf machinery and equipment and wharf and harbour services and facilities PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder and that the entire control and all personnel for or in respect of such use shall be provided by or with the approval of the Company;

Access through mining areas ⁴

- (g) allow the State and third parties to have access (with or without stock vehicles and rolling stock) over the mineral lease (by separate route road or railway) PROVIDED THAT such access over shall not unduly prejudice or interfere with the Company's operations hereunder;

Protection for inhabitants ⁴

- (h) subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made and altered as provided in subclause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Company) allow the inhabitants for the time being of the port townsite being employees licensees or agents of the Company or persons engaged in providing a legitimate and normal service to or for the Company or their employees licensees or agents to make use of the water power recreational health and other services or facilities provided or controlled by the Company;

Use of local labour and materials ⁴

- (i) so far as reasonably and economically practicable use labour materials plant equipment and supplies available within the said State where it is not prejudicial to the interests of the Company so to do;

Royalties ⁴

- (j) pay to the State royalty on all iron ore (or on iron ore pellets produced from iron ore) from the mineral lease shipped or sold (other than ore shipped solely for testing purposes) or (in the circumstances mentioned in subparagraph (iv) of this paragraph) on iron ore concentrates produced from iron ore from the mineral lease or on other iron ore from the mineral lease used as mentioned in subparagraph (iv) of this paragraph as follows —
- (i) on direct shipping ore (not being locally used ore) at the rate of seven and one half percentum ($7\frac{1}{2}\%$) of the f.o.b. revenue (computed at the rate of exchange prevailing on date of receipt by the Company of the purchase price in respect of ore shipped or sold hereunder) PROVIDED NEVERTHELESS that such royalty shall not be less than six shillings (6/-d) per ton (subject to subparagraph (viii) of this paragraph) in respect of ore the subject of any shipment or sale;
 - (ii) on fine ore (not being locally used ore) at the rate of three and three quarter percentum ($3\frac{3}{4}\%$) of the f.o.b. revenue (computed as aforesaid) PROVIDED NEVERTHELESS that such royalty shall not be less than three shillings (3/-d) per ton (subject to subparagraph (ix) of this paragraph) in respect of ore the subject of any shipment or sale;
 - (iii) on fines (not being locally used ore) at the rate of one shilling and sixpence (1/6d) per ton;
 - (iv) on iron ore concentrates produced from locally used ore and on other locally used ore at the rate of one shilling and sixpence (1/6d) per ton;
 - (v) on iron ore pellets produced in Western Australia north of the 26th parallel of latitude from iron ore with a combined average iron content of less than 60% at the rate of:
 - (a) one shilling (1/-d) per ton for all iron ore pellets shipped or sold during year one to year fifteen (both inclusive);

- (b) one shilling and threepence (1/3d) per ton for all iron ore pellets shipped or sold during year sixteen to year twenty-five (both inclusive);
- (c) one shilling and sixpence (1/6d) per ton for all iron ore pellets shipped or sold after year twenty-five;
- (vi) on iron ore pellets produced in Western Australia north of the 26th parallel of latitude from iron ore with a combined average iron ore content of 60% or over at the rate of one shilling and sixpence (1/6d) per ton;
- (vii) on all other iron ore (not being locally used ore) at the rate of seven and one half per centum (7½%) of the f.o.b. revenue (computed as aforesaid) without any minimum royalty;
- (viii) (for averaging purposes) if the amount ascertained by multiplying the total tonnage of direct shipping ore shipped or sold (and liable to royalty under subparagraph (i) of this paragraph) in any financial year by six shillings (6/-d) is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that subparagraph then that proviso shall not apply in respect of direct shipping ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made accordingly;
- (ix) (for averaging purposes) if the amount ascertained by multiplying the total tonnage of fine ore shipped or sold (and liable to royalty under subparagraph (ii) of this paragraph) in any financial year by three shillings (3/-d) is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that subparagraph then that proviso shall not apply in respect of fine ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made accordingly; and
- (x) the royalty at the rate of one shilling and sixpence (1/6d.) per ton referred to in subparagraphs (iii) (iv) and (vi) of this paragraph shall be adjusted up or down (as the case may be) as at the first day of January, 1969 and as at the beginning of every fifth year thereafter proportionately to

the variation of the average of the prices payable for foundry pig iron f.o.b. Adelaide during the last full calendar year preceding the date at which the adjustment is to be made as compared with the average of those prices during the calendar year 1963.

- (xi) the respective royalties referred to in subparagraph (v) of this paragraph shall be adjusted up or down (as the case may be) as at the first day of January 1970 and as at the beginning of every fifth year thereafter proportionately to the variation of the average of the prices payable for foundry pig iron f.o.b. Adelaide during the last full calendar year preceding the date at which the adjustment is to be made as compared with the average of those prices during the calendar year 1968.

For the purposes of this paragraph “locally used ore” means iron ore (other than iron ore from which iron ore pellets are produced which are subject to royalty under subparagraph (v) or (vi) of this paragraph) used by the Company or an associated company both within the Commonwealth and within the limits referred to in paragraph (o) of this clause for the production of iron ore pellets or in an integrated iron and steel industry and includes iron ore used by any other person or company north of the twenty-sixth parallel of latitude in the said State for the production of iron ore pellets or in an integrated iron and steel industry;

Payment of royalties ⁴

- (k) within fourteen days after the quarter days the last days of March June September and December in each year commencing with the quarter day next following the first commercial shipment of iron ore or iron ore pellets from the Company’s wharf furnish to the Minister a return showing the quantity of all iron ore or iron ore pellets or iron ore concentrates the subject of royalty hereunder and shipped sold used or produced (as the case may be) during the quarter immediately preceding the due date of the return and shall not later than two (2) months after such due date pay to the Minister the royalty payable in respect of iron ore pellets shipped or sold or iron ore concentrates produced or iron ore used and in respect of all iron ore shipped or sold pay to the Minister on account of the royalty payable hereunder a sum calculated on the basis of invoices or provisional invoices (as the case may be)

rendered by the Company to the purchaser (which invoices the Company shall render without delay simultaneously furnishing copies thereof to the Minister) of such iron ore 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. revenue realised in respect of the shipments shall have been ascertained;

Rent for mineral lease ⁴

- (l) by way of rent for the mineral lease pay to the State annually in advance a sum equal to three shillings and sixpence (3/6d) per acre of the area for the time being the subject of the mineral lease commencing on and accruing from the commencement date PROVIDED THAT after the Company commences production in commercial quantities within the said State of iron ore pellets if and during the period that the total area for the time being comprised within the mineral lease —
- (i) is not more than one hundred (100) square miles the annual rent shall be two shillings (2/-d) per acre;
 - (ii) is over one hundred (100) square miles but not more than one hundred and fifty (150) square miles the annual rent shall be two shillings and sixpence (2/6d) per acre; and
 - (iii) is over one hundred and fifty (150) square miles but not more than two hundred (200) square miles the annual rent shall be three shillings (3/-d) per acre;

Other rentals ⁴

- (m) pay to the State the rental referred to in the proviso to clause 8(1)
(b) hereof if and when such rental shall become payable;

Inspection ⁴

- (n) permit the Minister or his nominee to inspect at all reasonable times the books of account and records of the Company relative to any shipment or sale of iron ore or iron ore pellets hereunder and to take copies or extracts therefrom and for the purpose of determining the f.o.b. Revenue payable in respect of any shipment of iron ore or iron ore pellets hereunder the Company will take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the Minister's reasonable satisfaction as to all relevant weights and analyses and will give due regard to any objection or

representation made by the Minister or his nominee as to any particular weight or assay of iron ore which may affect the amount of royalty payable hereunder; and

Export to places outside the Commonwealth ⁴

- (o) ensure that without the prior written approval of the Minister all iron ore shipped pursuant to this Agreement will be off-loaded at a place outside the Commonwealth and if it fails so to ensure the Company will subject to the provisions of this paragraph be in default hereunder. Where any such shipment is off-loaded within the Commonwealth without such prior written approval the Company shall forthwith on becoming aware thereof give to the State notice of the fact and pay to the State in respect of the iron ore the subject of the shipment such further and additional rental calculated at a rate not exceeding ten shillings (10/-d) per ton of the iron ore as the Minister shall demand without prejudice however to any other rights and remedies of the State hereunder arising from the breach by the Company of the provisions hereof. If ore is shipped in a vessel not owned by the Company or an associated company or any other company in which the Company has a controlling interest and such ore is off-loaded in the Commonwealth the Company will not be or be deemed to be in default hereunder if it takes appropriate action to prevent a recurrence of such an off-loading PROVIDED FURTHER that the foregoing provisions of this paragraph shall not apply in any case (including any unforeseeable diversion of the vessel for necessary repairs or arising from force majeure or otherwise) where the Company could not reasonably have been expected to take steps to prevent that particular off-loading PROVIDED ALSO that the provisions of this paragraph shall not apply to iron ore pellets or iron and steel or steel manufacture by the Company or an associated company within the said State.

By-laws ⁴

- (3) The Governor in Executive Council may upon recommendation by the Company make alter and repeal by-laws for the purpose of enabling the Company to fulfil its obligations under paragraphs (a) (b) and (f) of subclause (2) of this clause and (unless and until the port townsite is declared a townsite pursuant to section 10 of the Land Act) under paragraph (h) of subclause (2) of this clause and under clause 10(a) hereof upon terms and subject to conditions (including terms and conditions as to user charging and

limitation of the liability of the Company) as set out in such by-laws consistent with the provisions hereof. Should the State at any time consider that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Company shall recommend such alteration or repeal thereof as the State may reasonably require or (in the event of there being any dispute as to the reasonableness of such requirement) then as may be decided by arbitration hereunder.

Mutual covenants⁴

10. The parties hereto covenant and agree with each other as follows: —

Water and power supplies⁴

- (a) that subject to and in accordance with proposals approved or determined under clause 6 hereof the Company for its purposes hereunder and for domestic and other purposes in relation to a townsite may to the extent determined by the Minister but notwithstanding any Act bore for water construct catchment areas store (by dams or otherwise) take and charge for water from any Crown lands available for the purpose and generate transmit supply and charge for electrical energy and the Company shall have all such powers and authorities with respect to water and electrical energy as are determined by the Minister for the purposes hereof which may include the powers of a water board under the *Water Board Act 1904* and of a supply authority under the *Electricity Act 1945*. The State acknowledges that large quantities of potable water up to four million (4,000,000) gallons a day will be required by the Company for its operations under this Agreement. The Company proposes to sink bores in the Fortescue area of the said State for the purposes of ascertaining and testing the availability of supplies. The Company will on request by the State from time to time give to the State particulars of the number depth and kind of bores sunk by it the precise situation of each and the quantities and quality of water obtained therefrom and will notify the State when supplies sufficient for the Company's purposes aforesaid have been proved. After such notice has been given the State will not itself and will not authorise any other to sink any new bore in any position which in the opinion of the State may injuriously affect the supply of water from the bore or bores sunk and required by the Company without making available to the Company adequate alternative supplies. The Company however shall not bore for or store water in any position which in the opinion of the State may

injuriously affect any existing water supply of the lessee or occupier of any land;

Use of public roads ⁴

- (b) that the Company may use any public roads which may from time to time exist in the area of its operations hereunder for the purpose of transportation of goods and materials in connection with such operations PROVIDED NEVERTHELESS that the Company shall on demand pay to the State or the shire council concerned the cost of making good any damage to such roads occasioned by —
 - (i) such user by the Company prior to the export date; and
 - (ii) user by the Company for the transportation of iron ore won from the mineral lease;

Upgrading of existing roads ⁴

- (c) that the State will at the request and cost of the Company (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or part of the cost involved) widen upgrade or realign any public road over which the State has control subject to the prior approval of the said Commissioner to the proposed work;

Effect on determination of Agreement ⁴

- (d) that on the cessation or determination of this Agreement —
 - (i) except as otherwise agreed by the Minister the rights of the Company to in or under this agreement and the rights of the Company or of any assignee of the Company or any mortgagee to in or under the mineral lease and any other lease license easement or right granted hereunder or pursuant hereto shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder AND the Company will without further consideration but otherwise at the request and cost of the State transfer or surrender to the State or the Crown all land the subject of any Crown Grant issued under the Land Act pursuant to this Agreement;

- (ii) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due; and
- (iii) save as aforesaid and as provided in clause 7(4) hereof and in the next following paragraph neither of the parties hereto shall have any claim against another of them with respect to any matter or thing in or arising out of this Agreement;

Effect of determination of lease ⁴

- (e) that on the cessation or determination of any lease license or easement granted hereunder by the State to the Company or (except as otherwise agreed by the Minister) to an associated company or other assignee of the Company under clause 13 hereof of land for the plant site or the Company's wharf for any installation within the harbour for the Company's railway or for housing at the port or port townsite the improvements and things erected on the relevant land and provided for in connection therewith other than plant and equipment shall remain or become the absolute property of the State without compensation and freed and discharged from all mortgages and encumbrances and the Company will do and execute such documents and things (including surrenders) as the State may reasonably require to give effect to this provision. In the event of the Company immediately prior to such expiration or determination or subsequent thereto deciding to remove its locomotives rolling stock plant and equipment or any of them from any land it shall not do so without first notifying the State in writing of its decision and thereby granting to the State the right or option exercisable within three months thereafter to purchase at valuation *in situ* the said plant and equipment or any of them. Such valuation shall be mutually agreed or in default of agreement shall be made by such competent valuer as the parties may appoint or failing agreement as to such appointment then by two competent valuers one to be appointed by each party or by an umpire appointed by such valuers should they fail to agree;

No charge for the handling of cargoes ⁴

- (f) that subject to the Company at its own expense providing all works buildings dredging and things of a capital nature reasonably required for its operations hereunder at or in the vicinity of the

harbour no charge or levy shall be made by the State or by any State authority in relation to the loading of outward or the unloading of inward cargoes from the Company's wharf whether such cargoes shall be the property of the Company or of any other person or corporation but the State accepts no obligation 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 or instrumentality or other local or other authority of the State and may charge vessels using the Company's wharf ordinary light conservancy and tonnage dues;

Zoning⁴

- (g) that the mineral lease and the lands the subject of any Crown Grant lease license or easement granted to the Company under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Company 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 or regulation;

Rentals and evictions⁴

- (h) that any State legislation for the time being in force in the said State relating to the fixation of rentals shall not apply to any houses belonging to the Company in any townsite and that in relation to each such house the Company shall have the right to include as a condition of its letting thereof that the Company may take proceedings for eviction of the occupant if the latter shall fail to abide by and observe the terms and conditions of occupancy or if the occupant shall cease to be employed by the Company;

Labour conditions⁴

- (i) that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the labour conditions imposed by or under the Mining Act in regard to the mineral lease;

Subcontracting⁴

- (j) that without affecting the liabilities of the parties under this Agreement either party shall have the right from time to time to

entrust to third parties the carrying out of any portions of the operations which it is authorised or obliged to carry out hereunder;

Rating⁴

- (k) 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 therewith) shall for rating purposes be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate;

Determination of Agreement⁴

- (l) that in any of the following events namely if the Company shall make default in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sublease license or other title or document granted or assigned under this Agreement on its part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to it by the State (or if the alleged default is contested by the Company and promptly submitted to arbitration within a reasonable time fixed by the arbitration award where the question is decided against the Company the arbitrator finding that there was a bona fide dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company shall abandon or repudiate its operations under this Agreement or shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto or if the Company shall surrender the entire mineral lease as permitted under clause 8.(1)(a) this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto shall thereupon determine; PROVIDED HOWEVER that if the Company shall fail to remedy any default after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose

the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand; and

(m) that —

(i) for the purposes of determining whether and the extent to which —

(A) the Company is liable to any person or body corporate (other than the State); or

(B) 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 maintenance of which the Company is responsible hereunder and for no other purpose the Company 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 Company; and

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

Alteration of works⁴

11. If at any time the State finds it necessary to request the Company to alter the situation of any of the installations or other works (other than those on the plant site and other than the Company’s wharf) erected constructed or provided hereunder and gives to the Company notice of the request the Company shall within a reasonable time after its receipt of the notice but at the expense in all things (including increased operating costs and loss of profits if any) of the State (unless the alteration is rendered necessary by reason of a breach by the Company of any of its obligations hereunder) alter the situation thereof accordingly.

Indemnity⁴

12. The Company will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands

or costs of third parties arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's wharf railway or other works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

Assignment⁴

13. (1) Subject to the provisions of this clause the Company may at any time —
- (a) assign mortgage charge sublet or dispose of to an associated company as of right and to any other company or person with the consent in writing of the Minister the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of any lease license easement grant or other title) and of the obligations of the Company hereunder; and
 - (b) appoint as of right an associated company or with the consent in writing of the Minister any other company or person to exercise all or any of the powers functions and authorities which are or may be conferred on the Company hereunder —

subject however to the assignee or (as the case may be) the appointee 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 Company to be complied with observed or performed in regard to the matter or matters so assigned or (as the case may be) the subject of the appointment.

- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this clause the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained herein and in any lease license easement grant or other title the subject of an assignment under the said subclause (1).

Variation⁴

14. (1) The parties hereto may from time to time by mutual agreement in writing add to cancel or vary all or any of the provisions of this Agreement or of any lease license easement or right granted hereunder or pursuant hereto for the purpose of implementing or facilitating the carrying out of such provisions or for the purpose of facilitating the carrying out of some separate part or parts of the Company's operations hereunder by an associated company as a separate

and distinct operation or for the establishment or development of any industry making use of the minerals within the mineral lease or such of the Company's works installations services or facilities the subject of this Agreement as shall have been provided by the Company in the course of work done hereunder.

(2) Notwithstanding the provisions of subclause (1) of this clause the Minister may with the consent of the Company from time to time add to cancel or vary any right or obligation relating to the works set out in Clause 9 hereof to the extent that the addition cancellation or variation implements or facilitates the method of achieving any of the purposes of the export of iron ore (or iron ore pellets produced from iron ore) from the mining areas.

(3) Notwithstanding the foregoing provisions of this clause the Minister may from time to time approve variations or require reasonable variations in the detailed proposals relating to any railway or harbour site and/or port facilities or dredging programme or townsite or town planning or any other facilities or services or other plans specifications or proposals which may have been approved pursuant to this Agreement and in considering such variations shall have regard to any changes consequent upon proposals for joint user or joint construction or both of any such works facilities or services and other relevant factors arising after the date hereof.

(4) The Company shall be entitled at any time and from time to time with the prior approval in writing of the Minister to enter into an agreement with any third party for the joint construction maintenance and user or for the joint user only of any work constructed or agreed to be constructed by the Company pursuant to the terms of this Agreement or by such other party pursuant to any agreement entered into by it with the State and in any such event any amount expended in or contributed to the cost of such construction by the Company shall for the purpose of the calculation of the said sum of thirty-five million pounds agreed to be expended by the Company under Clause 9 hereof so long as the pelletising plant capacity stipulated hereunder and the processing capacity stipulated under the other agreement of each and every category of material shall not be reduced and provided such construction is part of the constructions to which the said sum of thirty-five million pounds relates be taken and accepted as an amount equal to the total amount expended (whether by the Company or the said third party or by them jointly) in the construction of such work.

(5) When any agreement entered into by the Company with some other company or person results in that other company or person discharging all or any of the obligations undertaken by the Company under this Agreement or renders it unnecessary for the Company to discharge any obligation undertaken

by it hereunder the Minister will discharge or temporarily relieve the Company from such part of its said obligations as is reasonable having regard to the extent of and period for which the other company or person actually effects the discharge of those obligations.

Export license ⁴

15. (1) On the request by the Company the State shall make representations to the Commonwealth for the grant to the Company of a license or licenses under Commonwealth law for the export of iron ore or iron ore pellets in such quantities and at such rate or rates as shall be reasonable having regard to the terms of this Agreement the capabilities of the Company and to maximum tonnages of iron ore or iron ore pellets for the time being permitted by the Commonwealth for export from the said State and in a manner or terms not less favourable to the Company (except as to rate or quantity) than the State has given or intends to give in relation to such a license or licenses to any other exporter of iron ore or iron ore pellets from the said State.

(2) If at any time the Commonwealth limits by export license the total permissible tonnage of iron ore or iron ore pellets (as the case may be) for export from the said State then the Company will at the request of the State and within three (3) months of such request inform the State whether or not it intends to export to the limit of the tonnage permitted to it under Commonwealth licenses in respect of the financial year next following and if it does not so intend will co-operate with the State in making representation to the Commonwealth with a view to some other producer in the said State being licensed by the Commonwealth to export such of the tonnage permitted by the Commonwealth in respect of that year as the Company does not require and such other producer may require. Such procedure shall continue to be followed year by year during such time as the Commonwealth limits by export license the total permissible tonnage of iron ore or iron ore pellets (as the case may be) for export from the said State.

(3) The Company shall be in default hereunder if at any time it fails to obtain any license or licenses under Commonwealth law for the export of iron ore or iron ore pellets as may be necessary for the purpose of enabling the Company to fulfil its obligations hereunder or if any such license is withdrawn or suspended by the Commonwealth and such failure to obtain or such withdrawal or suspension (as the case may be) is due to some act or default by the Company or to the Company not being *bona fide* in its application to the Commonwealth or otherwise having failed to use its best endeavours to have the license granted or restored (as the case may be) but save as aforesaid if at any time any necessary license is not granted or any license granted to the Company

shall be withdrawn or suspended by the Commonwealth and so that as a result thereof the Company is not for the time being permitted to export at least the tonnage it has undertaken with the State it will export then the Company shall not be obliged to export the tonnage not so permitted until such time as it is so permitted and thereafter it will export the tonnage it has undertaken with the State it will export. The State shall at all times be entitled to apply on behalf of the Company (and is hereby authorised by the Company so to do) for any license or licenses under Commonwealth law for the export of iron ore or iron ore pellets as may from time to time be necessary for the purposes of this Agreement.

