

Western Australia

**Iron Ore (FMG Chichester Pty Ltd) Agreement
Act 2006**

As at 03 Oct 2006

No. 44 of 2006

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Western Australia

Iron Ore (FMG Chichester Pty Ltd) Agreement Act 2006

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Schedule 1 — Iron Ore (FMG Chichester Pty Ltd) Agreement

Western Australia

Iron Ore (FMG Chichester Pty Ltd) Agreement Act 2006

No. 44 of 2006

An Act to ratify, and authorise the implementation of, an agreement between the State and FMG Chichester Pty Ltd and Fortescue Metals Group Ltd relating to the development of a project for the mining of iron ore in the Pilbara region of the State.

[Assented to 3 October 2006]

The Parliament of Western Australia enacts as follows:

1. Short title

This is the *Iron Ore (FMG Chichester Pty Ltd) Agreement Act 2006*.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Terms used in this Act

In this Act —

“**scheduled agreement**” means the agreement of which a copy is set out in Schedule 1;

“**the Agreement**” means the scheduled agreement or, if it is varied in accordance with its terms, that agreement as varied from time to time.

4. Ratification and authorisation

- (1) The scheduled agreement is ratified.
- (2) The implementation of the Agreement is authorised.

5. State empowered under clause 22

The State has power in accordance with clause 22 of the Agreement.

6. Effect on other laws

- (1) The Agreement operates and takes effect despite any enactment or other law.
- (2) If a provision of the scheduled agreement expressly or by implication purports to modify or exclude the application or operation of an enactment for a purpose or in relation to a person or thing, the application or operation of the enactment is modified or excluded for that purpose, or in relation to that person or thing, to the extent or for the period mentioned in the provision or necessary for the provision to have effect.
- (3) To avoid doubt, it is declared that the provisions of the *Public Works Act 1902* section 96 do not apply to any railway constructed pursuant to the Agreement.
- (4) This section does not limit or otherwise affect the application of the *Government Agreements Act 1979*.

**Schedule 1 — Iron Ore (FMG Chichester Pty Ltd)
Agreement**

[s. 3]

2005

THE STATE OF WESTERN AUSTRALIA

and

**FMG CHICHESTER PTY LTD
ACN 109 264 262**

and

**FORTESCUE METALS GROUP LTD
ACN 002 594 872**

IRON ORE (FMG CHICHESTER PTY LTD) AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 1st day of December 2005

BETWEEN

THE HONOURABLE GEOFFREY IAN GALLOP, B.Ec., MA., MPhil., DPhil., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "**the State**") of the first part,

FMG CHICHESTER PTY LTD ACN 109 264 262 of Ground Floor, 46-50 Kings Park Road, West Perth, Western Australia (hereinafter called "**the Company**") in which term shall be included its successors and permitted assigns) of the second part, and

FORTESCUE METALS GROUP LTD ACN 002 594 872 of Level 1, 46-50 Kings Park Road, West Perth, Western Australia (hereinafter called "**the Guarantor**") of the third part.

WHEREAS:

- A. The Company wishes to develop within the Defined Area in the vicinity of the Chichester Ranges in the Pilbara region of Western Australia a project for the mining of iron ore for sale either within Australia or by export to overseas purchasers.
- B. At the date of this Agreement the Company holds, in respect of the Defined Area, the exploration licences referred to in part A of schedule 1 and has applied under the Mining Act to have granted to it the exploration licences referred to in part B of schedule 1. The Company has also applied under the Mining Act to have granted to it the mining leases, as referred to in schedule 2, in respect of part of the land the subject of those exploration licences held by it.
- C. The Guarantor and The Pilbara Infrastructure Pty Ltd ACN 103 096 340 are proceeding with detailed feasibility studies for the construction and operation of a multi-user railway from in the vicinity of the Chichester Ranges to multi-user port facilities within the Port of Port Hedland or to a

location near the boundary of that port for delivery to such port facilities by multi-user conveyor, and of such multi-user port facilities, for the shipping and export of iron ore products, freight goods and other products. The State has agreed to assist the development of those multi-user facilities upon and subject to the terms of the Railway and Port Agreement.

- D. The Guarantor and the Company intend the railway and port facilities, upon being constructed, to be used for the transportation, shipping and export of iron ore produced as part of the Company's proposed project.
- E. The State, for the purposes of promoting the development of the iron ore industry and the creation of employment opportunity generally in Western Australia, has agreed to assist the Company in the establishment of its proposed project and has agreed to provide a framework for managing future changes to the project, upon and subject to the terms of this Agreement.
- F. This Agreement is the Mining Agreement as defined in clause 1 of the Railway and Port Agreement.

NOW THIS AGREEMENT WITNESSES:

Definitions

1. In this Agreement subject to the context:

“**Access Act**” means the *Railways (Access) Act 1998*;

“**Access Code**” means the *Railways (Access) Code 2000*;

“**Access Minister**” means the Minister in the Government of the State for the time being responsible for the administration of the Access Act;

“**accommodation area**” means an area or areas on, or subject to clause 6 in the vicinity of, the Mining Leases for accommodation and ancillary facilities for the mine workforce;

“advise”, “apply”, “approve”, “approval”, “consent”, “certify”, “direct”, “notify”, “request”, or “require”, means advise, apply, approve, approval, consent, certify, direct, notify, request or require in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;

“Agreement Mining Tenements” means:

- (a) the exploration licences listed in part A of schedule 1;
- (b) any exploration licences granted to the Company pursuant to the applications for exploration licences listed in part B of schedule 1;
- (c) any mining leases granted to the Company pursuant to its applications for mining leases referred to in schedule 2;
- (d) any other mining leases or general purpose leases granted to the Company wholly by way of conversion of all or part of an exploration or exploration licences which at the time of conversion is an Agreement Mining Tenement or are Agreement Mining Tenements;
- (e) any other mining tenements granted to the Company in accordance with approved proposals; and
- (f) any other mining tenements approved by the Minister as Agreement Mining Tenements pursuant to clause 12(10),

and includes any renewals or extensions thereof as the case may be;

“approved proposal” means a proposal approved or deemed to be approved under this Agreement;

“beneficiated ore” means iron ore which has been concentrated or upgraded, otherwise than by washing, drying, crushing or screening or a combination thereof, by the Company in a plant constructed pursuant to an approved proposal or such other plant as is approved by the Minister after consultation with the

Minister for Mines and **“beneficiation”** and **“beneficiate”** have corresponding meanings;

“commencement date” means the date on which the Bill referred to in clause 3 comes into operation as an Act;

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

“Company’s workforce” means the persons (and the dependants of those persons) connected directly with the Company’s activities under this Agreement, whether or not such persons are employed by the Company and includes the persons (and the dependants of those persons) involved in the construction phases of the Project;

“Defined Area” means the area of land shown hatched on the plan annexed to this Agreement and marked with the letter “A”;

“Department” means the instrumentality of the State from time to time assisting the Minister for Mines in the administration of the Mining Act;

“EP Act” means the *Environmental Protection Act 1986*;

“Government agreement” has the meaning given to it in the *Government Agreements Act 1979*;

“iron ore” includes beneficiated ore;

“iron ore products” includes iron ore of all grades and all products from the processing of iron ore;

“LAA” means the *Land Administration Act 1997*;

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

“local government” means a local government established under the *Local Government Act 1995*;

“metallised agglomerates” means the product of a pyrometallurgical iron ore reduction process which has a composition of not less than 85% total iron excluding carbon;

“mine workforce” means such of the Company’s workforce (excluding dependants) engaged for the Company’s activities on the area of the Mining Leases, the accommodation area, and other areas provided for the facilities of the Company in the vicinity of the Mining Leases but does not include persons visiting any of those areas in connection with the Company’s activities on a short term basis only or employed for a specific task of limited duration;

“Mining Act” means the *Mining Act 1978*;

“Mining Amendment Act” means the *Mining Amendment Act 2004*;

“Mining Leases” means mining leases granted to the Company wholly by way of conversion of all or part of an exploration licence or exploration licences which at the time of conversion is an Agreement Mining Tenement or are Agreement Mining Tenements and mining leases approved by the Minister as Agreement Mining Tenements pursuant to clause 12(10) and includes any renewal thereof and according to the requirements of the context shall describe the area of land demised as well as the instruments by which such land is demised;

“mining tenement” has the meaning given to it in section 8 of the Mining Act;

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

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

“month” means calendar month;

“native title” and **“native title rights and interests”** have the meaning given in the *Native Title Act 1993* (Commonwealth);

“notice” means notice in writing;

“private roads” means the roads referred to in clause 15(1) and any other roads constructed by the Company in accordance with an approved proposal or agreed by the State and the Company to be a private road for the purposes of this Agreement;

