

Western Australia

Iron Ore (Mount Newman) Agreement Act 1964

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Iron Ore (Mount Newman) Agreement Act 1964

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Iron Ore (Mount Newman) Agreement Act 1964

An Act to approve an agreement relating to iron ore deposits at or near Mount Newman, and for incidental and other purposes.

1. Short title and citation

This Act may be cited as the *Iron Ore (Mount Newman) Agreement Act 1964*¹.

2. Interpretation

In this Act, unless the contrary intention appears —

the Agreement means the agreement of which a copy is set out in the First Schedule, and, if that agreement is added to or varied or any of its provisions are cancelled, in accordance with the provisions thereof, includes the agreement as so altered from time to time and, except for the purposes of section 3(1), a reference to the Agreement shall be construed as a reference to the agreement as from time to time altered by the First Variation Agreement, the Second Variation Agreement, the Third Variation Agreement, the Fourth Variation Agreement, the Fifth Variation Agreement, the *Iron Ore Agreements Legislation Amendment Act 2010* Part 8 and the Sixth Variation Agreement;

the Company has the same meaning as it has in, and for the purposes of, the Agreement;

the Fifth Variation Agreement means the agreement a copy of which is set out in the Sixth Schedule;

the First Variation Agreement means the agreement a copy of which is set forth in the Second Schedule;

s. 3

the Fourth Variation Agreement means the agreement a copy of which is set out in the Fifth Schedule;

the Second Variation Agreement means the agreement a copy of which is set forth in the Third Schedule;

the Sixth Variation Agreement means the agreement a copy of which is set out in the Seventh Schedule;

the Third Variation Agreement means the agreement a copy of which is set out in the Fourth Schedule.

[Section 2 amended by No. 12 of 1979 s. 2; No. 51 of 1990 s. 4; No. 8 of 1994 s. 4; No. 57 of 2000 s. 20; No. 34 of 2010 s. 18; No. 61 of 2010 s. 27.]

3. Agreement approved and provisions to take effect

- (1) The Agreement is approved.
- (2) Notwithstanding any other Act or law, and without limiting the effect of subsection (1) —
 - (a) the Company shall be permitted to enter upon the lands mentioned in paragraph (c) of clause 2 of the Agreement, to the extent, and for the purposes, by that paragraph provided; and
 - (b) the provisions of subclause (2) of clause 3 of the Agreement shall take effect.
- (3) The provisions of section 96 of the *Public Works Act 1902*, do not apply to any railway constructed pursuant to the Agreement.
- (4) The provisions of section 277(5) of the *Mining Act 1904*², do not apply to any renewal of the rights of occupancy granted pursuant to paragraph (a) of clause 2 of the Agreement.

3A. First Variation Agreement approved

The First Variation Agreement is approved.

[Section 3A inserted by No. 12 of 1979 s. 3.]

3B. Second Variation Agreement approved and ratified

- (1) The Second Variation Agreement is approved and ratified.
- (2) For the purposes of implementing relevant proposals made by the Company and approved pursuant to the Agreement, and to give full effect to the object of the Second Variation Agreement and the powers and authorisations therein conferred or referred to, the provisions of —
 - (a) the *Land Act 1933*³;
 - (b) the *Local Government (Miscellaneous Provisions) Act 1960*⁴;
 - (c) the *Country Areas Water Supply Act 1947*; and
 - (d) the *Country Towns Sewerage Act 1948*,

shall be read and construed with such modifications as are necessary.

[Section 3B inserted by No. 12 of 1979 s. 4.]

3C. Third Variation Agreement

- (1) The Third Variation Agreement is ratified and its implementation is authorised.
- (2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Third Variation Agreement shall operate and take effect notwithstanding any other Act or law.

[Section 3C inserted by No. 51 of 1990 s. 5.]

3D. Fourth Variation Agreement

- (1) The Fourth Variation Agreement is ratified and its implementation is authorised.
- (2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Fourth Variation

s. 3E

Agreement shall operate and take effect notwithstanding any other Act or law.

[Section 3D inserted by No. 8 of 1994 s. 5.]

3E. Fifth Variation Agreement

- (1) The Fifth Variation Agreement is ratified.
- (2) The implementation of the Fifth Variation Agreement is authorised.
- (3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Fifth Variation Agreement is to operate and take effect despite any other Act or law.

[Section 3E inserted by No. 57 of 2000 s. 21.]

4A. Variation of Agreement to increase rates of royalty

- (1) In this section —
the Agreement means the agreement a copy of which is set out in the First Schedule —
 - (a) as varied from time to time in accordance with its provisions; and
 - (b) as varied by these agreements —
 - (i) the First Variation Agreement;
 - (ii) the Second Variation Agreement;
 - (iii) the Third Variation Agreement;
 - (iv) the Fourth Variation Agreement;
 - (v) the Fifth Variation Agreement.
- (2) Clause 9(2)(j) of the Agreement is varied —
 - (a) in subparagraph (ii) by deleting “3.75%” and inserting —

5.625%

(b) in subparagraph (iia)(B) by deleting “3.75%” and inserting —

5.625%

(c) in subparagraph (iii) by deleting “3.25%” and inserting —

5%

(3) Clause 9(2)(j)(ii), (iia)(B) and (iii) of the Agreement as varied by subsection (2) operate and take effect despite —

(a) any other provision of the Agreement; and

(b) any other agreement or instrument; and

(c) any other Act or law.

(4) Nothing in this section affects the amount of royalty payable under clause 9 of the Agreement in respect of any period before the commencement of the *Iron Ore Agreements Legislation Amendment Act 2010* Part 8.

[Section 4A inserted by No. 34 of 2010 s. 19.]

4B. Sixth Variation Agreement

(1) The Sixth Variation Agreement is ratified.

(2) The implementation of the Sixth Variation Agreement is authorised.

(3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Sixth Variation Agreement is to operate and take effect despite any other Act or law.

[Section 4B inserted by No. 61 of 2010 s. 28.]

s. 4C

4C. State empowered under clause 9E(9)(a)

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

[Section 4C inserted by No. 61 of 2010 s. 28.]

4. By-laws

- (1) The Governor may make by-laws, for the purposes of, and in accordance with, the Agreement.
- (2) By-laws made pursuant to this section —
 - (a) shall be published in the *Government Gazette*;
 - (b) take effect and have the force of law from the date they are so published or from such later date as is fixed by the by-laws;
 - (c) may prescribe penalties not exceeding \$100; and
 - (d) are not subject to the provisions of section 36 of the *Interpretation Act 1918*⁵, but shall be laid before each House of Parliament within 6 sitting days of such House next following the publication of the by-laws in the *Government Gazette*.

[Section 4 amended by No. 113 of 1965 s. 8.]

5. Certain provisions of *Mining Act 1904*², etc., and *Transfer of Land Act 1893*, not to apply to floating charge

Notwithstanding the provisions of section 82 of the *Mining Act 1904*² and of regulations 192 and 193 made thereunder and of section 81D of the *Transfer of Land Act 1893*, —

- (a) no mortgage or charge in a form commonly known as a “floating charge” made or given, whether made or given before or after the commencement of this section, pursuant to clause 19 of the Agreement over any lease, licence, reserve or tenement granted under or pursuant to the Agreement by the Company or any assignee or appointee who has executed, and is for the time being

bound by deed of covenant made pursuant to clause 19 of the Agreement; and

- (b) no transfer or assignment, whether made or given before or after the commencement of this section, in exercise of any power of sale contained in such mortgage or charge,

shall require any approval or consent other than such consent as may be necessary under clause 19 of the Agreement and no such mortgage or charge shall be rendered ineffectual as an equitable charge by the absence of any approval or consent otherwise than as required by clause 19 of the Agreement or because the same is not registered under the provisions of the *Mining Act 1904*².

[Section 5 inserted by No. 63 of 1967 s. 4.]

6. *Partition Act 1878*⁶ not to apply to certain fee simple, etc.

No fee simple, lease, sub-lease, licence or other title or right granted or assigned under or pursuant to the Agreement shall be subject to or capable of partition including partition under the *Partition Act 1878*⁶, or under any order of any Court of competent jurisdiction under that Act or otherwise or be subject to the making of an order for sale under that Act.

[Section 6 inserted by No. 63 of 1967 s. 4.]

[Heading deleted by No. 19 of 2010 s. 42(2).]

First Schedule — Iron Ore (Mount Newman) Agreement

[s. 2]

[Headings inserted by No. 63 of 1967 s. 5; amended by No. 19 of 2010 s. 4.]

THIS AGREEMENT under seal made the twenty-sixth day of August, One thousand nine hundred and sixty-four BETWEEN THE HONOURABLE DAVID BRAND, M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called “the State”) of the one part AND MT. NEWMAN IRON ORE COMPANY LIMITED a company incorporated under the *Companies Act 1961* of the State of Western Australia and having its registered office and principal place of business at 25 William Street Perth in the State of Western Australia (hereinafter called “the Company” which expression will include the successors and assigns of the Company including where the context so admits the assignees and appointees of the company under clause 19 hereof) of the other part.

WHEREAS:

- (a) The Company (being satisfied from investigations which prior to 1st day of June 1964 cost over three hundred thousand pounds (£300,000) that the mining areas defined in clause 1 hereof contain iron ore of tonnages and grades sufficient to warrant economic recovery and marketing) desires to carry out certain investigations relating to the mining transport by rail and shipment of iron ore from the mining areas and also to the entering into a contract or contracts for the export sale of that ore.
- (b) The Company having heretofore commenced investigation of the feasibility of establishing within the State of Western Australia a plant for secondary processing agrees to review this matter from time to time with a view to its being in a position to submit to the State proposals for such establishment as hereinafter provided.
- (c) The Company agrees to investigate in due course the feasibility of establishing within the State of Western Australia an integrated iron and steel industry and to review this matter from time to time with a view to its being in a

position to submit to the State proposals for such establishment as hereinafter provided.

NOW THIS AGREEMENT WITNESSETH: —

Interpretation ⁷

1. In this Agreement subject to the context —

“associated company” means —

- (a) any company having a paid-up capital of not less than one million pounds (£1,000,000) notified in writing by the Company to the Minister which is incorporated in the United Kingdom the United States of America or the Commonwealth of Australia and which —
 - (i) is a subsidiary of the Company within the meaning of the term “subsidiary” in section 6 of the *Companies Act 1961*;
 - (ii) holds directly or indirectly not less than twenty per cent (20%) of the issued ordinary share capital of the Company;
 - (iii) is promoted by the Company or by any company that holds directly or indirectly not less than twenty per cent (20%) of the issued ordinary share capital of the Company for all or any of the purposes of this Agreement and in which the Company or such other company holds not less than twenty per cent (20%) of the issued ordinary share capital; or
 - (iv) is related within the meaning of that term in the aforesaid section to the Company or to any company in which the Company holds not less than twenty per cent (20%) of the issued ordinary share capital, and
- (b) any company approved in writing by the Minister for the purposes of this Agreement which is associated directly or

indirectly with the Company in its business or operations hereunder;

“commencement date” means the date referred to as the commencement date in clause 7(3) hereof;

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

“Company’s wharf” means the wharf to be constructed by the Company pursuant to this Agreement for the shipment of iron ore from the mineral lease or (except for the purposes of the definition of “harbour”) other the temporary wharf for the time being approved by the Minister as the Company’s wharf for the purposes hereof during the period to which such approval relates;

“deposits townsite” means the townsite to be established on or near the mining areas pursuant to this Agreement;

“direct shipping ore” means iron ore which has an average pure iron content of not less than sixty per cent. (60%) which will not pass through a one half (½) inch mesh screen and which is sold without concentration or other beneficiation other than crushing and screening;

“export date” means the earlier of the following dates namely —

- (a) the date or extended date if any referred to in clause 9(1) of this Agreement;
- (b) the date when the Company first exports iron ore hereunder (other than iron ore shipped solely for testing purposes);

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

“fine ore” means iron ore which has an average pure iron content of not less than sixty per cent. (60%) which will pass through a one half (½) inch mesh screen and which is sold without concentration or other beneficiation other than crushing and screening;

“fines” means iron ore (not being direct shipping ore or fine ore) which will pass through a one half (½) inch mesh screen;

“f.o.b. revenue” means the price for iron ore from the mineral lease the subject of any shipment or sale and payable by the purchaser thereof to the Company or an associated company 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 ore shall be placed on ship at the Company’s wharf 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 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 Company’s wharf; and
- (7) all import taxes by the country of the port of discharge;

“harbour” means the port or harbour at or near Port Hedland or such other port or place mutually agreed on and serving the Company’s wharf;

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

“iron ore contracts” means the contract or contracts referred to in clause 5(2)(b) hereof;

“Land Act” means the *Land Act 1933*;

“mineral lease” means the mineral lease referred to in clause 8(1)(a) hereof and includes any renewal thereof;

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

“mining areas” means the areas delineated and coloured red on the Plan marked “A” initialled by or on behalf of the parties hereto for the purposes of identification;

“Minister” means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the administration of the Ratifying Act 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;

“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“port townsite” means the townsite to be established pursuant to this Agreement near the harbour;

“Ratifying Act” means the Act to ratify this Agreement and referred to in clause 3 hereof;

“said State” means the State of Western Australia;

“secondary processing” means concentration or other beneficiation of iron ore other than by crushing or screening and includes thermal electrostatic magnetic and gravity processing and agglomeration, pelletization or comparable changes in the physical character of iron ore;

“special lease” means a special lease or license to be granted in terms of this Agreement under the Ratifying Act the Land Act or the *Jetties Act 1926* and includes any renewal thereof;

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

“ton” means a ton of two thousand two hundred and forty (2,240) lbs. net dry weight;

“townsite” in relation to the townsite to be established near the harbour means a townsite (whether or not constituted and defined under section 10 of the Land Act) primarily to facilitate the Company’s operations in and near the harbour and for employees of the Company and in relation to the mining areas means such a townsite or townsites or any other townsite or townsites which is or are established by the Company for the purposes of its operations and employees on or near the mining areas in lieu of a townsite constituted and defined under section 10 of the Land Act;

“wharf” includes any jetty structure;

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

reference in this Agreement to an Act shall include the amendments to such 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;

power given under any clause of this Agreement other than clause 23 hereof to extend any period or date shall be without prejudice to the power of the Minister under the said clause 23;

marginal notes shall not affect the interpretation or construction hereof⁷;

the phases in which it is contemplated that this Agreement will operate are as follows —

- (a) Phase 1 — the period from the execution hereof by the parties hereto until the commencement date;
- (b) Phase 2 — the period from the commencement date until a plant for secondary processing or an integrated iron and steel industry is established by the Company hereunder or by another company or party as referred to in clause 11 or clause 12 hereof whichever first occurs;
- (c) Phase 3 — (operative if the Company commences secondary processing before establishing an integrated iron and steel industry hereunder) — the period from the commencement of secondary processing by the Company hereunder until the

Company has established an integrated iron and steel industry hereunder which period shall include a continuation of Phase 2 operations; and

- (d) Phase 4 — the period after the Company has established an integrated iron and steel industry hereunder which period shall include a continuation of Phase 2 operations.

Obligations of the State during Phase 1 ⁷

2. The State shall —

- (a) upon application by the Company at any time prior to the 31st day of March, 1965 (and surrender of the then existing rights of occupancy already granted in respect of any portions of the mining areas) cause to be granted to the Company and to the Company alone rights of occupancy for the purposes of this Agreement (including the sole right to search and prospect for iron ore) over the whole of the mining areas under section 276 of the Mining Act at a rental at the rate of four pounds (£4) per square mile per annum payable quarterly in advance for the period expiring on the 31st December, 1965 and shall then and thereafter subject to the continuance of this Agreement cause to be granted to the Company as may be necessary successive renewals of such last-mentioned rights of occupancy (each renewal for a period of twelve (12) months at the same rental and on the same terms) the last of which renewals notwithstanding its currency shall expire —
 - (i) on the date of application for a mineral lease by the Company under clause 8(1)(a) hereof;
 - (ii) at the expiration of one month from the commencement date;
 - (iii) on the determination of this Agreement pursuant to its terms; or
 - (iv) on the day of the receipt by the State of a notice from the Company to the effect that the Company abandons and cancels this Agreement,

whichever shall first happen;

- (b) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage prior to the 15th day of November, 1964;
- (c) to the extent reasonably necessary for the purposes of clauses 4 and 5 hereof allow the Company to enter upon Crown lands (including land the subject of a pastoral lease) and survey possible sites for a harbour wharf railway townsite (both in or near the harbour and on or near the mining areas) stockpiling processing and other areas required for the purposes of this Agreement; and
- (d) at the request and cost of the Company co-operate with the Company in the discharge of its obligations under clause 4(1)(a) hereof.

Ratification and operation ⁷

3. (1) Clauses 8 9 10 (other than paragraphs (d) and (1) thereof) 11-21 both inclusive and 23 of this Agreement shall not operate unless and until the Bill to ratify this Agreement as referred to in clause 2(b) hereof is passed as an Act before the fifteenth day of November, 1964 or such later date if any as the parties hereto may mutually agree upon. If the Bill is not so passed before that date or later date (as the case may be) this Agreement will then cease and determine and neither of the parties hereto will have any claim against the other of them with respect to any matter or thing arising out of done performed or omitted to be done or performed under this agreement except as hereinafter provided in clause 10(d) hereof.

(2) If the Bill to ratify this Agreement is passed as an Act before the date or later date if any referred to in subclause (1) of this clause the following provisions of this clause shall notwithstanding the provisions of any Act or law thereupon operate and take effect namely —

- (a) the provisions of subclauses (1) (2) (3) and (4) of clause 8 the proviso to paragraph (a) of subclause (2) of clause 9 subclause (3) of clause 9 paragraphs (a) (f) (g) (h) (i) (k) and (m) of clause 10 and clauses 20 22 23 and 26 shall take effect as though the same had been brought into force and had been enacted by the Ratifying Act;
- (b) subject to paragraph (a) of this subclause the State and the Minister respectively shall have all the powers discretions and authorities

necessary or requisite to enable them to carry out and perform the powers discretions authorities and obligations conferred or imposed upon them respectively hereunder;

- (c) no future Act of the said State will operate to increase the Company's liabilities or obligations hereunder with respect to rents or royalties; and
- (d) the State may as for a public work under the *Public Works Act 1902* resume any land or any estate or interest in land required for the purposes of this Agreement and may lease or otherwise dispose of the same to the Company.

Obligations of Company during Phase 1 ⁷

4. (1) The Company at an estimated total cost as from the 1st June, 1964 of not less than three hundred and fifty thousand pounds (£350,000) shall with all reasonable diligence continue to do or shall carry out and by the 31st December, 1964 (or such extended date if any as the Minister may approve) shall complete the matters hereinafter in this subclause mentioned and everything necessary to enable it to finalise and to submit to the Minister the detailed proposals and other matters referred to in clause 5(2)(a) hereof. The matters first referred to in this subclause are —

- (a) a thorough geological and (as necessary) geophysical investigation and proving of the iron ore deposits in the mining areas and the testing and sampling of such deposits;
- (b) a general reconnaissance of the various sites of proposed operations pursuant to the Agreement;
- (c) an engineering investigation of the route for a railway from the mining areas to the harbour and wharf installation for the export of the iron ore;
- (d) an engineering investigation of a harbour site at or near Port Hedland or such other port or place mutually agreed on and wharf site therein for the purposes of the Company but having regard to the proper development use and capacity of the harbour as a whole by persons and corporations other than the Company;
- (e) an investigation of suitable water supplies for the townsites and harbour or port services;

- (f) the planning of suitable townsites in consultation with the State but having due regard to the general development of the port townsite and (if and to the extent applicable) the deposits townsite for use by others as well as the Company; and
- (g) metallurgical and market research.

(2) The Company shall keep the State fully informed at least quarterly commencing within one (1) quarter after the execution hereof as to the progress and results of the Company's operations under subclause (1) of this clause.

(3) If the State concurrently carries out its own investigations and reconnaissances in regard to all or any of the matters mentioned in subclause (1) of this clause or any alternative harbour site the Company shall co-operate with the State therein and so far as reasonably practicable will consult with the representatives or officers of the State and make full disclosures and expressions of opinion regarding matters referred to in this subclause.

(4) The Company will employ and retain expert consultant engineers to investigate report upon and make recommendations in regard to the sites for and design of the Company's wharf (including areas for installations stockpiling and other purposes in the harbour area) reasonably required by the Company under this Agreement but in such regard the Company will require the consultant engineers to have full regard for the general development of the harbour area and the dredging thereof and of approaches thereto with a view to the reasonable use by others of the harbour area and approaches and the Company will furnish to the State copies of such report and recommendations. When submitting to the Minister detailed proposals as referred to in clause 5(2)(a) hereof in regard to the matters mentioned in this subclause the Company will so far as reasonably practicable ensure that the detailed proposals —

- (a) do not materially depart from the report and recommendations of the consultant engineers;
- (b) provide for the best overall development of the harbour area; and
- (c) disclose any conditions of user and where alternative proposals are submitted the Company's preferences in regard thereto.

5. (1) As soon as possible after the execution of this Agreement the Company will submit to the Minister its proposal for the location of a site for

the harbour and the Minister will within one month notify the Company of his approval or otherwise or may submit an alternative proposal.

Company to submit proposals ⁷

(2) Subject to agreement being reached (as to which clause 24 hereof shall not apply) as to the site for the harbour then by the 31st day of December, 1964 (or such extended date if any as the Minister may approve) the Company will submit to the Minister —

- (a) to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect so far as relevant —
 - (A) to the mining from the mining areas (or so much thereof as shall be comprised within the mineral lease) by the Company during the three (3) years next following the commencement of such mining with a view to the transport and shipment of the iron ore mined and its outline proposals with respect to such mining during the next following seven (7) years; and
 - (B) to the transport and shipment of iron ore to be mined by the Company hereunder during the operation of Phase 2 of this Agreement —

and including the location area lay-out design number 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 —

- (i) the harbour and harbour development including dredging and depositing of spoil the provision of navigational aids the Company's wharf (the plans and specifications for which wharf shall be submitted to and be subject to the approval of the State) the berth and swinging basin for the Company's use and harbour installations facilities and services all of which shall permit of adaptation so as to enable the use of the harbour and wharf by vessels having an ore-carrying capacity of not less than sixty thousand (60,000) tons;

- (ii) the railway between the mining areas and the Company's wharf and works ancillary to or connected with the railway and its proposed operation including fencing (if any) and crossing places;
- (iii) townsites on the mining areas and near the harbour and development services and facilities in relation thereto;
- (iv) housing;
- (v) water supply;
- (vi) roads (including details of roads in respect of which it is not intended that the provisions of clause 9(2)(b) shall operate); and
- (vii) any other works services or facilities proposed or desired by the Company;

and

- (b) (subject to the provisions of subclause (4) of this clause) satisfactory evidence firstly of the making or likelihood of making a suitable contract or suitable contracts for the sale by the Company hereunder and shipment from the Company's wharf of not less than fifteen million (15,000,000) tons of iron ore (and/or processed iron ore) from the mineral lease at not less than two million (2,000,000) tons in the first two (2) years next following the export date and in each succeeding year after the expiration of the said two (2) years at not less than one million (1,000,000) tons secondly of the availability of finance necessary for the fulfilment of the Company's proposals hereunder relating to the iron ore export project the subject of Phase 2 of this Agreement and thirdly of any necessary license to the Company from the Commonwealth to export hereunder iron ore the subject of the iron ore contracts in the quantities at the rate or rates and in the years stated in the contracts.