Delays ⁴

16. This Agreement shall be deemed to be made subject to any delays in the performance of obligations under this Agreement and to the temporary suspension of continuing obligations hereunder which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays or any such temporary suspension as aforesaid caused by or arising from Act of God force majeure floods storms tempests washaways fire (unless caused by the actual fault or privity of the Company) act of war act of public enemies riots civil commotions strikes lockout 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 (common in the iron ore pellets export industry) to profitably sell iron ore pellets or factors due to overall world economic conditions or factors which could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall minimise the effect of the said causes as soon as possible after their occurrence.

Power to extend periods ⁴

17. Notwithstanding any provision hereof the Minister may at the request of the Company from time to time extend any period or date referred to in this Agreement for such period or to such later date as the Minister thinks fit and the extended period or later date when advised to the Company by notice from the Minister shall be deemed for all purposes hereof substituted for the period or date so extended.

Arbitration ⁴

18. Any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Agreement or any

such amendment variation or addition or as to the rights duties or liabilities of either party thereunder 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 and settled by arbitration under the provisions of the *Arbitration Act 1895*.

Notices⁴

19. Any notice consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Civil Service of the said State acting by the direction of the Minister and forwarded by prepaid post to the Company at its registered office for the time being in the said State or other address of which such Company has given the State prior notice and by the Company if signed on its behalf by a director manager or secretary of the Company or by any person or persons authorised by the Company in that behalf or by its solicitors as notified to the State from time to time and forwarded by prepaid post to the Minister and any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

Exemption from stamp duty⁴

20. (1) The State shall exempt from any stamp duty which but for the operation of this clause would or might be chargeable on —
- (a) this Agreement;
 - (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee of the Company any tenement lease easement license or other right or interest;
 - (c) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment made in conformity with the provisions of subclause (1) of clause 13 hereof; and
 - (d) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment to or in favour of the Company or an associated company of any interest right obligation power function or authority which has already been the subject of an assignment sublease disposition or appointment executed pursuant to subclause (1) of clause 13 hereof;

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

(2) If prior to the date on which the Bill referred to in clause 2 (b) hereof 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.

Interpretation ⁴

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

SCHEDULE

WESTERN AUSTRALIA

IRON ORE (CLEVELAND-CLIFFS) AGREEMENT ACT 1964

MINERAL LEASE

Lease No. Goldfield(s)

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 GREETINGS: KNOW
YE that WHEREAS by an Agreement made the day of , 1964
between the State of Western Australia of the one part and Basic Materials Pty.
Limited (hereinafter called "the Company" which expression will include the
successors and assigns of the Company including where the context so admits
the assignees of the Company under clause 13 of the said Agreement) of the
other part the said State agreed to grant to the Company a mineral lease of
portion or portions of the lands referred in the said Agreement as "the mining
areas" AND WHEREAS the said Agreement was ratified by the *Iron Ore
(Cleveland-Cliffs) Agreement Act 1964* which said Act (*inter alia*) authorised
the grant of a mineral lease to the Company 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 Company subject to the said provisions ALL THOSE pieces
and parcels of land situated in the Goldfield(s) containing
by admeasurement be the same
more or less 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 Company is 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 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 Company of the following covenants and conditions, that is to say:—

1. The Company 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 Company 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 also as modified by the said Agreement the Mining Act so far as the same affect or have reference to this lease.

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 mineral oil 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 mineral oil in any part of the land under the provisions of the *Petroleum Act 1936*.

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 seal of the Company has been affixed hereto this day of , 19 .

THE SCHEDULE ABOVE REFERRED TO:

IN WITNESS WHEREOF THE HONOURABLE DAVID BRAND M.L.A. has hereunto set his hand and seal and the COMMON SEAL of the Company has hereunto been affixed the day and year first hereinbefore mentioned.

SIGNED SEALED AND DELIVERED by the said THE HONOURABLE DAVID BRAND M.L.A., in the presence of —	}	DAVID BRAND [L.S.]
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C. W. COURT
Minister for Industrial Development

ARTHUR GRIFFITH
Minister for Mines

THE COMMON SEAL OF BASIC MATERIALS PTY. LIMITED was hereunto affixed in the presence of —	}	[C.S.]
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W. E. DOHNAL
Director.

J. H. WILLIAMS
Secretary.

Second Schedule — First variation agreement

[s. 2]

[Heading inserted: No. 35 of 1970 s. 7; amended: No. 19 of 2010 s. 4.]

AN AGREEMENT made the 12th day of May One thousand nine hundred and seventy BETWEEN THE HONOURABLE SIR DAVID BRAND, K.C.M.G., M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the Government of the said State and instrumentalities thereof from time to time (hereinafter called “the State”) of the one part and CLIFFS INTERNATIONAL INC. a limited company incorporated under the laws of the State of Ohio one of the United States of America and registered in the State of Western Australia under the provisions of the *Companies Act 1961*, of the said State and having its registered office situate at 84 Saint George’s Terrace Perth in the said State (hereinafter called “the Company”) of the other part.

WHEREAS:

- (a) By an agreement under seal dated the 18th day of November One thousand nine hundred and sixty-four made between the State of the one part and Basic Materials Pty. Limited (hereinafter called “Basic”) of the other part (which agreement was approved by and is scheduled to the *Iron Ore (Cleveland-Cliffs) Agreement Act 1964* and is hereinafter referred to as “the Agreement” Basic acquired upon the terms and conditions set forth in the agreement certain rights interests and benefits and assumed certain obligations with respect to the exploration for and development of specified iron ore deposits and the mining transportation processing pelletising and shipment of iron ore therefrom.
- (b) By virtue of various agreements under seal the Company is now entitled to all the right title interest claim and demand whatsoever of Basic in and under the Agreement and by virtue of deed of covenant with the State has assumed the obligations of Basic thereunder
- (c) The State and The Broken Hill Proprietary Company Limited (which company is hereinafter referred to as “Broken Hill”) have entered into an agreement (which agreement was approved by and is scheduled to the *Iron Ore (The Broken Hill Proprietary*

Company Limited) Agreement Act 1964, and is hereinafter referred to as “the Broken Hill Agreement”) for the mining by that company of iron ore in specified areas and for the establishment by that company of certain port and railway facilities to be used for the transportation of such iron ore and for the construction and establishment within the said State of plant for the secondary processing of iron ore and with regard to other matters

- (d) By assignment and deed of covenant made and given pursuant to Clause 27 of the Broken Hill Agreement the rights and obligations of Broken Hill arising under that agreement are now the rights and obligations of Dampier Mining Company Limited (hereinafter referred to as “Dampier”).
- (e) The areas covered by the Agreement and the Broken Hill Agreement are adjacent and the Company and Dampier have now entered into an agreement (hereinafter referred to as “the Companies Agreement”) which provides for various consultation and co-operation between them and subject to any necessary consents of the State for —
 - (i) Dampier to make available for use by the Company iron ore from the areas covered by the Broken Hill Agreement of an amount of up to 150,000,000 tons or such greater amount that the terms of the Companies Agreement may oblige it to supply;
 - (ii) The company to make available for purchase by Dampier in accordance with the Companies Agreement any iron ore that Dampier may require up to an amount of 2,000,000 tons per annum or such amount as the Companies may agree;
 - (iii) a right to Dampier to purchase part of the railway facilities and/or part or whole of the port facilities to be provided by that Company pursuant to its obligations under the Agreement; and
 - (iv) possible additional pelletising facilities at Cape Lambert to be constructed by Dampier or the Company or jointly by Dampier and the Company.
- (f) The State the Company and Dampier have now agreed that Cape Lambert is a more desirable port site for the initial development of

the deposits covered by the Agreement and the Broken Hill Agreement than those considered earlier and the Company has already submitted proposals for the development of certain facilities at Cape Lambert.

- (g) In view of the Companies Agreement, it is desirable that there should be some addition to the various rights and obligations of the parties created by the Agreement and by the Broken Hill Agreement and that certain additional provisions be included to facilitate the carrying out of the Agreement by the joint venture proposed to be established by the Company and referred to in the Companies Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. This agreement except for this clause shall have no force or effect and shall not be binding upon the parties until it is approved by an Act of the Parliament of Western Australia.
2. If an Act to ratify this agreement is passed by the Parliament of the said State the provisions of this agreement shall take effect as though the same had been enacted by the ratifying Act and notwithstanding any Act or law to the contrary the State and the Minister shall for the purpose of implementing this agreement have all the powers discretions and authorities conferred on them respectively by the Agreement for the purpose of implementing that agreement.
3. The Agreement is added to and varied as hereinafter provided and the Agreement shall be read and construed accordingly.
4. The Agreement is amended as follows:—
 - (1) Clause 1 is amended by —
 - (a) adding after the definition “Company’s wharf” a definition “Dampier” as follows —

“means Dampier Mining Company Limited and includes “the Company” mentioned in the agreement approved by the *Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act 1964*, and any successor or assignee of that Company permitted under that Agreement”;

- (b) by deleting the words “Cape Preston” in the definitions of “harbour” and “plant site” and substituting therefor the words “Cape Lambert”;
 - (c) by adding to the definition “mineral lease” after the word “includes” in the second line, the words —
“the sublease of any area of a mineral lease sublet to the Company by Dampier and” and by substituting for the word “thereof” in the last line, the words “of such lease or sublease”;
 - (d) by adding to the definition “mining areas” the words —
“and also any area within the mineral lease and also the areas the subject of Temporary Reserves 4269H to 4273H (both inclusive) reserved under section 276 of the Mining Act”;
 - (e) by adding after the definition “said State” a definition “secondary processing” as follows —
“means concentration or other beneficiation of iron ore other than by crushing or screening and includes thermal electrostatic magnetic and gravity processing and agglomeration pelletisation or comparable changes in the physical character of iron ore.”
- (2) Clause 5 is amended by deleting subclause (5).
- (3) Clause 8 is amended by —
- (a) adding to paragraph (a) of subclause (1) as follows —
 - (i) in the fifth line after the words “mining areas” the following:
“(other than the mining areas included in the sublease referred to in the definition of “mineral lease””, and
 - (ii) by changing the word “thereof” in the thirteenth line to the following:
“of the lands so applied for (notwithstanding the survey in respect thereof has not been completed)”.

- (b) inserting before the existing subparagraph (ii) of paragraph (b) of subclause (1) a new subparagraph as follows —
- “(ii) on application by the Company include in the area of any lease to be granted to the Company at Cape Lambert (for the purposes hereof) adequate provision for —
- (a) the development of such facilities at Cape Lambert as Dampier may require in connection with the production transportation processing and shipment of iron ore produced pursuant to the agreement approved by the *Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act 1964*; and
- (b) the expansion of any proposed iron ore pellet plant facilities to meet any requirements for increased production therefrom as may be required for Dampier; and ”
- and renumbering the existing subparagraph (ii) accordingly.
- (c) adding to paragraph (b) of subclause(1) in the last line after the word “pellets” the words —
- “PROVIDED FURTHER that additional rental will be payable pursuant to this paragraph in respect of iron ore sold to Dampier as if such iron ore were produced under a mineral lease granted pursuant to the agreement approved by the *Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act 1964*.”
- (d) adding two new paragraphs to subclause (1) thereof as follows —
- “(d) All leases rights mining tenements easements reserves and licenses granted under the provisions of this subclause may be so granted notwithstanding the survey in respect thereof has not been completed;
- “(e) Notwithstanding the provisions of Section 82 of the Mining Act and of regulations 192 and 193 made thereunder and of Section 81D of the *Transfer of Land*

Act 1893 and Section 143 of the Land Act insofar as the same or any of them may apply —

- (a) no assignment mortgage charge sublease or disposition made or given pursuant to Clause 13 hereof of or over any lease sublease license reserve or tenement granted hereunder or pursuant hereto by the Company or any assignee or appointee who has executed and is for the time being bound by deed of covenant made pursuant to Clause 13 hereof and
- (b) no transfer assignment mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge

shall require any approval or consent other than such consent as may be necessary under Clause 13 of the Agreement and no equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent otherwise than as required by Clause 13 hereof or because the same is not registered under the provisions of the Mining Act”.

- (e) inserting after the word “provisions” in the first line of subclause (3) the words —

“of paragraph (e) of subclause (1) of this clause and the provisions”.
- (f) adding a new paragraph after paragraph (f) of subclause (4) as follows —
 - “(g) (i) shall permit Dampier to sublet to the Company the whole or any part of any mineral lease granted pursuant to the agreements approved by the *Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act 1964*, and the *Iron Ore (Dampier Mining Company Limited) Agreement Act 1969*;
 - (ii) shall in the event of the termination of any mineral lease subleased in whole or in part to the Company by Dampier grant to the

Company a mineral lease for the unexpired term of the sublease covering the same mining areas and on the same terms as were applicable under the sublease except that royalties shall be payable at the rates provided for in this Agreement.

PROVIDED THAT any sublease referred to in subparagraph (i) and any mineral lease granted to the Company pursuant to subparagraph (ii) shall be included in the definition of “mineral lease” in Clause 1 of this agreement and shall be subject to the provisions of Clause 13 and paragraph (e) of subclause (1) of Clause 8.”

(g) adding a subclause as follows —

“(6) No fee simple lease sublease license or other title or right granted or assigned under or pursuant to this Agreement and no chattel belonging to or owned jointly or in individual shares by the Company and an associated company shall be subject to or capable of partition otherwise than by agreement including partition under the *Property Law Act 1969* or under any order of any court of competent jurisdiction made under that Act or otherwise or be subject to the making of an order for sale under the said Act.”

(4) Clause 9 is amended by —

(a) substituting for the proviso to paragraph (e) of subclause (2) thereof, the following proviso —

“PROVIDED HOWEVER that this paragraph shall not apply either to: —

- (i) iron ore used for the production of iron ore pellets or for secondary processing or for the manufacture of iron or steel in any part of the said State lying north of the twenty-sixth parallel of latitude; or
- (ii) iron ore sold or otherwise disposed of to Dampier.”

- (b) adding to paragraph (j) of subclause (2) after subparagraph (xi) and before the last sentence of the said paragraph the following provisos:
- “PROVIDED THAT for the purposes of this paragraph the words “mineral lease” shall not include any sublease from Dampier and
- PROVIDED FURTHER THAT the royalty payable on any iron ore sold to Dampier shall be computed as if such iron ore were produced under a mineral lease granted pursuant to the agreement approved by the *Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act 1964*, and
- PROVIDED FURTHER THAT with regard to the contracts which the Company has advised the State were entered into prior to September One thousand nine hundred and sixty-nine by an associated company for the sale of iron ore pellets and prepared sinter fines to Japanese steel mills the royalty for fines as well as iron ore pellets shall be computed at the rate specified in subparagraph (v) of this paragraph subject to the adjustment specified in subparagraph (xi)”.
- (c) deleting the last proviso of paragraph (o) of subclause (2) thereof and substituting therefor the following:
- “PROVIDED ALSO that the provisions of this paragraph shall not apply:
- (i) to iron ore pellets or to ore the subject of secondary processing or Iron or steel manufacture by the Company or an associated company within the said State, or
- (ii) to ore sold or otherwise disposed of to Dampier.”
- (d) inserting a new paragraph after paragraph (o) of subclause (2) thereof as follows:
- “(p) honour its undertakings with Dampier under any agreement with Dampier pursuant to which it receives a sublease referred to in subparagraph (i) of paragraph (g) of subclause (4) of clause 8 PROVIDED THAT as sole

remedy for a breach of this covenant the State may if the breach is not cured within a period as provided in paragraph (1) of clause 10 after notice as provided therein require Dampier to terminate such a sublease for any breach thereof which the State considers material AND the Company shall not thereafter be entitled to a lease under subparagraph (ii) of paragraph (g) of subclause (4) of clause 8 AND the State may require the surrender of areas included in any lease or leases pursuant to subparagraph (ii) of paragraph (b) of subclause (1) of clause 8.

- (e) inserting after the word “hereof” in the eighth line of subclause (3) the following:

“including the conferring upon the Company of power and authority requisite for the control and management of the works referred to in the said provisions”.

- (5) Clause 10 is amended by substituting for paragraph (1) thereof the following paragraph:

- “(1) (i) that in any of the following events namely if the Company shall make default which the State considers material in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sublease license or other title or document granted or assigned under this Agreement on its part to be performed or observed or shall abandon or repudiate its operations under this Agreement and such default shall not have been remedied or such operations resumed within a period of one hundred and eighty (180) days after notice as provided in subparagraph (ii) of this paragraph is given by the State (or — if the alleged default abandonment or repudiation is contested by the Company and within sixty (60) days after such notice is submitted by the Company to arbitration — within a reasonable time fixed by the arbitration award but not less than ninety (90) days after the making of the arbitration award where the question is decided against the Company the arbitrator finding that there was a bona fide dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company

shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto or if the Company shall surrender the entire mineral lease as permitted under Clause 8(1)(a) of this Agreement then this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto shall thereupon determine: PROVIDED HOWEVER that if the default shall not have been remedied after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand; and

- (ii) the notice to be given by the State in terms of subparagraph (i) of this paragraph shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Company and all such assignees mortgagees chargees and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 13(1)(a) hereof whose name and address for service of notice has previously been notified in writing to the State by the Company or any such assignee mortgagee chargee or disponee;

- (iii) the abandonment or repudiation by or liquidation of the Company referred to in subparagraph (i) of this paragraph means the abandonment or repudiation by or the liquidation of all of them the Company and all assignees and appointees who have executed and are for the time being bound by a deed of covenant in favour of the State as provided in Clause 13 hereof; and”.
- (6) Clause 13 is amended by —
 - (a) adding to subclause (1) a new subparagraph after subparagraph (b) and before the words “subject however” as follows:

“and (c) assign sublet or dispose of to Dampier in whole or in part rights under this Agreement (including its rights to or as the holder of any lease license easement grant or other title) in relation to the railway and the port and related facilities or any of them”;
 - (b) adding the following to subclause (2):

“PROVIDED HOWEVER that the Minister may agree to release the Company from such liability where having regard to all the circumstances of any such assignment mortgaging charging subletting disposition or appointment as mentioned in subclause (1) of this clause he considers such release will not be contrary to the interest of the State hereunder”;
 - (c) adding a new subclause as follows:

“(3) To the extent that it imposes any obligation on the Company with regard to the management preservation or control of any of the facilities mentioned in subparagraph (c) of subclause (1) of this clause whether as to maintenance operation or otherwise this Agreement shall no longer apply with regard to any such facilities which become the sole property of Dampier.”
- (7) Clause 19 is amended by inserting after the words “prior notice” in line 9 the words:

“or in the case of any other addressee to his or its address for service of notices notified in writing to the State”.

IN WITNESS whereof these presents have been executed as a deed the day and year first herein before written.

SIGNED by the said THE
HONOURABLE SIR DAVID
BRAND, K.C.M.G., M.L.A
in the presence of —

}

DAVID BRAND

C. W. COURT,
Minister for Industrial
Development.

ARTHUR GRIFFITH,
Minister for Mines.

SIGNED BY WILLIAM E. DOHNAL
pursuant to and with the authority of a
resolution of the Board of Directors of
CLIFFS INTERNATIONAL INC. in
the presence of —

}

WILLIAM E. DOHNAL

T. R. COLBORN
[C.S.]

[Second Schedule inserted: No. 35 of 1970 s. 7.]

Third Schedule — Second variation agreement

[s. 3B]

*[Heading inserted: No. 68 of 1973 s. 7; amended: No. 19 of 2010
s. 4.]*

AN AGREEMENT made the day of 1973 BETWEEN THE HONOURABLE JOHN TREZISE TONKIN, M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the Government of the said State and instrumentalities thereof from time to time (hereinafter called “the State”) of the first part and CLIFFS INTERNATIONAL INC. a limited company incorporated under the laws of the State of Ohio one of the United States of America and registered in the State of Western Australia under the provisions of the *Companies Act 1961*, of the said State and having its registered office situate at 12-14 Saint George’s Terrace, Perth in the said State (hereinafter called “Cliffs”) of the second part and CLIFFS WESTERN AUSTRALIAN MINING CO. PTY. LTD., a company incorporated under the said Companies Act and having its registered office at 12-14 Saint George’s Terrace, Perth in the said State, MITSUI IRON ORE DEVELOPMENT PTY. LTD., a company incorporated under the said Companies Act and having its registered office at 68 Saint George’s Terrace, Perth in the said State, ROBE RIVER LIMITED, a company incorporated under the Companies Ordinance of the Australian Capital Territory and having its registered office at 20 O’Connell Street, Sydney in the State of New South Wales, and MT. ENID IRON CO. PTY. LTD., a company incorporated under the said Companies Act and having its registered office at 22 Mount Street, Perth in the said State (hereinafter called “the Participants”) of the third part.

WHEREAS:

- (a) By an agreement under seal dated the 18th day of November 1964 made between the State of the one part and Basic Materials Pty. Limited (hereinafter called “Basic”) of the other part (which agreement was approved by and is scheduled to the *Iron Ore (Cleveland-Cliffs) Agreement Act 1964* and is hereinafter referred to as “the Agreement”) Basic acquired upon the terms and conditions set forth in the Agreement certain rights interest and benefits and assumed certain obligations with respect to the exploration for and development of specified iron ore deposits and the mining transportation processing pelletising and shipment of iron ore therefrom.

