



Western Australia

Iron Ore (Hope Downs) Agreement Act 1992

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Iron Ore (Hope Downs) Agreement Act 1992

An Act to ratify an agreement between the State and Hope Downs Limited relating to the development and mining of iron ore deposits, the processing of iron ore, and for incidental and other purposes.

1. Short title

This Act may be cited as the *Iron Ore (Hope Downs) Agreement Act 1992*¹.

2. Commencement

This Act shall come into operation on the day on which it receives the Royal Assent¹.

3. Interpretation

In this Act, unless the contrary intention appears —

Agreement means the agreement a copy of which is set out in Schedule 1 and, except in section 4(1), includes that agreement as varied from time to time in accordance with its provisions and by the First Variation Agreement and the Second Variation Agreement;

the First Variation Agreement means the agreement a copy of which is set out in Schedule 2;

the Second Variation Agreement means the agreement a copy of which is set out in Schedule 3.

[Section 3 amended: No. 61 of 2010 s. 16; No. 61 of 2011 s. 16.]

4. Agreement ratified

- (1) The Agreement is ratified.
- (2A) The First Variation Agreement is ratified.
- (2B) The Second Variation Agreement is ratified.
- (2) The implementation of the Agreement is authorised.
- (3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Agreement shall operate and take effect notwithstanding any other Act or law.
- (4) To avoid doubt, it is declared that the provisions of the *Public Works Act 1902* section 96 do not apply to a railway constructed under the Agreement.

[Section 4 amended: No. 61 of 2010 s. 17; No. 61 of 2011 s. 17.]

5. State empowered under clause 15C(9)(a)

The State has power in accordance with clause 15C(9)(a) of the Agreement.

[Section 5 inserted: No. 61 of 2010 s. 18.]

Schedule 1 — Iron Ore (Hope Downs) Agreement

[s. 3]

[Heading amended: No. 19 of 2010 s. 4; No. 61 of 2010 s. 19.]

THIS AGREEMENT is made this 30th day of November 1992

B E T W E E N:

THE HONOURABLE CARMEN MARY LAWRENCE, B.Psych., Ph.D., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part and

HOPE DOWNS LIMITED ACN 057 326 815 a company incorporated in the State of Western Australia and having its registered office at Third Floor, 28-42 Ventnor Avenue, West Perth (hereinafter called “the Company” in which term shall be included its successors and permitted assigns) of the other part.

W H E R E A S:

- (a) the Company is or is entitled pursuant to transfers to be the holder of mining tenements comprising Areas A, B and C (as hereinafter defined) within which iron ore of tonnages and grades sufficient to warrant economic recovery and marketing have been established;
- (b) the Company wishes to develop a project for the mining, transportation and sale, either within Australia or by export to overseas purchasers, of iron ore from the said Areas with an initial production of up to 15,000,000 tonnes of iron ore per annum; and
- (c) the State and Company have agreed to enter into this Agreement for the purpose of assisting the establishment of the proposed project and providing a framework for managing future changes to the project.

NOW THIS AGREEMENT WITNESSES:

Definitions

1. In this Agreement subject to the context —

“accommodation area” means an area or areas on or in the vicinity of the mining lease for accommodation and ancillary facilities for the mine camp workforce;

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

“agreed or determined” means agreed between the Company and the Minister or, failing agreement within three months of the Minister giving notice to the Company that he requires the value of a quantity of iron ore to be agreed or determined, as determined by the Minister and in agreeing or determining a fair and reasonable market value of such iron ore assessed at an arm’s length basis the Company and/or the Minister as the case may be shall have regard to prevailing markets and prices for iron ore both outside and within the Commonwealth and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value;

“approved proposal” means a proposal approved or deemed approved by the Minister under this Agreement or a proposal the subject of an award made on an arbitration under this Agreement where the award is accepted by the Company within 3 months of delivery by the arbitrator;

“Area A” means the areas coloured red on the plan marked “X” initialled by or on behalf of the parties hereto for the purpose of identification;

“Area B” means the areas coloured blue on the said plan marked “X”;

“Area C” means the areas coloured yellow on the said plan marked “X”;

“beneficiated manganese ore” and **“beneficiated manganiferous ore”** mean respectively manganese ore and manganiferous ore which has been concentrated or upgraded otherwise than by washing drying crushing or screening or a combination thereof by the Company in a plant constructed pursuant to an approved proposal;

“beneficiated ore” means iron ore which has been concentrated or upgraded otherwise than by washing drying crushing or screening or a combination thereof by the Company in a plant constructed pursuant to an approved proposal;

“Clause” means a clause of this Agreement;

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

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

“deemed f.o.b. point” means on ship at the loading port;

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

- (i) in the case of iron ore the property of the Company which is shipped out of the said State, the date of shipment;
- (ii) in any other case, the date of sale, transfer of ownership, disposal or use as the case may be;

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

“fine ore” means iron ore which is nominally sized minus six millimetres;

“f.o.b. value” means —

- (i) in the case of iron ore shipped and sold by the Company, the price which is payable for the iron ore by the purchaser thereof to the Company or, where the Minister is not satisfied that the price payable in respect of the iron ore represents a fair and reasonable market value for that iron ore assessed at an arm’s length basis, such amount as is agreed or determined, less all export duties and export taxes payable to the Commonwealth on the export of the iron ore and all costs and charges properly incurred and payable by the Company from the time the iron ore shall be placed on ship at the loading port to the time the same is delivered and accepted by the purchaser including —
 - (1) ocean freight;
 - (2) marine insurance;

- (3) port and handling charges at the port of discharge;
 - (4) all costs properly incurred in delivering the iron ore from port of discharge to the smelter and evidenced by relevant invoices;
 - (5) all weighing sampling assaying inspection and representation costs;
 - (6) all shipping agency charges after loading on and departure of ship from the loading port;
 - (7) all import taxes by the country of the port of discharge; and
 - (8) such other costs and charges as the Minister may in his discretion consider reasonable in respect of any shipment or sale;
- (ii) in all other cases, the deemed f.o.b. value.

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

“iron ore” means iron ore from the mining lease and except in the definitions of beneficiated ore, fine ore and lump ore includes beneficiated ore, manganese ore, manganiferous ore, beneficiated manganese ore and beneficiated manganiferous ore;

“Land Act” means the *Land Act 1933*;

“loading port” means in the case of iron ore shipped by the Company out of the said State the port of shipment and in the case of iron ore not so shipped means a port in the said State determined by the Minister for the purpose of this definition;

“local authority” means the council of a municipality that is a city, town or shire constituted under the *Local Government Act 1960*;

“**lump ore**” means iron ore which is nominally sized plus six millimetres minus thirty millimetres;

“**manganese ore**” means an ore having a naturally combined metal content of iron and manganese, the latter exceeding 35%;

“**manganiferous ore**” means an ore having a naturally combined metal content of iron and manganese, the latter being not less than 2% and not more than 35%.

“**mine camp workforce**” means the members of the Company’s workforce who are accommodated at the accommodation area but shall not include persons visiting the mine site in connection with the Company’s mining activities on a short term basis only or employed for a specific task of limited duration;

“**mine site**” means the mining lease the accommodation area and other areas provided for the facilities of the Company in the vicinity of the mining lease;

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

“**mining lease**” means the mining lease granted pursuant to Clause 12 and includes any renewal thereof and according to the requirements of the context shall describe the area of land demised as well as the instrument by which it is demised and any areas added thereto pursuant to the provisions of Clause 14;

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

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

“**month**” means calendar month;

“**notice**” means notice in writing;

“**person**” or “**persons**” includes bodies corporate;

“private roads” means the roads referred to in subclause (1) of Clause 18 and any other roads (whether within or outside the mining lease) constructed by the Company in accordance with an approved proposal or agreed by the parties to be a private road for the purposes of this Agreement;

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

“said State” means the State of Western Australia;

“State Energy Commission” means The State Energy Commission of Western Australia as described in section 7 of the *State Energy Commission Act 1979*;

“subclause” means subclause of the Clause in which the term is used;

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

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

Interpretation

2. In this Agreement —

- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
- (b) power given under any clause other than Clause 36 to extend any period or date shall be without prejudice to the power of the Minister under Clause 36;
- (c) clause headings do not affect the interpretation or construction;
- (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context; and
- (e) 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.

Initial obligations of the State

3. The State shall —
- (a) introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1992; and
 - (b) subject to the adequate protection of the environment (including flora and fauna) and the land affected (including improvements thereon) allow the Company to enter upon Crown Lands (including, if applicable, land the subject of a pastoral lease) to the extent reasonably necessary for the purposes of undertaking its obligations under subclause (1) of Clause 5.

Ratification and operation

4. (1) The provisions of this Agreement other than this Clause and Clauses 1, 2 and 3 shall not come into operation until the Bill referred to in Clause 3 has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (2) If before 31 December 1992 the said Bill has not commenced to operate as an Act then unless the parties hereto otherwise agree this Agreement shall then cease and determine and neither party hereto shall have any claim against the other with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (3) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

Initial obligations of the Company

5. (1) The Company shall continue its field and office geological, geophysical, engineering, environmental, marketing and finance studies and other matters necessary to enable it to finalise and to submit the proposals referred to in Clause 7.
- (2) The Company shall keep the State fully informed in writing quarterly as to the progress and results of its operations under subclause (1).

- (3) The Company shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclauses (1) and (2) and any other relevant studies in relation to those subclauses that the Minister may wish to undertake.

Initial mining project

6. (1) Prior to submission of its proposals under Clause 7 the Company shall confer with the Minister with regard to the proposed mining of up to 15,000,000 tonnes of iron ore per annum from Area A and/or if desired by the Company and approved by the Minister (where he is satisfied as to the exploration work carried out in respect thereof) from Area B or portions thereof.
- (2) (a) Subject to paragraph (b) of this subclause the exploration licences held by the Company under the Mining Act within Area A and any portion of Area B approved by the Minister pursuant to subclause (1) shall remain in force and effect during the period from the date hereof to the surrender of those licences pursuant to subclause (1) of Clause 12 (and shall be renewed as necessary pursuant to section 61(2) of the Mining Act for this purpose) under and subject to the Mining Act except that the provisions of sections 62 and 65 of the Mining Act shall not apply to those exploration licences during that period.
- (b) If this Agreement ceases or determines before the exploration licences referred to in paragraph (a) of this subclause are surrendered pursuant to subclause (1) of Clause 12 each of those exploration licences shall continue in force and effect under and subject to the Mining Act for the balance of the term thereof current at the date of cessation or determination of this Agreement.

Company to submit proposals for initial mining project

7. (1) The Company shall subject to the EP Act and the provisions of this Agreement submit to the Minister on or before 30 June 1998 to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect to the production of iron ore from the area or areas approved pursuant to

subclause (1) of Clause 6 and the transport and shipment of iron ore produced which proposals shall make provisions for the Company's workforce and associated population required to enable the Company to mine and recover iron ore from the mining lease and transport and ship the iron ore and shall include the location, area, lay-out, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely —

- (a) the mining and recovery of iron ore including mining crushing screening handling transport and storage of iron ore and plant facilities and any processing of iron ore proposed to be carried out;
- (b) roads within the mining lease and roads serving the mining lease;
- (c) temporary accommodation and ancillary facilities for the mine camp workforce and housing or other appropriate accommodation and facilities elsewhere for the Company's workforce;
- (d) management of vehicles on the mine site;
- (e) water supply;
- (f) power supply;
- (g) transportation of iron ore by rail and/or conveyor;
- (h) storage and ship loading of iron ore;
- (i) mine aerodrome on or in the vicinity of the mining lease and any other aerodrome facilities and services;
- (j) any other works, services or facilities desired by the Company;
- (k) use of local labour professional services manufacturers suppliers contractors and materials and measures to be taken with respect to the engagement and training of employees by the Company, its agents and contractors;
- (l) any leases, licences or other tenures of land required from the State; and

- (m) an environmental management programme as to measures to be taken, in respect of the Company's activities under this Agreement, for rehabilitation and the protection and management of the environment.

Order of proposals

- (2) Each of the proposals pursuant to subclause (1) may with the approval of the Minister or if so required by the Minister be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (m) of subclause (1).

Use of existing infrastructure

- (3) Each of the proposals pursuant to subclause (1) may with the consent of the Minister and that of any other parties concerned instead of providing for the construction of new facilities or equipment or the provision of new services of the kind therein mentioned provide for the use by the Company of any existing facilities equipment or services of such kind belonging to the Company or upon terms and conditions agreed between the Company and the other parties concerned of any other existing facilities equipment or services of such kind.

Additional submissions

- (4) At the time when the Company submits the said proposals it shall —
 - (a) submit to the Minister details of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with its reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto; and
 - (b) furnish to the Minister's reasonable satisfaction evidence of —
 - (i) marketing arrangements demonstrating the Company's ability to sell iron ore in accordance with the said proposals;

- (ii) the availability of finance necessary for the fulfilment of the operations to which the said proposals refer; and
- (iii) the readiness of the Company to embark upon and proceed to carry out the operations referred to in the said proposals.

Consideration of proposals

8. (1) In respect of each proposal pursuant to subclause (1) of Clause 7 the Minister shall subject to the EP Act —
- (a) approve of the proposal without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 7 not covered by the said proposal; or
 - (c) require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto or comply with such conditions in respect thereto as he (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,

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

Advice of Minister's decision

- (2) The Minister shall within two months after receipt of proposals pursuant to subclause (1) of Clause 7 or where the proposals are to be assessed under section 40(1)(b) of the EP Act then within two

months after service on him of an authority under section 45(7) of the EP Act give notice to the Company of his decision in respect to the proposals.

Consultation with Minister

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

Minister's decision subject to arbitration

- (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) and the Company considers that the decision is unreasonable the Company within two months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder.

Arbitration award

- (5) An award made on an arbitration pursuant to subclause (4) shall have force and effect as follows —
- (a) if by the award the dispute is decided against the Company then unless the Company within 3 months after delivery of the award gives notice to the Minister of its acceptance of the award this Agreement shall on the expiration of that period of 3 months cease and determine; or
- (b) if by the award the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

Implementation of proposals

- (6) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement the approved proposals in accordance with the terms thereof.

Effect of non-approval of proposals

- (7) Notwithstanding any provision of this Agreement or that under this Clause any proposals of the Company are approved by the Minister or determined by arbitration award, unless each and every proposal and matter required pursuant to Clause 7 is so approved or determined by 30 June 1999 then the Minister may give to the Company 12 months notice of intention to determine this Agreement and unless before the expiration of the said 12 months period all the detailed proposals and matters are so approved or determined this Agreement shall on the expiration of that period cease and determine subject however to the provisions of Clause 38.

Overall development

9. (1) Having regard to the geographical relationship and physical association of the mining lease with other iron ore deposits and to the general development of the Pilbara area, the Company in its initial proposals under Clause 7 and any subsequent proposals pursuant to Clause 10 (other than a proposal under that Clause that does not involve any significant variation to the project infrastructure) or Clause 11 shall take into account and make provision where it is reasonably practicable so to do for —
- (a) the economic and orderly overall development of the lands the subject of this Agreement and those other iron ore deposits;
 - (b) appropriate infrastructure development in the Pilbara area having regard to then existing iron ore operations and facilities and other existing developments; and
 - (c) an open town or towns or other appropriate housing and accommodation arrangements to service the iron ore mines and other developments in the Pilbara area.
- (2) The Company and the State shall co-operate and consult with each other regarding the matters referred to in subclause (1), State Government policies and development objectives, the Company's commercial requirements and any other relevant matters that the Minister or the Company may wish to consider.

Additional proposals

10. (1) Subject to Clause 11 if the Company at any time during the continuance of this Agreement desires to produce more than the tonnage of iron ore per annum for transportation from the mining lease approved under the proposals submitted pursuant to subclause (1) of Clause 7 or to significantly modify expand or otherwise vary its activities carried on pursuant to this Agreement beyond those activities specified in any approved proposals it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (m) of subclause (1) of Clause 7 as the Minister may require.
- (2) The provisions of Clause 7 and Clause 8 (other than subclauses (5)(a) and (7)) shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause with the proviso that the Company may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same. Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement approved proposals pursuant to this Clause in accordance with the terms thereof.

Aspects of a larger project

11. (1) The Company shall not produce more than 15,000,000 tonnes of iron ore per annum for transportation from the mining lease nor shall the total number of the mine camp workforce exceed 150 nor shall the Company proceed with any plan or plans to develop all or any of a port for the shipment of iron ore, a port townsite, a townsite in the vicinity of the mining lease or a railway line extending from the mining lease to a ship loading facility without the prior consent of the Minister and approval of detailed proposals in regard thereto in accordance with this Clause.
- (2) (a) If the Company desires to increase the annual tonnage or the mine camp workforce beyond that specified in subclause (1) or proceed with any plan mentioned therein it

shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of its proposals in respect thereto (including the matters mentioned in paragraphs (a) - (m) of subclause (1) of Clause 7).

- (b) The Minister shall within one month of a notice under paragraph (a) of this subclause advise the Company whether or not he approves in principle the proposed increase or progression of the proposed plan. An approval by the Minister under this subclause may be given subject to conditions including a condition requiring variations of or additions to this Agreement PROVIDED THAT any such condition shall not without the consent of the Company require variations of —
- (i) the term of the mining lease or any railway lease or the rental thereunder;
 - (ii) the rentals payable under any other lease or licence hereunder;
 - (iii) the rates of or method of calculating royalty; and
 - (iv) Clause 24.

