

Western Australia

## **Iron Ore (Yandicoogina) Agreement Act 1996**

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As at 07 May 2004

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7 May 2004

Western Australia

## Iron Ore (Yandicoogina) Agreement Act 1996

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Western Australia

## Iron Ore (Yandicoogina) Agreement Act 1996

**An Act to ratify, and authorise the implementation of, an agreement between the State and Hamersley Iron-Yandi Pty. Ltd. and Hamersley Iron Pty. Ltd. relating to the establishment and operation of an iron ore mine in the central Hamersley Range.**

**1. Short title**

This Act may be cited as the *Iron Ore (Yandicoogina) Agreement Act 1996*<sup>1</sup>.

**2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent<sup>1</sup>.

**3. Interpretation**

In this Act —

*Agreement* means the agreement, a copy of which is set out in Schedule 1, and includes that agreement as amended from time to time in accordance with clause 33 of the agreement.

**4. Agreement ratified and implementation authorised**

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

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- (3) Without limiting or otherwise affecting the *Government Agreements Act 1979*, the Agreement operates and takes effect despite any other written law or law.

## Schedule 1 — Agreement

[s. 3]

**THIS AGREEMENT** is made this day 22 of October 1996

BETWEEN

**THE HONOURABLE RICHARD FAIRFAX COURT**, B. Com., M.L.A.,  
Premier of the State of Western Australia, acting for and on behalf of the said  
State and its instrumentalities from time to time (hereinafter called “the State”)  
of the first part

**HAMERSLEY IRON-YANDI PTY LIMITED** A.C.N. 009 181 793 a  
company incorporated in Western Australia and having its registered office at  
Level 22, Central Park, 152 - 158 St George’s Terrace, Perth (hereinafter called  
“the Company” in which term shall be included its successors and permitted  
assigns) of the second part and

**HAMERSLEY IRON PTY LIMITED** A.C.N. 004 558 276 a company  
incorporated in the State of Victoria and having its registered office in the State  
of Western Australia at Level 22, Central Park 152 - 158 St. George’s Terrace,  
Perth (hereinafter called “Hamersley”) of the third part.

W H E R E A S:

- (a) the Company has established within the lands the subject of Exploration Licences Nos. E47/4 and E47/6 to E47/10 inclusive iron ore of tonneages and grades sufficient to warrant economic recovery and marketing;
- (b) the Company has put forward a project outline for a mining operation which will have capacity to produce up to 15,000,000 tonnes of iron ore per annum for transportation from the mining lease as markets develop and which will provide accommodation for the mine workforce by way of facilities established in the vicinity of the mining lease; and
- (c) the parties hereto have agreed to enter into this Agreement for the purpose of assisting the establishment of the mining operation as described above and providing a framework for managing future changes to the project, particularly in relation to production and workforce increases and changes in workforce accommodation arrangements.

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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 workforce;

**“Acquisition Act”** means the *Land Acquisition and Public Works Act 1902*;

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

**“approved proposal”** means a proposal approved or determined under this Agreement;

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

**“Clause”** means a clause of this Agreement;

**“commencement date”** means the date the Bill referred to in Clause 3 comes into operation as an Act;

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

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

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



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

“**iron ore**” includes beneficiated ore;

“**Land Act**” means the *Land Act 1933*;

“**Land Tenure Plan**” means the plan marked “A” initialled by or on behalf of the parties hereto for the purpose of identification;

“**laws relating to native title**” means laws applicable from time to time in Western Australia in respect of native title and includes the NTA;

“**loading port**” means the port of Dampier or if iron ore is not shipped, or is not shipped from that port, then such port (which may include the port of Dampier) as the Minister may determine 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 1995*;

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

“**metallised agglomerates**” means the product of a pyrometallurgical iron ore reduction process which has a composition of not less than 85% (eighty five per cent) total iron excluding carbon;

“**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;

“**mine workforce**” means the Company’s workforce engaged for the Company’s activities on the mine site but does 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;

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

“**mining lease**” means the mining lease, granted pursuant to Clause 11 and includes any renewal thereof and according to the requirements of the context describes the area of land demised as well as the instrument by which it is demised;

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

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

“**month**” means calendar month;

“**native title**” and “**native title rights and interests**” have the meaning given to them in the NTA;

“**notice**” means notice in writing;

“**NTA**” means the *Native Title Act 1993* (Commonwealth);

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

“**private roads**” means the roads referred to in subclause (1) of Clause 15 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 State and the Company 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;

“**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. (1) In this Agreement —

- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
  - (b) power given under any clause other than Clause 35 to extend any period or date shall be without prejudice to the power of the Minister under Clause 35;
  - (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;
  - (e) one gender includes the other genders; and
  - (f) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.
- (2) Nothing in this Agreement shall be construed to exempt the State or the Company from compliance with, or to require the State or the Company to do anything contrary to, any law 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 law relating to native title.
- (3) 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.

Ratification and Operation

3. (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1996 or such later date as may be agreed between the parties hereto.

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- (2) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation until the Bill referred to in subclause (1) has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (3) If before 31 December 1996 the said Bill has not commenced to operate as an Act then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (4) 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

4. (1) The Company shall continue its field and office engineering, environmental, heritage, market and finance studies and other matters necessary for the purposes of this Clause and to enable it to finalise and to submit to the Minister the detailed proposals referred to in Clause 6.
- (2) The Company shall keep the State fully informed in writing quarterly as to the progress and results of its operations under subclause (1) and shall supply to the State such information in relation thereto as the Minister may request.
- (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.