“Project” means the establishment and operation under this Agreement and in accordance with approved proposals of a project for the production of iron ore from the Mining Leases for transportation from the Mining Leases;

“public road” means a road as defined by the *Road Traffic Act 1974*;

“Rail Safety Act” means the *Rail Safety Act 1998*;

“Railway” has the meaning given to it in clause 1 of the Railway and Port Agreement;

“Railway and Port Agreement” means the agreement ratified by the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004*;

“said State” means the State of Western Australia;

“The JORC Code” means the Australasian Code for Reporting of Mineral Resources and Ore Reserves prepared by the Joint Ore Reserves Committee of The Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and Minerals Council of Australia in December 2004 or any future superseding code issued by the same or any future equivalent organisation or organisations;

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

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

Interpretation

2. (1) In this Agreement:
- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
 - (b) power given under any clause other than clause 29 to extend any period or date shall be without prejudice to the power of the Minister under clause 29;
 - (c) clause headings do not affect interpretation or construction;
 - (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
 - (e) one gender includes the other genders;
 - (f) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
 - (g) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;
 - (h) reference to the Access Code includes the amendments to that code for the time being in force and also any code established or made in substitution therefor or in lieu thereof;

- (i) reference in this Agreement to any other document includes that document as from time to time added to, varied or amended and notwithstanding any change in the identity of the parties to it;
 - (j) reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this Agreement, and a reference to a subclause or paragraph is a reference to the subclause of the clause or paragraph of the clause or subclause as the case may be in, or in relation to, which the reference is made;
 - (k) “including” means “including, but not limited to”; and
 - (l) reference to a “person” includes a body corporate.
- (2) Nothing in this Agreement, including the approval of proposals, shall be construed to exempt the State or the Company from compliance with, or to require the State or the Company to do anything contrary to, any 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.
- (3) Nothing in this Agreement, including the approval of proposals, shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment, including the clearing of native vegetation (as defined in section 3 of the EP Act), arising out of or incidental to its activities under this Agreement that may be made by or under the EP Act.

Ratification and operation

3. (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 30 June 2006 or such later date as may be agreed between the parties hereto.

- (2) (a) This clause and clauses 1, 2, 4 and 6 (2) shall come into operation on the date of this Agreement.
 - (b) Clause 12(3) shall not come into operation until both the Bill referred to in subclause (1) has been passed by the Parliament of Western Australia and comes into operation as an Act and Parts 6 and 10 of the Mining Amendment Act come into operation.
 - (c) The other provisions of this Agreement shall not come into operation until the Bill referred to in subclause (1) has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (3) If by 31 December 2006 the said Bill has not commenced to operate as an Act then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (4) Subject to subclauses 2(b) and (5), on the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect despite any enactment or other law.
- (5) On the later of:
- (a) the date on which the said Bill commences to operate as an Act; and
 - (b) the date on which Parts 6 and 10 of the Mining Amendment Act come into operation,
- the provisions of clause 12(3) shall operate and take effect despite any enactment or other law.

Initial obligations of the Company

4. (1) The Company shall continue its field and office engineering, environmental, heritage, market and finance studies and other

matters necessary for the purposes of this clause and to enable it to finalise and to submit to the Minister the detailed proposals referred to in clause 8. This shall include progressively exploring and carrying out geological investigations to delineate both the Indicated Mineral Resource and the Measured Mineral Resource (each as defined in The JORC Code) of iron ore within those parts of the exploration licences referred to in part A of schedule 1 which are the subject of the applications for mining leases set out in schedule 2.

- (2) The Company shall keep the State fully informed in writing at quarterly intervals from the date of this Agreement as to the progress and results of its operations under subclause (1) and shall supply to the Minister such information in relation thereto as the Minister may request from time to time.
- (3) The Company shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclauses (1) and (2) and any other relevant studies in relation to those subclauses that the Minister may wish the Company to undertake.
- (4) Notwithstanding the dedication of Agreement Mining Tenements to the Project as referred to in clause 6(2), as part of undertaking its obligations under subclause (1) the Company may mine iron ore on not more than 2 Mining Leases for the purposes of taking bulk samples and for testing mining equipment intended to be used in the Project provided that:
 - (a) such mining and associated mining operations shall be subject to the Mining Act, the EP Act and the other laws of the State; and
 - (b) the amount of earth, soil, rock, stone, fluid or mineral bearing substances that is excavated, extracted or removed from:
 - (i) those Mining Leases; and

- (ii) exploration licences which are Agreement Mining Tenements and in respect of which the Minister for Mines has, pursuant to section 66(c) of the Mining Act, approved a limit greater than the prescribed limit as referred to in that section,

as part of that bulk sampling and testing does not exceed 1,000,000 tonnes in aggregate.

Aboriginal Heritage Act 1972

- 5. For the purposes of this Agreement the *Aboriginal Heritage Act 1972* 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 made on 1 December 2005 between The Honourable Geoffrey Ian Gallop, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, FMG Chichester Pty Ltd ACN 109 264 262 and Fortescue Metals Group Ltd ACN 002 594 872, in relation to the use or proposed use pursuant to that agreement of land within the Defined Area (as defined in that agreement) after and in accordance with approved proposals under 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 sentence at the end of section 18(3):

“In relation to a notice from the Company pursuant to subsection (2) 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 proposals thereunder for the Project (as defined in 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 clause 5 nor the granting of any consents under section 18 of the *Aboriginal Heritage Act 1972* 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.

Land to be the subject of this Agreement

- 6. (1) The land to be granted pursuant to this Agreement, whether under the LAA, the Mining Act or otherwise, will be drawn from within:
 - (a) the Defined Area; and
 - (b) such other area of land in the vicinity of the Defined Area as the Minister, before the Company submits proposals in respect thereof, approves as land the Company may as part of the particular proposals and in accordance with but subject to this Agreement request the grant to it of leases, licences or other tenures over as

referred to in clause 18 to support the undertaking of the Project.

- (2) Subject to clause 4(4), the Company dedicates to the Project:
- (a) all Agreement Mining Tenements held by it at the date of this Agreement; and
 - (b) all future Agreement Mining Tenements,

and agrees that while this Agreement continues they shall remain so dedicated for their respective terms including as renewed or extended from time to time.

Community development plan

7. (1) In this clause, the term “community and social benefits” includes:
- (a) training and guaranteed employment for indigenous and non-indigenous persons living in the Pilbara region of the said State;
 - (b) regional development and local procurement of goods and services;
 - (c) contribution to community services and 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, prior to the time at which it submits any proposals pursuant to clause 8 and, if required by the Minister, prior to the time at which it submits any additional proposals pursuant to clauses 10 or 11, it shall:
- (a) consult with the relevant local government or local governments with respect to the need for community

- and social benefits in relation to the developments proposed;
- (b) following such consultation, prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with the developments proposed, and such plan shall include a process for regular consultation by the Company with the relevant local government or local governments in respect of the strategies; and
 - (c) submit to the Minister the plan prepared pursuant to subclause (3)(b) and confer with the Minister in respect of the plan.
- (4) The Minister shall within one month after receipt of a plan submitted under subclause (3)(c), either notify the Company that the Minister approves the plan as submitted or notify the Company of any changes that 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 plan submitted by the Company pursuant to subclause (3)(c) 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) During the continuance of this Agreement, the Company shall implement the plan approved or deemed to be approved by the Minister under this clause.
- (7) The Company shall report to the Minister about the results of its periodic ongoing consultation with the relevant local government or local governments in accordance with the plan approved or deemed to be approved by the Minister under this

clause and as soon as practicable after each such consultation takes place.

- (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.

Company to submit proposals

8. (1) The Company shall, subject to the EP Act, the provisions of this Agreement and approval of a plan as referred to in clause 7, submit to the Minister by 31 December 2006 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 production of iron ore from the Mining Leases then held by the Company and, if the Company so wishes, also from any mining leases which the Company has then applied for under the Mining Act and which if granted would be Agreement Mining Tenements (such Mining Leases and proposed mining leases in this subclause together being called “the relevant mining leases”) in an amount not less than, in aggregate, 10,000,000 tonnes per annum and not greater than the production limit specified in clause 11(1) or such higher number of tonnes per annum as may be approved in principle by the Minister pursuant to clause 11(2), for transportation from the relevant mining leases and which proposals shall include the location, area, lay-out, design, quantities, 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:
- (a) the mining and recovery of iron ore including mining, crushing, screening, handling, transport and storage of iron ore and plant facilities;

- (b) any beneficiation or further processing of iron ore proposed to be carried out;
- (c) transportation of iron ore from the relevant mining leases by road or by rail spur line or conveyor connecting to the Railway or to any other railway of a third party at a location within the Defined Area;
- (d) roads within the relevant mining leases and roads serving the relevant mining leases;
- (e) temporary accommodation and ancillary facilities for the mine workforce on, or subject to clause 6 in the vicinity of, the relevant mining leases and housing or other appropriate accommodation and facilities elsewhere for the Company's workforce;
- (f) water supply and disposal;
- (g) energy supplies;
- (h) a mine aerodrome on, or subject to clause 6 in the vicinity of, the relevant mining leases;
- (i) any other works, services or facilities desired by the Company;
- (j) residue disposal;
- (k) subject to clause 6, any ancillary leases (not being general purpose leases for land within the Defined Area or mining leases), licences (not being exploration licences or retention licences) or other tenures of land in favour of the Company required from the State to support the undertaking of the Project; and
- (l) 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.