(3) The Company shall have the right to submit to the Minister its detailed proposals aforesaid in regard to a matter or matters the subject of any of the subparagraphs numbered (i) to (vii) inclusive of paragraph (a) of subclause (2) of this clause as and when the detailed proposals become finalised

by the Company PROVIDED THAT where any such matter is the subject of a subparagraph which refers to more than one subject matter the detailed proposals will relate to and cover each of the matters mentioned in the subparagraph PROVIDED FURTHER that the first detailed proposals submitted to the Minister relate to and cover the matters mentioned in subparagraph (i) of the said paragraph (a) of the said subclause (2) and that the last two detailed proposals submitted to the Minister relate to and cover the iron ore contracts and the finance necessary for the iron ore export project.

(4) If the Company should in writing and within the time later in this subclause mentioned request the Minister to grant an extension or any further extension of time beyond the 31st day of December, 1964 (or such later date if any previously granted or approved by the Minister) within which to make the iron ore contracts and then demonstrates to the satisfaction of the Minister that the Company has duly complied with its other obligations hereunder has genuinely and actively but unsuccessfully endeavoured to make the iron ore contracts on a competitive basis and reasonably requires an additional period for the purpose of making iron ore contracts the Minister will grant such extension as is warranted in the circumstances as follows —

- (a) for up to six (6) months on request made within one month of the 31st day of December, 1964;
- (b) if an extension is granted under paragraph (a) of this subclause then further for up to three (3) years on request made within one month of the expiration of the period of extension granted under the said paragraph (a);
- (c) if an extension is granted under paragraph (b) of this subclause then further for up to two (2) years on request made within one month of the expiration of the period of extension granted under the said paragraph (b) unless the Minister shows to the Company satisfactory evidence that some third party is able and willing if made the lessee of the mineral lease to obtain and duly fulfil that party's obligations under contracts for the sale of iron ore (or processed iron ore) from the leased land which contracts are comparable with iron ore contracts under this Agreement on terms from the State not more favourable on the whole (having regarded *inter alia* to initial expenditure) to that party than those applicable to the Company hereunder;

subject always and in every case to the condition that the Company duly complies (or complies to the satisfaction of the Minister) with its other obligations hereunder.

Consideration of other proposals under clause 5(2) ⁷

6. (1) Within two (2) months after receipt of the detailed proposals of the Company in regard to any of the matters mentioned in clause 5(2)(a) hereof the Minister shall give to the Company notice either of his approval of the proposals or alterations desired thereto and in the latter case shall afford to the Company opportunity to consult with and to submit new proposals to the Minister. The Minister may make such reasonable alterations to or impose such reasonable conditions on the proposals or new proposals (as the case may be) as he shall think fit having regard to the circumstances including the overall development and use by others as well as the Company but the Minister shall in any notice to the Company disclose his reasons for any such alteration or condition. Within two (2) months of the receipt of the notice the Company may elect by notice to the State to refer to arbitration and within two (2) months thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Company then unless the Company within three (3) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period of three (3) months cease and determine (save as provided in clause 10(d) hereof) but if the question is decided in favour of the Company the decision will 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.

(2) Within two (2) months after receipt of evidence from the Company with regard to the matters mentioned in clause 5(2)(b) hereof to the reasonable satisfaction of the Minister the State will give to the Company notice either that it is satisfied with such evidence (in which case the proposals in relation to those matters will be deemed approved) or not in which case the State shall afford the Company an opportunity to consult with and to submit further evidence to the Minister. If within thirty (30) days of receipt of such notice further evidence has not been submitted to the Minister's reasonable satisfaction and his approval obtained thereto the Company may within a further period of thirty (30) days elect by notice to the State to refer to arbitration as hereinafter provided and will within two (2) months thereafter refer to arbitration any

dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the dispute is decided against the Company then unless the Company within three (3) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period cease and determine (save as provided in clause 10(d) hereof) but if the question is decided in favour of the Company the decision will take effect as a notice by the Minister that he is so satisfied with and has approved the matter or matters the subject of the arbitration.

Extension of time ⁷

7. (1) The arbitrator arbitrators or umpire (as the case may be) of any submission to arbitration hereunder is hereby empowered upon application by either party hereto to grant any interim extension of time or date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of either or both parties hereunder and an award in favour of the Company may in the name of the Minister grant any further extension of time for that purpose.

(2) Notwithstanding that under clause 6 hereof any detailed proposals of the Company are approved by the State or the Minister or determined by arbitration award unless each and every such proposal and matter is so approved or determined by the 28th day of February, 1965 or by such extended date if any as the Company shall be entitled to or shall be granted pursuant to the provisions hereof then at any time after the said 28th day of February, 1965 or if any extension or extensions should be granted under clause 5(4) hereof or any other provision of this Agreement then on or after the expiration of the last of such extensions the Minister may give to the Company twelve (12) months notice of intention to determine this Agreement and unless before the expiration of the said twelve (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 10(d) hereof.

Commencement date ⁷

(3) Subject to the approval by the Minister or determination by arbitration as herein provided of each and every of the detailed proposals and matters referred to in clause 5(2) hereof the date upon which the last of those proposals of the Company shall have been so approved or determined shall be the commencement date for the purposes of this Agreement.

(4) If under any arbitration under clause 6 hereof the dispute is decided against the Company and subsequently but before the commencement date this Agreement ceases and determines the State will not for a period of three (3) years after such determination enter into a contract with any other party for the mining transport and shipment of iron ore from the mining areas on terms more favourable on the whole to the other party than those which would have applied to the Company hereunder if the question had been determined in favour of the Company.

Phase 2. Obligations of State⁷

8. (1) As soon as conveniently may be after the commencement date the State shall —

Mineral lease⁷

- (a) after application is made by the Company for a mineral lease of any part or parts (not exceeding in total area three hundred (300) square miles and in the shape of a parallelogram or parallelograms) of the mining areas in conformity with the Company's detailed proposals under clause 5(2)(a)(A) hereof as finally approved or determined cause any necessary survey to be made of the land so applied for (the cost of which survey to the State will be recouped or repaid to the State by the Company on demand after completion of the survey) and shall cause to be granted to the Company a mineral lease thereof for iron ore in the form of the Schedule hereto for a term which subject to the payment of rents and royalties hereinafter mentioned and to the performance and observance by the Company of its obligations under the mineral lease and otherwise under this Agreement shall be for a period of twenty-one (21) years commencing from the commencement date with rights to successive renewals of twenty-one (21) years upon the same terms and conditions but subject to earlier determination upon the cessation or determination of this Agreement PROVIDED HOWEVER that the Company may from time to time (without abatement of any rent then paid or payable in advance) surrender to the State all or any portion or portions (of reasonable size and shape) of the mineral lease;

Under Company's proposals ⁷

- (b) in accordance with the Company's proposals as finally approved or determined under clause 6 hereof and as require the State to accept obligations —

Lands ⁷

- (i) grant to the Company in fee simple or for such terms or periods and on such terms and conditions (including renewal rights) as subject to the proposals (as finally approved or determined as aforesaid) shall be reasonable having regard to the requirements of the Company hereunder and to the overall development of the harbour and access to and use by others of lands the subject of any grant to the Company and of services and facilities provided by the Company —

for nominal consideration — townsite lots;

at the peppercorn rental — special leases of Crown lands within the harbour area the townsites and the railway; and

at rentals as prescribed by law or are otherwise reasonable — leases rights mining tenements easements reserves and licenses in on or under Crown lands

under the Mining Act the *Jetties Act 1926* or under the provisions of the Land Act modified as in subclause (2) of this clause provided (as the case may require) as the Company reasonably requires for its works and operations hereunder including the construction or provision of the railway wharf roads airstrip water supplies and stone and soil for construction purposes; and

Services and facilities ⁷

- (ii) provide any services or facilities subject to the Company's bearing and paying the capital cost involved and reasonable charges for maintenance and operation except operation charges in respect of education hospital

and police services and except where and to the extent
that the State otherwise agrees —

subject to such terms and conditions as may be finally approved or determined as aforesaid PROVIDED THAT from and after the fifteenth anniversary of the export date or the twentieth anniversary of the date hereof whichever shall first occur (provided that the said twentieth anniversary shall be extended one (1) year for each year this Agreement has been continued in force and effect under clause 5(4) hereof) the Company will in addition to the rentals already referred to in this paragraph pay to the State during the currency of this Agreement after such anniversary as aforesaid a rental (which subject to its being payable by the Company to the State may from time to time at the option of the Company be payable in respect of such one or more of the special leases or other leases granted to the Company under this paragraph and remaining current) equal to two shillings and sixpence (2s. 6d.) per ton on all iron ore and iron ore concentrates in respect of which royalty is payable under clause 9(2)(j) hereof in any financial year such additional rental to be paid within three (3) months after shipment sale use or production as the case may be of the iron ore or iron ore concentrates SO NEVERTHELESS that where in respect of any such year the additional rental so payable is less than a minimum sum of one hundred and fifty thousand pounds (£150,000) the Company will within three (3) months after the expiration of that year pay to the State as further rental the difference between one hundred and fifty thousand pounds (£150,000) and the additional rental actually paid in respect of that year but any amount so paid in respect of any financial year in excess of the rental payable for that year at the rate of two shillings and sixpence (2s. 6d.) per ton as aforesaid shall be offset by the Company against any amount payable by it to the State above the minimum amounts payable to the State under this paragraph in respect of the two (2) financial years immediately following the financial year in respect of which the said minimum sum was paid; and

Other rights ⁷

- (c) on application by the Company cause to be granted to it such machinery and tailings leases (including leases for the dumping of

overburden) and such other leases licenses reserves and tenements under the Mining Act or under the provisions of the Land Act modified as in subclause (2) of this clause provided as the Company may reasonably require and request for its purposes under this Agreement on or near the mineral lease;

(2) For the purposes of subparagraph (i) of paragraph (b) and paragraph (c) of subclause (1) of this clause the Land Act shall be deemed to be modified by —

(a) the substitution for subsection (2) of section 45A of the following subsection:

(2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased;

(b) the deletion of the proviso to section 116;

(c) the deletion of section 135;

(d) the deletion of section 143;

(e) the inclusion of a power to offer for sale or leasing land within or in the vicinity of any townsite notwithstanding that the townsite has not been constituted a townsite under section 10; and

(f) the inclusion of a power to offer for sale or grant leases or licenses for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of for the terms or periods and upon the terms and conditions and in the forms referred to in the Act and upon application by the Company in forms consistent as aforesaid in lieu of in the forms referred to in the Act.

(3) the provisions of subclause (2) of this clause shall not operate so as to prejudice the rights of the State to determine any lease license or other right or title in accordance with the other provisions of this Agreement.

(4) The State further covenants with the company that the State —

Non-interference with Company's rights⁷

- (a) shall not during the currency of this Agreement register any claim or grant any lease or other mining tenement under the Mining Act or otherwise by which any person other than the Company or an associated company will obtain under the laws relating to mining or otherwise any rights to mine or take the natural substances (other than petroleum as defined in the *Petroleum Act 1936*) within the mineral lease unless the Minister reasonably determines that it is not likely to unduly prejudice or to interfere with the operations of the Company hereunder assuming the taking by the Company of all reasonable steps to avoid the interference;

No resumption⁷

- (b) subject to the performance by the Company of its obligations under this Agreement shall not during the currency hereof 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 said 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 purposes of this Agreement nor any of the lands the subject of any lease or license granted to the Company in terms of this Agreement AND without such consent (which shall not be unreasonably withheld) the State will 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 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 operations hereunder;

Labour requirements⁷

- (c) shall if so requested by the Company and so far as its powers and administrative arrangements permit use reasonable endeavours to assist the Company to obtain adequate and suitable labour for the construction and the carrying out of the works and operations referred to in this Agreement including suitable immigrants for that purpose;

No discriminatory rates⁷

- (d) except as provided in this Agreement shall not impose nor permit nor 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 operations of the Company in the conduct of the Company's business hereunder nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement;

Rights to other minerals⁷

- (e) shall where and to the extent reasonably practicable on application by the Company from time to time grant or assist in obtaining the grant to the Company of prospecting rights and mining leases with respect to limestone dolomite and other minerals reasonably required by the Company for its purposes under this Agreement; and

Consents to improvements on leases⁷

- (f) shall as and when required by the Company (but without prejudice to the foregoing provisions of this Agreement relating to the detailed proposals and matters referred to in clause 5(2) hereof) consent in writing where and to the extent that the Minister considers to be reasonably justified to the Company's making improvements for the purposes of this Agreement on the land comprised in any lease granted by the State to the Company pursuant to this Agreement PROVIDED THAT the Company shall also obtain any other consents legally required in relation to such improvements.

(5) The Company shall not have any tenant rights in improvements made by the Company on the land comprised in any lease granted by the State to the Company pursuant to this Agreement in any case where pursuant to clause 10(e) hereof such improvements will remain or become the absolute property of the State.

Phase 2 obligations of the Company⁷

To construct⁷

9. (1) The Company shall within three (3) years next following the commencement date (or within such extended period not exceeding a further two years as the Company may satisfy the Minister that the Company reasonably requires and the Minister approves), and at a cost of not less than thirty million pounds (£30,000,000) construct install provide and do all things necessary to enable it to mine from the mineral lease to transport by rail to the Company's wharf and to commence shipment therefrom in commercial quantities at an annual rate of not less than one million (1,000,000) tons of iron ore and without lessening the generality of this provision the Company shall within the aforesaid period or extended period as the case may be —

On mining areas⁷

- (a) construct install and provide upon the mineral lease or in the vicinity thereof mining plant and equipment crushing screening stockpiling and car loading plant and facilities power house workshop and other things of a design and capacity adequate to enable the Company to meet and discharge its obligations hereunder and under the iron ore contracts and to mine handle load and deal with not less than three thousand (3,000) tons of iron ore per diem such capacity to be built up progressively to not less than ten thousand (10,000) tons of iron ore per diem within three (3) years next following the export date;

To commence exports⁷

- (b) actually commence to mine transport by rail and ship from the Company's wharf iron ore from the mineral lease so that the average annual rate during the first two years shall not be less than one million (1,000,000) tons;

To construct railway⁷

- (c) subject to the State having assured to the Company all necessary rights in or over Crown lands available for the purpose construct in a proper and workmanlike manner and in accordance with recognised standards of railways of a similar nature operating under similar conditions and along a route approved or determined

under clause 6 hereof (but subject to the provisions of the *Public Works Act 1902* to the extent that they are applicable) a four feet eight and one-half inches (4' 8½") gauge railway (with all necessary signalling switch and other gear and all proper or usual works) from the mining areas to the Company's wharf and will provide for crossing places and the running of such railway with sufficient and adequate locomotives freight cars and other railway stock and equipment to haul at least one million (1,000,000) tons of iron ore per annum to the Company's wharf or as required for the purposes of this Agreement;

To make roads ⁷

- (d) subject to the State having assured to the Company all necessary rights in or over Crown lands or reserves available for the purpose construct by the said date such new roads as the Company reasonably requires for its purposes hereunder of such widths with such materials gates crossings and passovers for cattle and for sheep and along such routes as the parties hereto shall mutually agree after discussion with the respective shire councils through whose districts any such roads may pass and subject to prior agreement with the appropriate controlling authority (being a shire council or the Commissioner of Main Roads) as to terms and conditions the Company may at its own expense and risk except as otherwise so agreed upgrade or realign any existing road;

To construct wharf ⁷

- (e) construct the Company's wharf in accordance with plans and specifications for the construction thereof previously approved or determined under clause 6 hereof on the site previously approved or determined for the purpose; and

To carry out proposals ⁷

- (f) in accordance with the Company's proposals as finally approved or determined under clause 6 hereof and as require the Company to accept obligations —
- (i) dredge the berth at the Company's wharf and the channel and approaches thereto and any necessary swinging basin;

- (ii) lay out and develop the townsites and provide adequate and suitable housing recreational and other facilities and services;
- (iii) construct and provide roads housing school water and power supplies and other amenities and services; and
- (iv) construct and provide other works (if any) including an airstrip.

(2) Throughout the continuance of this Agreement the Company shall —

Operation of railway ⁷

- (a) operate its railway in a safe and proper manner and where and to the extent that it can do so without unduly prejudicing or interfering with its operations hereunder allow crossing places for roads stock and other railways and transport the passengers and carry the freight of the State and of third parties on the railway subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made altered and repealed as provided in subclause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost of the railway to the Company) PROVIDED THAT in relation to its use of the said railway the Company shall not be deemed to be a common carrier at common law or otherwise;

Use of roads by others ⁷

- (b) except to the extent that the Company's proposals as finally approved or determined under clause 6 hereof otherwise provide allow the public to use free of charge any roads constructed or upgraded under this clause PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder;

Compliance with laws ⁷

- (c) in the construction operation maintenance and use of any work installation plant machinery equipment service or facility provided or controlled by the Company comply with and observe the

provisions hereof and subject thereto the laws for the time being in force in the said State;

Maintenance⁷

- (d) at all times keep and maintain in good repair and working order and condition and where necessary replace all such works installations plant machinery and equipment and the railway wharf roads (other than the public roads referred to in clause 10(b) hereof) dredging and water and power supplies for the time being the subject of this Agreement;

Shipment of and price for ore⁷

- (e) ship from the Company's wharf all iron ore mined from the mineral lease and sold and use its best endeavours to obtain therefor the best price possible having regard to market conditions from time to time prevailing PROVIDED THAT this paragraph shall not apply to iron ore used for secondary processing or for the manufacture of iron or steel in any part of the said State lying north of the twenty-sixth parallel of latitude;

Use of wharf and facilities⁷

- (f) subject to and in accordance with by-laws (which shall include provisions for reasonable charges) from time to time to be made and altered as provided in subclause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Company) allow the State and third parties to use the Company's wharf and harbour installations wharf machinery and equipment and wharf and harbour services and facilities PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder and that the entire control and all personnel for or in respect of such use shall be provided by or with the approval of the Company;

Access through mining areas⁷

- (g) allow the State and third parties to have access (with or without stock vehicles and rolling stock) over the mineral lease (by separate route road or railway) PROVIDED THAT such access

over shall not unduly prejudice or interfere with the Company's operations hereunder;

Protection for inhabitants⁷

- (h) subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time be made and altered as provided in subclause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Company) allow the inhabitants for the time being of the port townsite being employees licensees or agents of the Company or persons engaged in providing a legitimate and normal service to or for the Company or those employees licensees or agents to make use of the water power recreational health and other services or facilities provided or controlled by the Company;

Use of local labour and materials⁷

- (i) so far as reasonably and economically practicable use labour materials plant equipment and supplies available within the said State where it is not prejudicial to the interests of the Company so to do;

Royalties⁷

- (j) pay to the State royalty on all iron ore from the mineral lease shipped or sold (other than ore shipped solely for testing purposes) or (in the circumstances mentioned in subparagraph (iv) of this paragraph) on iron ore concentrates produced from iron ore from the mineral lease or on other iron ore from the mineral lease used as mentioned in subparagraph (iv) of this paragraph as follows —
 - (i) on direct shipping ore (not being locally used ore) at the rate of seven and one half per centum (7½%) of the f.o.b. revenue (computed at the rate of exchange prevailing on date of receipt by the Company of the purchase price in respect of ore shipped or sold hereunder) PROVIDED NEVERTHELESS that such royalty shall not be less than six shillings (6/-) per ton (subject to subparagraph (vi) of this paragraph) in respect of ore the subject of any shipment or sale;

- (ii) on fine ore (not being locally used ore) at the rate of three and three quarter per centum ($3\frac{3}{4}\%$) of the f.o.b. revenue (computed as aforesaid) PROVIDED NEVERTHELESS that such royalty shall not be less than three shillings (3/-d) per ton (subject to subparagraph (vii) of this paragraph) in respect of ore the subject of any shipment or sale;
- (iii) on fines (not being locally used ore) at the rate of one shilling and sixpence (1s. 6d.) per ton;
- (iv) on iron ore concentrates produced from locally used ore by secondary processing and on locally used ore (not being iron ore used for producing iron ore concentrates subject to royalty hereunder) at the rate of one shilling and sixpence (1s. 6d.) per ton;
- (v) on all other iron ore (not being locally used ore) at the rate of seven and one half per centum ($7\frac{1}{2}\%$) of the f.o.b. revenue (computed as aforesaid) without any minimum royalty;
- (vi) (for averaging purposes) if the amount ascertained by multiplying the total tonnage of direct shipping ore shipped or sold (and liable to royalty under subparagraph (i) of this paragraph) in any financial year by six shillings (6/-d) is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that subparagraph then that proviso shall not apply in respect of direct shipping ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made accordingly;
- (vii) (for averaging purposes) if the amount ascertained by multiplying the total tonnage of fine ore shipped or sold (and liable to royalty under subparagraph (ii) of this paragraph) in any financial year by three shillings (3/-d) is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that subparagraph then that proviso shall not apply in

respect of fine ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made accordingly; and

- (viii) the royalty at the rate of one shilling and sixpence (1/6d.) per ton referred to in subparagraphs (iii) and (iv) of this paragraph shall be adjusted up or down (as the case may be) as at the first day of January, 1969 and as at the beginning of every fifth year thereafter proportionately to the variation of the average of the prices payable for foundry pig iron f.o.b. Adelaide during the last full calendar year preceding the date at which the adjustment is to be made as compared with the average of those prices during the calendar year 1963.