Surveys of lands

5. (1) For the purposes of Clause 4 and to the extent reasonably necessary to enable the Company to carry out its obligations under that Clause and to carry out surveys of land and other

works in relation to its proposed activities under this Agreement and for the purpose of complying with and making applications with respect to land under the *Aboriginal Heritage Act 1972* (for all of which purposes the Company shall be deemed to be within the expression “the owner of any land” in section 18 of that Act), but subject to the adequate protection of the environment (including flora and fauna) and the land affected (including improvements thereon) the Company and its agents and contractors in relation to its proposed activities under this Agreement may, subject to sections 82 and 83A of the Acquisition Act and authorisations pursuant to those sections, exercise the powers set out in those sections as if such activities were a work under that Act.

- (2) The land to be granted pursuant to this Agreement, whether under the Land Act or the Mining Act, will be drawn from within the areas coloured red and blue on the Land Tenure Plan and such other land as may be agreed between the State and the Company.

Company to submit proposals

6. (1) Subject to the provisions of this Agreement the Company shall on or before 31 December 1997 submit to the Minister 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 up to 15,000,000 tonnes of iron ore per annum for transportation from the mining lease and the transport and shipment of iron ore produced which proposals shall make provision 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 —

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- (a) the mining and recovery of iron ore including mining, crushing, screening, handling, transport and storage of iron ore and plant facilities and any beneficiation or further processing of iron ore proposed to be carried out;
- (b) a railway between the mining lease and Hamersley's existing railway from Dampier to Marandoo and works ancillary to or connected with the railway including fencing (if any) and crossing places;
- (c) roads within the mining lease and roads serving the mining lease;
- (d) temporary accommodation and ancillary facilities for the mine workforce on or in the vicinity of the mining lease and housing or other appropriate accommodation and facilities elsewhere for the Company's workforce;
- (e) water supply and disposal;
- (f) energy supplies;
- (g) storage and ship loading of iron ore;
- (h) mine aerodrome on or in the vicinity of the mining lease and any other aerodrome facilities and services;
- (i) any other works, services or facilities desired by the Company;
- (j) 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;
- (k) any leases, licences, easements and other titles to land required from the State; and
- (l) 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 him, shall be submitted separately and in any order as to any matter or matters mentioned in subclause (1).

Additional submissions

- (3) 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.

Consideration of proposals

7. (1) In respect of each proposal pursuant to subclause (1) of Clause 6 the Minister shall —
- (a) approve of the proposal without qualification or reservation; or
  - (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 6 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 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

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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 6 give notice to the Company of his decision in respect to the proposals, PROVIDED THAT —
- (a) where a proposal is to be assessed under section 40(1)(b) of the EP Act the Minister shall only give notice to the Company of this decision in respect to the proposal within 2 months after service on him of an authority under section 45(7) of the EP Act; and
- (b) where implementation of a proposal by the State will require the State to take any native title rights and interests the Minister shall only give notice to the Company of his decision in respect to the proposal within 2 months of the process of taking such native title rights and interests by the State being completed.

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.

Effect of non-approval of proposals

- (6) Notwithstanding that under subclause (1) any proposals of the Company are approved by the Minister or determined by arbitration award, unless each and every such proposal and matter is so approved or determined by 31st December 1997 or by such extended date or period if any as the Company shall be granted pursuant to the provisions of this Agreement then the Minister may give to the Company 12 months notice of intention to determine this Agreement and unless before the expiration of the said 12 months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of Clause 39.

Implementation of proposals

- (7) The Company shall implement the approved proposals in accordance with the terms thereof.

Variation of proposals

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- (8) Notwithstanding Clause 33 the Minister may during the implementation of approved proposals approve variations to those proposals.

Extension of periods

- (9) The periods set forth in subclause (1) of Clause 6 and subclause (6) of this Clause will be extended (in addition to any extension granted pursuant to Clause 34 or 35) upon request of either the Company or the State for such reasonable period or periods as may be necessary from time to time to enable either of them to comply with laws relating to native title.

Termination of Agreement

- (10) If either the Company or the State considers the establishment of the mining operations as envisaged in subclause (1) of Clause 6 should not proceed having regard to matters arising out of laws relating to native title or by reason of claims or objections lodged under laws relating to native title, that party shall consult with the other in regard thereto. Subject to such consultation, either of them may, at any time before production of iron ore in commercial quantities is commenced, for reasons the subject of such consultation, determine this Agreement by notice to the other, whereupon this Agreement shall determine and the provisions of Clause 39 will apply.

Overall development

8. (1) Having regard to the geographical relationship and physical association of the mining lease with other iron ore deposits in and to the general development of the central Hamersley Range area, the Company in its initial proposals under Clause 6 and any additional proposals pursuant to Clause 9 (other than a proposal under that Clause to increase production of iron ore where the total production after such increase will not exceed 15,000,000 tonnes of iron ore per annum for transportation from the mining lease and the proposal does not involve any significant variation to the mine infrastructure) or Clause 10 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 central Hamersley Range area having regard to then existing iron ore operations and facilities and to other existing infrastructure including the Great Northern Highway; and
  - (c) an open town or other appropriate housing and accommodation arrangements to service the iron ore mines and other developments in the central Hamersley Range 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, planning 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

9. (1) If the Company at any time during the continuance of this Agreement desires 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 subclause (1) of Clause 6 as the Minister may require.
- (2) The provisions of Clause 6 and Clause 7 (other than subclauses (5)(a) and (6) of Clause 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.

