



Western Australia

# **Nickel (Agnew) Agreement Amendment Act 2023**

---

As at 17 Aug 2023

Official Version

No. 17 of 2023

Published on [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au)



Western Australia

# Nickel (Agnew) Agreement Amendment Act 2023

## Contents

1.	Short title	2
2.	Commencement	2
3.	Act amended	2
4.	Section 2 amended	2
5.	Section 3B inserted	3
	3B. Ratification of 2022 variation agreement	3
6.	Third Schedule inserted	3
	<b>Third Schedule — 2022 variation agreement</b>	





Western Australia

# **Nickel (Agnew) Agreement Amendment Act 2023**

---

**No. 17 of 2023**

---

**An Act to amend the *Nickel (Agnew) Agreement Act 1974*.**

*[Assented to 17 August 2023]*

The Parliament of Western Australia enacts as follows:

**s. 1**

---

**1. Short title**

This is the *Nickel (Agnew) Agreement Amendment Act 2023*.

**2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

**3. Act amended**

This Act amends the *Nickel (Agnew) Agreement Act 1974*.

**4. Section 2 amended**

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

*2022 variation agreement* means the agreement a copy of which is set out in the Third Schedule;

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

Variation Agreement and the 2022 variation agreement;

Note: The heading to amended section 2 is to read:

**Terms used**

**5. Section 3B inserted**

After section 3A insert:

**3B. Ratification of 2022 variation agreement**

- (1) The 2022 variation agreement is ratified.
- (2) The implementation of the 2022 variation agreement is authorised.
- (3) Without limiting or otherwise affecting the *Government Agreements Act 1979*, the 2022 variation agreement operates and takes effect despite any enactment or other law.

**6. Third Schedule inserted**

After the Second Schedule insert:

**Third Schedule — 2022 variation agreement**

[s. 2]

**2022**

**THE HONOURABLE MARK McGOWAN  
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

**AND**

**BHP NICKEL WEST PTY LTD  
ACN 004 184 598**

---

**NICKEL (AGNEW) AGREEMENT 1974  
RATIFIED VARIATION AGREEMENT**

---

[Solicitor's details]

**THIS AGREEMENT** is made this 20<sup>th</sup> day of December 2022

**BETWEEN**

**THE HONOURABLE MARK McGOWAN**, BA, LLB, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (the "**State**") of the one part

**AND**

**BHP NICKEL WEST PTY LTD** ACN 004 184 598 of Level 15, 171 Collins Street, Melbourne, Victoria (the "**Joint Venturers**") of the other part.

**RECITALS**

- A.** The parties to this Agreement are now the parties to the agreement (herein called the "**1974 Agreement**") dated 21 November 1974, the execution of which by the State was ratified by the *Nickel (Agnew) Agreement Act 1974*, as varied by:
- (a) the agreement dated 3 September 1976 which was ratified by the *Nickel (Agnew) Agreement Act Amendment Act 1976*;
  - (b) the agreement dated 6 August 1977 entered into pursuant to the provisions of clause 31 of the 1974 Agreement; and



- (c) the agreement dated 15 May 1995 entered into pursuant to the provisions of clause 31 of the 1974 Agreement.

The 1974 Agreement as so varied is hereinafter referred to as the "**Principal Agreement**".

- B.** The parties wish to vary the provisions of the Principal Agreement on the terms and conditions set out in this Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

**1. Ratification and operation**

- (1) This Agreement, other than this clause, does not come into operation except in accordance with subclause (2).
- (2) This Agreement, other than this clause, comes into operation on the day on which it is ratified by an Act of the Parliament of Western Australia ("**Operative Date**") unless, before that day, it terminates under subclauses (4) or (5).
- (3) The State must introduce in the Parliament of Western Australia before 30 June 2023 or a later date agreed between the parties to this Agreement, a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.
- (4) If by 31 December 2023 this Agreement has not been ratified by an Act of the Parliament of Western Australia then, unless the parties to this Agreement otherwise agree, this Agreement terminates on that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (5) The parties agree that if the Principal Agreement is otherwise determined in accordance with its provisions on a day prior to the Operative Date, then this Agreement shall also terminate on and from that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