- (b) By virtue of various agreements under seal Cliffs became entitled to all the right title interest claim and demand whatsoever of Basic in and under the Agreement and by virtue of deed of covenant with the State assumed the obligations of Basic thereunder.
- (c) By an agreement dated the 12th day of May, 1970 made between the State of the one part and Cliffs of the other part which is scheduled to the *Iron Ore (Cleveland-Cliffs) Agreement Act Amendment Act 1970* (hereinafter called “the first variation agreement”) the parties thereto varied the agreement as therein set out for the purposes set out in the recitals thereto. Under the provisions of the said Act and in the events which happened the first variation agreement was approved thereby on and from the 30th day of December, 1970.
- (d) By deed dated the 29th day of June, 1970 made between the State, Cliffs and the Participants, Cliffs granted and assigned to the Participants all the right title interest claim and demand of the “Company” (as defined in the Agreement) in and under the Agreement (as then or thereafter altered from time to time) except the rights of occupancy referred to therein of the mining areas therein defined and the rights to obtain mineral leases thereof as tenants in common in the following shares:

Cliffs Western Australian Mining Co. Pty. Ltd	30%
Mitsui Iron Ore Development Pty.Ltd.	30%
Robe River Limited	35%
Mt. Enid Iron Co. Pty. Ltd.	5%

By the said deed the Participants severally covenanted and agreed with the State that such Participant should to the extent of its commitment therein set out comply with, observe and perform the provisions of the Agreement (as then or thereafter amended) on the part of Cliffs to be complied with observed or performed in respect of the matters assigned as therein set forth to the intent that the same should be binding upon the Participants (to the extent of the commitment therein set out) in the same manner and to the same extent as if the Participants were expressly named in the Agreement.

- (e) The parties desire to add to and amend the provisions of the Agreement as amended and added to by the first variation agreement (hereinafter referred to as “the Principal Agreement”).

NOW THIS AGREEMENT WITNESSETH:

1. Words and phrases to which meanings are given under clause 1 of the Principal Agreement (other than words and phrases to which meanings are given in this Agreement) shall have the same respective meanings in this Agreement as are given to them in clause 1 of the Principal Agreement.

Subject to the provisions of the deed referred to in recital (d) hereof, for the purposes of the Principal Agreement and this Agreement the expression “the Company” shall where the context so admits mean and include both Cliffs and the Participants.

2. The Principal Agreement is added to and varied as hereinafter provided and the Principal Agreement shall be read and construed accordingly.

3. The Principal Agreement is hereby amended as follows —

(1) The definition of “mining areas” in clause 1 is amended by substituting for the passage “4269H to 4273H (both inclusive)” the passage “4269H, 4270H, 4273H, 4321H, 4323H, 4324H, 4981H, 4982H, 4983H, 5733H and 5845H”;

(2) by adding after clause 7 two new clauses 7A and 7B as follows —

Additional Proposals⁴

7A. If the Company at any time during the continuance of this Agreement desires to modify expand or otherwise substantially vary its activities beyond those specified in any approved proposals the Company shall give notice of such desire to the Minister and within two months thereafter shall subject to the provisions of this Agreement submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in subparagraphs (i) to (vii) inclusive of clause 5(2)(a) as the Minister may require. The provisions of clause 6 shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this clause; and

Second Pellet Plant⁴

7B. The Company shall forthwith proceed to complete its investigations into the feasibility of establishing within the said State a second iron ore pellet plant and provided that the Company has entered into or intends to enter into contracts satisfactory to the Company, for the sale of iron ore pellets from the proposed second iron ore pellet plant and for financing that

plant and associated facilities, the Company shall by the 31st December, 1974 (or within such extended time as the Minister may allow) submit to the Minister pursuant to clause 7A detailed proposals for the establishment of such a plant on the following basis —

- (a) the plant to have an estimated design capacity of 5 million tons of iron ore pellets per annum; and
 - (b) the capital cost involved in the construction of the plant and associated facilities to be not less than one hundred million dollars (\$100,000,000).;
- (3) Clause 8(1)(a) is amended by substituting for the passage “for a period of twenty-one (21) years commencing from the commencement date” in lines nineteen and twenty, the passage “for a period commencing —
 - (i) on the 31st day of October, 1970, in respect of any part of the mining areas existing prior to the date of the execution of the agreement entered into pursuant to the *Iron Ore (Cleveland-Cliffs) Agreement Act Amendment Act 1973*; and
 - (ii) on the date of execution of that agreement, in respect of any other part of the mining areas —and expiring on the 30th day of October, 1991”;
- (4) Clause 9(2)(j) is amended —
 - (a) by substituting for the passage commencing with the word “prices” in line eight of subparagraph (x) and ending with the passage “1963.” in the last line of that subparagraph, the passage “prices payable for 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 last full calendar year preceding the date at which the adjustment is to be made as compared with the average of those prices for the calendar year 1963.”; and
 - (b) by substituting for the passage commencing with the word “prices” in line seven of subparagraph (xi) and ending with the passage “1968.” in the last line of that subparagraph, the passage “prices payable for 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 last full calendar year preceding the date at which the adjustment is to be made as compared with the average of those prices for the calendar year 1968.”;

- (5) Clause 9(2)(1) is amended by deleting the words “commencing on and accruing from the commencement date” in lines five and six;
- (6) Paragraph (a) of clause 10 is deleted and the following paragraph substituted —

Power⁴

- (a) (i) that subject to and in accordance with proposals approved or determined under this Agreement the Company for its purposes hereunder and for domestic and other purposes in relation to a townsite may to the extent determined by the Minister but notwithstanding any Act generate transmit supply and charge for electrical energy and the Company shall have all such powers and authorities with respect to electrical energy as are determined by the Minister for the purposes hereof which may include the powers of a supply authority under the *Electricity Act 1945*;

Water for mining areas⁴

- (ii) that subject to and in accordance with proposals approved or determined under this Agreement the Company for its purposes hereunder in relation to its requirements for water in the mining areas and for domestic and other purposes in relation to any townsite associated with the mining areas, may to the extent determined by the Minister but notwithstanding any Act bore for water construct catchment areas store (by dams or otherwise) take and charge for water from any Crown lands available for the purpose and the Company shall have all such powers and authorities with respect to water as are determined by the Minister for the purposes hereof which may include the powers of a water board under the *Water Board Act 1904*;

Water for the port and port townsite⁴

- (iii) that the rights and obligations of the Company in respect to the supply of water at the industrial area at Cape Lambert for its purposes and operations under the Agreement and at the port townsite for domestic and other purposes in relation to a townsite and the rights and obligations of the State with respect to the supply of water for such purposes contained in the deed dated as of the day of 1973 and made between the State on the one part and the Participants of the other part; and

- (7) by adding after clause 11 a new clause 11A as follows —

Environmental Protection⁴

11A. Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to the operations of the Company 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.

4. The Schedule to the Principal Agreement is deleted and the following schedule substituted —

SCHEDULE

WESTERN AUSTRALIA

IRON ORE (CLEVELAND-CLIFFS) AGREEMENT ACT 1964-1973

MINERAL LEASE

Lease No.

Goldfield

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 GREETINGS: KNOW YE that WHEREAS by an Agreement made the 18th day of November, 1964 between the State of Western Australia of the one part and BASIC MATERIALS PTY. LIMITED (hereinafter called “Basic”) of the other part the said State agreed to grant to Basic a mineral lease of portion or portions of the lands referred to in the said

Agreement as “the mining areas” AND WHEREAS the said Agreement was ratified by the *Iron Ore (Cleveland-Cliffs) Agreement Act 1964* which said Act (*inter alia*) authorised the grant of a mineral lease to Basic its successors and assigns AND WHEREAS by virtue of various agreements under seal CLIFFS INTERNATIONAL, INC. a limited company incorporated under the laws of the State of Ohio one of the United States of America and registered in the State of Western Australia under the provisions of the *Companies Act 1961* of the said State and having its registered offices situated at 12-14 Saint George’s Terrace, Perth in the said State (hereinafter called “Cliffs”) became entitled to all the rights title interest claim and demand whatsoever of Basic in and under the said Agreement and additions and variations thereto as set out in the agreements scheduled to the *Iron Ore (Cleveland-Cliffs) Agreement Act Amendment Act 1970* and the agreement executed pursuant to the *Iron Ore (Cleveland-Cliffs) Agreement Act Amendment Act 1973* (the three agreements scheduled to or executed pursuant to the said Acts are hereinafter referred to as “the said Agreements”) NOW WE in consideration of the rents and royalties reserved by and of the provisions of the said Agreements and in pursuance of the said Acts DO BY THESE PRESENTS GRANT AND DEMISE unto Cliffs subject to the said provisions ALL THOSE pieces and parcels of land situated in the Goldfield containing approximately (subject to such corrections as may be necessary to accord with 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 Cliffs is entitled under the said Agreements. TO HOLD the said lands and mine and all and singular the premises hereby demised for a period commencing —

- (i) on the 31st day of October, 1970, in respect of any part of the mining areas existing prior to the date of the execution of the agreement entered into pursuant to the *Iron Ore (Cleveland-Cliffs) Agreement Act Amendment Act 1973*; and
- (ii) on the date of execution of that agreement, in respect of any other part of the mining areas —

and expiring on the 30th day of October, 1991 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 terms covenants and conditions set out in the said Agreements

and to the Mining Act (as modified by the said Agreements) YIELDING and paying therefor the rent and royalties as set out in the said Agreements. AND WE do hereby declare that this lease is subject to the observance and performance by Cliffs of the following covenants and conditions, that is to say: —

1. Cliffs shall and will use the land *bona fide* exclusively for the purposes of the said Agreements.
2. Subject to the provisions of the said Agreements Cliffs 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 also as modified by the said Agreements the Mining Act so far as the same affect or have reference to this lease.
3. Cliffs shall if the Minister for Mines determines during the term of this lease (but not in respect of any renewed term) pay to the previously registered occupant of Temporary Reserve 4321H, 4322H, 4323H, 4324H, 4981H, 4982H, and 4983H such amount as the Minister for Mines may approve towards expenditure incurred by such occupant on the exploration of the said reserves.
4. Cliffs shall if the Minister for Mines so determines during the term of this lease or any renewed term pay to the previously registered occupant of Temporary Reserves 4321H, 4322H, 4323H, 4324H, 4981H, 4982H and 4983H a royalty at a rate of 0.25 per centum per ton on the value of iron ore (as determined by the Minister for Mines) shipped or sold by Cliffs from the land formerly comprised in the said reserves during the first twenty-one year production period but no longer.

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 Agreements.

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 seal of Cliffs has been affixed hereto this day of , 19

THE SCHEDULE ABOVE REFERRED TO:

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

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

Minister for Development
and Decentralisation.

Minister for Mines.

Signed by W.E. DOHNAL pursuant }
to and with the Authority of a resolution }
of the Board of Directors of CLIFFS }
INTERNATIONAL INC. in the }
presence of — }

The Common Seal of CLIFFS }
WESTERN AUSTRALIAN MINING }
CO. PTY. LTD. was hereunto affixed }
by Authority of the Directors and in the }
presence of — }

Director.

Secretary.

The Common Seal of MITSUI
IRON ORE DEVELOPMENT PTY.
LTD. was hereunto affixed by
Authority of the Directors and in
the presence of — }

Director.

Secretary.

The Common Seal of ROBE
RIVER LIMITED was hereunto
affixed by Authority of the
Directors and in the presence of — }

Director.

Secretary.

The Common Seal of MT. ENID
IRON CO. PTY. LTD, was hereunto
affixed by Authority of the Directors
and in the presence of — }

Director.

Director.

[Third Schedule inserted: No. 68 of 1973 s. 7.]

Fourth Schedule — Third variation agreement

[s. 2]

*[Heading inserted: No. 37 of 1984 s. 4; amended: No. 19 of 2010
s. 4.]*

AN AGREEMENT made the thirtieth day of April One thousand nine hundred and eighty-four 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 instrumentalities thereof from time to time (hereinafter called “the State”) of the first part CLIFFS INTERNATIONAL INC. a limited company incorporated under the laws of the State of Ohio, one of the United States of America and registered in the State of Western Australia under the provisions of the *Companies Act 1961* of the said State and having its registered office in the State of Western Australia at 12-14 St. George’s Terrace, Perth (hereinafter called “Cliffs”) of the second part and CLIFFS WESTERN AUSTRALIAN MINING CO. PTY. LTD., a company incorporated under the said Companies Act and having its registered office at 12-14 St. George’s Terrace, Perth (hereinafter called “Cliffs Western”) MITSUI IRON ORE DEVELOPMENT PTY. LTD. a company incorporated under the said Companies Act and having its principal office in the said State at 22nd Floor, 44 St. George’s Terrace, Perth (hereinafter called “Mitsui Iron”) ROBE RIVER LIMITED a company incorporated under the Companies Ordinance of the Australian Capital Territory and having its principal place of business at 1 Castlereagh Street, Sydney in the State of New South Wales (hereinafter called “RRL”) and NIPPON STEEL AUSTRALIA PTY. LIMITED a company incorporated in the State of New South Wales and having its registered office in that State at 60 Martin Place, Sydney, SUMITOMO METAL AUSTRALIA PTY. LIMITED a company incorporated in the State of New South Wales and having its registered office in that State at 31st Floor, CAGA Centre, 8 Bent Street, Sydney and the said MITSUI IRON ORE DEVELOPMENT PTY. LTD., such lastmentioned three companies acting together and carrying on business under the registered business name “CAPE LAMBERT IRON ASSOCIATES” and having their principal place of business in the State of Western Australia at 22nd Floor, 44 St. George’s Terrace, Perth (hereinafter collectively called “CLIA”), the said Cliffs Western, Mitsui Iron, RRL and CLIA (hereinafter collectively called “the Participants”) being the party of the third part.

WHEREAS:

- (a) by an agreement under seal dated the 18th day of November, 1964 made between the State of the one part and Basic Materials Pty. Limited (hereinafter called “Basic”) of the other part (which agreement was approved by and is scheduled to the *Iron Ore (Cleveland-Cliffs) Agreement Act 1964* and is hereinafter referred to as “the Agreement”) Basic acquired upon the terms and conditions set forth in the Agreement certain rights interests and benefits and assumed certain obligations with respect to the exploration for and development of specified iron ore deposits and the mining transportation processing pelletising and shipment of iron ore therefrom;
- (b) by virtue of various agreements under seal Cliffs became entitled to all the right title interest claim and demand whatsoever of Basic in and under the Agreement and by virtue of a deed of covenant with the State assumed the obligations of Basic thereunder;
- (c) by an agreement dated the 12th day of May, 1970 made between the State of the one part and Cliffs of the other part which is scheduled to the *Iron Ore (Cleveland-Cliffs) Agreement Act Amendment Act 1970* (hereinafter called “the first variation agreement”) the parties thereto varied the Agreement as therein set out for the purposes set out in the recitals thereto. Under the provisions of the said Act and in the events which happened the first variation agreement was approved thereby on and from the 30th day of December, 1970;
- (d) by deed dated the 29th day of June, 1970 made between the State, Cliffs and Cliffs Western, Mitsui Iron, RRL and Mt. Enid Iron Co. Pty. Ltd., Cliffs granted and assigned to the lastmentioned companies all the right title interest claim and demand of the “Company” (as defined in the Agreement) in and under the Agreement (as then or thereafter altered from time to time) except the rights of occupancy referred to therein of the mining areas therein defined and the rights to obtain mineral leases thereof as tenants in common in the following shares:

Cliffs Western	30%
Mitsui Iron	30%
RRL	35%
Mt. Enid Iron Co. Pty. Ltd. (hereinafter called “Mt. Enid”)	5%

and by the said deed each of them Cliffs Western, Mitsui Iron, RRL and Mt. Enid, severally covenanted and agreed with the State that it should to the extent of its commitment therein set out comply with, observe and perform the provisions of the Agreement (as then or thereafter amended) on the part of Cliffs to be complied with observed or performed in respect of the matters assigned as therein set forth to the intent that the same should be binding upon them (to the extent of the commitment therein set out) in the same manner and to the same extent as if each of them were expressly named in the Agreement;

- (e) by an agreement dated the 13th day of July, 1976 made between the State of the first part Cliffs of the second part and Cliffs Western, Mitsui Iron, RRL and Mt. Enid of the third part the execution whereof on behalf of the State was authorised by the *Iron Ore (Cleveland Cliffs) Agreement Act Amendment Act 1973* (hereinafter called “the second variation agreement”) the parties thereto further varied the Agreement as therein set out;
- (f) by an agreement dated the 22nd day of June, 1977 made between Mt. Enid as vendor and CLIA as purchaser Mt. Enid with effect from the 1st day of July, 1977 sold and assigned to CLIA the whole of its 5% share in and under the Agreement (as amended by the first variation agreement and the second variation agreement) and by virtue of a deed of covenant with the State made the 1st day of July, 1977 CLIA assumed the obligations of Mt. Enid thereunder.
- (g) by an agreement dated the 5th day of October, 1983 made between the State of the first part Cliffs of the second part and the Participants of the third part (hereinafter called “the third variation Agreement”) the parties thereto further varied the Agreement as therein set out in manner provided for in the Agreement; and
- (h) the parties desire to add to and amend the provisions of the Agreement as amended and added to by the first variation agreement the second variation agreement and the third variation agreement (hereinafter referred to as “the Principal Agreement”).

NOW THIS AGREEMENT WITNESSETH:

1. Words and phrases to which meanings are given under clause 1 of the Principal Agreement (other than words and phrases to which meanings are given in this Agreement) shall have the same respective meanings in this Agreement as are given to them in clause 1 of the Principal Agreement.

2. Subject to the provisions of the deed referred to in recital (d) hereof, for the purposes of the Principal Agreement and this Agreement the expression “the Company” shall where the context so admits mean and include both Cliffs and the Participants.
3. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.
4. The subsequent clauses of this Agreement shall not operate unless and until the Bill to ratify this Agreement referred to in clause 3 hereof is passed as an Act before the 30th day of June, 1984 or such later date if any as the parties hereto may mutually agree upon.
5. The Principal Agreement is added to and varied as hereinafter provided and the Principal Agreement shall be read and construed accordingly.
6. The Principal Agreement is hereby amended as follows:
 - (1) Clause 1 —
 - (a) by inserting, after the definition “Land Act”, the following definition —

“ “local authority” means the council of a municipality that is a city, town or shire constituted under the *Local Government Act 1960*; ”;
 - (b) by inserting, after the definition of “year 1”, the following paragraph —

“reference in this Agreement to the Company shall not include persons (other than the parties to this agreement) to whom land in the port townsite is or is agreed to be transferred or otherwise disposed of by the Company in accordance with a proposal approved pursuant to clause 7C hereof;”.
 - (2) Clause 6 —

by deleting “(1) Within” and substituting “Within”.
 - (3) By inserting after clause 7B the following clauses —

“Further proposals relating to port townsite”⁴

7C. (1) The Company may submit to the Minister from time to time detailed proposals with respect to the port townsite relating to —

 - (a) the transfer to or vesting in the State or the appropriate instrumentality of the State or

- the relevant local authority as the case may be of the ownership, care control and management maintenance or preservation of any service or facility owned and/or operated by the Company hereunder;
- (b) the vesting in transfer surrender lease or sublease to the State or the appropriate instrumentality of the State or the relevant local authority as the case may be of any land of which the Company is the lessee or proprietor in fee simple hereunder;
 - (c) the proposed sale by the Company of any land which on the 1st day of April 1984 was the subject of a sublease from the Company and was used for commercial community or welfare purposes, to the sub lessee thereof or, with the prior consent of the Minister, to any other person; or
 - (d) any other purpose concerning the maintenance use or operation of the Company's services or facilities situated in or near the port townsite, as the Minister shall approve.
- (2) The provisions of clause 7A hereof shall not apply to proposals submitted pursuant to this clause.
 - (3) The Minister shall within two (2) months of the receipt of proposals submitted pursuant to subclause (1) of this clause give to the Company notice either of —
 - (a) his approval thereof; or
 - (b) any objections or alterations desired thereto and in such case shall afford the Company an opportunity to consult with and submit new proposals to the Minister.
 - (4) If within two (2) months of receipt of a notice pursuant to paragraph (b) of subclause (3) of this clause the Minister has not given his approval to the

said proposals, the said proposals shall not be referable to arbitration hereunder but shall lapse.

- (5) The Company shall implement proposals approved pursuant to this clause in accordance with the terms thereof.

- 7D. If a proposal approved pursuant to clause 7C hereof provides for the surrender by the Company to the State of Special Lease No. 3116/4629 (Crown Lease No. 310/1970) and all land held by the Company thereunder: —

Grant and lease of lands⁴

- (a) the State shall in accordance with such approved proposal —
- (i) grant to the Company in fee simple at a price to be determined by the Minister for Lands; and/or
 - (ii) lease to the Company for such terms or periods and on such terms and conditions as, subject to the approved proposal, shall be determined by the Minister for Lands

such part or parts of the land so surrendered as that proposal so provides;

Sale of lots for housing⁴

- (b) the Company may, after such surrender, apply to the State from time to time for lots of land within the area shown coloured green on the plan marked “B” (initialled by or on behalf of the parties hereto for the purpose of identification) for housing for residential use by employees engaged in the operations of the Company under this Agreement and the State will provide out of such land (or so much thereof as has not been released prior to the date of such application), within a reasonable period after application therefor by the Company (having regard to the normal time to be taken for subdivision and servicing if this is required by reason of such application), the lots so applied for, such lots to be vacant serviced lots of such size and position as is

determined by the Minister for Lands after consultation with the Company for purchase by the Company in fee simple at prices to be determined by the Minister for Lands (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 providing and servicing such lots;

Release of lands ⁴

- (c) notwithstanding the provisions of the Land Act the Minister for Lands shall not at any time put up for sale or lease as a single release to persons other than the Company more than 30 lots of land within the land shown coloured green on the said plan marked “B” without first consulting with the Company for the purpose of ensuring that provision has been made for the future housing requirements of employees engaged in the operations of the Company under this Agreement; and

Preservation of subleases by Company ⁴

- (d) if any land within the land so surrendered is or is subsequently to be granted in fee simple to the Company by the State pursuant to such approved proposal and that land is, immediately prior to the surrender thereof, the subject of a sublease granted, or the subject of an agreement for sublease about to be granted or renewed by the Company under the said Special Lease then, notwithstanding the surrender of the said Special Lease, any provision in the sublease or agreement for sublease or the provisions of any Act or any principle of law or equity to the contrary, that sublease shall as between the Company and the sublessee and any person deriving title under the sublessee continue and at all times remain in full force and effect in accordance with but subject to its terms as if the said Special Lease had not been surrendered.