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Limits on mining

10. (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 workforce exceed 150 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 workforce beyond that specified in subclause (1) 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 subclause (1) of Clause 6).
- (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. 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 the 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;
- (iv) the provisions of Clause 20; or
- (v) the provisions of Clause 23.
- (3) The Company shall not seek approval in principle to proposals in regard to the production of more than 30 million tonnes of iron ore per annum for transportation from the mining lease unless the Minister in accordance with subclause (4) of Clause 23 has approved or is deemed to have approved

proposals submitted under subclause (2) of that Clause for the establishment within the State of plant for the production of metallised agglomerates or under subclause (6) of that Clause for an alternative project in lieu of the Company's obligations in respect of the establishment of plant for the production of metallised agglomerates under that Clause or unless the Minister otherwise agrees for the purpose of this subclause to receive a notice under subclause (2)(a).

- (4) (a) If the Minister approves in principle a proposed increase the Company must within three 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 9 shall apply to detailed proposals submitted pursuant to this subclause.
- (5) Any proposal under this Clause to increase the annual tonnage to be produced or the number of the mine workforce shall specify the proposed increase and on and after approval or determination of any such proposal pursuant to paragraph (b) of subclause (4) the provisions of this Clause shall apply mutatis mutandis to the increased tonnage or number of the mine workforce as the case may be and also to any subsequent desires of the Company for an increase in the tonnage or mine workforce.

#### Mining lease

- 11. (1) 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 (1) of Clause 6 have been approved or determined and the Company has complied with the provisions of subclause (3) of Clause 6, for a mining lease of land within the land depicted by the area coloured red on the Land Tenure Plan then held by the Company or by Hamersley under the exploration licences referred to in recital (a) of this Agreement the State shall subject to the conditions set out in the following subclauses and insofar

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as is permitted by laws relating to native title cause a mining lease of the land so applied for to be granted to the Company.

Conditions of grant of mining lease

- (2) The grant of the mining lease referred to in subclause (1) shall be subject to the conditions that —
- (a) the mining lease may be in respect of one or more pieces of land whether contiguous or not provided that the total area leased shall not exceed 777 square kilometres, and each piece of land shall be in the form of a rectangle or as near thereto as is practicable;
  - (b) the mining lease may be granted before the area leased has been surveyed but in that case shall be granted subject to the condition that the area leased shall be surveyed by or on behalf of the State at the Company's expense and shall accord with that survey;
  - (c) the mining lease shall permit the Company to mine iron ore only;
  - (d) the mining lease shall only be granted on the surrender of Exploration Licences Nos. E47/4 and E47/7 to E47/10 and any part of Exploration Licence No. E47/6 which is to be included in the mining lease;
  - (e) the rental payable in respect of the mining lease shall be that prescribed from time to time in the Mining Act otherwise than under regulation 28A;
  - (f) from and after the date 15 years after the first transportation from the mining lease of iron ore on which royalty is payable under subclause (2) of Clause 12 the Company, in addition to the rental already referred to in paragraph (e), shall pay to the State an additional rental in respect of the mining lease equal to 25 cents per tonne on all iron ore in respect of which royalty is payable under subclause (2) of Clause 12, such additional rental to be paid in respect of the same periods and at the same times as such royalty is payable; and

- (g) the mining lease shall be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but in the form of the Schedule hereto.

Term of mining lease

- (3) 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

- (4) 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

- (5) The Company shall lodge with the Department of Minerals and Energy at Perth mineral exploration reports in accordance with section 115A of the Mining Act but shall not be required to lodge any operations reports in accordance with that section.

Access over mining lease

- (6) 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.

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Surrender of part of mining lease

- (7) 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.

Additional areas

- (8) Notwithstanding the provisions of the Mining Act the Company may from time to time during the currency of this Agreement apply to the Minister for areas held by the Company under a mining tenement granted under the Mining Act to be included in the mining lease but so that the total area of the mining lease 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 in their discretion 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 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 mining 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.
- (9) The Company shall not mine or carry out other activities (other than exploration, bulk sampling and testing) on any area of areas added to the mining lease pursuant to subclause (8) of this Clause unless and until proposals with respect thereto are approved or determined pursuant to the subsequent provisions of this Clause.
- (10) If the Company desires to commence mining of iron ore or to carry out any other activities (other than as aforesaid) on the said areas it shall give notice of such desire to the Minister and shall within 2 months of the date of such notice (or thereafter



within such extended time as the Minister may allow as hereinafter provided) and subject to the provisions of this Agreement submit to the Minister to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister) with respect to such mining or other activities as additional proposals pursuant to Clause 9.

Other mining tenements

- (11) (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 the subject of 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 is likely unduly to 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.

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- (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 notwithstanding any recommendation of any mining registrar or warden, by notice served on the mining registrar with whom the application was lodged, refuse the application.
- (iii) Before making a determination pursuant to subparagraph (ii) of this paragraph the Minister for Mines may request the warden of the mineral field or district thereof in which is situated the mining tenement for which the application was made 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 no mining registrar shall 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 mining registrar 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 subparagraph (iii) of 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 for a mining tenement lodged with a

mining registrar 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 subparagraph (i) of paragraph (c) of this subclause and any matters raised by the Company before the warden pursuant to subparagraph (iii) of paragraph (c) of this subclause or to subparagraph (ii) of this paragraph.
- (e)
  - (i) 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).
  - (ii) On the expiration or sooner determination of any such mining tenement or, if that tenement is a prospecting licence, exploration licence or retention licence and a substitute tenement is granted in respect thereof pursuant to an application made under section 49 or section 67 or section 70L of the Mining Act, then on the expiration or sooner determination of the substitute title the land the subject of such mining tenement or substitute title as the case may be shall thereupon be deemed to be part of the land in the mining lease (with appropriate adjustment of rental) and unless the Minister otherwise directs shall be subject to the terms and conditions of the mining lease and this Agreement.