**2. Variations of the Principal Agreement**

The Principal Agreement is varied as follows:

(1) in clause 1 by:

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

"Leinster concentrator" means the plant constructed under this Agreement upon the mineral lease for the concentration of nickeliferous ore, as modified or replaced from time to time in accordance with this Agreement;

"mine closure plan" means a document that:

(a) is in the form required under the Mining Act 1978 for a mine closure plan relating to mining leases granted under that Act; and

(b) contains information required under the Mining Act 1978 for a mine closure plan relating to mining leases granted under that Act including about:

(i) the decommissioning of each mine (within the meaning given to that term in the Mining Act 1978) and whether proposed or, as at the variation date, existing and not already decommissioned; and

(ii) the rehabilitation of land,  
within the area of the mineral lease;

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

"Mining Regulations" means the *Mining Regulations 1981* (WA);

"mining tenement" has the meaning given to it in section 8 of the Mining Act 1978;

"MRF Act" means the *Mining Rehabilitation Fund Act 2012* (WA);

"non-Agreement nickel concentrates" means concentrates obtained by treating non-mineral lease ore (other than concentrates produced in accordance with Clause 6B or as authorised by subclause (9) of Clause 8);

"non-mineral lease ore" means nickeliferous ore mined from areas other than within the mineral lease and whether within or outside Australia;

"register" has the meaning given to that term in section 8 of the Mining Act 1978;

"Relevant Endorsement Time", in respect of a particular Specified Mining Tenement, means the time the register is endorsed pursuant to subclause (4) of Clause 16A in respect of that particular Specified Mining Tenement;

"Specified Mining Tenement" means general purpose leases 36/49, 36/50 and 36/51 and mining leases 36/87, 36/156, 36/230, 36/389 and 36/439, or, depending on the context, any one or more of them, and includes any renewals or extensions thereof as the case may be;

"Townsite Lease" means the Land Act lease O260893L held by the Joint Venturers over land comprised in the townsite;

"variation date" means the date on which Clause 2 of the variation agreement made on or about 20 December 2022 between The Honourable Mark McGowan, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time and the Joint Venturers comes into operation;

- (b) in the definition of "townsite", deleting "land contained in Special Lease 3116/6675" and substituting "townsite constituted under section 10 of the *Land Act 1933* (WA) (and which by the Land Act is to be treated as constituted under section 26 of the Land Act) and known as the Leinster Townsite";
- (c) in the definition of "Minister for Mines", after the words "Mining Act" inserting the words "and the Mining Act 1978";

- (d) in the definition of "native title" by:
    - (i) deleting "has" and substituting "and "native title rights and interests" have"; and
    - (ii) deleting "it" and substituting "them"; and
  - (e) in the definition of "nickel concentrates", after the words "obtained by treating ore" inserting the words "or non-mineral lease ore or both together";
- (2) by inserting after clause 2 the following new clause:
- "2A. Nothing in this Agreement, including the approval of proposals, shall be construed to exempt the State or the Joint Venturers from compliance with, or to require the State or the Joint Venturers to do any thing contrary to, any laws relating to native title or any lawful obligation imposed on the State or the Joint Venturers, as the case may be, pursuant to any laws relating to native title."
- (3) in clause 6 by:
- (a) in clause 6(1)(c), deleting "railways";
  - (b) in clause 6(1)(d), deleting "facilities for the export of nickel-containing products through a port in the said State";
  - (c) in clause 6(1)(g), after the word "power" inserting the word "supply,";
- (4) by inserting after clause 6A the following new clause:
- "Non-Mineral Lease Ore and Non-Agreement Nickel Concentrates**
- 6B. Subject to subclauses (9) to (14) of Clause 8, the Joint Venturers may in accordance with this Agreement:
- (a) treat at the Leinster concentrator non-mineral lease ore separately or blended with ore to produce nickel concentrates; and
  - (b) blend at the Joint Venturers' facilities upon the mineral lease nickel concentrates produced in accordance with approved proposals under this

Agreement with non-Agreement nickel concentrates."