Authority to enter into agreements ⁴

- 7E. Where pursuant to any approved proposal as to any of the matters referred to in clause 7C hereof or as varied pursuant

to subclause (3) of clause 14 hereof provision is made for the relevant local authority consistent with its functions as a local authority or an instrumentality of the State to enter into and carry out any agreement with the Company and/or for the Minister or respective Ministers administering the *Hospitals Act 1927*, the *Education Act 1928*, the *Public Works Act 1902*, the *Fire Brigades Act 1942*, the *Country Areas Water Supply Act 1947* and the *Country Towns Sewerage Act 1948* to enter into and carry out any agreement with the Company —

- (a) the *Local Government Act 1960*, the *Hospitals Act 1927*, the *Education Act 1928*, the *Public Works Act 1902*, the *Fire Brigades Act 1942*, the *Country Areas Water Supply Act 1947* and the *Country Towns Sewerage Act 1948* shall for the purposes of implementing such approved proposals be deemed to be modified by the inclusion of a power whereby such relevant local authority, instrumentality of the State and/or Minister or Ministers are authorised and empowered to enter into and carry out any such agreement; and
- (b) the relevant local authority, instrumentality of the State and such Minister or Ministers may enter into and carry out any such agreement notwithstanding the other provisions of this Agreement.

7F. Notwithstanding the provisions of clause 7A hereof, where pursuant to an approved proposal under clause 7C hereof the Company has surrendered to the State Special Lease No. 3116/4629 (Crown Lease No. 310/1970) and all land held by the Company thereunder and the Minister has approved proposals pursuant to clause 7C hereof with respect to schools hospitals and police station facilities and the housing for State employees associated therewith the State thereafter will continue to operate and undertake the maintenance of such facilities and any additions thereto and the Company shall not thereafter be required to submit any proposals with respect to the provision, operation or maintenance of such facilities in or near the port townsite except where any such facilities are required to meet the

needs of any construction workforce involved in the operations of the Company under this Agreement.”.

(4) Clause 8 —

(a) subclause (1) paragraph (b) —

- (i) by inserting after “hereof”, where it first occurs the following —

“or as varied from time to time pursuant to subclause (3) of clause 14 hereof”;

and

- (ii) by inserting after “paragraph”, where it first occurs in the first proviso, the following —

“or otherwise payable pursuant to the provisions of paragraph (n) of clause 10 hereof”;

(b) subclause (2) —

- (i) by inserting after “clause” the following —

“, the implementation of the Company’s proposals as finally approved under clause 7C hereof, clause 7D hereof and paragraph (n) of clause 10 hereof”

- (ii) by deleting “and” in paragraph (e);

- (iii) by deleting “Act.” in paragraph (f) and substituting “Act.”; and

- (iv) by adding after paragraph (f) the following paragraphs —

“(g) the inclusion of a power whereby any special lease granted to the Company hereunder may be varied by agreement or surrendered in whole or part; and

(h) the inclusion of a power whereby any land granted or leased to the Company hereunder may be leased or subleased by the company to the State or any appropriate instrumentality of the State or the relevant local authority as the case may be.”;

- (c) subclause (4) paragraph (b) —
by deleting “nor any of the lands the subject of any lease or licence granted to the Company in terms of” and substituting the following —
“nor any lands for the time being held by the Company under any lease or licence issued pursuant to”; and
 - (d) subclause (6) —
by deleting “granted or assigned” and substituting the following —
“held by the Company”.
 - (5) Clause 10 —
 - (a) by adding after paragraph (a) the following paragraphs —
 - “(aa) that notwithstanding any surrender by the Company to the State of the whole or any part or parts of the land within Special Lease No. 3116/4629 (Crown Lease No. 310/1970) all references in the Determination with respect to Electrical Energy made by the Minister pursuant to subparagraph (i) of paragraph (a) of this clause on the 21st day of February, 1980 to the boundaries of Crown Lease No. 310/1970 shall mean and be construed as the boundaries of Crown Lease No. 310/1970 at the time of grant of such lease;
 - (ab) that —
 - (i) the extent to which the Company may generate transmit supply and charge for and any powers and authorities with respect to electrical energy determined by the Minister pursuant to subparagraph (i) of paragraph (a) of this clause; and
 - (ii) any rights and obligations with respect to water contained in the deed dated as of the 13th day of July 1976 referred to in subparagraph (iii) of paragraph (a) of this clause
- shall be modified from time to time to accord with proposals approved under clause 7C hereof (including

any variation thereof pursuant to subclause (3) of clause 14 hereof);”;

- (b) paragraph (d) subparagraph (i) —

by deleting “Agreement;” and substituting the following —

“Agreement PROVIDED that this paragraph shall not apply to townsite lots or other areas within any land granted to the Company in fee simple pursuant to paragraph (a) of clause 7D hereof unless such lots or areas are then owned by the Company or to any townsite lots sold to the Company pursuant to paragraph (b) of clause 7D hereof;”;

- (c) paragraph (g) —

by deleting “granted to” and substituting the following —

“held by”; and

- (d) by inserting after paragraph (m) the following paragraph —

“(n) that from and after the surrender by the Company to the State of any land within Special Lease No. 3116/4629 (Crown Lease No. 310/1970) under a proposal approved pursuant to clause 7C hereof, notwithstanding the provisions of subparagraph (i) of paragraph (b) of subclause (1) of clause 8 hereof, any grants to the Company pursuant to that subparagraph of —

- (i) townsite lots within or near the port townsite in fee simple shall in lieu of being for nominal consideration be for a consideration to be determined by the Minister for Lands (having regard to the price of any similar lots then being made available by the State to others) which will include the cost (if any) to the State of providing and servicing such lots; and
- (ii) special leases of Crown lands within or near the port townsite (excluding any such lands within the harbour area and the railway) shall in lieu of being at peppercorn rental be

at such rentals as are prescribed by law or are otherwise reasonable.”.

(6) Clause 13 —

by inserting after subclause (3) the following subclause —

“(4) Where in respect of any land acquired by the Company under this Agreement the Company makes any disposition in accordance with a proposal approved pursuant to clause 7C hereof, then notwithstanding the provisions of subclause (1) of this clause but subject to any contrary intention contained in any such approved proposal, the consent writing of the Minister shall not be required to any such disposition nor shall the assignee from the Company be required to enter into a deed of covenant as provided in subclause (1) of this clause.”.

(7) Clause 14 —

(a) subclause (5) —

by inserting after “hereunder” the following —

“(except in either case any obligation undertaken by the Company pursuant to subclause (5) of clause 7C hereof)”; and

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

“(6) Where in the performance of its obligations under subclause (5) of clause 7C hereof the Company pursuant to a proposal approved under that clause enters into any arrangement with a person (including an instrumentality of the State or a local authority) whereby that person assumes or agrees to assume any of the obligations undertaken by the Company under this Agreement in relation to the port townsite the State will discharge the Company from such obligations to the extent to which and during the period for which that person assumes or agrees to assume those obligations.”.

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 said THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., in the presence of —	}	BRIAN BURKE.
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DAVID PARKER,
MINISTER FOR MINERALS AND ENERGY.

SIGNED for and on behalf of CLIFFS INTERNATIONAL INC. by VICTOR FAHRNEY KOONTZ pursuant to and with the authority of a resolution of the Board of Directors of CLIFFS INTERNATIONAL INC. in the presence of —	}	V. KOONTZ.
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W. REES.

THE COMMON SEAL of CLIFFS WESTERN AUSTRALIAN MINING CO. PTY. LTD. was hereunto affixed by authority of a resolution of the Board of Directors and in the presence of —	}	(C.S.)
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V. KOONTZ, Director.

W. REES, Director.

THE COMMON SEAL of MITSUI IRON ORE DEVELOPMENT PTY. LTD. was hereunto affixed by authority of a resolution of the Board of Directors and in the presence of —	}	(C.S.)
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Y. OKAMOTO, Director.

J. N. MacKENZIE, Secretary.

THE COMMON SEAL of ROBE
RIVER LIMITED was hereunto affixed
by authority of a resolution of the Board
of directors and in the presence of — } (C.S.)

G. J. REANEY, Director.

A. R. EDWARDS, Secretary.

THE COMMON SEAL of NIPPON
STEEL AUSTRALIA PTY. LIMITED
was hereunto affixed by authority of the
Directors in the presence of — } (C.S.)

H. HIGAKI, Director.

S. TAIL, Secretary.

THE COMMON SEAL of
SUMITOMO METAL AUSTRALIA
PTY. LIMITED was hereunto affixed
by authority of the Directors and in the
presence of — } (C.S.)

S. OKAMOTO, Director.

K. SATO, Secretary.

THE COMMON SEAL of MITSUI
IRON ORE DEVELOPMENT PTY.
LTD. was hereunto affixed by authority
of a resolution of the Board of Directors
and in the presence of — } (C.S.)

Y. OKAMOTO, Director.

J. N. MacKENZIE, Secretary.

[Fourth Schedule inserted: No. 37 of 1984 s. 4.]

Fifth Schedule — Fourth variation agreement

[s. 3D]

[Heading inserted: No. 95 of 1985 s. 6; amended: No. 19 of 2010 s. 4.]

AN AGREEMENT made the 29th day of October 1985, 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 instrumentalities thereof from time to time (hereinafter called “the State”) of the first part CLIFFS INTERNATIONAL INC. a limited company incorporated under the laws of the State of Ohio, one of the United States of America and registered in the State of Western Australia under the provisions of the *Companies Act 1961* of the said State and having its registered office in the State of Western Australia at 12-14 St. George’s Terrace, Perth (hereinafter called “Cliffs”) of the second part and CLIFFS WESTERN AUSTRALIAN MINING CO. PTY. LTD., a company incorporated under the — said Companies Act and having its registered office at 12-14 St. George’s Terrace, Perth (hereinafter called “Cliffs Western”) MITSUI IRON ORE DEVELOPMENT PTY. LTD. a company incorporated under the said Companies Act and having its principal office in the said State at 22nd Floor, 44 St. George’s Terrace, Perth (hereinafter called “Mitsui Iron”) PEKO-WALLSEND OPERATIONS LIMITED a company incorporated under the Companies Act of the State of New South Wales and having its principal place of business at 1 Macquarie Street, Sydney in the State of New South Wales (hereinafter called “Peko”) and NIPPON STEEL AUSTRALIA PTY. LIMITED a company incorporated in the State of New South Wales and having its registered office in that State at 60 Martin Place, Sydney, SUMITOMO METAL AUSTRALIA PTY. LIMITED a company incorporated in the State of New South Wales and having its registered office in that State at 30th floor CBA Centre, 60 Margaret Street, Sydney and the said MITSUI IRON ORE DEVELOPMENT PTY. LTD., such lastmentioned three companies acting together and carrying on business in the State of Western Australia at 22nd Floor, 44 St. George’s Terrace, Perth (hereinafter collectively called “CLIA”), the said Cliffs Western, Mitsui Iron, Peko and CLIA (hereinafter collectively called “the Participants”) being the party of the third part.

WHEREAS:

- (a) By an agreement under seal dated the 18th day of November One thousand nine hundred and sixty-four made between the State of the one part and Basic Materials Pty. Limited (hereinafter called “Basic”) of the other part (which agreement was approved by and is scheduled to the *Iron Ore (Cleveland-Cliffs) Agreement Act 1964* and is hereinafter referred to as “the Agreement”) Basic acquired upon the terms and conditions set forth in the agreement certain rights interests and benefits and assumed certain obligations with respect to the exploration for and development of specified iron ore deposits and the mining transportation processing pelletising and shipment of iron ore therefrom.
- (b) By virtue of various agreements under seal Cliffs International, Inc. (“Cliffs”) became entitled to all the right title interest claim and demand whatsoever of Basic in and under the Agreement and by virtue of deed of covenant with the State assumed the obligations of Basic thereunder.
- (c) The State and The Broken Hill Proprietary Company Limited (which company is hereinafter referred to as “Broken Hill”) entered into an agreement (which agreement was approved by and is scheduled to the *Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act 1964*, and is hereinafter referred to as “the Broken Hill Agreement”) for the mining by that company of iron ore in specified areas and for the establishment by that company of certain port and railway facilities to be used for the transportation of such iron ore and for the construction and establishment within the said State of plant for the secondary processing of iron ore and with regard to other matters.
- (d) By assignment and deed of covenant made and given pursuant to Clause 27 of the Broken Hill Agreement the rights and obligations of Broken Hill arising under that agreement are now the rights and obligations of BHP Minerals Limited (then called “Dampier Mining Company Limited”) (hereinafter referred to as “BHPM”).
- (e) The areas covered by the Agreement and the Broken Hill Agreement are adjacent and Cliffs and BHPM entered into an agreement (hereinafter referred to as “the Companies Agreement”) which provided for various consultation and co-operation between them and subject to any necessary consents of the State for, *inter alia*:
 - (i) BHPM to make available for use by Cliffs iron ore from the areas covered by the Broken Hill Agreement of an amount of up to 150,000,000 tons or such greater amount that the terms of the Companies Agreement may oblige it to supply; and

- (ii) Cliffs to make available for purchase by BHPM in accordance with the Companies Agreement any iron ore that BHPM may require up to an amount of 2,000,000 tons per annum or such amount as the Companies may agree.
- (f) By an Agreement under seal dated the 12th day of May, 1970 between the State of the one part and Cliffs of the other part (which Agreement was approved and is scheduled to the *Iron Ore (Cleveland-Cliffs) Agreement Amendment Act 1970*) the Agreement was amended to take account of the developments contemplated in the Companies Agreement.
- (g) By an Agreement dated the 30th day of September, 1969 between the State of the one part and BHPM of the other part which agreement was scheduled to the *Iron Ore (Dampier Mining Company Limited) Agreement Act 1969* The Broken Hill Agreement was amended to take account of the developments contemplated in the Companies Agreement.
- (h) By deed dated the 29th day of June, 1970 made between the State, Cliffs and Cliffs Western, Mitsui Iron, Robe River Limited (“RRL”) and Mt. Enid Iron Co. Pty. Ltd., (“Mt. Enid”) (hereinafter called the “Original Participants”) Cliffs granted and assigned to the Original Participants all the right title interest claim and demand of the “Company” (as defined in the Agreement) in and under the Agreement (as then or thereafter altered from time to time) except the rights of occupancy referred to therein of the mining areas therein defined and the rights to obtain mineral leases thereof as tenants in common in the following shares:
- | | |
|----------------|-----|
| Cliffs Western | 30% |
| Mitsui Iron | 30% |
| RRL | 35% |
| Mt. Enid | 5% |
- and by the said deed each of them Cliffs Western, Mitsui Iron, RRL and Mt. Enid, severally covenanted and agreed with the State that it should to the extent of its commitment therein set out comply with, observe and perform, the provisions of the Agreement (as then or thereafter amended) on the part of Cliffs to be complied with observed or performed in respect of the matters assigned as therein set forth to the intent that the same should be binding upon them (to the extent of the commitment therein set out) in the same manner and to the same extent as if each of them were expressly named in the Agreement.
- (i) By virtue of various agreements and deeds Cliffs Western, Mitsui Iron, Peko and CLIA (which parties are hereinafter called “the Participants”)

are now entitled to all the right title and interests of the Original Participants in and under the Agreement (as amended) as tenants in common in the following shares:

Cliffs Western	30%
Mitsui Iron	30%
Peko	35%
CLIA	5%

- (j) The Participants, Cliffs and BHPM have now entered into an Agreement dated the Twenty Eighth day of October 1985 (hereinafter referred to as “the Second Companies Agreement) which provides subject to any necessary consents of the State for *inter alia* BHPM to make available for use by the Participants of iron ore from areas additional and adjacent to those provided for under the Companies Agreement and which are covered by The Broken Hill Agreement (as amended).
- (k) In view of the Second Companies Agreement, it is desirable that there should be some amendment to the various rights and obligations of the parties created by the Agreement (as amended by agreements dated 12th May 1970, 13th July 1976, 5th October 1983 and 30th April 1984 hereinafter referred to as the Principal Agreement) and by the Broken Hill Agreement (as amended).

NOW THIS AGREEMENT WITNESSETH:

1. This Agreement except for this Clause shall have no force or effect and shall not be binding upon the parties until it is approved by an Act of the Parliament of Western Australia.
2. If an Act to ratify this Agreement is passed by the Parliament of the said State the provisions of this Agreement shall take effect as though the same has been enacted by the ratifying Act and notwithstanding any Act or law to the contrary the State and the Minister shall for the purpose of implementing this Agreement have all the powers discretions and authorities conferred on them respectively by the Agreement for the purpose of implementing the Agreement.
3. Words and phrases to which meanings are given under Clause 1 of the Principal Agreement (other than words and phrases to which meanings are given in this Agreement) shall have the same respective meanings in this Agreement as are given to them in Clause 1 of the Principal Agreement.

4. Subject to the provisions of the deed referred to in recital (h) hereof, for the purposes of the Principal Agreement and this Agreement the expression “the Company” shall where the context so admits mean and include both Cliffs and the Participants.
5. The Principal Agreement is added to and varied as hereinafter provided and the Principal Agreement shall be read and construed accordingly.
6. The Principal Agreement is hereby amended as follows:
 - (1) Clause 1 (a) by inserting after the definition “Company’s wharf” the following definition —
 - “ “CRRIA” means Cliffs Robe River Iron Associates a joint venture comprising Cliffs Western Australian Mining Co. Pty. Ltd., Mitsui Iron Ore Development Pty. Ltd., Peko Wallsend Operations Ltd, and Cape Lambert Iron Associates (a partnership comprising Nippon Steel Australia Pty. Ltd, Sumitomo Metal Australia Pty. Ltd., and Mitsui Iron Ore Development Pty. Ltd.) responsible only severally in the proportions of 30%, 30%, 35% and 5% respectively and each of their successors and permitted assigns under this Agreement;
 - (b) by amending the definition of “mineral lease” as follows —
 - (i) by deleting “the sublease”, where it first occurs, and substituting the following —
“ any subleases ”;
 - (ii) by inserting after “the Company” the following —
“ and/or CRRIA, ”; and
 - (iii) by deleting the last word “sublease” and substituting the following —
“ subleases ”.
- (2) Clause 8 subclause (1) —
 - (a) by deleting in paragraph (a) “the sublease” and substituting the following —
“ any subleases ”;

(b) by inserting after paragraph (g) the following paragraph —

- “ (h) (i) shall permit Dampier to sublet to CRRIA the whole or any part with the approval of the Minister of any mineral lease granted pursuant to the agreements approved by the *Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act 1964*, and the *Iron Ore (Dampier Mining Company Limited) Agreement Act 1969*;
- (ii) shall in the event of the termination of any mineral lease subleased in whole or in part to CRRIA by Dampier grant to CRRIA a mineral lease for the unexpired term of the sublease covering the same mining areas and on the same terms as were applicable under the sublease except that royalties shall be payable at the rates provided for in this Agreement.

PROVIDED THAT any sublease referred to in subparagraph (i) and any mineral lease granted to CRRIA pursuant to subparagraph (ii) shall be included in the definition of “mineral lease” in Clause 1 of this Agreement and shall be subject to the provisions of Clause 13 and paragraph (e) of subclause (1) of Clause 8. ”.

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 said THE
HONOURABLE BRIAN
THOMAS BURKE, M.L.A., in
the presence of —

}

BRIAN BURKE

D PARKER
MINISTER FOR MINERALS AND ENERGY

SIGNED for and on behalf of
CLIFFS INTERNATIONAL INC.
by VICTOR FAHRNEY KOONTZ
pursuant to and with the authority of a
resolution of the Board of Directors of
CLIFFS INTERNATIONAL INC. in
the presence of —

V. KOONTZ

W. REES

THE COMMON SEAL of CLIFFS
WESTERN AUSTRALIAN MINING
CO. PTY. LTD. was hereunto affixed
by authority of the Directors and in the
presence of —

(C.S.)

Director V. KOONTZ

Director W. REES

THE COMMON SEAL OF MITSUI
IRON ORE DEVELOPMENT PTY.
LTD. was hereunto affixed by authority
of the Directors and in the presence
of —

(C.S.)