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Royalties

12. (1) In this Clause —

**“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 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;

**“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;

**“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.

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- (2) 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 —
- (a) for the period ending on 31 December 2010 —
    - (i) on lump ore at the rate of 7.5% of the f.o.b. value;
    - (ii) on fine ore at the rate of 5.625% of the f.o.b. value;
    - (iii) on beneficiated ore at the rate of 5.0% of the f.o.b. value; and
    - (iv) on any other iron ore at the rate of 7.5% of the f.o.b. value,
  - (b) for the period commencing on 1 January 2011 — on all iron ore at the rate or rates from time to time prescribed under the Mining Act,

PROVIDED HOWEVER in respect to paragraphs (a) and (b) of this subclause —

- (c) where iron ore sold or intended to be sold as fine ore includes lump ore nominally sized minus 10 millimetres the royalty payable on such iron ore shall be the royalty payable on fine ore; and
- (d) where iron ore from the mining lease is processed in the said State into pellets, sinter, metallised agglomerates or steel by the Company or a third party the rates applicable pursuant to this subclause shall be reduced in respect of that iron ore by —
  - (i) 0.5% in respect of iron ore processed into pellets or sinter;
  - (ii) 1.0% in respect of iron ore processed into metallised agglomerates;
  - (iii) 2.0% in respect of iron ore processed into steel.

- (3) 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 beneficiated ore produced and all fine ore, lump ore and other iron ore the subject of royalty hereunder and 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 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 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

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(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 or 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.

Protection and management of the environment

13. (1) The Company shall in respect of the matters referred to in paragraph (1) of subclause (1) of Clause 6 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 as the case may be for rehabilitation and the protection and management of the environment.
- (2) The Company shall during the currency of this Agreement submit to the Minister —
- (a) not later than the 30th day of June, 1998 and the 30th day of June in each year thereafter (except those years in which a comprehensive report is required to be submitted pursuant to paragraph (b) of this subclause) a brief report concerning investigations and research carried out pursuant to subclause (1) and the implementation by the Company of the elements of the approved proposals relating to the rehabilitation, protection and management



of the environment in the year ending the 30th day of April immediately preceding the due date for the brief report; and

- (b) not later than the 30th day of June 2000 and the 30th day of June in each third year thereafter if so requested by the Minister from time to time, a comprehensive report on the result of such investigations and research and the implementation by the Company of the elements of the approved proposals relating to the rehabilitation, protection and management of the environment during the three year period ending the 30th day of April immediately preceding the due date for the detailed report and the programme proposed to be undertaken by the Company during the following three year period in regard to investigation and research under subclause (1) and the implementation by the Company of the elements of the approved proposals relating to the rehabilitation protection and management of the environment.
- (3) The Minister may within 2 months of receipt of a detailed report pursuant to paragraph (b) of subclause (2) notify the Company that he —
  - (a) approves the report and programme (if any); or
  - (b) requires amendment of the report and/or programme (if any) for the ensuing 3 years; or
  - (c) requires additional detailed proposals to be submitted for the rehabilitation, protection and management of the environment.
- (4) The Company shall within 2 months of receipt of a notice pursuant to paragraph (b) 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 him on his 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 he requires additional detailed proposals to be

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submitted for the rehabilitation, protection and management of the environment.

- (6) The Company shall within 2 months of receipt of a notice pursuant to paragraph (c) of subclause (3) or subclause (5) of this Clause submit to the Minister additional detailed proposals as required and the provisions of subclauses (1), (2), (3), (4) (5) and (7) of Clause 7 shall *mutatis mutandis* apply to those proposals.

Use of local labour professional services and materials

14. (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 contractor'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,

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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.

Roads — Private roads

15. (1) Except with the consent of the Minister private roads providing access to the mining lease shall be restricted to —
- (a) a road between the mining lease and the accommodation area;
  - (b) a road between the mining lease and the mine aerodrome serving the mining lease; and
  - (c) a railway maintenance road within the railway lease.

Construction of private roads

- (2) The Company shall —
- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in its activities hereunder;
  - (b) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles other than those engaged upon the Company's activities and its invitees and licensees from using the private roads; and
  - (c) at any place where any private roads are constructed by the Company so as to cross any public roads or private railways provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the owner of the private railway as the case may be.

Maintenance of public roads

- (3) 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

- (4) 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 (3) 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

- (5) 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

16. (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 without the approval of the Minister propose or construct any mine aerodrome of a standard greater

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than the standard requirements for aircraft with a maximum take off weight of 20,000 kg.

Electricity — purchase of electricity

17. The Company may in accordance with its approved proposals hereunder and subject to the provisions of the *Electricity Act 1945* and any other relevant Act —
- (a) install and operate without cost to the State, at an appropriate location or locations equipment of sufficient capacity to generate electricity for its activities on the mine site; and
  - (b) transmit power within the mine site subject to the provisions of the *Electricity Act 1945* and any other relevant Act.

Water — mining lease

18. (1) (a) To the fullest extent reasonably practicable the Company shall use water obtained from dewatering on the mining lease for its purposes under this Agreement.
- (b) 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.