(5) in clause 8 by:

(a) deleting clause 8(1) and substituting the following new subclause:

"(1) Subject to the following subclauses of this Clause, if the Joint Venturers at any time during the continuance of this Agreement desire to significantly modify, expand or otherwise vary their activities that may be carried on by them pursuant to this Agreement beyond those specified in any approved proposals or in paragraphs (a) or (b) of subclause (9) of this Clause, they shall give notice to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a), (b) and (e) to (k) (both inclusive) of subclause (1) of Clause 6 as the Minister may require. The provisions of subclauses (2), (3) and (4) of Clause 6 shall, subject to this Clause, apply mutatis mutandis to detailed proposals submitted pursuant to this subclause."

(b) inserting after clause 8(1) the following new subclauses (2) through to (14) (inclusive):

"(2) On receipt of each proposal pursuant to subclause (1) of this Clause, the Minister, subject to the EP Act, shall:

(a) approve of the proposal without qualification or reservation; or

(b) defer consideration of or decision upon the same until such time as the Joint Venturers submit a further proposal or proposals in respect of some other of the matters referred in subclause (1) of this

Clause not covered by the said proposal;  
or

- (c) require as a condition precedent to the giving of the Minister's approval to the said proposal, that the Joint Venturers make such alteration thereto or comply with such conditions in respect thereto as the Minister (having regard to the circumstances including the overall development of and the use by others as well as the Joint Venturers of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose the Minister's reasons for such conditions,

PROVIDED ALWAYS that:

- (d) where implementation of any proposals hereunder have been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this Clause shall, if the case so requires, incorporate a requirement that the Joint Venturers make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures; and
- (e) the Minister shall not consider a purported proposal or proposals (as the case may be) if the Minister is of the opinion that the purported proposal or proposals does not or do not (as the case may be) comply with this Clause or other applicable provisions of this Agreement and in such circumstances:
  - (i) this subclause (2) (other than this paragraph (e)) and subclause (3) shall not apply

- to the purported proposal or proposals;
- (ii) subject to this Agreement, the Minister shall afford the Joint Venturers full opportunity to consult with him (including disclosure of reasons for his opinion) and should they so desire to submit a new or revised proposal or proposals either generally or in respect to some particular matter; and
  - (iii) the Minister's opinion is not subject to arbitration under Clause 44.
- (3) The Minister shall within 2 months after the later of:
- (a) receipt of proposals pursuant to subclause (1) of this Clause;
  - (b) where any of the proposals are to be assessed under Part IV of the EP Act, service on the Minister of an authority under section 45(12) of the EP Act; or
  - (c) where any of the proposals will or may require the State to do any act which affects native title rights and interests, completion of all processes required by laws relating to native title to be undertaken by the State before that act may be done by the State,
- give notice to the Joint Venturers of the Minister's decision in respect to the proposals.
- (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (2) of this Clause the Minister shall afford the Joint

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

- (5) If the decision of the Minister is as mentioned in paragraph (c) of subclause (2) of this Clause and the Joint Venturers consider that the condition precedent is unreasonable, the Joint Venturers within 2 months after receipt of the notice mentioned in subclause (3) of this Clause may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the condition precedent PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (2) or a decision of the Minister under paragraph (b) of subclause (2) of this Clause shall not be referable to arbitration under this Agreement.
- (6) If by the award made on an arbitration pursuant to subclause (5) of this Clause the dispute is decided in favour of the Joint Venturers, the decision shall take effect as a notice by the Minister that the Minister is so satisfied with and approves the matter or matters the subject of the arbitration.
- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act, the Joint Venturers shall implement the approved proposals in accordance with the terms thereof.
- (8) Notwithstanding Clause 31, the Minister may during the implementation of approved proposals approve variations to those proposals.
- (9) On and from the variation date, the activities referred to in Clause 6B may only be undertaken in accordance with this Clause and otherwise in accordance with the provisions of this Agreement and the parties acknowledge that as at the variation date the following activities of the nature referred



to in Clause 6B are authorised and subject to the Agreement obliged to be implemented by the Joint Venturers:

- (a) the continued treatment at the Leinster concentrator of:
    - (i) between 500,000 and 600,000 tonnes per annum over a 4 year period from the variation date of non-mineral lease ore from mining leases 36/9 and 36/618 blended with ore;
    - (ii) between 500,000 and 1,000,000 tonnes per annum over a 3 year period from the variation date of non-mineral lease ore from mining lease 36/102 blended with ore; and
  - (b) the continued blending at the Joint Venturers' facilities upon the mineral lease of between 250,000 and 350,000 tonnes per annum over a 20 year period from the variation date of non-Agreement nickel concentrates obtained from the treatment at the Mount Keith concentrator of non-mineral lease ore from mining leases 36/183, 36/184, 36/185, 36/246, 53/56 and 53/57 with nickel concentrates.
- (10) Without limiting the operation of subclause (1) of this Clause, the parties acknowledge that the treatment at the Leinster concentrator of non-mineral lease ore or the blending at the Joint Venturers' facilities of non-Agreement nickel concentrate from or including a source not then the subject of approved proposals under this Agreement (including from a mining tenement not

referred to in subclause (9) of this Clause) shall be regarded as a significant modification, expansion or other variation of the Joint Venturers' activities carried on by them pursuant to this Agreement and may only be undertaken in accordance with proposals submitted and approved or determined under this Clause 8 and otherwise in accordance with the provisions of this Agreement.

- (11) A proposal or proposals submitted pursuant to subclause (1) of this Clause for the undertaking of any of the activities referred to in Clause 6B must clearly identify the non-mineral lease ore and/or non-Agreement nickel concentrates as the case may be the subject of the proposal (including by reference to source, tonnage and duration) or where the proposal relates also to ore and/or nickel concentrates produced from ore, clearly differentiate the non-mineral lease ore and/or non-Agreement nickel concentrates as the case may be from ore and/or nickel concentrates produced from ore.
- (12) The Joint Venturers shall not without the prior consent of the Minister submit a proposal under this Clause for, or in any way to support, the undertaking of any of the activities referred to in Clause 6B using non-mineral lease ore obtained from outside of Australia.
- (13) The Joint Venturers shall not without the prior consent of the Minister submit a proposal under this Clause for the grant of any lease, licence or other tenure to support either wholly or in part the undertaking of any of the activities referred to in Clause 6B.
- (14) To avoid doubt the parties acknowledge that none of:
- (a) the mining of non-mineral lease ore;

- (b) the treatment of such non-mineral lease ore outside the mineral lease to produce non-Agreement nickel concentrates;
- (c) the transport of such non-mineral lease ore and non-Agreement nickel concentrates to the mineral lease;
- (d) the transport of nickel concentrates produced from or containing non-mineral lease ore or non-Agreement nickel concentrates from the mineral lease; or
- (e) the smelting and refining of such nickel concentrates,

will be part of the activities that may be undertaken under this Agreement to the intent that the same, whether undertaken by the Joint Venturers or a third party, shall be undertaken in accordance with the general laws from time to time of the said State and upon tenure not subject to this Agreement."

- (c) renumbering subclause (2) of clause 8 as subclause (15);
- (6) in clause 10, by inserting "and subclause (7) of Clause 10B" at the end of clause 10(2) before the full stop;
- (7) by inserting after clause 10 the following new clauses:

**"Community Development Plan**

- 10A. (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 northern Goldfields region of the said State;
  - (b) training and employment for indigenous and non-indigenous persons living in the

- northern Goldfields region of the said State;
  - (c) regional development activities in the northern Goldfields region of the said State, including partnerships and sponsorships and local procurement of goods and services;
  - (d) contribution to any community projects, town services or facilities; and
  - (e) a regionally based workforce.
- (2) The Joint Venturers acknowledge the need for community and social benefits flowing from this Agreement.
- (3) The Joint Venturers agree that:
- (a) they shall prepare a draft plan which describes the Joint Venturers' proposed strategies for achieving community and social benefits in connection with their activities under this Agreement;
  - (b) within 2 months after the variation date, they shall confer with the Minister in respect of the draft plan; and
  - (c) they shall, following such conferral and within 3 months after the variation date, provide to the Minister a plan describing the Joint Venturers' strategies for achieving community and social benefits in connection with their activities under this Agreement.
- (4) At least 3 months before the anticipated submission of proposals under Clause 8 (or such lesser period as the Minister may, at the request of the Joint Venturers, approve in respect of such anticipated proposals), the Joint Venturers shall,

unless the Minister otherwise requires, give to the Minister information about how the proposed activities may affect the plan provided to 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 provided under this Clause.