For the purposes of this paragraph “locally used ore” means iron ore used by the Company or an associated company both within the Commonwealth and within the limits referred to in paragraph (o) of this clause for secondary processing or in an integrated iron and steel industry and includes iron ore used by any other person or company north of the twenty-sixth parallel of latitude in the said State for secondary processing or in an integrated iron and steel industry;

Payments of royalties ⁷

- (k) 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 commercial shipment of iron ore from the Company’s wharf furnish to the Minister a return showing the quantity of all iron ore or iron ore concentrates the subject of royalty hereunder and shipped sold used or produced (as the case may be) during the quarter immediately preceding the due date of the return and shall not later than two (2) months after such due date pay to the Minister the royalty payable in respect of iron ore concentrates produced or iron ore used and in respect of all iron ore shipped or sold 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 and shall from time to time in the next following appropriate return and payment make (by the return and by cash) all such necessary adjustments (and give to the Minister full details thereof) when the f.o.b. revenue realised in respect of the shipments shall have been ascertained;

Rent for mineral lease ⁷

- (l) by way of rent for the mineral lease pay to the State annually in advance a sum equal to three shillings and sixpence (3/6d) per acre of the area for the time being the subject of the mineral lease commencing on and accruing from the commencement date PROVIDED THAT after the Company commences production in commercial quantities within the said State from a plant for secondary processing or for iron and steel manufacture or steel manufacture (whichever is first constructed) if and during the period that the total area for the time being comprised within the mineral lease —
- (i) is not more than one hundred (100) square miles the annual rent shall be two shillings (2/-d) per acre;
 - (ii) is over one hundred (100) square miles but not more than one hundred and fifty (150) square miles the annual rent shall be two shillings and sixpence (2/6d) per acre; and
 - (iii) is over one hundred and fifty (150) square miles but not more than two hundred (200) square miles the annual rent shall be three shillings (3/-d) per acre;

Other rentals ⁷

- (m) pay to the State the rental referred to in the proviso to clause 8(1)(b) hereof if and when such rental shall become payable;

Inspection ⁷

- (n) permit the Minister or his nominee to inspect at all reasonable times the books of account and records of the Company relative to any shipment or sale of iron ore hereunder and to take copies or extracts therefrom and for the purpose of determining the f.o.b. revenue payable in respect of any shipment of iron ore hereunder

the Company will take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the Minister's reasonable satisfaction as to all relevant weights and analyses and will give due regard to any objection or representation made by the Minister or his nominee as to any particular weight or assay of iron ore which may affect the amount of royalty payable hereunder; and

Export to places outside the Commonwealth ⁷

- (o) ensure that without the prior written approval of the Minister all iron ore shipped pursuant to this Agreement will be off-loaded at a place outside the Commonwealth and if it fails so to ensure the Company will subject to the provisions of this paragraph be in default hereunder. Where any such shipment is off-loaded within the Commonwealth without such prior written approval the Company shall forthwith on becoming aware thereof give to the State notice of the fact and pay to the State in respect of the iron ore the subject of the shipment such further and additional rental calculated at a rate not exceeding ten shillings (10/-d) per ton of the iron ore as the Minister shall demand without prejudice however to any other rights and remedies of the State hereunder arising from the breach by the Company of the provisions hereof. If ore is shipped in a vessel not owned by the Company or an associated company or any other company in which the Company has a controlling interest and such ore is off-loaded in the Commonwealth the Company will not be or be deemed to be in default hereunder if it takes appropriate action to prevent a recurrence of such an off-loading PROVIDED FURTHER that the foregoing provisions of this paragraph shall not apply in any case (including any unforeseeable diversion of the vessel for necessary repairs or arising from force majeure or otherwise) where the Company could not reasonably have been expected to take steps to prevent that particular off-loading PROVIDED ALSO that the provisions of this paragraph shall not apply —
 - (i) to ore the subject of secondary processing or iron and steel or steel manufacture by the Company or an associated company within the said State;

- (ii) to ore processed by the Company or an associated company within the Commonwealth but outside the said State to the extent that the tonnage of ore so processed does not in any year exceed fifty per centum (50%) of the total quantity of iron ore the subject of secondary processing and/or iron and steel manufacture or steel manufacture by the Company or an associated company within the said State; or
- (iii) to ore processed by the Company or an associated company within the Commonwealth but outside the said State in excess of fifty per centum (50%) of the total quantity of ore the subject of secondary processing and/or iron and steel manufacture or steel manufacture by the Company or an associated company within the said State with the prior written approval of the Minister as aforesaid.

By-laws ⁷

(3) The Governor in Executive Council may upon recommendation by the Company make alter and repeal by-laws for the purpose of enabling the Company to fulfil its obligations under paragraphs (a) and (f) of subclause (2) of this clause and (unless and until the port townsite is declared a townsite pursuant to section 10 of the Land Act) under paragraph (h) of subclause (2) of this clause and under clause 10(a) hereof 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 State 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 State 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.

Mutual covenants ⁷

10. The parties hereto covenant and agree with each other as follows: —

Water and power supplies ⁷

- (a) that subject to and in accordance with proposals approved or determined under clause 6 hereof the Company for its purposes hereunder and for domestic and other purposes in relation to a townsite may to the extent determined by the Minister but notwithstanding any Act bore for water construct catchment areas store (by dams or otherwise) take and charge for water from any Crown lands available for the purpose and generate transmit supply and charge for electrical energy and the Company shall have all such powers and authorities with respect to water and electrical energy as are determined by the Minister for the purposes hereof which may include the powers of a water board under the *Water Boards Act 1904* and of a supply authority under the *Electricity Act 1945*;

Use of public roads ⁷

- (b) that the Company may use any public roads which may from time to time exist in the area of its operations hereunder for the purpose of transportation of goods and materials in connection with such operations PROVIDED NEVERTHELESS that the Company shall on demand pay to the State or the shire council concerned the cost of making good any damage to such roads occasioned by —
- (i) such user by the Company prior to the export date; and
 - (ii) user by the Company for the transportation of iron ore won from the mineral lease;

Upgrading of existing roads ⁷

- (c) that the State will at the request and cost of the Company (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or part of the cost involved) widen upgrade or realign any public road over which the State has control subject to the prior approval of the said Commissioner to the proposed work;

Effect of determination of Agreement ⁷

- (d) that on the cessation or determination of this Agreement —

- (i) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement and the rights of the Company or of any assignee of the Company or any mortgagee to in or under the mineral lease and any other lease license easement or right granted hereunder or pursuant hereto shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder AND the Company will without further consideration but otherwise at the request and cost of the State transfer or surrender to the State or the Crown all land the subject of any Crown grant issued under the Land Act pursuant to this Agreement;
- (ii) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
- (iii) the Company shall forthwith furnish to the State complete factual statements of the work research surveys and reconnaissances carried out pursuant to clause 4(1) hereof if and insofar as the statements may not have been so furnished; and
- (iv) save as aforesaid and as provided in clause 7(4) hereof and in the next following paragraph neither of the parties hereto shall have any claim against another of them with respect to any matter or thing in or arising out of this Agreement;

Effect of determination of lease ⁷

- (e) that on the cessation or determination of any lease license or easement granted hereunder by the State to the Company or (except as otherwise agreed by the Minister) to an associated company or other assignee of the Company under clause 19 hereof of land for the Company's wharf for any installation within the harbour for the Company's railway or for housing at the port or port townsite the improvements and things erected on the relevant land and provided for in connection therewith shall remain or become the absolute property of the State without compensation

and freed and discharged from all mortgages and encumbrances and the Company will do and execute such documents and things (including surrenders) as the State may reasonably require to give effect to this provision. In the event of the Company immediately prior to such expiration or determination or subsequent thereto deciding to remove its locomotives rolling stock plant equipment and removable buildings or any of them from any land it shall not do so without first notifying the State in writing of its decision and thereby granting to the State the right or option exercisable within three months thereafter to purchase at valuation *in situ* the said plant equipment and removable buildings or any of them. Such valuation shall be mutually agreed or in default of agreement shall be made by such competent valuer as the parties may appoint or failing agreement as to such appointment then by two competent valuers one to be appointed by each party or by an umpire appointed by such valuers should they fail to agree;

No charge for the handling of cargoes ⁷

- (f) that subject to the Company at its own expense providing all works buildings dredging and things of a capital nature reasonably required for its operations hereunder at or in the vicinity of the harbour no charge or levy shall be made by the State or by any State authority in relation to the loading of outward or the unloading of inward cargoes from the Company's wharf whether such cargoes shall be the property of the Company or of any other person or corporation but the State accepts no obligation to undertake such loading or unloading and may make the usual charges from time to time prevailing in respect of services rendered by the State or by any State agency or instrumentality or other local or other authority of the State and may charge vessels using the Company's wharf ordinary light conservancy and tonnage dues;

Zoning ⁷

- (g) that the mineral lease and the lands the subject of any Crown Grant lease license or easement granted to the Company under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the

State by any State agency or instrumentality or by any local or other authority of the State on the ground that such operations are contrary to any zoning by-law or regulation;

Rentals and evictions⁷

- (h) that any State legislation for the time being in force in the said State relating to the fixation of rentals shall not apply to any houses belonging to the Company in any townsite and that in relation to each such house the Company shall have the right to include as a condition of its letting thereof that the Company may take proceedings for eviction of the occupant if the latter shall fail to abide by and observe the terms and conditions of occupancy or if the occupant shall cease to be employed by the Company;

Labour conditions⁷

- (i) 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 labour conditions imposed by or under the Mining Act in regard to the mineral lease;

Subcontracting⁷

- (j) that without affecting the liabilities of the parties under this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portions of the operations which it is authorised or obliged to carry out hereunder;

Rating⁷

- (k) that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection therewith) shall for rating purposes be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate;

Determination of Agreement ⁷

- (l) that in any of the following events namely if the Company shall make default in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sublease license or other title or document granted or assigned under this Agreement on its part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to it by the State (or if the alleged default is contested by the Company and promptly submitted to arbitration within a reasonable time fixed by the arbitration award where the question is decided against the Company the arbitrator finding that there was a bona fide dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company shall abandon or repudiate its operations under this Agreement or shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto or if the Company shall surrender the entire mineral lease as permitted under clause 8.(1)(a) this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto shall thereupon determine; PROVIDED HOWEVER that if the Company shall fail to remedy any default after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand; and
- (m) that —
- (i) for the purposes of determining whether and the extent to which —

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

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

- (ii) for the purposes of this paragraph the terms “municipality” “street” and “care control and management” shall have the meanings which they respectively have in the *Local Government Act 1960*.

Secondary processing⁷

11. (1) The Company having commenced already to investigate the feasibility of establishing a plant for the secondary processing by the Company within the said State of iron ore from the mineral lease will from time to time review this matter with a view to its being in a position before the end of year 10 to submit to the Minister detailed proposals for such plant (capable ultimately of treating not less than Two million (2,000,000) tons of iron ore per annum) containing provision that —

- (a) the plant will by the end of year 12 have the capacity to process at an annual rate of and will during year 13 process not less than Five hundred thousand (500,000) tons of iron ore;
- (b) production will progressively increase so that the plant will by the end of year 16 have the capacity to process at an annual rate of and will during year 17 process not less than Two million (2,000,000) tons of iron ore; and
- (c) the capital cost involved will be not less than Eight million pounds (£8,000,000) unless the Company utilises a less expensive but at least equally satisfactory method of secondary processing than any at present known to either party.

Provided that if the Company satisfies the Minister that the Company's mining operations are not producing quantities of iron ore suitable for treatment at a rate of two million (2,000,000) tons of iron ore per annum on an economic basis then the Minister may approve a modified proposal and reduce the figure of two million (2,000,000) tons to a figure the Minister considers appropriate having regard to prevailing circumstances but to not less than one million (1,000,000) tons per annum with provision for progressive increase to two million (2,000,000) tons per annum on a revised programme and in approving such modified proposal the Minister may approve corresponding variations of the provisions of paragraphs (a) (b) and (c) of this subclause.

(2) If before the end of year 10 such proposals are submitted by the Company to the Minister the State shall within two months of the receipt thereof give to the Company notice either of its approval of the proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford the Company an opportunity to consult with and to submit new proposals to the Minister. If within thirty days of receipt of such notice agreement is not reached as to the proposals the Company may within a further period of thirty days elect by notice to the State to refer to arbitration as hereinafter provided any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Company the Minister shall be deemed to have then approved the proposals of the Company.

(3) If such proposals are not submitted by the Company to the Minister before the end of year 10 or if such proposals are so submitted but are not approved by the Minister within two months of receipt thereof then (subject to any extension of time granted under subclause (1) of clause 7 hereof)

- (a) the Company shall not after the end of year 12 export iron ore hereunder at an annual rate in excess of Five million (5,000,000) tons unless prior to year 10 the Minister shall have approved the Company entering into a contract or contracts for the export of iron ore at an annual rate in excess of Five million (5,000,000) tons; and
- (b) if by the end of year 13 (or extended date if any) the State gives to the Company notice that some other company or party (hereinafter referred to as "the Third Party") has agreed to establish a plant for secondary processing within the said State of iron ore from the mineral lease on terms not more favourable on the whole to the Third Party than those proposed by or available to the Company

hereunder this Agreement will (subject to the provisions of subclauses (d) and (e) of clause 10 and of clause 15 hereof) cease and determine at the end of year 21 or at the date by which the Third Party has substantially established the plant referred to in this subclause in accordance with the terms agreed upon by the State and the Third Party whichever is the later.

PROVIDED THAT if by the end of year 13 (or extended date if any) the State has not given to the Company the notice referred to in this subclause paragraph (a) of this subclause shall thereupon cease to have effect AND PROVIDED FURTHER that the Company may at any time after the end of year 10 submit proposals as aforesaid if at that time it has not received the notice aforesaid and the provisions of subclause (2) of this clause shall apply to such proposals but (subject to any extension of time as aforesaid) the Company may not submit proposals as aforesaid after the end of year 10 and before the end of year 13 if it has received a notice from the Minister that he is negotiating with a Third Party and such notice has not been withdrawn.

(4) Subject to the provisions of clause 12 hereof and except as provided in paragraph (b) of subclause (3) of this clause this Agreement will continue in operation subject to compliance by the Company with its obligations hereunder and with such proposals by the Company as are approved by the Minister.

(5) Notwithstanding anything contained herein no failure by the Company to submit to the Minister proposals as aforesaid nor any non-approval by the Minister of such proposals shall constitute a breach of this Agreement by the Company and subject to the provisions of clause 12 hereof the only consequence arising from such failure or non-approval (as the case may be) will be those set out in subclause (3) of this clause.

Iron and steel industry⁷

12. (1) The Company will in due course investigate the feasibility of establishing an integrated iron and steel industry within the said State and will from time to time review this matter with a view to its being in a position before the end of year 20 to submit to the Minister detailed proposals for such industry (capable ultimately of producing one million (1,000,000) tons of steel per annum) containing provision that —

- (a) by the end of year 25 productive capacity will be at an annual rate of not less than and during year 26 production will be not less than Five

hundred thousand (500,000) tons of pig iron foundry iron or steel (hereinafter together referred to as “product”) of which not less than Two hundred and fifty thousand (250,000) tons will be steel;

- (b) production will progressively increase so that by the end of year 29 productive capacity will be at an annual rate of not less than and during year 30 production will be not less than One million (1,000,000) tons of product (of which not less than Five hundred thousand (500,000) tons will be steel) and by the end of year 31 productive capacity will be at an annual rate of not less than and during year 32 production will be not less than One million (1,000,000) tons of steel; and
- (c) the capital cost involved will be not less than Forty million pounds (£40,000,000) unless the Company utilises a less expensive but at least equally satisfactory method of manufacture than any at present known to either party.

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

(3) If such proposals are not submitted by the Company to the Minister before the end of year 20 or if such proposals are so submitted but are not approved by the Minister within two months after receipt thereof then (subject to any extension of time granted under subclause (1) of clause 7 hereof) if by the end of year 23 (or extended date if any) the State gives to the Company notice that some other company or party (hereinafter referred to as “the Fourth Party”) has agreed to establish either —

- (a) a plant for secondary processing within the said State of iron ore from the mineral lease (if proposals by the Company for the establishment of such a plant have not previously been submitted

to and approved by the Minister) on terms not more favourable on the whole to the Fourth Party than those proposed by or available to the Company hereunder; or

- (b) an integrated iron and steel industry within the said State (using iron ore from the mineral lease) on terms not more favourable on the whole to the Fourth Party than those proposed by or available to the Company hereunder.

then and in either case this Agreement will (subject to the provisions of subclauses (d) and (e) of clause 10 hereof and clause 15 hereof) cease and determine —

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

(4) If by the end of year 23 (or extended date if any) the State has not given to the Company any such notice as is referred to in subclause (3) of this clause that subclause shall thereupon cease to have effect except that (to the extent they can from time to time operate) the provisions of subclause (3) of this clause shall revive (for a period of three years) at the end of year 33 and at the end of each successive period of 13 years thereafter in such a way that each year referred to in that subclause shall be read as the year thirteen years or (as the case may require) a multiple of thirteen years thereafter (subject to extensions of dates if any as aforesaid).

(5) The Company may at any time after the end of year 20 submit proposals for an integrated iron and steel industry if at that time it has not

received any notice under subclause (3) of this clause and the provisions of subclauses (1) and (2) of this clause shall apply to such proposals.

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

(7) Notwithstanding anything contained herein no failure by the Company to submit to the Minister proposals as aforesaid nor any non-approval by the Minister of such proposals shall constitute a breach of this Agreement by the Company and the only consequences arising from such failure or non-approval (as the case may be) will be those set out in subclause (3) of this clause.

“Substantial establishment”⁷

13. The Third Party or the Fourth Party shall have substantially established a plant for secondary processing or an integrated iron and steel industry when and not before that party’s secondary processing plant has the capacity to treat not less than two million (2,000,000) tons of iron ore per annum or (as the case may be) that party’s integrated iron and steel industry has the capacity to produce one million (1,000,000) tons of steel per annum and in either case the Minister has notified the Company that he is satisfied that that party will proceed *bona fide* to operate its plant or industry.

Terms “not more favourable”⁷

14. In deciding whether for the purposes of clause 11 or clause 12 hereof the terms granted by the State to some company or party are not more favourable on the whole than those proposed by or available to the Company regard shall be had *inter alia* to all the obligations which would have continued to devolve on the Company had it proceeded with secondary processing or (as the case may be) iron and steel manufacture or steel manufacture including its obligations to mine transport by rail and ship iron ore and restrictions relating thereto to pay rent additional rental and royalty and (in the case of secondary processing by a third party pursuant to clause 11 hereof) to termination of rights as provided in clause 12 hereof if proposals for iron and steel manufacture or steel manufacture are not brought to fruition and also to the need for the other company or party to pay on a fair and reasonable basis for or for the use of property accruing to the State under paragraph (e) of clause 10 hereof and made available by the State to

that company or party but also to any additional or equivalent obligations to the State assumed by that company or party PROVIDED HOWEVER that if after the end of year 33 the Minister gives notice to the Company under clause 12 hereof that another company or party has agreed to establish either secondary processing or an integrated iron and steel industry but not both then the latter company or party need not have any obligation to establish both.

Supply of iron ore by others ⁷

15. If at the date upon which this Agreement ceases and determines pursuant to clauses 11 or 12 hereof the Company remains under any obligation for the supply of iron ore arising out of a contract or contracts entered into by the Company with the consent of the Minister the Company may give notice to the Minister that it desires the State to ensure that the Third Party (or the Fourth Party as the case may be) is obligated to discharge such remaining obligations to supply iron ore or to supply iron ore to the Company into ships to enable it to discharge such obligations. Forthwith upon receipt of such notice the State will ensure that the Third Party (or the Fourth Party as the case may be) is obligated to discharge such obligations in accordance with such contract or contracts on a basis which is fair and reasonable as between the Company and the Third Party (or the Fourth Party as the case may be) or if desired to supply iron ore to the Company into ships on such fair and reasonable basis.

Supply of iron ore to others ⁷

16. The Company covenants and agrees with the State that should the Company remain in possession of the mineral lease for any period during which the Third Party or the Fourth Party is operating or is ready to operate a plant for secondary processing of iron ore or an integrated iron and steel industry then during such period (whenever commencing) the Company will supply the Third Party or the Fourth Party or both (as the case may be) with iron ore from the mineral lease (not exceeding in all Five million (5,000,000) tons per annum unless otherwise agreed) —

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

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

Alteration of works ⁷

17. If at any time the State finds it necessary to request the Company to alter the situation of any of the installations or other works (other than the Company's wharf) erected constructed or provided hereunder and gives to the Company notice of the request the Company shall within a reasonable time after its receipt of the notice but at the expense in all things of the State (unless the alteration is rendered necessary by reason of a breach by the Company of any of its obligations hereunder) alter the situation thereof accordingly.

Indemnity ⁷

18. The Company will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's wharf railway or other works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

Assignment ⁷

19. (1) Subject to the provisions of this clause the Company may at any time —
- (a) assign mortgage charge sublet or dispose of to an associated company as of right and to any other company or person with the consent in writing of the Minister the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of any lease license easement grant or other title) and of the obligations of the Company hereunder; and
 - (b) appoint as of right an associated company or with the consent in writing of the Minister any other company or person to exercise all

or any of the powers functions and authorities which are or may be conferred on the Company hereunder

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

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

Variation⁷

20. (1) The parties hereto may from time to time by mutual agreement in writing add to cancel or vary all or any of the provisions of this Agreement or of any lease license easement or right granted hereunder or pursuant hereto for the purpose of implementing or facilitating the carrying out of such provisions or for the purpose of facilitating the carrying out of some separate part or parts of the Company's operations hereunder by an associated company as a separate and distinct operation or for the establishment or development of any industry making use of the minerals within the mineral lease or such of the Company's works installations services or facilities the subject of this Agreement as shall have been provided by the Company in the course of work done hereunder.

(2) Notwithstanding the provisions of subclause (1) of this clause the Minister may with the consent of the Company from time to time add to cancel or vary any right or obligation relating to works for the transport and/or export of iron ore to the extent that the addition cancellation or variation implements or facilitates the method of achieving any of the purposes of iron ore export secondary processing or manufacture of iron and steel or of steel based on ore from the mineral lease.

(3) Notwithstanding the foregoing provisions of this clause the Minister may from time to time approve variations or require reasonable variations in the detailed proposals relating to any railway or harbour site and/or

port facilities or dredging programme or townsite or town planning or any other facilities or services or other plans specifications or proposals which may have been approved pursuant to this Agreement and in considering such variations shall have regard to any changes consequent upon joint user proposals of any such works facilities or services and other relevant factors arising after the date hereof.