Water requirements

- (2) 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 them to be reasonable are hereinafter called "the mining water requirements") and amounts required to be withdrawn in dewatering.

Rights to water and water services

- (3) Except as otherwise specifically provided for under this Clause the mining water requirements shall be obtained in accordance with laws applicable from time to time in Western Australia in respect of rights in water and the supply of water and water services.

Grant of licence

- (4) Subject to and in accordance with the approved proposals and the *Rights in Water and Irrigation Act 1914* the State shall grant or cause to be granted to the Company a licence to develop and draw from the source specified in those proposals, at the Company's cost but without fee, the mining water requirements (less any withdrawal amounts included therein) and withdrawal amounts 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 prove hydrologically inadequate to meet the mining water requirements on a continuous basis, 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 in the opinion of the Minister that source is hydrologically capable of meeting as aforesaid.

Minimisation of water consumption

- (5) 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.

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Provision of accommodation/housing

19. (1) Accommodation for the mine workforce at the mine site 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 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) all accommodation units on the mine site shall be removed from the mine site upon the mine workforce being accommodated elsewhere than at the mine site;
  - (c) only the mine 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) 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 10;
  - (b) to substantially add to, upgrade, replace or relocate accommodation units; or
  - (c) to use its own workforce in place of a contractor workforce or to use a contractor workforce in place of its own workforce in its mining activities; or



- (d) 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 workforce (including those members of the mine 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 central Hamersley Range 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 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) As and when required by the Minister after consultation with the relevant local authority, the Company shall confer with the Minister with a view 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.

#### Railway

20. (1) Subject to and in accordance with approved proposals 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 approval proposals (but subject to the provisions of the Acquisition Act, to the extent that they are

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applicable) a standard gauge railway specified in the approved proposals connecting the mining lease to Hamersley's existing Dampier - Marandoo railway and shall also construct inter alia any necessary deviations, loops, spurs, 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 (all of which together with the specified railway is referred to in this Agreement as "the railway") and shall operate the 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.

- (2) The Company shall during the continuance of this Agreement operate the 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 railway.
- (3) The Company shall if and when reasonably required so to do transport passengers and carry the freight of the State and third parties over the railway where it can do so without unduly prejudicing or interfering with its activities under this Agreement 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 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 railway.
- (4) In relation to its use of the railway when transporting passengers or carrying freight pursuant to subclause (3) the Company shall not be deemed to be a common carrier at law or otherwise.

- (5) The Company shall not enter into any agreement or other arrangement for the use of or the carriage of iron ore or iron ore products of the Company over any railway not established by the Company pursuant to this Agreement (other than Hamersley's existing Dampier - Marandoo railway) without the prior approval of the State thereto and to the proposed terms and conditions (including charges) for such use or carriage.
- (6) 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 this Clause 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 there being any dispute as to the reasonableness of such requirement) then as may be decided by arbitration hereunder.
- (7) (a) Where the railway crosses the Great Northern Highway the Company shall be responsible at its cost for the construction, operation and maintenance of level crossing warning signs and such extra warnings to Highway users as may be reasonably required by the Commissioner of Main Roads.
- (b) The Company and the State shall co-operate and consult with each other on additional works and actions which may be required from time to time to ensure safe operation of the railway crossing referred to in paragraph (a) and the Company shall be responsible at its cost for carrying out such additional works and actions.

Lands

21. (1) On application made by the Company, not later than 3 months after a proposal submitted pursuant to subclause (1) of Clause 6 has been approved or determined or not later than 3 months

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after proposals submitted under subclause (1) of Clause 9 or subclause (3) of Clause 10 have been approved or determined the State shall in accordance with the Company's approved proposals and insofar as is permitted by laws relating to native title grant to the Company, or arrange to have the appropriate authority or other interested instrumentality of the State grant from within the land depicted by the area coloured blue on the Land Tenure Plan and in respect of other land approved for the purposes of this Clause by the Minister, 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, leases and where applicable licences for the use of land, 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, aerodrome, railway, private roads, tailing areas, water pipelines, pumping installations and reservoirs, power transmission lines, radio and communication sites, plant site areas and pits for obtaining stone, sand, clay and gravel.

Modification of Land Act

- (2) For the purpose of this Agreement in respect of any land the subject of or proposed to be the subject of a lease or licence granted by the State to the Company under subclause (1) —
- (a) the Minister for Lands may lease to the Company any lot being town or suburban lands without offering that land to the public;
  - (b) the Minister for Lands may grant a lease of land to the Company without giving notice of the Company's application for that land or of the purpose or term for which it is proposed to be granted;
  - (c) an application for land made by the Company under subclause (1) shall take priority over any other application made for that land under the Land Act;
  - (d) it shall not be a prerequisite to the validity of any transfer, mortgage or sublease permitted under this Agreement of any lease or licence that the approval to the transfer, mortgage or sublease of the Minister for Lands or of an

officer of the department of the State government assisting him in the administration of the Land Act be obtained;

- (e) the Minister for Lands may grant occupancy rights over land on such terms and conditions as the Minister for Lands may determine;
- (f) the Minister for Lands may grant leases or licences for terms or periods and on terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, terms and conditions and 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.

Stone, sand, clay and gravel

- (3) The State shall in accordance with approved proposals grant to the Company a mining lease or mining leases for the obtaining of stone, sand, clay and gravel for the construction of works the subject of approved proposals, such mining lease or mining leases to be granted under and except as otherwise provided herein subject to the Mining Act but limited in term to a reasonable period required for construction of the works and rehabilitation in accordance with the proposals. No royalty shall be payable under the Mining Act in respect of stone, sand, clay and gravel obtained from any such mining lease.