- (2) Proposals submitted pursuant to subclause (1) must not:
- (a) include a request for the grant of a lease, licence or other tenure of land which the Company has already applied for under the Mining Act, the LAA or otherwise;
 - (b) in relation to all Agreement Mining Tenements the subject of the proposals, be inconsistent with the conditions endorsed by the Minister for Mines on the grants of those mining tenements; and
 - (c) if they relate to a mining lease or mining leases which the Company has applied for under the Mining Act and which if granted would be an Agreement Mining Tenement or Agreement Mining Tenements as the case may be, be inconsistent with the documentation that accompanied that application or those applications under the Mining Act.
- (3) Each of the proposals submitted pursuant to subclause (1) 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 paragraphs (a) to (l) of subclause (1). Until all of its proposals under this clause 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 clause in respect of the subject matter of the withdrawn proposal.
- (4) Each of the proposals submitted pursuant to subclause (1) may with the consent of the Minister and the consents of any other parties concerned, instead of providing for the construction of new facilities or equipment or the provision of new services of the kind therein mentioned, provide for the use by the Company of any existing facilities equipment or services of such kind belonging to the Company or upon terms and conditions agreed between the Company and the other parties concerned of any other existing facilities equipment or services of such kind.

- (5) 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 clause), 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 or carried out outside Australia, together with its reasons therefor and shall, if required by the Minister consult with the Minister with respect thereto.
- (6) At the time when the Company submits the last of the said proposals pursuant to this clause, it shall furnish to the Minister's reasonable satisfaction evidence of:
- (a) marketing arrangements demonstrating the Company's ability to sell iron ore produced in accordance with the said proposals;
 - (b) the financial capacity of the Company to undertake the operations to which the said proposals refer;
 - (c) all accreditations under the Rail Safety Act which are required to be held by the Company or any other person for the construction of any rail spur proposed as referred to in subclause (1)(c); and
 - (d) the readiness of the Company to embark upon and proceed to carry out the operations referred to in the said proposals.

Consideration of proposals

9. (1) In respect of each proposal pursuant to clause 8(1) the Minister shall subject to the EP Act:
- (a) approve of the proposal 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 8(1) not covered by the said proposal or until such time as clause 8(6) has been complied with by the Company; or
- (c) require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto (including where the proposal relates to an Agreement Mining Tenement or Agreement Mining Tenements granted after the submission of the proposal, to accord with the conditions endorsed by the Minister for Mines on the grant of that mining tenement or grants of those mining tenements) 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 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 Company make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

- (2) The Minister shall within 2 months after the later of:
 - (a) receipt of proposals pursuant to clause 8(1);
 - (b) where the proposals are to be assessed under Part IV of the EP Act, service on the Minister of an authority under section 45(7) of the EP Act;
 - (c) where a proposal will or may require the State to do any act which affects any 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 ay be done by the State; and

- (d) where the proposals relate to a mining tenement or mining tenements which the Company has applied for under the Mining Act and which if granted would be an Agreement Mining Tenement or Agreement Mining Tenements, the grant of that application or of all of those applications as the case may be,

give notice to the Company of his decision in respect to the proposals.

- (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) 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 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.
- (5) An award made on an arbitration pursuant to subclause (4) shall have force and effect as follows:
- (a) if by the award the dispute is decided against the Company then unless the Company within 3 months after delivery of the award gives notice to the Minister of its acceptance of the award this Agreement shall on the expiration of that period of 3 months cease and determine; or
- (b) if by the award the dispute is decided in favour of the 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) Notwithstanding any provision of this Agreement (other than clause 29) or that the plan required to be approved pursuant to clause 7 has not been approved, or that under this clause any proposals of the Company are approved by the Minister or determined by arbitration award, unless each and every proposal and matter required pursuant to clause 8 is so approved or determined by 31 December 2007 then the Minister may give to the Company 12 months notice of intention to determine this Agreement and unless before the expiration of the said 12 months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of clause 31.
- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement the approved proposals in accordance with the terms thereof.
- (8) Notwithstanding clause 27, the Minister may during the implementation of approved proposals approve variations to those proposals.
- (9) The Minister may extend the periods set forth in clause 8(1) and subclause (6) of this clause (in addition to any extension granted under clauses 28 and 29) upon request of either the Company or the State for such reasonable period or periods as the Minister considers appropriate to enable either of them to comply with laws relating to native title.

Expansion of the Project

10. (1) Subject to clause 11, if the Company at any time during the continuance of this Agreement desires to significantly modify, expand or otherwise vary its activities that are the subject of this Agreement and that may be carried on by it pursuant to this Agreement beyond those activities specified in any approved proposals 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 8(1) as the Minister may require.

- (2) The provisions of clauses 8 and 9 (other than subclauses (5)(a) and 6) shall mutatis mutandis apply to detailed proposals submitted pursuant to this clause with the proviso that the Company may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same. Subject to and in accordance with the EP Act and any approvals or licences required under that Act, the Company shall implement approved proposals pursuant to this clause in accordance with the terms thereof.

Limits on mining

11. (1) The Company shall not produce, in aggregate, more than 45,000,000 tonnes of iron ore per annum from the Mining Leases without the prior in-principle approval of the Minister under, and approval of detailed proposals in regard thereto in accordance with, this clause.
- (2) (a) If the Company desires to increase the annual tonnage beyond that specified in subclause (1) it shall, subject to sub-clause (3), give notice thereof to the Minister and furnish to the Minister with that notice an outline of its proposals in respect thereto (including the matters mentioned in clause 8(1) or as the Minister otherwise requires).
- (b) The Minister shall within one month of receipt of a notice under paragraph (a) of this subclause advise the Company whether or not he approves in principle the proposed increase. An in-principle approval by the Minister under this subclause may be given subject to conditions including a condition requiring variations of or additions to this Agreement provided that any such

condition shall not without the consent of the Company require variations of:

- (i) the term of any Agreement Mining Tenement; or
- (ii) the rentals payable under any Agreement Mining Tenement; or
- (iii) the rates or method of calculating royalty; or
- (iv) the provisions of clause 20.

The Minister shall afford the Company full opportunity to consult with him in respect of the decision of the Minister under this subclause.

- (3) The Company may not give a notice under subclause (2)(a) in regard to the production, in aggregate, of more than 45,000,000 tonnes of iron ore per annum from the Mining Leases unless the Minister:
 - (a) acting in accordance with clause 20(4) has approved or is deemed to have approved proposals submitted under clause 20(2) for the establishment within the said State of plant for the production of metallised agglomerates or under clause 20(6) for an alternative project in lieu of the Company's obligations under clause 20 in respect of the establishment of such plant; or
 - (b) agrees for the purpose of this subclause (3) to receive a notice under subclause (2)(a). If at the time the Minister is considering whether or not to so agree for the purpose of this subclause the Company has pursuant to clause 20(3) applied for or been granted a postponement of its obligations to submit proposals under clause 20(2) or such an application made by it is subject to clause 20(3)(d), the Minister shall in considering whether or not to so agree for the purpose of this subclause take into account the estimated quantity of iron ore then still available to be produced from the Mining Leases.

