



Western Australia

# **Iron Ore (Murchison) Agreement Authorisation Act 1973**

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Western Australia

# **Iron Ore (Murchison) Agreement Authorisation Act 1973**

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## **Iron Ore (Murchison) Agreement Authorisation Act 1973**

**An Act to authorise the execution on behalf of the State of an agreement with Northern Mining Corporation N.L. relating to the exploration for and the development and treatment of iron ore and for incidental and other purposes.**

**1. Short title**

This Act may be cited as the *Iron Ore (Murchison) Agreement Authorisation Act 1973*<sup>1</sup>.

**2. Execution of agreement authorised**

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

**3. Executed agreement to operate and take effect**

When the agreement referred to in section 2 is duly executed by all the parties thereto, the agreement shall, subject to its provisions, operate and take effect as though those provisions were enacted in this Act.

## Schedule — Iron Ore (Murchison) Agreement

[s. 2]

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

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_  
One thousand nine hundred and seventy-three BETWEEN THE  
HONOURABLE JOHN TREZISE TONKIN, M.L.A., THE PREMIER OF THE  
STATE OF WESTERN AUSTRALIA acting for and on behalf of the said State  
and its instrumentalities from time to time (hereinafter called “the State”) of the  
one part and NORTHERN MINING CORPORATION N.L. a company  
incorporated under the *Companies Act 1961* of the State of Victoria in the  
Commonwealth of Australia and having its registered office in the State of  
Western Australia situate at 442 Murray Street Perth (hereinafter called “the  
Company” which expression shall where the context so admits or requires  
extend to and include the successors assigns and appointees of the Company) of  
the other part.

### WHEREAS:

- (a) The Company is exploring and investigating the possibility of  
the mining areas hereinafter defined containing deposits of iron  
ore.
- (b) Research is being conducted by the Company with the object of  
establishing satisfactory ore crushing, screening, and upgrading  
procedures in the treatment of iron ore from the mining areas.

NOW THIS AGREEMENT WITNESSETH as follows —

### Definitions <sup>2</sup>

1. In this Agreement subject to the context —

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

“approved proposals” means proposals of the Company which are  
approved or are deemed to be approved by the Minister  
pursuant to this Agreement;

“associated company” means —

- (a) any Company notified by the company to the Minister which has a paid-up capital of not less than two million dollars and is incorporated in the United Kingdom, the United States of America, or the Commonwealth of Australia and which —
  - (i) is promoted by the Company for all or any of the purposes of this Agreement and in which the Company holds not less than twenty per centum of the issued ordinary share capital or —
  - (ii) is related within the meaning of section 6 of the *Companies Act 1961* to the Company or to any company in which the Company holds not less than twenty per centum of the issued ordinary share capital and —
- (b) any other company which the Minister approves as an associated company for the purposes of this Agreement.

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

“Clause” means a clause of this Agreement;

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

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

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

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

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

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

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

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

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

- (1) ocean freight;
- (2) marine insurance;
- (3) port and handling charges at port of discharge;
- (4) costs of delivery from port of discharge to a smelter nominated by the purchaser;



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

For the purpose of this definition —

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

such charge is directly or indirectly imposed upon or incurred by the Company or an associated company pursuant to an arrangement entered into between the Company and the State;

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

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

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

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

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

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

“Land Act” means the *Land Act 1933*;

“locally used ore” means iron ore used by the Company or an associated company within the Commonwealth for secondary processing or tertiary processing and includes iron ore used by any other person in the said State for secondary processing or tertiary processing;

“metallised agglomerates” means products resulting from the reduction of iron ore or iron ore concentrates by any method whatsoever and having an iron content of not less than eighty five per centum;

“mineral lease” means the mineral lease or mineral leases referred to in Clause 12(1) and includes any renewal thereof and where the context so permits shall describe the area of land demised as well as the instrument by which it is demised;

“mine townsite” means a townsite or townsites established by the Company on or near the mining areas pursuant to this Agreement and includes any existing townsite approved by the Minister;

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

“mining areas” means the area delineated and coloured green on the plan marked “A” together with such of the areas delineated and coloured blue on that plan over which rights of occupancy pursuant to section 276 of the Mining Act may at any time (whether before or after the commencement of this Agreement) be granted to the Company or transferred to the Company with the approval of the Minister for Mines;

“Minister” means the Minister in the Government of the said State for the time being responsible for the administration of this Agreement;

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

“month” means calendar month;

“notice” means notice in writing;

“ore” means iron ore;

“parties” means the parties to this Agreement;

“person” or “persons” includes bodies corporate;

“port” means a new port to be established near Geraldton under the control of the Geraldton Port Authority in implementation of

approved proposals hereunder whether the same be established by the Company exclusively or by it in conjunction with another or others (including the State) and should no such new port be established the term means any existing port developed or used by the Company for the purposes of this Agreement by arrangement with another or others (including the State) and in either case the term extends to and includes as well as the land upon which the Company's wharf is erected also the adjacent land serving the Company's wharf and the adjacent land on which it is proposed to locate or on which could be located or in fact is located secondary processing plants crushing grinding and screening facilities stock piling yards electric power generating plant petroleum storage and other ancillary facilities;

“port townsite” subject to the provisions of Clause 26 means the town of Geraldton including those environs of that town within the Shires of Chapman Valley and Greenough;

“Railways Commission” means the Western Australian Government Railways Commission established pursuant to the *Government Railways Act 1904*;

“said State” means the State of Western Australia;

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

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

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

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

“tonne” means a tonne of 1000 kilograms net dry weight;

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

“wharf” includes any jetty structure;

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

### **Interpretation**<sup>2</sup>

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 47 to extend any period or date shall be without prejudice to the power of the Minister under Clause 47;
- (c) marginal notes<sup>2</sup> do not affect the interpretation or construction; and
- (d) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

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

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

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

**Effect on existing Acts**<sup>2</sup>

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

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

(b) the Land Act —

(i) by deleting subsections (1) and (2) of Section 45A thereof and by substituting the following —

“45A (1) Notwithstanding anything contained in the last preceding Sections of this Part (Part IV) of this Act the Governor may dispense with the requirements thereof as to the sale of town or country lands and may approve of any lot being offered for sale or for leasing in the manner prescribed in subsection (2) of this Section.

(2) Upon the Governor signifying approval pursuant to subsection (1) of this Section in respect of any such lands the Minister may offer the said lands or any part thereof for sale or may grant leases or licences thereof for such price or prices and for such period or periods (including rights of renewal) and upon and subject to such other terms and conditions and in such form as the Minister may think fit provided that the price period or other terms and conditions shall not be inconsistent with the provisions of any agreement executed by the Premier of the State of Western Australia acting for and on behalf of the said State pursuant to the authority in that behalf given by an Act of the Parliament of the said State.”;

- (ii) by deleting the proviso to Section 116 thereof;
- (iii) by deleting Sections 135 and 143 thereof;
- (c) the *Public Works Act 1902* — by deleting subsections (2) to (7) inclusive of Section 17 thereof and also the whole of Section 17A thereof;
- (d) Section 82 of the Mining Act and Section 81D of the Transfer of Land Act shall not apply to a mortgage or charge in the form commonly known as a floating charge given by the Company or an associated company pursuant to Clause 41 or to a transfer or assignment in exercise of a power of sale contained in any such mortgage or charge;
- (e) no lease sublease licence or other title or right granted or assigned under or pursuant to this Agreement shall be subject to or capable of partition and the provisions of Part XVI of the *Property Law Act 1969* shall not apply thereto.