Resumption for the purposes of this Agreement

- 22. (1) The State, pursuant to the Acquisition Act may, for the purpose of conferring interests therein on the Company, take and resume any land within the areas coloured red and blue on the Land Tenure Plan the subject of approved proposals and any other land as specified in approved proposals and may grant leases, licences or easements in respect of the whole or portions of that

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land to the Company. The Company shall pay to the State, on demand, the costs to the State of and incidental to the taking of any land pursuant to this Clause, including the cost of any compensation due to any holder of native title or native title rights and interests in the land.

- (2) For the purposes of this Agreement and in the Acquisition Act when construed for the purposes of this Agreement, a reference to “land” shall be read as extending to any land or to any portion of any land and to the subsoil, surface or airspace relating thereto and to any estate, right, title, easement, lease, licence, privilege, native title right or interest or other interest, in, over, under, affecting, or in connection with that land or any portion, stratum or other specified sector of that land.

Further processing

23. (1) During the continuance of this Agreement, the Company shall undertake ongoing investigations into the technical and economic feasibility of establishing within the said State plant for the production of metallised agglomerates and shall on or before the earlier of —
- (a) the date 7 years after the date on which iron ore from the mining lease (other than iron ore transported solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) is first transported from the mining lease; and
  - (b) the date on which the 100 millionth tonne of such iron ore from the mining lease is transported from the mining lease submit to the Minister detailed reports of such investigations to the date of the report and its program, budget and timetable for the preparation of the proposals referred to in subclause (2).
- (2) The Company shall —
- (a) on or before the earlier of —
    - (i) the date 10 years after the date on which iron ore from the mining lease (other than iron ore

transported solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) is first transported from the mining lease; and

- (ii) the date on which the 150 millionth tonne of such iron ore from the mining lease is transported from the mining lease (which date is hereinafter called “the m.a. date”); or
- (b) if proposals under this subclause are postponed for a 3 year period pursuant to subclause (3), on or before the third or subsequent third anniversary as the case may require of the m.a. date,

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

- (3) (a) If the Company believes that the submission of proposals pursuant to subclause (2) on the m.a. date or a third anniversary of the m.a. date where a 3 year postponement has been allowed pursuant to this subclause should be postponed because the establishment of the said plant is not then economically feasible, the Company may apply to the Minister not more than 6 months nor less than 3 months before the date for submission of those proposals for postponement for a period of 3 years of the date for submission of proposals under subclause (2) and shall provide to the Minister with such application all relevant information and supporting data available to the Company relating to such application.
- (b) The Company shall supply to the Minister such other information and data as the Minister may reasonably require in relation to its application.

**Schedule 1**

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- (c) If the Minister is satisfied that there are reasonable grounds for the postponement applied for the requirement on the Company to submit proposals under this subclause shall be postponed for a period of 3 years.
  - (d) If the Minister notifies the Company that he does not agree with its submission then at the request of the Company made within two (2) months after receipt of the Company of the notification from the Minister, the Minister will appoint a tribunal (hereinafter called “the Tribunal”) consisting of one person if the Company and the State agree on that person or, failing such agreement consisting of three persons (one of whom shall be a Judge of the Supreme Court of Western Australia or failing him or her a Commissioner appointed pursuant to section 49 of the *Supreme Court Act 1935* or a Queens Counsel and the others of whom shall have appropriate technical or economic qualifications) to decide in accordance with clause 37 whether or not the metallising operation is feasible and the Tribunal in reaching its decision shall take into account (*inter alia*) the Company’s submission, the amount of capital required for the metallising operation, the availability of that capital at that time on reasonable terms and conditions, the likelihood of the Company being able to sell metallised agglomerates at sufficient prices and in sufficient quantities and for a sufficient period to justify the metallising operation having regard to the amount and rate of return on total funds that would be involved in or in connection with the production and sale of metallised agglomerates and the weighted average cost of capital to the Company.
- (4) The Minister shall within two (2) months of receipt of proposals under subclause (2) give to the Company notice of his approval of those proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto, and in the latter case shall afford the Company an opportunity to consult with and to submit new proposals to the Minister. If within two (2) months of receipt of such notice agreement is not reached as to the proposals, the Company may within a further period of two (2) months elect by notice to the



State to refer to arbitration as provided in Clause 37 any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have approved the proposals of the Company.

- (5) The Company shall (except to the extent otherwise agreed with the Minister) before the end of the respective times specified in subclause (2) complete the construction of plant in accordance with the Company's proposals as finally approved or determined under this Clause and shall thereafter continue to produce metallised agglomerates from such plant at not less than the rates provided for in subclause (2) for so long as the Company continues to ship from the said State iron ore from the mining lease.
- (6) (a) The Company may at any time before the time for submission of proposals pursuant to subclause (2) apply to the Minister for approval that an alternative project be accepted by the State in lieu of all or some part of the Company's obligations in respect of the establishment of plant for the production of metallised agglomerates pursuant to this Clause.
- (b) Where the Minister approves an application under paragraph (a) of this subclause the Company shall implement the alternative project in accordance with that approval and upon completion thereof, or earlier with the agreement of the Minister, the provisions of subclause (2) or that part of those provisions which pursuant to the said approval are to be satisfied by the alternative project shall cease to apply PROVIDED FURTHER that the provisions of subclause (2) shall cease to apply upon completion of an alternative project which represents, or alternative projects which together represent, economic development in the said State (either alone or in the aggregate with other alternative projects) of value approximately equivalent to a plant for the production of two million tonnes of metallised agglomerates per annum.