Export license ⁷

21. (1) On request by the Company the State shall make representations to the Commonwealth for the grant to the Company of a license or licenses under Commonwealth law for the export of iron ore in such quantities and at such rate or rates as shall be reasonable having regard to the terms of this Agreement the capabilities of the Company and to maximum tonnages of iron ore for the time being permitted by the Commonwealth for export from the said State and in a manner or terms not less favourable to the Company (except as to a rate or quantity) than the State has given or intends to give in relation to such a license or licenses to any other exporter of iron ore from the said State.

(2) If at any time the Commonwealth limits by export license the total permissible tonnage of iron ore for export from the said State then the Company will at the request of the State and within three (3) months of such request inform the State whether or not it intends to export to the limit of the tonnage permitted to it under Commonwealth licenses in respect of the financial year next following and if it does not so intend will co-operate with the State in making representation to the Commonwealth with a view to some other producer in the said State being licensed by the Commonwealth to export such of the tonnage permitted by the Commonwealth in respect of that year as the Company does not require and such other producer may require. Such procedure shall continue to be followed year by year during such time as the Commonwealth limits by export license the total permissible tonnage of iron ore for export from the said State.

(3) The Company shall be in default hereunder if at any time it fails to obtain any license or licenses under Commonwealth law for the export of iron ore as may be necessary for the purpose of enabling the Company to fulfil its obligations hereunder or if any such license is withdrawn or suspended by the Commonwealth and such failure to obtain or such withdrawal or suspension (as the case may be) is due to some act or default by the Company or to the Company not being *bona fide* in its application to the Commonwealth or otherwise having failed to use its best endeavours to have the license granted or

restored (as the case may be) but save as aforesaid if at any time any necessary license is not granted or any license granted to the Company shall be withdrawn or suspended by the Commonwealth and so that as a result thereof the Company is not for the time being permitted to export at least the tonnage it has undertaken with the State it will export then the Company shall not be obliged to export the tonnage not so permitted until such time as it is so permitted and thereafter it will export the tonnage it has undertaken with the State it will export. The State shall at all times be entitled to apply on behalf of the Company (and is hereby authorised by the Company so to do) for any license or licenses under Commonwealth law for the export of iron ore as may from time to time be necessary for the purposes of this Agreement.

Delays⁷

22. This Agreement shall be deemed to be made subject to any delays in the performance of obligations under this Agreement and to the temporary suspension of continuing obligations hereunder which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays or any such temporary suspension as aforesaid caused by or arising from Act of God force majeure floods storms tempests washaways fire (unless caused by the actual fault or privity of the Company) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability (common in the iron ore export industry) to profitably sell ore or factors due to overall world economic conditions or factors which could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall minimise the effect of the said causes as soon as possible after their occurrence.

Power to extend periods⁷

23. Notwithstanding any provision hereof the Minister may at the request of the Company from time to time extend any period or date referred to in this Agreement for such period or to such later date as the Minister thinks fit and the extended period or later date when advised to the Company by notice from the Minister shall be deemed for all purposes hereof substituted for the period or date so extended.

Arbitration⁷

24. Any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Agreement or any such amendment variation or addition or as to the rights duties or liabilities of either party thereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the *Arbitration Act 1895*.

Notices⁷

25. 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 Civil Service of the said State acting by the direction of the Minister and forwarded by prepaid post to the Company at its registered office for the time being in the said State and by the Company if signed on its behalf by a director manager or secretary of the Company or by any person or persons authorised by the Company in that behalf or by its solicitors as notified to the State from time to time and forwarded by prepaid post to the Minister and 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.

Exemption from stamp duty⁷

26. (1) The State shall exempt from any stamp duty which but for the operation of this clause would or might be chargeable on —
- (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 of the Company any tenement lease easement license or other right or interest;
 - (c) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment made in conformity with the provisions of subclause (1) of clause 19 hereof; and

- (d) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment to or in favour of the Company or an associated company of any interest right obligation power function or authority which has already been the subject of an assignment sublease disposition or appointment executed pursuant to subclause (1) of clause 19 hereof;

PROVIDED THAT this clause shall not apply to any instrument or other document executed or made more than seven years from the date hereof.

(2) If prior to the date on which the Bill referred to in clause 2(b) hereof to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) of this clause the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document to the person who paid the same.

Interpretation ⁷

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

SCHEDULE

WESTERN AUSTRALIA

IRON ORE (MOUNT NEWMAN) AGREEMENT ACT 1964
MINERAL LEASE

Lease No Goldfield(s)

ELIZABETH THE SECOND by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith:

TO ALL TO WHOM THESE PRESENTS shall come GREETINGS: KNOW YE that WHEREAS by an Agreement made the day of , 1964 between the State of Western Australia of the one part and MT. NEWMAN IRON ORE COMPANY LIMITED (hereinafter called "the Company" which expression will include the successors and assigns of the Company including where the context so admits the assignees of the Company under Clause 19 of

the said Agreement) of the other part the said State agreed to grant to the Company a mineral lease of portion or portions of the lands referred to in the said Agreement as “the mining areas” AND WHEREAS the said Agreement was ratified by the *Iron Ore (Mount Newman) Agreement Act 1964* which said Act (*inter alia*) authorised the grant of a mineral lease to the Company NOW WE in consideration of the rents and royalties reserved by and of the provisions of the said Agreement and in pursuance of the said Act DO BY THESE PRESENTS GRANT AND DEMISE unto the Company subject to the said provisions ALL THOSE pieces and parcels of land situated in the Goldfield(s) containing by admeasurement be the same more or less and particularly described and delineated on the plan in the Schedule hereto and all those mines, veins, seams, lodes and deposits of iron ore in on or under the said land (hereinafter called “the said mine”) together with all rights, liberties, easements, advantages and appurtenances thereto belonging or appertaining to a lessee of a mineral lease under the *Mining Act 1904* including all amendments thereof for the time being in force and all regulations made thereunder for the time being in force (which Act and regulations are hereinafter referred to as “the Mining Act”) or to which the Company is entitled under the said Agreement TO HOLD the said land and mine and all and singular the premises hereby demised for the full term of twenty-one years from the day of , 19 with the right to renew the same from time to time for further periods each of twenty-one years as provided in but subject to the said Agreement for the purposes but upon and subject to the terms covenants and conditions set out in the said Agreement and to the Mining Act (as modified by the said Agreement) YIELDING and paying therefor the rent and royalties as set out in the said Agreement. AND WE do hereby declare that this lease is subject to the observance and performance by the Company of the following covenants and conditions, that is to say: —

1. The Company shall and will use the land bona fide exclusively for the purposes of the said Agreement.
2. Subject to the provisions of the said Agreement the Company shall and will observe, perform, and carry out the provisions of the *Mines Regulation Act 1946*, and all amendments thereof for the time being in force and the regulations for the time being in force made thereunder and subject to and also as modified by the said Agreement the Mining Act so far as the same affect or have reference to this lease.

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

PROVIDED FURTHER that all mineral oil on or below the surface of the demised land is reserved to Her Majesty with the right to Her Majesty or any person claiming under her or lawfully authorised in that behalf to have access to the demised land for the purpose of searching for and for the operations of obtaining mineral oil in any part of the land under the provisions of the *Petroleum Act 1936*.

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

THE SCHEDULE ABOVE REFERRED TO:

IN WITNESS WHEREOF THE HONOURABLE DAVID BRAND M.L.A. has hereunto set his hand and seal and the COMMON SEAL of the Company has hereunto been affixed the day and year first hereinbefore mentioned.

SIGNED SEALED AND DELIVERED }
by the said THE HONOURABLE } DAVID BRAND
DAVID BRAND M.L.A., in the presence } [L.S.]
of — }

C. W. Court
Minister for Industrial Development

Arthur Griffith
Minister for Mines

THE COMMON SEAL of MT.
NEWMAN IRON ORE COMPANY
LIMITED was hereunto affixed in the
presence of —

} [C.S.]
}

G. F. JOKLIK
Director.

P. R. ADAMS
Director.

Second Schedule — First Variation Agreement

[s. 2]

[Heading amended by No. 19 of 2010 s. 4.]

THIS AGREEMENT under seal made the 16th day of November One thousand nine hundred and sixty-seven BETWEEN THE HONOURABLE DAVID BRAND M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called “the State”) of the First Part AMAX IRON ORE CORPORATION a company incorporated in the State of Delaware in the United States of America and registered in the State of Western Australia as a foreign Company (hereinafter called “Amax Iron”) PILBARA IRON LIMITED a company incorporated in the State of Western Australia (hereinafter called “Pilbara”) DAMPIER MINING COMPANY LIMITED a company incorporated in the State of Western Australia (hereinafter called “Dampier”) SELTRUST IRON ORE LIMITED a company incorporated in England and registered in the State of Western Australia as a foreign company (hereinafter called “Seltrust Iron”) and MITSUI-C. ITOH IRON PTY. LTD. a company incorporated in the State of Western Australia (hereinafter called “Mitsui Iron”) of the Second Part AND MT. NEWMAN IRON ORE COMPANY LIMITED a company incorporated in the State (hereinafter called “the Mt. Newman Company”) of the Third Part

WHEREAS:

- A. By an agreement dated the Twenty-sixth day of August One thousand nine hundred and sixty-four (hereinafter called “the Mt. Newman Agreement”) and made between the Mt. Newman Company of the one part and the State of the other part the Mt. Newman Company acquired upon the terms and conditions set forth in such Agreement certain rights interests and benefits and assumed certain obligations with respect to: —
- (i) the exploration for and development of iron ore deposits in the mining areas as therein defined and the mining transportation and shipment of iron ore therefrom; and
 - (ii) the investigation of the feasibility of establishing secondary processing operations and an integrated iron and steel industry within the State.

- B. The Mt. Newman Agreement was approved by the *Iron Ore (Mount Newman) Agreement Act 1964*.
- C. By sub-clause (1) of clause 19 of the Mt. Newman Agreement the Mt. Newman Company was granted the right *inter alia* at any time to assign or dispose of as of right to an associated company as defined in the Mt. Newman Agreement (hereinafter called the “associated companies”) the whole or any part of its rights and obligations under the Mt. Newman Agreement subject however to the assignee executing in favour of the State a deed of covenant in the form approved by the Minister for Industrial Development of the State to comply with observe and perform the provisions of the Mt. Newman Agreement on the part of the Mt. Newman Company to be complied with observed or performed in regard to the matters so assigned.
- D. Amax Iron and Pilbara were on the Sixth day of May One thousand nine hundred and sixty-five associated companies of the Mt. Newman Company.
- E. By a deed dated the Sixth day of May One thousand nine hundred and sixty-five and made between the Mt. Newman Company of the one part and Amax Iron and Pilbara of the other part the Mt. Newman Company pursuant to sub-clause (1) of clause 19 of the Mt. Newman Agreement transferred and assigned to Amax Iron and Pilbara the Mt. Newman Agreement and the full benefit and advantage thereof and all the right title interest claim and demand whatsoever of the Mt. Newman Company in and under the Mt. Newman Agreement and including without prejudice to the generality of the foregoing rights of occupancy over temporary reserves leases licenses lands tenements and hereditaments and other rights interests and other property to which the Mt. Newman Company was then or thereafter entitled thereunder to hold the same unto and to the use of Amax Iron and Pilbara as tenants in common in equal undivided shares absolutely.
- F. Amax Iron and Pilbara by Indenture dated the Twenty-fourth day of June One thousand nine hundred and sixty-five entered into the requisite deed of covenant with the State in compliance with the provisions of sub-clause (1) of clause 19 of the Mt. Newman Agreement.

- G. Amax Iron Pilbara Dampier Seltrust Iron and Mitsui Iron were on the Twelfth day of April One thousand nine hundred and sixty-seven and are at the date hereof associated companies of the Mt. Newman Company.
- H. By a deed dated the Twelfth day of April One thousand nine hundred and sixty-seven and made between Amax Iron and Pilbara of the one part and Amax Iron Pilbara Dampier Seltrust Iron and Mitsui Iron of the other part Amax Iron and Pilbara pursuant to sub-clause (1) of clause 19 of the Mt. Newman Agreement transferred and assigned to Amax Iron Pilbara Dampier Seltrust Iron and Mitsui Iron the Mt. Newman Agreement and the full benefit and advantage thereof and all right title interest claim and demand whatsoever of Amax Iron and Pilbara in and under the Mt Newman Agreement and including without prejudice to the generality of the foregoing rights of occupancy over temporary reserves leases licenses lands tenements and hereditaments and other rights interests and other property to which Amax Iron and Pilbara were then or thereafter entitled thereunder to hold the same unto and to the use of Amax Iron Pilbara Dampier Seltrust Iron and Mitsui Iron as tenants in common in undivided shares absolutely as follows:

Pilbara	30 per centum
Dampier	30 per centum
Amax Iron	25 per centum
Mitsui Iron	10 per centum
Seltrust Iron	5 per centum

- I. Amax Iron Pilbara Dampier Seltrust Iron and Mitsui Iron by Indenture dated the Twelfth day of April One thousand nine hundred and sixty-seven entered into the requisite deed of covenant with the State in compliance with the provisions of sub-clause (1) of clause 19 of the Mt. Newman Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. This Agreement shall have no force or effect and shall not be binding upon the parties until it is approved by the Parliament of Western Australia.
2. The Mt. Newman Agreement is amended or altered as hereinafter provided and the Mt. Newman Agreement shall be read and construed accordingly.

3. Paragraph (b) of sub-clause (1) of clause 8 is amended by adding at the end thereof the following words “PROVIDED FURTHER that no additional rental pursuant to this paragraph will be payable in respect of iron ore sold or otherwise disposed of to The Broken Hill Proprietary Company Limited (hereinafter called “B.H.P.”) or to Australian Iron & Steel Proprietary Limited (hereinafter called “A.I.S.”) or to any company or companies related to B.H.P. or A.I.S. within the meaning of sub-section (5) of Section 6 of the *Companies Act 1961* of the State for use within the Commonwealth for manufacture into iron or steel”.
4. Paragraph (c) of sub-clause (1) of clause 8 is amended by adding thereto a new paragraph as follows:
 - (d) Notwithstanding the provisions of Section 82 of the Mining Act and of regulations 192 and 193 made thereunder and of Section 81D of the *Transfer of Land Act 1893* insofar as the same or any of them may apply no mortgage or charge in a form commonly known as a floating charge made or given pursuant to clause 19 hereof over any lease license reserve or tenement granted hereunder or pursuant hereto by the Company or any assignee or appointee who has executed and is for the time being bound by deed of covenant made pursuant to clause 19 hereof and no transfer or assignment in exercise of any power of sale contained in such mortgage or charge shall require any approval or consent other than such consent as may be necessary under clause 19 hereof and no such mortgage or charge shall be rendered ineffectual as an equitable charge by the absence of any approval or consent otherwise than as required by clause 19 hereof or because the same is not registered under the provisions of the Mining Act.
5. Sub-clause (3) of clause 8 is amended by inserting after the word “provisions” in the first line the words “of paragraph (d) of sub-clause (1) of this clause and the provisions”.
6. Clause 8 is amended by adding thereto a sub-clause as follows:

“(6) no fee simple lease sub-lease license or other title or right granted or assigned under or pursuant to this Agreement shall be subject to or capable of partition including partition under the *Partition Act 1878* or under any order of any Court of competent

jurisdiction under that Act or otherwise or be subject to the making of an order for sale under the said Act.”

7. Paragraph (e) of sub-clause (2) of clause 9 is amended by substituting for the proviso thereto the following proviso:

PROVIDED HOWEVER that this paragraph shall not apply to:

- (i) iron ore used for secondary processing or for the manufacturing of iron or steel in any part of the said State lying north of the twenty-sixth parallel of latitude; or
 - (ii) iron ore sold or otherwise disposed of to B.H.P. or A.I.S. or any company or companies related to B.H.P. or A.I.S. within the meaning of sub-section (5) of Section 6 of the *Companies Act 1961* of the State for use within the Commonwealth for manufacture into iron or steel.
8. Paragraph (j) of sub-clause (2) of clause 9 is amended by substituting for the last sentence thereof the following:

For the purposes of this paragraph “locally used ore” means:

- (i) iron ore used by the Company or an associated company both within the Commonwealth and within the limits referred to in paragraph (o) of this sub-clause for secondary processing or in an integrated iron and steel industry;
 - (ii) iron ore used by any other person or company north of the twenty-sixth parallel of latitude in the said State for secondary processing or in an integrated iron and steel industry; or
 - (iii) iron ore sold or otherwise disposed of to B.H.P. or to A.I.S. or to any company or companies related to B.H.P. or A.I.S. within the meaning of sub-section (5) of Section 6 of the *Companies Act 1961* of the State for use within the Commonwealth for secondary processing or for further manufacture into iron or steel”.
9. Sub-paragraph (ii) of paragraph (o) of sub-clause (2) of clause 9 is amended by deleting the word “or” at the end thereof.

10. Sub-paragraph (iii) of paragraph (o) of sub-clause (2) of clause 9 is amended by adding the word “or” at the end thereof.
11. Paragraph (o) of sub-clause (2) of clause 9 is further amended by adding thereto a sub-clause as follows:
 - (iv) to ore sold or otherwise disposed of to B.H.P. or to A.I.S. or to any company or companies related to B.H.P. or A.I.S. within the meaning of sub-section (5) of Section 6 of the *Companies Act 1961* of the State for use within the Commonwealth for secondary processing or for further manufacture into iron or steel.
12. Clause 10 is amended by substituting for paragraph (l) thereof the following paragraph:
 - (l) (i) that in any of the following events namely if the Company shall make default in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sub-lease license or other title or document granted or assigned under this Agreement on its part to be performed or observed or shall abandon or repudiate its operations under this Agreement and such default shall not have been remedied or such operations resumed within a period of one hundred and eighty (180) days after notice as provided in sub-paragraph (ii) of this paragraph is given by the State (or if the alleged default abandonment or repudiation is contested by the Company and within sixty (60) days after such notice is submitted by the Company to arbitration then within a reasonable time fixed by the arbitration award but not less than ninety (90) days after the making of the arbitration award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or

pursuant hereto or if the Company shall surrender the entire mineral lease as permitted under clause 8(1)(a) of this Agreement then this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto shall thereupon determine; PROVIDED HOWEVER that if the default shall not have been remedied after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand; and

- (ii) the notice to be given by the State in terms of sub-paragraph (i) of this paragraph shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate or 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 19(1)(a) hereof whose name and address for service of notice has previously been notified in writing to the State by the Company or any such assignee mortgagee chargee or disponent to be an assignee mortgagee chargee or disponent as the case may be;
- (iii) the abandonment or repudiation by or liquidation of the Company referred to in sub-paragraph (i) of this paragraph means the abandonment or repudiation by or the liquidation of all of them the Company and all assignees and appointees who have executed and are for

the time being bound by a deed of covenant in favour of the State as provided in clause 19 hereof.

13. The Mt. Newman Agreement is amended by adding thereto a new clause after clause 16 as follows:

16A (1) Subject to sub-clause (2) of this clause if at the date on which this Agreement but for this clause would have ceased and determined by virtue of paragraph (b) of sub-clause (3) of clause 11 hereof or by virtue of sub-clause (3) of clause 12 hereof there are one or more assignees of the Company not subject to the obligations imposed by such clauses (in this clause called “the remaining assignee”) then this Agreement shall cease and determine as between the State and the parties other than the remaining assignee but for all purposes remain in full force and effect as between the State and the remaining assignee and in particular but without restricting the generality of the foregoing:

- (a) the acts omissions events or circumstances which have caused this Agreement to cease and determine as regards such other parties as aforesaid shall not as regards the remaining assignee constitute a failure of performance or observance of obligations under this Agreement;
- (b) (notwithstanding the provisions of sub-clauses (d) and (e) of clause 10 hereof) the cessation and determination of this Agreement as between the State and the parties other than the remaining assignee shall not prejudice or affect the rights of the remaining assignee in the mineral lease or any other lands leases licenses easements or rights granted hereunder or pursuant thereto and no act or omission by the State with regard to the cessation or determination of this Agreement as between the State and the parties other than the remaining assignee shall adversely affect the rights or interests of the remaining assignee in or under this Agreement or in the mineral lease or other lands leases licenses easements and rights granted hereunder or pursuant thereto;
- (c) on the cessation and determination of the Agreement as aforesaid as between the State and the parties other than

the remaining assignee all the rights and interests of such other parties in the mineral lease and other lands leases licenses easements and rights granted hereunder or pursuant thereto shall vest in the remaining assignee subject to any mortgage charge or other encumbrance affecting the same and subject to the right of the State under sub-clause (2) of this clause.

(2) At any time after the vesting referred to in paragraph (c) of sub-clause (1) of this clause the remaining assignee shall on request by the State and without further consideration assign and transfer or the State may by writing appoint to the Third Party or Fourth Party or such other party as may be agreed between the remaining assignee and the State (as the case may be) a 65% share and interest (or such lesser percentage share and interest as the Minister shall have previously approved in writing expressly for the purpose of this sub-clause) as tenant in common in this Agreement and in the mineral lease and any other lands leases licenses easements and rights granted hereunder or pursuant thereto.

(3) Contemporaneously with an assignment or transfer or exercise of the power of appointment pursuant to sub-clause (2) hereof the State will at the request of the remaining assignee procure that the Third Party or the Fourth Party or any other party referred to in sub-clause (2) hereof (as the case may be) will become obligated with the remaining assignee to discharge any then outstanding obligations to supply iron ore from the mineral lease under a contract or contracts entered into with the consent of the Minister by the Company or any assignee or assignees therefrom in accordance with the terms of such contact or contracts on a basis which is fair and reasonable as between the remaining assignee and the Third Party or the Fourth Party or any other party referred to in sub-clause (2) hereof (as the case may be).

(4) The remaining assignee will supply the Third Party or the Fourth Party with iron ore from the mineral lease during the period and on the terms and conditions specified in clause 16 hereof as if the remaining assignee were the Company.

14. Sub-clause (2) of clause 19 is amended by adding thereto a proviso as follows:

PROVIDED HOWEVER that the Minister may agree to release the Company from such liability where having regard to all the circumstances of any such assignment mortgaging charging sub-letting disposition or appointment as mentioned in sub-clause (1) of this clause he considers such release will not be contrary to the interest of the State hereunder.

15. Clause 25 is amended by inserting after the words “its registered office for the time being in the said State” the words “or in the case of any other addressee to his or its address for service of notices notified in writing to the State.”

IN WITNESS whereof these presents have been executed the day and year first hereinbefore written.

SIGNED SEALED AND
DELIVERED by the said THE
HONOURABLE DAVID
BRAND M.L.A. in the presence
of:

}

DAVID BRAND
[L.S.]