Director Y. OKAMOTO

Secretary J. MACKENZIE

Executed by PEKO-WALLSEND
OPERATIONS LIMITED by being
signed by its Attorney RICHARD
ANDREW LADBURY under Power
of Attorney dated 23rd October 1985
(who certifies that he has received no
notice of revocation thereof) in the
presence of:

R. A. LADBURY

R. E. BLANCKENSEE
Solicitor Perth

Executed by NIPPON STEEL
AUSTRALIA PTY LIMITED by being
signed by its Attorney YASUYOSHI
OKAMOTO under Power of Attorney
dated 25th October 1985 (who certifies
that he has received no notice of
revocation thereof) in the presence of: }

Y. OKAMOTO

R. M. B. REYNOLDS

Executed by SUMITOMO METAL
AUSTRALIA PTY. LTD. by being
signed by its Attorney YASUYOSHI
OKAMOTO under Power of Attorney
dated 24th October 1985 (who certifies
that he has received no notice of
revocation thereof) in the presence of: }

Y. OKAMOTO

R. M. B. REYNOLDS

THE COMMON SEAL of MITSUI
IRON ORE DEVELOPMENT PTY.
LTD. was hereunto affixed by authority
of the Directors and in the presence
of — }

(C.S.)

Director Y. OKAMOTO

Secretary J. MACKENZIE

[Fifth Schedule inserted: No. 95 of 1985 s. 6.]

Sixth Schedule — Fifth variation agreement

[s. 2]

*[Heading inserted: No. 87 of 1987 s. 8; amended: No. 19 of 2010
s. 4.]*

THIS AGREEMENT is made the 26th day of June 1987

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 instrumentalities thereof from time to time (hereinafter called “the State”) of the first part ROBE RIVER LIMITED a company incorporated in the Australian Capital Territory and having its principal office in the State of New South Wales situate at 10 Loftus Street, Sydney (hereinafter called “Robe River Limited”) of the second part and

ROBE RIVER MINING CO. PTY. LTD. (formerly Cliffs Western Australian Mining Co. Pty. Ltd.) a company incorporated in the State of Western Australia and having its registered office there at 12-14 St. George’s Terrace, Perth (hereinafter called “RRM”), MITSUI IRON ORE DEVELOPMENT PTY. LTD. a company incorporated in the State of Western Australia and having its principal office there at 24th Floor, Forrest Centre, 221 St. George’s Terrace, Perth (hereinafter called “Mitsui Iron”), PEKO-WALLSEND OPERATIONS LIMITED a company incorporated in the State of New South Wales and having its principal place of business there at 10 Loftus Street, Sydney (hereinafter called “Peko”), NIPPON STEEL AUSTRALIA PTY. LIMITED a company incorporated in the State of New South Wales and having its registered office there at 60 Martin Place, Sydney, SUMITOMO METAL AUSTRALIA PTY. LTD. a company incorporated in the State of New South Wales and having its registered office there at 30th Floor, CBA Centre, 60 Margaret Street, Sydney and the said MITSUI IRON ORE DEVELOPMENT PTY. LTD., such last mentioned three companies acting together and carrying on business under the name of CAPE LAMBERT IRON ASSOCIATES in the State of Western Australia at 24th Floor, Forrest Centre, 221 St. George’s Terrace, Perth (hereinafter collectively called “CLIA”) and the said NIPPON STEEL AUSTRALIA PTY. LIMITED and the said SUMITOMO METAL AUSTRALIA PTY. LTD. such last mentioned two companies acting together and carrying on business under the name of PANNAWONICA IRON ASSOCIATES in the State of Western Australia at 24th Floor, Forrest Centre,

221 St. George's Terrace, Perth (hereinafter collectively called "PIA") of the third part (the said RRM, Mitsui Iron, Peko, CLIA and PIA the parties of the third part being hereinafter collectively called "the Participants").

WHEREAS:

- (a) by an agreement under seal dated the 18th day of November, 1964 made between the State of the one part and Basic Materials Pty. Limited (hereinafter called "Basic") of the other part (which agreement was approved by and is scheduled to the *Iron Ore (Cleveland-Cliffs) Agreement Act 1964* and is hereinafter referred to as "the Agreement") Basic acquired upon the terms and conditions set forth in the Agreement certain rights interests and benefits and assumed certain obligations with respect to the exploration for and development of specified iron ore deposits and for the mining transportation processing pelletising and shipment of iron ore therefrom;
- (b) by virtue of various agreements under seal Robe River International Inc. formerly Cliffs International, Inc. (hereinafter called "Cliffs") became entitled to all the right interest claim and demand whatsoever of Basic in and under the Agreement and by virtue of deed of covenant with the State assumed the obligations of Basic thereunder;
- (c) the Agreement has been varied by the following agreements —
 - (i) the agreement dated the 12th day of May, 1970 approved by the *Iron Ore (Cleveland-Cliffs) Agreement Act Amendment Act 1970*;
 - (ii) the agreement dated the 13th day of July, 1976 the execution of which by the State was authorized by the *Iron Ore (Cleveland-Cliffs) Agreement Act Amendment Act 1973*;
 - (iii) an agreement made the 5th day of October, 1983;
 - (iv) the agreement dated the 30th day of April, 1984 ratified by the *Iron Ore (Cleveland-Cliffs) Agreement Amendment Act 1984*; and
 - (v) the agreement dated the 29th day of October, 1985 approved and ratified by the *Iron Ore (Cleveland-Cliff) Agreement Amendment Act 1985*

and as so varied from time to time is hereinafter referred to as "the Principal Agreement";

- (d) by virtue of various agreements and deeds the Participants are now entitled to all the right title interest claim and demand of the Company

(as defined in the Principal Agreement) in and under the Principal Agreement except Mineral Lease 248 SA granted thereunder by the State to Cliffs as tenants in common in the following shares:

RRM	30%
Mitsui Iron	20%
Peko	35%
CLIA	5%
PIA	10%;

- (e) by virtue of a deed dated the 12th day of May, 1986 Robe River Limited became entitled (inter alia) to all the right title and interest of Cliffs in and to the Principal Agreement and the said Mineral Lease 248 SA;
- (f) by an agreement dated the 24th day of December, 1976 made between RRM, Mitsui Iron, Robe River Limited and Mt. Enid Iron Co. Pty. Ltd (predecessors in title of the Participants) and BHP Minerals Limited (formerly called Dampier Mining Company Limited and referred to hereinafter as “BHPM”), BHPM purchased inter alia interests as therein described in certain leases subleases and licences relating to the port and railway facilities constructed under the Principal Agreement and by an agreement dated the 31st day of December, 1976 and made between the State and BHPM, BHPM agreed to comply with observe and perform the provisions of the Principal Agreement to be complied with observed and performed in regard to the property so purchased;
- (g) by an assignment and deed of covenant dated the 25th day of June, 1987 made between the State, BHPM and the Participants, BHPM with effect from the 1st day of December, 1986 sold and assigned to the Participants inter alia the whole of its interests in the leases subleases and licences referred to in recital (f) hereof and the Participants agreed to comply with observe and perform the provisions of the Principal Agreement to be complied with observed and performed in regard to the property so acquired and by a release of the same date the Minister (as defined in the Principal Agreement) released BHPM from its obligations to the State in respect thereof;
- (h) by an assignment and deed of covenant dated the 25th day of June, 1987 and made between the State, BHPM, the Participants, The Broken Hill Proprietary Company Limited and Australian Iron and Steel Proprietary Limited, BHPM assigned to the Participants all its interest in the agreement defined in section 1A of the *Iron Ore (Dampier Mining Company Limited) Agreement Act 1969* (hereinafter called “the Dampier

Agreement”) and in the clauses of the Agreement defined in section 2 of the *Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act 1964* (hereinafter called “the 1964 BHP Agreement”) set out in item 1 of the Schedule hereto and by the same deed the Participants acquired the benefit of and became subject to the obligations arising under the clauses of the 1964 BHP Agreement set out in item 2 of the Schedule hereto insofar as they related to the interests of the Participants in the Dampier Agreement and the clauses of the 1964 BHP Agreement set out in item 1 of the Schedule hereto;

- (i) by a release dated the 25th day of June, 1987 the Minister (as defined in the 1964 BHP Agreement) released BHPM and The Broken Hill Proprietary Company Limited from liability for the performance and observance of the covenants and agreements on their part contained in the clauses set out in item 1 of the Schedule hereto and released BHPM from liability for the performance and observance of the covenants and agreements on its part contained in the Dampier Agreement;
- (j) as a consequence of changed circumstances which caused the production of iron ore pellets under the Principal Agreement to become uneconomic the Minister (as defined in the Principal Agreement) approved the sale to the People’s Republic of China of certain key components of the pellet plant constructed pursuant to the Principal Agreement; and
- (k) the parties hereto desire to amend the Principal Agreement in the light of the acquisitions by the Participants referred to in recitals (g) and (h) hereof and the said sale of the pellet plant.

NOW THIS AGREEMENT WITNESSES:

- 1. The provisions of this Agreement shall not come into operation until a Bill to ratify this Agreement is passed by the Legislature of the said State and comes into operation as an Act.
- 2. The Principal Agreement is hereby varied as follows —
 - (1) Clause 1 —
 - (a) by deleting the definition of “Dampier” and substituting the following definition —

“ “Dampier” means BHP Minerals Limited (formerly Dampier Mining Company Limited);”;

- (b) by inserting after the definition of “Dampier” the following definition —

“ “Dampier Mineral Lease” means mineral lease No. 254 SA granted to Dampier pursuant to the Agreement defined in section 2 of the *Iron Ore (The Broken Hill Proprietary Company Limited) Agreement Act 1964* and the agreement defined in section 1A of the *Iron Ore (Dampier Mining Company Limited) Agreement Act 1969*;”;
- (c) in the definition of “mineral lease”, by deleting “and includes any subleases of any area of a mineral lease sublet to the Company and/or CRRIA by Dampier and any renewal of such lease or subleases” and substituting the following —

“and includes any areas added to the mineral lease pursuant to the provisions of clause 10A hereof and any renewal of such lease”;
- (d) by inserting after the definition of “State Energy Commission” the following definition —

“ “the 1987 Amendment date” means the date on which the provisions of the agreement ratified by the *Iron Ore (Cleveland-Cliffs) Agreement Amendment Act 1987* come into operation;”.
- (2) Clause 6 —

in the marginal note, by deleting “other”.
- (3) Clause 7A —
 - (a) by inserting after “may require” the following —

“and in respect of measures to be taken in relation to the matters the subject of the proposals for the protection and management of the environment”;
 - (b) by deleting the following —

“The provisions of clause 6 shall mutatis mutandis apply to detailed proposals submitted pursuant to this clause.”.
- (4) By inserting after clause 7A the following clauses —

“7AB. (1) On receipt of proposals pursuant to clause 7A hereof the Minister shall —

 - (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 Company submits a further proposal or proposals in respect of some other of the matters mentioned in clause 7A hereof 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 Company makes such alterations thereto or complies with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions.
- (2) The Minister shall within two months after receipt of the said proposals pursuant to subclause (1) give notice to the Company of his decision in respect to the same.
- (3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (4) Subject to subclause (5) of this clause if the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) and the Company considers that the decision is unreasonable the Company within two months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision.
- (5) The Company may withdraw its proposals submitted pursuant to clause 7A hereof at any time before approval thereof or, where any decision of the

Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the proposed modification expansion or variation of its activities as so proposed in those proposals.

- (6) The Company shall implement the decision of the Minister or an award made on arbitration (where the proposals are not withdrawn) as the case may be in accordance with the terms thereof.

- 7AC. (1) The Company shall in respect of the matters referred to in clause 7A hereof which are the subject of proposals approved or determined under clause 7AB hereof carry out a continual programme of investigation, research and monitoring to ascertain the effectiveness of the measures it is taking both generally and pursuant to its approved proposals for the protection and management of the environment.
- (2) The Company shall during the currency of this Agreement, at yearly intervals commencing from the dates when proposals under clause 7A hereof are approved or determined or such other date or dates as the Company and the Minister may agree, submit reports to the Minister concerning —
- (a) measures taken for the protection and management of the environment both generally and pursuant to any proposals made under clause 7A hereof; and
 - (b) investigations, research and monitoring carried out pursuant to subclause (1) of this clause.
- (3) Each 3 years commencing from the date referred to in subclause (2) of this clause the report submitted to the Minister under that subclause shall be more detailed and shall embrace not only the matters referred to in paragraphs (a) and (b) of subclause (2) of this clause but also the results and conclusions of the investigations, research and monitoring carried out during the previous 3 years and a programme of

- measures to be taken for protection and management of the environment, including investigations, research and monitoring, for the ensuing 3 years.
- (4) The Minister may within 2 months of receipt of a detailed report pursuant to subclause (3) of this clause notify the Company that he —
- (a) requires amendment of the report and/or programme for the ensuing 3 years; or
 - (b) requires additional detailed proposals to be submitted for the protection and management of the environment in relation to matters the subject of proposals approved or determined under clause 7AB hereof.
- (5) The Company shall within 2 months of receipt of a notice pursuant to paragraph (a) of subclause (4) of this clause submit to the Minister an amended report and/or programme as required. The Minister shall afford the Company full opportunity to consult with him on his requirements during the preparation of any amended report or programme.
- (6) The Minister may within 1 month of receipt of an amended report or programme pursuant to subclause (5) of this clause notify the Company that he requires additional detailed proposals to be submitted for the protection and management of the environment in relation to matters the subject of proposals approved or determined under clause 7AB hereof.
- (7) The Company shall within 2 months of receipt of a notice pursuant to paragraph (b) of subclause (4) or subclause (6) of this clause submit to the Minister additional detailed proposals as required and the provisions of clause 7AB hereof where applicable shall *mutatis mutandis* apply.
- (8) The Company shall implement the decision of the Minister or an award on arbitration as the case may be in accordance with the terms thereof.”.

- (5) Clause 8 subclause (1) —
 - (a) paragraph (a) —
by deleting “(other than the mining areas included in any subleases referred to in the definition of “mineral lease”);”;
 - (b) paragraph (b) —
 - (i) by deleting subparagraph (ii);
 - (ii) in the first proviso to paragraph (b) —
 - (A) by deleting “the thirtieth anniversary of the export date” and substituting the following —
“the 31st day of December, 1988”;
 - (B) by deleting “after such anniversary as aforesaid” and substituting the following —
“after such date”;
 - (iii) by deleting the second proviso to paragraph (b);
 - (c) by deleting paragraph (h) (inserted by clause 6(2)(b) of the agreement defined as the fourth variation agreement in section 2 of the Act ratifying the Principal Agreement).
- (6) Clause 8 subclause (4) —
by deleting paragraph (g).
- (7) Clause 9 subclause (2) —
 - (a) by inserting in paragraph (d) after “equipment” the following —
“(other than the pellet plant)”;
 - (b) in paragraph (e) by deleting the proviso and substituting the following proviso —
“PROVIDED HOWEVER that this paragraph shall not apply to iron ore used for the production of iron ore pellets or for secondary processing or for the manufacture of iron or steel in any part of the said State lying north of the twenty-sixth parallel of latitude.”;
 - (c) by deleting paragraph (i) and substituting the following paragraph —

- “(i) (a) for the purposes of this Agreement —
- (i) as far as it is reasonable and economically practicable so to do —
 - (A) use labour available within the said State; and
 - (B) use the services of engineers surveyors architects and other professional consultants, project managers manufacturers suppliers and contractors resident and available within the said State;
 - (ii) when preparing specifications calling for tenders and letting contracts for work materials plant equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that Western Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote; and
 - (iii) 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;
- (b) 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 subparagraph (a) of this paragraph and shall report to the Company concerning such third party’s implementation of that condition;

- (c) submit a report to the Minister at quarterly intervals or such longer periods as the Minister determines commencing from the 1987 Amendment date concerning its implementation of the provisions of this paragraph and the performance of third parties in relation thereto pursuant to subparagraph (b) of this paragraph together with a copy of any report received by the Company pursuant to that subparagraph during that quarter PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine;”;
 - (d) paragraph (j) —
 - (i) in subparagraph (iii) by inserting after “ton” the following —

“until the 31st day of December 1988 and thereafter at the rate of three and three quarter per centum (3¾%) of the f.o.b. revenue (computed as aforesaid)”;
 - (ii) by deleting the three provisos appearing after subparagraph (xi);
 - (e) paragraph (o) —

in subparagraph (ii) of the proviso by inserting after “Dampier” the following —

“during such period as Dampier is the holder of the Dampier Mineral Lease”;
 - (f) by deleting paragraph (p).
- (8) By inserting after clause 10 the following clause —
- “10A. Notwithstanding the provisions of the *Mining Act 1978* the Company shall on or before the expiration of three months from the 1987 Amendment date surrender or cause to be surrendered to the State (the Company having before such surrender registered or caused to be registered surrenders of any subleases (limited however in the case of Sublease Numbered 1H/79 to the areas referred to in paragraph (a) following) and subleases and

discharges of any mortgages and other encumbrances affecting the lands) —

- (a) those portions of the mineral lease comprising Middle Robe Section 20 and Gorge Sections 30-32, 34, 36 and 39-44;
- (b) the Dampier Mineral Lease; and
- (c) exploration licences numbered 47/21 and 47/22 granted under the *Mining Act 1978*

and upon such surrender the areas comprised within the Dampier Mineral Lease and the said exploration licences immediately before the surrenders thereof shall be deemed to be included in the mineral lease subject to the same terms covenants and conditions as apply to the mineral lease (with such apportionments of rents as is necessary), notwithstanding that the survey of such additional land has not been completed (but subject to correction to accord with the survey when completed at the Company's expense) and an endorsement to that effect shall be made by the Department of Mines on the mineral lease.”.

- (9) Clause 11 —

by deleting the following —

“other than those on the plant site and”.

- (10) Clause 13 —

- (a) subclause (1) —

by deleting the following —

“and (c) assign sublet or dispose of to Dampier in whole or in part rights under this Agreement (including its rights to or as the holder of any lease license easement grant or other title) in relation to the railway and the port and related facilities or any of them”;

- (b) by deleting subclause (3).

- (11) Clause 16 —

by deleting the following —

“and inability (common in the iron ore pellets export industry) to profitably sell iron ore pellets”.

3. The Participants hereby agree that notwithstanding the provisions of any deed of assignment or covenant or other document or agreement to the contrary any covenant or agreement on their part to be observed performed or complied with under the Principal Agreement as varied from time to time shall be deemed to be a joint covenant or agreement as the case may be on the part of those parties.
4. Upon the surrender to the State of the Dampier Mineral Lease in accordance with clause 10A of the Principal Agreement (as amended by this Agreement), the Dampier Agreement, the clauses of the 1964 BHP Agreement set out in item 1 of the Schedule hereto, and the clauses of the 1964 BHP Agreement set out in item 2 of the Schedule hereto insofar as they may relate to the interests of the Participants in the Dampier Agreement and the 1964 BHP Agreement shall thereupon be cancelled and the rights and obligations of the parties thereto thereby terminated.

THE SCHEDULE

1964 BHP AGREEMENT:

1. Clauses 8, 9, 10, 21 except sub-clause (3), 22 except paragraphs (d) (e) (j) and (l), 23 except sub-clause (4)(c), (4)(d), (4)(e), (4)(g), (4)(h), (4)(i) and (5), 25 and 29.
2. Clauses 6, 22(d) (e) (j) and (l), 23(4)(c), (4)(d), (4)(e), (4)(h), (4)(i) and (5), 26, 27, 28, 30, 31, 32, 35, 36, 37 and 39.

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 said THE HONOURABLE BRIAN THOMAS BURKE, M.L.A. in the presence of —	}	BRIAN BURKE
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D. PARKER
MINISTER FOR MINERALS AND ENERGY

THE COMMON SEAL of ROBE RIVER LIMITED was hereunto affixed by authority of a resolution of the Board of Directors and in the presence of —	}	
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A. C. COPEMAN	Director	(C.S.)
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A. R. EDWARDS Secretary

THE COMMON SEAL of ROBE
RIVER MINING CO. PTY. LTD. was
hereunto affixed by authority of a
resolution of the Board of Directors and
in the presence of — }

A. C. COPEMAN Director (C.S.)

D. CALVIN Secretary

THE COMMON SEAL of MITSUI
IRON ORE DEVELOPMENT
PTY. LTD. was hereunto affixed by
authority of the Directors and in the
presence of — }

Y. OKAMOTO Director (C.S.)

J. MacKENZIE Secretary

THE COMMON SEAL of
PEKO-WALLSEND OPERATIONS
LIMITED was hereunto affixed by
authority of a resolution of the Board of
Directors and in the presence of — }

A. C. COPEMAN Director (C.S.)

A. R EDWARDS Secretary

NIPPON STEEL AUSTRALIA PTY
LIMITED by its duly appointed
Attorney MITSUI IRON ORE
DEVELOPMENT PTY. LTD. hereunto
affixing its Seal pursuant to a Power of
Attorney dated 28 October 1984
registered at the Office of Titles, Perth,
Western Australia with number
C 883525 and which Attorney by its
execution hereof also declares that it has
no notice of revocation of the Power of
Attorney aforesaid.

THE COMMON SEAL of MITSUI
IRON ORE DEVELOPMENT
PTY. LTD. was hereunto affixed by
authority of the Directors and in the
presence of — }

Y. OKAMOTO Director (C.S.)
J. MacKENZIE Secretary

SUMITOMO METAL AUSTRALIA
PTY. LTD. by its duly appointed
Attorney MITSUI IRON ORE
DEVELOPMENT PTY. LTD. hereunto
affixing its Seal pursuant to a Power of
Attorney dated 18 October 1984
registered at the Office of Titles, Perth,
Western Australia with
number C883524 and which Attorney
by its execution hereof declares that it
has no notice of revocation of the Power
of Attorney aforesaid.