- (4) (a) If the Minister approves in principle a proposed increase the Company:
- (i) if it has not already submitted pursuant to clause 8 all of its proposals for its initial mining project, shall submit to the Minister pursuant to clause 8 detailed proposals in respect of the proposed increase as part of the Company's proposals for its initial mining project and in accordance with any condition of the Minister's in-principle approval which may include the amendment of the plan approved under clause 7 as a prerequisite to the submission by the Company of proposals under clause 8; or
 - (ii) if it has already submitted pursuant to clause 8 all of its proposals for its initial mining project, may after compliance with clause 7 (if required by the Minister) and within 18 months or such longer period as the Minister may from time to time allow of the Minister's in-principle approval, submit to the Minister detailed proposals in respect of the proposed increase in accordance with any conditions of that in-principle approval otherwise that in-principle approval shall lapse.
- (b) The provisions of clauses 8 and 9 shall mutatis mutandis apply to detailed proposals regarding a proposed increase referred to in paragraph (a)(i) of this subclause. The provisions of clause 10(2) shall apply to detailed proposals submitted pursuant to paragraph (a)(ii) of this subclause.
- (5) Any proposal to increase the annual tonnage to be produced from the Mining Leases shall specify the proposed increase and on and after approval or determination of any such proposal in accordance with subclause (4)(b):
- (a) a reference to the amount referred to in subclause (1) shall be deemed to be a reference to the increased

tonnage and the provisions of this clause shall apply mutatis mutandis to the increased tonnage and also to any subsequent desires of the Company for an increase in the tonnage; and

- (b) a reference to the amount referred to in subclause (3) shall be deemed to be a reference to the increased tonnage if that increased tonnage is higher than 45,000,000 tonnes of iron ore per annum.

Agreement Mining Tenements

- 12. (1) The Company shall be responsible for obtaining the grant to it under the Mining Act of mining leases and general purpose leases, by way of conversion of all or part of exploration licences now or hereafter held by it and which are Agreement Mining Tenements, required for the purposes of the Project and the grant of such leases and any other mining leases will not be sought or granted pursuant to this Agreement.
- (2) For the purposes of this Agreement and without limiting the operation of other subclauses, the application of the Mining Act and regulations made thereunder are specifically modified during the continuance of this Agreement as follows:
 - (a) in relation to an application that the Company may after the commencement date make under the Mining Act:
 - (i) to convert all or part of an exploration licence referred to in part A of schedule 1 or granted to the Company pursuant to an application referred to in part B of schedule 1 to a mining lease or general purpose lease; or
 - (ii) otherwise for the grant to it of a mining tenement solely over land within the Defined Area where the grant is provided for in approved proposals,

the provisions of the Mining Act which, but for this paragraph, entitle or would entitle a person to object with or without the leave of the warden to the grant of such a mining tenement to the Company, shall not apply to the extent only that those provisions entitle or would entitle a person to so object;

- (b) by inserting in section 65(1a) the words “or otherwise by the terms of the licence” after the words “section 111”;
 - (c) the Company shall not be entitled to apply for and be granted any retention licences in respect of the whole or any part of the land the subject of a Mining Lease or an exploration licence which is an Agreement Mining Tenement; and
 - (d) in respect of any exploration licence that is an Agreement Mining Tenement by inserting in regulation 23AB the following new ground for extension of the term of such exploration licence:

“the holder of the exploration licence is a person authorised by the Minister under section 111 or otherwise by the terms of the licence to explore for iron on that land”.
- (3) For the purposes of this Agreement and without limiting the operation of other subclauses, the application of the Mining Act and regulations made thereunder are also specifically modified during the continuance of this Agreement as follows:
- (a) in respect of the applications for mining leases referred to in schedule 2 and any other applications by Company for mining leases under the Mining Act which if granted would be Agreement Mining Tenements, by deleting section 120AA;
 - (b) section 6(1a), including as applying pursuant to section 90(1), shall not apply to the extent it may

prevent the Minister from referring for assessment under Part IV of the EP Act, a proposal or proposals submitted pursuant to clauses 8, 10 or 11 as the case may be;

- (c) in section 6(1d), including as applying pursuant to section 90(1), by deleting the full stop at the end of paragraph (b) and substituting “; or” and inserting the following new paragraph:
 - “(c) a proposal or proposals submitted pursuant to a Government agreement as defined in the *Government Agreements Act 1979* for approval under that agreement”;
 - (d) a “relevant mining proposal” as defined in section 82(1a) shall include an approved proposal;
 - (e) in section 82A(2), including as applying pursuant to section 90(4), by deleting the full stop at the end of paragraph (b) and substituting a comma and inserting as a qualification to paragraphs (a) and (b) the words “unless such mining operations are dealt with in a proposal or proposals approved or deemed to be approved pursuant to a Government agreement as defined in the *Government Agreements Act 1979*.”; and
 - (f) by deleting section 118A.
- (4) For the purposes of this Agreement and without limiting the operation of other subclauses, during the continuance of this Agreement and notwithstanding any provisions of the Mining Act and regulations made thereunder to the contrary:
- (a) any assignment, mortgaging, charging, subletting, parting with possession or disposal of an Agreement Mining Tenement shall be subject to clause 26;
 - (b) subject to compliance with its obligations hereunder, the Company shall not be required to comply with the expenditure obligations imposed by or under the Mining Act in regard to Agreement Mining Tenements;

- (c) in considering an application by the Company for the extension of the term of an Agreement Mining Tenement or for an exemption from the requirement of section 65 of the Mining Act in respect of an exploration licence which is an Agreement Mining Tenement, the Minister for Mines shall consult with the Minister and if applicable have regard to the Company's compliance with clause 12(11) in respect of that Agreement Mining Tenement and the results of the geological investigations carried out on it; and
 - (d) an Agreement Mining Tenement shall not be forfeited (except if it is an exploration licence, in regard to failure to surrender land the subject of the licence in accordance with the Mining Act) or determined otherwise than in accordance with this Agreement.
- (5) Except as required by section 65 of the Mining Act the Company shall not surrender all or any part of an Agreement Mining Tenement without the prior consent of the Minister.
- (6) The Company shall lodge with the Department at Perth:
- (a) in respect of each Agreement Mining Tenement such periodical reports and returns as may be prescribed from time to time in respect of such type of mining tenement under or pursuant to the Mining Act or the regulations made thereunder;
 - (b) if requested by the Department but not more frequently than annually, a report on identified mineral resources and/or iron ore reserves within the Agreement Mining Tenements (prepared in accordance with The JORC Code) together with a list of any geological, geochemical, geophysical, geotechnical and metallurgical activities carried out during the year and, if requested by the Department, the Company will provide details and results of any of those activities in a mineral exploration report, or other technical report, in accordance with the statutory guidelines on reporting as specified in the Mining Act; and

- (c) reports on drilling operations and drill holes where the main purposes of the drilling was to discover or define future mineral resources and ore reserves within the Agreement Mining Tenements and, if requested by the Department, reports on drilling done within blocks of proven ore for the purpose of mine planning.
- (7) The Company shall at all times permit the State and third parties with the consent of the State (with or without stock, vehicles and rolling stock) to have access to and to pass over Agreement Mining Tenements and any other lease, licence of other title granted pursuant to or under this Agreement (by separate route, road or railway) so long as that access and passage does not in the Minister's opinion unduly prejudice or interfere with the activities of the Company under this Agreement.
- (8) Notwithstanding the Mining Act, the Company may with the prior consent of the Minister and from time to time (with abatement of future rent in respect to the area surrendered but without any abatement of rent already paid or any rent which has become due and has been paid in advance) surrender to the State all or any portion or portions of the Mining Leases.
- (9) The Company in accordance with approved proposals may for the construction of works (and the maintenance thereof) within the Mining Leases for the purposes of this Agreement and without payment of royalty, obtain stone sand clay and gravel from the Mining Leases.
- (10) The Minister, after consulting the Minister for Mines, may approve any mining tenement held by the Company the land the subject of which is wholly or partly within the Defined Area or in the vicinity of the Defined Area, and which is not then an Agreement Mining Tenement, as an Agreement Mining Tenement for the purposes of this Agreement and subject to such of the existing conditions of that mining tenement as the Minister for Mines determines but otherwise as from the date of the Minister's approval subject to the provisions of this Agreement.

- (11) The Company shall to the extent permitted by the Mining Act progressively explore and carry out geological investigations to delineate the Inferred Mineral Resource (as defined in The JORC Code) of iron ore within the Mining Leases and exploration licences which are Agreement Mining Tenements.

Royalties

13. Except as otherwise provided in clause 12(9) the Company shall pay to the State royalties on all minerals obtained from Agreement Mining Tenements as may from time to time be prescribed under or pursuant to the Mining Act or the regulations made thereunder.

Transportation by rail

14. (1) Subject to and in accordance with approved proposals, the Rail Safety Act and the State having assured to the Company all necessary rights in or over Crown lands (as defined in the LAA) available for the purpose 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 along the route specified in the approved proposals the rail spur line or lines specified in the approved proposals and shall also construct inter alia any necessary loops, sidings, crossings, points, bridges signalling switches and other works and appurtenances and provide for crossing places and (where required by the Minister) grade separation or other protective devices including flashing lights and boom gates (all of which together with the specified rail spur line or lines being hereinafter referred to as “the said railway spur line”) at places where the said rail spur line crosses or intersects with major roads or existing railways and unless the Minister otherwise allows shall operate the said railway spur line with sufficient and adequate locomotives freight cars and other railway stock and equipment for the purposes of the Company’s activities under this Agreement.