C. W. COURT
Minister for Industrial
Development

Attest:

AMAX IRON ORE
CORPORATION

By ANTHONY CHANDLER
Assistant Secretary

By JOHN PAYNE
President

[L.S.]

THE COMMON SEAL of
PILBARA IRON LIMITED was
hereunto affixed pursuant to a
resolution of the Board of
Directors:

}

J. E. MAKINSON
Director

L. SHEPHERDSON
Secretary

[L.S.]

THE COMMON SEAL of
DAMPIER MINING
COMPANY LIMITED was
hereunto affixed by authority of
the Board of Directors:

}

M. A. CUMING
Director

R. G. WALLACE
Secretary

[L.S.]

THE COMMON SEAL of
SELTRUST IRON ORE
LIMITED was hereunto affixed
by authority of the Board of
Directors in the presence of:

}

H. L. BEALE
Director

J. R. CHEESEMAN
Assistant Secretary

[L.S.]

THE COMMON SEAL of
MITSUI-C ITOH IRON PTY.
LTD. was hereunto affixed by
authority of the Board of
Directors in the presence of:

}

S. AOKI
Director

A. CARO
Secretary

[L.S.]

THE COMMON SEAL of MT.
NEWMAN IRON ORE
COMPANY LIMITED was
hereunto affixed in the presence
of:

}

ANTHONY CHANDLER
Director

G. F. JOKLIK
Director

J. McLEAN
Secretary

[L.S.]

[Second Schedule inserted by No. 63 of 1967 s. 6.]

Third Schedule — Second Variation Agreement

[s. 2]

[Heading amended by No. 19 of 2010 s. 4.]

THIS AGREEMENT made the 9th day of May One thousand nine hundred and seventy nine BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, K.C.M.G., O.B.E., M.L.A., Premier of the State of Western Australia acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called “the State”) of the First Part AMAX IRON ORE CORPORATION a company incorporated in the State of Delaware in the United States of America and registered in the State of Western Australia as a foreign company (hereinafter called “Amax Iron”) PILBARA IRON LIMITED a company incorporated in the State of Western Australia (hereinafter called “Pilbara”) DAMPIER MINING COMPANY LIMITED a company incorporated in the State of Western Australia (hereinafter called “Dampier”) SELTRUST IRON ORE LIMITED a company incorporated in England and registered in the State of Western Australia as a foreign company (hereinafter called “Seltrust Iron”) and MITSUI-C. ITOH IRON PTY LTD a company incorporated in the State of Western Australia (hereinafter called “Mitsui Iron”) of the Second Part and MT. NEWMAN IRON ORE COMPANY LIMITED a company incorporated in the State of Western Australia (hereinafter called “the Mt. Newman Company”) of the Third Part.

WHEREAS:

- (a) By an agreement under seal made the 26th day of August, 1964 BETWEEN the State of the one part and the Mt. Newman Company of the other part (which agreement was approved by and is scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964* and is hereinafter referred to as “the 1964 agreement”) the Mt. Newman Company acquired upon the terms and conditions set forth in the 1964 agreement certain rights interests and benefits and assumed certain obligations with respect to the exploration for and development of specified iron ore deposits and the mining transportation processing and shipment of iron ore therefrom.
- (b) By virtue of various agreements under seal Amax Iron Pilbara Dampier Seltrust Iron and Mitsui Iron became entitled to all the right title interest claim and demand whatsoever of the Mt. Newman Company in and under the 1964 agreement and by virtue

of certain Deeds of Covenant with the State assumed the obligations of the Mt. Newman Company thereunder.

- (c) By an agreement under seal made the 16th of November, 1967 between the State of the first part and Amax Iron Pilbara Dampier Seltrust Iron and Mitsui Iron of the second part and the Mt. Newman Company of the third part (which is scheduled to the *Iron Ore (Mount Newman) Agreement Act Amendment Act 1967* and is hereinafter referred to as “the first variation agreement”) the parties thereto varied the agreement as therein set out.
- (d) The parties desire to add to and amend the provisions of the 1964 agreement as amended by the first variation agreement (hereinafter referred to as “the Principal Agreement”).

NOW THIS AGREEMENT WITNESSETH:

- 1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
- 2. The provisions of this agreement shall not come into operation unless and until a Bill to approve and ratify this agreement is passed by the legislature of the State and comes into operation as an Act.
- 3. The Principal Agreement is hereby varied as follows:
 - (1) As to clause 1 —
 - (a) by adding after the definition “harbour” the following definition —

“housing scheme” means any scheme to be established by the Company from time to time pursuant to any proposal approved hereunder or any approved proposal as varied pursuant to subclause (3) of clause 20 hereof in relation to a townsite or townsites for the sale to employees engaged in the operations of the Company under this Agreement of lots of land whether improved or unimproved within or near such townsite or townsites;

- (b) by substituting for the passage “in lieu of a townsite constituted and defined under section 10 of the Land Act;” in lines 11 and 12 of the definition of “townsite”, the following passage —
 - “(whether or not such townsite or townsites are constituted and defined under section 10 of the Land Act);”; and
 - (c) by adding after the definition “Year 1” the following passage —
 - “reference in this Agreement to the Company shall not include persons (other than the parties to this Agreement) to whom townsite lots are or are by agreement with the Company agreed to be assigned or transferred pursuant to a housing scheme;”;
- (2) by adding after clause 6 two new clauses 6A and 6B as follows —

Additional proposals

6A. (1) The Company may submit to the Minister from time to time detailed proposals relating to —

- (a) any housing scheme;
- (b) the transfer to the State or the appropriate instrumentality of the State of any facility owned and/or operated by the Company hereunder;
- (c) the vesting in, transfer or lease to the State and/or the relevant local authority of any land of which the Company is the lessee or proprietor in fee simple hereunder; or
- (d) any other purpose relating to the use maintenance or operation of the Company’s services or facilities in or near a townsite as the Minister shall approve.

(2) The provisions of subclause (1) of clause 6 and subclause (1) of clause 7 of this Agreement shall *mutatis mutandis* apply to proposals submitted pursuant to subclause (1) of this clause. Provided that in the event of arbitration the decision of the arbitrator, arbitrators or umpire (as the case may be) shall be final and shall be accepted and given effect to by the parties and the provisions of subclause (1) of clause 6 dealing with cessation and

determination of this Agreement shall not apply. The proposals modified or altered in accordance with the award on arbitration shall be deemed approved on the date of delivery of the award.

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

Authorisation of local authority and certain Ministers to enter agreements

6B. Where pursuant to any approved proposal as to any of the matters referred to in clause 6A hereof or as varied pursuant to subclause (3) of clause 20 hereof provision is made for the relevant local authority consistent with its functions as a local authority to enter into and carry out any agreement with the Company and/or for the Minister or respective Ministers administering the *Country Areas Water Supply Act 1947* and the *Country Towns Sewerage Act 1948* to enter into and carry out any agreement with the Company —

- (a) the *Local Government Act 1960* and/or the *Country Areas Water Supply Act 1947* and the *Country Towns Sewerage Act 1948* shall for the purposes of implementing such approved proposals be deemed to be modified by the inclusion of a power whereby such relevant local authority and/or Minister or Ministers are authorised and empowered to enter into and carry out any such agreement; and
 - (b) the relevant local authority and such Minister or Ministers may enter into and carry out any such agreement notwithstanding the other provisions of this Agreement.;
- (3) as to clause 8 —
- (a) as to paragraph (b) of subclause (1) by adding after the word “hereof” in line 3 the following passage —

“or under clause 6A hereof or as varied from time to time pursuant to subclause (3) of clause 20 hereof”;
 - (b) as to subclause (2) —

- (i) by deleting the word “and” in line 4 of paragraph (e);
- (ii) by substituting for the passage “Act.” in line 9 of paragraph (f) the passage “Act.”; and
- (iii) by adding after paragraph (f) the following paragraphs —
 - “(g) the inclusion of a power whereby any special lease granted to the Company hereunder may be varied by agreement or surrendered in whole or in part; and
 - (h) the inclusion of a power whereby any land granted or leased to the Company hereunder may be —
 - (i) acquired by the State or any instrumentality of the State from the Company by way of transfer or exchange; or
 - (ii) leased or subleased by the Company to the State or any instrumentality of the State.”;
- (c) by adding after subclause (3) a new subclause (3A) as follows —

“(3A) Notwithstanding the provisions of the Land Act, if proposals approved hereunder so provide, the Minister for Lands shall not at any time put up for sale or lease to persons other than the Company 30 or more lots of land as a single release within the deposits townsite without first consulting with the Company for the purpose of ensuring that provision has been made for the Company’s future development requirements pursuant to this Agreement.”;
- (d) as to paragraph (b) of subclause (4) by substituting for the words “nor any of the lands the subject of any lease or license granted to the Company in terms of” in lines 10, 11 and 12 the words “nor any lands for the time being owned by the Company

in fee simple hereunder or under any lease or license issued pursuant to”; and

- (e) by substituting for the words “granted or assigned” in line 2 of subclause (6) the words “held by the Company”;

(4) as to clause 10 —

- (a) as to paragraph (a) by substituting for the passage “1945;” at the end of the paragraph, the passage “1945 PROVIDED HOWEVER that such powers and authorities shall be modified from time to time to accord with proposals approved under clause 6A hereof (including any variation thereto pursuant to subclause (3) of clause 20 hereof);”;

- (b) as to paragraph (d) by substituting for the passage “Agreement;” at the end of paragraph (i) the following passage —

“Agreement PROVIDED that this subparagraph shall not apply to townsite lots which have been granted to or acquired by the Company for the purposes of a housing scheme unless such lots are then owned by the Company;”;

and

- (c) as to paragraph (g) —

- (i) by substituting for the words “granted to” in line 3 the words “held by”; and

- (ii) by adding after the words “this Agreement” in line 3 the words “or in respect of which the Company has any right to purchase pursuant to a housing scheme”;

(5) as to clause 16A by adding after the word “Company” in line 7 of subclause (1) the words “other than assignees of the Company under a housing scheme”;

(6) as to clause 19 by adding after subclause (2) two new subclauses (3) and (4) as follows —

“(3) Where in respect of any land acquired by the Company hereunder the Company makes any disposition pursuant to any approved proposal as to any of the matters referred to in clause 6A

hereof or as varied pursuant to subclause (3) of clause 20 hereof, then notwithstanding the provisions of subclause (1) of this Clause but subject to any contrary intention contained in any such approved proposal, the consent in writing of the Minister shall not be required to any such disposition nor shall any assignee from the Company be required to enter into a deed of covenant as provided in subclause (1) of this clause.

(4) Notwithstanding subclause (2) of this clause, where in the performance of its obligations under subclause (3) of clause 6A hereof the Company enters into any agreement with a person which results in that person discharging all or any of the obligations undertaken by the Company under this Agreement or renders it unnecessary for the Company to discharge any obligation undertaken by it hereunder the Minister will discharge or temporarily relieve the Company from such part of its said obligations as is reasonable having regard to the extent to which and the period for which that person agrees to effect the discharge of those obligations.”; and

(7) by adding after clause 26 a new clause 26A as follows —

Further exemption from stamp duty

26A (1) The State shall exempt from any stamp duty which but for the operation of this clause would or might be chargeable on —

- (a) any agreement transfer or other instrument evidencing the sale or transfer to the Company from the Rural and Industries Bank of Western Australia of any townsite lot pursuant to any housing scheme;
- (b) any agreement transfer or other instrument evidencing the sale or transfer of any lot in fee simple in the deposits townsite or the town of Port Hedland from the Company to any employee or to the Company from any such employee or former employee (as the case may be) pursuant to any housing scheme; and
- (c) any mortgage to the Company from any employee in respect of any land the subject of a transfer from the Company to any such employee,

PROVIDED THAT this clause shall not apply to any such agreement transfer mortgage or other instrument executed or made more than 10 years from the 1st day of June, 1979.

(2) For the purposes of paragraphs (b) and (c) of subclause (1) of this clause the expression "employee" means any person engaged in the operations of the Company under this Agreement and employed by the Company or by Mt. Newman Mining Co. Pty. Limited (or other manager for the time being of the operations of the Company hereunder) and shall for the purposes of any transfer pursuant to paragraph (b) of subclause (1) of this clause include the legal personal representatives of any such person.

IN WITNESS whereof these presents have been executed the day and year first hereinbefore written.

SIGNED by the said THE
HONOURABLE SIR
CHARLES WALTER
MICHAEL COURT, K.C.M.G.,
O.B.E., M.L.A., in the presence
of —

CHARLES COURT.

ANDREW MENSAROS,
MINISTER FOR INDUSTRIAL DEVELOPMENT.

Executed by AMAX IRON
ORE CORPORATION by being
signed in Western Australia by
its duly appointed Attorney
Donald L. Davenport under
Power of Attorney dated 25th
April, 1979 in the presence of —

DONALD L. DAVENPORT.

JOHN GALE.

Executed by PILBARA IRON LIMITED by being signed in Western Australia by its duly appointed Attorneys Colin Russell Leith and John McKenzie Middleton under Power of Attorney dated 24th April, 1979 in the presence of —

C. R. LEITH.
J. M. MIDDLETON.

Norman Leslie Smithson.

Executed by DAMPIER MINING COMPANY LIMITED by being signed in Western Australia by its duly appointed Attorney Norman Leslie Smithson under Power of Attorney dated 2nd May, 1979 in the presence of —

N. L. SMITHSON.

Raymond John Smith.

Executed for and on behalf of SELTRUST IRON ORE LIMITED by being signed in Western Australia by its duly authorised representative Gordon MacEwan Smith in the presence of —

G. M. SMITH.

Thomas McLean.

THE COMMON SEAL of
MITSUI-C. ITOH IRON PTY.
LTD. was hereunto affixed with
the authority of the Board of
Directors in the presence of —

}

[C.S.]

Director,
K. Eguchi.

Secretary,
J. N. Mackenzie.

Executed by MT. NEWMAN
IRON ORE COMPANY
LIMITED by being signed in
Western Australia by its duly
appointed Attorney Norman
Leslie Smithson under Power of
Attorney dated 3rd May, 1979 in
the presence of —

}

N. L. SMITHSON.

Raymond John Smith.

[Third Schedule inserted by No. 12 of 1979 s. 5.]

Fourth Schedule — Third Variation Agreement

[s. 2]

[Heading amended by No. 19 of 2010 s. 4.]

THIS AGREEMENT is made the 12th day of July 1990 BETWEEN: THE HONOURABLE CARMEN MARY LAWRENCE, B.Psych., Ph.D., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called “the State”) of the one part AND PILBARA IRON LIMITED a company incorporated in the State of Western Australia, BHP MINERALS LIMITED a company incorporated in the State of Western Australia, MITSUI-C. ITOH IRON PTY. LTD. a company incorporated in the State of Western Australia and CI MINERALS AUSTRALIA PTY. LTD. a company incorporated in the State of Western Australia of the other part.

WHEREAS:

- (a) the State and the other parties hereto (pursuant to certain assignments and Deeds of Covenant and the release of Mt. Newman Iron Ore Company Limited pursuant to clause 19(2) of the Principal Agreement as hereinafter defined) are now the parties to the agreement dated the 26th day of August 1964 (hereinafter called “the 1964 Agreement”) which agreement was approved by and is scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964* and has been varied by —
 - (i) the agreement dated the 16th day of November 1967 approved by the *Iron Ore (Mount Newman) Agreement Act Amendment Act*;
 - (ii) the agreement dated the 9th day of May 1979 approved by the *Iron Ore (Mount Newman) Agreement Act Amendment Act 1979*;
 - (iii) agreements dated respectively the 11th day of December 1985 and the 27th day of January 1987 entered into pursuant to clause 20(1) of the 1964 Agreement;
- (b) the 1964 Agreement as so varied is hereinafter referred to as “the Principal Agreement”;

- (c) the parties desire to amend the Principal Agreement pursuant to clause 20(1) thereof.

NOW THIS AGREEMENT WITNESSETH —

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purposes of the Principal Agreement.
2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the State of Western Australia and comes into operation as an Act.
3. The Principal Agreement is hereby varied as follows —

(1) Clause 1 —

- (a) by deleting the definitions of “direct shipping ore”, “fine ore”, “fines” and “f.o.b. revenue”;
- (b) by inserting, in the appropriate alphabetical positions, the following definitions —

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

“beneficiated ore” means iron ore which has been concentrated or upgraded otherwise

than by washing drying crushing or screening or a combination thereof;

“deemed f.o.b. point” means on ship at the Company’s wharf;

“deemed f.o.b. value” means an agreed or determined value of the iron ore at the time the iron ore becomes liable to royalty established on the basis that the iron ore was sold f.o.b. at the deemed f.o.b. point;

“fine ore” means iron ore (not being beneficiated ore) which is sized minus six millimetres;

“f.o.b. value” means —

- (i) in the case of iron ore shipped and sold by the Company, the price which is payable for the iron ore by the purchaser thereof to the Company or an associated 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 type of 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 Company’s wharf to the time the same is delivered and accepted by the purchaser including — A

(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 Company's wharf;
 - (7) all import taxes by the country of the port of discharge; and
 - (8) such other costs and charges as the Minister may in his discretion consider reasonable in respect of any shipment or sale;
- (ii) in all other cases, the deemed f.o.b. value. For the purpose of subparagraph (i) of this definition, it is acknowledged that the consideration payable in an arm's length transaction for iron ore sold solely for testing purposes may be less than the fair and reasonable market value for that iron ore and in this circumstance where the Minister in his discretion is

satisfied such consideration represents the entire consideration payable, the Minister shall be taken to be satisfied that such entire consideration represents the fair and reasonable market value;

“iron ore” includes beneficiated ore;

“lump ore” means iron ore (not being beneficiated ore) which is sized plus six millimetres minus thirty millimetres;

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

- (c) in the definition of “associated company”, by deleting “section 6 of the *Companies Act 1961*” and substituting the following —

“section 7 of the *Companies (Western Australia) Code*”;

- (d) in the definition of mineral lease, by inserting after “thereof” the following —

“and any areas included therein pursuant to clause 9A hereof ”.

- (2) Clause 8(1)(b) —

- (a) in the first proviso, by deleting “and iron ore concentrates which become” and substituting the following —

“which becomes”;

- (b) in the second proviso, by deleting “sub-section (5) of Section 6 of the *Companies Act 1961* of the State” and substituting the following —

“section 7 of the *Companies (Western Australia) Code*”.

(3) Clause 9(2)(e) —

by deleting “sub-section (5) of section 6 of the *Companies Act 1961* of the State” and substituting the following —

“section 7 of the *Companies (Western Australia) Code*”.

(4) Clause 9(2)(j) —

by deleting paragraph (j) of clause 9(2) and substituting the following paragraph —

“(j) pay to the State royalty on all iron ore from the mineral lease (other than iron ore shipped solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) as follows —

- (i) on lump ore and on fine ore where such fine ore is not sold or shipped separately as such at the rate of 7.5% of the f.o.b. value except that the rate of royalty in respect of lump ore used within the Commonwealth by B.H.P. or A.I.S. or any company or companies related to B.H.P. or A.I.S. within the meaning of section 7 of the *Companies (Western Australia) Code* for manufacture into iron or steel and becoming liable for royalty during the period from and including 1st July 1989 to and including 31st December 1990 shall be —
 - (A) during the period 1st July 1989 to 31st December 1989, 5% of the f.o.b. value; and
 - (B) during the calendar year 1990, 6.25% of the f.o.b. value;
- (ii) on fine ore sold or shipped separately as such at the rate of 3.75% of the f.o.b. value;
- (iii) on beneficiated ore at the rate of 3.25% of the f.o.b. value;

(iv) on all other iron ore of whatever kind at the rate of 7.5% of the f.o.b. value;”.

(5) Clause 9(2)(k) —

(a) by deleting “all iron ore or iron ore concentrates the subject of royalty hereunder and shipped sold used or produced” and substituting the following —

“all beneficiated ore produced and all other iron ore the subject of royalty hereunder and shipped sold transferred or otherwise disposed of or used”;

(b) by deleting “of iron ore concentrates produced or iron ore used and in respect of all iron ore shipped or sold” and substituting the following —

“thereof or if the f.o.b. value is not then finally calculated, agreed or determined”;

(c) by inserting after “of such iron ore” the following —

“or on the basis of estimates as agreed or determined”;

(d) by deleting “f.o.b. revenue realised in respect of the shipments shall have been ascertained” and substituting the following —

“f.o.b. value shall have been finally calculated, agreed or determined”.

(6) Clause 9(2)(n) —

(a) by inserting after “the Company” where it first occurs the following —

“including contracts”;

(b) deleting “f.o.b. revenue payable in respect of any shipment of iron ore hereunder the Company will take reasonable steps” and substituting the following —

“f.o.b. value in respect of any shipment sale transfer or other disposal or use or production of

iron ore hereunder the Company will take reasonable steps (i) to provide the Minister with current prices for iron ore outside and within the Commonwealth and other details and information that may be required by the Minister for the purpose of agreeing or determining the f.o.b. value and (ii)”;

- (c) by deleting “hereunder; and” and substituting the following —

“hereunder.”.

- (7) By deleting clause 9(2)(o).
(8) By inserting after clause 9 the following clause —

Additional areas

- “9A. (1) Notwithstanding the provisions of the Mining Act or the *Mining Act 1978* the Company may on or before the 1st day of October, 1990 (or such later date as the parties may agree) apply to the Minister for Mines for inclusion in the mineral lease of such of the land coloured red on the plan marked ‘B’ (initialled by or on behalf of the parties hereto for the purpose of identification) as the Company at the time of such application holds under exploration licences granted under the *Mining Act 1978* and the Minister for Mines shall, subject to the Company surrendering from the mineral lease the land coloured red on the plan marked ‘C’ (initialled by or on behalf of the parties hereto for the purpose of identification) and the lands so applied for out of the exploration licences, include the land so applied for (herein after called “the additional areas”) in the mineral lease by endorsement on the mineral lease subject to such of the conditions of the surrendered exploration licences as the Minister for Mines determines but otherwise subject to

the same terms covenants and conditions as apply to the mineral lease (with such apportionment of rents as is necessary) and notwithstanding that the survey of the additional areas has not been completed but subject to correction to accord with the survey when completed at the Company's expense.