- (5) During the currency of this Agreement, the Joint Venturers shall implement the plan provided to the Minister under this Clause.
- (6) The Joint Venturers shall at least annually report to the Minister about the Joint Venturers' implementation of the plan provided to the Minister under this Clause.
- (7) At the request of either of them made at any time and from time to time, the Minister and the Joint Venturers shall confer as to any amendments desired to any plan provided to the Minister under this Clause and following such conferral the Joint Venturers may provide to the Minister an amended or a new plan. Any such amended plan or new plan will be deemed to be the plan provided to the Minister under this Clause.

#### **Local Participation Plan**

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

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

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

- (4) At the request of either of them made at any time and from time to time, the Minister and the Joint Venturers shall confer as to any amendments desired to any plan provided under this Clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.
- (5) At least 3 months before the anticipated submission of proposals pursuant to Clause 8 (or such lesser period as the Minister may, at the request of the Joint Venturers, approve in respect of any such anticipated proposals), the Joint Venturers shall, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this Clause in relation to the activities to be the subject of such proposals. 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 provided under this Clause.

- (6) During the currency of this Agreement the Joint Venturers shall implement the plan provided under this Clause.
- (7) Except as otherwise agreed by the Minister, the Joint Venturers shall:
  - (a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this Clause; and
  - (b) use reasonable endeavours to ensure that the third party complies with those provisions."
- (8) in clause 11 by:
  - (a) in clause 11(5)(a), deleting the words "a municipality and the said roads shall be deemed to be streets under the care control and management of the Joint Venturers" and substituting the words "a local government and the said roads shall each be deemed to be a thoroughfare under the care control and/or management of the Joint Venturers and which the public are allowed to use"; and
  - (b) deleting clause 11(5)(b) and substituting the following new subparagraph:
    - "(b) for the purposes of this Clause the terms "local government" and "thoroughfare" shall have the meanings which they



respectively have in the *Local Government Act 1995* (WA)."

(9) in clause 12 by deleting subclauses (1), (2), (3), (5) and (7) (including subheadings);

(10) in clause 13 by:

(a) deleting subclauses (1), (4) (5) and (6) (including subheadings); and

(b) in clause 13(2), by deleting the words "In the event of the Joint Venturers demonstrating to the satisfaction of the Minister that the provisions of subclause (1) of this Clause would be unduly prejudicial to their operations; the" and substituting the word "The";

(11) in clause 15 by:

(a) inserting the following new subclause after clause 15(3):

**"Rent**

(3a) On and from the variation date, the Joint Venturers shall pay rent for the mineral lease in the amounts (including on a pro rata basis for portions of a rental period) and otherwise at the times and in the manner that would be required from time to time by the Mining Act 1978 and the Mining Regulations if the mineral lease was a mining lease granted under the Mining Act 1978."

(b) inserting the following new subclauses after clause 15(7):

**"MRF Act**

(8) On and from the variation date, the mineral lease shall be deemed to be a mining authorisation for the purposes of the MRF Act and the regulations made under that Act.

**Mine closure planning**

(9) The Joint Venturers shall, not later than 6 months after the variation date, lodge with the State a mine

closure plan for, subject to the EP Act, approval by the Minister for Mines (acting with the concurrence of the Minister) and on provision of such approval:

- (a) the mine closure plan shall be deemed to be a mine closure plan within the meaning given to that term in the Mining Act 1978 that, subject to this Clause, is to be reviewed, amended and implemented in accordance with that Act as if the mineral lease was a mining lease under the Mining Act 1978;
  - (b) the mineral lease shall be deemed to be subject to:
    - (i) a condition that the holder of the mineral lease must review the mine closure plan and obtain approval for the reviewed mine closure plan in accordance with this Clause; and
    - (ii) a condition that the holder of the mineral lease must decommission all mines (within the meaning given to that term in the Mining Act 1978) from time to time within the area of, and rehabilitate the land within, the mineral lease in accordance with the approved mine closure plan from time to time.
- (10) The Joint Venturers shall ensure that the mine closure plan referred to in subclause (9) of this Clause is reviewed at the times that a mine closure plan under the Mining Act 1978 is required by that

Act to be reviewed and otherwise at the times determined from time to time by the Minister for Mines (acting with the concurrence of the Minister).