**Right to enter Crown land<sup>2</sup>**

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

**Rights of occupancy of mining areas<sup>2</sup>**

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

**Existing rights to be surrendered<sup>2</sup>**

- (a) the rights of occupancy shall be granted subject to the condition precedent that the Company surrenders all its existing rights of occupancy in respect of the mining areas to the Minister for Mines;

**Period of rights of occupancy<sup>2</sup>**

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

**Consideration of rights of occupancy<sup>2</sup>**

- (c) the Company shall within one month after the commencement date and thereafter on the first and every subsequent anniversary of the commencement date during the continuance of the period of the rights of occupancy pay to the State as consideration for the rights of occupancy in advance an annual fee of one thousand dollars for each Temporary Reserve comprised in the mining areas and in addition ten dollars for each square kilometre or part of a square kilometre of the mining areas for the time being subject to the rights of occupancy;

**Obligation to prospect<sup>2</sup>**

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

**Reports<sup>2</sup>**

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

**Other mining tenements<sup>2</sup>**

- (f) the Minister for Mines may grant to any person (including the Company) mining tenements pursuant to



the Mining Act for any mineral other than iron ore within the mining areas if the Minister for Mines is satisfied that such grant would be unlikely to materially prejudice or interfere with the Company's operations under this Agreement;

**Determination of occupancy<sup>2</sup>**

- (g) the rights of occupancy shall forthwith cease and determine on the happening of any of the following events namely —
- (i) upon the Company by notice to the Minister relinquishing the same; or
  - (ii) upon the period of the rights of occupancy expiring by effluxion of time; or
  - (iii) upon the State granting to the Company a mineral lease pursuant to Clause 12 (notwithstanding that the instrument of such lease may not be issued); or
  - (iv) upon the Company making default in the due and punctual payment of any annual fee payable pursuant to paragraph (c) of this Clause and failing to comply with a notice from the State specifying such default and calling upon the Company to remedy the same within a period of fourteen days of the service of such notice; or
  - (v) upon the Company making default in the due performance or observance of any of the other of the terms and conditions upon and subject to which the rights of occupancy were granted and failing to comply with a notice from the State specifying such default and calling upon the Company to remedy the same within a period of fourteen days of the service of such notice.

**Investigations and Studies<sup>2</sup>**

6. (1) The Company shall insofar as it has not already done so to the satisfaction of the Minister, commence as soon as reasonably practicable and carry out at its expense (with the assistance of experienced consultants where appropriate) —

- (a) a thorough geological and (as necessary) geophysical investigation and proving of the iron ore deposits in the mining areas and the testing and sampling of such deposits;
- (b) a reconnaissance of site of the operations proposed pursuant to this Agreement together with the preparation of suitable maps and drawings;
- (c) an engineering investigation of the route for a railway from the mining areas to the port or to connect with any existing or proposed railway and for this purpose the Company shall in consultation with the Railways Commission carry out such investigations as may be agreed;
- (d) an engineering investigation of a port site;
- (e) a study of the technical and economic feasibility of the mining transporting handling and shipping of iron ore from the mining areas;
- (f) the planning for the development of a suitable mine townsite and where appropriate a suitable port townsite (including design of housing utilities and associated facilities and social cultural and civic facilities) in consultation with the State having due regard to the possible or probable use of the same by others as well as the Company;
- (g) the investigation, in areas approved by the Minister, of suitable water supplies for mining industrial and mine townsite purposes;
- (h) metallurgical and market research; and
- (i) an assessment of the environmental effects likely to result from operations pursuant to this Agreement together with outlines of proposals to minimise any deleterious effects on the environment.

**Port investigations<sup>2</sup>**

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

- (a) do not materially depart from the reports and recommendations of such engineers;
- (b) provide for the best overall development of the port so far as the same relates to the Company's activities;
- (c) disclose any conditions of user; and
- (d) where alternative proposals are submitted the Company's preferences in regard thereto.

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

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

**State Assistance**<sup>2</sup>

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

**Company's proposals**<sup>2</sup>

7. (1) As soon as practicable after the completion of the investigations mentioned in Clause 6 the Company shall submit to the Minister proposals as to the location of the port and an outline in sufficient detail to enable the Minister to satisfy himself as to the suitability, technical feasibility and practicability, of the proposed development of the port (having regard to the matters mentioned in paragraph (a) of subclause (2) of this Clause). The Minister shall within two months after such submission notify the Company whether he approves or otherwise of such proposals or the Minister may within that time himself suggest an alternative proposal. If the Minister does not approve of the Company's proposals or if he himself submits an alternative proposal the Minister shall disclose his reasons for so doing in the said notice and afford the company ample opportunity to consult with him to submit further or alternative proposals and to consider any alternative proposal suggested by the Minister. When considering any of the Company's proposals and in making his own proposal the Minister shall have regard to the possible future requirements of others (including the State) and no preference or other priority shall be given to the Company or its proposals by reason only that the proposals were submitted for consideration before proposals from any other party.

**Detailed proposals**<sup>2</sup>

(2) Subject to the proposals or any alternative proposals as to the location and development of the port being approved the Company shall on or before the fifth anniversary of the commencement date or on or before such later date as the Minister may approve or as may be determined by arbitration as hereinafter provided submit to the Minister subject to the provisions of this Agreement detailed proposals which shall include (where practicable) appropriate plans and (where reasonably required by the Minister) appropriate specifications in respect of the mining of iron ore on and the future development of the mining areas (or so much thereof as is likely to be comprised in the mineral lease mentioned in Clause 12) and detailed particulars as to the measures proposed to be taken for the protection of the environment should the said proposals be approved or deemed to be approved and also (to the fullest

extent reasonably practicable) detailed particulars as to the location area layout design number materials to be used in and time programme for the commencement and completion of the construction or the provision (as the case may be) of each of the following matters —

- (a) (to the extent not already covered by the proposals mentioned in subclause (1) of this Clause) the port and port development including the dredging thereof and the disposal and depositing of the spoil the provision of navigational aids and a fair contribution to their maintenance the Company's wharf the berth and swinging basin proposed in connection with the Company's use thereof and the port installations facilities and services to be available all of which are to be of such nature and extent as to be capable of and suitable for adaptation to permit use of the Company's wharf by ships having a capacity to carry 150 000 tonnes of iron ore;
- (b) the railway from the mining areas to the port or to connect with an existing railway and the proposed operation of such railway;
- (c) the development of the mine townsite and where appropriate the port townsite including services and facilities in relation thereto;
- (d) housing;
- (e) water supply;
- (f) roads;
- (g) generation transmission and distribution of electricity;
- (h) airfields;
- (i) the leases licences or other tenures of land jetty structures and mooring areas (if any) required from the State;
- (j) disposal of waste materials;
- (k) drainage;
- (l) dust control measures; and
- (m) any other works, services or facilities proposed or required by the Company.

**Order of proposals**<sup>2</sup>

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

**Use of existing infrastructure**<sup>2</sup>

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

**Marketing and financial arrangements**<sup>2</sup>

(5) At the time when the Company submits the said proposals it shall furnish to the State's satisfaction in all respects evidence of —

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

**Port Location**<sup>2</sup>

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

**Consideration of proposals**<sup>2</sup>

8. (1) On receipt of the said proposals the Minister shall —
- (a) approve of the said proposals either wholly or in part without qualification or reservation; or

- (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (2) of Clause 7 not covered by the said proposals; or
- (c) require as a condition precedent to the giving of his approval to the said proposals that the Company makes such alteration thereto or complies with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions.

**Advice of Minister's decision**<sup>2</sup>

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

**Consultation with Minister**<sup>2</sup>

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

**Minister's decision subject to arbitration**<sup>2</sup>

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

**Reasonableness of Minister's decision**<sup>2</sup>

(5) In addition to any other matter to which the arbitrator is required to have regard in considering the reasonableness of any decision of the Minister made pursuant to subclause (1) of this Clause the Minister shall not be regarded to have acted unreasonably if he shall defer his decision on a proposal made in relation to the matters mentioned in paragraph (i) of subclause (2) of Clause 7

until the said proposals in relation to the matters mentioned in the other paragraphs of subclause (2) of Clause 7 have become or deemed to have become approved proposals and the Company has complied with the provisions of subclause (5) of Clause 7.

**Arbitration Award**<sup>2</sup>

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

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

**Guarantee**<sup>2</sup>

9. (1) After the Company's proposals submitted pursuant to Clause 7(1) have been approved by the State and the Company has complied with the provisions of Clause 7(5) to the satisfaction of the State, the State undertakes that it will guarantee any loan or loans to the Company in respect of the construction of the railway referred to in Clause 20(1), subject to: —

- (a) the State first approving of the Lender and the terms and conditions of the loan or loans and the form of the securities therefor;
- (b) the Company demonstrating to the State that it is unable to arrange satisfactory terms for financing the construction of the railway without the aforesaid guarantee;
- (c) the terms and conditions of the guarantee being determined by the State.