THE COMMON SEAL of MITSUI
IRON ORE DEVELOPMENT
PTY. LTD. was hereunto affixed by
authority of the Directors and in
the presence of — }

Y. OKAMOTO Director (C.S.)
J. MacKENZIE Secretary

THE COMMON SEAL OF MITSUI
IRON ORE DEVELOPMENT PTY.
LTD. was hereunto affixed by authority
of a resolution of the Board of Directors
and in the presence of — }

Y. OKAMOTO Director (C.S.)

J. MacKENZIE Secretary

NIPPON STEEL AUSTRALIA PTY.
LIMITED by its duly appointed
Attorney MITSUI IRON ORE
DEVELOPMENT PTY. LTD. hereunto
affixing its seal pursuant to a Power of
Attorney dated 3rd November 1986
registered at the Office of Titles, Perth,
Western Australia with number
D357648 and which Attorney by its
execution hereof also declares that it has
no notice of revocation of the Power of
Attorney aforesaid.

THE COMMON SEAL of MITSUI
IRON ORE DEVELOPMENT
PTY. LTD. was hereunto affixed by
authority of the Directors and in the
presence of —

}
}

Y. OKAMOTO Director (C.S.)
J. MacKENZIE Secretary

SUMITOMO METAL AUSTRALIA
PTY. LTD. by its duly appointed
Attorney MITSUI IRON ORE
DEVELOPMENT PTY. LTD. hereunto
affixing its seal pursuant to a Power of
Attorney dated 21st October 1986
registered at the Office of Titles, Perth,
Western Australia with
number D357649 and which Attorney
by its execution hereof also declares that
it has no notice of revocation of the
Power of Attorney aforesaid.

THE COMMON SEAL of MITSUI
IRON ORE DEVELOPMENT PTY.
LTD. was hereunto affixed by the
authority of the Directors and in the
presence of —

Y. OKAMOTO	Director	(C.S.)
J. MacKENZIE	Secretary	

[Sixth Schedule inserted: No. 87 of 1987 s. 8.]

Seventh Schedule — Sixth variation agreement

[s. 2]

[Heading inserted: No. 61 of 2010 s. 10.]

2010

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

AND

**ROBE RIVER LIMITED
ACN 008 478 493**

**ROBE RIVER MINING CO PTY. LIMITED
ACN 008 694 246**

**MITSUI IRON ORE DEVELOPMENT PTY. LTD.
ACN 008 734 361**

**NORTH MINING LIMITED
ACN 000 081 434**

**NIPPON STEEL AUSTRALIA PTY. LTD.
ACN 001 445 049**

**SUMITOMO METAL AUSTRALIA PTY. LTD.
ACN 001 444 604**

**IRON ORE (ROBE RIVER) AGREEMENT 1964
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 instrumentalities thereof from time to time (**State**)

AND

ROBE RIVER LIMITED ACN 008 478 493 of Level 33, 120 Collins Street, Melbourne, Victoria (**RRL**)

AND

ROBE RIVER MINING CO PTY. LIMITED ACN 008 694 246 of Level 27, Central Park, 152 - 158 St George's Terrace, Perth, Western Australia (**RRMC**),

MITSUI IRON ORE DEVELOPMENT PTY. LTD. ACN 008 734 361 of Level 26, Exchange Plaza, 2 The Esplanade, Perth, Western Australia (**Mitsui**),

NORTH MINING LIMITED ACN 000 081 434 of Level 33, 120 Collins Street, Melbourne, Victoria (**NML**),

NIPPON STEEL AUSTRALIA PTY. LTD. ACN 001 445 049 of Level 24, 1 York Street, Sydney, New South Wales, **SUMITOMO METAL AUSTRALIA PTY. LTD.** ACN 001 444 604 of Level 39, Australia Square, 264 George Street, Sydney, New South Wales, and the said **MITSUI IRON ORE DEVELOPMENT PTY. LTD.** which 3 companies carry on business under the name of **Cape Lambert Iron Associates (CLIA)**, and

the said **NIPPON STEEL AUSTRALIA PTY LTD** and **SUMITOMO METAL AUSTRALIA PTY LTD** which 2 companies carry on business together under the name **Pannawonica Iron Associates (PIA)**.

(RRMC, Mitsui, NML, CLIA and PIA are collectively referred to in this Agreement as the **Robe Participants**.)

RECITALS

- A. The State, RRL and the Robe Participants are now the parties to the agreement dated 18 November 1964, approved by and scheduled to the *Iron Ore (Robe River) Agreement Act 1964* and which as subsequently

added to, varied or amended is referred to in this Agreement as the
“**Principal Agreement**”.

B. The parties wish to vary the Principal Agreement.

Operative provisions

- 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 Parliament of Western Australia to ratify this Agreement and shall endeavour to secure its passage as an Act prior to 31 December 2010 or such later date as the parties may agree.
- 3.**
 - (a) Clause 4 does not come into operation unless or until an Act passed in accordance with clause 2 ratifies this Agreement.
 - (b) If by 30 June 2011, or such later date as may be agreed pursuant to clause 2, clause 4 has not come into operation then unless the parties hereto otherwise agree this Agreement shall cease and determine and none of the parties shall have any claim against the other parties with respect to any matter or thing arising out of or done or performed or omitted to be done or performed under this Agreement.
- 4.** The Principal Agreement is varied as follows:
 - (1) in clause 1:
 - (a) by deleting the current definition of “direct shipping ore”, “fine ore” and “fines”;
 - (b) by inserting in the appropriate alphabetical positions the following new definitions:

“**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 Company 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;

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

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

“**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);

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

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

“Minister for Mines” means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the administration of the *Mining Act 1978* (WA);

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

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

“**Related Entity**” means a company in which:

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

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

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

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

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

- (c) in the definition of “agreed or determined” by:
 - (i) deleting “assessed at” and substituting “assessed on”; and
 - (ii) deleting all the words after “have regard to” and substituting a colon followed by:
 - “(i) in the case of iron ore initially sold at cost pursuant to paragraph (B) of the proviso to clause 9(2)(e), 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 (B)(iii) of that proviso and the seller in relation to the type of sale and the relevant international seaborne iron ore market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value; and
- (ii) in any other case, the prices for that type of iron ore prevailing at the time the price for such iron ore was agreed between the Company and the purchaser in relation to the type of sale and the market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value;";
- (d) in the definition of "Company's wharf" by inserting "and in clauses 9(2)(e) and (f) also any additional wharf constructed by the Company pursuant to this Agreement" before the semi colon;
- (e) in the definition of "f.o.b. value" by:
- (i) in paragraph (i):
- (A) inserting "subject to paragraph (ii)", before "in the case of"; and
- (B) deleting "assessed as" and substituting "assessed on";
- (ii) renumbering paragraph (ii) as paragraph (iii); and
- (iii) inserting after paragraph (i) the following new paragraph:
- "(ii) in the case of iron ore initially sold at cost pursuant to paragraph (B) of the proviso to clause 9(2)(e), the price which is payable for the iron ore by the arm's length purchaser as referred to in paragraph (B)(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";

- (f) in the definition of "loading port" by:
 - (i) renumbering the existing paragraph (c) as paragraph (e); and
 - (ii) inserting after paragraph (b) the following new paragraphs:
 - "(c) the Port of Port Hedland; or
 - (d) any other port constructed after the variation date under an Integration Agreement;"
- (g) in the definition of "mineral lease" by deleting "clause 10A" and substituting "clauses 9A or 10A";
- (h) in the definition of "secondary processing" by deleting "concentration or other beneficiation of iron ore other than by crushing or screening" and substituting "beneficiation of iron ore";
- (i) in the sentence beginning "marginal notes", by inserting "and clause notes" after "marginal notes"; and
- (j) by inserting at the end of clause 1 the following new paragraphs:

"Words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context.

Nothing in this Agreement shall be construed:

 - (a) to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its

- activities under this Agreement that may be made by or under the EP Act; or
- (b) to exempt the State or the Company from compliance with or to require the State or the Company to do anything contrary to any laws relating to native title or any lawful obligation or requirement imposed on the State or the Company as the case may be pursuant to any laws relating to native title; or
 - (c) to exempt the Company from compliance with the provisions of the *Aboriginal Heritage Act 1972 (WA)*.”;
- (2) by deleting clauses 7A and 7AB and substituting the following new clauses:
- “7A. (1) If the Company, at any time during the continuance of this Agreement after the variation date, desires to significantly modify, expand or otherwise vary its activities carried on pursuant to this Agreement (other than under clauses 7AC, 7C or 9D) beyond those activities specified in any proposals approved pursuant to clause 6 it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in clause 5(2)(a) as the Minister may require.
- (2) A proposal may with the consent of the Minister (except in relation to an Integration Agreement) and that of any parties concerned (being in respect of an Integration Agreement the Integration Proponent for that agreement) provide for the use by the Company of any works installations or facilities constructed or established under a Government agreement.
- (3) Each of the proposals pursuant to subclause (1) may with the approval of the Minister, or shall if so required by the Minister, be submitted separately and in any order as to any matter or matters in respect of which such proposals are required to be submitted.

- (4) At the time when the Company submits the said proposals it shall submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with its reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto.
- (5) The Company may withdraw its proposals pursuant to subclause (1) at any time before approval thereof, or where any decision in respect thereof is referred to arbitration as referred to in clause 7AB, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same.

Consideration of Company's proposals under clause 7A

- 7AB.(1) In respect of each proposal pursuant to subclause (1) of clause 7A the Minister shall:
- (a) subject to the limitations set out below, refuse to approve the proposal (whether it requests the grant of new tenure or not) if the Minister is satisfied on reasonable grounds that it is not in the public interest for the proposal to be approved; or
 - (b) approve of the proposal without qualification or reservation; or
 - (c) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in clause 7A(1) not covered by the said proposal; or

- (d) require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable, and in such a case the Minister shall disclose his reasons for such conditions,

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

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

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

The right to refuse to approve a proposal conferred by paragraph (a) may only be exercised in respect of a proposal where the Minister is satisfied on reasonable grounds that a purpose of the proposal is the integrated use of works installations or facilities

(as defined in subclause (7) of clause 9B for the purpose of that clause) as contemplated by clause 9B. It may not be so exercised in respect of a proposal if pursuant to clause 7AD(5) the Minister, prior to the submission of the proposal, advised the Company in writing that the Minister has no public interest concerns (as defined in that clause) with the single preferred development (as referred to in clause 7AD(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 7AD(5) in respect of that single preferred development.

- (2) The Minister shall within 2 months after receipt of proposals pursuant to clause 7A(1) give notice to the Company of his decision in respect to the proposals, PROVIDED THAT where a proposal is to be assessed under Part IV of the EP Act the Minister shall only give notice to the Company of his decision in respect to the proposal within 2 months after service on him of an authority under section 45(7) of the EP Act.
- (3) If the decision of the Minister is as mentioned in either of paragraphs (a), (c) or (d) of subclause (1) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (4) If the decision of the Minister is as mentioned in either of paragraphs (c) or (d) of subclause (1) and the Company considers that the decision is unreasonable the Company within 2 months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder. A decision of the

Minister under paragraph (a) of subclause (1) shall not be referable to arbitration under this Agreement.

- (5) If by the award made on the arbitration pursuant to subclause (4) the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.
 - (6) The Company shall implement the approved proposals in accordance with the terms thereof.
 - (7) Notwithstanding clause 14, the Minister may during the implementation of approved proposals approve variations to those proposals.”;
- (3) by inserting after clause 7AC the following new clause:

“Notification of possible proposals

- 7AD. (1) If the Company, upon completion of a pre-feasibility study in respect of any matter that would require the submission and approval of proposals pursuant to this Agreement (being proposals which will have as their purpose, or one of their purposes, the integrated use of works installations or facilities as contemplated by clause 9B) for the matter to be undertaken, intends to further consider the matter with a view to possibly submitting such proposals it shall promptly notify the Minister in writing giving reasonable particulars of the relevant matter.
- (2) Within one (1) month after receiving the notification the Minister may, if the Minister so wishes, inform the Company of the Minister’s views of the matter at that stage.
 - (3) If the Company is informed of the Minister’s views, it shall take them into account in deciding whether or not to proceed with its consideration of the matter and the submission of proposals.
 - (4) Neither the Minister’s response nor the Minister choosing not to respond shall in any way limit, prejudice or otherwise affect the exercise by the

Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.

- (5) (a) This subclause applies where the Company has settled upon a single preferred development a purpose of which is the integrated use of works installations or facilities (as defined in subclause (7) of clause 9B for the purpose of that clause) as contemplated by clause 9B.
- (b) For the purpose of this subclause "public interest concerns" means any concern that implementation of the single preferred development or any part of it will:
- (i) detrimentally affect economic and orderly development in the said State, including without limitation, infrastructure development in the said State; or
 - (ii) be contrary to or inconsistent with the planning and development policies and objectives of the State; or
 - (iii) detrimentally affect the rights and interests of third parties; or
 - (iv) detrimentally affect access to and use by others of lands the subject of any grant or proposed grant to the Company.
- (c) At any time prior to submission of proposals the Company may give to the Minister notice of its single preferred development and request the Minister to confirm that the Minister has no public interest concerns with that single preferred development.

- (d) The Company shall furnish to the Minister with its notice reasonable particulars of the single preferred development including, without limitation:
 - (i) as to the matters that would be required to be addressed in submitted proposals; and
 - (ii) its progress in undertaking any feasibility or other studies or matters to be completed before submission of proposals; and
 - (iii) its timetable for obtaining required statutory and other approvals in relation to the submission and approval of proposals; and
 - (iv) its tenure requirements.
- (e) If so required by the Minister, the Company will provide to the Minister such further information regarding the single preferred development as the Minister may require from time to time for the purpose of considering the Company's request and also consult with the Minister or representatives or officers of the State in regard to the single preferred development.
- (f) Within 2 months after receiving the notice (or if the Minister requests further information, within 2 months after the provision of that information) the Minister must advise the Company:
 - (i) that the Minister has no public interest concerns with the single preferred development; or
 - (ii) that he is not then in a position to advise that he has no public interest concerns

with the single preferred development
and the Minister's reasons in that regard.

- (g) If the Minister gives the advice mentioned in paragraph (f)(ii) the Company may, should it so desire, give a further request to the Minister in respect of a revised or alternate single preferred development and the provisions of this subclause shall apply *mutatis mutandis* thereto.”;
- (4) in clause 8(1)(b) by:
 - (a) in the second line deleting “clause 6” and substituting “clauses 6 or 7AB”;
 - (b) in subparagraph (i):
 - (i) inserting “or cause to be granted” after “granted”;
 - (ii) in the paragraph beginning “at peppercorn rental”, deleting “the harbour area”;
 - (iii) inserting after that paragraph the following new paragraph:

“at commercial rentals, licence or easement fees as applicable – leases, licences or easements within Port Walcott; and”,
 - (iv) inserting “, the *Marine and Harbours Act 1981* (WA)” after “*Jetties Act 1926*”; and
 - (v) inserting “installations or facilities” before “and operations hereunder”; and
 - (c) in the proviso following subparagraph (iii):
 - (A) deleting “and iron ore concentrates and iron ore pellets” after “all iron ore”; and
 - (B) deleting “or in the case of iron ore or concentrates production as the case may be of the iron or iron ore concentrates or iron ore pellets” and substituting “of the iron ore”;

- (5) by inserting after subclause (3) of clause 8 the following new subclause:
- “(3a) The provisions of subclause (1) 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.”;
- (6) by deleting paragraph (e) of clause 9(2) and substituting the following new paragraphs:
- “(e) ship, or procure the shipment of, all iron ore mined from the mineral lease and sold:
- (i) from the Company’s wharf; or
 - (ii) from any other wharf in a loading port which wharf has been constructed under an Integration Agreement; or
 - (iii) with the Minister’s approval given before submission of proposals in that regard, from any other wharf in a loading port which wharf has been constructed under another Government agreement (excluding the Integration Agreements),
- and use its best endeavours to obtain therefor the best price possible having regard to market conditions from time to time prevailing PROVIDED THAT:
- (A) this paragraph shall not apply to iron ore used for secondary processing or for the manufacture of iron or steel in any part of the said State lying north of the twenty sixth parallel of latitude; and
 - (B) iron ore from the mineral lease may be sold by the Company prior to or at the time of the shipment under this Agreement at a price equal to the production costs in respect of that iron ore up to the point of sale, if:
 - (i) the Minister is notified before the time of shipment that the sale is to be made at cost, providing details of the proposed sale; and

- (ii) the Minister is notified of the proposed arm's length purchaser in the relevant international seaborne iron ore market of the iron ore the subject of the proposed sale at cost; and
- (iii) there is included in the return lodged pursuant to subclause (2)(k) 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 in subclause (2)(ea);

Designated purchaser

- (ea) if required by notice in writing from the Minister, provide the Minister within 30 days after receiving the notice with evidence that the transaction as included in the return pursuant to paragraph (B)(iii) of subclause (2)(e) was a sale in the relevant international seaborne iron ore market to an independent participant in that market. If no evidence is provided or the Minister is not so satisfied on the evidence provided or other information obtained, the Minister may by notice to the Company designate the purchaser to be a designated purchaser and that designation will remain in force unless and until lifted by further notice from the Minister to the Company. For the avoidance of doubt, the parties acknowledge that marketing entities forming part of the corporate group including the Company (or part of the parallel corporate group if the Company is part of a dual-listed corporate structure) are not independent participants for the purposes of this subclause;";

- (7) by deleting paragraph (j) of clause 9(2) and substituting the following new paragraph:
- “(j) pay to the State royalty on all iron ore from the mineral lease (other than iron ore shipped solely for testing purposes) as follows:
- (i) on lump ore and on fine ore and pisolite fine ore not sold or shipped separately as such at the rate of 7.5% of the f.o.b. value;
 - (ii) on fine ore and pisolite fine ore sold or shipped separately as such at the rate of 5.625% of the f.o.b. value;
 - (iii) on beneficiated ore at the rate of 5% of the f.o.b. value; and
 - (iv) on all other iron ore at the rate of 7.5% of the f.o.b. value.

Where beneficiated ore is produced from an admixture of iron ore from the mineral lease and iron ore from elsewhere, a portion (and a portion only) of the beneficiated ore so produced being equal to the proportion that the amount of the iron in the iron ore from the 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 Company 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;”;

- (8) in clause 9(2)(k):
- (a) by deleting “or iron ore pellets or iron ore concentrates”;
 - (b) 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 paragraph (j)” after “the due date of return”; and

- (c) by deleting all the words after “on the basis of” and substituting a colon followed by:
 - “(i) in the case of iron ore initially sold at cost pursuant to paragraph (B) of the proviso to subclause (2)(e), at the price notified pursuant to paragraph (B)(iii) of that proviso; and
 - (ii) in any other case, invoices or provisional invoices (as the case may be) rendered by the Company to the purchaser (which invoices the Company shall render without delay simultaneously furnishing copies thereof to the Minister) of such iron ore or on the basis of estimates as agreed or determined,

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

- (9) in clause 9(2)(n):

- (a) in subparagraph (i):
 - (i) by deleting “books of account and records (including but not limited to contracts) of the Company” and substituting “books, records, accounts, documents (including contracts), data and information of the Company stored by any means”;
 - (ii) by deleting “or iron ore pellets or iron ore concentrates”; and
 - (iii) by inserting “(in whatever form)” after “copies or extracts”; and
- (b) by deleting the full stop at the end of subparagraph (ii) and substituting “; and” and the following new subparagraph:
 - “(iii) 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 subparagraph (i) to enable the exercise of rights by the Minister or the Minister's nominee under subparagraph (i), 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.”;

(10) in clause 9(4):

(a) by deleting paragraph (a) and substituting the following new paragraph:

“(a) The Company 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.”; and

(b) in paragraph (b):

- (i) by deleting “there is” and substituting “there are”;

- (ii) by deleting “between the relevant Government agreements”; and
 - (iii) by deleting “blended and” and substituting “blended as between each of the sources referred to in paragraph (a)”; and
 - (iv) inserting a comma after “processing”;
- (11) by inserting after clause 9 the following new clauses:

“Additional areas

- 9A. (1) Notwithstanding the provisions of the *Mining Act 1904* or the *Mining Act 1978* the Company may from time to time during the currency of this Agreement apply to the Minister for:
- (a) areas held by the Company or an associated company under a mining tenement granted under the *Mining Act 1978*;
 - (b) the area shaded in red on Plan “A” initialled by or on behalf of the parties for the purpose of identification (and being at the variation date the subject of Mineral Lease 4SA),

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, or in respect of the area referred to in paragraph (b) above the surrender of that area from Mineral Lease 4SA, 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 Company's expense.

- (2) The Minister may approve, upon application by the Company 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 Company 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 Company desires to commence mining of iron ore or to carry out any other activities (other than as aforesaid) on the said areas it shall give notice of such desire to the Minister and shall within 2 months of the date of such notice (or thereafter within such extended time as the Minister may allow as hereinafter provided) and subject to the provisions of this Agreement submit to the Minister to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister) with respect to such mining or other activities as additional proposals pursuant to clause 7A.