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

- (3) (a) If the Minister approves in principle a proposed increase or plan the Company shall within six months of that approval submit to the Minister detailed proposals in respect thereof in accordance with any conditions of that approval otherwise that approval shall lapse.
- (b) The provisions of subclause (2) of Clause 10 shall apply to detailed proposals submitted pursuant to this subclause.
- (4) Any proposal under this Clause to increase the annual tonnage to be produced or the number of the mine camp workforce shall specify the proposed increase and on and after approval or determination of any such proposal pursuant to subclause (3)(b) the provisions of this Clause shall apply mutatis mutandis to the increased tonnage or number of the mine camp workforce as the

case may be and also to any subsequent desires of the Company for an increase in the tonnage or mine camp workforce.

Mining lease

12. (1) On application made by the Company, not later than 3 months after all its proposals submitted pursuant to subclause (1) of Clause 7 have been approved or determined and the Company has complied with the provisions of subclause (4) of Clause 7, for a mining lease for the mining of iron ore of Area A and so much of the land in Area B as may be the subject of the said proposals the State shall upon the surrender by the Company of the exploration licences over Area A and the surrender of any land in Area B the subject of the said proposals out of the applicable exploration licences cause to be granted to the Company at the rental specified from time to time in the Mining Act a mining lease of such land (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed at the Company's expense) for the mining of iron ore only such mining lease to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but in the form of the Schedule hereto and subject to such conditions or stipulations consistent with the provisions of this Agreement and approved proposals as the Minister for Mines may determine.

Term

- (2) Subject to the performance by the Company of its obligations under this Agreement and the Mining Act and notwithstanding any provisions of the Mining Act to the contrary the term of the mining lease shall be for a period of 21 years commencing from the date of receipt of the application therefor under subclause (1) with the right during the currency of this Agreement to take two successive renewals of the said term each for a further period of 21 years upon the same terms and conditions, subject to the sooner determination of the said term upon 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 mining lease.

Exemption from expenditure conditions

- (3) The State shall ensure that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the expenditure conditions imposed by or under the Mining Act in regard to the mining lease.

Reports

- (4) The Company shall lodge with the Department of Minerals and Energy at Perth —
- (a) such periodical reports (except reports in the form of Form 5 of the *Mining Regulations 1981* or other reports relating to expenditure on the mining lease) and returns as may be prescribed in respect of mining leases pursuant to regulations under the Mining Act provided that the Minister for Mines may waive any requirement for lodgment of exploration data in respect of areas within the mining lease;
 - (b) on an annual basis, a report on ore reserves within the mining lease (using the scheme recommended by the Australasian Institute of Mining and Metallurgy and the Australian Mining Industry Council or future equivalent) together with a list of any geotechnical, metallurgical, geochemical and geophysical investigations carried out during the year and, if requested by the Department, details of any of those investigations;
 - (c) reports on drilling operations and drill holes where the main purpose of the drilling was to discover or define future ore reserves on the mining lease and, if requested by the Department, reports on drilling done within blocks of proven ore for the purpose of mine planning.

Access over mining lease

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

Surrender of part of mining lease

- (6) Notwithstanding the provisions of this Clause and the Mining Act with the approval of the Minister 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 the mining lease.

Stone sand clay and gravel

- (7) The Company in accordance with approved proposals may for the construction of works (and the maintenance thereof) for the purposes of this Agreement and without payment of royalty, obtain stone sand clay and gravel from the mining lease.

Other mining tenements

- (8) (a) Notwithstanding anything contained or implied in this Agreement or in the mining lease or the Mining Act mining tenements may subject to the provisions of this Clause be granted to or registered in favour of persons other than the Company under the Mining Act in respect of the areas subject to the mining lease unless the Minister for Mines determines that such grant or registration is likely unduly to prejudice or interfere with the current or prospective operations of the Company hereunder with respect to iron ore assuming the taking by the Company of reasonable steps to avoid the prejudice or interference or that there is a reasonable probability that such a grant or registration would materially reduce the quantity of economically extractable iron ore available to the Company.
- (b) A mining tenement granted or registered as a result of this Clause shall not confer any right to mine or otherwise obtain rights to iron ore on the tenement.
- (c) (i) In respect of any application for a mining tenement made under the Mining Act in respect of an area the subject of the mining lease the Minister for Mines shall consult with the Minister and the Company with respect to the significance of iron ore deposits in, on

or under the land the subject of the application and any effect the grant of a mining tenement pursuant to such application might have on the current or prospective iron ore operations of the Company under this Agreement.

- (ii) Where the Minister for Mines, after taking into account any matters raised by the Minister or the Company determines that the grant or registration of the application is likely to have the effect on the operations of the Company or the iron ore referred to in paragraph (a) of this subclause, he shall, by notice served on the Warden to whom the application was made, refuse the application.
 - (iii) Before making a determination pursuant to subparagraph (ii) of this paragraph the Minister for Mines may request the Warden to hear the application and any objections thereto and as soon as practicable after the hearing of the application to report to the Minister for Mines on the application and the objections and the effect on the current or prospective operations of the Company or the quantity of economically extractable iron ore that a grant of the application might have.
- (d) (i) Except as provided in paragraph (c) of this subclause a Warden shall not hear or otherwise deal with an application for a mining tenement in respect of an area the subject of the mining lease unless and until the Minister for Mines has notified him that it is not intended to refuse the application pursuant to paragraph (c) of this subclause. Following such advice to the Warden the application shall be disposed of under and in accordance with the Mining Act save that where the Warden has heard the application and objections thereto pursuant to paragraph (c) of this subclause, the application may be dealt with by the Warden without further hearing.
- (ii) The Company may exercise in respect of any application heard by the Warden any right that it may

have under the Mining Act to object to the granting of the application.

- (iii) Any mining tenement granted pursuant to such application shall, in addition to any covenants and conditions that may be prescribed or imposed, be granted subject to such conditions as the Minister for Mines may determine having regard to the matters the subject of the consultations with the Minister and the Company pursuant to paragraph (c)(i) of this subclause and any matters raised by the Company before the Warden.
- (e) On the grant of any mining tenement pursuant to an application to which this subclause applies the land the subject thereof shall thereupon be deemed excised from the mining lease (with abatement of future rent in respect of the area excised but without any abatement of rent already paid or of rent which has become due and has not been paid in advance).
- (f) If the Company applies —
 - (i) during the period of application for or during the term of any mining tenement referred to in paragraph (e) of this subclause; or
 - (ii) if that tenement is a prospecting licence or exploration licence and a substitute tenement is granted in respect thereof pursuant to an application made under section 49 or section 67 of the Mining Act, during the term of the substitute title,

to the Minister to have the land the subject of such mining tenement or substitute title as the case may be revert to the mining lease on the termination of the mining tenement or substitute title then notwithstanding anything contained in the Mining Act on such termination the land the subject of such mining tenement or substitute title shall thereupon be deemed to be part of the land in the mining lease (with appropriate adjustment of rental) and shall be subject to the terms and conditions of the mining lease and this Agreement.

Royalties

13. (1) The Company shall during the continuance of this Agreement pay to the State royalty on all iron ore from the mining lease (other than iron ore shipped solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) as follows —
- (i) on lump ore and on fine ore, where such fine ore is not sold or shipped separately as such, shipped sold transferred or otherwise disposed of or used prior to 1 December 2008 at the rate of 5.625% of the f.o.b. value and thereafter at the rate of 7.5% of the f.o.b. value;
 - (ii) on fine ore sold or shipped separately as such at the rate of 5.625% of the f.o.b. value;
 - (iii) on manganese ore and on manganiferous ore sold or shipped separately as such at the rate of 7.5% of the f.o.b. value;
 - (iv) on beneficiated ore at the rate of 3.25% of the f.o.b. value;
 - (v) on beneficiated manganese ore and on beneficiated manganiferous ore at the rate of 5% of the f.o.b. value;
 - (vi) on all other iron ore of whatever kind at the rate of 7.5% of the f.o.b. value.
- (2) The Company shall —
- (a) within fourteen days after the quarter days the last days of March June September and December in each year commencing with the quarter day next following the first transportation of iron ore from the mining lease furnish to the Minister a return showing the quantity of all iron ore the subject of royalty hereunder and shipped sold transferred or otherwise disposed of or used (as the case may be) during the quarter immediately preceding the due date of the return and shall not later than two (2) months after such due date pay to the Minister the royalty payable in respect thereof or if the f.o.b. value is not then finally calculated, agreed or determined pay to the Minister on account of the royalty payable hereunder a sum calculated on the basis of invoices or provisional invoices (as the case may be) rendered by the

Company to the purchaser (which invoices the Company shall render without delay simultaneously furnishing copies thereof to the Minister) of such iron ore or on the basis of estimates as agreed or determined and shall from time to time in the next following appropriate return and payment make (by return and by cash) all such necessary adjustments (and give to the Minister full details thereof) when the f.o.b. value shall have been finally calculated, agreed or determined;

- (b) permit the Minister or his nominee to inspect at all reasonable times the books of account and records of the Company including contracts relative to any shipment or sale of iron ore hereunder and records of iron ore in stockpile or transit and to take copies of extracts therefrom and for the purpose of determining the f.o.b. value in respect of any shipment sale transfer or other disposal or use or production of iron ore hereunder the Company will take reasonable steps (i) to provide the Minister with current prices for iron ore outside and within the Commonwealth and other details and information that may be required by the Minister for the purpose of agreeing or determining the f.o.b. value and (ii) to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the Minister's reasonable satisfaction as to all relevant weights and analyses and will give due regard to any objection or representation made by the Minister or his nominee as to any particular weight or assay of iron ore which may affect the amount of royalty payable hereunder; and
- (c) as and when required by the Minister for Mines from time to time install and thereafter maintain in good working order and condition meters for measuring quantities of iron ore and iron ore products of such design or designs and at such places as the Minister for Mines may require.

Area B

14. (1) The Company shall progressively explore and carry out full geological investigations on the lands within Area B (except any portion thereof approved by the Minister pursuant to subclause (1) of Clause 6) expending in respect of each mining tenement within

those lands amounts at least equal to the prescribed expenditure conditions applicable to the mining tenement under the Mining Act and shall report to the State the results of such exploration and investigations as and when required by the Minister.

- (2) The Company may from time to time during the currency of this Agreement until 30 June 2000 apply to the Minister for any mining tenements held by it within Area B not then the subject of the mining lease to be included in the mining lease and provided the tenement or tenements concerned have been explored to the satisfaction of the State, the Minister for Mines will subject to surrender by the Company of the mining tenement or tenements concerned include the land the subject thereof in the mining lease by endorsement on the mining lease subject to such of the conditions of the surrendered mining tenements as the Minister for Mines determines but otherwise subject to the same terms covenants and conditions as apply to the mining lease (with such apportionment of rents as is necessary), notwithstanding that the survey of such additional land has not been completed (but subject to correction to accord with the survey when completed at the Company's expense).
- (3) (a) Subject to paragraph (b) of this subclause exploration licences held by the Company under the Mining Act within Area B and which are not the subject of an approval by the Minister under subclause (1) of Clause 6 or included in the mining lease shall remain in force and effect during the period from the date hereof to 30 June 2000 (and shall be renewed as necessary pursuant to section 61(2) of the Mining Act for this purpose) under and subject to the Mining Act except that the provisions of section 65 of the Mining Act shall not apply to those exploration licences during that period.
- (b) On and after 30 June 2000 or the sooner determination or cessation of this Agreement each exploration licence to which paragraph (a) of this subclause applies then held by the Company within Area B shall continue in force and effect under and subject to the Mining Act for the balance of the term thereof then current.

Area C

15. (1) (a) Subject to paragraph (b) of this subclause the exploration licences held by the Company at the date hereof under the Mining Act within Area C shall remain in force and effect during the period from the date hereof to 30 June 2003 (and shall be renewed as necessary pursuant to section 61(2) of the Mining Act for this purpose) under and subject to the Mining Act except that (subject to subclause (3)) the provisions of section 65 of the Mining Act shall not apply to those exploration licences during that period.
- (b) On and after June 2003 or the sooner determination or cessation of this Agreement each exploration licence then held by the Company within Area C shall continue in force and effect under and subject to the Mining Act for the balance of the term thereof then current.
- (2) The Company shall comply with the provisions of section 62 of the Mining Act in regard to the exploration licences (subject to any exemption under section 102A of that Act).
- (3) The State and the Company may negotiate during the currency of this Agreement until 30 June 2003 as to the basis on which the Company may be given rights to mine and recover iron ore from Area C.

Protection and management of the environment

16. (1) The Company shall in respect of the matters referred to in paragraph (m) of subclause (1) of Clause 7 and which are the subject of approved proposals, carry out a continuous programme of investigation research and monitoring to ascertain the effectiveness of the measures it is taking both generally and pursuant to such approved proposals for rehabilitation and the protection and management of the environment.
- (2) The Company shall during the currency of this Agreement submit to the Minister at yearly intervals commencing from the date when the Company's proposals are approved or determined (except those years in which a comprehensive report is required to be submitted) a brief report concerning investigations research and monitoring carried out pursuant to subclause (1) and the implementation by the

Company of the elements of the approved proposals relating to rehabilitation and the protection and management of the environment in the year ending two calendar months before the due date for the brief report and, at three yearly intervals commencing from such date a comprehensive report on the result of such investigations research and monitoring and the implementation by the Company of the elements of the approved proposals relating to rehabilitation and the protection and management of the environment during the three year period ending two calendar months before the due date for the comprehensive report and the programme proposed to be undertaken by the Company during the following three year period in regard to investigations research and monitoring pursuant to subclause (1) and the implementation by the Company of the elements of the approved proposals relating to rehabilitation and the protection and management of the environment.

- (3) The Minister may within 2 months of receipt of a report pursuant to subclause (2) notify the Company that the Minister —
 - (a) requires amendment of the report and/or programme; or
 - (b) requires additional detailed proposals to be submitted for the protection and management of the environment.
- (4) The Company shall within 2 months of receipt of a notice pursuant to paragraph (a) of subclause (3) submit to the Minister an amended report and/or programme as required. The Minister shall afford the Company full opportunity to consult with the Minister on the Minister's requirements during the preparation of any amended report or programme.
- (5) The Minister may within 1 month of receipt of an amended report or programme pursuant to subclause (4) notify the Company that the Minister requires additional detailed proposals to be submitted for rehabilitation and the protection and management of the environment.
- (6) The Company shall within 2 months of receipt of a notice given pursuant to paragraph (b) of subclause (3) or subclause (5) submit to the Minister additional detailed proposals as required and the provisions of subclauses (1), (2), (3) and (4) of Clause 8 shall *mutatis mutandis* apply in respect of such proposals.

- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement the decision of the Minister or any award on arbitration as the case may be in accordance with the terms thereof.

Use of local labour professional services and materials

17. (1) The Company shall, for the purposes of this Agreement —
- (a) except in those cases where the Company can demonstrate it is impracticable so to do, use labour available within Western Australia (using all reasonable endeavours to ensure that as many as possible of the Company's workforce be recruited from the Pilbara) or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;
 - (b) as far as it is reasonable and economically practicable so to do, use the services of engineers surveyors architects and other professional consultants experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within Western Australia or if such services are not available within Western Australia then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;
 - (c) during design and when preparing specifications, calling for tenders and letting contracts for works materials plant equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that suitably qualified Western Australian and Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote;
 - (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and where possible preference to other Australian suppliers manufacturers and contractors; and

- (e) if notwithstanding the foregoing provisions of this subclause a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and where possible preference to tenders arrangements or proposals that include Australian participation.
- (2) Except as otherwise agreed by the Minister the Company shall in every contract entered into with a third party for the supply of services labour works materials plant equipment or supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) and shall report to the Company concerning such third party's implementation of that condition.
- (3) The Company shall submit a report to the Minister at monthly intervals or such longer period as the Minister determines commencing from the date of this Agreement concerning its implementation of the provisions of this Clause together with a copy of any report received by the Company pursuant to subclause (2) during that month or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine.
- (4) The Company shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia together with its reasons therefor and shall as and when required by the Minister consult with the Minister with respect thereto.

Private roads

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

- (b) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles other than those engaged upon the Company's activities and its invitees and licensees from using the private roads; and
- (c) at any place where any private roads are constructed by the Company so as to cross any railways or public roads provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the Railways Commission as the case may be.

Maintenance of public roads

- (2) The State shall maintain or cause to be maintained those public roads under the control of the Commissioner of Main Roads or a local authority which may be used by the Company for the purposes of this Agreement to a standard similar to comparable public roads maintained by the Commissioner of Main Roads or a local authority as the case may be.

Upgrading of public roads

- (3) In the event that for or in connection with the Company's activities hereunder the Company or any person engaged by the Company uses or wishes to use a public road (whether referred to in subclause (2) or otherwise) which is inadequate for the purpose, or any use by the Company or any person engaged by the Company of any public road results in excessive damage to or deterioration thereof (other than fair wear and tear) the Company shall pay to the State or the local authority as the case may require the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads having regard to the use of such public road by others.

Acquisition of private roads

- (4) Where a road constructed by the Company for its own use is subsequently required for public use, the State may, after consultation with the Company and so long as resumption thereof shall not unduly prejudice or interfere with the activities of the Company under this Agreement, resume and dedicate such road as

a public road. Upon any such resumption the State shall pay to the Company such amount as is reasonable.

Aerodrome

19. (1) The Company shall confer with the Minister on any upgrading of existing aerodrome facilities and services in the Pilbara region that the Minister after consultation with the relevant local authority may consider to be required as a result of the Company's activities under this Agreement.
- (2) The Company shall not propose or construct any mine aerodrome of a standard greater than the minimum requirements for an Authorised Landing Area of a standard suitable for use by a Canadair Challenger 600-601 jet aircraft or other similar aircraft without the approval of the Minister.