- (2) The Company shall during the continuance of this Agreement:
- (a) keep the said railway spur line constructed under this Agreement in operation;
 - (b) ensure that the said railway spur line is operated in a safe and proper manner in compliance with all applicable laws from time to time; and
 - (c) without limiting subclause 2(b), 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 said railway spur line,

and nothing in this Agreement shall be construed to exempt the Company or any other person from compliance with the Rail Safety Act, or limit their application to the Company's operations generally.

- (3) The Company shall provide crossings for livestock and also for any roads, other railways, conveyors, pipelines and other utilities which now exist and where in the Minister's opinion it can do so without unduly prejudicing or interfering with its activities hereunder the Company shall 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 the said railway spur line.
- (4) Where in the Minister's opinion the Company can do so without materially prejudicing or interfering with its operations hereunder and subject to the payment to it of the charges prescribed by and for the time being payable under any by-laws made by the Company in respect of the transporting of passengers and the carriage of freight (including the iron ore and iron ore products of third parties) over the said railway spur line and subject to the due compliance with the other requirements and conditions prescribed by such by-laws (or should there be no such by-laws for the time being in force then subject to the payment of such charges and the due compliance with such requirements and conditions as in either case shall be

reasonable having regard to the cost to the Company of the construction and operation of the said railway spur line) the Company shall if and when reasonably required so to do transport passengers and carry the freight of the State and third parties (including the iron ore and iron ore products of third parties) over the said railway spur line but in relation to its use of the said railway spur line the Company shall not be deemed to be a common carrier at law or otherwise.

- (5) (a) The Company shall, during the continuance of this Agreement and until the Access Act and the Access Code are applied to and in respect of the said railway spur line and associated access roads of the Company, notify the Minister of all written requests made by third parties to the Company for access to the said railway spur line and associated access roads of the Company and as soon as practicable after such requests are made.
- (b) The Minister shall provide to the Access Minister a copy of each notification from the Company as soon as practicable after such notification is received for consideration by the Access Minister as to whether or not in the Access Minister's discretion the Access Act and the Access Code should be applied to and in respect of the said railway spur line and associated access roads of the Company.
- (c) The Company acknowledges that the Access Act and the Access Code may during the continuance of this Agreement be applied to and in respect of the said railway spur line and associated access roads of the Company (but not to the Company's rolling stock, rolling stock maintenance facilities, office buildings, housing, freight centres, terminal yards and depots and any other facilities which are not railway infrastructure (as that term is defined in the Access Act)). The Company:
- (i) acknowledges that the State shall from time to time be entitled to make such legislative

changes as are necessary to achieve that application; and

- (ii) in the event the Access Minister decides in exercise of the Access Minister's discretion as referred to in paragraph (b) that such application should occur, shall do all such things as the Minister reasonably requests for the purposes of the Access Act and the Access Code applying and continuing to apply to and in respect of the said railway spur line and associated access roads of the Company which are not inconsistent with this Agreement.
- (6) Throughout the continuance of this Agreement the Company shall all times keep and maintain the said railway spur line 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).
- (7) 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 the said railway spur line constructed under this Agreement or permit this to occur, other than for the purpose of maintenance, repair, upgrade or renewal.

Private and public roads

15. (1) The Company shall:
- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in its activities hereunder;
 - (b) 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

- (c) at any place where any private roads are constructed by the Company so as to cross any public roads or private railways provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the owner of the private railway as the case may be.
- (2) The State shall maintain or cause to be maintained those public roads under the control of the Commissioner of Main Roads or a local government which may be used by the Company for the purposes of this Agreement to a standard similar to comparable (in the Minister's opinion) public roads maintained by the Commissioner of Main Roads or a local government as the case may be.
- (3) In the event that for or in connection with the Company's activities hereunder the Company or any person engaged by the Company uses or wishes to use a public road (whether referred to in subclause (2) or otherwise) which is inadequate for the purpose, or any use by the Company or any person engaged by the Company of any public road results in excessive damage to or deterioration thereof (other than fair wear and tear) the Company shall pay to the State or the local government as the case may require the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads having regard to the use of such public road by others.
- (4) Where a road constructed by the Company for its own use is subsequently required for public use, the State may, after consultation with the Company and so long as resumption thereof shall not in the Minister's opinion unduly prejudice or interfere with the activities of the Company under this Agreement, resume and dedicate such road as a public road. Upon any such resumption the State shall pay to the Company such amount as is reasonable for such resumption.

Electricity

16. The Company may in accordance with its approved proposals hereunder and subject to the provisions of the *Electricity Act 1945* and any other relevant Act:
- (a) install and operate without cost to the State at an appropriate location or locations on the Mining Leases equipment of sufficient capacity to generate electricity for its activities on the Mining Leases and other areas provided for the facilities of the Company in the vicinity of the Mining Leases; and
 - (b) transmit power within and between the Mining Leases and other areas provided for the facilities of the Company in the vicinity of the Mining Leases and for other elements of the Company's operations hereunder as the Minister may approve for the purposes of this clause.

Water

17. (1) (a) To the fullest extent reasonably practicable the Company shall use water obtained from dewatering on Mining Leases for its purposes under this Agreement.
- (b) Nothing in this Agreement shall be construed so as to exempt the Company from any liability to the State or to third parties arising out of or caused by the extraction of water from the Agreement Mining Tenements by dewatering or any discharge or escape from the Agreement Mining Tenements of water obtained by dewatering.
- (2) Except as otherwise specifically provided for under this clause the water requirements for the Project shall be obtained in accordance with laws applicable from time to time in Western Australia in respect of rights in water and the supply and discharge of water and the supply of water services.
- (3) The Company shall to the extent that it is practical and economical design, construct and operate all plant and

equipment used in its activities under this Agreement so as to minimise water consumption and shall at all times use its best endeavours to minimise the consumption of water in its activities under this Agreement and ensure the most efficient use of the available water resources.

Ancillary titles

18. On application made by the Company not later than 3 months after proposals submitted pursuant to clause 8(1) have been approved or determined or not later than 3 months after proposals submitted pursuant to clause 10 or 11 have been approved or determined (as applicable), the State shall in accordance with the Company's approved proposals grant to the Company, or arrange to have the appropriate authority or other interested instrumentality of the State grant to the Company, for such periods and on such terms and conditions including rentals and renewal rights as shall be reasonable having regard to the requirements of the Company and as are consistent with the terms of this Agreement and approved proposals, leases and where applicable licences, easements and rights of way for all or any of the purposes of the Company's activities hereunder including any of the following namely - accommodation area, mine aerodrome, rail spur line, conveyor, private roads, water pipelines, pumping installations and reservoirs, power transmission lines, radio and communication sites and plant site areas.

Use of local labour professional services and materials

19. (1) Except as otherwise agreed by the Minister the Company shall, for the purposes of this Agreement:
- (a) except in those cases where the Company can demonstrate it is not reasonable and economically practicable so to do, use labour available within the said State (using all reasonable endeavours to ensure that as many as possible of the workforce be recruited from the Pilbara region) or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;

- (b) as far as it is reasonable and economically practicable so to do, use the services of engineers, surveyors, architects and other professional consultants experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within the said State, or if such services are not available within the said State, then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;
 - (c) during design and when preparing specifications, calling for tenders and letting contracts for works, 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 suitably qualified Western Australian and Australian suppliers, manufacturers and contractors are given fair and reasonable opportunity to tender or quote;
 - (d) give proper consideration and, where possible, preference to Western Australian suppliers, manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price, quality, delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and, where possible, preference to other Australian suppliers, manufacturers and contracts; and
 - (e) if, notwithstanding the foregoing provisions of this subclause, a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and, where possible, preference to tenders, arrangements or proposals that include Australian participation where price, delivery and service are otherwise equal or better.
- (2) Except as otherwise agreed by the Minister, the Company shall, in every contract entered into with a third party for the supply

of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) and shall report to the Company concerning such third party's implementation of that condition.