- (2) The Company shall not mine the additional areas except in accordance with proposals with respect thereto approved or determined pursuant to subclauses (3) to (10) of this clause.
- (3) If and whenever the Company desires to mine the additional areas it shall 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 the mining of iron ore from the additional areas and shall include the location, area, layout, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely —
 - (a) the mining and recovery of iron ore including mining crushing screening handling transport and storage of iron ore and plant facilities;
 - (b) roads;
 - (c) housing and accommodation for the persons engaged in the development and/or mining of the additional areas and associated activities including the provision of utilities, services and associated facilities;
 - (d) water supply;

- (e) power supply;
 - (f) iron ore transportation;
 - (g) airstrip and other airport facilities and services;
 - (h) any other works, services or facilities desired by the Company;
 - (i) 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;
 - (j) any leases licences or other tenures of land required from the State; and
 - (k) an environmental management programme as to measures to be taken, in respect of the Company's activities at additional areas, for rehabilitation and the protection and management of the environment.
- (4) The proposals pursuant to subclause (3) of this clause may with the approval of the Minister be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (k) of that subclause.
- (5) On receipt of the said proposals the Minister shall subject to the *Environmental Protection Act 1986* —
- (a) approve of the said proposals either wholly or in part without qualification or reservation; or

- (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (3) of this clause not covered by the said proposals; or
- (c) require as a condition precedent to the giving of his approval to the said proposals that the Company makes such alteration thereto or complies with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use of other parties as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions

PROVIDED ALWAYS that where implementation of any proposals hereunder has been approved pursuant to the *Environmental Protection Act 1986* 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.

- (6) The Minister shall within two months after receipt of the said proposals or, if applicable, within two months of service on him of an authority under section 45(7) of the *Environmental Protection Act 1986* give notice to the Company of his decision in respect of the same.

- (7) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (5) of this clause 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 of some particular matter.
- (8) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (5) of this clause and the Company considers that the decision is unreasonable the Company within two months after receipt of the notice mentioned in subclause (6) of this clause 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 (5) of this clause shall not be referable to arbitration hereunder.
- (9) The Company may withdraw its proposals submitted pursuant to subclause (3) of this clause 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 proposed mining of the additional areas.
- (10) The Company shall implement the proposals as approved by the Minister or an award made on arbitration (where the proposals are not withdrawn) as the case may be in accordance with the terms thereof and in such implementation shall comply with all requirements in connection with the protection of the environment that may be made by the State or by any State agency or instrumentality or any local or other authority or statutory body

of the State pursuant to any Act from time to time in force.

- (11) (a) If the Company at any time during the continuance of this Agreement desires to significantly modify expand or otherwise vary its activities at the additional areas beyond those specified in any proposals approved or determined under this clause it shall give notice of such desire to the Minister and if required by the Minister within two months of the giving of such notice shall submit to the Minister within such period as the Minister may reasonably allow (but in any event not less than two months) detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (k) of subclause (3) of this clause as the Minister may require. The provisions of subclauses (4) to (9) of this clause shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause. The Company shall implement the proposals as approved by the Minister or an award made on arbitration as the case may be in accordance with the terms thereof and the provisions of subclause (10) of this clause.
- (b) If the Minister does not require the Company to submit proposals under paragraph (a) of this subclause the Company may, subject to compliance with all applicable laws, proceed with the modification expansion or variation of its activities the subject of the notice to the Minister under that paragraph.

- (12) (a) The Company shall, in respect of the matters referred to in paragraph (k) of subclause (3) of this clause and which are the subject of proposals approved or determined under this clause carry out with effect from such date of approval or determination a continuous programme including monitoring to ascertain the effectiveness of the measures it is taking pursuant to such proposals for rehabilitation and the protection and management of the environment and shall as and when reasonably required by the Minister from time to time (but not more frequently than once in every twelve months) submit to the Minister a detailed report thereon.
- (b) Whenever as a result of its monitoring under paragraph (a) of this subclause or otherwise reliable information becomes available to the Company which in order to more effectively rehabilitate, protect or manage the environment may necessitate or could require any changes or additions to any proposals approved or determined under this clause or require matters not addressed in any such proposals to be addressed the Company shall forthwith notify the Minister thereof and with such notification shall submit a detailed report thereon.
- (c) The Minister may within two (2) months of the receipt of a detailed report pursuant to paragraphs (a) or (b) of this subclause notify the Company that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the report and

such other reasonable matters as the Minister may require in connection therewith.

- (d) The Company shall within two months of the receipt of a notice given pursuant to paragraph (c) of this subclause submit to the Minister additional detailed proposals as required and the provisions of subclauses (5), (6), (7), (8), (10) and (11) of this clause and this subclause shall *mutatis mutandis* apply in respect of such proposals.
- (13) The Company shall, in respect of its activities at the additional areas in lieu of the provisions of clause 9(2)(i) 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 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 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;
- (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;
- (f) except as otherwise agreed by the Minister in every contract entered into with a third party for the supply of

services labour works materials plant equipment and supplies require as a condition thereof that such third party shall undertake the same obligations as are referred to in paragraphs (a)-(e) of this subclause and shall report to the Company concerning such third party's implementation of that condition;

- (g) submit a report to the Minister at monthly intervals or such longer period as the Minister determines concerning its implementation of the provisions of this subclause together with a copy of any report received by the Company pursuant to paragraph (f) of this subclause 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; and
- (h) keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia together with its reasons therefor and shall as and when

required by the Minister consult with
the Minister with respect thereto.

- (14) The Company shall be responsible for the provision at no cost to the State of suitable accommodation for its employees and the dependants of its employees and for other persons (and dependants of those persons) engaged in the development and/or mining of the additional areas and associated activities.
- (15) The Company shall except as otherwise agreed by the Minister pay to the State or the appropriate authority the capital cost of establishing and providing additional services and facilities and associated equipment including sewerage and water supply schemes, main drains, education, police and hospital services in Newman to the extent to which those additional works and services are made necessary by reason of the persons (and their dependants) engaged in the development and/or mining of the additional areas and associated activities residing therein or by reason of the Company's activities in relation to the additional areas or such proportion of any such cost as may be agreed by the Minister taking into account the permanent or temporary nature of the services or facilities. The additional services, works and associated equipment referred to in this subclause shall be provided by the State (or the State shall cause the same to be provided) to a standard normally adopted by the State in providing new services works and associated equipment in similar cases in comparable towns.
- (16) The Company shall confer with the Minister and the relevant local authority with a view to assisting in the cost of providing at Newman appropriate community recreation, civic, social

and commercial amenities if required by reason of the development and/or mining of the additional areas and associated activities.”.

(9) Clause 24 —

by deleting “*Arbitration Act 1895*” and substituting the following —

“*Commercial Arbitration Act 1985* and notwithstanding section 20(1) of that Act each party may be represented by a duly qualified legal practitioner or other representative”.

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 CARMEN
MARY LAWRENCE, B.Psych.,
Ph.D., M.L.A. in the presence
of:

}

CARMEN LAWRENCE

J. M. BERINSON
Minister for Resources

THE COMMON SEAL of
PILBARA IRON LIMITED was
hereunto affixed by authority of
the Board of Directors:

}

[C.S.]

Director
D. F. COLLINS

Secretary
ADA LIAN DAVIES

THE COMMON SEAL of BHP
MINERALS LIMITED was
hereunto affixed by authority of
the Board of Directors: } [C.S.]

Director
D. J. WOOD

Secretary
G. J. HEATH

THE COMMON SEAL of
MITSUI-C. ITOH IRON PTY.
LTD. was hereunto affixed by
authority of the Board of
Directors in the presence of: } [C.S.]

Director
T. SUZUKI

Secretary
J. MacKENZIE

THE COMMON SEAL of CI
MINERALS AUSTRALIA
PTY. LTD. was hereunto
affixed by authority of the Board
of Directors in the presence of: } [C.S.]

Director
M. YAMAMOTO

Secretary
M. L. APPLEBEE

[Fourth Schedule inserted by No. 51 of 1990 s. 6.]

Fifth Schedule — Fourth Variation Agreement

[s. 2]

[Heading amended by No. 19 of 2010 s. 4.]

THIS AGREEMENT is made the 30th day of November 1993

B E T W E E N:

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 instrumentalities thereof from time to time (hereinafter called “the
State”) of the one part

AND

PILBARA IRON LIMITED ACN 008 694 853 a company incorporated in the
State of Western Australia, **BHP MINERALS PTY. LTD.** ACN 008 694 782 a
company incorporated in the State of Western Australia, **MITSUI-ITOCHU**
IRON PTY. LTD. ACN 008 702 761 a company incorporated in the State of
Western Australia and **CI MINERALS AUSTRALIA PTY. LTD.**
ACN 009 256 259 a company incorporated in the State of Western Australia of
the other part.

WHEREAS:

- (a) the State and the other parties hereto (pursuant to certain assignments and Deeds of Covenant and the release of Mt. Newman Iron Ore Company Limited pursuant to clause 19(2) of the Principal Agreement as hereinafter defined) are now the parties to the agreement dated the 26th day of August 1964 (hereinafter called “the 1964 Agreement”) which agreement was approved by and is scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964* and has been varied by —
 - (i) the agreement dated the 16th day of November 1967 approved by the *Iron Ore (Mount Newman) Agreement Act Amendment Act 1967*;
 - (ii) the agreement dated the 9th day of May 1979 approved by the *Iron Ore (Mount Newman) Agreement Act Amendment Act 1979*;

- (iii) agreements dated respectively the 11th day of December 1985 and the 27th day of January 1987 entered into pursuant to clause 20(1) of the 1964 Agreement; and
- (iv) the agreement dated the 12th day of July 1990 ratified by the *Iron Ore (Mount Newman) Agreement Amendment Act 1990*;
- (b) the 1964 Agreement as so varied is hereinafter referred to as “the Principal Agreement”;
- (c) the parties desire to amend the Principal Agreement pursuant to clause 20(1) thereof.

NOW THIS AGREEMENT WITNESSES —

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purposes of the Principal Agreement.
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1993 or such later date as may be agreed between the parties hereto.
3. (1) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation unless and until —
 - (a) the Bill to ratify this Agreement as referred to in Clause 2; and
 - (b) a Bill to ratify an agreement of even date herewith made between the State of the one part and BHP Minerals Pty. Ltd., BHP Energy Holdings Pty. Ltd. and BHP Power Holdings Pty. Ltd. of the other partare passed as Acts before 31 December 1993 or such later date (if any) as the parties hereto agree upon.
- (2) If before 31 December 1993 or such later agreed date the said Bills have not commenced to operate as Acts 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.

- (3) On the said Bills commencing to operate as Acts all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

4. The Principal Act is hereby varied as follows —

- (1) Clause 1 —

By inserting after the definition of “**person**” the following definition —

“**Pilbara Energy Project Agreement**” means the agreement (as amended from time to time) ratified by the *Pilbara Energy Project Agreement Act 1994*.”.

- (2) Clause 12 —

By deleting the expressions appearing in the first column of the Table to this subclause wherever they occur and substituting in each case respectively the dates appearing alongside those expressions in the second column of the Table: —

Table

Year 20	December 1996
Year 23	December 1999
Year 25	December 2001
Year 26	December 2002
Year 29	December 2005
Year 30	December 2006
Year 31	December 2007
Year 32	December 2008
Year 33	December 2009

- (3) By inserting after clause 12 the following Clause —

“12A. (1) If each of the power station, the gas pipeline and the Newman facilities as defined in the Pilbara Energy Project Agreement are constructed, in accordance with the provisions of subclause (7) of clause 7 of that agreement, by 31 December 1996 the obligations of the Company under clause 12 of this Agreement

Sixth Schedule — Fifth Variation Agreement

[s. 3E]

[Heading amended by No. 19 of 2010 s. 4.]

THIS AGREEMENT is made the 11th day of April 2000.

B E T W E E N

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 one part

AND

BHP MINERALS PTY. LTD. ACN 008 694 782 , a company incorporated in
the State of Western Australia, **MITSUI-ITOCHE IRON PTY. LTD.**
ACN 008 702 761 a company incorporated in the State of Western Australia
and **CI MINERALS AUSTRALIA PTY. LTD.** ACN 009 256 259 a company
incorporated in the State of Western Australia (hereinafter called “the Joint
Venturers”) of the other part.

W H E R E A S :

- (a) the State and the Joint Venturers (pursuant to certain assignments and Deeds of Covenant and the release of Mt. Newman Iron Ore Company Limited pursuant to clause 19(2) of the Principal Agreement as hereinafter defined) are now the parties to the agreement dated the 26th day of August 1964 which agreement was approved by and is scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964* and as amended from time to time is hereinafter referred to as “the Principal Agreement”;
- (b) the State and the Joint Venturers wish to vary the Principal Agreement.

NOW THIS AGREEMENT WITNESSES —

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

2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 2000 or such later date as may be agreed between the parties hereto.
3. (1) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation unless and until —
 - (a) the Bill to ratify this Agreement as referred to in Clause 2; and
 - (b) Bills to ratify the following agreements of even date herewith, namely: —
 - (i) an agreement between the State and BHP Direct Reduced Iron Pty. Ltd. to vary the Iron Ore Beneficiation (BHP) Agreement;
 - (ii) an agreement between the State and BHP Direct Reduced Iron Pty. Ltd. to vary the Iron Ore — Direct Reduced Iron (BHP) Agreement;
 - (iii) an agreement between the State and BHP Minerals Pty. Ltd., CI Minerals Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. to vary the Iron Ore (Marillana Creek) Agreement;
 - (iv) an agreement between the State and BHP Iron Ore (Jimblebar) Pty. Ltd. to vary the Iron Ore (McCamey's Monster) Agreement;
 - (v) an agreement between the State and BHP Minerals Pty. Ltd., CI Minerals Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. to vary the Iron Ore (Mount Goldsworthy) Agreement; and
 - (vi) an agreement between the State and BHP Minerals Pty. Ltd., CI Minerals Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. to vary the Iron Ore (Goldsworthy-Nimingarra) Agreement

are passed as Acts before 31 December 2000 or such later date if any as the parties hereto may agree upon.

- (2) If before 31 December 2000 or such later agreed date the said Bills have not commenced to operate as Acts 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.
- (3) On the said Bills commencing to operate as Acts all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.
4. The Principal Agreement is hereby varied with effect on and from the coming into operation of this agreement as follows —
- (1) Clause 1 —
- in the definition of “beneficiated ore” by inserting after “upgraded” the following —
- “by the Company pursuant to proposals approved under this Agreement”.
- (2) By inserting after Clause 8 the following clause —
- “Lease for tunnel**
- 8A. Notwithstanding the provisions of any Act regarding the term of leases that it may grant, the Port Hedland Port Authority may in accordance with approved proposals grant to the Joint Venturers a lease for the purpose of an underwater tunnel between Finucane Island and Nelson Point for a term coterminous with the term of the agreement ratified by the *Iron Ore-Direct Reduced Iron (BHP) Agreement Act 1996*.”.
- (3) Clause 9(2)(j) —
- (a) in subparagraph (i) by deleting the following —
- “except that the rate of royalty in respect of lump ore used within the Commonwealth by B.H.P. or A.I.S. or any company or companies related to B.H.P. or A.I.S. within the meaning of section 7 of the *Companies (Western Australia)*

Code for manufacture into iron or steel and becoming liable for royalty during the period from an including 1st July 1989 to and including 31st December 1990 shall be —

- (A) during the period 1st July 1989 to 31st December 1989, 5% of the f.o.b. value; and
- (B) during the calendar year 1990; 6.25% of the f.o.b. value”.

(b) by inserting after subparagraph (ii) the following subparagraph —

“(iia) on iron ore used in the beneficiation plant the subject of the Agreement ratified by the *Iron Ore Beneficiation (BHP) Agreement Act 1996* at the following rates —

- (A) in respect of lump ore, 7.5% of the f.o.b. value; and
- (B) in respect of fine ore, 3.75% of the f.o.b. value;”.

5. The Principal Agreement is hereby further varied with effect on and from the later of the coming into operation of the Water Agreement (as hereinafter defined) or the coming into operation of this agreement as follows —

(1) By inserting after Clause 8A the following clause —

“Water — Port Hedland

8B.(1) In this clause —

“Water Agreement” means an agreement entered into between the Water Corporation (established pursuant to section 4 of the *Water Corporation Act 1995*) and BHP Iron Ore Pty. Ltd. ACN 008 700 981 as agent for BHP Direct Reduced Iron Pty. Ltd. and the Mount Newman and Mount Goldsworthy Mining Associates Joint Venturers in a form approved by the Minister in relation to the supply of water for, inter alia, the Joint Venturers’ water requirements for the purposes of this Agreement at Port Hedland;

“Commencement Date”, “Renewal Period”, “Buyer” and “Default” have the same meanings respectively as they have in the Water Agreement.

- (2) Notwithstanding any provision of the Water Agreement, the State shall ensure during the period from the Commencement Date until the later of the sixtieth (60th) anniversary of the Commencement Date or the end of the Renewal Period that (except where the Water Agreement is lawfully terminated because of the Buyer’s Default) —
- (a) the Waters and Rivers Commission (established by section 4 of the *Waters and Rivers Commission Act 1995*) will allocate water reserves sufficient to meet the quantities set out in the Water Agreement; and
 - (b) in the event of expiration of the Water Agreement the Coordinator of Water Services under the *Water Services Coordination Act 1995* will impose a condition on any relevant licence to supply water in Port Hedland that the supplier is to supply BHP Iron Ore Pty. Ltd. (as agent as aforesaid) with water on the same terms as those contained in the Water Agreement.”.

(2) Clause 10(a) —

- (a) by inserting after “purposes hereunder” the following —
“at the mining areas”;
- (b) by inserting after “townsite” the following —
“established by the Company for the purposes of its operations and employees on or near the mining areas”.

6. If the Water Agreement referred to in Clause 5 of this agreement shall not have come into operation by 1 January 2001, Clause 5 of this agreement shall on that date cease and thenceforth have no effect.

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

SIGNED by THE HONOURABLE
RICHARD FAIRFAX COURT in the
presence of — } RICHARD COURT

COLIN BARNETT
MINISTER FOR RESOURCES DEVELOPMENT

THE COMMON SEAL of **BHP**
MINERALS PTY. LTD. was hereunto
affixed by authority of the Board of
Directors: } [C.S.]

STEFANO GIORGINI
Director

MICHAEL KNOWLES
Secretary

THE COMMON SEAL of
MITSUI-ITOCHU IRON PTY. LTD. was
hereunto affixed by authority of the Board of
Directors in the presence of: } [C.S.]

YOICHI HASHIMOTO
Director

PETER KATAVATIS
Secretary

THE COMMON SEAL of **CI MINERALS**
AUSTRALIA PTY. LTD. was hereunto
affixed by authority of the Directors in the
presence of: } [C.S.]

MASAYUKI YAMAMOTO

Director

MICHAEL APPLEBEE

Secretary

[Sixth Schedule inserted by No. 57 of 2000 s. 22.]

Seventh Schedule — Sixth Variation Agreement

[s. 2]

[Heading inserted by No. 61 of 2010 s. 29.]

2010

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

AND

BHP BILLITON MINERALS PTY. LTD.

ACN 008 694 782

MITSUI-ITOCHU IRON PTY. LTD.

ACN 008 702 761

ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.

ACN 009 256 259

IRON ORE (MOUNT NEWMAN) AGREEMENT 1964
RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 17th day of November 2010

BETWEEN

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

AND

BHP BILLITON MINERALS PTY. LTD. ACN 008 694 782 of Level 17, St Georges Square, 225 St Georges Terrace, Perth, Western Australia, **MITSUI-ITOCHU IRON PTY. LTD.** ACN 008 702 761 of Level 16, Exchange Plaza, 2 The Esplanade, Perth, Western Australia and **ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.** ACN 009 256 259 of Level 22, 221 St Georges Terrace, Perth, Western Australia (**Joint Venturers**).

RECITALS

- A.** The State and the Joint Venturers are now the parties to the agreement dated 26 August 1964 approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964* and as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B.** The State and the Joint Venturers wish to vary the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

- 1.** Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
- 2.** The State shall sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and shall endeavour to secure its passage as an Act prior to 31 December 2010 or such later date as the parties may agree.

3. (a) Clause 4 does not come into operation unless or until an Act passed in accordance with clause 2 ratifies this Agreement.
- (b) If by 30 June 2011, or such later date as may be agreed pursuant to clause 2, clause 4 has not come into operation then unless the parties hereto otherwise agree this Agreement shall cease and determine and neither party shall have any claim against the other party with respect to any matter or thing arising out or done or performed or omitted to be done or performed under this Agreement.
4. The Principal Agreement is varied as follows:
- (1) in clause 1:
- (a) by deleting the existing definitions of "beneficiated ore", "deemed f.o.b. value", "fine ore" and "lump ore";
- (b) by inserting in the appropriate alphabetical positions the following new definitions:
- "approved proposal" means a proposal approved or determined under this Agreement;
- "beneficiated ore" means iron ore that has been concentrated or upgraded (otherwise than solely by crushing, screening, separating by hydrocycloning or a similar technology which uses primarily size as a criterion, washing, scrubbing, trommelling or drying or by a combination of 2 or more of those processes) by the Company in a plant constructed pursuant to a proposal approved pursuant to an Integration Agreement or in such other plant as is approved by the Minister after consultation with the Minister for Mines and "beneficiation" and "beneficiate" have corresponding meanings;
- "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:

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

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

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

"Integration Agreement" means:

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

- (h) the agreement approved by and scheduled to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*, as from time to time added to, varied or amended; or
- (i) the agreement ratified by and scheduled to the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*, as from time to time added to, varied or amended; or
- (j) the agreement authorised by and as scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972*, as from time to time added to, varied or amended; or
- (k) the agreement ratified by and scheduled to the *Iron Ore (Marillana Creek) Agreement Act 1991*, as from time to time added to, varied or amended;

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

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

"loading port" means:

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

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

"McCamey's Mineral Lease" has the same meaning as that given to the expression "mineral lease" in the McCamey's Monster Agreement;

"McCamey's Monster Agreement" means the agreement authorised by and as scheduled to the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972* as subsequently from time to time added to, varied or amended;

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

"Minister for Mines" means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the administration of the Mining Act and the Mining Act 1978;

"Related Entity" means a company in which:

- (a) as at 21 June 2010; and
- (b) after 21 June 2010, with the approval of the Minister, a direct or (through a subsidiary or subsidiaries within the meaning of the *Corporations Act 2001* (Commonwealth)) indirect shareholding of 20% or more is held by:
 - (c) Rio Tinto Limited ABN 96 004 458 404; or
 - (d) BHP Billiton Limited ABN 49 004 028 077; or
 - (e) those companies referred to in paragraphs (c) and (d) in aggregate;

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

- (c) in the definition of "agreed or determined" by:
 - (a) inserting "(following, if requested by the Company, consultation with the Company and its consultants in regard thereto)" after "determined by the Minister";
 - (b) deleting "assessed at" and substituting "assessed on"; and

- (c) deleting all the words after "shall have regard to" and substituting:
 - "(i) in the case of iron ore initially sold at cost pursuant to paragraph (B) of the proviso to clause 9(2)(e), the prices for that type of iron ore prevailing at the time the price for such iron ore was agreed between the arm's length purchaser referred to in paragraph (B)(iii) of that proviso and the seller in relation to the type of sale and the relevant international seaborne iron ore market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value; and
 - (ii) in any other case, the prices for that type of iron ore prevailing at the time the price for such iron ore was agreed between the Company and the purchaser in relation to the type of sale and the market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value;"
- (d) in the definition of "Company's wharf" by inserting "and in clauses 9(2)(e) and (f) also any additional wharf constructed by the Company pursuant to this Agreement" before the semi colon;
- (e) in the definition of "deemed f.o.b. point" by deleting "Company's wharf" and substituting "relevant loading port";
- (f) in the definition of "f.o.b. value" by:
 - (i) in paragraph (i):
 - (A) inserting "subject to paragraph (ii)," before "in the case of";

- (B) deleting "assessed at" and substituting "assessed on"; and
 - (C) deleting the 2 references to "Company's wharf or other wharf approved by the Minister under clause 9(2)(e) as the case may be" and substituting "relevant loading port";
- (ii) renumbering paragraph (ii) as paragraph (iii); and
 - (iii) inserting after paragraph (i) the following new paragraph:
 - "(ii) in the case of iron ore initially sold at cost pursuant to paragraph (B) of the proviso to clause 9(2)(e), the price which is payable for the iron ore by the arm's length purchaser as referred to in paragraph (B)(iii) of that proviso or, where the Minister considers, following advice from the appropriate Government department, that the price payable in respect of the iron ore does not represent a fair and reasonable market value for that type of iron ore assessed on an arm's length basis in the relevant international seaborne iron ore market, such amount as is agreed or determined as representing such a fair and reasonable market value, less all duties, taxes, costs and charges referred to in paragraph (i) above;"
- (g) in the definition of "iron ore" by inserting ", without limitation," after "includes";
 - (h) in the definition of "mineral lease" by deleting "Clause 9A" and substituting "clauses 9A or 9B";
 - (i) in the definition of "secondary processing" by deleting "concentration or other beneficiation of iron ore other than by crushing or screening" and substituting "beneficiation of iron ore";
 - (j) in the sentence beginning "marginal notes" by inserting "and clause headings after "marginal notes"; and

- (k) by inserting at the end of clause 1 the following new paragraphs:

"Words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context.