Electricity — mine site

20. (1) For the purposes of facilitating integration of electricity generation and transmission facilities in the area of the mine site the Company shall purchase its electricity requirements (if available) from the State Energy Commission or negotiate with the State Energy Commission for the payment by the Company of an equitable contribution towards the augmentation of the facilities of the State Energy Commission to enable it to supply such electricity to the Company. Electricity supplied to the Company pursuant to this subclause shall be at rates and on terms and conditions to be agreed between the State Energy Commission and the Company.

Electricity generation

- (2) In the event of the Company demonstrating to the satisfaction of the Minister that the provisions of subclause (1) would be unduly prejudicial to its activities or if the State Energy Commission is unable to provide supply the Company may —
- (a) in accordance with its approved proposals hereunder and subject to the provisions of the *Electricity Act 1945* and the approval and requirements of the State Energy Commission pursuant to any Act, install and operate without cost to the State, at an appropriate location equipment of sufficient

capacity to generate electricity for its activities at the mine site; and

- (b) transmit power within the mine site and for the operations of the Company's railway subject to the provisions of the *Electricity Act 1945* and the approval and requirements of the State Energy Commission pursuant to any Act.

Easements

- (3) In the event that the Company is unable to procure easements or other rights over land required for the purposes of subclause (2) on reasonable terms the State shall assist the Company to such extent as may be reasonably necessary to enable it to procure the said easements or other rights over land.

Supply to State Energy Commission

- (4) If the State Energy Commission desires to purchase power for its own use and the Company has the ability to supply such power in excess of the Company's own requirements, the Company shall use its best endeavours to supply on terms and conditions to be negotiated between the State Energy Commission and the Company and the Company shall in that event be empowered to supply such power.

Water — mine site

21. (1) (a) The State and the Company shall agree upon the amounts (and qualities thereof) of the Company's annual and maximum daily water requirements for use in its activities hereunder at the mine site (which amounts or such other amounts as shall from time to time be agreed between the parties to be reasonable are hereinafter called "the mining water requirements").
- (b) To the fullest extent reasonably practicable the Company shall use water obtained from dewatering on the mining lease for its purposes under this Agreement.
- (c) Nothing in this Agreement shall be construed to exempt the Company from any liability to the State or to third parties arising out of or caused by extraction of water from the

mining lease by dewatering or any discharge or escape from the mining lease of water obtained by dewatering.

Search within mining lease

- (2) The Company shall at its cost and in collaboration with the State search for underground water within the mining lease. Where appropriate the Company shall employ and retain experienced groundwater consultants. The Company shall furnish to the Minister details of the results of its investigations and copies of the reports of such consultants as they become available.

Search outside mining lease

- (3) If in the opinion of the Minister, the details and reports of the consultants pursuant to subclause (2) indicate that any source of underground water in the mining lease is likely to be inadequate or unsuitable to supply the mining water requirements the State and the Company shall (having due regard to the then present or likely future requirements of third parties for water) collaborate and agree on the programme which shall be carried out by the State at the cost of the Company to search for water inside and outside the mining lease.

Grant of licence

- (4) If the investigations referred to in subclauses (2) and (3) prove to the satisfaction of the Minister the availability of any suitable underground water source in or near the mining lease which can continue to be drawn on by the Company without seriously affecting the water level in that water source beneath the mining lease or adjacent areas or the availability of water in the adjacent areas the State shall grant to the Company a licence to develop and draw from that source at the Company's cost but without fee, the mining water requirements on such terms and conditions as are necessary to ensure good water resource management as the Minister may from time to time require and during the continuance of this Agreement grant renewals of any such licence PROVIDED HOWEVER that should that source in the opinion of the Minister prove hydrologically inadequate to meet the mining water requirements, the State may on at least 6 months prior notice to the Company (or on at least 48 hours prior notice if in the opinion of the Minister an emergency situation exists) limit the amount of

water which may be taken from that source at any one time or from time to time to the maximum which that source is hydrologically capable of meeting as aforesaid.

Investigation of surface water

- (5) In the event of water supplies from available underground sources proving insufficient to meet the mining water requirements the Company shall notwithstanding the provisions of subclause (4) collaborate with the State in an investigation of surface water, water catchments and storage dams. The Company shall if it proposes to utilise such surface water, water catchments and storage dams pay to the State a sum or sums to be agreed towards the cost of such investigation.

Alternative water source

- (6) Should the State at any time pursuant to the proviso to subclause (4) limit the amount of water to be taken from any underground water source or if otherwise the mining water requirements cannot be met from any water source on a continuous basis the State shall with all reasonable expedition and in conjunction with and upon the request of the Company search for new or additional water sources with a view to restoring or ensuring the full quantity of the mining water requirements. The Company shall pay to the State a fair and reasonable proportion of the cost of investigating and developing such new and additional water sources as agreed between the Company and the State.

Development of water sources

- (7) The Company shall provide at its cost or with finance arranged by it and construct to standards and in accordance with designs approved by the State and operate and maintain in accordance with the relevant approved proposals all necessary dams, bores, valves, distribution pipelines, reticulation, meters, tanks, equipment and appurtenances necessary to draw transport use reticulate and dispose of water obtained by the Company pursuant to this Clause.

State's acquisition of water facilities

- (8) If during the currency of this Agreement the Minister is of the opinion that it would be desirable for water conservation purposes or water management purposes that sources of water utilised by the

Company be controlled and operated by the State as part of a regional water supply scheme, the Minister may, on giving 6 months prior notice to the Company of his intention to do so, acquire the Company's water supply facilities for a monetary consideration to be agreed between the Minister and the Company. Immediately thereafter the State shall, subject only to the continued hydrological availability of water from such sources (as determined by the Minister) commence and thereafter continue to supply water of the relevant qualities up to the amount and at the rates required by the Company being the amounts and rates to which the Company was previously entitled and the proviso to subclause (4) and the provisions of subclause (5) shall in like manner apply to this subclause.

Enlarged water capacity

- (9) The State, after first having due regard to the mining water requirements and to the hydrological adequacy of existing water sources, may in its discretion develop all or any of the water resources referred to in this Clause or construct any works in connection therewith to a greater capacity than that required to supply the mining water requirements but in that event the Company shall pay to the State a share of the cost of the system as so enlarged as may be agreed between the parties to be fair in all the circumstances.

Third party use

- (10) The State may after first having due regard to the mining water requirements and to the hydrological adequacy of the applicable water source, upon not less than 3 months prior notice to the Company specifying the identity of the third party including where applicable the State and the estimated maximum daily and total quantity of water to be drawn by that third party and the period over which such drawing is to occur, grant to a third party rights to draw water or itself draw water from that source PROVIDED HOWEVER that —
- (a) where the Company has paid (in whole or in part) any moneys in respect of the investigation development and utilisation of that water source the State shall require as a condition of the grant that where the third party is or will be

a substantial drawer of water from that water source within 5 years of the commencement date the third party (but not the State) shall reimburse to the Company prior to the third party exercising its rights to draw water, such proportion of those moneys as the Minister determines is fair and reasonable; and

- (b) where the Company draws water from that water source the State shall ensure that it is a condition of the grant to third parties that in the event that the capacity of that water source is reduced, such reduction shall be first applied to the third parties and thereafter if further reduction is necessary the State's and the Company's requirements shall be reduced in such proportion as may be agreed.

Payment for water

- (11) The Company shall pay to the State for water supplied by the State pursuant to subclauses (5) and (8) a fair price to be agreed between the parties hereto having regard to the actual cost to the State of establishing operating and maintaining the supply and provision for replacement of the water supply facilities.

Design of plant

- (12) The Company shall to the extent that it is practical and economical design construct and operate all plant required under this Clause so as to ensure the most efficient use of the available water resources including if required by the Minister the use of brackish or saline water.

Charges for supply of water to third parties

- (13) Subject to the Minister's approval the Company may supply water to third parties including the State at a charge to be approved by the Minister after consultation with the Company. The Company shall have all the powers and authorities with respect to such water as are determined by the Minister which may include all or any of the powers of a water board under the *Water Boards Act 1904* and, with the consent of the Minister for Local Government, those of a local authority.

Minimisation of water consumption

- (14) The Company shall to the extent that it is practical and economical design construct and operate all plant and equipment used in its activities under this Agreement so as to minimise water consumption and shall at all times use its best endeavours to minimise the consumption of water in its activities under this Agreement and ensure the most efficient use of the available water resources.

State to restrict adverse grants

- (15) The State shall ensure that no rights to mine minerals petroleum or other substances are granted over the area of any water source from which the Company is drawing water or from time to time have the right to draw water hereunder unless the Minister reasonably determines that such grant is not likely to unduly prejudice or to interfere with the activities of the Company hereunder and is not likely to render the water source incapable of supplying the mining water requirements on a continuous basis.

Rights in Water and Irrigation Act

- (16) Any reference in the foregoing provisions of 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 source developed for the Company's purposes under this Agreement.

Provision of accommodation/housing

22. (1) Accommodation for the mine camp workforce when the Company is producing not more than 15,000,000 tonnes of iron ore per annum for transportation from the mining lease and the total number of the mine camp workforce is not more than 150 shall be by way of temporary accommodation units (not caravans) and ancillary facilities of a standard generally used in the mining industry located in the vicinity of the mining lease and —
- (a) the accommodation units and facilities ancillary to the accommodation units (which may include a mess/wet mess, amenities blocks and offices for Company management

personnel) may be provided by the Company or a contractor to the Company but shall be subject to the prior approval of the Minister as to nature and type;

- (b) unless otherwise agreed by the Minister all accommodation units on the mine site shall be removed from the mine site upon the mine camp workforce being accommodated elsewhere than at the mine site;
 - (c) only the mine camp workforce and persons visiting the mine site in connection with the Company's mining activities on a short term basis or employed for a specific task of limited duration shall be permitted to stay at the accommodation area; and
 - (d) except where the Minister otherwise agrees in a particular case, no dependants or pets shall be allowed on the mine site.
- (2) If and whenever the Company proposes —
- (a) to give a notice of proposed increase of tonneages or workforce pursuant to Clause 11;
 - (b) to substantially add to upgrade replace or relocate accommodation units; or
 - (c) to construct an additional accommodation area separate from that already established

it shall confer with the Minister with respect to the future accommodation of the mine camp workforce (including those members of the mine camp workforce then accommodated at the accommodation area) which may include expansion or alteration of the accommodation area, establishment of or assimilation into a new townsite, and assimilation into an existing town before submitting any proposal in regard thereto to the Minister.

- (3) The Company shall likewise confer with the Minister at the request of the Minister if the State proposes an open town in the Pilbara area and shall co-operate with the State on any studies in relation to such a proposal that may be required to select a site for the town.
- (4) If the State and the Company agree that the mine camp workforce can be located in the proposed open town then the Company will

relocate the workforce to the open town within an agreed period of time at no cost to the State and make such contributions to the infrastructure and community facilities in the open town as are agreed between the State and the Company to be required to service the needs of the Company's workforce.

- (5) The Company shall confer with the Minister as and when required by the Minister and the relevant local authorities with a view —
- (a) to ensuring that appropriate planning is being made for the provision of adequate serviced land for housing the Company's workforce in any existing town; and
 - (b) to assisting in the cost of providing any appropriate community, recreation, civic or social amenities at any existing town required for the Company's workforce and associated population.

Lands

23. (1) The State shall in accordance with the Company's approved proposals grant to the Company, or arrange to have the appropriate authority or other interested instrumentality of the State grant, for such periods and on such terms and conditions including rentals and renewal rights as shall be reasonable having regard to the requirements of the Company and as are consistent with the terms of this Agreement and approved proposals, leases and where applicable licences easements and rights of way for all or any of the purposes of the Company's activities hereunder including any of the following namely — accommodation area, rail spur line, railway line, conveyor, private roads, tailing areas, water pipelines, pumping installations and reservoirs, power transmission lines, radio and communication sites, plant site areas and borrow pits for stone sand clay and gravel.

Modification of Land Act

- (2) For the purpose of this Agreement in respect of any land leased to the Company by the State the Land Act shall be deemed to be modified by —
- (a) the substitution for subsection (2) of section 45A of the following subsection —

- “(2) Upon the Minister signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be leased.”;
- (b) the deletion of the proviso to section 116;
 - (c) the deletion of section 135;
 - (d) the deletion of section 143;
 - (e) the inclusion of a power to grant occupancy rights over land on such terms and conditions as the Minister for Lands may determine;
 - (f) the inclusion of a power to grant leases or licences for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, the terms and conditions and the forms referred to in the Land Act.

The provisions of this subclause shall not operate so as to prejudice the rights of the State to determine any lease licence or other right or title in accordance with the other provisions of this Agreement.

Railway

24. (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 in a proper and workmanlike manner and in accordance with recognised standards for railways of a similar nature operating under similar conditions construct along the route specified in the approved proposals (but subject to the provisions of the *Public Works Act 1902*, to the extent that they are applicable) the rail spur line or lines or railway line (of standard gauge, 1.4351 metres) specified in the approved proposals and shall also construct inter alia any necessary deviations, loops, spurs, sidings, crossings, points, bridges signalling switches and other works and appurtenances and provide for crossing places and (where appropriate and required by the Minister) grade separation or other protective devices including flashing lights and boom gates at places where the specified railway crosses or intersects with major roads or existing railways (all of which together with the specified rail spur line or lines or railway line being hereinafter

referred to as “the said railway”) and shall operate the said railway with sufficient and adequate locomotives freight cars and other railway stock and equipment for the purposes of the Company’s activities under this Agreement.

Operation of railway

- (2) The Company shall during the continuance of this Agreement operate the said railway in a safe and proper manner and shall provide crossings for livestock and also for any roads and other railways which now exist and where it can do so without unduly prejudicing or interfering with its activities hereunder the Company shall allow such crossings for roads and railways which may be constructed for future needs and which may be required to cross the said railway.

Third parties iron ore

- (3) The Company shall if and when required carry iron ore and iron ore products of third parties (being iron ore or iron ore products obtained from outside the mineral lease) over the said railway in accordance with arrangements (including provision for payment of charges by such third parties) to be entered into for the purpose of this subclause between the Company and the State such arrangements unless the parties hereto otherwise agree to be similar in all material respects with any other arrangements for the carriage of iron ore products of third parties made pursuant to any other agreement with the State relating to the mining of iron ore.

Passengers and freight

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

reasonably required so to do transport passengers and carry the freight of the State and third parties (other than iron ore or iron ore products of third parties) over the said railway but in relation to its use of the said railway the Company shall not be deemed to be a common carrier at law or otherwise.

Use of other railways

- (5) The Company shall not enter into any agreement or other arrangement for the use of or the carriage of the iron ore products of the Company over any railway not established by the Company pursuant to this Agreement without the prior approval of the State thereto and to the proposed terms and conditions (including charges) for such use or carriage.

Shipping facilities

25. (1) Where pursuant to Clause 11 and approved proposals the Company is to develop a port for the shipment of iron ore, the Company shall develop the port in accordance with the approved proposals and shall construct a Company wharf and carry out all necessary dredging of approach channels, swinging basins and berth at the Company's wharf and provide all necessary buoys, beacons, markers, navigational aids, lighting equipment and services and facilities required in connection therewith.
- (2) Notwithstanding the provisions of subclause (1), the Company and the State recognise with respect to any wharf or port and shipping facilities and services to be established for the purposes of this Agreement that it may be advantageous for the State to provide all or any of such works or services and in such case the Company and the State shall together with other users and potential users of a wharf or port and/or those facilities or services confer as to the manner in and the conditions upon which the State should provide such works facilities or services to the mutual advantage of all. The Company shall pay to the State a sum or sums to be agreed (not exceeding the amount that would have been payable had the Company carried out the said works) towards the cost of the said works facilities or services provided by the State.

Use of shipping facilities

- (3) The Company shall subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made and altered as provided in Clause 26 and subject thereto, or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Company) allow the State and third parties to use any wharf and port installations wharf machinery and equipment and wharf and port services and facilities constructed or provided by the Company PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder and that such use shall be subject to the prior approval of the Company.

By-laws

26. The Minister may upon recommendation by the Company make alter and repeal by-laws for the purpose of enabling the Company to fulfil its obligations under Clause 24 and subclause (3) of Clause 25 upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Company) as set out in such by-laws consistent with the provisions hereof. Should the Minister at any time consider that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Company shall recommend such alteration or repeal thereof as the Minister may reasonably require or (in the event of their being any dispute as to the reasonableness of such requirement) then as may be decided by arbitration hereunder.

Further processing

27. (1) During the continuance of this Agreement commencing from the date when the Company first transports iron ore from the mining lease (other than iron ore shipped solely for testing purposes) the Company shall undertake ongoing investigations into the technical and economic feasibility of establishing facilities within the said State either alone or in association with others for the further processing of iron ore obtained from the mining lease and as and when requested by the Minister, but not more frequently than once in every two years, shall submit detailed reports of their

investigations to the date of request and their conclusions in regard thereto.