Integrated use of works installations or facilities under the Integration Agreements

- 9B. (1) Subject to subclauses (2) to (7) of this clause and to the other provisions of this Agreement, the Company may during the continuance of this Agreement:

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

(wholly or in part) in the activities of the Company carried on by it pursuant to this Agreement including, without limitation, as part of those activities, transporting by railway and shipping from a loading port and undertaking any ancillary and incidental activities in doing so (including, without limitation, blending permitted by clause 9(4)) 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); or
- (C) with the prior approval of the Minister, iron ore mined by a third party from a *Mining Act 1978* mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a

- Government agreement) which has been purchased by the Company from the third party;
- (D) iron ore mined under an Integration Agreement;
- (b) make any existing or new works installations or facilities constructed or held under this Agreement available for use (wholly or partly) by another Integration Proponent during the continuance of its Integration Agreement in the activities of that Integration Proponent carried on by it pursuant to its Integration Agreement including, without limitation, as part of those activities, transporting by railway and shipping from a loading port and undertaking any ancillary and incidental activities in doing so (including, without limitation, blending permitted by that Integration Agreement) of:
- (i) iron ore mined from a *Mining Act 1978* mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement);
 - (ii) with the prior approval of the Minister (as defined in that Integration Agreement) iron ore mined in, or proximate to, the Pilbara region of the said State under a Government agreement (excluding an Integration Agreement);
 - (iii) with the prior approval of the Minister (as defined in that Integration Agreement), 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 clause (1)(d) or construction, expansion, modification or other variation referred to in subclause (1)(e) by the Company shall, to the extent not already authorised under this Agreement as at the variation date, be regarded as a significant modification expansion or other variation of the Company's activities carried on by it pursuant to this Agreement and may only be made in accordance with proposals submitted and approved or determined under this Agreement in accordance with clauses 7A and 7AB or clause 9D as the case may require and otherwise in compliance with the provisions of this Agreement and the laws from time to time of the said State. For the avoidance of doubt, the parties acknowledge that any use or making available for use contemplated by subclause (1)(a), (1)(b) or (1)(c) shall not otherwise than as required by this paragraph (a) require the submission and approval of further proposals under this Agreement.

- (b) The Company shall not be entitled to:
- (i) submit proposals to construct any 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 within the boundaries of Port Walcott; or
 - (ii) generate and supply power, take and supply water or dispose of water otherwise than in accordance with the other clauses of this Agreement and subject to any restrictions contained in those clauses; or
 - (iii) without limiting subparagraphs (i) and (ii) submit proposals to construct or establish works installations or facilities of a type, or to make expansions, modifications or other variations of works installations or facilities of a type, which in the Minister's reasonable opinion this Agreement, immediately before the variation date, did not permit or contemplate the Company constructing, establishing or making as the case may be otherwise than for integration use as contemplated by subclauses (1)(a), (1)(b) or (1)(c) or as permitted by clause 9D; or
 - (iv) submit proposals to make a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) otherwise than on tenure granted under or pursuant to this Agreement from time to time or held pursuant to this Agreement from time to time; or

- (v) submit proposals to make a connection referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) for the purpose of use as contemplated by subclause (1)(c)(i), if in the reasonable opinion of the Minister the activity which is the subject of the proposals would give to the holder or holders of the relevant *Mining Act 1978* mining lease the benefit of rights or powers granted to the Company under this Agreement, over and above the right of access to and use of the relevant works, installations or facilities; or
 - (vi) submit proposals to make a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) for the purpose of use as contemplated by subclause (1)(c) and involving the grant of tenure without the prior approval of the Minister; or
 - (vii) submit proposals to assign, sublet, transfer or dispose of any works installations or facilities constructed or held under this Agreement or any leases, licences, easements or other titles under or pursuant to this Agreement for any purpose referred to in this clause.
- (c) Notwithstanding the provisions of clauses 7AB and 9D, the Minister may defer consideration of, or a decision upon, a proposal submitted by the Company for a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e), for the purpose of use or making available for use as referred to in subclauses (1)(a) or (1)(b), until relevant

corresponding proposals under the relevant Integration Agreement have been submitted and those proposals can be approved under that Integration Agreement concurrently with the Minister's approval under this Agreement of the Company's proposal.

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

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

- (5) Nothing in this Agreement shall be construed to:
 - (a) exempt another Integration Proponent from complying with, or the application of, the provisions of its Integration Agreement; or
 - (b) restrict the Company's rights under clause 13.

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

undertake any activities under this Agreement or under another Integration Agreement.

- (6) Nothing in this clause shall be construed to exempt the Company from complying with, or the application of, the other provisions of this Agreement including, without limitation, clause 13 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

- 9C. (1) For the purposes of this clause “Relevant Infrastructure” means any works installations or facilities (as defined in clause 9B(7)):
- (a) constructed or held under another Integration Agreement;
 - (b) which the Company is using in its activities pursuant to this Agreement;
 - (c) which the Minister is satisfied (after consulting with the Company and the Integration Proponent for that other Integration Agreement):
 - (i) are no longer required by that other Integration Proponent to carry on its activities pursuant to its Integration Agreement because of the cessation of the Integration Proponent’s mining operations in respect of which such Relevant Infrastructure was constructed or held or because of any other reason acceptable to the Minister; and
 - (ii) are required by the Company to continue to carry on its activities pursuant to this Agreement; and
 - (d) in respect of which that other Integration Proponent has notified the Minister it consents

to the Company submitting proposals as referred to in subclause (2).

- (2) The Company may as an additional proposal pursuant to clause 7A propose:
- (a) that it be granted a lease licence or other title over the Relevant Infrastructure pursuant to this Agreement subject to and conditional upon the other Integration Proponent surrendering wholly or in part (and upon such terms as the Minister considers reasonable including any variation of terms to address environmental issues) its lease licence or other title over the Relevant Infrastructure; or
 - (b) that the other Integration Proponent's lease licence or other title (not being a mineral lease, mining lease or other right to mine title granted under a Government agreement, the *Mining Act 1904* or the *Mining Act 1978*) to the Relevant Infrastructure be transferred to this Agreement (to be held by the Company pursuant to this Agreement) with such surrender of land from it and variations of its terms as the Minister considers reasonable for that title to be held under this Agreement including, without limitation, to address environmental issues and outstanding obligations of that other Integration Proponent under its Integration Agreement in respect of that Relevant Infrastructure.

The provisions of clause 7AB shall mutatis mutandis apply to any such additional proposal. In addition the Company acknowledges that the Minister may require variations of the other Integration Agreement and/or proposals under it or of this Agreement in order to give effect to the matters contemplated by this clause.

Miscellaneous Licences for Railways

- 9D. (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 *Land Administration Act 1977* (WA);

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

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

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

“Private Roads” means Lateral Access Roads and the Company’s access roads within a Railway Corridor;

“Rail Safety Act” means the *Rail Safety Act 1998* (WA);

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

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

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

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

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

“Railway Operation Date” means the date of the first carriage of iron ore, freight goods or other products

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

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

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

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

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

Company to obtain prior Ministerial in-principle approval

- (2) (a) If the Company wishes, from time to time during the continuance of this Agreement, to proceed under this clause with a plan to develop a Railway it shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of its plan.
- (b) The Minister shall within one month of a notice under paragraph (a) advise the Company

whether or not he approves in-principle the proposed plan. The Minister shall afford the Company full opportunity to consult with him in respect of any decision of the Minister under this paragraph.

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

Railway Corridor

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

In seeking such agreement, regard shall be had to achieving a balance between engineering

matters including costs, the nature and use of any lands concerned and interests therein and the costs of acquiring the land (all of which shall be borne by the Company). The parties acknowledge the intention is for the Company to construct the Railway, the access roads for the construction and maintenance of the Railway which are to be within the Railway Corridor and the relevant Additional Infrastructure (if any) along the centreline of the Railway Corridor subject to changes in that alignment to the extent necessary to avoid heritage, environmental or poor ground conditions that are not identified during preliminary investigation work, and recognise the width of the Railway Corridor may need to vary along its route to accommodate Additional Infrastructure (if any), access roads, areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce and water bores. The provisions of clause 18 shall not apply to this subclause.

- (b) If the date by which the Company must submit detailed proposals under subclause (4)(a) (as referred to in subclause (2)(c)) is extended or varied by the Minister pursuant to clause 17, any agreement made pursuant to paragraph (a) before such date is extended or varied shall unless the Minister notifies the Company otherwise be deemed to be at an end and neither party shall have any claim against the other in respect of it.
- (c) The Company acknowledges that it shall be responsible for liaising with every title holder in respect of the land affected and for obtaining in a form and substance acceptable to the Minister all unconditional and irrevocable consents of each such title holder to, and all statutory

consents required in respect of the land affected for:

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

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

Company to submit proposals for Railway

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

Minister and the Company pursuant to subclause 3(a);

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

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

- (e) At the time when the Company submits the last of the said proposals pursuant to this subclause, it shall:
 - (i) furnish to the Minister's reasonable satisfaction evidence of all accreditations under the Rail Safety Act which are required to be held by the Company or any other person for the construction of the Railway; and
 - (ii) furnish to the Minister the written consents referred to in subclause (3)(c)(i) and (3)(c)(ii).
- (f) The provisions of clause 7AB shall apply mutatis mutandis to detailed proposals submitted under this subclause.

Additional Railway Proposals

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

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

of clause 7AB shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause.

Grant of Tenure

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

- (A) prior to the Railway Operation Date, as if the width of the Railway Corridor were 100 metres; and
 - (B) on and from the Railway Operation Date, at the rentals from time to time prescribed under the *Mining Act 1978*; and
- (ii) a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under subclause (3)(a) (each a “Lateral Access Road Licence”), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the *Mining Act 1978* in the form of the Third Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the *Mining Act 1978*.
- (b) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after its proposals submitted pursuant to subclause (5)(a) for the construction of Lateral Access Roads for access to the Railway Corridor to construct a Railway spur line have been approved or deemed to be approved and the Company has complied with the provisions of subclause (4)(e) (as applying pursuant to subclause (5)(d)), the State notwithstanding the *Mining Act 1978* shall cause to be granted to the Company a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under subclause (3)(a) (as applying pursuant to

subclause (5)(b)) (each a “Lateral Access Road Licence”), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the *Mining Act 1978* in the form of the Fourth Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the *Mining Act 1978*.

- (c) Notwithstanding the *Mining Act 1978*, the term of the Special Railway Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 50 years commencing on the date of grant thereof.
- (d) Notwithstanding the *Mining Act 1978*, the term of any Lateral Access Road Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 4 years commencing on the date of grant thereof.
- (e) Notwithstanding the *Mining Act 1978*, and except as required to do so by the terms of the Special Railway Licence, the Company shall not be entitled to surrender the Special Railway Licence or any Lateral Access Road Licence or any part or parts of them without the prior consent of the Minister.
- (f)
 - (i) The Company may in accordance with approved proposals take stone, sand, clay and gravel from the Railway Corridor for the construction, operation and maintenance of the Railway constructed within or approved for construction within the Railway Corridor.
 - (ii) Notwithstanding the *Mining Act 1978* no royalty shall be payable under the Mining

Act in respect of stone, sand, clay and gravel which the Company is permitted by subparagraph (i) to obtain from the land the subject of the Special Railway Licence.

- (g) For the purposes of this Agreement and without limiting the operation of paragraphs (a) to (f) inclusive above, the application of the *Mining Act 1978* and the regulations made thereunder are specifically modified;
 - (i) in section 91(1) by:
 - (A) deleting “the mining registrar or the warden, in accordance with section 42 (as read with section 92)” and substituting “the Minister”;
 - (B) deleting “any person” and substituting “the Company (as defined in the agreement approved by and scheduled to the *Iron Ore (Robe River) Agreement Act 1964*, 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 9D(6)(a)(i), clause 9D(6)(a)(ii) or clause 9D(6)(b), of 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”;
 - (ii) in section 91(3)(a), by deleting “prescribed form” and substituting “form required by 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”;
- (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 approved by and scheduled to the *Iron Ore (Robe River) Agreement Act 1964*, 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 approved by and scheduled to the *Iron Ore (Robe River) Agreement Act 1964*, 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 approved by and scheduled to the *Iron Ore (Robe River) Agreement Act 1964*, as from time to time added to, varied or amended”.

- (h) If additional proposals are approved in accordance with subclause (5) for the construction of a Railway spur line outside the then Railway Corridor, the Minister for Mines shall include the area of land within which such construction is to occur in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.
- (i) If additional proposals are approved in accordance with subclause (5) for the construction of Train Loading Infrastructure or Train Unloading Infrastructure outside the then Railway Corridor, the Minister for Mines shall include the area of such land within which such infrastructure is approved for construction in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.
- (j) The provisions of this subclause shall not operate so as to require the State to cause a Special Railway Licence or a Lateral Access Road Licence to be granted or any land included in the Special Railway Licence as mentioned above until all processes necessary under any laws relating to native title to enable that grant or inclusion of land to proceed, have been completed.

Construction and operation of Railway

- (7) (a) Subject to and in accordance with approved proposals, the Rail Safety Act and the grant of the relevant Special Railway Licence and any associated Lateral Access Road Licences the Company shall in a proper and workmanlike

manner and in accordance with recognised standards for railways of a similar nature operating under similar conditions construct the Railway and associated Additional Infrastructure and access roads within the Railway Corridor and shall also construct inter alia any necessary sidings, crossing points, bridges, signalling switches and other works and appurtenances and provide for crossings and (where appropriate and required by the Minister) grade separation or other protective devices including flashing lights and boom gates at places where the Railway crosses or intersects with major roads or existing railways.

- (b) The Company shall while the holder of a Special Railway Licence:
- (i) keep the Railway the subject of that licence in an operable state; and
 - (ii) ensure that the Railway the subject of that licence is operated in a safe and proper manner in compliance with all applicable laws from time to time; and
 - (iii) without limiting subparagraph (ii) ensure that the obligations imposed under the Rail Safety Act on an owner and an operator (as those terms are therein defined) are complied with in connection with the Railway the subject of that licence.

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

- (c) The Company shall provide crossings for livestock and also for any roads, other railways, conveyors, pipelines and other utilities which

exist at the date of grant of the relevant Special Railway Licence or in respect of land subsequently included in it at the date of such inclusion and the Company shall on reasonable terms and conditions allow such crossings for roads, railways, conveyors, pipelines and other utilities which may be constructed for future needs and which may be required to cross a Railway constructed pursuant to this clause.

- (d) Subject to clause 9C, the Company shall at all times be the holder of Special Railway Licences and Lateral Access Road Licences granted pursuant to this clause and (without limiting clause 10(j) but subject to clause 9C) shall at all times own manage and control the use of each Railway the subject of a Special Railway Licence held by the Company.
- (e) The Company shall not be entitled to exclusive possession of the land the subject of a Special Railway Licence or Lateral Access Road Licence granted pursuant to this clause to the intent that the State, the Minister, the Minister for Mines and any persons authorised by any of them from time to time shall be entitled to enter upon the land or any part of it at all reasonable times and on reasonable notice with all necessary vehicles, plant and equipment and for purposes related to this Agreement or such other purposes as they think fit but in doing so shall be subject to the reasonable directions of the Company so as not to unreasonably interfere with the Company's operations.
- (f) The Company's ownership of a Railway constructed pursuant to this clause shall not give it an interest in the land underlying it.
- (g) The Company shall not at any time without the prior consent of the Minister dismantle, sell or otherwise dispose of any part or parts of any Railway constructed pursuant to this clause, or

permit this to occur, other than for the purpose of maintenance, repair, upgrade or renewal.

- (h) The Company shall, subject to and in accordance with approved proposals, in a proper and workmanlike manner, construct any Additional Infrastructure, access roads, Lateral Access Roads and other works approved for construction under this clause.
- (i) The Company shall while the holder of a Special Railway Licence at all times keep and maintain in good repair and working order and condition (which obligation includes, where necessary, replacing or renewing all parts which are worn out or in need of replacement or renewal due to their age or condition) the Railway, access roads and Additional Infrastructure (if any) the subject of that licence and all such other works installations plant machinery and equipment for the time being the subject of this Agreement and used in connection with the operation use and maintenance of that Railway, access roads and Additional Infrastructure (if any).
- (j) Subject to clause 9C, the Company shall:
 - (i) be responsible for the cost of construction and maintenance of all Private Roads constructed pursuant to this clause; and
 - (ii) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles (other than those engaged upon the Company's activities and its invitees and licensees) from using the Private Roads; and
 - (iii) at any place where any Private Roads are constructed by the Company so as to cross any railways or public roads

provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the Public Transport Authority as the case may be.

- (k) The provisions of clauses 9(2)(a) and (3) regarding third party access as well as the proviso to clause 9(2)(a) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause except that the Company shall not be obliged to transport passengers upon any such Railway or Railway spur line.

Aboriginal Heritage Act 1972 (WA)

- (8) For the purposes of this clause the *Aboriginal Heritage Act 1972 (WA)* applies as if it were modified by:
 - (a) the insertion before the full stop at the end of section 18(1) of the words:

“and the expression “the Company” means the persons from time to time comprising “the Company” in their capacity as such under the agreement approved by and scheduled to the *Iron Ore (Robe River) Agreement Act 1964*, as from time to time added to, varied or amended in relation to the use or proposed use of land pursuant to clause 9D of that agreement after and in accordance with approved proposals under clause 9D of that agreement and in relation to the use of that land before any such approval of proposals where the Company has the requisite authority to enter upon and so use the land”;
 - (b) the insertion in sections 18(2), 18(4), 18(5) and 18(7) of the words “or the Company as the case may be” after the words “owner of any land”;

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

“In relation to a notice from the Company the conditions that the Minister may specify can as appropriate include, among other conditions, a condition restricting the Company’s use of the relevant land to after the approval or deemed approval as the case may be under the abovementioned agreement of all of the Company’s submitted initial proposals thereunder for the Railway Operation (as defined in clause 9D(1) of the abovementioned agreement), or in the case of additional proposals submitted or to be submitted by the Company to after the approval or deemed approval under that agreement of such additional proposals, and to the extent so approved. ”; and
- (e) the insertion in sections 18(2) and 18(5) of the words “or it as the case may be” after the word “he”.

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

Taking of land for the purposes of this clause

- (9) (a) The State is hereby empowered, as and for a public work under Parts 9 and 10 of the LAA, to take for the purposes of this clause any land (other than any part of a Port) which in the

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

- (b) In applying Parts 9 and 10 of the LAA for the purposes of this clause:
 - (i) “land” in that Act includes a legal or equitable estate or interest in land;
 - (ii) sections 170, 171, 172, 173, 174, 175 and 184 of that Act do not apply; and
 - (iii) that Act applies as if it were modified in section 177(2) by inserting -
 - (A) after “railway” the following -

“or land is being taken pursuant to a Government agreement as defined in section 2 of the *Government Agreements Act 1979* (WA)”;
 - (B) after “that Act” the following -

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

Notification of Railway Operation Date

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

construction or commissioning purposes) has occurred”;

- (12) in clause 10(a)(i) by deleting the comma at the end of subparagraph (c) and substituting a semi colon followed by:

“(D) in relation to electrical energy but not water, the Company for the purpose of supply to:

- (i) “the Company” or “Joint Venturers” as the case may be as defined in, and for the purpose of an Integration Agreement, for its or their purposes thereunder;
- (ii) the holders from time to time of a *Mining Act 1978* mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement) for the purpose of their iron ore mining operations on that mining lease; and
- (iii) with the prior approval of the Minister, “the Company” or “the Joint Venturers” as the case may be as defined in, and for the purpose of a Government agreement (excluding an Integration Agreement) for the mining of iron ore in, or proximate to, the Pilbara region of the said State for the purpose of its or their operations under that agreement.”;

- (13) in clause 10(d) by inserting “or held pursuant hereto” after “hereunder or pursuant hereto”;

- (14) in clause 10(e) by:
 - (a) inserting “or pursuant hereto” after “granted hereunder”; and
 - (b) inserting “ or held pursuant hereto” after “clause 13 hereof”;
- (15) in clause 10(l) by:
 - (a) inserting “granted under or pursuant to this Agreement, or held pursuant to this Agreement” after “licence or other title”;
 - (b) inserting “or held pursuant hereto” after each of the two references to “granted hereunder or pursuant hereto”; and
 - (c) deleting “occupied by the Company” 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”;
- (16) by deleting clause 11A;
- (17) by inserting the following sentence at the end of clause 12:

“As a separate independent indemnity the Company will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any use, making available for use or other activities of the Company as referred to in clause 9B.”;
- (18) in clause 14(1) by inserting “or held pursuant hereto” after “granted hereunder or pursuant hereto”; and
- (19) by inserting after the Schedule the following new schedules:

“SECOND SCHEDULE
WESTERN AUSTRALIA
IRON ORE (ROBE RIVER) AGREEMENT ACT 1964
MINING ACT 1978
MISCELLANEOUS LICENCE FOR A RAILWAY AND OTHER
PURPOSES

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called “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, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called “the Company”) a miscellaneous licence for the construction operation and maintenance of a Railway (as defined in clause 9D(1) of the Agreement and otherwise as provided in the Agreement) and, if applicable, other purposes AND WHEREAS the Company pursuant to clause 9D(6)(a) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Robe River) Agreement Act 1964*, as from time to time added to, varied or amended, the Company is hereby granted by this licence authority to conduct on the land the subject of this licence as more particularly delineated and described from time to time in the Schedule hereto all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce in accordance with the Agreement and, subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance on the land the subject of this licence of the Railway and Additional Infrastructure (as defined in clause 9D(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 9D(6)(a)(i) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

- If the Company be more than one the liability of the Company hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution 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 Company is permitted to, in accordance with approved proposals, take stone, sand, clay and gravel from the land the subject of this licence for the construction, operation and maintenance of the Railway (including any Railway spur line) constructed within or approved for construction within the area of land the subject of this licence.
3. Notwithstanding the *Mining Act 1978*, no royalty shall be payable under the *Mining Act 1978* in respect of stone, sand, clay and gravel which the Company is permitted by the Agreement to obtain from the land the subject of this licence.
4. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determines and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

1.
 - (a) Except as provided in paragraph (b), the Company shall within 2 years after the Railway Operation Date surrender in accordance with the provisions of the *Mining Act 1978* the area of this licence down to a maximum of 100 metres width or as otherwise approved by the Minister (as defined in the Agreement) for the safe operation of the 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 9D(6)(h) or clause 9D(6)(i) of the Agreement.
2. The Company 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 9D(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 (ROBE RIVER) AGREEMENT ACT 1964
MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called “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, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called “the Company”) a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 9D(6)(a)(ii) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Robe River) Agreement Act 1964*, as from time to time added to, varied or amended, the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 9D(6)(a)(ii) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

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

- 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 (ROBE RIVER) AGREEMENT ACT 1964
MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called “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, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called “the Company”) a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 9D(6)(b) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Robe River) Agreement Act 1964*, as from time to time added to, varied or amended, the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 9D(6)(b) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

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

- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution 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 ”.