Nothing in this Agreement shall be construed:

- (a) to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made by or under the EP Act; or
- (b) to exempt the State or the Company from compliance with or to require the State or the Company to do anything contrary to any laws relating to native title or any lawful obligation or requirement imposed on the State or the Company as the case may be pursuant to any laws relating to native title; or
- (c) to exempt the Company from compliance with the provisions of the *Aboriginal Heritage Act 1972* (WA).";
- (2) in clause 6A:
- (a) by inserting in its heading "for townsites" after "Additional Proposals"; and
- (b) by deleting subclauses (2) and (3) and substituting the following new subclause:
- "(2) The provisions of clauses 7A(2) to (5) and 7B shall apply mutatis mutandis to proposals submitted pursuant to subclause (1).";
- (3) by inserting after clause 7 the following new clauses:

"Additional Proposals

- 7A. (1) If the Company, at any time during the continuance of this Agreement after the variation date, desires to significantly modify, expand or otherwise vary its

activities carried on pursuant to this Agreement (other than under clauses 6A, 9A or 9E) beyond those activities specified in any proposals approved pursuant to clause 6 it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in clause 5(2)(a) as the Minister may require.

- (2) A proposal may with the consent of the Minister (except in relation to an Integration Agreement) and that of any parties concerned (being in respect of an Integration Agreement the Integration Proponent for that agreement) provide for the use by the Company of any works installations or facilities constructed or established under a Government agreement.
- (3) Each of the proposals pursuant to subclause (1) may with the approval of the Minister, or shall if so required by the Minister, be submitted separately and in any order as to any matter or matters in respect of which such proposals are required to be submitted.
- (4) At the time when the Company submits the said proposals it shall submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with its reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto.
- (5) The Company may withdraw its proposals pursuant to subclause (1) at any time before approval thereof, or where any decision in respect thereof is referred to arbitration as referred to in clause 7B, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same.

Consideration of Company's proposals under clause 7A

- 7B. (1) In respect of each proposal pursuant to subclause (1) of clause 7A the Minister shall:
- (a) subject to the limitations set out below, refuse to approve the proposal (whether it requests the grant of tenure or not) if the Minister is satisfied on reasonable grounds that it is not in the public interest for the proposal to be approved; or
 - (b) approve of the proposal without qualification or reservation; or
 - (c) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in clause 7A(1) not covered by the said proposal; or
 - (d) require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable, and in such a case the Minister shall disclose his reasons for such conditions,

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

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

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

The right to refuse to approve a proposal conferred by paragraph (a) may only be exercised in respect of a proposal where the Minister is satisfied on reasonable grounds that a purpose of the proposal is the integrated use of works installations or facilities (as defined in subclause (7) of clause 9C for the purpose of that clause) as contemplated by clause 9C. It may not be so exercised in respect of a proposal if pursuant to clause 7C(5) the Minister, prior to the submission of the proposal, advised the Company in writing that the Minister has no public interest concerns (as defined in that clause) with the single preferred development (as referred to in clause 7C(5)(a)) the subject of the submitted proposals and those proposals are consistent (as to their substantive scope and content) with the information provided to the Minister pursuant to clause 7C(5) in respect of that single preferred development.

- (2) The Minister shall within 2 months after receipt of proposals pursuant to clause 7A(1) give notice to the Company of his decision in respect to the proposals, PROVIDED THAT where a proposal is to be assessed under Part IV of the EP Act the Minister shall only give notice to the Company of his decision

in respect to the proposal within 2 months after service on him of an authority under section 45(7) of the EP Act.

- (3) If the decision of the Minister is as mentioned in either of paragraphs (a), (c) or (d) of subclause (1) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (4) If the decision of the Minister is as mentioned in either of paragraphs (c) or (d) of subclause (1) and the Company considers that the decision is unreasonable the Company within 2 months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder. A decision of the Minister under paragraph (a) of subclause (1) shall not be referable to arbitration under this Agreement.
- (5) If by the award made on the arbitration pursuant to subclause (4) the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.
- (6) The Company shall implement the approved proposals in accordance with the terms thereof.
- (7) Notwithstanding clause 20, the Minister may during the implementation of approved proposals approve variations to those proposals

Notification of possible proposals

- 7C. (1) If the Company, upon completion of a pre-feasibility study in respect of any matter that would require the submission and approval of proposals pursuant to this Agreement (being

proposals which will have as their purpose, or one of their purposes, the integrated use of works installations or facilities as contemplated by clause 9C) for the matter to be undertaken, intends to further consider the matter with a view to possibly submitting such proposals it shall promptly notify the Minister in writing giving reasonable particulars of the relevant matter.

- (2) Within one (1) month after receiving the notification the Minister may, if the Minister so wishes, inform the Company of the Minister's views of the matter at that stage.
- (3) If the Company is informed of the Minister's views, it shall take them into account in deciding whether or not to proceed with its consideration of the matter and the submission of proposals.
- (4) Neither the Minister's response nor the Minister choosing not to respond shall in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.
- (5)
 - (a) This subclause applies where the Company has settled upon a single preferred development a purpose of which is the integrated use of works installations or facilities (as defined in subclause (7) of clause 9C for the purpose of that clause) as contemplated by clause 9C.
 - (b) For the purpose of this subclause "public interest concerns" means any concern that implementation of the

single preferred development or any part of it will:

- (i) detrimentally affect economic and orderly development in the said State, including without limitation, infrastructure development in the said State; or
 - (ii) be contrary to or inconsistent with the planning and development policies and objectives of the State; or
 - (iii) detrimentally affect the rights and interests of third parties; or
 - (iv) detrimentally affect access to and use by others of lands the subject of any grant or proposed grant to the Company.
- (c) At any time prior to submission of proposals the Company may give to the Minister notice of its single preferred development and request the Minister to confirm that the Minister has no public interest concerns with that single preferred development.
- (d) The Company shall furnish to the Minister with its notice reasonable particulars of the single preferred development including, without limitation:
- (i) as to the matters that would be required to be addressed in submitted proposals; and
 - (ii) its progress in undertaking any feasibility or other studies or

- matters to be completed before submission of proposals; and
- (iii) its timetable for obtaining required statutory and other approvals in relation to the submission and approval of proposals; and
 - (iv) its tenure requirements.
- (e) If so required by the Minister, the Company will provide to the Minister such further information regarding the single preferred development as the Minister may require from time to time for the purpose of considering the Company's request and also consult with the Minister or representatives or officers of the State in regard to the single preferred development.
- (f) Within 2 months after receiving the notice (or if the Minister requests further information, within 2 months after the provision of that information) the Minister must advise the Company:
- (i) that the Minister has no public interest concerns with the single preferred development; or
 - (ii) that he is not then in a position to advise that he has no public interest concerns with the single preferred development and the Minister's reasons in that regard.
- (g) If the Minister gives the advice mentioned in paragraph (f)(ii) the Company may, should it so desire, give a further request to the Minister in respect of a revised or alternate single preferred development and the

provisions of this subclause shall apply
mutatis mutandis thereto.";

- (4) in clause 8(1)(b):
- (a) by in the first paragraph, deleting "clause 6 hereof or under clause 6A hereof" and substituting "clauses 6, 6A, 7B or 9A"; and
 - (b) in subparagraph (i) by:
 - (i) inserting "or cause to be granted" after "grant";
 - (ii) in the paragraph beginning "for nominal consideration" by deleting "the harbour area";
 - (iii) inserting after that paragraph the following new paragraph:

"at commercial rentals, licence or easement fees as applicable – leases, licences or easements within the Port of Port Hedland; and";
 - (iv) inserting "the *Port Authorities Act 1999* (WA)" after "the Jetties Act, 1926"; and
 - (v) inserting "installations or facilities" after "as the Company reasonably requires for its works";
- (5) by inserting after clause 8(3A) the following new clause:
- "(3B) The provisions of subclause (1) of this clause shall not operate so as to require the State to grant or vary, or cause to be granted or varied, any lease licence or other right or title until all processes necessary under any laws relating to native title to enable that grant or variation to proceed, have been completed.";
- (6) in clause 8A:
- (a) by deleting "Joint Venturers a lease" and substituting "Company an extension of the lease granted to it"; and
 - (b) by deleting "the agreement ratified by the Iron Ore Direct Reduced Iron (BHP) Agreement Act 1996" and substituting "this Agreement";

(7) by deleting paragraph (e) of clause 9(2) and substituting the following new paragraphs:

"(e) ship, or procure the shipment of, all iron ore mined from the mineral lease and all iron ore referred to in clause 9(2)(ja) and (in each case) sold;

(i) from the Company's wharf;

(ii) from any other wharf in a loading port which wharf has been constructed under an Integration Agreement; or

(iii) with the Minister's approval given before submission of proposals in that regard, from any other wharf in a loading port which wharf has been constructed under another Government agreement (excluding the Integration Agreements),

and use its best endeavours to obtain therefor the best price possible having regard to market conditions from time to time prevailing PROVIDED THAT:

(A) this paragraph shall not apply to iron ore used for secondary processing or for the manufacture of iron or steel in any part of the said State lying north of the twenty sixth parallel of latitude;

(B) iron ore from the mineral lease may be sold by the Company prior to or at the time of the shipment under this Agreement at a price equal to the production costs in respect of that iron ore up to the point of sale, if:

(i) the Minister is notified before the time of shipment that the sale is to be made at cost, providing details of the proposed sale; and

(ii) the Minister is notified of the proposed arm's length purchaser in the relevant international seaborne iron ore market of the iron ore the subject of the proposed sale at cost; and

(iii) there is included in the return lodged pursuant to subclause (2)(k) particulars of the transaction

in which the ore sold at cost was subsequently purchased in the relevant international seaborne iron ore market by an arm's length purchaser specifying the purchaser, the seller, the price and the date when the sale was agreed between the arm's length purchaser and the seller; and

- (iv) the arm's length purchaser referred to in paragraph (iii) above is not then a designated purchaser as referred to in subclause (2)(ea);

Designated purchaser

(ea) if required by notice in writing from the Minister, provide the Minister within 30 days after receiving the notice with evidence that the transaction as included in the return pursuant to paragraph (B)(iii) of subclause (2)(e) was a sale in the relevant international seaborne iron ore market to an independent participant in that market. If no evidence is provided or the Minister is not so satisfied on the evidence provided or other information obtained, the Minister may by notice to the Company designate the purchaser to be a designated purchaser and that designation will remain in force unless and until lifted by further notice from the Minister to the Company. For the avoidance of doubt, the parties acknowledge that marketing entities forming part of the corporate group including the Company (or part of the parallel corporate group if the Company is part of a dual-listed corporate structure) are not independent participants for the purposes of this subclause;"

- (8) in clause 9(2)(j) by inserting the following paragraphs after subparagraph (iv):

"Where beneficiated ore is produced from an admixture of iron ore from the mineral lease and iron ore from elsewhere, a portion (and a portion only) of the beneficiated ore so produced being equal to the proportion that the amount of the iron in the iron ore from the mineral lease used in the production of that beneficiated ore bears

to the total amount of iron in the iron ore so used shall be deemed to be produced from iron ore from the mineral lease.

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

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

- (9) by inserting after paragraph (j) of clause 9(2) the following new paragraph:

"(ja) pay to the State royalty on all iron ore mined from the McCamey's Mineral Lease purchased, shipped and sold by the Company (other than iron ore shipped solely for testing purposes and in respect of which no purchase price or other consideration is payable or due) at the rates from time to time specified in paragraph (j) and otherwise in accordance with this Agreement as if such iron ore were iron ore mined from the mineral lease;"

- (10) in clause 9(2)(k) by:

(a) inserting "and also showing such other information in relation to the abovementioned iron ore as the Minister may from time to time reasonably require in regard to, and to assist in verifying, the calculation of royalties in accordance with paragraphs (j) and (ja)" after "the due date of the return"; and

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

"(i) in the case of iron ore initially sold at cost pursuant to paragraph (B) of the proviso to subclause (2)(e), at the price notified pursuant to paragraph (B)(iii) of that proviso;

(ii) in any other case, 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 the 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;"

(11) in clause 9(2)(n) by:

- (a) deleting "books of account and records of the Company including contracts relative" and substituting "books, records, accounts, documents (including contracts), data and information of the Company stored by any means relating";
- (b) inserting "the subject of royalty" before "hereunder" where it appears both times; and
- (c) inserting "(in whatever form)" after "copies or extracts";

(12) by deleting the fullstop after paragraph (n) of clause 9(2) and substituting a semi colon followed by the following new paragraph:

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

(13) by inserting after subclause (3) of clause 9 the following new subclause:

"Blending of iron ore

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

above authority in respect of the relevant blending arrangements until he is again satisfied in terms of this paragraph (b).

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

- (14) in clause 9A(11) by deleting the last 2 sentences of paragraph (a) and substituting:

"The provisions of clauses 7A(2) to (5) and 7B shall apply mutatis mutandis to proposals submitted pursuant to this subclause.";

- (15) in clause 9A(12) by deleting "subclauses (5), (6), (7), (8), (10) and (11)" in paragraph (d) and substituting "clause 7B and subclause (11)" ;

- (16) by inserting after clause 9A the following new clauses:

"9B. (1) Notwithstanding the provisions of the Mining Act or the Mining Act 1978 the Company may from time to time during the currency of this Agreement apply to the Minister for areas held by the Company or an associated company under a mining tenement granted under the Mining Act 1978 to be included in the mineral lease but so that the total area of the mineral lease, any land that may be included in the mineral lease pursuant to this Agreement and of any other mineral lease or mining lease granted under or pursuant to this Agreement (as aggregated) shall not at any time exceed 777 square kilometres. The Minister shall confer with the Minister for Mines in regard to any such application and if they approve the application the Minister for Mines shall upon the surrender of the relevant mining tenement include the area the subject thereof in the mineral lease by endorsement subject to such of the conditions of the

surrendered mining tenement as the Minister for Mines determines but otherwise subject to the same terms covenants and conditions as apply to the mineral lease (with such apportionment of rents as is necessary) and notwithstanding that the survey of such additional land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.

- (2) The Minister may approve, upon application by the Company from time to time, for the total area referred to in subclause (1) to be increased up to a limit not exceeding 1,000 square kilometres.
- (3) The Company shall not mine or carry out other activities (other than exploration, bulk sampling and testing) on any area added to the mineral lease pursuant to subclause (1) of this clause unless and until proposals with respect thereto are approved or determined pursuant to the subsequent provisions of this clause.
- (4) If the Company desires to commence mining of iron ore or to carry out any other activities (other than as aforesaid) on the said area 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 7A.

Integrated use of works installations or facilities under the Integration Agreements

- 9C. (1) Subject to subclauses (2) to (7) of this clause and to the other provisions of this Agreement, the Company may during the continuance of this Agreement:
- (a) use any existing or new works installations or facilities constructed or held:
 - (i) under this Agreement; or
 - (ii) under any other Integration Agreement which are made available for such use and during the continuance of such Integration Agreement; or
 - (iii) with the approval of the Minister, under a Government agreement (excluding an Integration Agreement) which are made available for such use and during the continuance of that agreement,
- (wholly or in part) in the activities of the Company carried on by it pursuant to this Agreement including, without limitation, as part of those activities, transporting by railway and shipping from a loading port and undertaking any ancillary and incidental activities in doing so (including, without limitation, blending permitted by clause 9(4)) of:
- (A) iron ore mined from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement);
 - (B) with the prior approval of the Minister, iron ore mined in, or proximate to, the Pilbara region of the said State under a Government agreement (excluding an Integration Agreement);

- (C) with the prior approval of the Minister, iron ore mined by a third party from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by the Company from the third party;
 - (D) iron ore mined under an Integration Agreement;
- (b) make any existing or new works installations or facilities constructed or held under this Agreement available for use (wholly or partly) by another Integration Proponent during the continuance of its Integration Agreement in the activities of that Integration Proponent carried on by it pursuant to its Integration Agreement including, without limitation, as part of those activities, transporting by railway and shipping from a loading port and undertaking any ancillary and incidental activities in doing so (including, without limitation, blending permitted by that Integration Agreement) of:
- (i) iron ore mined from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement);
 - (ii) with the prior approval of the Minister (as defined in that Integration Agreement), iron ore mined in, or proximate to, the Pilbara region of the said State under a Government agreement (excluding an Integration Agreement);

- (iii) with the prior approval of the Minister (as defined in that Integration Agreement), iron ore mined by a third party from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by that Integration Proponent from the third party;
 - (iv) iron ore mined under an Integration Agreement;
- (c) make any existing or new works installations or facilities constructed or held under this Agreement available for use (wholly or partly) in connection with operations under:
- (i) a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State, for iron ore, which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under a Government agreement); or
 - (ii) with the approval of the Minister, a Government agreement (other than an Integration Agreement) for the mining of iron ore in, or proximate to, the Pilbara region of the said State;
- (d) subject to subclause (2), under this Agreement and for the purpose of any use or making available for use referred to in paragraph (a), (b) or (c) connect any existing or new works installations or facilities constructed or held under this Agreement to any existing or new works installations or facilities constructed or held under another Integration Agreement;

- (e) subject to subclause (2), under this Agreement and for the purpose of any use or making available for use referred to in paragraph (a), (b) or (c) or making of any connection referred to in paragraph (d) construct new works installations or facilities and expand modify or otherwise vary any existing and new works installations or facilities constructed or held under this Agreement;
 - (f) allow a railway or rail spur line (not being a railway or rail spur line constructed or held under an Integration Agreement) to be connected to a railway or rail spur line or other works installations or facilities constructed or held under this Agreement for the delivery of iron ore to an Integration Proponent for transport by railway and shipping from a loading port (together with any ancillary and incidental activities in doing so) as part of its activities under its Integration Agreement; and
 - (g) allow an electricity transmission line (not being an electricity transmission line constructed or held under an Integration Agreement) to be connected to an electricity transmission line constructed or held under this Agreement for the supply of electricity permitted to be made under an Integration Agreement.
- (2) (a) A connection referred to in clause (1)(d) or construction, expansion, modification or other variation referred to in subclause (1)(e) by the Company shall, to the extent not already authorised under this Agreement as at the variation date, be regarded as a significant modification expansion or other variation of the Company's activities carried on by it pursuant to this Agreement and may only be made in accordance with proposals submitted and approved or determined under this Agreement in accordance with clauses 6A, 7A and 7B, 9A

or 9E as the case may require and otherwise in compliance with the provisions of this Agreement and the laws from time to time of the said State. For the avoidance of doubt, the parties acknowledge that any use or making available for use contemplated by subclause (1)(a), (1)(b) or (1)(c) shall not otherwise than as required by this paragraph require the submission and approval of further proposals under this Agreement.

- (b) The Company shall not be entitled to:
- (i) submit proposals to construct any new port or to establish harbour or port works installations or facilities, or to expand modify or otherwise vary harbour or works installations or facilities otherwise than at or near the town of Port Hedland within the boundaries of the Port of Port Hedland; or
 - (ii) generate and supply power, take and supply water or dispose of water otherwise than in accordance with the other clauses of this Agreement and subject to any restrictions contained in those clauses; or
 - (iii) without limiting subparagraphs (i) and (ii) submit proposals to construct or establish works installations or facilities of a type, or to make expansions, modifications or other variations of works installations or facilities of a type, which in the Minister's reasonable opinion this Agreement, immediately before the variation date, did not permit or contemplate the Company constructing, establishing or making as the case may be otherwise than for integration use as contemplated by

- subclauses (1)(a), (1)(b) or (1)(c) or as permitted by clause 9E; or
- (iv) submit proposals to make a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) otherwise than on tenure granted under or pursuant to this Agreement from time to time or held pursuant to this Agreement from time to time; or
 - (v) submit proposals to make a connection referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) for the purpose of use as contemplated by subclause (1)(c)(i), if in the reasonable opinion of the Minister the activity which is the subject of the proposals would give to the holder or holders of the relevant Mining Act 1978 mining lease the benefit of rights or powers granted to the Company under this Agreement, over and above the right of access to and use of the relevant works installations or facilities; or
 - (vi) submit proposals to make a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e) for the purpose of use as contemplated by subclause (1)(c) and involving the grant of tenure without the prior approval of the Minister; or
 - (vii) submit proposals to assign, sublet, transfer or dispose of any works installations or facilities constructed or held under this Agreement or any leases, licences, easements or other titles under

or pursuant to this Agreement for any purpose referred to in this clause.