- (2) The State may undertake similar investigations and, for this purpose, the Company shall provide the State, within a reasonable time of request, with such information as the State may reasonably request. The Company shall not be obliged to supply technical information of a confidential nature or financial and economic information the disclosure of which would unduly prejudice contractual or commercial arrangements between the Company and third parties, but will use reasonable endeavours to arrange for the supply of this or like information on request by the State.
- (3) If as result of investigations undertaken under subclause (1) or (2), the Company or the State reasonably concludes that further processing of iron ore from the mining lease with or without other iron ore and by the Company alone or in association with others is technically and economically feasible, then the State and the Company shall consult on the implementation of such further processing.
- (4) If the Company is unwilling to proceed with implementation of such further processing on a timetable acceptable to the State, the State may allow a third party to carry out that implementation but the State will not grant to the third party terms and conditions more favourable on the whole than it was prepared to grant to the Company. In such circumstances, the Company will if required by the third party supply iron ore to the third party at the wharf or port through which iron ore from the mining lease is then or was last exported or such other place as the third party and the Company agree in sufficient quantities and appropriate rates and grades and at appropriate times to meet the requirements of the third party for at least the first ten years of its operations at a reasonable price and in determining a reasonable price regard shall be had to any comparable sales then being made by the Company and if there are no such sales, comparable sales (if any) then being made by other iron ore producers in the Pilbara area. The Minister may relieve the Company in whole or in part of its obligations under this subclause where the Company demonstrates to the satisfaction of the Minister that full or partial supply of the required iron ore is not practicable on economic or technical grounds.

Zoning

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

Rating

29. (1) The State shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands the subject of this Agreement (except the accommodation area and any other parts of the lands the subject of this Agreement on which accommodation units or housing for the Company's workforce is erected or which is occupied in connection with such accommodation units or housing 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 activities carried out by the Company pursuant to approved proposals) 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 and further as regards the mining lease that the unimproved value thereof shall be calculated on the basis that the mining lease is a mining lease under the Mining Act and not as land held pursuant to an agreement made with the Crown in right of the State and scheduled to an Act approving the agreement.
- (2) It is hereby declared and agreed that the provisions of section 533B of the *Local Government Act 1960* shall not apply to any lands the subject of this Agreement.

No discriminatory rates

30. Except as provided in this Agreement the State shall not impose, nor shall it permit or authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or

charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the activities of the Company in the conduct of its business hereunder nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement.

Resumption for the purposes of this Agreement

31. 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 that land to the Company and the provisions of subsections (2) to (7) inclusive of section 17 and section 17A of that Act shall not apply to or in respect of that land or the resumption thereof. 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.

No resumption

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

Assignment

33. (1) Subject to the provisions of this Clause the Company may at any time assign mortgage charge sublet or dispose of to any company or persons 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 the mining lease (or the exploration licences referred to in recital (a) hereof if the mining lease is not then issued) or any other lease licence easement grant or other title) and of the obligations of the Company hereunder subject however in the case of an assignment subletting or disposition to the assignee sublessee or disponent (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting or disposition.
- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained in this Agreement and in the mining lease or any other lease licence easement grant or other title the subject of an assignment mortgage subletting or disposition under subclause (1) PROVIDED THAT the Minister may agree to release the Company from such liability where the Minister considers such release will not be contrary to the interests of the State.
- (3) Notwithstanding the provisions of the the Mining Act, the *Transfer of Land Act 1893* and the Land Act, insofar as the same or any of them may apply —
- (a) no assignment mortgage charge sublease or disposition made or given pursuant to this Clause of or over the mining lease or any other lease licence easement grant or other title granted under or pursuant to this Agreement by the Company or any assignee sublessee or disponent who has executed and is for the time being bound by deed of covenant made pursuant to this Clause; and

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

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

Variation

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

Force majeure

35. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the temporary suspension of continuing obligations under this Agreement that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including without limiting the generality of the foregoing delays or any such temporary suspension as aforesaid caused by or arising from act of God force majeure earthquakes floods storms tempest washaways fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war act of public enemies riots civil

commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) acts or omissions of the Commonwealth shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability to sell iron ore profitably 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 use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

Power to extend periods

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

Determination of Agreement

37. (1) In any of the following events namely if —
- (a) (i) the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations of the Company in this Agreement or in the mining lease or any other lease licence easement grant or other title or document granted or assigned under this Agreement on its part to be performed or observed; or
 - (ii) the Company abandons or repudiates this Agreement or its activities under this Agreement

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

- (b) the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 6 months from the date of such liquidation the interest of the Company is assigned to an assignee approved by the Minister under Clause 33

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

- (2) The notice to be given by the State in terms of paragraph (a) of subclause (1) shall specify the nature of the default 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 33 whose name and address for service of notice has previously been notified to the State by the Company or any such assignee mortgagee chargee or disponee.
- (3)
 - (a) If the Company contests the alleged default abandonment or repudiation referred to in paragraph (a) of subclause (1) the Company shall within 60 days after notice given by the State as provided in subclause (2) refer the matter in dispute to arbitration.
 - (b) If the question is decided against the Company, the Company shall comply with the arbitration award within a reasonable time to be fixed by that award PROVIDED THAT if the arbitrator finds that there was a bona fide dispute and that the Company was not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.
- (4) If the default referred to in paragraph (a) of subclause (1) shall not have been remedied after receipt of the notice referred to in that subclause or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon

lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

Effect of cessation or determination of Agreement

38. (1) On the cessation or determination of this Agreement —
- (a) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement and the rights of the Company or of any assignee of the Company or any mortgagee to in or under the mining lease and any other lease licence easement grant or other title or right granted hereunder or pursuant hereto (but excluding townsite lots which have been granted to or acquired by the Company and which are no longer owned by it) shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given under this Agreement;
 - (b) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
 - (c) save as aforesaid and as otherwise provided in this Agreement neither of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.
- (2) Subject to the provisions of subclause (3) upon the cessation or determination of this Agreement except as otherwise determined by the Minister all buildings erections and other improvements erected on any land then occupied by the Company under the mining lease or any other lease licence easement grant or other title made under or pursuant to this Agreement shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Company or any other party and freed and discharged from all mortgages and other encumbrances and the Company shall do and execute all such deeds documents and other acts matters and things (including

surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

- (3) 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 fixed or movable plant and equipment or any part thereof from any part of the land occupied by it at the date of such cessation or determination it shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within 3 months thereafter to purchase in situ such fixed or moveable plant and equipment at a fair valuation to be agreed between the parties or failing agreement determined by arbitration under this Agreement.

Environmental protection

39. 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 its activities under this Agreement that may be made pursuant to the EP Act.

Indemnity

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

Commonwealth licences and consents

41. (1) The Company shall from time to time make application to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to it of any licence or consent under the laws of the Commonwealth necessary

to enable or permit the Company to enter into this Agreement and to perform any of its obligations hereunder.

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

Subcontracting

42. The State shall ensure that without affecting the liabilities of the parties under this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portions of the activities which it is authorised or obliged to carry out hereunder.

Stamp duty exemption

43. (1) The State shall exempt from any stamp duty which but for the operation of this Clause would or might be assessed and chargeable on —
- (a) this Agreement;
 - (b) instruments of transfer under the Mining Act dated 30 November 1992 by Hancock Resources Limited to the Company of Exploration Licences Nos. 47/243, 47/308, 47/309, 47/427, 47/428, 47/429, 47/430, 47/431 and 47/597;
 - (c) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee any tenement lease licence easement or other right or rights; and
 - (d) any assignment sublease or disposition (other than by way of mortgage or charge) made in conformity with the provisions of subclause (1) of Clause 33

PROVIDED THAT this subclause shall not apply to any instrument or other document executed or made after 31 December 1996.

- (2) If prior to the date on which the Bill referred to in Clause 3 to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document or transaction

referred to in subclause (1) the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document or transaction to the person who paid the same.

Arbitration

44. (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 under this Agreement or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the *Commercial Arbitration Act 1985* and notwithstanding section 20(1) of that Act each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.
- (2) Except where otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of either of the parties to 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 under this Agreement and an award may in the name of the Minister grant any further extension or variation for that purpose.

Consultation

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

Notices

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

Term of Agreement

47. Subject to the provisions of subclauses (5) and (7) of Clause 8 and Clauses 37 and 38, this Agreement shall expire on the expiration or sooner determination or surrender of the mining lease.

Applicable law

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

THE SCHEDULE
WESTERN AUSTRALIA
MINING ACT 1978
IRON ORE (HOPE DOWNS) AGREEMENT ACT 1992
MINING LEASE

MINING LEASE NO.

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

Schedule to this lease) hereby leases to the Lessee the land more particularly delineated and described in the Third Schedule to this lease for iron ore and for manganese ore and manganiferous ore (as defined in the Agreement) subject however to the exceptions and reservations set out in the Fourth Schedule to this lease and to any other exceptions and reservations which subject to the Agreement are by the *Mining Act 1978* and by any Act for the time being in force deemed to be contained herein to hold to the Lessee this lease for a term of twenty one years commencing on the date set out in the Fifth Schedule to this lease (subject to the sooner determination of the said term upon the cessation or determination of the Agreement) upon and subject to such of the provisions of the *Mining Act 1978* except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the terms covenants and conditions set out in the Agreement and to the covenants and conditions herein contained or implied and any further conditions or stipulations set out in the Sixth Schedule to this lease the Lessee paying therefor the rents for the time being and from time to time prescribed pursuant to the provisions of the *Mining Act 1978* at the times and in the manner so prescribed and royalties as provided in the Agreement with the right during the currency of the Agreement and in accordance with the provisions of the Agreement to take two successive renewals of the term each for a further period of 21 years upon the same terms and conditions subject to the sooner determination of the term upon cessation or determination of the Agreement PROVIDED ALWAYS that this lease shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this lease —

- “Lessee” includes the successors and permitted assigns of the Lessee.
- If the Lessee be more than one the liability of the Lessee hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and to the regulations and by-laws for the time being in force thereunder.

FIRST SCHEDULE

HOPE DOWNS LIMITED ACN 057 326 815 a company incorporated in the State of Western Australia and having its registered office at Third Floor, 28-42 Ventnor Avenue, West Perth.

MARY LAWRENCE in)
the presence of:) **CARMEN LAWRENCE**

MINISTER FOR STATE DEVELOPMENT **IAN TAYLOR**

THE COMMON SEAL of)
HOPE DOWNS LIMITED was)
hereunto affixed by)
authority of the Directors)
in the presence of:)

G. RINEHART

Director

G. SCHWAB

Secretary

Schedule 2 — First Variation Agreement

[s. 3]

[Heading inserted: No. 61 of 2010 s. 20.]

2010

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

AND

HOPE DOWNS IRON ORE PTY. LTD.

ACN 071 514 308

HAMERSLEY WA PTY. LTD.

ACN 115 004 138

**IRON ORE (HOPE DOWNS) AGREEMENT 1992
RATIFIED VARIATION AGREEMENT**

[Solicitor's details]

THIS AGREEMENT is made this 17th day of November 2010

BETWEEN

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

AND

HOPE DOWNS IRON ORE PTY LTD ACN 071 514 308 of Level 3, Hppl House, 28-42 Ventnor Avenue, West Perth, Western Australia and **HAMERSLEY WA PTY. LTD.** ACN 115 004 138 of Level 22, Central Park, 152-158 St Georges Terrace, Perth, Western Australia. (**Joint Venturers**).

RECITALS

- A.** The State and the Joint Venturers are now the parties to the agreement dated 30 November 1992 ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B.** The State and the Joint Venturers wish to vary the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

- 1.** Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
- 2.** The State shall sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and shall endeavour to secure its passage as an Act prior to 31 December 2010 or such later date as the parties may agree.
- 3.** (a) Clause 4 does not come into operation unless or until an Act passed in accordance with clause 2 ratified this Agreement.
(b) If by 30 June 2011, or such later date as may be agreed pursuant to clause 2, clause 4 has not come into operation then unless the parties hereto otherwise agree this Agreement shall cease and determine and none of the parties shall have any claim against the other parties with respect to any matter or thing arising out of or

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

4. The Principal Agreement is hereby varied as follows:

(1) in clause 1:

- (a) by deleting the existing definitions of "approved proposal", "beneficiated ore", "beneficiated manganese ore", "beneficiated manganiferous ore", "fine ore", "iron ore", "loading port", "lump ore" and "metallised agglomerates";
- (b) by inserting in the appropriate alphabetical positions the following new definitions:

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

"associated company" means:

- (a) any company notified in writing by the Company to the Minister which is incorporated in the United Kingdom, the United States of America or Australia and which is:
 - (i) a subsidiary of the Company within the meaning of the term "subsidiary" in section 46 of the *Corporations Act 2001* (Commonwealth);
 - (ii) promoted by the Company for all or any of the purposes of this Agreement and in which the Company holds not less than \$2,000,000 of the issued ordinary capital;
 - (iii) a company in which the Company holds not less than 20% of the issued ordinary share capital;
 - (iv) a related body corporate (within the meaning of the term "related body corporate" in section 9 of the *Corporations Act 2001* (Commonwealth)) of the Company or of any company in which the Company holds not less than 20% of the issued ordinary share capital; and

- (b) any other company approved in writing by the Minister for the purpose of this Agreement which is associated directly or indirectly with the Company in its business or operations under this Agreement;

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

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

"East Angelas Deposit" has the meaning given in subclause (3) of Clause 15;

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

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

"Integration Agreement" means:

- (a) the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963*, as from time to time added to, varied or amended; or
- (b) the agreement approved by and scheduled to the *Iron Ore (Robe River) Agreement Act 1964*, as from time to time added to, varied or amended; or
- (c) the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*, as from time to time added to, varied or amended; or
- (d) the agreement ratified by and scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972*, as from time to time added to, varied or amended; or
- (e) the agreement ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended; or
- (f) the agreement ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996*, as from time to time added to, varied or amended; or
- (g) the agreement approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended; or
- (h) the agreement approved by and scheduled to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*, as from time to time added to, varied or amended; or
- (i) the agreement ratified by and scheduled to the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*, as from time to time added to, varied or amended; or
- (j) the agreement authorised by and as scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended; or

- (k) the agreement ratified by and scheduled to the *Iron Ore (Marillana Creek) Agreement Act 1991*, as from time to time added to, varied or amended;

"Integration Proponent" means in relation to an Integration Agreement, "the Company" or "the Joint Venturers" as the case may be as defined in, and for the purpose of, that Integration Agreement;

"iron ore" includes, without limitation, beneficiated ore, beneficiated manganese ore and beneficiated manganiferous ore;

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

"loading port" means:

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

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

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

"Related Entity" means a company in which:

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

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

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

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

- (c) in the definition of "agreed or determined" by:
 - (i) inserting "(following, if requested by the Company, consultation with the Company and its consultants in regard thereto" after "as determined by the Minister";
 - (ii) deleting "assessed at" and substituting "assessed on"; and
 - (iii) deleting all the words after "shall have regard to" and substituting a colon followed by:
 - "(i) in the case of iron ore initially sold at cost pursuant to the proviso to clause 12(10), the prices for that type of iron ore prevailing at the time the price for such iron ore was agreed between the arm's length purchaser referred to in paragraph (iii) of that proviso and the seller in relation to the type of sale and the relevant international seaborne iron ore market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value; and
 - (ii) in any other case, the prices for that type of iron ore prevailing at the time the price for

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

- (d) in the definition of "f.o.b. value" by:
 - (i) in paragraph (i):
 - (A) inserting "subject to paragraph (ii)," before "in the case of";
 - (B) deleting "assessed at" and substituting "assessed on"; and
 - (C) inserting "relevant" before "loading port" in both places where it appears;
 - (ii) remembering paragraph (ii) as paragraph (iii); and
 - (iii) inserting after paragraph (i) the following new paragraph:
 - "(ii) in the case of iron ore initially sold at cost pursuant to the proviso to clause 12(10), the price which is payable for the iron ore by the arm's length purchaser as referred to in paragraph (iii) of that proviso or, where the Minister considers, following advice from the appropriate Government department, that the price payable in respect of the iron ore does not represent a fair and reasonable market value for that type of iron ore assessed on an arm's length basis in the relevant international seaborne iron ore market, such amount as is agreed or determined as representing such a fair and reasonable market value, less all duties, taxes, costs and charges referred to in paragraph (i) above"; and

- (e) in the definition of "mining lease" by deleting "Clause 14" and substituting "Clauses 12A, 14 or 15(3)";
- (2) by inserting after clause 2 the following new clause:

"2A. Nothing in this Agreement shall be construed:

 - (a) to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made by or under the EP Act; or
 - (b) to exempt the State or the Company from compliance with or to require the State or the Company to do anything contrary to any laws relating to native title or any lawful obligation or requirement imposed on the State or the Company as the case may be pursuant to any laws relating to native title; or
 - (c) to exempt the Company from compliance with the provisions of the *Aboriginal Heritage Act 1972* (WA).";
- (3) in clause 10(1):
 - (a) by inserting "from the mining lease (other than from the East Angelas Deposit)" after "desires to produce";
 - (b) by deleting "proposals submitted pursuant to subclause (1) of Clause 7" and substituting "approved proposals (including for the development of the East Angelas Deposit)"; and
 - (c) by inserting "(other than for the development of the East Angelas Deposit) or under Clause 15C)" after "activities carried on pursuant to this Agreement";
- (4) by inserting the following sentence at the end of clause 10(1):

"The provisions of clause 7(4)(b) shall apply to proposals submitted pursuant to this clause.";
- (5) by deleting subclause (2) of clause 10 and substituting the following new subclauses:

- "(2) A proposal may with the consent of the Minister (except in relation to an Integration Agreement) and that of any parties concerned (being in respect of an Integration Agreement the Integration Proponent for that agreement) provide for the use by the Company of any works installations or facilities constructed or established under a Government agreement.
- (3) Each of the proposals pursuant to subclause (1) may with the approval of the Minister or, if so required by the Minister, shall be submitted separately and in any order as to any matter or matters in respect of which such proposals are required to be submitted.
- (4) At the time when the Company submits the said proposals it shall submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with its reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto.
- (5) The Company may withdraw its proposals pursuant to subclause (1) at any time before approval thereof, or where any decision in respect thereof is referred to arbitration as referred to in clause 10A, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same.";
- (6) by inserting after clause 10 the following new clauses:

"Consideration of Company's proposals under clause 10

- 10A. (1) In respect of each proposal pursuant to subclause (1) of Clause 10 the Minister shall:
- (a) subject to the limitations set out below, refuse to approve the proposal (whether it requests the grant of new tenure or not) if the Minister is satisfied on reasonable grounds that it is not in the public interest for the proposal to be approved; or

- (b) approve of the proposal without qualification or reservation; or
- (c) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in Clause 10(1) not covered by the said proposal; or
- (d) require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable, and in such a case the Minister shall disclose his reasons for such conditions,

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

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

- (i) detrimentally affect economic and orderly development in the said State, including without limitation, infrastructure development in the said State; or
- (ii) be contrary to or inconsistent with the planning and development policies and objectives of the State; or

- (iii) detrimentally affect the rights and interests of third parties; or
- (iv) detrimentally affect access to and use by others of the lands the subject of any grant or proposed grant to the Company.