(2) The total liability of the State under this Clause shall not exceed forty-two million dollars.

(3) The provisions of Clause 50 shall not apply to this Clause.



### **Additional Proposals**<sup>2</sup>

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

### **Basis of Submission**<sup>2</sup>

(2) In the event of the Company submitting detailed proposals pursuant to subclause (1) of this Clause, or, if as a consequence of it submitting detailed proposals pursuant to Clause 34 or 35, the Minister requires further detailed proposals to be submitted on any of the said matters mentioned in paragraphs (a) to (m) of subclause (2) of Clause 7, then subject as provided in subclause (3) of this Clause the additional proposals shall be submitted on the basis that should the same become approved proposals the provisions of Clause 26 shall apply *mutatis mutandis* in respect of any increase in the extent of the services and facilities mentioned in subclause (1) of Clause 26 and also in respect of the provision of the additional services or facilities (whether of the kind mentioned in subclause (1) of Clause 26 or not) occasioned in either case by the additional proposals becoming approved proposals.

### **Determination of extent of Company's obligations**<sup>2</sup>

(3) The extent of the Company's responsibilities under Clause 26 to provide the capital cost of and to maintain any increased or additional services and facilities of the kind mentioned in subclause (1) of that Clause occasioned by the additional proposals or any of them becoming approved proposals shall be determined by the Minister after discussion and negotiation on such matters with the Company and in making such determination the Minister shall have regard *inter alia* to the current and anticipated composition of any mining or other town affected and the extent to which the ordinary responsibilities of the State with respect to the provision of the capital cost of such services and facilities are to be assumed by the State in the light of the State's current capital resources at that time.

**Determination before implementation of proposals<sup>2</sup>**

11. In any of the following events namely —

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

the State may give to the Company one month's notice determining this Agreement and on the expiration of such notice this Agreement shall cease and determine and neither party shall have any claim against the other in respect of any matter or thing arising out of or done or performed or omitted to be done or performed under this Agreement except as provided under Clause 44.

**Mineral lease<sup>2</sup>**

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

**Provisions<sup>2</sup>**

- (a) the total area of the land the subject thereof shall not exceed seven hundred and seventy-seven square kilometres;
- (b) the boundaries of the land comprising such area shall be so located as to form either a rectangular parallelogram or rectangular parallelograms or as near thereto as is practicable;
- (c) the rent reserved thereby shall be that fixed in subclause (4) of this Clause;
- (d) the Company shall therein covenant to pay to the State in addition to the said rent the royalties fixed in Clause 32;
- (e) subject to the due payment by the Company of the said rent and royalties and to the due performance and observance by the Company of its other obligations thereunder and of its obligations under this Agreement the term thereof will be twenty-one years as from the date of the granting thereof but the Company shall during the continuance of this Agreement have the right to take successive renewals of the said term each for a period of twenty-one years upon the same terms and conditions subject to the sooner determination of the said term upon the cessation or determination of this Agreement, such right to be exercisable by the Company making written application for any such renewal not later than one month before the expiration of the current term of the mineral lease;
- (f) subject to paragraphs (a) to (e) inclusive of this subclause and as in this Agreement otherwise provided all relevant provisions of the Mining Act and the Regulations thereunder shall apply but subject to the Company discharging and carrying out its obligations under this Agreement the Company shall not be required to comply with the labour conditions imposed by the said Act in respect of mineral leases.

**Survey**<sup>2</sup>

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

**Surrender of part of mineral lease<sup>2</sup>**

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

**Rent<sup>2</sup>**

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

**Rights to other minerals<sup>2</sup>**

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

**Other mining tenements<sup>2</sup>**

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

**Access over mineral lease<sup>2</sup>**

(7) The Company shall at all times permit the State and third parties (with or without stock vehicles and rolling stock) to have access to and to pass over the mineral lease (by separate route, road or railway) so long as that access and passage does not materially prejudice or interfere with the operations of the Company under this Agreement.

**State may resume land<sup>2</sup>**

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

**Other Leases<sup>2</sup>**

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

**Special Leases<sup>2</sup>**

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

- (a) a special lease (or special leases) of Crown land at the mine townsite for residential, professional, business, commercial and industrial purposes and for the purpose of providing communal facilities. Such special lease shall be granted upon all usual terms and conditions and in particular shall contain the following provisions —
  - (i) the term thereof (unless sooner determined) shall expire on the same date as that on which

- the term of the mineral lease or any renewal thereof terminates or is determined;
  - (ii) the rental payable thereunder shall be one peppercorn per annum payable if and when demanded;
  - (iii) the Company shall have the right during the continuance thereof to purchase (for a price comparable with that charged by the State for other Crown land released for freehold sale in similar towns in the general region of the Company's operations) the fee simple of any parcel or lot being part of the land thereby demised on which is erected buildings or structures (not being dwellings) costing at least ten thousand dollars or dwellings costing at least seven thousand dollars;
  - (iv) the Company shall have the right during the continuance thereof notwithstanding the provisions of the *Sale of Land Act 1970* to sell any parcel or lot being part of the land thereby demised on condition that the purchaser erects on such land buildings or structures (not being dwellings) costing at least ten thousand dollars or dwellings costing at least seven thousand dollars;
- (b) a special lease (or special leases) of Crown land at or near the port for industrial stockpiling, ship loading, power generation and other similar purposes. Such special lease shall be granted upon all usual terms and conditions and in particular shall contain the following provisions —
  - (i) the term thereof shall (unless sooner determined) expire on the same date as that on which the term of the mineral lease or any renewal thereof terminates or is determined;
  - (ii) the rental payable thereunder shall be an annual rental payable in advance to be agreed for the first twenty-one years and thereafter

reviewed at seven year intervals and in each case based on a valuation of the land the subject of the said special leases by a competent and experienced land valuer appointed by the State and acceptable to the Company;

**Additional rent**<sup>2</sup>

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

**No resumption**<sup>2</sup>

15. The State agrees that subject to the performance by the Company of its obligations hereunder the State shall not resume or suffer or permit to be resumed by an instrumentality or by any local or other authority of the said State any portion of the land the subject of any special lease mentioned in subclause (2) of Clause 14 the resumption of which would materially impede the Company's works and activities thereon or any portion of the land the subject of the mineral lease whereon any of the Company's works are situate in accordance with proposals approved hereunder the resumption of which would materially impede the Company's mining or other activities thereon nor shall the State create or grant or permit or suffer to be created or granted by an instrumentality or authority of the said State any road right of way or easement of any nature or kind whatsoever over or in respect of the land comprised in the said leases whereon any of the Company's works are situate in accordance with proposals approved hereunder without the consent of the Company first had and

obtained which consent the Company agrees it shall not arbitrarily or unreasonably withhold.

**No discriminatory rates**<sup>2</sup>

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

**Zoning**<sup>2</sup>

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

**Rating**<sup>2</sup>

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



### **Construction of plant<sup>2</sup>**

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

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

### **Commencement of operations<sup>2</sup>**

- (b) actually commence to mine transport by rail and ship from the Company's wharf iron ore from the mineral lease so that the average annual rate during the first two years after export date shall not be less than one million tonnes.

### **Railway<sup>2</sup>**

20. (1) The Company shall submit to the Minister for approval the proposed route of the railway (as hereinafter defined) and the Minister shall within two months of the receipt of such submission advise the Company of his decision. In considering the Company's submission the Minister shall have due regard to the shortest practicable route of the railway. The Company, having first obtained the approval of the Minister to the proposed route as aforesaid, and subject to the provisions of this Clause, shall at its expense and in accordance with the relevant approved proposal construct or arrange to have constructed a railway having a 1.435 metre gauge between a mining site or sites

within or adjacent to the mining areas and the port. Such railway and other works and appurtenances required to be provided by the Company pursuant to this Clause on the railway lease (as defined in subclause (2) of this Clause) are hereinafter referred to as “the railway”.