- (11) The Joint Venturers shall ensure that a reviewed mine closure plan is within the applicable times under subclause (10) of this Clause lodged with the State for approval, subject to the EP Act, by the Minister for Mines (acting with the concurrence of the Minister).
- (12) The Minister for Mines (acting with the concurrence of the Minister) may approve the mine closure plan or a reviewed mine closure plan as lodged or subject to such changes as required by the Minister for Mines (acting with the concurrence of the Minister). If the Joint Venturers are unwilling to accept the changes required to be made, they shall notify the Minister to that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes and the effect of an award made on arbitration shall be that the mine closure plan or reviewed mine closure plan (as the case may be) lodged by the Joint Venturers shall, with such changes as required by the Minister for Mines (acting with the concurrence of the Minister) as the arbitrator determines to be reasonable (with or without modification by the arbitrator) be deemed to be the plan approved by the Minister for Mines (acting with the concurrence of the Minister) under this Clause.
- (13) Without limiting the Mining Act 1978, the Joint Venturers shall implement the mine closure plan or reviewed mine closure plan approved or deemed to be approved from time to time under subclause (12) of this Clause.

- (14) Without limiting the Mining Act 1978, the obligations set out in subclause (13) of this Clause shall survive the cessation or determination of this Agreement and the expiry or surrender of the mineral lease, in which case the Joint Venturers may enter and re-enter the land that was the subject of the mineral lease with such agents, employees, vehicles, machinery and equipment as may be necessary for the purpose of implementing the relevant mine closure plan and complying with the relevant conditions."

(12) by inserting after clause 16 the following new clause:

**"Incorporation of Specified Mining Tenements in the mineral lease and continuation proposals**

- 16A. (1) The Joint Venturers shall, not later than 2 months after the variation date, submit proposals under subclause (1) of Clause 8 for the continuation under this Agreement and upon the mineral lease (as it would be following the inclusion of the area of land of the Specified Mining Tenement within the mineral lease pursuant to this Clause) of their then current and contemplated activities on the Specified Mining Tenement and the provisions of Clause 8 shall be deemed to authorise the submission of such proposals.
- (2) If the proposals contemplated by subclause (1) of this Clause are approved or determined in accordance with Clause 8 such approval or determination shall take effect in respect of the area of a Specified Mining Tenement on and from the Relevant Endorsement Time and otherwise in accordance with and subject to the provisions of Clause 8.
- (3) Notwithstanding the provisions of the Mining Act or the Mining Act 1978 and subject to subclause (4) of this Clause, at the Relevant

Endorsement Time applicable to a Specified Mining Tenement:

- (a) the Specified Mining Tenement shall be deemed to be surrendered; and
  - (b) the area of land of the Specified Mining Tenement shall be deemed included in the mineral lease subject to such of the then existing conditions of the surrendered Specified Mining Tenement as the Minister for Mines determines (such determination to be made after the variation date and prior to the Relevant Endorsement Time) but otherwise subject to the same terms covenants and conditions as apply to the mineral lease (with such apportionments of rents as may be necessary) and notwithstanding that the survey of such additional land has not been completed but subject to correction to accord with the survey when completed at the Joint Venturers' expense.
- (4) As soon as practicable after the approval or determination of proposals contemplated by subclause (1) of this Clause in respect of the area of land the subject of a Specified Mining Tenement, the State shall cause a notation or other endorsement to be made in the register that the mineral lease includes the area of land of the Specified Mining Tenement subject to the determined conditions and the terms, covenants and conditions otherwise applicable in accordance with paragraph (b) of subclause (3) of this Clause.
- (5) For the avoidance of doubt, the abovementioned endorsements are authorised to be made in the register without any further formalities, approvals or other preconditions."