The right to refuse to approve a proposal conferred by paragraph (a) may only be exercised in respect of a proposal where the Minister is satisfied on reasonable grounds that a purpose of the proposal is the integrated use of works installations or facilities (as defined in subclause (7) of clause 15A for the purpose of that clause) as contemplated by clause 15A. It may not be so exercised in respect of a proposal if pursuant to clause 10B(5) the Minister, prior to the submission of the proposal, advised the Company in writing that the Minister has no public interest concerns (as defined in that clause) with the single preferred development (as referred to in clause 10B(5)(a)) the subject of the submitted proposals and those proposals are consistent (as to their substantive scope and content) with the information provided to the Minister pursuant to clause 10B(5) in respect of that single preferred development.

- (2) The Minister shall within 2 months after receipt of proposals pursuant to clause 10(1) give notice to the Company of his decision in respect to the proposals, PROVIDED THAT where a proposal is to be assessed under Part IV of the EP Act the Minister shall only give notice to the Company of his decision in respect to the proposal within 2 months after service on him of an authority under section 45(7) of the EP Act.
- (3) If the decision of the Minister is as mentioned in either of paragraphs (a), (c) or (d) of subclause (1) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.

- (4) If the decision of the Minister is as mentioned in either of paragraphs (c) or (d) of subclause (1) and the Company considers that the decision is unreasonable the Company within 2 months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder. A decision of the Minister under paragraph (a) of subclause (1) shall not be referable to arbitration under this Agreement.
- (5) If by the award made on the arbitration pursuant to subclause (4) the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.
- (6) The Company shall implement the approved proposals in accordance with the terms thereof.
- (7) Notwithstanding Clause 34, the Minister may during the implementation of approved proposals approve variations to those proposals.

Notification of possible proposals

- 10B. (1) If the Company, upon completion of a pre-feasibility study in respect of any matter that would require the submission and approval of proposals pursuant to this Agreement (being proposals which will have as their purpose, or one of their purposes, the integrated use of works installations or facilities as contemplated by Clause 15A) for the matter to be undertaken, intends to further consider the matter with a view to possibly submitting such proposals it shall promptly notify the Minister in writing giving reasonable particulars of the relevant matter.
- (2) Within one (1) month after receiving the notification the Minister may, if the Minister so wishes, inform

the Company of the Minister's views of the matter at that stage.

- (3) If the Company is informed of the Minister's views, it shall take them into account in deciding whether or not to proceed with its consideration of the matter and the submission of proposals.
- (4) Neither the Minister's response nor the Minister choosing not to respond shall in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.
- (5)
 - (a) This subclause applies where the Company has settled upon a single preferred development a purpose of which is the integrated use of works installations or facilities (as defined in subclause (7) of Clause 15A for the purpose of that clause) as contemplated by Clause 15A.
 - (b) For the purpose of this subclause "public interest concerns" means any concern that implementation of the single preferred development or any part of it will:
 - (i) detrimentally affect economic and orderly development in the said State, including without limitation, infrastructure development in the said State; or
 - (ii) be contrary to or inconsistent with the planning and development policies and objectives of the State; or
 - (iii) detrimentally affect the rights and interests of third parties; or
 - (iv) detrimentally affect access to and use by others of lands the subject of any grant or proposed grant to the Company.

- (c) At any time prior to submission of proposals the Company may give to the Minister notice of its single preferred development and request the Minister to confirm that the Minister has no public interest concerns with that single preferred development.
- (d) The Company shall furnish to the Minister with its notice reasonable particulars of the single preferred development including, without limitation:
 - (i) as to the matters that would be required to be addressed in submitted proposals; and
 - (ii) its progress in undertaking any feasibility or other studies or matters to be completed before submission of proposals; and
 - (iii) its timetable for obtaining required statutory and other approvals in relation to the submission and approval of proposals; and
 - (iv) its tenure requirements.
- (e) If so required by the Minister, the Company will provide to the Minister such further information regarding the single preferred development as the Minister may require from time to time for the purpose of considering the Company's request and also consult with the Minister or representatives or officers of the State in regard to the single preferred development.
- (f) Within 2 months after receiving the notice (or if the Minister requests further information, within 2 months after the provision of that information) the Minister must advise the Company:
 - (i) that the Minister has no public interest concerns with the single preferred development; or

- (ii) that he is not then in a position to advise that he has no public interest concerns with the single preferred development and the Minister's reasons in that regard.
 - (g) If the Minister gives the advice mentioned in paragraph (f)(ii) the Company may, should it so desire, give a further request to the Minister in respect of a revised or alternate single preferred development and the provisions of this subclause shall apply *mutatis mutandis* thereto.";
- (7) in clause 11(1) by inserting "for the initial mining project referred to in Clause 7 or for the East Angelas Deposit project referred to in subclause (4) of Clause 15" after "exceed 150";
- (8) in clause 11(2):
 - (a) by in paragraph (a) inserting "or in respect of the East Angelas Deposit the matters mentioned in paragraphs (a)-(m) of subclause (4) of Clause 15" after "Clause 7"; and
 - (b) by in paragraph (c) inserting "or under subclause (8) of Clause 15" after "Clause 8";
- (9) in clause 11(3):
 - (a) by in paragraph (a):
 - (i) inserting "and such increase or plan relates to or primarily relates to the initial mining project referred to in Clause 7" after "in principle a proposed increase or plan"; and
 - (ii) in subparagraph (i) inserting "approval" after "in principle";
 - (b) by redesignating the existing paragraph (b) as paragraph (c);
 - (c) by inserting the following new paragraph (b):
 - "(b) If the Minister approves a proposed increase or plan and such increase or plan relates to or primarily to the East Angelas Deposit project referred to in subclause (4) of Clause 15:

- (i) if it has not already submitted pursuant to subclause (4) of Clause 15 all of its proposals for its East Angelas Deposit project, submit to the Minister pursuant to subclause (4) of Clause 15 detailed proposals in respect of the proposed increase or plan as part of the Company's proposals for its East Angelas Deposit project and in accordance with any conditions of the Minister's in principle approval; or
 - (ii) if it has already submitted pursuant to subclause (4) of Clause 15 all of its proposals for its East Angelas Deposit project, within six (6) months of the Minister's in principle approval submit to the Minister detailed proposals in respect of the proposed increase or plan in accordance with any conditions of that approval otherwise that approval shall lapse."; and
- (d) by in paragraph (c) deleting the second sentence and substituting the following sentence:
- "The provisions of:
- (i) subclause (4)(b) of Clause 7, subclauses (2) to (5) of Clause 10 and of Clause 10A shall apply to detailed proposals submitted pursuant to paragraph (a)(ii) of this subclause;
 - (ii) subclauses (4) to (14) of Clause 15 shall apply mutatis mutandis to detailed proposals regarding a proposed increase or plan referred to in paragraph (b)(i) of this subclause; and
 - (iii) subclause (15)(b) of Clause 15 shall apply to detailed proposals submitted pursuant to paragraph (b)(ii) of this subclause.";
- (10) in clause 11(4) by deleting "pursuant to Clause 8" and substituting "as referred to in";

(11) by inserting after clause 12(8) the following new subclauses:

"Blending of iron ore

- (9) (a) The Company may blend iron ore mined from the mining lease with any:
- (i) iron ore mined from a mining tenement or other mining title granted under, or pursuant to, an Integration Agreement; or
 - (ii) iron ore mined from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement); or
 - (iii) with the prior approval of the Minister, iron ore mined in, or proximate to, the Pilbara region of the said State under a Government agreement (excluding an Integration Agreement); or
 - (iv) with the prior approval of the Minister, iron ore mined by a third party from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by an Integration Proponent from the third party.
- (b) The authority given under paragraph (a) is subject to the Minister being reasonably satisfied that there are in place adequate systems and controls for the correct apportionment of the quantities of iron ore being blended as between each of the sources referred to in paragraph (a), which systems and controls monitor production, processing, transportation, stockpiling and shipping of all such iron ore. If at any time the Minister ceases to be so satisfied he may, after consulting the Company and provided the Company has not within three (3) months after the

commencement of such consultation addressed the matters of concern to the Minister to his satisfaction, by notice in writing to the Company suspend the above authority in respect of the relevant blending arrangements until he is again satisfied in terms of this paragraph (b).

- (c) If any blending of iron ore occurs as contemplated by this subclause, then for the purposes of Clauses 13(1) and (2)(a), a portion of the iron ore so blended being equal to the proportion that the amount of iron ore from the mining lease used in the admixture of iron ore bears to the total amount of iron ore so blended, shall be deemed to be produced from the mining lease.

Shipment of and price for iron ore

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

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

- (i) the Minister is notified before the time of shipment that the sale is to be made at cost, providing details of the proposed sale; and
- (ii) the Minister is notified of the proposed arm's length purchaser in the relevant international seaborne iron

ore market of the iron ore the subject of the proposed sale at cost; and

- (iii) there is included in the return lodged pursuant to clause 13(2) particulars of the transaction in which the ore sold at cost was subsequently purchased in the relevant international seaborne iron ore market by an arm's length purchaser specifying the purchaser, the seller, the price and the date when the sale was agreed between the arm's length purchaser and the seller; and
- (iv) the arm's length purchaser referred to in (iii) above is not then a designated purchaser as referred to below.

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

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

"Additional areas

- 12A. (1) Notwithstanding the provisions of the Mining Act 1904 or the Mining Act 1978 the Company may from time to time during the currency of this Agreement apply to the Minister for areas held by the Company or an associated company under a mining tenement

granted under the Mining Act 1978 (excluding the exploration licences referred to in subclause (3) of Clause 15) to be included in the mining lease but so that the total area of the mining lease, any land that may be included in the mining lease pursuant to this Agreement and of any other mineral lease or mining lease granted under or pursuant to this Agreement (as aggregated) shall not at any time exceed 777 square kilometres. The Minister shall confer with the Minister for Mines in regard to any such application and if they approve the application the Minister for Mines shall upon the surrender of the relevant mining tenement include the area the subject thereof in the mining lease by endorsement subject to such of the conditions of the surrendered mining tenement as the Minister for Mines determines but otherwise subject to the same terms covenants and conditions as apply to the mineral lease (with such apportionment of rents as is necessary) and notwithstanding that the survey of such additional land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.

- (2) The Minister may approve, upon application by the Company from time to time, for the total area referred to in subclause (1) to be increased up to a limit not exceeding 1,000 square kilometres.
- (3) The Company shall not mine or carry out other activities (other than exploration, bulk sampling and testing) on any area or areas added to the mining lease pursuant to subclause (1) of this Clause unless and until proposals with respect thereto are approved or determined pursuant to the subsequent provisions of this Clause.
- (4) If the Company desires to commence mining of iron ore or to carry out any other activities (other than as aforesaid) on the said areas it shall give notice of such desire to the Minister and shall within 2 months of the date of such notice (or thereafter within such extended time as the Minister may allow as hereinafter

provided) and subject to the provisions of this Agreement submit to the Minister to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister) with respect to such mining or other activities as additional proposals pursuant to Clauses 10 or 11 as the case may be.";

(13) in clause 13(1):

- (a) in paragraph (iv), by deleting "3.25%" and inserting "5%"; and
- (b) by inserting at the end of clause 13(1) the following new paragraphs:

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

Where for the purpose of determining f.o.b. value it is necessary to convert an amount or price to Australian currency, the conversion is to be calculated using a rate (excluding forward hedge or similar contract rates) that has been approved by the Minister at the request of the Company and in the absence of such request as determined by the Minister to be a reasonable rate for the purpose.

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

(14) in clause 13(2):

- (a) by inserting in paragraph (a) "and also showing such other information in relation to the abovementioned iron ore as the Minister may from time to time reasonably require in

regard to, and to assist in verifying, the calculation of royalties in accordance with subclause (1)" after "the due date of the return";

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

"(i) in the case of iron ore initially sold at cost pursuant to the proviso to clause 12(10), at the price notified pursuant to paragraph (iii) of that proviso;

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

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

(c) in paragraph (b):

(i) by deleting "books of account and records of the Company including contracts relative" and substituting "books, records, accounts, documents (including contracts), data and information of the Company stored by any means relating";

(ii) by inserting "(in whatever form)" after "copies or extracts";

(iii) by inserting "the subject of royalty" before each reference to "hereunder"; and

(iv) by deleting "and" after the semi colon; and

(d) by in paragraph (c) deleting the full stop and substituting "; and" and inserting after paragraph (c) the following new paragraph:

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

(15) in clause 15(1):

- (a) by in paragraph (a) inserting "and subclause (3)" after "this subclause"; and
- (b) by in paragraphs (a) and (b) deleting "2008" and substituting "2012";

(16) by deleting subclause (3) of Clause 15 and substituting the following new subclauses:

"(3) Notwithstanding the provisions of the Mining Act the Company may on or before 31 December 2012 (or such later date as the parties may agree) apply to the Minister for all exploration licences held by it at the time of application within Area C (and being the subject of subclause (1)) to be included in the mining lease and provided that the exploration licences have been explored to the satisfaction of the State the Minister for Mines shall, subject to the surrender by the Company of the exploration licences concerned include the land the subject thereof (herein called "the East Angelas Deposit") in the mining lease by endorsement on the mining lease subject to such of the conditions of the surrendered exploration licences as the Minister for Mines determines but otherwise subject to the same terms and covenants and conditions as apply to the mining lease (with such apportionment of rents as is necessary) and notwithstanding that the survey of the East Angelas Deposit has not been completed (but subject to correction to accord with the survey when completed at the Company's expense).

- (4) The Company shall subject to the EP Act, Clause 11 and the other provisions of this Agreement submit to the Minister on or before the date occurring 2 years after the East Angelas Deposit is included in the mining lease to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister and any other details normally required by a local government in whose area any works are to be situated) with respect to the production of iron ore from the East Angelas Deposit and the transport and shipment of iron ore produced which proposals shall make provisions for the Company's' workforce and associated population required to enable the Company to mine and recover iron ore from the East Angelas Deposit and transport and ship the iron ore and shall include the location, area, lay-out, design, quantities, materials and time programme for the commencement and completion of construction or provision (as the case may be) of each of the following matters, namely:
- (a) the mining and recovery of iron ore including mining crushing screening handling transport and storage of iron ore and plant facilities and any processing of iron ore proposed to be carried out;
 - (b) roads within the mining lease and roads serving the mining lease;
 - (c) temporary accommodation and ancillary facilities for the mine camp workforce and housing and other appropriate accommodation and facilities elsewhere for the Company's' workforce, in each case engaged in the East Angelas Deposit project;
 - (d) management of vehicles on the mine site;
 - (e) water supply;
 - (f) power supply;

- (g) transportation of iron ore by conveyor or, subject to Clause 11, by rail way or rail spur line constructed under an Integration Agreement;
 - (h) subject to Clauses 11 and 12(10), storage and ship loading of iron ore;
 - (i) mine aerodrome on or in the vicinity of the mining lease and any other aerodrome facilities and services;
 - (j) any other works installations or facilities or services desired by the Company;
 - (k) use of local labour professional services manufacturers suppliers contractors and materials and measures to be taken with respect to the engagement and training of employees by the Company, its agents and contractors;
 - (l) any leases, licences or other tenures of land required from the State; and
 - (m) an environmental management programme as to measures to be taken, in respect of the Company's activities under this Agreement, for the rehabilitation and the protection and management of the environment.
- (5) A proposal may with the consent of the Minister (except in relation to an Integration Agreement) and that of any parties concerned (being in respect of an Integration Agreement the Integration Proponent for that agreement) provide for the use by the Company of any works installations or facilities constructed or established under a Government agreement.
- (6) Each of the proposals pursuant to subclause (4) may with the approval of the Minister or, if so required by the Minister, shall be submitted separately and in any order as to any matter or matters in respect of which such proposals are required to be submitted.
- (7) At the time when the Company submits the said proposals it shall:
- (a) submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works materials, plant, equipment and supplies that it proposes to consider obtaining from or

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

- (b) furnish to the Minister's reasonable satisfaction evidence of:
 - (i) marketing arrangements demonstrating the Company's ability to sell iron ore in accordance with the said proposals;
 - (ii) the availability of finance necessary for the fulfilment of the operations to which the said proposals refer; and
 - (iii) the readiness of the Company to embark upon and proceed to carry out the operations referred to in the said proposals.