(2) The Company shall give notice to the State in advance of its intention to commence construction of the railway. Upon the receipt of such notice the State shall so soon as conveniently may be —

**Acquisition of land**<sup>2</sup>

- (a) at the expense of the Company acquire such land as may be necessary and exercise such statutory powers to enable the construction of the railway; and

**Lease of land to Company**<sup>2</sup>

- (b) grant to the Company for a term of eighteen years a lease of the land so acquired and all other land that may be necessary to enable the construction use and operation of the railway at an annual rental of one peppercorn in accordance with the provisions of this Agreement. Such lease (in this Clause called “the railway lease”) shall contain a covenant by the Company to construct the railway and such other covenants and provisos as are reasonably necessary for the protection of the State as lessor.

**Authorisation**<sup>2</sup>

(3) The provisions of section 96 of the *Public Works Act 1902* shall not apply to the construction of the railway.

**Determination of Lease**<sup>2</sup>

(4) The railway shall not be subject to tenant’s rights in the Company and at the expiration or sooner determination of the said lease the Company’s rights and interest in the railway (whether or not fixtures) shall subject as hereinafter provided absolutely cease and vest or re-vest in the State and become the absolute property (freed from all encumbrances) of the State which shall not be obliged to pay any compensation to the Company in respect of the railway.

**Construction of Railway and protective devices<sup>2</sup>**

(5) The construction of the railway shall be carried out to the standards of and in accordance with plans and specifications approved by the Railways Commission which specifications shall provide *inter alia* for grade separation when required by the State at all intersections with any other railways and, having regard to the requirements of the Commissioner of Main Roads, for grade separation when required by the State at all intersections with major roads and such warning and protective devices including flashing lights and boom gates at all intersections with other roads.

**Operation by Railways Commission<sup>2</sup>**

(6) The Railways Commission shall —

- (a) notwithstanding the provisions of subclauses (1) and (2) of this Clause be solely responsible for the operation of the railway for its use by the Company and the Railways Commission;
- (b) during the continuance of this Agreement subject to the Company complying with its obligations hereunder in relation to its use of rail transport and in particular subject to the number of wagons provided by the Company being sufficient for the purpose, operate such trains as the Company may reasonably require for the transport of iron ore products limestone and other commodities for the purposes of this Agreement and allow such trains carrying the Company's iron ore such priority over other traffic on the railway as is reasonable in the circumstances, and subject thereto;
- (c) be entitled to operate on the railway such trains other than those for the purposes of the Company's operations hereunder as may be practicable.

**Maintenance by Railways Commission<sup>2</sup>**

(7) The Railways Commission shall at its expense maintain the railway together with all locomotives brakevans and wagons used on the railway.

**Notice of requirements<sup>2</sup>**

(8) The Company shall provide to the satisfaction of the Railways Commission not less than two years in advance of its requiring to use rail transport such particulars of its requirements as to the use of the railway (including the anticipated or provisional annual tonneages from time to time likely to be available for transport) as shall enable the Railways Commission to make arrangements to meet those requirements and shall thereafter give adequate notice of any change in those requirements.

**Provision and maintenance of equipment by Company<sup>2</sup>**

(9) The Company shall on land occupied by it at the mining site or sites and at the port (other than on land the subject of the railway lease) at its own cost provide and maintain such sidings, shunting loops, spurs and other rail connections and appurtenances (including all necessary signals and safety devices) as the Railways Commission may reasonably require for its operations under subclause 6(b) of this Clause and loading and unloading facilities sufficient to meet the Company's train operating requirements and terminal equipment (including weighing devices) with such staff as may be adequate to ensure the proper operation of such facilities and equipment.

**Company to provide wagons<sup>2</sup>**

(10) The Company shall provide sufficient wagons including spare wagons (of a design and to a specification approved by the Railways Commission) to carry all iron ore products limestone and other commodities required to be transported for the Company between the mining areas and the port and where in the opinion of the Railways Commission any such wagons are no longer capable of being maintained and serviced by the Railways Commission, provide replacement wagons.

**Locomotives and brake-vans<sup>2</sup>**

(11) The Company shall if and when required by the Railways Commission provide sufficient locomotives and brakevans (of a design and to a specification approved by the Railways Commission) for the transport of the iron ore products limestone and all other commodities required to be transported for the Company on the railway and the Railways Commission shall lease from the Company the locomotives and brakevans so provided on such terms and conditions as the parties may agree.

**Loading of wagons<sup>2</sup>**

(12) The Company shall ensure that all wagons are properly trimmed and are loaded to tonnages approved by the Railways Commission.

**Connection of Railway to State rail system<sup>2</sup>**

(13) The Railways Commission may connect the railway to either the existing State rail system or any new system to be operated by the State at a point or points to be determined by the Minister and shall give notice to the Company in advance of its intention to make such connections.

**Rail Freight Charges<sup>2</sup>**

(14) During the continuance of this Agreement —

- (a) The Company shall pay to the Railways Commission freight in respect of the commodities carried for the Company pursuant to this Agreement. The freight rate shall be determined by the Railways Commission from time to time but shall not exceed the actual cost to the Railways Commission of operating and maintaining the railway in accordance with the Company's requirements under this Agreement including (where the Company has exclusive use of the railway) the costs of necessary replacements or (where the Company does not have such exclusive use) a fair contribution thereto and to the standard normally required by the Railways Commission together with a management fee not exceeding 12½% of such operating and maintenance costs.
- (b) Freight shall be payable by monthly payments in the month next following the month of haulage on the basis of the estimated costs of operating and maintaining the railway and shall be subject to annual adjustment after the expiration of each year. The State shall at the request of the Company procure the certificate of the Auditor General of the State as to the correctness of the Railways Commission's costs of operating and maintaining the railway.

**Use of railway by others<sup>2</sup>**

(15) In the event of the Railways Commission making use of the railway to carry freight for other persons within eighteen years of the date of this Agreement and moving over the railway in any one year within that period 100 000 tonnes or more of bulk products the State shall require such other user to make a fair contribution to the cost of the establishment of the railway and from the proceeds of any such contribution or contributions shall pay to the Company such amount as shall be equitable.

**Roads Construction<sup>2</sup>**

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

**Use of public roads<sup>2</sup>**

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

### **Upgrading of public roads<sup>2</sup>**

(3) If required by the Company the State shall at the Company's cost and expense (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or any part of the cost) widen upgrade or realign any public road existing from time to time which the Company desires to use for its operations hereunder over which the State has control subject to the prior approval of the Commissioner of Main Roads to the proposed work.

### **Liability for use of roads<sup>2</sup>**

(4) (a) For the purpose of determining whether and the extent to which —

- (i) the Company is liable to any person or body corporate (other than the State) or
- (ii) an action is maintainable by any such person or body corporate

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

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

### **Water<sup>2</sup>**

#### **General water requirements<sup>2</sup>**

22. (1) The Company having complied with its obligations under Clause 6(1)(g) shall give to the State not less than two years notice in appropriate detail of its estimated consumption of potable water at the port and the mine townsite other than for construction purposes (which amounts or such other amounts as shall be agreed between the parties are in this Clause called "the Company's general water requirements").

**General water search**<sup>2</sup>

(2) Upon receipt of such notice the State shall in collaboration with the Company and in accordance with an agreed programme and budget at the expense of the Company search for suitable subterranean water sources sufficient to supply the Company's general water requirements in areas agreed to by the parties.

**Development of water sources**<sup>2</sup>

(3) In the event that the search referred to in subclause (2) of this Clause identifies and proves subterranean water sources which the parties agree are adequate to supply the Company's general water requirements the State shall, in accordance with the relevant approved proposal and an agreed programme and budget, construct or arrange to have constructed at the Company's expense all bores, valves, pipelines, meters, tanks, equipment and appurtenances (in this Clause called "the water works") necessary to supply the Company's general water requirements.

**Additional capacity**<sup>2</sup>

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

**State to supply water**<sup>2</sup>

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

**Mine water requirements**<sup>2</sup>

(6) The Company shall give to the State not less than six months notice in appropriate detail in respect of its requirements of potable and non potable water other than for construction purposes both at the mine and



elsewhere within or near the mining areas to implement its obligations hereunder (which amounts or such other amounts as shall be agreed between the parties are in this Clause called “the Company’s mine water requirements”).