- (3) The Company shall:
- (a) in respect of developments the subject or to be the subject (as the case may be) of proposals submitted pursuant to clause 8, submit a report to the Minister at quarterly intervals from the commencement date to the date of the first submission of proposals pursuant to clause 8 and thereafter at monthly intervals until the date on which iron ore from the Mining Leases (other than iron ore transported solely for testing purposes and iron ore produced as part of the testing of mining equipment referred to in clause 4(4)) is first transported from the Mining Leases and thereafter as requested by the Minister from time to time; and
 - (b) in respect of developments the subject or to be the subject (as the case may be) of proposals submitted pursuant to clauses 10 or 11, submit a report to the Minister at quarterly intervals from the date on which it gives notice under clauses 10 or 11, to the date of the first submission of proposals in connection with that notice pursuant to clause 10 or 11 as the case may be and thereafter at monthly intervals until commissioning of the developments the subject of the proposals approved in accordance with to clause 10 or 11 as the case may be and thereafter as requested by the Minister from time to time,

concerning its implementation of the provisions of this clause, together with a copy of any report received by the Company pursuant to subclause (2) during that month or longer period as the case may be 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.

- (4) The Company shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as reasonably required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia, together with its reasons therefor and shall, as and when required by the Minister, consult with the Minister with respect thereto.

Further processing

20. (1) During the term of this Agreement, the Company shall undertake ongoing investigations into the technical and economic feasibility of establishing within the said State plant for the production of metallised agglomerates and shall on or before the earlier of:
- (a) the date 7 years after the date on which iron ore produced as part of the Project (other than iron ore transported solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) is first transported from the Mining Leases; and
 - (b) the date on which the 100 millionth tonne of the aggregate of such iron ore and iron ore produced from Mining Leases as part of the testing of mining equipment as referred to in clause 4(4) is transported from the Mining Leases,

submit to the Minister detailed reports of such investigations carried out up to the date of the report and its program, budget and timetable for the preparation of the proposals referred to in subclause (2).

- (2) The Company shall:
- (a) on or before the earlier of:
- (i) the date 10 years after the date on which iron ore produced as part of the Project (other than iron ore transported solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) is first transported from the Mining Leases; and
- (ii) the date on which the 150 millionth tonne of the aggregate of such iron ore and iron ore produced from Mining Leases as part of the testing of mining equipment as referred to in clause 4(4) is transported from the Mining Leases (which date is hereinafter called “the m.a. date”); or
- (b) if proposals under this subclause are postponed for a 3 year period pursuant to subclause (3), on or before the third or subsequent third anniversary as the case may require of the m.a. date,

submit to the Minister detailed proposals for the establishment within the said State of plant for the production of metallised agglomerates containing provisions that such plant will within 3 years of the date on which the proposals are submitted have the capacity to produce not less than 2 million tonnes of metallised agglomerates per annum and will within 8 years of the date on which the proposals are submitted have the capacity to produce not less than 3 million tonnes of metallised agglomerates per annum.

- (3) (a) If the Company believes that the submission of proposals pursuant to subclause (2) on the m.a. date or a third anniversary of the m.a. date where a 3 year postponement has been allowed pursuant to this subclause should be postponed because the establishment of the said plant is not then economically feasible, the Company may apply to the Minister not

more than 6 months nor less than 3 months before the date for submission of those proposals for postponement for a period of 3 years of the date for submission of proposals under subclause (2) and shall provide to the Minister with such application all relevant information and supporting data available to the Company relating to such application.

- (b) The Company shall supply to the Minister such other information and data as the Minister may reasonably require in relation to its application.
- (c) If the Minister is satisfied that there are reasonable grounds for the postponement applied for the requirement on the Company to submit proposals under this subclause shall be postponed for a period of 3 years.
- (d) If the Minister notifies the Company that he does not agree with its submission then at the request of the Company made within 2 months after receipt by the Company of the notification from the Minister, the Minister will appoint a tribunal (hereinafter called "the Tribunal") consisting of one person if the Company and the State agree on that person or, failing such agreement consisting of 3 persons (one of whom shall be a Judge of the Supreme Court of Western Australia or failing him or her a Commissioner appointed pursuant to section 49 of the *Supreme Court Act 1935* or a State Counsel and the others of whom shall have appropriate technical or economic qualifications) to decide in accordance with clause 34 whether or not the metallising operation is economically feasible and the Tribunal in reaching its decision shall take into account (inter alia) the Company's submission, the amount of capital required for the metallising operation, the availability of that capital at that time on reasonable terms and conditions, the likelihood of the Company being able to sell metallised agglomerates at sufficient prices and in sufficient quantities and for a sufficient period to justify the metallising operation having regard

to the amount and rate of return on total funds that would be involved in or in connection with the production and sale of metallised agglomerates and the weighted average cost of capital to the Company.

- (4) The Minister shall within 2 months of receipt of proposals under subclause (2) give to the Company notice of his approval of those proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto, and in the latter case shall afford the Company an opportunity to consult with and to submit new proposals to the Minister. If within 2 months of receipt by the Company of such notice agreement is not reached as to the proposals, the Company may within a further period of 2 months elect by notice to the State to refer to arbitration as provided in clause 34 any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have approved the proposals of the Company.
- (5) The Company shall (except to the extent otherwise agreed with the Minister) before the end of the respective times specified in subclause (2) complete the construction of plant in accordance with the Company's proposals as finally approved or determined under this clause and shall thereafter continue to produce metallised agglomerates from such plant at not less than the rates provided for in subclause (2) for so long as the Company continues to transport iron ore from the Mining Leases.
- (6) (a) The Company may at any time before the time for submission of proposals pursuant to subclause (2) apply to the Minister for approval that an alternative project be accepted by the State in lieu of all or some part of the Company's obligations in respect of the establishment of plant for the production of metallised agglomerates pursuant to this clause.
- (b) Where the Minister approves an application under paragraph (a) of this subclause the Company shall implement the alternative project in accordance with

that approval and upon completion thereof, or earlier with the agreement of the Minister, the provisions of subclause (2) or that part of those provisions which pursuant to the said approval are to be satisfied by the alternative project shall cease to apply PROVIDED FURTHER that the provisions of subclause (2) shall cease to apply upon completion of an alternative project which represents, or alternative projects which together represent, economic development in the said State (either alone or in the aggregate with other alternative projects) of value approximately equivalent to a plant for the production of 2 million tonnes of metallised agglomerates per annum.

- (7) (a) In subclauses (1) and (2) references to “Mining Leases” include, for the avoidance of doubt, all of the mining leases granted to the Company by way of conversion of all or part of exploration licences which at the time of conversion are Agreement Mining Tenements and all of the mining leases (if any) approved by the Minister as Agreement Mining Tenements pursuant to clause 12(10) considered together, and whether or not such mining leases are still in force at the relevant dates referred to in those subclauses.
- (b) Iron ore produced from Mining Leases as part of the Company undertaking the testing of mining equipment as referred to in clause 4(4) shall be included in the amounts referred to in subclauses (1) and (2).
- (c) Iron ore produced from mining leases approved by the Minister as Agreement Mining Tenements pursuant to clause 12(10) but before the date of the Minister’s approval, shall not be included in the amounts referred to in subclauses (1) and (2).
- (d) For the purposes of subclause (6) “alternative project” means a project under which the Company or a related body corporate (within the meaning of the *Corporations Act 2001* (Commonwealth)) of the Company or another party first approved of by the Minister undertakes to

establish and operate plant in the said State which processes and adds to the value of minerals mined in the said State.

No discriminatory charges

21. Except as provided in this Agreement the State shall not impose, nor shall it permit or authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes, rates or charges of any nature whatsoever on or in respect of the titles, property or other assets, products, materials or services used or produced by or through the activities of the Company in the conduct of its 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. In the application of this clause the conferral of rights upon parties to Government agreements (or the Railway and Port Agreement if it is not a Government agreement) shall be disregarded.

Taking of land for the purposes of this Agreement

22. (1) The State is hereby empowered, as and for a public work under Parts 9 and 10 of the LAA and the *Public Works Act 1902*, to take for the purposes of this Agreement any land which in the opinion of the Company is necessary for the Project and which the Minister determines is appropriate to be taken for the Project (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 or to the provisions of the Railway and Port Agreement if it is not a Government agreement) and notwithstanding any other provisions of those Acts may lease or license that land to the Company.

- (2) In applying Parts 9 and 10 of the LAA and the *Public Works Act 1902* for the purposes of this clause -
- (a) “land” in those Acts includes a legal or equitable estate or interest in land;
 - (b) sections 170, 171, 172, 173, 174, 175 and 184 of the LAA do not apply; and
 - (c) the LAA applies as if it were modified in section 177(2) by inserting:
 - (i) 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*”; and
 - (ii) after “that Act” the following –
“or that Agreement as the case may be”.
- (3) 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.