**Schedule 1**

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- (7) For the purposes of subclause (6) “alternative project” means a project under which the Company or a related body corporate (within the meaning of the Corporations Law) of the Company undertakes to establish and operate plant in the said State which processes and adds to the value of minerals mined in the said State.

Training levy exemption

24. The provisions of the *Building and Construction Industry Training Levy Act 1990* and the *Building and Construction Industry Training Fund and Levy Collection Act 1990* shall have no application to the Company when acting pursuant to and in accordance with this Agreement.

Commonwealth licences and consents

25. (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

26. The State shall ensure that without affecting the liabilities of the parties under this Agreement the State and the Company 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.

Zoning

27. The State shall ensure after consultation with the relevant local authority that the mining lease and any lands the subject of any lease, licence, easement or other title 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

28. 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 1995*, be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate.

No discriminatory charges

29. 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

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deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement.

No resumption

30. 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 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.

Indemnity

31. 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 or its servants, agents, or contractors are negligent in carrying out work for the Company pursuant to this Agreement.

Assignment

32. (1) Subject to the provisions of this Clause the Company may at any time assign, mortgage, charge, sublet or dispose of to any person with the consent of the Minister the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of the mining lease or any other lease, licence, easement, 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 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 Mining Act, and the *Transfer of Land Act 1893*, insofar as the same or any of them may apply —
- (a) no assignment, mortgage, charge, sublease or disposition made or given pursuant to this Clause of or over the mining lease or any other lease, licence, easement 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

**Schedule 1**

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- (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

33. (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 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

34. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the temporary suspension of continuing obligations under this Agreement that may be caused by or arise from circumstances beyond the power

and control of the party responsible for the performance of those obligations including without limiting the generality of the foregoing delays or any such temporary suspension as aforesaid caused by or arising from act of God, force majeure, earthquakes, floods, storms, tempest, washaways, fire (unless caused by the actual fault or privity of the party responsible for such performance), act of war, act of public enemies, riots, civil commotions, strikes, lockouts, stoppages, restraint of labour or other similar acts (whether partial or general), acts or omissions of the Commonwealth, shortages of labour or essential materials, reasonable failure to secure contractors, delays of contractors, inability to sell iron ore or metallised agglomerates profitably, factors due to overall world economic conditions, factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen PROVIDED 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

35. 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.

Consultation

36. 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.

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Arbitration

37. (1) Any dispute or difference between the State and the Company arising out of or in connection with this Agreement, the construction of this Agreement or as to the rights, duties or liabilities of either of them under this Agreement or as to any matter to be agreed upon between them under this Agreement shall in default of agreement between them and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the *Commercial Arbitration Act 1985* and notwithstanding section 20(1) of that Act each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.
- (2) Except where otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State, the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of either of the parties to the arbitration to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties to the arbitration and an award may in the name of the Minister grant any further extension or variation for that purpose.

Determination of Agreement

38. (1) If—
- (a) (i) the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations of the Company in this Agreement or in the mining lease or any other lease, licence, easement 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 matter is not remedied within a period of 180 days after notice is given by the State as provided in subclause (2) or, if the matter is referred to arbitration, then within the period mentioned in subclause (3); or

- (b) the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 3 months from the date of such liquidation the interest of the Company is assigned to an assignee approved by the Minister under Clause 32

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

- (2) The notice to be given by the State in terms of paragraph (a) of subclause (1) shall specify the nature of the default, abandonment or repudiation so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Company and all such assignees, mortgagees, chargees and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment, mortgage, charge or disposition has been effected in terms of Clause 32 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

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dispute and that the Company was not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.

- (4) If the default referred to in paragraph (a) of subclause (1) shall not have been remedied within a period of 180 days after receipt of the notice referred to in that subclause or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents, workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant, machinery, equipment and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

Effect of cessation or determination of Agreement

39. (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 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 any 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 the State nor the Company shall have

any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.

- (2) Except as otherwise determined by the Minister and subject to the provisions of subclause (3), upon the cessation or determination of this Agreement all buildings, erections and other improvements erected on any land then occupied by the Company under the mining lease or any other lease, licence, easement 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) (a) In the event of the Company immediately prior to the cessation or determination of this Agreement or within 3 months therefrom 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 State and the Company or failing agreement determined by arbitration under this Agreement.
- (b) If the State does not exercise the right or option referred to in paragraph (a) the Company may on the expiry of the 3 month period referred to, or sooner with the consent of the Minister, remove the fixed or movable plant and equipment to which the right or option refers.

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Term of Agreement

40. Subject to the provisions of subclauses (6) and (10) of Clause 7 and Clauses 38 and 39, this Agreement shall expire on the expiration or sooner determination or surrender of the mining lease.

Notices

41. 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.

Stamp Duty

42. The State shall exempt the following instruments from any stamp duty which, but for the operation of this Clause, would or might be assessed as chargeable on them —
- (a) this Agreement;
  - (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee, any licence, lease, easement or other title;
  - (c) any assignment, sublease or disposition (other than by way of mortgage or charge) made by the Company arising from a proposal submitted to the Minister and consented to by the Minister under subclause (1) of Clause 32,

PROVIDED THAT this Clause shall not apply to any instrument or other document executed or made more than 2 years after the commencement date.