**Mine water search**<sup>2</sup>

(7) The Company shall in collaboration with the State search for and make investigations to establish the availability of suitable subterranean water sources within the mineral lease or at other locations approved by the Minister and shall employ and retain experienced ground water consultants where appropriate and shall furnish the Minister with copies of the consultants’ reports or alternatively if so requested by the Company the State shall carry out the said search and investigations at the Company’s expense.

**Construction of mine water works**<sup>2</sup>

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

**Licence**<sup>2</sup>

(9) The Company shall make application to the State for one or more licences to draw the Company’s mine water requirements up to the amounts and at rates not less in total than those set forth in the notice given pursuant to subclause (6) of this Clause from suitable subterranean water sources identified pursuant to the search and investigation mentioned in subclause (7) of this Clause and as are agreed to be adequate and the State shall in accordance with the relevant approved proposal grant to the Company such licence or licences PROVIDED HOWEVER that should any such source prove hydrologically inadequate to meet the Company’s mine water requirements, the State may limit the amount of water which may be taken from such source at any one time or from time to time to the maximum which such sources are hydrologically capable of meeting.

**Surrender of licence**<sup>2</sup>

(10) If during the currency of a licence granted under the provisions of this Clause the Minister is of the opinion that it is desirable that the sources of

potable water licensed to the Company and the mine water works established in respect thereof by the Company pursuant to subclause (8) of this Clause be made available to the State for such purposes, *inter alia*, as water conservation, water management, utilisation of unused hydrological capacity, supply of water to third parties (where such supply will not materially prejudice the Company's operations hereunder) and establishment of a regional water supply system incorporating the area of operations of the Company the Minister shall (after first affording the Company an opportunity to consult with him) so notify the Company and the Company shall after the expiration of six months from the date of such notice surrender such licence or licences (other than a licence granted exclusively for non potable water) and relinquish to the State the ownership control and operation of such part of the works as relate to potable water. The State shall thereupon assume the ownership control and operation of such works. The State shall not be liable to pay the Company compensation in respect of such works relinquished or the licence or licences so surrendered. Immediately after the surrender of such licence or licences the State shall (subject only to the continued hydrological availability of water from such sources previously licensed to the Company) commence and thereafter continue to supply water to the Company up to the same amount and at the same rate as that which the Company would have been entitled to draw under such surrendered licence or licences and the proviso to subclause (9) of this Clause shall in like manner apply to this subclause.

**Regional water supply**<sup>2</sup>

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

**Non-potable water**<sup>2</sup>

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

**Charges for water**<sup>2</sup>

(13) The Company shall pay to the State for all water supplied by it for the purposes of this Agreement a fair price to be negotiated between the parties which shall be equal to the actual cost incurred by the State in supplying water

to the Company including operating maintenance and overhead costs and a provision for replacement of the water works or the mine water works (as may be applicable). Notwithstanding the foregoing the Company shall pay to the State in respect of water supplied by the State to the Company for townsite purposes such charges as are levied from time to time pursuant to the provisions of the *Country Areas Water Supply Act 1947*.

**Additional water search**<sup>2</sup>

(14) Should the State at any time pursuant to the provisos to subclauses (5) and (9) of this Clause limit the amount of water to be taken from the water sources therein mentioned, the Company shall collaborate with the State in a search at the Company's expense for new or additional subterranean water sources with a view to restoring the full quantity or quantities of water required by the Company and such search shall (if necessary and agreed between the parties) extend to and include investigations into surface water resources pursuant to subclause (15) of this Clause.

**Surface water**<sup>2</sup>

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

**Rights in Water and Irrigation Act**<sup>2</sup>

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

**Sea water licence**<sup>2</sup>

(17) Upon the request of the Company the State shall grant to the Company a licence to draw from the sea at the port its requirements of sea water in accordance with the relevant approved proposal hereunder.

**Electricity**<sup>2</sup>

**Electricity facilities**<sup>2</sup>

23. (1) The Company shall in accordance with the approved proposals construct without cost or expense to the State the necessary plant equipment and systems (in this Clause called “electricity facilities”) for the generation and transmission of electricity needed to enable the Company to carry out its obligations hereunder. The Company shall not take transmission lines beyond any mining area or beyond the port area without the prior approval of the Commission (which approval may be given subject to such terms and conditions as the Commission determines). The Company shall so design and construct the electricity facilities as to facilitate their ultimate connection with similar facilities owned by the Commission or other third parties.

**Purchase of electricity**<sup>2</sup>

(2) Notwithstanding the provisions of subclause (1) of this Clause (and for the purpose of facilitating integration of electricity generation and transmission facilities in areas where the Company operates) the Company shall be at liberty to purchase electricity from the Commission and third parties or to negotiate with the Commission or third parties for the augmentation of the facilities of the Commission and such third parties to enable them to supply the Company in lieu of the Company providing electricity facilities pursuant to subclause (1) of this Clause.

**Acquisition of facilities**<sup>2</sup>

(3) The State may at any time give to the Company twelve months’ notice of its intention to acquire and may thereafter acquire the Company’s electricity facilities or any part thereof up to the first point of voltage breakdown or such other appropriate point as may be agreed, at a price to be agreed between the parties and the Company shall take all such steps as may be necessary to effect the acquisitions. The State undertakes that in such event the Company shall for its purposes hereunder have first call on the power generated and transmitted by such electricity facilities so acquired and the State undertakes subject only to its inability to supply power for any of the reasons set forth in Clause 40 to supply the Company with power for its purposes hereunder

up to the normal continuous full load capacity of the electricity facilities so acquired and that in the event of such inability to supply power occurring the State shall take all possible steps to restore such supply regardless of the time or day when such inability arises and may call upon the Company to provide employees for that purpose at the State's expense.

#### **Charges for electricity<sup>2</sup>**

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

#### **Bulk supply to State<sup>2</sup>**

(5) Should the Company's relevant approved proposal provide for the Commission to reticulate electricity to houses occupied by the Company's work-force and by any other persons connected directly with the Company's operations whether employees or not and to commercial establishments directly connected with such operations, the Company shall sell to the Commission in bulk electricity in sufficient quantities to meet the needs of such work-force persons and establishments at a price equal to the Company's actual cost of generating and transmitting such electricity including, *inter alia*, appropriate capital charges.

#### **Port and Company's Wharf<sup>2</sup>**

24. (1) (a) The Company shall develop the port, construct the Company's wharf and carry out all necessary dredging of approach channels, swinging basin and berth at the Company's wharf and provide and be responsible for the cost of maintenance (where the Company is the sole user and the State does not obtain any revenue in respect thereof) or a fair contribution thereto of all necessary buoys, beacons, markers, navigational aids, lighting equipment and services and facilities including where necessary the provision of

tugs tug service berths and pilot boats to the requirements of the Geraldton Port Authority in accordance with the Company's relevant approved proposal.

(b) Notwithstanding the provisions of paragraph (a) of this subclause, the parties recognise that it may be to their advantage for the State to provide all or some of the said works mentioned in the said paragraph and in such case the State shall confer with the Company and the other users and potential users of the port as to the manner in which and the terms and conditions upon which the State should provide such works. The Company shall pay to the State such sum or sums as the parties agree (not exceeding the amount that would have been payable had the Company carried out the said works) towards the cost of the said works provided by the State.

**Use of wharf and facilities**<sup>2</sup>

(2) (a) Subject to the payment to the Company of the charges prescribed by and for the time being payable under any by-laws made by the Company in respect of the use by others of the Company's wharf and subject to the due compliance with the other requirements and conditions prescribed by such by-laws or should there be no such by-laws for the time being in force then subject to the payment of such charges and the due compliance with such requirements and conditions as in either case shall be reasonable having regard to the cost to the Company of the construction and operation of the Company's wharf the Company shall permit the State and (where it does not prejudice the existing use of the facilities in the port of Geraldton) third parties to use the Company's wharf and the port installations, wharf machinery equipment and wharf and port services and port facilities constructed or provided by the Company in connection therewith if and for so long as such user shall not materially prejudice or interfere with the operations of the Company under this Agreement.

(b) Subject to the provisions of Clause 25 nothing in this Agreement shall be construed to limit the application of the *Shipping and Pilotage Act 1967*.