No taking of land

23. Subject to the performance by the Company of its obligations under this Agreement the State shall not during the term of this Agreement 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 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 purpose of this Agreement or any of the works on any Agreement Mining Tenement or other lease, licence or other title granted to the Company under or pursuant to this Agreement and without such consent (which shall not be unreasonably withheld) the

State shall not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road, right-of-way, water right or easement of any nature or kind whatsoever over or in respect of any such lands which may in the Minister's opinion unduly prejudice or interfere with the Company's activities under this Agreement.

Commonwealth licences and consents

24. (1) The Company shall from time to time make application to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to it of any licence or consent under the laws of the Commonwealth necessary to enable or permit the Company to enter into this Agreement and to perform any of its obligations hereunder.
- (2) On request by the Company the State shall make representations to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to the Company of any licence or consent mentioned in subclause (1).

Zoning

25. The State shall ensure after consultation with the relevant local government that any Agreement Mining Tenement or any other lease, licence or other title granted to the Company under or pursuant to this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the activities of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State or by any State agency or instrumentality or by any local or other authority of the State on the ground that such activities are contrary to any zoning by-law, regulation or order.

Assignment

26. (1) Subject to the provisions of this clause the Company may at any time assign, mortgage, charge, sublet or dispose of to any

person with the consent 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 Agreement Mining Tenement or any other lease, licence, easement or other title granted under or pursuant to this Agreement) and of the obligations of the Company hereunder subject however in the case of an assignment, subletting or disposition, to the assignee, sublessee or disponee (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with, observe and perform the provisions hereof on the part of the Company to be complied with, observed or performed in regard to the matter or matters the subject of such assignment, subletting or disposition.

- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) the 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 in this Agreement and in the Agreement Mining Tenements and in all other leases, licences, easements or other titles the subject of an assignment, mortgage, subletting or disposition under subclause (1) provided that the Minister may agree to release the Company from such liability where the Minister considers such release will not be contrary to the interests of the State.
- (3) Notwithstanding the provisions of the Mining Act, the LAA and the *Transfer of Land Act 1893*, insofar as the same or any of them may apply:
 - (a) no assignment, mortgage, charge, sublease or disposition made or given pursuant to this clause of or over an Agreement Mining Tenement or other lease, licence, easement or other title granted under or pursuant to this Agreement by the Company or any assignee, sublessee or disponee who has executed and is for the time being bound by deed of covenant made pursuant to this clause; and

- (b) no transfer, assignment, mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge,

shall require any approval or consent other than such consent as may be necessary under this clause and no equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent (otherwise than as required by this clause) or because the same is not registered under the provisions of the Mining Act, the LAA or the *Transfer of Land Act 1893* as the case may be.

Variation

27. (1) The parties to this Agreement may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement or of any Agreement Mining Tenement or any other lease, licence, easement or other title granted under or pursuant to this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.
- (2) The Minister shall cause any agreement made pursuant to subclause (1) in respect of any addition, substitution, cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.
- (3) Either House may, within 12 sitting days of that House after the agreement has been laid before it, pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that day.

Force majeure

28. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the

temporary suspension of continuing obligations under this Agreement that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including without limiting the generality of the foregoing delays or any such temporary suspension as aforesaid caused by or arising from act of God, force majeure, earthquakes, floods, storms, tempest, washaways, fire (unless caused by the actual fault or privity of the party responsible for such performance), act of war, act of public enemies, riots, civil commotions, strikes, lockouts, stoppages, restraint of labour or other similar acts (whether partial or general), acts or omissions of the Commonwealth, shortages of labour or essential materials, reasonable failure to secure contractors, delays of contractors, inability to sell iron ore or metallised agglomerates profitably, factors due to overall world economic conditions, factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen provided that that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

Power to extend periods

29. Notwithstanding any provision of this Agreement the Minister may at the request of the Company from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement or in any approved proposal for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

Determination of this Agreement

30. (1) If:
- (a) (i) the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations of the Company in this Agreement

or in any Agreement Mining Tenement or any other lease, licence, easement or other title granted under or pursuant to this Agreement on its part to be performed or observed; or

- (ii) the Company abandons or repudiates this Agreement or its activities under this Agreement,

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

- (b) the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 3 months from the date of such liquidation the interest of the Company is assigned to an assignee approved by the Minister under clause 26,

the State may by notice to the Company determine this Agreement.

- (2) The notice to be given by the State in terms of paragraph (a) of subclause (1) shall specify the nature of the default, abandonment or repudiation 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 26 whose name and address for service of notice has previously been notified to the State by the Company or any such assignee, mortgagee, chargee or donee.
- (3) (a) If the Company contests the alleged default abandonment or repudiation referred to in paragraph (a) of subclause (1) the Company shall within 60 days after

notice given by the State as provided in subclause (2) refer the matter in dispute to arbitration.

- (b) If the question is decided against the Company, the Company shall comply with the arbitration award within a reasonable time to be fixed by that award provided that if the arbitrator finds that there was a bona fide dispute and that the Company was not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.
- (4) If the default referred to in paragraph (a) of subclause (1) shall not have been remedied within a period of 180 days after receipt of the notice referred to in that subclause 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 actual 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.
- (5) The parties may at any time by mutual agreement determine this Agreement, provided that no matter in connection with a failure by the parties to agree under this subclause (5) shall be referable to arbitration hereunder.

Effect of cessation or determination of this Agreement

- 31. (1) On the cessation or determination of this Agreement:
 - (a) (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 any mortgagee or chargee to, in or under Agreement Mining Tenements (other than any

exploration licences then held by the Company which are Agreement Mining Tenements) and any other lease, licence, easement or other title or right granted hereunder or pursuant hereto shall thereupon cease and determine but without prejudice to the liability of any of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any guarantee or indemnity given under this Agreement;

- (ii) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
 - (iii) save as aforesaid and as otherwise provided in this Agreement neither the State nor the Company shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement; and
- (b) The benefit of the rights and privileges conferred by this Agreement, and any modification by this Agreement of any Act or law shall cease to apply, but otherwise any Agreement Mining Tenements that the Company may pursuant to paragraph (a) continue to hold after the cessation or determination of this Agreement shall continue in force under and subject to the Mining Act for the balance of their respective terms and any renewals thereof or extensions thereto that may be granted pursuant to the Mining Act.
- (2) Except as otherwise determined by the Minister and subject to the provisions of subclause (3), upon the cessation or determination of this Agreement all buildings, erections and other improvements erected on any land then occupied by the Company under the Agreement Mining Tenements (other than any Agreement Mining Tenements that the Company may pursuant to subclause (1) continue to hold after the cessation or determination of this Agreement) or any other lease, licence, easement or other title granted under or pursuant to this

Agreement shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Company or any other party and freed and discharged from all mortgages and other encumbrances and the Company shall do and execute all such deeds, documents and other acts, matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

- (3) (a) In the event of the Company immediately prior to the cessation or determination of this Agreement or within 3 months thereafter desiring to remove any of its fixed or movable plant and equipment or any part thereof from any part of the land occupied by it at the date of such cessation or determination (other than any Agreement Mining Tenements that the Company may pursuant to subclause (1) continue to hold after such cessation or determination) it shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within 3 months thereafter to purchase in situ such fixed or moveable plant and equipment at a fair valuation to be agreed between the State and the Company or failing agreement determined by arbitration under this Agreement.
- (b) If the State does not exercise the right or option referred to in paragraph (a) the Company may on the expiry of the 3 month period referred to, or sooner with the consent of the Minister, remove the fixed or movable plant and equipment to which the right or option refers.

Indemnity

32. The Company shall indemnify and keep indemnified the State and its servants, agents and contractors in respect of all actions, suits, claims, demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Company pursuant to this Agreement or relating to its activities hereunder or 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 works or services the subject of this Agreement or the plant, apparatus or equipment installed in connection therewith provided that subject to the provisions of any other relevant Act such indemnity shall not apply to the extent the State or its servants, agents, or contractors are negligent in carrying out work for the Company pursuant to this Agreement.

Subcontracting

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

Arbitration

34. (1) Any dispute or difference between the State and the Company arising out of or in connection with this Agreement, the construction of this Agreement or as to the rights, duties or liabilities of either of them under this Agreement or as to any matter to be agreed upon between them under this Agreement shall in default of agreement between them 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 *Commercial Arbitration Act 1985* and notwithstanding section 20(1) of that Act each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.
- (2) Except where otherwise provided in this Agreement, the provisions of this clause shall not apply to any case where the State, the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of either of the parties to the arbitration to grant in the name of the Minister any interim extension of any period or variation of any

date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties to the arbitration and an award may in the name of the Minister grant any further extension or variation for that purpose.