EXECUTED as a deed.

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

[Signature]

STEPHEN WOOD

Signed for **ROBE RIVER LIMITED**)
ACN 008 478 493 by its attorney in the)
presence of:)

[Signature]

Witness Signature

HELEN FERNIHOUGH

Print Name

[Signature]

Attorney Signature

ALAN DAVIES

Print Name

THE COMMON SEAL of **ROBE**)
RIVER MINING CO PTY. LIMITED) [C.S.]
ACN 008 694 246 was hereunto affixed)
by authority of the Directors in the:)
presence of:)

[Signature]

Director

[Signature]

Secretary

ALAN DAVIES

HELEN FERNIHOUGH

THE COMMON SEAL of)
NETSCOUT GROUP LTD)
DEVELOPMENT PTY. LTD.) [C.S.]
ACN 008 734 361 was hereunto affixed)
by authority of the Directors in the)
presence of:)

[Signature]

Director

[Signature]

Director/Secretary

YOICHI HASHIMOTO

JOHN SMITH

Signed by **NORTH MINING**)
LIMITED ACN 000 081 434 by)
its attorney in the presence of:)

[Signature]

Witness Signature

HELEN FERNIHOUGH

Print Name

[Signature]

Attorney Signature

ALAN DAVIES

Print Name

CAPE LAMBERT IRON ASSOCIATES

Signed by **NIPPON STEEL**)
AUSTRALIA PTY. LTD.)
ACN 001 445 049 by its duly appointed)
attorney **MITSUI IRON ORE**) [C.S.]
DEVELOPMENT PTY. LTD.)
ACN 008 734 361 hereunto affixing)
its Seal by authority of the Directors)
in the presence of:)

[Signature]

Director

[Signature]

~~Director~~/Secretary

YOICHI HASHIMOTO

JOHN SMITH

Signed by **SUMITOMO METAL**)
AUSTRALIA PTY. LTD.)
ACN 001 444 604 by its duly appointed)
attorney **MITSUI IRON ORE**) [C.S.]
DEVELOPMENT PTY. LTD.)
ACN 008 734 361 hereunto affixing)
its Seal by authority of the Directors)
in the presence of:)

[Signature]

Director

[Signature]

~~Director~~/Secretary

YOICHI HASHIMOTO

JOHN SMITH

The COMMON SEAL of MITSUI)
IRON ORE DEVELOPMENT PTY.)
LTD. ACN 008 734 361 was hereunto) [C.S.]
affixed by authority of the Directors in)
the presence of:)

[Signature] YOICHI HASHIMOTO

Director

[Signature] JOHN SMITH

~~Director/Secretary~~

PANNAWONICA IRON ASSOCIATES

Signed by **NIPPON STEEL**)
AUSTRALIA PTY. LTD.)
ACN 001 445 049 by its duly appointed)
attorney **MITSUI IRON ORE**) [C.S.]
DEVELOPMENT PTY. LTD.)
ACN 008 734 361 hereunto affixing)
its Seal by authority of the Directors)
in the presence of:

[Signature] YOICHI HASHIMOTO

Director

[Signature] JOHN SMITH

~~Director~~/Secretary

Signed by **SUMITOMO METAL**)
AUSTRALIA PTY. LTD.)
ACN 001 444 604 by its duly appointed)
attorney **MITSUI IRON ORE**) [C.S.]
DEVELOPMENT PTY. LTD.)
ACN 008 734 361 hereunto affixing)
its Seal by authority of the Directors)
in the presence of:)

[Signature] YOICHI HASHIMOTO

Director

[Signature] JOHN SMITH

Director/Secretary

[Seventh Schedule inserted: No. 61 of 2010 s. 10.]

Eighth Schedule — Seventh variation agreement

[s. 4D]

[Heading inserted: No. 61 of 2011 s. 10]

2011

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

AND

ROBE RIVER LIMITED
ACN 008 478 493

ROBE RIVER MINING CO PTY. LIMITED
ACN 008 694 246

MITSUI IRON ORE DEVELOPMENT PTY. LTD.
ACN 008 734 361

NORTH MINING LIMITED
ACN 000 081 434

NIPPON STEEL AUSTRALIA PTY. LTD.
ACN 001 445 049

SUMITOMO METAL AUSTRALIA PTY. LTD.
ACN 001 444 604

IRON ORE (ROBE RIVER) AGREEMENT 1964
RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 8th 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

ROBE RIVER LIMITED ACN 008 478 493 of Level 33, 120 Collins Street, Melbourne, Victoria (**RRL**)

AND

ROBE RIVER MINING CO PTY. LIMITED ACN 008 694 246 of Level 27, Central Park, 152-158 St Georges Terrace, Perth, Western Australia (**RRMC**),

mitsui iron ore development pty. ltd. ACN 008 734 361 of Level 26, Exchange Plaza, 2 The Esplanade, Perth, Western Australia (**Mitsui**),

NORTH MINING LIMITED ACN 000 081 434 of Level 33, 120 Collins Street, Melbourne, Victoria (**NML**),

nippon steel australia pty. ltd. ACN 001 445 049 of Level 24, 1 York Street, Sydney, New South Wales, **SUMITOMO METAL**

AUSTRALIA PTY. LTD. ACN 001 444 604 of Level 39, Australia Square, 264 George Street, Sydney, New South Wales, and the said **MITSUI IRON ORE DEVELOPMENT PTY. LTD.** which 3 companies carry on business under the name of **Cape Lambert Iron Associates (CLIA)**, and

the said **NIPPON STEEL AUSTRALIA PTY LTD** and **SUMITOMO METAL AUSTRALIA PTY LTD** which 2 companies carry on business together under the name **Pannawonica Iron Associates (PIA)**.

(RRMC, Mitsui, NML, CLIA and PIA are collectively referred to in this Agreement as the **Robe Participants**.)

RECITALS:

- A. The State, RRL and the Robe Participants are now the parties to the agreement dated 18 November 1964, approved by and scheduled to the *Iron Ore (Robe River) Agreement Act 1964* and which as subsequently added to, varied or amended is referred to in this Agreement as the “**Principal Agreement**”.
- B. The parties 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:

- (a) inserting in the appropriate alphabetical positions the following new definitions:

“Eligible Existing Tenure” means:

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

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

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

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

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

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

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

“**Special Advance Tenure**” means:

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

and as the context requires such tenure if granted;

- (b) inserting after the words “reference in this Agreement to an Act shall include the amendments to such 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” the words “(and for the avoidance of doubt this principle, subject to the context and without limitation to its application to other Acts, may apply in respect of references to the Land Act and the Mining Act notwithstanding references in this Agreement to the LAA and the *Mining Act 1978*);”;

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

“**Community development plan**

- 7G. (1) In this clause, the term “community and social benefits” includes:
- (a) assistance with skills development and training opportunities to promote work readiness and employment for persons living in the Pilbara region of the said State;
 - (b) regional development activities in the Pilbara region of the said State, including partnerships and sponsorships;
 - (c) contribution to any community projects, town services or facilities; and
 - (d) a regionally based workforce.
- (2) The Company acknowledges the need for community and social benefits flowing from this Agreement.

- (3) The Company agrees that:
 - (a) it shall prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with its activities under this Agreement; and
 - (b) the Company shall, not later than 3 months after the second variation date, submit to the Minister the plan prepared under paragraph (a) and confer with the Minister in respect of the plan.
- (4) The Minister shall within 2 months after receipt of a plan submitted under subclause (3)(b), either notify the Company that the Minister approves the plan as submitted or notify the Company of changes which the Minister requires be made to the plan. If the Company is unwilling to accept the changes which the Minister requires it shall notify the Minister to that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes required by the Minister.
- (5) The effect of an award made on an arbitration pursuant to subclause (4) shall be that the relevant plan submitted by the Company pursuant to subclause (3)(b) shall, with such changes required by the Minister under subclause (4) as the arbitrator determines to be reasonable (with or without modification by the arbitrator), be deemed to be the plan approved by the Minister under this clause.
- (6) At least 3 months before the anticipated submission of proposals relating to a proposed development pursuant to clauses 7A or 9D, the Company must, unless the Minister otherwise requires, give to the Minister information about how the proposed development may affect the plan approved or deemed to be approved by the Minister under this clause. This obligation operates in relation to all proposals

submitted on or after the date that is 4 months after the date when a plan is first approved or deemed to be approved under this clause.

- (7) The Company shall at least annually report to the Minister about the Company's implementation of the plan approved or deemed to be approved by the Minister under this clause.
- (8) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan approved or deemed to be approved by the Minister under this clause and may agree to amendment of the plan or adoption of a new plan. Any such amended plan or new plan will be deemed to be the plan approved by the Minister under this clause in respect of the development to which it relates.
- (9) During the currency of this Agreement, the Company shall implement the plan approved or deemed to be approved by the Minister under this clause.

Local participation plan

- 7H. (1) In this clause, the term "local industry participation benefits" means:
- (a) the use and training of labour available within the said State;
 - (b) the use of the services of engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and contractors available within the said State; and
 - (c) the procurement of works, materials, plant, equipment and supplies from Western Australian suppliers, manufacturers and contractors.

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

managers and consultants and Western Australian suppliers, manufacturers and contractors to services opportunities and procurement opportunities respectively as referred to in subclause (1).

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

- (4) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.
- (5) At least 6 months before the anticipated submission of proposals relating to a proposed development pursuant to clauses 7A or 9D, the Company must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this clause in relation to the proposed development. This obligation operates in relation to all proposals submitted on or after the date that is 7 months after the date when a plan is first provided under this clause.
- (6) During the currency of this Agreement the Company shall implement the plan provided under this clause.
- (7) The Company shall:
 - (a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions

requiring the third party to undertake procurement activities in accordance with the plan provided under this clause; and

- (b) use reasonable endeavours to ensure that the third party complies with those provisions.”;

- (3) in clause 8(1)(b) by:

- (a) inserting a comma after “Mining Act”; and
- (b) inserting after subparagraph (iii) the following new paragraph:

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

- (4) by inserting after clause 8(2) the following new subclauses:

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

- (2a) (a) The Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Eligible Existing Tenure becoming held pursuant to this Agreement on such conditions as the Minister sees fit (including, without limitation and notwithstanding the *Mining Act 1978* and the LAA, as to the surrender of land, the submission of detailed proposals and the variation of the terms and conditions of the Eligible Existing Tenure (including for the Eligible Existing Tenure to be held pursuant to this Agreement and for the more efficient use of the Relevant Land)) and the Minister may from time to time vary such conditions in order to extend any specified time for the doing of any thing or otherwise with the agreement of the Company.

- (b) Eligible Existing Tenure the subject of an approval by the Minister under this subclause will be held by the Company pursuant to this Agreement:
- (i) if the Minister's approval was not given subject to conditions, on and from the date of the Minister's notice of approval;
 - (ii) unless paragraph (iii) applies, if the Minister's approval was given subject to conditions, on the date on which all such conditions have been satisfied; and
 - (iii) if the Minister's approval was given subject to a condition requiring that the Company submit detailed proposals in accordance with this Agreement, on the later of the date on which the Minister approves proposals submitted in discharge of that specified condition and the date upon which all other specified conditions have been satisfied, but the Company is authorised to implement any approved proposal to the extent such implementation is consistent with the then terms and conditions of the Eligible Existing Tenure pending the satisfaction of any conditions relating to the variation of the terms or conditions of the Eligible Existing Tenure. Where this paragraph (iii) applies, prior to any approval of proposals and satisfaction of other conditions, the relevant tenure will be treated for (but only for) the purposes of clause 9B(2)(b)(iv) as tenure held pursuant to this Agreement.

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

- (2b) Without limiting clause 8(1)(c), the Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Special Advance

Tenure being granted to the Company pursuant to this Agreement if:

- (a) the Company proposes to submit detailed proposals under this Agreement (other than under clause 9D) to construct works installations or facilities on the Relevant Land and the Company's request is so far as is practicable made, unless the Minister approves otherwise, no less than 6 months before the submission of those detailed proposals; and
- (b) the Minister is satisfied that it is necessary and appropriate that Special Advance Tenure, rather than tenure granted under or pursuant to the other provisions of this Agreement, be used for the purposes of the proposed works installations or facilities on the Relevant Land,

and if the Minister does so approve:

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

obligations, under this Agreement or otherwise under the laws from time to time of the said State.”;

(5) in clause 8 by:

- (a) deleting in subclause (3) “subclause (2)” and substituting “subclauses (2), (2a) and (2b)”;
- (b) deleting in subclause (3a) “subclause (1)” and substituting “subclauses (1), (2a) and (2b)”;

(6) in clause 9(2) by:

- (a) deleting in paragraph (a) the words “allow crossing places for roads stock and other railways and”;
- (b) inserting after paragraph (a) the following new paragraph:

“Crossings over Railway

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

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

- (c) deleting paragraph (j)(ii) and substituting the following subparagraph:
 - “(ii) on fine ore and pisolite fine ore sold or shipped separately as such at the rate of:
 - (A) 5.625% of the f.o.b. value, for ore shipped prior to or on 30 June 2012;
 - (B) 6.5% of the f.o.b. value, for ore shipped during the period from 1 July 2012 to 30 June 2013 (inclusive of both dates); and
 - (C) 7.5% of the f.o.b. value, for ore shipped on or after 1 July 2013;”;
- (7) in clause 9D by:
 - (a) deleting in subclause (1) ““LAA” means the *Land Administration Act 1997* (WA)”;
 - (b) inserting after subclause (3)(c) the following new paragraph:
 - “(d) Without limiting subclause (9), the Minister may waive the requirement under this clause for the Company to obtain and to furnish the consent of a title holder if the title holder has refused to give the required consent and the Minister is satisfied that:
 - (i) the title holder’s affected land is or was subject to a miscellaneous licence granted under the *Mining Act 1978* for the purpose of a railway to be constructed and operated in accordance with this Agreement; and
 - (ii) in the Minister’s opinion, the title holder’s refusal to give the required consent is not reasonable in all the circumstances including having regard to:
 - (A) the rights of the Company in relation to the affected land as the holder of the miscellaneous licence, relative to its rights as the holder of the sought Special

Railway Licence or Lateral Access
Road Licence (as the case may be);
and

- (B) the terms of any agreement
between the Company and the title
holder.”;
- (c) deleting in subclause (4)(a) the comma after “the provisions
of this Agreement” and substituting “and”; and
- (d) in subclause (7):
- (i) deleting all words in paragraph (c) after “at the date
of such inclusion”; and
- (ii) inserting after paragraph (k) the following new
paragraph:
- “(l) The provisions of clause 9(2)(aa) shall
apply mutatis mutandis to any Railway or
Railway spur line constructed pursuant to
this clause.”; and
- (8) in clause 10B by deleting “clause 9(2)(a)” and substituting
“clauses 9(2)(a) and (aa)”.

EXECUTED as a deed.

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

[Signature]

Signature of witness

[Signature]

Stephen Bombardieri

Name of witness

Signed for **ROBE RIVER LIMITED**)
ACN 008 478 493 by its attorney in the)
presence of:)

[Signature]

Witness signature

[Signature]

Attorney signature

Christopher Richards

Print Name

Paul Shannon

Print Name

THE COMMON SEAL of ROBE)
RIVER MINING CO PTY. LIMITED)
ACN 008 694 246 was hereunto affixed)
by authority of the Directors in the)
presence of:)

[C.S.]

[Signature]

Director

Andrew Kite

[Signature]

Secretary

Helen Fernihough

THE COMMON SEAL of)
mitsui iron ore)
DEVELOPMENT PTY. LTD.) [C.S.]
ACN 008 734 361 was hereunto affixed)
by authority of the Directors in the)
presence of:)

Hirofumi Fujita

Director

John William Smith

Director/Secretary

Signed by **NORTH MINING**)
LIMITED ACN 000 081 434 by)
its attorney in the presence of:)

[Signature]

Attorney signature

Paul Shannon

Print Name

CAPE LAMBERT IRON ASSOCIATES

Signed by **NIPPON STEEL**)
AUSTRALIA PTY. LTD.)
ACN 001 445 049 by its duly appointed)
attorney **MITSUI IRON ORE**) [C.S.]
DEVELOPMENTS PTY. LTD.)
ACN 008 734 361 hereunto affixing)
its Seal by authority of the Directors)
in the presence of:)

Hirofumi Fujita

John William Smith

Signed by **SUMITOMO METAL**)
AUSTRALIA PTY. LTD.)
ACN 001 444 604 by its duly appointed)
attorney **MITSUI IRON ORE**) [C.S.]
DEVELOPMENTS PTY. LTD.)
ACN 008 734 361 hereunto affixing)
its Seal by authority of the Directors)
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Hirofumi Fujita

John William Smith

THE COMMON SEAL of MITSUI)
IRON ORE DEVELOPMENT PTY.)
LTD. ACN 008 734 361 was hereunto) [C.S.]
affixed by authority of the Directors in)
the presence of:)

[Signature]

Director

Hirofumi Fujita

[Signature]

Secretary

John William Smith

PANNAWONICA IRON ASSOCIATES

Signed by **NIPPON STEEL**)
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ACN 001 445 049 by its duly appointed)
attorney **MITSUI IRON ORE**) [C.S.]
DEVELOPMENTS PTY. LTD.)
ACN 008 734 361 hereunto affixing)
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in the presence of:)

[Signature]

Director

Hirofumi Fujita

[Signature]

Secretary

John William Smith

Signed by **SUMITOMO METAL**)
AUSTRALIA PTY. LTD.)
ACN 001 444 604 by its duly appointed)
attorney **MITSUI IRON ORE**) [C.S.]
DEVELOPMENT PTY. LTD.)
ACN 008 734 361 hereunto affixing)
its Seal by authority of the Directors)
in the presence of:)

[Signature]

Director

Hirofumi Fujita

[Signature]

Secretary

John William Smith

[Eighth Schedule inserted: No. 61 of 2011 s. 10.]

=====

Notes

- ¹ This reprint is a compilation as at 3 January 2014 of the *Iron Ore (Robe River) Agreement Act 1964* 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 (Cleveland Cliffs) Agreement Act 1964</i> ⁵	91 of 1964 (13 Eliz. II No. 91)	14 Dec 1964	14 Dec 1964
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
<i>Iron Ore (Cleveland-Cliffs) Agreement Act Amendment Act 1969</i>	79 of 1969 (Repealed by No. 35 of 1970 ⁶)	7 Nov 1969	7 Nov 1969
<i>Iron Ore (Cleveland-Cliffs) Agreement Act Amendment Act 1970</i>	35 of 1970	27 May 1970	27 May 1970
<i>Iron Ore (Cleveland-Cliffs) Agreement Act Amendment Act 1973</i>	68 of 1973	28 Nov 1973	Act other than s. 3, 4 and 6: 28 Nov 1973 (see s. 2(1)); s. 3, 4 and 6: 30 Apr 1984 (see s. 2(2) and Act No. 37 of 1984 s. 4)
<i>Iron Ore (Cleveland-Cliffs) Agreement Amendment Act 1984</i>	37 of 1984	20 Jun 1984	20 Jun 1984
<i>Iron Ore (Cleveland-Cliffs) Agreement Amendment Act 1985</i>	95 of 1985	4 Dec 1985	4 Dec 1985 (see s. 2)
<i>Iron Ore (Cleveland-Cliffs) Agreement Amendment Act 1987</i>	87 of 1987	9 Dec 1987	9 Dec 1987 (see s. 2)
Reprint of the <i>Iron Ore (Robe River) Agreement Act 1964</i> as at 3 Aug 2001 (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010</i> s. 4 and 42(2)	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)

Short title	Number and year	Assent	Commencement
<i>Iron Ore Agreements Legislation Amendment Act 2010</i> Pt. 10	34 of 2010	26 Aug 2010	1 Jul 2010 (see s. 2(b)(ii))
<i>Iron Ore Agreements Legislation Amendment Act (No. 2) 2010</i> Pt. 3	61 of 2010	10 Dec 2010	11 Dec 2010 (see s. 2(c))
<i>Iron Ore Agreements Legislation Amendment Act 2011</i> Pt. 3	61 of 2011	14 Dec 2011	15 Dec 2011 (see s. 2(b))

Reprint 2: The Iron Ore (Robe River) Agreement Act 1964 as at 3 Jan 2014
(includes amendments listed above)

- ² The *Mining Act 1904* was repealed by the *Mining Act 1978*.
- ³ The *Interpretation Act 1918* was repealed by the *Interpretation Act 1984*.
- ⁴ Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.
- ⁵ Now known as the *Iron Ore (Robe River) Agreement Act 1964*; short title changed (see note under s. 1).
- ⁶ See s. 2A.

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
Agreement.....	2, 4A(1)
Company.....	2
fifth variation agreement.....	2
first variation agreement	2
fourth variation agreement	2
second variation agreement.....	2
seventh variation agreement.....	2
sixth variation agreement	2
third variation agreement	2