**No charge for handling of cargoes**<sup>2</sup>

25. The State undertakes that subject to the Company at its expense providing all works buildings dredging and things of a capital nature reasonably required for its operations hereunder at or in the vicinity of the port no charge or levy shall be made by the State or by any State agency authority or instrumentality in relation to the loading of outward or the unloading of inward cargoes from the

Company's wharf whether such cargoes shall be the property of the Company or of any other person or corporation but the State accepts no obligations to undertake such loading or unloading and may make the usual charges from time to time prevailing in respect of services rendered by the State or by any State agency authority or instrumentality or by any local or other authority on behalf of the State and may charge vessels using the Company's wharf ordinary light conservancy and tonnage dues.

**Townsites Establishment**<sup>2</sup>

26. (1) (a) The parties recognise that based on preliminary planning the Company intends to expand and develop the town of Geraldton including those environs of the town within the Shires of Chapman Valley and Greenough for the port townsite and an existing town for its mine townsite but should the approved proposals provide for the establishment of a new town at the mine townsite the Company shall at its cost and in accordance with the approved proposals —

- (i) provide at the mine townsite such housing accommodation services and works (including sewerage reticulation and treatment works water supply works and main drainage works and also social cultural and civic facilities) as may be necessary in order to provide for the needs of persons (and the dependants of those persons) connected directly with the Company's operations under this Agreement, whether or not such persons are employed by the Company;
- (ii) provide at the mine townsite all necessary public roads and buildings required for educational, hospital, medical, police, recreation, fire and other services;
- (iii) provide all equipment required for the operation and proper functioning of the services and works referred to in subparagraphs (i) and (ii) of this paragraph; and
- (iv) service maintain and where necessary repair and renovate the housing accommodation services and works mentioned in subparagraphs (i) and (ii) of this paragraph;
- (v) (subject to and in accordance with by-laws from time to time to be made and altered by the Company which include provisions for fair and reasonable prices rentals or charges or if no such by-laws are made or in force then at such prices

rentals or charges and upon and subject to such terms and conditions as are fair and reasonable) ensure that the said housing accommodation services and works are at all times readily available to persons requiring the same being employees licensees or agents of the Company or persons engaged in providing a legitimate and normal service to or for the Company or its employees licensees or agents including the dependants of such persons; and

- (vi) ensure that the roads buildings and other works mentioned in subparagraph (ii) of this paragraph and the equipment mentioned in subparagraph (iii) of this paragraph are readily available free of charge to those desiring to use the same.

#### **Limitation on Company's obligations<sup>2</sup>**

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

#### **Equipment<sup>2</sup>**

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

#### **Staff Housing<sup>2</sup>**

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

#### **Existing Towns<sup>2</sup>**

(4) If the approved proposals provide for the assimilation into any existing town of the whole or part of the Company's work-force (including their dependants) and any other persons (including their dependants) connected directly with the Company's operations (whether employees of the Company or not) whereby the normal population of such existing town is increased then the Company shall subject to the provisions of subclause (3) of Clause 10 bear the cost of the provision at that existing town of the matters mentioned in



subparagraphs (i) (ii) and (iii) of paragraph (a) of subclause (1) of this Clause to the extent as shall be necessary in order to provide for the needs of the said increase in population of such existing town. The said additional housing services works and equipment may be provided by the State or by another party under an agreement with the State and in either case shall be to the extent and of a standard at least equal to that normally adopted by the State in similar types of buildings used for similar purposes in comparable towns. The Company shall pay to the State or such other party such proportion of the cost of such additional housing services works and equipment and the planning thereof as is fair and reasonable having regard to the extent of the said increase in the population of such existing town.

**State provided services<sup>2</sup>**

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

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

**Environmental protection<sup>2</sup>**

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

**Compliance with State laws<sup>2</sup>**

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

**Maintenance of Installations<sup>2</sup>**

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

**Use of local professional services, labour and materials<sup>2</sup>**

30. The Company shall for the purposes of this Agreement as far as it is reasonably and economically practicable —

- (a) use the services of engineers surveyors architects and other professional consultants resident and available within the said State;
- (b) use labour available within the said State;
- (c) when calling for tenders and letting contracts for works materials plant equipment and supplies ensure that Western Australian suppliers manufacturers and contractors are given reasonable opportunity to tender or quote; and
- (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere.

**Commonwealth licences and consents<sup>2</sup>**

31. (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 of Australia 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) of this Clause.

**Royalty<sup>2</sup>**

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

- (a) on iron ore products (being direct shipping ore and fine ore and fines not sold or shipped separately as such) not being locally used ore — at the rate of seven and one half per centum of the f.o.b. revenue (computed at the rate of exchange prevailing on date of receipt by the Company of the purchase price of such iron ore products) PROVIDED NEVERTHELESS that subject as provided in paragraph (e) of this subclause the total royalty payable under this paragraph shall not be less than the sum ascertained by multiplying 59.0524 cents by the total weight in tonnes of such iron ore products the subject of any shipment or sale;
- (b) on iron ore products (being fine ore and fines so sold or shipped separately as such) not being locally used ore — at the rate of seven and one half per centum of the f.o.b. revenue (computed as mentioned in paragraph (a) of this subclause) PROVIDED NEVERTHELESS that subject as provided in paragraph (f) of this subclause the total royalty payable under this paragraph shall not be less than the sum ascertained by multiplying 29.5262 cents by the total weight in tonnes of such iron ore products the subject of any shipment or sale;
- (c) (i) on iron ore products (being such as are produced by the secondary processing of iron

ore by the Company or an associated company within the Commonwealth); or

- (ii) on locally used ore (not being iron ore used in the secondary processing of iron ore by the Company or an associated company within the Commonwealth) —

at the rate of 14.7631 cents per tonne;

- (d) on all other iron ore products (not being locally used ore) at the rate of seven and one half per centum of the f.o.b. revenue (computed as aforesaid) without any minimum royalty;
- (e) if the amount ascertained by multiplying 59.0524 cents by the total weight in tonnes of direct shipping ore shipped or sold (and liable to royalty under paragraph (a) of this subclause) in any financial year is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that paragraph then that proviso shall not apply in respect of direct shipping ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made;
- (f) if the amount ascertained by multiplying 29.5262 cents by the total weight in tonnes of fine ore and fines shipped or sold separately as such (and liable to royalty under paragraph (b) of this subclause) in any financial year is less than the total royalty which would be payable in respect of that ore but for the operation of that proviso to that paragraph then that proviso shall not apply in respect of fine ore and fines shipped or sold separately as such in that year and at the expiration of that year any necessary adjustments shall be made;
- (g) the rate of royalty of 14.7631 cents per tonne mentioned in paragraph (c) of this subclause shall be adjusted up or down (as the case may be) as at the first day of January 1969 and as at the beginning of every fifth year thereafter in accordance with any variation in the average of the basic prices of foundry pig iron c.i.f. Australian capital

city ports as announced by The Broken Hill Proprietary Company Limited or any subsidiary thereof from time to time during the calendar year immediately preceding the date at which the adjustment is required to be made as compared with such average for the calendar year 1963;

- (h) where iron ore products produced from secondary processing hereunder are so produced from an admixture of iron ore from the mineral lease and other iron ore, a portion (and a portion only) of the iron ore products so produced being equal to the proportion which the amount of iron in the iron ore from the mineral lease used in the production of those iron ore products bears to the total amount of iron in the iron ore so used, shall be deemed to be produced from iron ore from the mineral lease.

**Payment of royalties<sup>2</sup>**

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

**Inspection of Records<sup>2</sup>**

(3) The Company shall permit the Minister or his nominee at all reasonable times to inspect the books of account and records of the Company relative to the Company's operations hereunder and to any shipment sale or use

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

**Offloading**<sup>2</sup>

33. (1) Subject to the provisions of subclause (3) of this Clause the Company shall not at any time during the continuance of this Agreement, unless the Minister otherwise permits, offload or permit to be offloaded any iron ore products shipped pursuant to this Agreement at a place within the Commonwealth.