Consultation

35. The Company shall during the currency of this Agreement consult with and keep the State fully informed on a confidential basis concerning any action that the Company proposes to take with any third party (including the Commonwealth or any Commonwealth constituted agency authority instrumentality or other body) which might significantly affect the overall interest of the State under this Agreement.

Notices

36. Any notice, consent or other writing authorised or required by this Agreement to be given or sent by the State to the Company or to the Guarantor will be deemed to have been duly given or sent if signed by the Minister or by any senior officer of the Public Service of the State acting by the direction of the Minister and forwarded by prepaid post or handed to the Company or to the Guarantor as the case may be at its address hereinbefore set forth or other address in the said State nominated by the Company, or by the Guarantor as the case may be, to the Minister and by the Company or by the Guarantor to the State if signed on its behalf by any person or persons authorised by the Company or by its solicitors, or by the Guarantor or by its solicitors as the case may be, as notified to the State from time to time, and forwarded by prepaid post or handed to the Minister and except in the case of personal service any such notice, consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

Guarantee of Company's performance

37. Notwithstanding any addition to or deletion or variation of the provisions of this Agreement or any time or other indulgence granted by the State or by the Minister to the Company whether or not notice thereof is given to the Guarantor by the State, the Guarantor hereby guarantees to the State the due performance by the Company of all of the Company's obligations to be performed hereunder. The Minister may agree to release the Guarantor from this guarantee where the Minister is reasonably satisfied that the Company has the financial capacity to perform its obligations under this Agreement. Except as provided in a release given under this clause, the guarantee given under this clause 37 shall continue notwithstanding the cessation or determination of this Agreement.

Stamp Duty

38. (1) The State shall exempt the following instruments from any stamp duty which, but for the operation of this clause, would or might be assessed as chargeable on them:
- (a) this Agreement;
 - (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company any licence, lease, easement or other title; and
 - (c) any assignment, sublease or disposition (other than by way of mortgage or charge) made by the Company arising from a request for the Minister's consent submitted to the Minister and consented to by the Minister under clause 26 (1),
- provided that this clause shall not apply to any instrument or other document executed or made more than 2 years after the commencement date.
- (2) If prior to the commencement date stamp duty has been assessed and paid on any instrument or other document or transaction referred to in subclause (1) the State shall on

demand after the commencement date refund any stamp duty paid on any such instrument or other document or transaction to the person who paid the same.

Term of this Agreement

39. Subject to the provisions of clauses 9(6), 30 and 31 this Agreement shall expire on the date occurring 50 years after the commencement date.

Applicable law

40. This Agreement is to be interpreted according to the law for the time being in force in the State of Western Australia.

SCHEDULE 1

PART A

EXPLORATION LICENCES

White Knight

Exploration licences 45/2497, 45/2499, 45/2593, 45/2651 and 47/1434

Cloud Break

Exploration licences 45/2498, 45/2652 and 46/590

Christmas Creek

Exploration licences 46/566, 46/610 - 46/612

Mt Lewin

Exploration licences 46/567 and 46/600

Clayton's Hammer

Exploration licences 46/518, 46/568 and 46/601

Mt Nicholas

Exploration licences 46/467, 46/595, and 46/623

Springo Bore

Exploration licences 46/519

Tongololo

Exploration licences 46/413, 46/516 and 46/569

PART B

EXPLORATION LICENCE APPLICATIONS

Christmas Creek

Application for exploration licence 46/664

Tongololo

Applications for exploration licences 46/666 and 46/675

SCHEDULE 2

MINING LEASE APPLICATIONS

Christmas Creek

Applications for mining leases 46/320 - 46/355 and 46/412 - 46/424

Cloud Break

Applications for mining leases 45/1102 - 45/1107, 45/1082 - 45/1085, 45/1124 - 45/1128, 45/1138- 45/1140, 45/1143, 46/356, 46/357, 46/407 - 46/411 and 46/449 – 46/455

White Knight

Applications for mining leases 45/1086 - 45/1094 and 45/1147 - 45/1150
Mt Lewin/Clayton's Hammer
Applications for mining leases 46/292, 46/293 and 46/314 - 46/319

Sandy Creek

Applications for mining leases 46/401 - 46/406

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

SIGNED by the **HONOURABLE GEOFFREY IAN GALLOP** in the presence of:) [Signature]
)
)

Witness: [Signature]
Name: NEIL ROBERTS

THE COMMON SEAL of **FMG CHICHESTER PTY LTD** ACN 109 264 262 was hereunto affixed in accordance with its constitution in the presence of:) [C.S.]
)
)

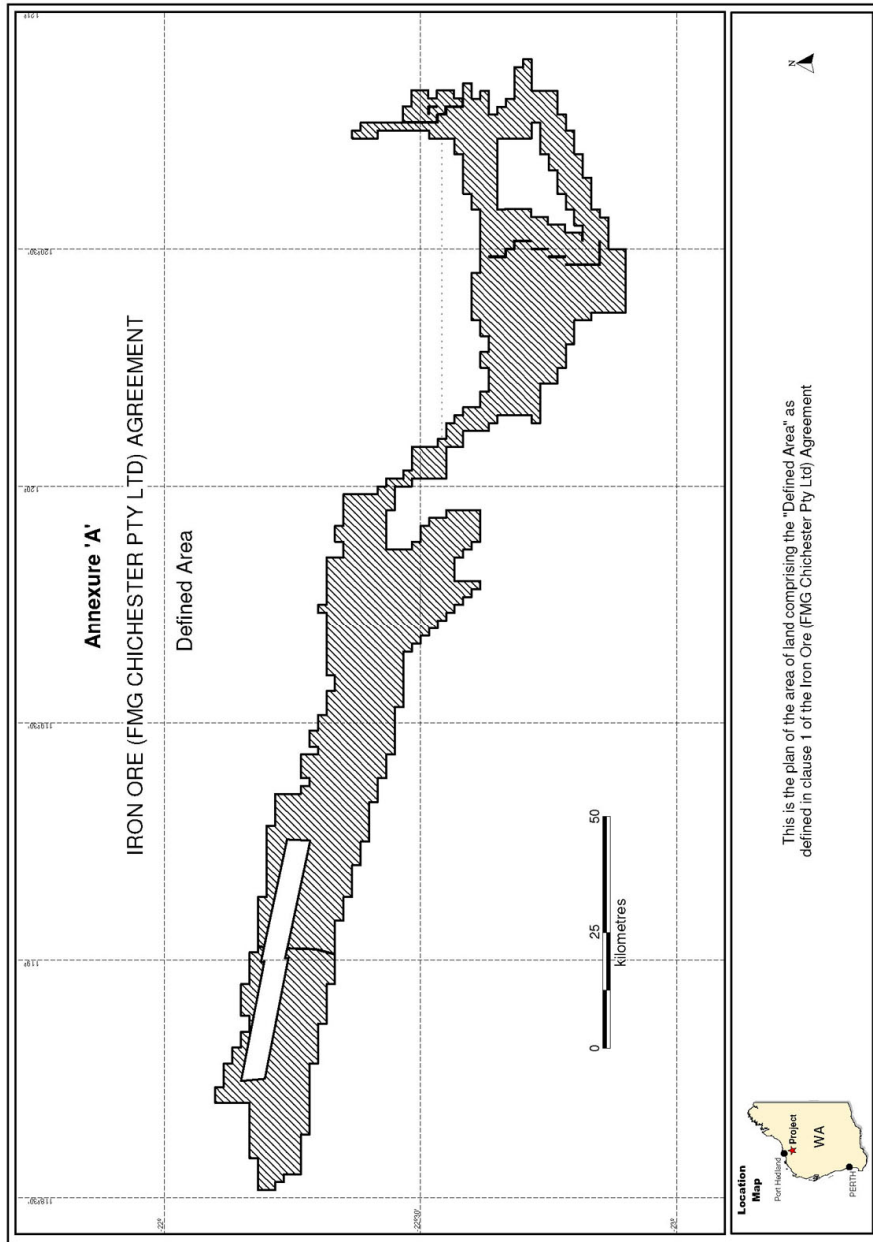
Director: [Signature]
Name: WILLIAM GRAEME ROWLEY

~~Director~~/Secretary: [Signature]
Name: ROD CAMPBELL

THE COMMON SEAL of **FORTESCUE METALS GROUP LTD** ACN 002 594 872 was hereunto affixed in accordance with its constitution in the presence of:) [C.S.]
)
)

Director: [Signature]
Name: WILLIAM GRAEME ROWLEY

~~Director~~/Secretary: [Signature]
Name: ROD CAMPBELL



By Authority: JOHN A. STRIJK, Government Printer

Extract from www.sip.wa.gov.au, see that website for further information