Guarantee

43. Notwithstanding any addition to or deletion or variation of the provisions of this Agreement or any time or other indulgence granted by the State to the Company whether or not notice thereof is given to Hamersley by the State, Hamersley hereby guarantees to the State the due performance by the Company of all of the Company's obligations to be performed hereunder.

Applicable law

44. 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 (YANDICOOGINA) AGREEMENT ACT 1996*  
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 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

**Schedule 1**

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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

HAMERSLEY IRON-YANDI PTY LIMITED ACN 009 181 793 a company incorporated in Western Australia and having its registered office at Level 22, Central Park, 152 - 158 St. George’s Terrace, Perth.

SECOND SCHEDULE

The Agreement made between the State of Western Australia and Hamersley Iron-Yandi Pty Limited and ratified by the *Iron Ore (Yandicoogina) Agreement Act 1996*.

THIRD SCHEDULE

(Description of land:)

Locality:

Mineral Field: Area, etc.:

Being the land delineated on Survey Diagram No. and  
recorded in the Department of Minerals and Energy, Perth.

FOURTH SCHEDULE

All petroleum as defined in the *Petroleum Act 1967* on or below the surface of the land the subject of this lease is reserved to the Crown in right of the State of Western Australia with the right of the Crown in right of the State of Western Australia and any person lawfully claiming thereunder or otherwise authorised to do so to have access to the land the subject of this lease for the purpose of searching for and for the operations of obtaining petroleum (as so defined) in any part of the land.

FIFTH SCHEDULE

(Date of commencement of the lease).

SIXTH SCHEDULE

(Any further conditions or stipulations).

IN witness whereof the Minister for Mines has affixed his seal and set his hand hereto this day of 19

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

SIGNED by the said )  
**THE HONOURABLE** )  
**RICHARD FAIRFAX COURT** ) R F Court  
in the presence of: )

W Ireland

MINISTER FOR RESOURCES DEVELOPMENT

Colin Barnett

**Schedule 1**

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THE COMMON SEAL of )  
**HAMERSLEY IRON-YANDI** )  
**PTY LIMITED** was hereunto )  
affixed by authority of the ) C.S.  
Directors in the presence of: )

Director M Richmond

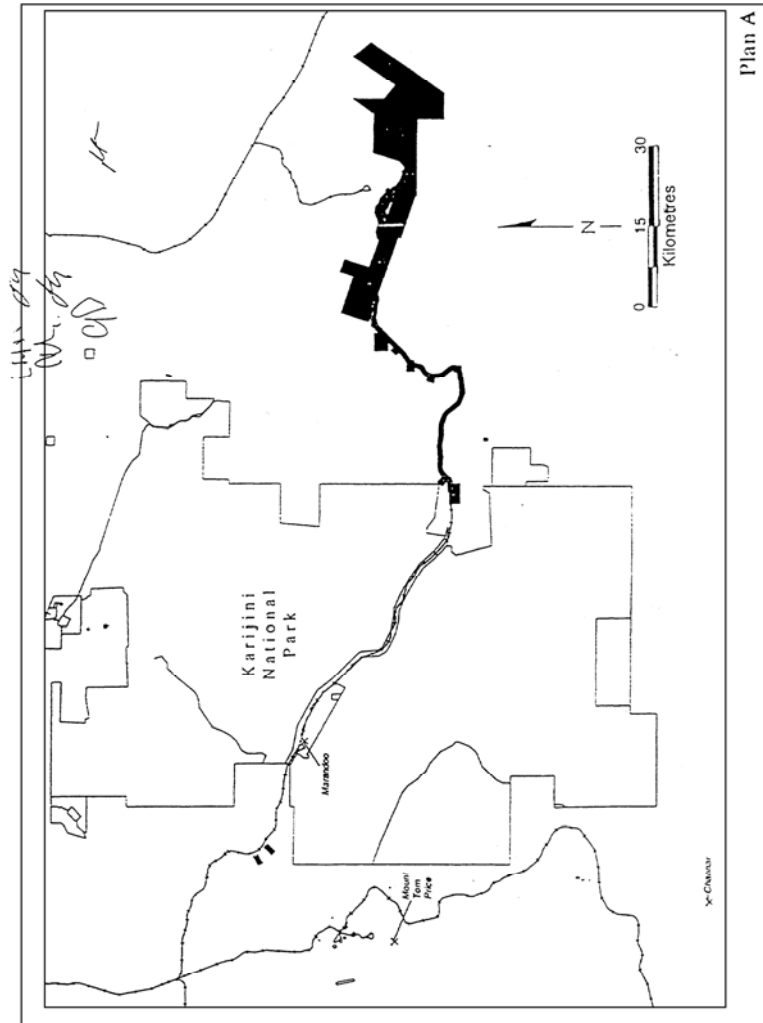
Secretary L M Graefe

THE COMMON SEAL of )  
**HAMERSLEY IRON PTY** )  
**LIMITED** was hereunto affixed by )  
authority of the Directors in ) C.S.  
the presence of: )

Director M Richmond

Secretary L M Graefe





**Notes**

- <sup>1</sup> This is a reprint as at 7 May 2004 of the *Iron Ore (Yandicoogina) Agreement Act 1996*. The following table contains information about that Act and any reprint.

**Compilation table**

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Iron Ore (Yandicoogina) Agreement Act 1996</i>	65 of 1996	11 Nov 1996	11 Nov 1996 (see s. 2)
<b>Reprint 1: The <i>Iron Ore (Yandicoogina) Agreement Act 1996</i> as at 7 May 2004</b>			

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