- (8) In respect of each proposal pursuant to subclause (4) the Minister shall:
 - (a) subject to the limitations set out below, refuse to approve the proposal (whether it requests the grant of new tenure or not) if the Minister is satisfied on reasonable grounds that it is not in the public interest for the proposal to be approved; or
 - (b) approve of the proposal without qualification or reservation; or
 - (c) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (4) not covered by the said proposal; or
 - (d) require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable, and in such a case the Minister shall disclose his reasons for such conditions,

PROVIDED ALWAYS that where implementation of any proposals hereunder has been approved pursuant to the EP Act

subject to conditions or procedures, any approval or decision of the Minister under this clause shall if the case so requires incorporate a requirement that the Company make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

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

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

The right to refuse to approve a proposal conferred by paragraph (a) may only be exercised in respect of a proposal where the Minister is satisfied on reasonable grounds that a purpose of the proposal is the integrated use of works installations or facilities (as defined in subclause (7) of clause 15A for the purpose of that clause) as contemplated by clause 15A. It may not be so exercised in respect of a proposal if pursuant to clause 10B(5) the Minister, prior to the submission of the proposal, advised the Company in writing that the Minister has no public interest concerns (as defined in that clause) with the single preferred development (as referred to in clause 10B(5)(a)) the subject of the submitted proposals and those proposals are consistent (as to their substantive scope and content) with the information provided to the Minister pursuant to clause 10B(5) in respect of that single preferred development.

- (9) The Minister shall within 2 months after receipt of proposals pursuant to subclause (4) give notice to the Company of his

decision in respect to the proposals, PROVIDED THAT where a proposal is to be assessed under Part IV of the EP Act the Minister shall only give notice to the Company of his decision in respect to the proposal within 2 months after service on him of an authority under section 45(7) of the EP Act.

- (10) If the decision of the Minister is as mentioned in either of paragraphs (a), (c) or (d) of subclause (8) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (11) If the decision of the Minister is as mentioned in either of paragraphs (c) or (d) of subclause (8) and the Company considers that the decision is unreasonable the Company within 2 months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (8) shall not be referable to arbitration hereunder. A decision of the Minister under paragraph (a) of subclause (8) shall not be referable to arbitration under this Agreement.
- (12) If by the award made on the arbitration pursuant to subclause (11) the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.
- (13) The Company shall implement the approved proposals in accordance with the terms thereof.
- (14) Notwithstanding Clause 34, the Minister may during the implementation of approved proposals approve variations to those proposals.
- (15) (a) Subject to Clause 11, if the Company at any time during the continuance of this Agreement desires to produce more iron ore from the East Angelas Deposit than the tonnage of iron ore for transportation from the mining lease approved under approved proposals or to significantly modify expand or otherwise vary its activities in relation to the mining of the East Angelas Deposit beyond those activities specified in any approved proposals it shall give notice of such desire to

the Minister and shall within 2 months thereafter 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 (4) as the Minister may require.

- (b) The provisions of subclauses (5) to (14) shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause with the proviso that the Company may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same. Subject to and accordance with the EP Act and any approvals and licences required under that Act the Company shall implement approved proposals pursuant to this Clause in accordance with the terms thereof.";

- (17) by inserting after clause 15 the following new clauses:

"Integrated use of works installations or facilities under the Integration Agreements

15A. (1) Subject to subclauses (2) to (7) of this Clause and to the other provisions of this Agreement, the Company may during the continuance of this Agreement:

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

(wholly or in part) in the activities of the Company carried on by it pursuant to this Agreement including, without limitation, as part of those activities, transporting by railway and shipping from a loading port and undertaking any ancillary and incidental activities in doing so (including, without limitation, blending permitted by Clause 12(9)) of:

- (A) iron ore mined from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement); or
 - (B) with the prior approval of the Minister, iron ore mined in, or proximate to, the Pilbara region of the said State under a Government agreement (excluding an Integration Agreement); or
 - (C) with the prior approval of the Minister, iron ore mined by a third party from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by the Company from the third party; or
 - (D) iron ore mined under an Integration Agreement;
- (b) make any existing or new works installations or facilities constructed or held under this Agreement available for use (wholly or partly) by another Integration Proponent during the continuance of its Integration Agreement in the activities of that Integration Proponent carried

on by it pursuant to its Integration Agreement including, without limitation, as part of those activities, transporting by railway and shipping from a loading port and undertaking any ancillary and incidental activities in doing so (including, without limitation, blending permitted by that Integration Agreement) of:

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

the said State, for iron ore, which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under a Government agreement); or

- (ii) with the approval of the Minister, a Government agreement (other than an Integration Agreement) for the mining of iron ore in, or proximate to, the Pilbara region of the said State;
- (d) subject to subclause (2), under this Agreement and for the purpose of any use or making available for use referred to in paragraph (a), (b) or (c) connect any existing or new works installations or facilities constructed or held under this Agreement to any existing or new works installations or facilities constructed or held under another Integration Agreement;
- (e) subject to subclause (2), under this Agreement and for the purpose of any use or making available for use referred to in paragraph (a), (b) or (c) or making of any connection referred to in paragraph (d) construct new works installations or facilities and expand modify or otherwise vary any existing and new works installations or facilities constructed or held under this Agreement;
- (f) allow a railway or rail spur line (not being a railway or rail spur line constructed or held under an Integration Agreement) to be connected to a railway or rail spur line or other works installations or facilities constructed or held under this Agreement for the delivery of iron ore to an Integration Proponent for transport by railway and shipping from a loading port (together with any ancillary and incidental activities in doing so) as part of its activities under its Integration Agreement; and

- (g) allow an electricity transmission line (not being an electricity transmission line constructed or held under an Integration Agreement) to be connected to an electricity transmission line constructed or held under this Agreement for the supply of electricity permitted to be made under an Integration Agreement.
- (2)
 - (a) A connection referred to in clause (1)(d) or construction, expansion, modification or other variation referred to in subclause (1)(e) by the Company shall, to the extent not already authorised under this Agreement as at the variation date, be regarded as a significant modification expansion or other variation of the Company's activities carried on by it pursuant to this Agreement and may only be made in accordance with proposals submitted and approved or determined under this Agreement in accordance with clauses 10 and 10A or clauses 11, 15 or 15C as the case may require and otherwise in compliance with the provisions of this Agreement and the laws from time to time of the said State. For the avoidance of doubt, the parties acknowledge that any use or making available for use contemplated by subclause (1)(a), (1)(b) or (1)(c) shall not otherwise than as required by this paragraph (a) require the submission and approval of further proposals under this Agreement.
 - (b) The Company shall not be entitled to:
 - (i) submit proposals to construct a port otherwise than as permitted by clause 11 or to establish harbour or port works installations or facilities, or to expand modify or otherwise vary harbour or works installations or facilities otherwise than within the boundaries of any port permitted to be constructed by the Company pursuant to clause 11 or at or

near the town of Port Hedland within the boundaries of the Port of Port Hedland; or

- (ii) generate and supply power, take and supply water or dispose of water otherwise than in accordance with the other clauses of this Agreement and subject to any restrictions contained in those clauses; or
- (iii) without limiting subparagraphs (i) and (ii) submit proposals to construct or establish works installations or facilities of a type, or to make expansions, modifications or other variations of works installations or facilities of a type, which in the Minister's reasonable opinion this Agreement, immediately before the variation date, did not permit or contemplate the Company constructing, establishing or making as the case may be otherwise than for integration use as contemplated by subclauses (1)(a), (1)(b) or (1)(c) or as permitted by clause 15C; or
- (iv) submit proposals to make a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) otherwise than on tenure granted under or pursuant to this Agreement from time to time or held pursuant to this Agreement from time to time; or
- (v) submit proposals to make a connection referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) for the purpose of use as contemplated by subclause (1)(c)(i), if in

the reasonable opinion of the Minister the activity which is the subject of the proposals would give to the holder or holders of the relevant Mining Act 1978 mining lease the benefit of rights or powers granted to the Company under this Agreement, over and above the right of access to and use of the relevant works, installations or facilities; or

- (vi) submit proposals to make a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) for the purpose of use as contemplated by subclause (1)(c) and involving the grant of tenure without the prior approval of the Minister; or
 - (vii) submit proposals to assign, sublet, transfer or dispose of any works installations or facilities constructed or held under this Agreement or any leases, licences, easements or other titles under or pursuant to this Agreement for any purpose referred to in this clause.
- (c) Notwithstanding the provisions of clauses 10A, 11, 15 or 15C, the Minister may defer consideration of, or a decision upon, a proposal submitted by the Company for a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e), for the purpose of use or making available for use as referred to in subclauses (1)(a) or (1)(b), until relevant corresponding proposals under the relevant Integration Agreement have been submitted and those proposals can be approved under that Integration Agreement concurrently with the Minister's approval under this Agreement of the Company's proposal.

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

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

- (5) Nothing in this Agreement shall be construed to:
- (a) exempt another Integration Proponent from complying with, or the application of, the provisions of its Integration Agreement.
 - (b) restrict the company's rights under Clause 33.

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

- (6) Nothing in this clause shall be construed to exempt the Company from complying with, or the application of, the other provisions of this Agreement including,

without limitation, Clause 33 and of relevant laws from time to time of the said State.

- (7) For the purpose of this Clause "works installations or facilities" means any:
- (a) harbour or port works installations or facilities including, without limitation, stockpiles, reclaimers, conveyors and wharves;
 - (b) railway or rail spur lines;
 - (c) track structures and systems associated with the operation and maintenance of a railway including, without limitation, sidings, train control and signalling systems, maintenance workshops and terminal yards;
 - (d) train loading and unloading works installations or facilities;
 - (e) conveyors;
 - (f) private roads;
 - (g) mine aerodrome and associated aerodrome works installations and facilities;
 - (h) iron ore mining, crushing, screening, beneficiation or other processing works installations or facilities;
 - (i) mine administration buildings including, without limitation, offices, workshops and medical facilities;
 - (j) borrow pits;
 - (k) accommodation and ancillary facilities including, without limitation, construction camps and in townsites constructed pursuant to and held under any Integration Agreement;
 - (l) water, sewerage, electricity, gas and telecommunications works installations and

facilities including, without limitation, pipelines, transmission lines and cables; and

- (m) any other works installations or facilities approved of by the Minister for the purpose of this clause.

Transfer of rights to shared works installations or facilities

15B. (1) For the purposes of this clause "Relevant Infrastructure" means any works installations or facilities (as defined in Clause 15A(7)):

- (a) constructed or held under another Integration Agreement;
- (b) which the Company is using in its activities pursuant to this Agreement;
- (c) which the Minister is satisfied (after consulting with the Company and the Integration Proponent for that other Integration Agreement):
 - (i) are no longer required by that other Integration Proponent to carry on its activities pursuant to its Integration Agreement because of the cessation of the Integration Proponent's mining operations in respect of which such Relevant Infrastructure was constructed or held or because of any other reason acceptable to the Minister; and
 - (ii) are required by the Company to continue to carry on its activities pursuant to this Agreement; and
- (d) in respect of which that other Integration Proponent has notified the Minister it consents to the Company submitting proposals as referred to in subclause (2).

- (2) The Company may as an additional proposal pursuant to Clause 10 propose:
- (a) that it be granted a lease licence or other title over the Relevant Infrastructure pursuant to this Agreement subject to and conditional upon the other Integration Proponent surrendering wholly or in part (and upon such terms as the Minister considers reasonable including any variation of terms to address environmental issues) its lease licence or other title over the Relevant Infrastructure; or
 - (b) that the other Integration Proponent's lease licence or other title (not being a mineral lease, mining lease or other right to mine title granted under a Government agreement, the Mining Act 1904 or the Mining Act 1978) to the Relevant Infrastructure be transferred to this Agreement (to be held by the Company pursuant to this Agreement) with such surrender of land from it and variations of its terms as the Minister considers reasonable for that title to be held under this Agreement including, without limitation, to address environmental issues and outstanding obligations of that other Integration Proponent under its Integration Agreement in respect of that Relevant Infrastructure.

The provisions of Clause 10A shall mutatis mutandis apply to any such additional proposal. In addition the Company acknowledges that the Minister may require variations of the other Integration Agreement and/or proposals under it or of this Agreement in order to give effect to the matters contemplated by this Clause.

- (3) This Clause shall cease to apply in the event the State gives any notice of default to the Company pursuant to Clause 37(1) and while such notice remains unsatisfied.

Miscellaneous Licences for Railways

15C. (1) In this Clause subject to the context:

"Additional Infrastructure" means:

- (a) Train Loading Infrastructure;
- (b) Train Unloading Infrastructure;
- (c) a conveyor, train unloading and other infrastructure necessary for the transport of iron ore, freight goods or other products from the Railway (directly or indirectly) to port facilities within a loading port,

in each case located outside a Port;

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

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

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

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

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

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

"Railway" means a standard gauge heavy haul railway or railway spur line, located or to be located as the case may be in, or proximate to, the Pilbara region of the said State (but outside the boundaries of a Port)

for the transport of iron ore, freight goods and other products together with all railway track, associated track structures including sidings, turning loops, over or under track structures, supports (including supports for equipment or items associated with the use of a railway) tunnels, bridges, train control systems, signalling systems, switch and other gear, communication systems, electric traction infrastructure, buildings (excluding office buildings, housing and freight centres), workshops and associated plant, machinery and equipment and including rolling stock maintenance facilities, terminal yards, depots, culverts and weigh bridges which railway is or is to be (as the case may be) the subject of approved proposals under subclause (4) and includes any expansion or extension thereof outside a Port which is the subject of additional proposals approved in accordance with subclause (5);

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

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

"Railway spur line" means a standard gauge heavy haul railway spur line located or to be located in, or proximate to, the Pilbara region of the said State (but outside a Port) connecting to a Railway for the

transport of iron ore, freight goods and other products upon the Railway to (directly or indirectly) a loading port;

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

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

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

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

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

Company to obtain prior Ministerial in-principle approval

- (2) (a) If the Company wishes, from time to time during the continuance of this Agreement, to

proceed under this clause with a plan to develop a Railway it shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of its plan.

- (b) The Minister shall within one month of a notice under paragraph (a) advise the Company whether or not he approves in-principle the proposed plan. The Minister shall afford the Company full opportunity to consult with him in respect of any decision of the Minister under this paragraph.
- (c) The Minister's in-principle approval in respect of a proposed plan shall lapse if the Company has not submitted detailed proposals to the Minister in respect of that plan in accordance with this Clause within 18 months of the Minister's in-principle approval.

Railway Corridor

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

- (iv) the routes of, and the land required for, roads outside the Railway Corridor (and also outside a Port) for access to it to construct the Railway (such roads as agreed being "Lateral Access Roads").

In seeking such agreement, regard shall be had to achieving a balance between engineering matters including costs, the nature and use of any lands concerned and interests therein and the costs of acquiring the land (all of which shall be borne by the Company). The parties acknowledge the intention is for the Company to construct the Railway, the access roads for the construction and maintenance of the Railway which are to be within the Railway Corridor and the relevant Additional Infrastructure (if any) along the centreline of the Railway Corridor subject to changes in that alignment to the extent necessary to avoid heritage, environmental or poor ground conditions that are not identified during preliminary investigation work, and recognise the width of the Railway Corridor may need to vary along its route to accommodate Additional Infrastructure (if any), access roads, areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce and water bores. The provisions of clause 44 shall not apply to this subclause.

- (b) If the date by which the Company must submit detailed proposals under subclause (4)(a) (as referred to in subclause (2)(c)) is extended or varied by the Minister pursuant to Clause 36, any agreement made pursuant to paragraph (a) before such date is extended or varied shall unless the Minister notifies the Company otherwise be deemed to be at an end and

neither party shall have any claim against the other in respect of it.

- (c) The Company acknowledges that it shall be responsible for liaising with every title holder in respect of the land affected and for obtaining in a form and substance acceptable to the Minister all unconditional and irrevocable consents of each such title holder to, and all statutory consents required in respect of the land affected for:
- (i) the grant of the Special Railway Licence for the construction, operation and maintenance within the Railway Corridor of the Railway, access roads and Additional Infrastructure (if any) to be within the Railway Corridor; and
 - (ii) the grant of Lateral Access Road Licences for the construction, use and maintenance of Lateral Access Roads over the routes for the Lateral Access Roads agreed pursuant to paragraph (a); and
 - (iii) the inclusion of additional land in the Special Railway Licence as referred to in subclause (6)(h) or subclause (6)(i),

in accordance with this clause. For the purposes of this subclause (3)(c), "title holder" means a management body (as defined in the LAA) in respect of any part of the affected land, a person who holds a mining, petroleum or geothermal energy right (as defined in the LAA) in respect of any part of the affected land, a person who holds a lease or licence under the LAA in respect of any part of the affected land, a person who holds any other title granted under or pursuant to a Government agreement in respect of any part of the affected land, a person

who holds a lease or licence in respect of any part of the affected land under any other Act applying in the said State and a person in whom any part of the affected land is vested, immediately before the provision of such consents to the Minister as referred to in subclause (4)(e)(ii) (including as applying pursuant to subclause 5(d)).