(13) in clause 17 by:

(a) in clause 17(2), deleting the word "townsites,"; and

(b) in clause 17(4):

(i) after the words "third party" inserting the word "with"; and

(ii) after the words "subject to" inserting the words "subclause (3) of Clause 29,";

(14) in clause 18 by deleting subclause (4) (including the subheading);

(15) by deleting clause 20 and substituting the following new clause:

**"Port**

20. To avoid doubt the parties acknowledge that after the variation date:

(a) the transport of nickel containing products from the mineral lease for delivery or sale to a third party (including without limitation the construction or provision of facilities and infrastructure outside of the mineral lease for such purposes); and

(b) the transport (including by road or rail) to, and shipment through, a port in the said State of nickel containing products (including without limitation the construction or provision of facilities and infrastructure for such purposes),

will not be part of the activities that may be undertaken under this Agreement after the variation date to the intent that the same, whether undertaken by the Joint Venturers or a third party, shall be undertaken in accordance with the general laws from time to time of the said State."

(16) in clause 21 by:

(a) in clause 21(1), inserting "1978 in respect of mining leases granted under that Act " before the full stop;

(b) deleting clause 21(3) and substituting the following new subclauses:

- "(3) The Joint Venturers shall within 30 days after the last day (provided that last day occurs after the variation date) of each of March, June, September and December in each year give to the State a return showing the number of tonnes of minerals mined by them or products produced by them from minerals derived from the mineral lease and for which payment is received during the 3 calendar months ending on that last day and all other particulars necessary to enable the calculation, and to assist in the verification, of the royalty payable thereon and shall pay to the State the royalty payable on such product and mineral.
- (3A) The Joint Venturers shall within 30 days of the expiration of the last day (provided such last day occurs after the variation date) of March, June, September and December in each year during which they, in accordance with paragraph (a) of subclause (9) of Clause 8 and approved proposals under this Agreement (as applicable), treat non-mineral lease ore to produce nickel concentrates, give to the State a return showing in respect of each source from which such non-mineral lease ore is mined:
- (a) the tonnes of non-mineral lease ore treated in the 3 calendar months ending on that last day;
  - (b) the assay percentages of nickel contained in that non-mineral lease ore;
  - (c) the tonnes of nickel contained in that non-mineral lease ore;
  - (d) the nickel recovery rates in respect of that non-mineral lease ore;
  - (e) the tonnes of nickel concentrate recovered from the treatment of that non-mineral lease ore; and

- (f) such other information as the State shall from time to time reasonably require to enable the calculation of royalty payable in respect of nickel mined from each such abovementioned source.
- (3B) The Joint Venturers shall within 30 days of the expiration of the last day (provided such last day occurs after the variation date) of March, June, September and December in each year during which they, in accordance with paragraph (b) of subclause (9) of Clause 8 and approved proposals under this Agreement (as applicable) blend nickel concentrates produced in accordance with paragraph (a) of subclause (9) of Clause 8 and approved proposals under this Agreement (as applicable) with non-Agreement nickel concentrates, give to the State a return showing in respect of each source from which non-Agreement nickel concentrates are obtained:
- (a) the tonnes of non-Agreement nickel concentrates delivered to the Joint Venturers in the 3 calendar months ending on that last day;
  - (b) the assay percentages of nickel contained in the non-Agreement nickel concentrates delivered;
  - (c) the tonnes of nickel contained in the non-Agreement nickel concentrates delivered;
  - (d) the nickel recovery rates in respect of the non-Agreement nickel concentrates delivered after blending with nickel concentrates produced in accordance with approved proposals under this Agreement;
  - (e) the tonnes of nickel concentrates recovered from the blending of the



non-Agreement nickel concentrates delivered with nickel concentrates produced in accordance with approved proposals under this Agreement; and