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

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

- (a) where the iron ore products are shipped in a vessel that is not owned by the Company or an associated company and the Company satisfies the Minister that it has taken appropriate steps to ensure that iron ore products will not again be offloaded in breach of this Clause; or
- (b) because the vessel in which the iron ore products are being carried is unforeseeably diverted for necessary repairs or because of a *force majeure* or other unforeseeable cause and the Company satisfies the

Minister that because of any such event it could not take or be reasonably expected to have taken steps to prevent the offloading; or

- (c) where the weight of iron ore products offloaded in any part of the Commonwealth in any year and used by the Company or an associated company within the Commonwealth but outside the said State does not exceed fifty per centum (or such other percentage as the Minister approves) of the weight of locally used ore consumed used or otherwise applied in the said State for that year.

### **Secondary processing proposals<sup>2</sup>**

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

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

### **Consideration of proposals<sup>2</sup>**

(2) If such detailed proposals are submitted by the Company to the Minister within the time mentioned in subclause (1) of this Clause the Minister

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

**Failure to submit proposals<sup>2</sup>**

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

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



- (c) if by the end of Year 13 the State has not given to the Company a notice pursuant to the provisions of paragraph (b) of this subclause then the provisions of paragraph (a) of this subclause shall as from the end of Year 13 cease to operate and have effect.

**Submission of proposals after Year 10<sup>2</sup>**

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

**Failure not a default<sup>2</sup>**

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

**Provisions applying to proposals<sup>2</sup>**

(6) Subject as in this Clause otherwise provided the provisions of Clauses 7, 8 and 10 shall apply *mutatis mutandis* to detailed proposals made pursuant to this Clause.

**Iron and steel industry<sup>2</sup>**

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

EITHER for the establishment of such an industry, to be capable ultimately of producing 250 000 tonnes of steel per annum on the following basis —

- (a) the extent dimension design and construction thereof to be such that will permit the same having the capacity to produce progressively annually —
  - (i) by the end of Year 25 — not less than 125 000 tonnes of processed products consisting of pig iron, foundry iron and steel of which not less than 62 500 tonnes shall be steel;
  - (ii) by the end of Year 29 — not less than 250 000 tonnes of processed products of which not less than 125 000 tonnes shall be steel;
  - (iii) by the end of Year 31 — not less than 250 000 tonnes of processed products which shall be comprised entirely of steel;
- (b) the capital cost involved to be not less than fifty million dollars unless the Company utilises a less expensive but at least equally satisfactory method of production than any at present known to either of the parties

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

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

the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have then approved the proposals of the Company.

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

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

then and in either case the Minister shall forthwith notify the Company in reasonable detail of the proposals of the Fourth Party and allow the Company a reasonable opportunity to submit counter proposals or to enter into negotiations with such Fourth Party with a view to participating in the proposed activities of such Fourth Party. If at the end of twelve months from the date of the Minister's notification the Minister is not satisfied with such counter proposals (which counter proposals are not arbitrable hereunder) or with the outcome of such negotiations then the Minister may, either require the Company to supply to such Fourth Party quantities of iron ore in addition to but otherwise in accordance with the provisions of Clause 38 but not exceeding a total of ten million tonnes in any year (which amount is inclusive of the Company's obligations to the Fourth Party under Clause 38) or, notify the Company that this Agreement will determine whereupon this Agreement shall cease and determine —

- (i) in the case of the Fourth Party proceeding with secondary processing then when the Fourth Party has substantially

established the plant referred to in paragraph (a) of this subclause;

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

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

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

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

(7) Notwithstanding anything contained herein no failure by the Company to submit to the Minister proposals as aforesaid nor any non-approval by the Minister of such proposals shall constitute a breach of this Agreement by the Company and the only consequences arising from such failure, or

non-approval (as the case may be) will be those set out in subclause (3) of this clause.

**Substantial establishment**<sup>2</sup>

36. For the purposes of this Agreement the Third Party or the Fourth Party shall be deemed to have substantially established a plant for secondary processing or an integrated iron and steel industry when and not before that party's secondary processing plant has the capacity to treat not less than two million tonnes of iron ore per annum or (as the case may be) that party's integrated iron and steel industry has the capacity to produce 250 000 tonnes of steel per annum and in either case the Minister has notified the Company that he is satisfied that that party will proceed *bona fide* to operate its plant or industry.

**Terms "not more favourable"**<sup>2</sup>

37. In deciding whether for the purposes of Clause 34 or Clause 35 the terms granted by the State to some company or party are not more favourable on the whole than those proposed by or available to the Company regard shall be had *inter alia* to the quantities and grades of iron ore available to the Company and to all the obligations which would have continued to devolve on the Company had it proceeded with secondary processing or (as the case may be) iron and steel manufacture or steel manufacture including their obligations to mine transport by rail and ship iron ore and restrictions relating thereto to pay rent additional rental and royalty and (in the case of secondary processing by a third party pursuant to Clause 34) to termination of rights as provided in Clause 35 if proposals for iron and steel manufacture or steel manufacture are not brought to fruition and also to the need for the other company or party to pay on a fair and reasonable basis for or for the use of property accruing to the State and made available by the State to that company or party but also to any additional or equivalent obligations to the State assumed by that company or party PROVIDED HOWEVER that if after the end of Year 33 the Minister gives notice to the Company under Clause 35 that another company or party has agreed to establish either secondary processing or an integrated iron and steel industry but not both then the latter company or party need not have any obligation to establish both.

**Supply of iron ore to others**<sup>2</sup>

38. The Company covenants and agrees with the State that should the company remain in possession of the mineral lease for any period during which the Third Party or the Fourth Party is operating or is ready to operate a plant for secondary processing of iron ore or an integrated iron and steel industry then

during such period (whenever commencing) the Company shall supply the Third Party or the Fourth Party or both (as the case may be) with iron ore (not exceeding in all five million tonnes per annum unless otherwise agreed) —

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

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

**Protection for current contracts<sup>2</sup>**

39. If this Agreement should cease and determine pursuant to the provisions of Clause 34 or Clause 35 and if at the date of such cessation or determination the Company is under an obligation arising under a current contract or contracts with some other party with the consent of the Minister to supply iron ore to that other party the Company may give notice of that fact to the Minister and request the State to ensure that the Third Party or the Fourth Party (as the case may be) takes over and assumes liability for the due and punctual discharge of the Company's said obligations or alternatively agrees to supply iron ore to enable it to discharge its said obligations and the State shall forthwith upon receipt of such notice or as soon as possible or practicable thereafter do or cause to be done all such acts matters or things as may be fair and reasonable in the circumstances to comply with the Company's said request.

**Delays<sup>2</sup>**

40. This Agreement is deemed to be made subject to any delays in the performance of the obligations hereunder and to the temporary suspension of the continuing obligations hereunder that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including 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* floods storms tempest washaways fire (unless caused by the actual fault or privity of the Company) act of war act of

public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability profitably to sell iron ore products or factors due to overall world economic conditions or factors 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 ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party of the event or events and shall minimise the effect of such causes as soon as possible after their occurrence.

**Assignment**<sup>2</sup>

41. (1) Subject to the provisions of this Clause the Company may at any time —

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

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

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

subject of an assignment mortgage subletting or disposition or appointment under subclause (1) of this Clause.

**By-laws**<sup>2</sup>

42. The Governor in Executive Council may upon the recommendation of the Company make alter and repeal by-laws for the purpose of enabling the Company to fulfil its obligations under Clauses 23(5) and 24(2) and (unless and until the townsite concerned is declared a townsite pursuant to Section 10 of the Land Act) under Clause 26(1)(a)(v) upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Company) consistent with the provisions hereof. If at any time it appears that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Company shall recommend to the Governor that he makes such alteration or repeal thereof as the State may reasonably require or (in the event of there being any dispute as to the reasonableness of such requirement) as may be decided by arbitration as herein provided.

**Determination of Agreement**<sup>2</sup>

43. (1) In any of the following events namely if the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sublease licence or other title or document granted or assigned under this Agreement on its part to be performed or observed or if the Company abandons or repudiates its operations under this Agreement and such default is not remedied or such operations resumed within a period of one hundred and eighty (180) days after notice as provided in subclause (2) of this Clause is given by the State (or — if the alleged default abandonment or repudiation is contested by the Company and within sixty (60) days after such notice is submitted by the Company to arbitration — within a reasonable time fixed by the arbitration award but not less than ninety (90) days after the making of the arbitration award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and the rights of the Company hereunder and under any lease licence easement or right granted hereunder or pursuant hereto shall thereupon determine.