Company to submit proposals for Railway

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

- appropriate facilities elsewhere for the Company's workforce;
- (iv) water supply;
 - (v) energy supplies;
 - (vi) access roads within the Railway Corridor and Lateral Access Roads both along the routes for those roads agreed between the Minister and the Company pursuant to subclause 3(a);
 - (vii) any other works, services or facilities desired by the Company; and
 - (viii) use of local labour, professional services, manufacturers, suppliers contractors and materials and measures to be taken with respect to the engagement and training of employees by the Company, its agents and contractors.
- (b) Proposals pursuant to paragraph (a) must specify the matters agreed for the purpose pursuant to subclause (3)(a) and must not be contrary to or inconsistent with such agreed matters.
- (c) Each of the proposals pursuant to paragraph (a) may with the approval of the Minister, or must if so required by the Minister, be submitted separately and in any order as to the matter or matters mentioned in one or more of subparagraphs (i) to (viii) of paragraph (a) and until all of its proposals under this subclause have been approved the Company may withdraw and may resubmit any proposal but the withdrawal of any proposal shall not affect the obligations of the Company to submit a proposal under this subclause in respect of the subject matter of the withdrawn proposal.

- (d) The Company shall, whenever any of the following matters referred to in this subclause are proposed by the Company (whether before or during the submission of proposals under this subclause), submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia, together with its reasons therefor and shall, if required by the Minister consult with the Minister with respect thereto.
- (e) At the time when the Company submits the last of the said proposals pursuant to this subclause, it shall:
 - (i) furnish to the Minister's reasonable satisfaction evidence of all accreditations under the Rail Safety Act which are required to be held by the Company or any other person for the construction of the Railway; and
 - (ii) furnish to the Minister the written consents referred to in subclause (3)(c)(i) and (3)(c)(ii).
- (f) The provisions of clause 10A shall apply mutatis mutandis to detailed proposals submitted under this subclause.

Additional Railway Proposals

- (5) (a) If the Company at any time during the currency of a Special Railway Licence desires to construct a Railway spur line (connecting to the Railway the subject of that Special Railway Licence) or desires to significantly modify, expand or otherwise vary its activities within the land the subject of the Special Railway

Licence that are the subject of this Agreement and that may be carried on by it pursuant to this Agreement (other than by the construction of a Railway spur line) beyond those activities specified in any approved proposals for that Railway, it shall give notice of such desire to the Minister and furnish to the Minister with that notice an outline of its proposals in respect thereto (including, without limitation, such matters mentioned in subclause (4)(a) as are relevant or as the Minister otherwise requires).

- (b) If the notice relates to a Railway spur line, or to the construction of Train Loading Infrastructure or Train Unloading Infrastructure on land outside the then Railway Corridor, the Minister shall within one month of receipt of such notice advise the Company whether or not he approves in-principle the proposed construction of such spur line, Train Loading Infrastructure or Train Unloading Infrastructure. If the Minister gives in-principle approval the Company may (but not otherwise) submit detailed proposals in respect thereof provided that the provisions of subclause (3) shall mutatis mutandis apply prior to submission of detailed proposals in respect thereof.
- (c) Subject to the EP Act, the provisions of this Agreement and agreement at that time subsisting in respect of any matters required to be agreed pursuant to subclause (3)(a) (as referred to in paragraph (b)), the Company shall submit to the Minister within a reasonable timeframe, as determined by the Minister after receipt of the notice referred to in paragraph (a) (or in the case of a notice referred to in paragraph (b) the giving of the Minister's in-principle consent as referred to in that paragraph), detailed proposals in

respect of the proposed construction of such Railway spur line, Train Loading Infrastructure, Train Unloading Infrastructure or other proposed modification, expansion or variation of its activities including such of the matters mentioned in subclause (4)(a) as the Minister may require.

- (d) The provisions of subclause (4) (with the date for submission of proposals being read as the date or time determined by the Minister under paragraph (c) and the reference in subclause (4)(e)(ii) to subclause (3)(c)(i) being read as a reference to subclause (3)(c)(iii)) and of clause 10A shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause.

Grant of Tenure

- (6) (a) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after all its proposals submitted pursuant to subclause (4)(a) have been approved or deemed to be approved and the Company has complied with the provisions of subclause (4)(e), the State notwithstanding the Mining Act 1978 shall cause to be granted to the Company:
- (i) a miscellaneous licence to conduct within the Railway Corridor and in accordance with its approved proposals all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce and, subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance within the Railway Corridor

of the Railway, access roads and Additional Infrastructure (if any) ("the Special Railway Licence") such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act 1978 in the form of the Second Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at a rental calculated in accordance with the Mining Act 1978:

- (A) prior to the Railway Operation Date, as if the width of the Railway Corridor were 100 metres; and
 - (B) on and from the Railway Operation Date, at the rentals from time to time prescribed under the Mining Act 1978; and
- (ii) a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under subclause (3)(a) (each a "Lateral Access Road Licence"), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act 1978 in the form of the Third Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the Mining Act 1978.
- (b) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after its proposals submitted pursuant to subclause

(5)(a) for the construction of Lateral Access Roads for access to the Railway Corridor to construct a Railway spur line have been approved or deemed to be approved and the Company has complied with the provisions of subclause (4)(e) (as applying pursuant to subclause (5)(d)), the State notwithstanding the Mining Act 1978 shall cause to be granted to the Company a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under subclause (3)(a) (as applying pursuant to subclause (5)(b)) (each a "Lateral Access Road Licence"), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act 1978 in the form of the Fourth Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the Mining Act 1978.

- (c) Notwithstanding the Mining Act 1978, the term of the Special Railway Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 50 years commencing on the date of grant thereof.
- (d) Notwithstanding the Mining Act 1978, the term of any Lateral Access Road Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 4 years commencing on the date of grant thereof.
- (e) Notwithstanding the Mining Act 1978, and except as required to do so by the terms of the Special Railway Licence, the Company shall not be entitled to surrender the Special Railway

Licence or any Lateral Access Road Licence or any part or parts of them without the prior consent of the Minister.

- (f) (i) The Company may in accordance with approved proposals take stone, sand, clay and gravel from the Railway Corridor for the construction, operation and maintenance of the Railway constructed within or approved for construction within the Railway Corridor.
- (ii) Notwithstanding the Mining Act 1978 no royalty shall be payable under the Mining Act in respect of stone, sand, clay and gravel which the Company is permitted by subparagraph (i) to obtain from the land the subject of the Special Railway Licence.
- (g) For the purposes of this Agreement and without limiting the operation of paragraphs (a) to (f) inclusive above, the application of the Mining Act 1978 and the regulations made thereunder are specifically modified:
 - (i) in section 91(1) by:
 - (A) deleting "the mining registrar or the warden, in accordance with section 42 (as read with section 92)" and substituting "the Minister";
 - (B) deleting "any person" and substituting "the Company (as defined in the agreement ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended)";

- (C) deleting "for any one or more of the purposes prescribed" and substituting "for the purpose specified in clause 15C(6)(a)(i), clause 15C(6)(a)(ii) or clause 15C(6)(b), of the agreement ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended";
- (ii) in section 91(3)(a), by deleting "prescribed form" and substituting "form required by the agreement ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended";
- (iii) by deleting sections 91(6), 91(9), 91(10) and 91B;
- (iv) in section 92, by deleting "Sections 41, 42, 44, 46, 46A, 47 and 52 apply," and inserting "Section 46A (excluding in subsection (2)(a) "the mining registrar, the warden or") applies," and by deleting "in those provisions" and inserting "in that provision";
- (v) by deleting the full stop at the end of the section 94(1) and inserting, "except to the extent otherwise provided in, or to the extent that such terms and conditions are inconsistent with, the agreement ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended";
- (vi) by deleting sections 94(2), (3) and (4);
- (vii) in section 96(1), by inserting after "miscellaneous licence" the words "(not being a miscellaneous licence granted

pursuant to the agreement ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended";

- (viii) by deleting mining regulations 37(2), 37(3), 42 and 42A; and
- (ix) by inserting at the beginning of mining regulations 41(c) and (f) the words "subject to the agreement ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended".
- (h) If additional proposals are approved in accordance with subclause (5) for the construction of a Railway spur line outside the then Railway Corridor, the Minister for Mines shall include the area of land within which such construction is to occur in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.
- (i) If additional proposals are approved in accordance with subclause (5) for the construction of Train Loading Infrastructure or Train Unloading Infrastructure outside the then Railway Corridor, the Minister for Mines shall include the area of such land within which such infrastructure is approved for construction in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.

- (j) The provisions of this subclause shall not operate so as to require the State to cause a Special Railway Licence or a Lateral Access Road Licence to be granted or any land included in the Special Railway Licence as mentioned above until all processes necessary under any laws relating to native title to enable that grant or inclusion of land to proceed, have been completed.

Construction and operation of Railway

- (7) (a) Subject to and in accordance with approved proposals, the Rail Safety Act and the grant of the relevant Special Railway Licence and any associated Lateral Access Road Licences the Company shall in a proper and workmanlike manner and in accordance with recognised standards for railways of a similar nature operating under similar conditions construct the Railway and associated Additional Infrastructure and access roads within the Railway Corridor and shall also construct inter alia any necessary sidings, crossing points, bridges, signalling switches and other works and appurtenances and provide for crossings and (where appropriate and required by the Minister) grade separation or other protective devices including flashing lights and boom gates at places where the Railway crosses or intersects with major roads or existing railways.
- (b) The Company shall while the holder of a Special Railway Licence:
 - (i) keep the Railway the subject of that licence in an operable state; and
 - (ii) ensure that the Railway the subject of that licence is operated in a safe and

proper manner in compliance with all applicable laws from time to time; and

- (iii) without limiting subparagraph (ii) ensure that the obligations imposed under the Rail Safety Act on an owner and an operator (as those terms are therein defined) are complied with in connection with the Railway the subject of that licence.

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

- (c) The Company shall provide crossings for livestock and also for any roads, other railways, conveyors, pipelines and other utilities which exist at the date of grant of the relevant Special Railway Licence or in respect of land subsequently included in it at the date of such inclusion and the Company shall on reasonable terms and conditions allow such crossings for roads, railways, conveyors, pipelines and other utilities which may be constructed for future needs and which may be required to cross a Railway constructed pursuant to this clause.
- (d) Subject to Clause 15B, the Company shall at all times be the holder of Special Railway Licences and Lateral Access Road Licences granted pursuant to this clause and (without limiting Clause 42 but subject to Clause 15B) shall at all times own manage and control the use of each Railway the subject of a Special Railway Licence held by the Company.
- (e) The Company shall not be entitled to exclusive possession of the land the subject of a Special

Railway Licence or Lateral Access Road Licence granted pursuant to this clause to the intent that the State, the Minister, the Minister for Mines and any persons authorised by any of them from time to time shall be entitled to enter upon the land or any part of it at all reasonable times and on reasonable notice with all necessary vehicles, plant and equipment and for purposes related to this Agreement or such other purposes as they think fit but in doing so shall be subject to the reasonable directions of the Company so as not to unreasonably interfere with the Company's operations.

- (f) The Company's ownership of a Railway constructed pursuant to this clause shall not give it an interest in the land underlying it.
- (g) The Company shall not at any time without the prior consent of the Minister dismantle, sell or otherwise dispose of any part or parts of any Railway constructed pursuant to this clause, or permit this to occur, other than for the purpose of maintenance, repair, upgrade or renewal.
- (h) The Company shall, subject to and in accordance with approved proposals, in a proper and workmanlike manner, construct any Additional Infrastructure, access roads, Lateral Access Roads and other works approved for construction under this clause.
- (i) The Company shall while the holder of a Special Railway Licence at all times keep and maintain in good repair and working order and condition (which obligation includes, where necessary, replacing or renewing all parts which are worn out or in need of replacement or renewal due to their age or condition) the Railway, access roads and Additional Infrastructure (if any) the subject of that licence and all such other works installations plant

machinery and equipment for the time being the subject of this Agreement and used in connection with the operation use and maintenance of that Railway, access roads and Additional Infrastructure (if any).

- (j) Subject to Clause 15B, the Company shall:
- (i) be responsible for the cost of construction and maintenance of all Private Roads constructed pursuant to this clause; and
 - (ii) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles (other than those engaged upon the Company's activities and its invitees and licensees) from using the Private Roads; and
 - (iii) at any place where any Private Roads are constructed by the Company so as to cross any railways or public roads provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the Public Transport Authority as the case may be.
- (k) The provisions of Clause 24(4) regarding third party access shall apply mutatis mutandis to any Railway or railway spur line constructed pursuant to this clause except that the Company shall not be obliged to transport passengers on any such Railway or Railway spur line and in relation to its use thereof the Company shall not be deemed to be a common carrier at law or otherwise.

Aboriginal Heritage Act 1972 (WA)

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

"and the expression "the Company" means the persons from time to time comprising "the Company" in their capacity as such under the agreement ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended in relation to the use or proposed use of land pursuant to clause 15C of that agreement after and in accordance with approved proposals under clause 15C of that agreement and in relation to the use of that land before any such approval of proposals where the Company has the requisite authority to enter upon and so use the land";
 - (b) the insertion in sections 18(2), 18(4), 18(5) and 18(7) of the words "or the Company as the case may be" after the words "owner of any land";
 - (c) the insertion in section 18(3) of the words "or the Company as the case may be" after the words "the owner";
 - (d) the insertion of the following sentences at the end of section 18(3):

"In relation to a notice from the Company the conditions that the Minister may specify can as appropriate include, among other conditions, a condition restricting the Company's use of the relevant land to after the approval or deemed approval as the case may be under the abovementioned

agreement of all of the Company's submitted initial proposals thereunder for the Railway Operation (as defined in clause 15C(1) of the abovementioned agreement), or in the case of additional proposals submitted or to be submitted by the Company to after the approval or deemed approval under that agreement of such additional proposals, and to the extent so approved. "; and

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

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

Taking of land for the purposes of this clause

- (9) (a) The State is hereby empowered, as and for a public work under Parts 9 and 10 of the LAA to take for the purposes of this clause any land (other than any part of a Port) which in the opinion of the Company is necessary for the relevant Railway Operation and which the Minister determines is appropriate to be taken for the relevant Railway Operation (except any land the taking of which would be contrary to the provisions of a Government agreement entered into before the submission of the proposals relating to the proposed taking) and notwithstanding any other provisions of that Act may license that land to the Company.
- (b) In applying Parts 9 and 10 of the LAA for the purposes of this clause:

- (i) "land" in that Act includes a legal or equitable estate or interest in land;
- (ii) sections 170, 171, 172, 173, 174, 175 and 184 of that Act do not apply; and
- (iii) that Act applies as if it were modified in section 177(2) by inserting -
 - (A) after "railway" the following -

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

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

Notification of Railway Operation Date

- (10) (a) The Company shall from the date occurring 6 months before the date for completion of construction of a Railway specified in its time program for the commencement and completion of construction of that Railway submitted under subclause (4)(a), keep the Minister fully informed as to:
 - (i) the progress of that construction and its likely completion and commissioning; and
 - (ii) the likely Railway Operation Date.

- (b) The Company shall on the Railway Operation Date notify the Minister that the first carriage of iron ore, freight goods or other products as the case may be over the Railway (other than for construction or commissioning purposes) has occurred.
 - (c) The Company shall from the date occurring 6 months before the date for completion of construction of a Railway spur line specified in its time program for the commencement and completion of construction of that spur line submitted under subclause (5)(c) keep the Minister fully informed as to:
 - (i) the progress of that construction and its likely completion and commissioning; and
 - (ii) in respect of it, the likely Railway spur line Operation Date.
 - (d) The Company shall on the Railway spur line Operation Date in respect of any Railway spur line notify the Minister that the first carriage of iron ore, freight goods or other products as the case may be over such spur line (other than for construction or commissioning purposes) has occurred.";
- (18) in clause 16(1) by inserting "and paragraph (m) of subclause (4) of Clause 15" after "Clause 7";
- (19) in clause 16(6) by deleting "subclauses (1), (2), (3) and (4) of Clause 8" and substituting "Clause 10A";
- (20) in clause 23(1) by deleting "or in respect of land within the area coloured red on the plan "Plan A" annexed hereto arrange to have the Port Authority grant to the Company,";
- (21) in clause 23(2) by inserting the following new paragraph:
- "(2a) The provisions of subclause (1) of this Clause shall not operate so as to require the State to grant or vary, or cause to

be granted or varied, any lease licence or other right or title until all processes necessary under any laws relating to native title to enable that grant or variation to proceed, have been completed.";

- (22) by deleting clause 23(3);
- (23) by deleting clause 24(5);
- (24) in clause 27(6), by inserting in paragraph (b) "or cause to be implemented" after "shall implement";
- (25) by deleting subclause (7) of clause 27 and substituting the following new subclause:

"(7) For the purposes of subclause (6) "alternative project" means:

- (a) a project to establish and operate within the said State plant for the production of metallised agglomerates;
- (b) a project to establish and operate within the said State plant which processes and adds value to minerals mined in the said State; or
- (c) any other project within the said State which the Minister approves as providing as equivalent benefits to the State to a project to establish and operate within the said State plant for the production of metallised agglomerates,

to be undertaken by:

- (d) the Company (excluding a project referred to in paragraph (a)): or
- (e) a related body corporate or related bodies corporate (within the meaning of the Corporations Act 2001 (Cwth) of the Company solely or in conjunction with the Company; or
- (f) a joint venture in which the Company or its related body corporate has a majority participating interest; or

- (g) any other third person or persons which the Company and the Minister accept as having the requisite financial and technical capacity and expertise to undertake solely, or in conjunction with the Company, the relevant project referred to in paragraphs (a), (b) or (c).";
- (26) by inserting in clause 33(3)(a) "or held pursuant to this Agreement" after "under or pursuant to this Agreement";
- (27) by inserting in clause 34(1) "or held pursuant to this Agreement" after "pursuant to this Agreement";
- (28) in clause 37:
- (i) in subclause (1)(a)(i) by inserting "granted under or pursuant to this Agreement or held pursuant to this Agreement" after "easement grant or other title"; and
- (ii) in subclause (4) by deleting "occupied by the Company" and substituting "the subject of any lease licence easement or other title granted under or pursuant to this Agreement or held pursuant to this Agreement";
- (29) in clause 38:
- (a) in subclause (1)(a) by inserting "or held pursuant hereto" after "granted hereunder or pursuant hereto"; and
- (b) in subclause (2) by inserting "or held pursuant to this Agreement" after "made under or pursuant to this Agreement";
- (30) by inserting the following sentence at the end of clause 40:
- "As a separate independent indemnity the Company will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any use, making available for use or other activities of the Company as referred to in Clause 15A."; and
- (31) by inserting after the Schedule the following new schedules:

"SECOND SCHEDULE

WESTERN AUSTRALIA
IRON ORE (HOPE DOWNS) AGREEMENT ACT 1992
MINING ACT 1978
MISCELLANEOUS LICENCE FOR A RAILWAY AND
OTHER PURPOSES

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called "the Company") a miscellaneous licence for the construction operation and maintenance of a Railway (as defined in clause 15C(1) of the Agreement and otherwise as provided in the Agreement) and, if applicable, other purposes AND WHEREAS the Company pursuant to clause 15C(6)(a) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended, the Company is hereby granted by this licence authority to conduct on the land the subject of this licence as more particularly delineated and described from time to time in the Schedule hereto all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce in accordance with the Agreement and, subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance on the land the subject of this licence of the Railway and Additional Infrastructure (as defined in clause 15C(1) of the Agreement) and access roads to be located on the land the subject of this licence in accordance with the provisions of the Agreement and proposals approved under the Agreement, for the term of 50 years from the date hereof (subject to the sooner determination of the term upon the determination of the Agreement) and upon and subject to the terms covenants and conditions set out in the

Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 15C(6)(a)(i) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

- If the Company be more than one the liability of the Company hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution thereof or in lieu thereof and to the regulations and by-laws of the time being in force thereunder.
- Reference to "the Agreement" means such agreement as from time to time added to, varied or amended.
- The terms "approved proposals", "Railway", "Railway Operation Date", and "Railway spur line" have the meanings given in the Agreement.