- (f) such other information as the State shall from time to time reasonably require to enable the calculation of royalty payable in respect of nickel mined from each such abovementioned source."
- (c) in subclause 21(4), by deleting the words "Minister for Mines" and each occurrence of the words "Minister for Mines or his nominee" and substituting in each case the word "State";
- (d) in subclause 21(4), after the words "royalty payable under this Clause" inserting the words ", and under the Mining Act 1978 in respect of non-mineral lease ore and nickel concentrates and non-Agreement nickel concentrates the subject of approved proposals under this Agreement,";
- (e) by inserting after clause 21(4) the following new subclauses:
  - "(5) The Joint Venturers shall to the extent they have not already done so, within 3 months after the variation date, establish and thereafter during the continuance of this Agreement maintain in place to the reasonable satisfaction of the State adequate systems and controls for the correct apportionment, where blending as referred to in Clause 6B is being undertaken, between ore and non-mineral lease ore and nickel concentrates produced in accordance with approved proposals under this Agreement and non-Agreement nickel concentrates of the quantities of nickel comprised in the resulting nickel containing products and which systems and controls monitor production, concentration, processing, transportation, stockpiling and shipping activities in respect of such nickel.

- (6) If at any time the State ceases to be so satisfied it may, after consulting the Joint Venturers and provided that the Joint Venturers have not within 3 months after the commencement of such consultation addressed the matters of concern to the State's satisfaction, by notice in writing to the Joint Venturers suspend the above authority for blending to be undertaken until the State is again so satisfied in terms of subclause (5) of this Clause."

(17) by deleting clause 24 and substituting with the following new clause:

**"Rating**

24. (1) The State shall ensure that, notwithstanding the provisions of any Act or anything done or purported to be done under any Act, the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except land the subject of the Townsite Lease and except as to any part of other land upon which is situated a specified improvement as referred to below) shall for rating purposes under the *Local Government Act 1995* (WA), be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate.
- (2) For the purpose of this Clause, the following improvements are specified improvements:
- (a) accommodation, recreation and administration facilities and associated buildings; and
  - (b) maintenance workshops existing within 100 metres of facilities listed in paragraph (a) above."

(18) by deleting clause 26 (other than the heading);

(19) by inserting after clause 29(2) the following new subclause:

"(3) Notwithstanding the provisions of the Land Act insofar as the same may apply, no sublease by the Joint Venturers of land from time to time comprised in the Townsite Lease for:

- (a) a purpose or purposes falling within the permitted use of the land the subject of that lease; and
- (b) a potential term shorter than the current term from time to time of the Townsite Lease,

will require any approval or consent under subclause (1) of this Clause or under the Land Act provided that the Joint Venturers give notice to the Minister and the Minister responsible for the Land Act of the proposed sublease."

(20) in clause 35 by deleting subclause (4);

(21) in clause 44 by:

(a) in clause 44(1):

- (i) deleting the words "their umpire" and substituting the words "a third and presiding arbitrator"; and
- (ii) deleting the words "Arbitration Act 1895" and substituting the words "*Commercial Arbitration Act 2012 (WA)*"; and

(b) in clause 44(3), deleting the words "or umpire (as the case may be)"; and

(22) in clause 46, by inserting after the words "the State of Western Australia" the words "and, except for matters to be referred to arbitration pursuant to this Agreement, the parties to this Agreement submit to the jurisdiction of the courts of Western Australia in relation to any action or proceeding to settle any dispute or question arising out of or in connection with this Agreement".

**s. 6**

---

**EXECUTED** as a deed.

**SIGNED** by **THE HONOURABLE** )  
**MARK McGOWAN** )  
in the presence of: ) [Signature]

[Signature]

\_\_\_\_\_  
Signature of witness

DAVID PAUL COGGIN

\_\_\_\_\_  
Name of witness

**EXECUTED** by **BHP NICKEL** )  
**WEST PTY LTD** ACN 004 184 598 )  
in accordance with section 127(1) of )  
the *Corporations Act 2001* (Cth) by )  
authority of its directors: )

[Signature]

\_\_\_\_\_  
Signature of director

JESSICA FARRELL

\_\_\_\_\_  
Full name of director (block letters)

[Signature]

\_\_\_\_\_  
Signature of director/~~company~~  
~~secretary~~\*

RIAAN CLOETE

\_\_\_\_\_  
Full name of director/~~company~~  
~~secretary~~\* (block letters)

\*delete whichever is not applicable