(2) The notice to be given by the State in terms of subclause (1) of this Clause shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Company and all such assignees mortgagees chargees and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 41 whose name and address for service of notice has previously been notified in writing to the State by the Company or any such assignee mortgagee chargee or disponee.

(3) The abandonment or repudiation by or liquidation of the Company referred to in subclause (1) of this Clause means the abandonment or repudiation by or the liquidation of all of them the Company and all assignees and appointees who have executed and are for the time being bound by a deed of covenant in favour of the State as provided in Clause 41.

(4) If the default referred to in subclause (1) of this Clause shall not have been remedied after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

**Effect of cessation and determination of Agreement <sup>2</sup>**

44. (1) Upon the cessation or determination of this Agreement —
- (a) except as otherwise agreed by the Minister the rights of the Company and those of any assignee or mortgagee of the Company under this Agreement or under the mineral lease or any other lease, licence, easement or right granted hereunder or pursuant hereto and all the right title and interest of the Company and of any such assignee or mortgagee in and to any land wherever situated granted to the Company or to such assignee for any other of the purposes of this Agreement shall thereupon cease and determine, but without prejudice to the liability of either of the parties in respect of any antecedent breach or

default under this Agreement or in respect of any indemnity given hereunder; and

- (b) the Company shall forthwith pay to the State all monies that may then have been payable or accrued due hereunder; and
- (c) except as provided in this Clause or otherwise provided in this Agreement neither of the parties shall have any claim against the other of them in respect to any matter or thing contained in or arising out of this Agreement.

(2) Subject to the provisions of subclause (3) of this Clause upon the cessation or determination of this Agreement all buildings erections and other improvements erected on any land then occupied by the Company or any associated company or assignee of the Company under the mineral lease or any other lease, licence, easement, right or grant made hereunder for the purpose hereof (including the wagons and other facilities and appurtenances provided by the Company pursuant to Clause 20 and including also the Company's wharf) 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) In the event of the Company immediately prior to the cessation or determination of this Agreement or subsequently thereto desiring to remove any of its electricity generating plant and transmission system or any of its other fixed or movable plant and equipment from any part of the land occupied by it at the date of such cessation or determination the Company shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within three months thereafter to purchase *in situ* the said electricity generating plant transmission system and other fixed or movable plant and equipment or any part thereof at a fair valuation to be agreed between the parties or failing agreement determined by arbitration hereunder.

### **Indemnity<sup>2</sup>**

45. 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

operations or arising out of or in connection with the construction maintenance operation or use by the Company or its servants agents contractors appointees or assignees of the works or services constructed maintained operated or used by it under this Agreement or the plant apparatus or equipment installed in connection therewith.

**Variation<sup>2</sup>**

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

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

(3) Either House may, within twelve (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 last day.

**Power to extend periods<sup>2</sup>**

47. 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 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.

**Notices<sup>2</sup>**

48. Any notice consent or other writing authorised by or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by a senior officer of the Public Service of the said State acting by the direction of the Minister and forwarded by prepaid post to the Company at its registered office for the time being in the said State and by the Company if executed by the Company or signed for and on behalf of the Company by any person or persons authorised by the Company in

that behalf or by its solicitors (which solicitors have been notified to the State from time to time) and forwarded by prepaid post to the Minister at his office in Perth in the said State and every such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered to the addressee in the ordinary course of post.

**Exemption from Stamp Duty**<sup>2</sup>

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

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any associated company or permitted assignee of the Company any tenement lease easement licence or other right or interest;
- (c) any assignment sublease or disposition (other than by way of mortgage or charge) and any appointment to or in favour of the Company or an associated company of any interest right obligation power function or authority made pursuant to the provisions of Clause 41.

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

**Arbitration**<sup>2</sup>

50. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights duties or liabilities of either party hereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to the arbitration of two arbitrators one to be appointed by each party the arbitrators to appoint their umpire before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the *Arbitration Act 1895*.

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

**Applicable Law**<sup>2</sup>

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

SCHEDULE

WESTERN AUSTRALIA

*Mining Act 1904*

MINERAL LEASE

LEASE NO.

MINERAL FIELD

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith. TO ALL TO WHOM these presents shall come,

GREETING:

KNOW YE that —

WHEREAS by an Agreement made the \_\_\_\_\_ day of \_\_\_\_\_ 1973 between the Honourable JOHN TREZISE TONKIN, MLA the Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities for the time being (hereinafter called “the State”) of the one part and NORTHERN MINING CORPORATION N.L. a company incorporated under the *Companies Act 1961* of the State of Victoria and having its registered office in the State of Western Australia at

(in the said Agreement and herein called “the Company” which expression shall include the successors and permitted assigns and appointees of the Company) of the other part (being the agreement referred to in section 2 of the *Iron Ore (Murchison) Agreement Authorization Act 1973*) the State agreed to cause to be granted to the Company a mineral lease or leases.

AND WHEREAS the said Agreement was executed by the State pursuant to the authority granted by the *Iron Ore (Murchison) Agreement Authorization Act 1973* and the same operates and takes effect as provided in the said Act.

NOW WE in consideration of the rents and royalties reserved by and of the provisions of the said Agreement and in pursuance of the said Act DO BY THESE PRESENTS GRANT AND DEMISE unto the Company subject to the said provisions ALL THOSE pieces and parcels of land situated in the

Gold Field containing approximately

hectares (subject to such corrections as may be necessary to accord with the survey when made) and particularly described and delineated on the plan in the Schedule hereto and all those mines, veins, seams, lodes and deposits of iron ore in on or under the said land (hereinafter called “the said mine”) together with all rights, liberties, easements, advantages and appurtenances thereto belonging or appertaining to a lessee of a mineral lease under the *Mining Act 1904*, including all amendments thereof for the time being in force and all regulations made thereunder for the time being in force (which Act and regulations are hereinafter referred to as “the Mining Act”) or to which the Company is entitled under the said Agreement TO HOLD the said land and mine and all and singular the premises hereby demised for the full term of twenty-one years from the day of      19      with the right to renew the same from time to time for further periods each of twenty-one years as provided in but subject to the said Agreement for the purposes of the said Agreement but upon and subject to the terms covenants and conditions set out in the said Agreement and to the Mining Act (as modified by the said Agreement) YIELDING and paying therefor the rent and royalties as set out in the said Agreement. AND WE do hereby declare that this lease is subject to the observance and performance by the Company of the following covenants and conditions, that is to say —

- (1) that the Company shall and will use the land *bona fide* exclusively for the purposes of the said Agreement;
- (2) subject to the provisions of the said Agreement the Company shall and will observe, perform, and carry out

the provisions of the *Mines Regulation Act 1946*, and all amendments thereof for the time being in force and the regulations for the time being in force made thereunder and (subject to and as modified by the said Agreement) those of the Mining Act in so far as the same affect or have reference to this lease; and

- (3) that the Company shall if required by the Minister for Mines supply information of a geological nature relating to the Company's operations on the demised land.

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

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

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

THE SCHEDULE ABOVE REFERRED TO

In WITNESS whereof this Agreement has been executed the day and year first hereinbefore written.

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

}

MINISTER FOR DEVELOPMENT  
AND DECENTRALISATION.

MINISTER FOR MINES.

The common seal of NORTHERN  
MINING CORPORATION N.L.  
was hereunto affixed with the  
authority of a resolution of  
the Board of Directors and in  
the presence of —

}  
}

DIRECTOR.

SECRETARY.



### Notes

- <sup>1</sup> This is a compilation of the *Iron Ore (Murchison) Agreement Authorisation Act 1973* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Iron Ore (Murchison) Agreement Authorisation Act 1973</i>	50 of 1973	6 Nov 1973	6 Nov 1973
<b>Reprint 1: The <i>Iron Ore (Murchison) Agreement Authorisation Act 1973</i> as at 5 Nov 2004</b>			
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)

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