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.
2. The Company is permitted to, in accordance with approved proposals, take stone, sand, clay and gravel from the land the subject of this licence for the construction, operation and maintenance of the Railway (including any Railway spur line) constructed within or approved for construction within the area of land the subject of this licence.

3. Notwithstanding the *Mining Act 1978*, no royalty shall be payable under the *Mining Act 1978* in respect of stone, sand, clay and gravel which the Company is permitted by the Agreement to obtain from the land the subject of this licence.
4. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determine and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

1.
 - (a) Except as provided in paragraph (b), the Company shall within 2 years after the Railway Operation Date surrender in accordance with the provisions of the *Mining Act 1978* the area of this licence down to a maximum of 100 metres width or as otherwise approved by the Minister (as defined in the Agreement) for the safe operation of the Railway then constructed or approved for construction under approved proposals.
 - (b) Paragraph (a) shall not apply to land the subject of this licence that was included in this licence pursuant to clause 15C(6)(h) or clause 15C(6)(i) of the Agreement.
2. The Company shall as soon as possible after the construction of a Railway spur line or of an expansion or extension thereof as the case may be surrender in accordance with the *Mining Act 1978* the land the subject of this licence that was included in this licence pursuant to clause 15C(6)(h) of the Agreement for the purpose of such construction down to a maximum of 100 metres in width or as otherwise approved by the Minister (as defined in the Agreement) for the safe operation of that Railway spur line or expansion or extension thereof as the case may be then constructed or approved for construction under approved proposals.

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

SCHEDULE

Land description

Locality:

Mineral Field

Area:

DATED at Perth this day of .

MINISTER FOR MINES

THIRD SCHEDULE

WESTERN AUSTRALIA

IRON ORE (HOPE DOWNS) AGREEMENT ACT 1992

MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called "the Company") a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 15C(6)(a)(ii) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or

amended, the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 15C(6)(a)(ii) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

- If the Company be more than one the liability of the Company hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefore or in lieu thereof and to the regulations and by-laws of the time being in force thereunder.
- Reference to "the Agreement" means such agreement as from time to time added to, varied or amended.

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.
2. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determine and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

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

SCHEDULE

Description of land

Locality:

Mineral Field:

Area:

DATED at Perth this day of .

MINISTER FOR MINES

FOURTH SCHEDULE

WESTERN AUSTRALIA

IRON ORE (HOPE DOWNS) AGREEMENT ACT 1992

MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called "the Company") a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 15C(6)(b) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or

amended, the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 15C(6)(b) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

- If the Company be more than one the liability of the Company hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefore or in lieu thereof and to the regulations and by-laws of the time being in force thereunder.
- Reference to "the Agreement" means such agreement as from time to time added to, varied or amended.

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.
2. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determine and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

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

SCHEDULE

Description of land

Locality:

Mineral Field:

Area:

DATED at Perth this day of .

MINISTER FOR MINES".

EXECUTED as a deed.

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

[Signature]
STEPHEN WOOD

THE COMMON SEAL of **HOPE**)
DOWNES IRON ORE PTY. LTD.)
ACN 071 514 308 was hereunto) [C.S.]
affixed in accordance with its)
constitution in the presence of:)

[Signature] TADEUSZ J WATROBA
Director

[Signature] JAY NEWBY
Secretary

THE COMMON SEAL of)
HAMERSLEY WA PTY. LTD.)
ACN 115 004 138 was hereunto) [C.S.]
affixed by authority of the Directors)
in the presence of:)

[Signature] ALAN DAVIES
Director

[Signature] HELEN FERNIHOUGH
Secretary

[Schedule 2 inserted: No. 61 of 2010 s. 20.]

Schedule 3 — Second Variation Agreement

[s. 3]

[Heading inserted: No. 61 of 2011 s. 18.]

2011

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

AND

HOPE DOWNS IRON ORE PTY. LTD.

ACN 071 514 308

HAMERSLEY WA PTY. LTD.

ACN 115 004 138

IRON ORE (HOPE DOWNS) AGREEMENT 1992
RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 9th day of November 2011

BETWEEN

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

AND

HOPE DOWNS IRON ORE PTY LTD ACN 071 514 308 of Level 3, Hppl House, 28-42 Ventnor Avenue, West Perth, Western Australia and **HAMERSLEY WA PTY. LTD.** ACN 115 004 138 of Level 22, Central Park, 152-158 St Georges Terrace, Perth, Western Australia (**Joint Venturers**).

RECITALS:

- A.** The State and the Joint Venturers are now the parties to the agreement dated 30 November 1992 ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B.** The State and the Joint Venturers wish to vary the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Interpretation

Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.

2. Ratification and Operation

- (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia prior to 31 December 2011 or such later date as

may be agreed between the parties hereto to ratify this Agreement. The State shall endeavour to secure the timely passage of such Bill as an Act.

- (2) The provisions of this Agreement other than this clause and clause 1 will not come into operation until the day after the day on which the Bill referred to in subclause (1) has been passed by the State Parliament of Western Australia and commences to operate as an Act.
- (3) If by 30 June 2012 the said Bill has not commenced to operate as an Act then, unless the parties hereto otherwise agree, this Agreement will then cease and determine and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (4) On the day after the day on which the said Bill commences to operate as an Act all the provisions of this Agreement will operate and take effect despite any enactment or other law.

3. Variation of Principal Agreement

The Principal Agreement is varied as follows:

- (1) in clause 1 by inserting in the appropriate alphabetical positions the following new definitions:

"Eligible Existing Tenure" means:

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

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

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

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

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

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

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

"Special Advance Tenure" means:

- (a) a miscellaneous licence or general purpose lease requested under Clause 23(2c) to be granted to the Company under the Mining Act 1978; or
- (b) an easement or a lease requested under Clause 23(2c) to be granted to the Company under the LAA,

and as the context requires such tenure if granted;

- (2) in clause 2(e) by inserting after "for the time being in force thereunder" the words "(and for the avoidance of doubt this principle, subject to the context and without limitation to its application to other Acts, may apply in respect of references to the Land Act notwithstanding references in this Agreement to the LAA)";
- (3) by inserting after clause 10B the following new clauses:

"Community development plan

10C. (1) In this Clause, the term "community and social benefits" includes:

- (a) assistance with skills development and training opportunities to promote work readiness and employment for persons living in the Pilbara region of the said State;
- (b) regional development activities in the Pilbara region of the said State, including partnerships and sponsorships;

- (c) contribution to any community projects, town services or facilities; and
 - (d) a regionally based workforce.
- (2) The Company acknowledges the need for community and social benefits flowing from this Agreement.
- (3) The Company agrees that:
 - (a) it shall prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with its activities under this Agreement; and
 - (b) the Company shall, not later than 3 months after the second variation date, submit to the Minister the plan prepared under paragraph (a) and confer with the Minister in respect of the plan.
- (4) The Minister shall within 2 months after receipt of a plan submitted under subclause (3)(b), either notify the Company that the Minister approves the plan as submitted or notify the Company of changes which the Minister requires be made to the plan. If the Company is unwilling to accept the changes which the Minister requires it shall notify the Minister to that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes required by the Minister.
- (5) The effect of an award made on an arbitration pursuant to subclause (4) shall be that the relevant plan submitted by the Company pursuant to subclause (3)(b) shall, with such changes required by the Minister under subclause (4) as the arbitrator determines to be reasonable (with or without modification by the arbitrator), be deemed to be the plan approved by the Minister under this Clause.
- (6) At least 3 months before the anticipated submission of proposals relating to a proposed development

pursuant to any of Clauses 10, 11, 15, 15C and 27 the Company must, unless the Minister otherwise requires, give to the Minister information about how the proposed development may affect the plan approved or deemed to be approved by the Minister under this Clause. This obligation operates in relation to all proposals submitted on or after the date that is 4 months after the date when a plan is first approved or deemed to be approved under this Clause.

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

Local participation plan

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

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

as referred to in subclause (7) to use, to alert Western Australian engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and consultants and Western Australian suppliers, manufacturers and contractors to services opportunities and procurement opportunities respectively as referred to in subclause (1).

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

- (4) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.
- (5) At least 6 months before the anticipated submission of proposals relating to a proposed development pursuant to any of Clauses 10, 11, 15, 15C and 27, the Company must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this Clause in relation to the proposed development. This obligation operates in relation to all proposals submitted on or after the date that is 7 months after the date when a plan is first provided under this Clause.
- (6) During the currency of this Agreement the Company shall implement the plan provided under this Clause.
- (7) The Company shall:
 - (a) in every contract entered into with a third party where the third party has an

obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this Clause; and

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

- (4) by deleting clause 13(1)(ii) and substituting the following paragraph:

"(ii) on fine ore sold or shipped separately as such at the rate of:

- (A) 5.625% of the f.o.b. value, for ore shipped prior to or on 30 June 2012;
- (B) 6.5% of the f.o.b. value, for ore shipped during the period from 1 July 2012 to 30 June 2013 (inclusive of both dates); and
- (C) 7.5% of the f.o.b. value, for ore shipped on or after 1 July 2013;

- (5) in clause 15C by:

- (a) deleting in subclause (1) "'LAA" means the *Land Administration Act 1997* (WA)";

- (b) inserting after subclause (3)(c) the following new paragraph:

"(d) Without limiting subclause (9), the Minister may waive the requirement under this Clause for the Company to obtain and to furnish the consent of a title holder if the title holder has refused to give the required consent and the Minister is satisfied that:

- (i) the title holder's affected land is or was subject to a miscellaneous licence granted under the Mining Act 1978 for the purpose of a railway to be constructed and operated in accordance with this Agreement; and

- (ii) in the Minister's opinion, the title holder's refusal to give the required consent is not reasonable in all the circumstances including having regard to:
 - (A) the rights of the Company in relation to the affected land as the holder of the miscellaneous licence, relative to its rights as the holder of the sought Special Railway Licence or Lateral Access Road Licence (as the case may be); and
 - (B) the terms of any agreement between the Company and the title holder.";
- (c) deleting in subclause (4)(a) the comma after "the provisions of this Agreement" and substituting "and"; and
- (d) in subclause (7):
 - (i) deleting all words in paragraph (c) after "at the date of such inclusion"; and
 - (ii) inserting after paragraph (k) the following new paragraph:
 - "(l) The provisions of clause 24(2a) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this Clause.";
- (6) in clause 23 by:
 - (a) inserting at the end of subclause (1) the following new paragraph:

"Notwithstanding Clause 15A(2)(b)(iv), detailed proposals may refer to activities on tenure which is proposed to be granted pursuant to this subclause (1) as if that tenure was granted pursuant to this Agreement (but this does not limit the powers or discretions of the Minister under this Agreement or

the Minister responsible for the administration of any relevant Act with respect to the grant of the tenure).";

- (b) in subclause (2), inserting after "The provisions of this subclause" the words "and subclauses (2b) and (2c)";
- (c) in subclause (2a), deleting "subclause (1)" and substituting "subclauses (1), (2b) and (2c)"; and
- (d) inserting after subclause (2a) the following new subclauses:

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

- (2b) (a) The Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Eligible Existing Tenure becoming held pursuant to this Agreement on such conditions as the Minister sees fit (including, without limitation and notwithstanding the Mining Act 1978 and the LAA, as to the surrender of land, the submission of detailed proposals and the variation of the terms and conditions of the Eligible Existing Tenure (including for the Eligible Existing Tenure to be held pursuant to this Agreement and for the more efficient use of the Relevant Land)) and the Minister may from time to time vary such conditions in order to extend any specified time for the doing of any thing or otherwise with the agreement of the Company.
- (b) Eligible Existing Tenure the subject of an approval by the Minister under this subclause will be held by the Company pursuant to this Agreement:
 - (i) if the Minister's approval was not given subject to conditions, on and

from the date of the Minister's notice of approval;

- (ii) unless paragraph (iii) applies, if the Minister's approval was given subject to conditions, on the date on which all such conditions have been satisfied; and
- (iii) if the Minister's approval was given subject to a condition requiring that the Company submit detailed proposals in accordance with this Agreement, on the later of the date on which the Minister approves proposals submitted in discharge of that specified condition and the date upon which all other specified conditions have been satisfied, but the Company is authorised to implement any approved proposal to the extent such implementation is consistent with the then terms and conditions of the Eligible Existing Tenure pending the satisfaction of any conditions relating to the variation of the terms or conditions of the Eligible Existing Tenure. Where this paragraph (iii) applies, prior to any approval of proposals and satisfaction of other conditions, the relevant tenure will be treated for (but only for) the purposes of clause 15A(2)(b)(iv) as tenure held pursuant to this Agreement.

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

- (2c) The Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Special Advance Tenure being granted to the Company pursuant to this Agreement if:
- (a) the Company proposes to submit detailed proposals under this Agreement (other than under Clause 15C) to construct works installations or facilities on the Relevant Land and the Company's request is so far as is practicable made, unless the Minister approves otherwise, no less than 6 months before the submission of those detailed proposals; and
 - (b) the Minister is satisfied that it is necessary and appropriate that Special Advance Tenure, rather than tenure granted under or pursuant to the other provisions of this Agreement, be used for the purposes of the proposed works installations or facilities on the Relevant Land,

and if the Minister does so approve:

- (c) notwithstanding the Mining Act 1978 or the LAA, the appropriate authority or instrumentality of the State shall obtain the consent of the Minister to the form and substance of the Special Advance Tenure prior to its grant (which for the avoidance of doubt neither the State nor the Minister is obliged to cause) to the Company; and
- (d) if the Company does not submit detailed proposals relating to construction of the relevant works installations or facilities on the Relevant Land within 24 months after

the date of the Minister's approval or such later time subsequently allowed by the Minister, or if submitted the Minister does not approve such detailed proposals, the Special Advance Tenure (if then granted) shall be surrendered at the request of the Minister.

- (2d) The decisions of the Minister under subclauses (2b) and (2c) shall not be referable to arbitration and any approval of the Minister under this Clause shall not in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State."; and

(7) in clause 24 by:

- (a) deleting in subclause (2) all words after "other railways which now exist"; and
- (b) inserting after subclause (2) the following new subclause:

"Crossings over Railway

- (2a) For the purposes of livestock and infrastructure such as roads, railways, conveyors, pipelines, transmission lines and other utilities proposed to cross the land the subject of the said railway the Company shall:
- (i) if applicable, give its consent to, or otherwise facilitate the grant by the State or any agency, instrumentality or other authority of the State of any lease, licence or other title over land the subject of the said railway so long as such grant does not in the Minister's opinion unduly prejudice or interfere with the activities of the Company under this Agreement; and
- (ii) on reasonable terms and conditions allow access for the construction and operation of

Notes

- ¹ This is a compilation of the *Iron Ore (Hope Downs) Agreement Act 1992* 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 (Hope Downs) Agreement Act 1992</i>	62 of 1992	11 Dec 1992	11 Dec 1992 (see s. 2)
Reprint 1: The <i>Iron Ore (Hope Downs) Agreement Act 1992</i> as at 23 Jan 2004			
<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)
<i>Iron Ore Agreements Legislation Amendment Act (No. 2) 2010</i> Pt. 5	61 of 2010	10 Dec 2010	11 Dec 2010 (see s. 2(c))
<i>Iron Ore Agreements Legislation Amendment Act 2011</i> Pt. 5	61 of 2011	14 Dec 2011	15 Dec 2011 (see s. 2(b))

Defined terms

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

Defined term	Provision(s)
Agreement.....	3
the First Variation Agreement	3
the Second Variation Agreement	3