- (c) Notwithstanding the provisions of clauses 6A, 7B, 9A or 9E the Minister may defer consideration of, or a decision upon, a proposal submitted by the Company for a connection as referred to in subclause (1)(d) or a construction, expansion, modification or other variation as referred to in subclause (1)(e), for the purpose of use or making available for use as referred to in subclauses (1)(a) or (1)(b), until relevant corresponding proposals under the relevant Integration Agreement have been submitted and those proposals can be approved under that Integration Agreement concurrently with the Minister's approval under this Agreement of the Company's proposal.
- (3) Any use or making available for use as referred to in subclause (1), or submission of proposals as referred to in subclause (2), in respect of a Related Entity shall be subject to the Company first confirming with the Minister that the Minister is satisfied that the relevant company is a Related Entity.
- (4) The Company shall give the Minister prior written notice of any significant change (other than a temporary one for maintenance or to respond to an emergency) proposed in its use, or in it making available for use, works installations or facilities as referred to in this clause:
 - (a) from that authorised under this Agreement immediately before the variation date; and
 - (b) subsequently from that previously notified to the Minister under this subclause,as soon as practicable before such change occurs.

The Company shall also keep the Minister fully informed with respect to any proposed connection as

referred to in subclause (1)(f) or (1)(g) or request of the Company for such connection to be allowed.

- (5) Nothing in this Agreement shall be construed to:
- (a) exempt another Integration Proponent from complying with, or the application of, the provisions of its Integration Agreement; or
 - (b) restrict the Company's rights under clause 19.

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

- (6) Nothing in this clause shall be construed to exempt the Company from complying with, or the application of, the other provisions of this Agreement including, without limitation, clause 19 and of relevant laws from time to time of the said State.
- (7) For the purpose of this clause "works installations or facilities" means any:
- (a) harbour or port works installations or facilities including, without limitation, stockpiles, reclaimers, conveyors and wharves;
 - (b) railway or rail spur lines;
 - (c) track structures and systems associated with the operation and maintenance of a railway including, without limitation, sidings, train control and signalling systems, maintenance workshops and terminal yards;
 - (d) train loading and unloading works installations or facilities;
 - (e) conveyors;
 - (f) private roads;

- (g) mine aerodrome and associated aerodrome works installations and facilities;
- (h) iron ore mining, crushing, screening, beneficiation or other processing works installations or facilities;
- (i) mine administration buildings including, without limitation, offices, workshops and medical facilities;
- (j) borrow pits;
- (k) accommodation and ancillary facilities including, without limitation, construction camps and townsites constructed pursuant to and held under any Integration Agreement;
- (l) water, sewerage, electricity, gas and telecommunications works installations and facilities including, without limitation, pipelines, transmission lines and cables; and
- (m) any other works installations or facilities approved of by the Minister for the purpose of this clause.

Transfer of rights to shared works, installations or facilities

- 9D. (1) For the purposes of this clause "Relevant Infrastructure" means any works installations or facilities (as defined in clause 9C(7)):
- (a) constructed or held under another Integration Agreement;
 - (b) which the Company is using in its activities pursuant to this Agreement;
 - (c) which the Minister is satisfied (after consulting with the Company and the Integration Proponent for that other Integration Agreement):

- (i) are no longer required by that other Integration Proponent to carry on its activities pursuant to its Integration Agreement because of the cessation of the Integration Proponent's mining operations in respect of which such Relevant Infrastructure was constructed or held or because of any other reason acceptable to the Minister; and
 - (ii) are required by the Company to continue to carry on its activities pursuant to this Agreement; and
 - (d) in respect of which that other Integration Proponent has notified the Minister it consents to the Company submitting proposals as referred to in subclause (2).
- (2) The Company may as an additional proposal pursuant to clause 7A propose:
- (a) that it be granted a lease licence or other title over the Relevant Infrastructure pursuant to this Agreement subject to and conditional upon the other Integration Proponent surrendering wholly or in part (and upon such terms as the Minister considers reasonable including any variation of terms to address environmental issues) its lease licence or other title over the Relevant Infrastructure; or
 - (b) that the other Integration Proponent's lease licence or other title (not being a mineral lease, mining lease or other right to mine title granted under a Government agreement, the Mining Act 1904 or the Mining Act 1978) to the Relevant Infrastructure be transferred to this Agreement (to be held by the Company pursuant to this Agreement) with such surrender of land from it and variations of its terms as the Minister considers reasonable for that title to be held

under this Agreement including, without limitation, to address environmental issues and outstanding obligations of that other Integration Proponent under its Integration Agreement in respect of that Relevant Infrastructure.

The provisions of clause 7B shall mutatis mutandis apply to any such additional proposal. In addition the Company acknowledges that the Minister may require variations of the other Integration Agreement and/or proposals under it or of this Agreement in order to give effect to the matters contemplated by this clause.

- (3) This clause shall cease to apply in the event the State gives any notice of default to the Company pursuant to clause 10(1) and while such notice remains unsatisfied.";

Miscellaneous Licences for Railways

9E. (1) In this clause subject to the context:

"Additional Infrastructure" means:

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

in each case located outside a Port;

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

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

"Lateral Access Road Licence" means a miscellaneous licence granted pursuant to subclause (6)(a)(ii) or subclause (6)(b) as the case may be and

according to the requirements of the context describes the area of land from time to time the subject of that licence;

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

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

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

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

"Railway Corridor" means, prior to the grant of a Special Railway Licence, the land for the route of the Railway the subject of that licence, access roads (other than Lateral Access Roads), areas from which stone, sand, clay and gravel may be taken, temporary

accommodation facilities for the railway workforce, water bores and Additional Infrastructure (if any) which is the subject of a subsisting agreement pursuant to subclause (3)(a) and after the grant of the Special Railway Licence the land from time to time the subject of that Special Railway Licence;

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

"Railway spur line" means a standard gauge heavy haul railway spur line located or to be located in, or proximate to, the Pilbara region of the said State (but outside a Port) connecting to a Railway for the transport of iron ore, freight goods and other products upon the Railway to (directly or indirectly) a loading port;

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

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

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

"Train Loading Infrastructure" means conveyors, stockpile areas, blending and screening facilities, stackers, re-claimers and other infrastructure

reasonably required for the loading of iron ore, freight goods or other products onto the relevant Railway for transport (directly or indirectly) to a loading port; and

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

Company to obtain prior Ministerial in-principle approval

- (2) (a) If the Company wishes, from time to time during the continuance of this Agreement, to proceed under this clause with a plan to develop a Railway it shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of its plan.
- (b) The Minister shall within one month of a notice under paragraph (a) advise the Company whether or not he approves in-principle the proposed plan. The Minister shall afford the Company full opportunity to consult with him in respect of any decision of the Minister under this paragraph.
- (c) The Minister's in-principle approval in respect of a proposed plan shall lapse if the Company has not submitted detailed proposals to the Minister in respect of that plan in accordance with this clause within 18 months of the Minister's in-principle approval.

Railway Corridor

- (3) (a) If the Minister gives in-principle approval to a plan of the Company to develop a Railway it

shall consult with the Minister to seek the agreement of the Minister as to:

- (i) where the Railway will begin and end; and
- (ii) a route for the Railway, access roads to be within the Railway Corridor and the land required for that route as well as Additional Infrastructure (if any) including, without limitation, areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce and water bores; and
- (iii) in respect of Additional Infrastructure (if any) the nature and capacity of such Additional Infrastructure; and
- (iv) the routes of, and the land required for, roads outside the Railway Corridor (and also outside a Port) for access to it to construct the Railway (such roads as agreed being "Lateral Access Roads").

In seeking such agreement, regard shall be had to achieving a balance between engineering matters including costs, the nature and use of any lands concerned and interests therein and the costs of acquiring the land (all of which shall be borne by the Company). The parties acknowledge the intention is for the Company to construct the Railway, the access roads for the construction and maintenance of the Railway which are to be within the Railway Corridor and the relevant Additional Infrastructure (if any) along the centreline of the Railway Corridor subject to changes in that alignment to the extent necessary to avoid heritage, environmental or poor ground conditions that are not identified during

preliminary investigation work, and recognise the width of the Railway Corridor may need to vary along its route to accommodate Additional Infrastructure (if any), access roads, areas from which stone, sand, clay and gravel may be taken, temporary accommodation facilities for the railway workforce and water bores. The provisions of clause 24 shall not apply to this subclause.

- (b) If the date by which the Company must submit detailed proposals under subclause (4)(a) (as referred to in subclause (2)(c)) is extended or varied by the Minister pursuant to clause 23, any agreement made pursuant to paragraph (a) before such date is extended or varied shall unless the Minister notifies the Company otherwise be deemed to be at an end and neither party shall have any claim against the other in respect of it.
- (c) The Company acknowledges that it shall be responsible for liaising with every title holder in respect of the land affected and for obtaining in a form and substance acceptable to the Minister all unconditional and irrevocable consents of each such title holder to, and all statutory consents required in respect of the land affected for:
 - (i) the grant of the Special Railway Licence for the construction, operation and maintenance within the Railway Corridor of the Railway, access roads and Additional Infrastructure (if any) to be within the Railway Corridor; and
 - (ii) the grant of Lateral Access Road Licences for the construction, use and maintenance of Lateral Access Roads over the routes for the Lateral Access

Roads agreed pursuant to paragraph (a);
and

- (iii) the inclusion of additional land in the Special Railway Licence as referred to in subclause (6)(h) or subclause (6)(i),

in accordance with this clause. For the purposes of this subclause (3)(c), "title holder" means a management body (as defined in the LAA) in respect of any part of the affected land, a person who holds a mining, petroleum or geothermal energy right (as defined in the LAA) in respect of any part of the affected land, a person who holds a lease or licence under the LAA in respect of any part of the affected land, a person who holds any other title granted under or pursuant to a Government agreement in respect of any part of the affected land, a person who holds a lease or licence in respect of any part of the affected land under any other Act applying in the said State and a person in whom any part of the affected land is vested, immediately before the provision of such consents to the Minister as referred to in subclause (4)(e)(ii) (including as applying pursuant to subclause 5(d)).

Company to submit proposals for Railway

- (4) (a) The Company shall, subject to the EP Act, the provisions of this Agreement, agreement at that time subsisting in respect of the matters required to be agreed pursuant to subclause 3(a), submit to the Minister by the latest date applying under subclause (2)(c) to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister and any other details normally required by a local government in whose area any works are to be situated) with respect to the

undertaking of the relevant Railway Operation, which proposals shall include the location, area, layout, design, materials and time program for the commencement and completion of construction or the provision (as the case may be) of each of the following matters namely:

- (i) the Railway including fencing (if any) and crossing places within the Railway Corridor;
 - (ii) Additional Infrastructure (if any) within the Railway Corridor;
 - (iii) temporary accommodation and ancillary temporary facilities for the railway workforce on, or in the vicinity of, the Railway Corridor and housing and other appropriate facilities elsewhere for the Company's workforce;
 - (iv) water supply;
 - (v) energy supplies;
 - (vi) access roads within the Railway Corridor and Lateral Access Roads both along the routes for those roads agreed between the Minister and the Company pursuant to subclause 3(a);
 - (vii) any other works, services or facilities desired by the Company; and
 - (viii) use of local labour, professional services, manufacturers, suppliers contractors and materials and measures to be taken with respect to the engagement and training of employees by the Company, its agents and contractors.
- (b) Proposals pursuant to paragraph (a) must specify the matters agreed for the purpose

pursuant to subclause (3)(a) and must not be contrary to or inconsistent with such agreed matters.

- (c) Each of the proposals pursuant to paragraph (a) may with the approval of the Minister, or must if so required by the Minister, be submitted separately and in any order as to the matter or matters mentioned in one or more of subparagraphs (i) to (viii) of paragraph (a) and until all of its proposals under this subclause have been approved the Company may withdraw and may resubmit any proposal but the withdrawal of any proposal shall not affect the obligations of the Company to submit a proposal under this subclause in respect of the subject matter of the withdrawn proposal.
- (d) The Company shall, whenever any of the following matters referred to in this subclause are proposed by the Company (whether before or during the submission of proposals under this subclause), submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia, together with its reasons therefor and shall, if required by the Minister consult with the Minister with respect thereto.
- (e) At the time when the Company submits the last of the said proposals pursuant to this subclause, it shall:
 - (i) furnish to the Minister's reasonable satisfaction evidence of all accreditations under the Rail Safety Act which are required to be held by the Company or

any other person for the construction of the Railway; and

- (ii) furnish to the Minister the written consents referred to in subclause (3)(c)(i) and (3)(c)(ii).
- (f) The provisions of clause 7B shall apply mutatis mutandis to detailed proposals submitted under this subclause.

Additional Railway Proposals

- (5) (a) If the Company at any time during the currency of a Special Railway Licence desires to construct a Railway spur line (connecting to the Railway the subject of that Special Railway Licence) or desires to significantly modify, expand or otherwise vary its activities within the land the subject of the Special Railway Licence that are the subject of this Agreement and that may be carried on by it pursuant to this Agreement (other than by the construction of a Railway spur line) beyond those activities specified in any approved proposals for that Railway, it shall give notice of such desire to the Minister and furnish to the Minister with that notice an outline of its proposals in respect thereto (including, without limitation, such matters mentioned in subclause (4)(a) as are relevant or as the Minister otherwise requires).
- (b) If the notice relates to a Railway spur line, or to the construction of Train Loading Infrastructure or Train Unloading Infrastructure on land outside the then Railway Corridor, the Minister shall within one month of receipt of such notice advise the Company whether or not he approves in-principle the proposed construction of such spur line, Train Loading Infrastructure or Train Unloading Infrastructure. If the Minister gives in-principle approval the

Company may (but not otherwise) submit detailed proposals in respect thereof provided that the provisions of subclause (3) shall mutatis mutandis apply prior to submission of detailed proposals in respect thereof.

- (c) Subject to the EP Act, the provisions of this Agreement and agreement at that time subsisting in respect of any matters required to be agreed pursuant to subclause (3)(a) (as referred to in paragraph (b)), the Company shall submit to the Minister within a reasonable timeframe, as determined by the Minister after receipt of the notice referred to in paragraph (a) (or in the case of a notice referred to in paragraph (b) the giving of the Minister's in-principle consent as referred to in that paragraph), detailed proposals in respect of the proposed construction of such Railway spur line, Train Loading Infrastructure, Train Unloading Infrastructure or other proposed modification, expansion or variation of its activities including such of the matters mentioned in subclause (4)(a) as the Minister may require.
- (d) The provisions of subclause (4) (with the date for submission of proposals being read as the date or time determined by the Minister under paragraph (c) and the reference in subclause (4)(e)(ii) to subclause (3)(c)(i) being read as a reference to subclause (3)(c)(iii)) and of clause 7B shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause.

Grant of Tenure

- (6) (a) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after all its proposals submitted pursuant to subclause (4)(a) have been approved or deemed to be

approved and the Company has complied with the provisions of subclause (4)(e), the State notwithstanding the Mining Act 1978 shall cause to be granted to the Company:

- (i) a miscellaneous licence to conduct within the Railway Corridor and in accordance with its approved proposals all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce and, subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance within the Railway Corridor of the Railway, access roads and Additional Infrastructure (if any) ("the Special Railway Licence") such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act 1978 in the form of the Second Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at a rental calculated in accordance with the Mining Act 1978:
 - (A) prior to the Railway Operation Date, as if the width of the Railway Corridor were 100 metres; and
 - (B) on and from the Railway Operation Date, at the rentals from time to time prescribed under the Mining Act 1978; and
- (ii) a miscellaneous licence or licences to allow the construction, use and

maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under subclause (3)(a) (each a "Lateral Access Road Licence"), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act 1978 in the form of the Third Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the Mining Act 1978.

- (b) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after its proposals submitted pursuant to subclause (5)(a) for the construction of Lateral Access Roads for access to the Railway Corridor to construct a Railway spur line have been approved or deemed to be approved and the Company has complied with the provisions of subclause (4)(e) (as applying pursuant to subclause (5)(d)), the State notwithstanding the Mining Act 1978 shall cause to be granted to the Company a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under subclause (3)(a) (as applying pursuant to subclause (5)(b)) (each a "Lateral Access Road Licence"), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act 1978 in the form of the Fourth Schedule hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the

rentals from time to time prescribed under the Mining Act 1978.

- (c) Notwithstanding the Mining Act 1978, the term of the Special Railway Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 50 years commencing on the date of grant thereof.
- (d) Notwithstanding the Mining Act 1978, the term of any Lateral Access Road Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 4 years commencing on the date of grant thereof.
- (e) Notwithstanding the Mining Act 1978, and except as required to do so by the terms of the Special Railway Licence, the Company shall not be entitled to surrender the Special Railway Licence or any Lateral Access Road Licence or any part or parts of them without the prior consent of the Minister.
- (f)
 - (i) The Company may in accordance with approved proposals take stone, sand, clay and gravel from the Railway Corridor for the construction, operation and maintenance of the Railway constructed within or approved for construction within the Railway Corridor.
 - (ii) Notwithstanding the Mining Act 1978 no royalty shall be payable under the Mining Act 1978 in respect of stone, sand, clay and gravel which the Company is permitted by subparagraph (i) to obtain from the land the subject of the Special Railway Licence.
- (g) For the purposes of this Agreement and without limiting the operation of paragraphs (a) to (f)

inclusive above, the application of the Mining Act 1978 and the regulations made thereunder are specifically modified;

- (i) in section 91(1) by:
 - (A) deleting "the mining registrar or the warden, in accordance with section 42 (as read with section 92)" and substituting "the Minister";
 - (B) deleting "any person" and substituting "the Company (as defined in the agreement approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended)";
 - (C) deleting "for any one or more of the purposes prescribed" and substituting "for the purpose specified in clause 9E(6)(a)(i), clause 9E(6)(a)(ii) or clause 9E(6)(b), of the agreement approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended";
- (ii) in section 91(3)(a), by deleting "prescribed form" and substituting "form required by the agreement approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended";
- (iii) by deleting sections 91(6), 91(9), 91(10) and 91B;

- (iv) in section 92, by deleting "Sections 41, 42, 44, 46, 46A, 47 and 52 apply," and inserting "Section 46A (excluding in subsection (2)(a) "the mining registrar, the warden or") applies," and by deleting "in those provisions" and inserting "in that provision";
 - (v) by deleting the full stop at the end of the section 94(1) and inserting, "except to the extent otherwise provided in, or to the extent that such terms and conditions are inconsistent with, the agreement approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended";
 - (vi) by deleting sections 94(2), (3) and (4);
 - (vii) in section 96(1), by inserting after "miscellaneous licence" the words "(not being a miscellaneous licence granted pursuant to the agreement approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended";
 - (viii) by deleting mining regulations 37(2), 37(3), 42 and 42A; and
 - (ix) by inserting at the beginning of mining regulations 41(c) and (f) the words "subject to the agreement approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended".
- (h) If additional proposals are approved in accordance with subclause (5) for the construction of a Railway spur line outside the

then Railway Corridor, the Minister for Mines shall include the area of land within which such construction is to occur in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.

- (i) If additional proposals are approved in accordance with subclause (5) for the construction of Train Loading Infrastructure or Train Unloading Infrastructure outside the then Railway Corridor, the Minister for Mines shall include the area of such land within which such infrastructure is approved for construction in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.
- (j) The provisions of this subclause shall not operate so as to require the State to cause a Special Railway Licence or a Lateral Access Road Licence to be granted or any land included in the Special Railway Licence as mentioned above until all processes necessary under any laws relating to native title to enable that grant or inclusion of land to proceed, have been completed.

Construction and operation of Railway

- (7) (a) Subject to and in accordance with approved proposals, the Rail Safety Act and the grant of the relevant Special Railway Licence and any associated Lateral Access Road Licences the Company shall in a proper and workmanlike manner and in accordance with recognised standards for railways of a similar nature

operating under similar conditions construct the Railway and associated Additional Infrastructure and access roads within the Railway Corridor and shall also construct inter alia any necessary sidings, crossing points, bridges, signalling switches and other works and appurtenances and provide for crossings and (where appropriate and required by the Minister) grade separation or other protective devices including flashing lights and boom gates at places where the Railway crosses or intersects with major roads or existing railways.

- (b) The Company shall while the holder of a Special Railway Licence:
- (i) keep the Railway the subject of that licence in an operable state; and
 - (ii) ensure that the Railway the subject of that licence is operated in a safe and proper manner in compliance with all applicable laws from time to time; and
 - (iii) without limiting subparagraph (ii) ensure that the obligations imposed under the Rail Safety Act on an owner and an operator (as those terms are therein defined) are complied with in connection with the Railway the subject of that licence.

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

- (c) The Company shall provide crossings for livestock and also for any roads, other railways, conveyors, pipelines and other utilities which

exist at the date of grant of the relevant Special Railway Licence or in respect of land subsequently included in it at the date of such inclusion and the Company shall on reasonable terms and conditions allow such crossings for roads, railways, conveyors, pipelines and other utilities which may be constructed for future needs and which may be required to cross a Railway constructed pursuant to this clause.

- (d) Subject to clause 9D, the Company shall at all times be the holder of Special Railway Licences and Lateral Access Road Licences granted pursuant to this clause and (without limiting clause 10(j) but subject to clause 9D) shall at all times own manage and control the use of each Railway the subject of a Special Railway Licence held by the Company.
- (e) The Company shall not be entitled to exclusive possession of the land the subject of a Special Railway Licence or Lateral Access Road Licence granted pursuant to this clause to the intent that the State, the Minister, the Minister for Mines and any persons authorised by any of them from time to time shall be entitled to enter upon the land or any part of it at all reasonable times and on reasonable notice with all necessary vehicles, plant and equipment and for purposes related to this Agreement or such other purposes as they think fit but in doing so shall be subject to the reasonable directions of the Company so as not to unreasonably interfere with the Company's operations.
- (f) The Company's ownership of a Railway constructed pursuant to this clause shall not give it an interest in the land underlying it.
- (g) The Company shall not at any time without the prior consent of the Minister dismantle, sell or otherwise dispose of any part or parts of any

Railway constructed pursuant to this clause, or permit this to occur, other than for the purpose of maintenance, repair, upgrade or renewal.

- (h) The Company shall, subject to and in accordance with approved proposals, in a proper and workmanlike manner, construct any Additional Infrastructure, access roads, Lateral Access Roads and other works approved for construction under this clause.
- (i) The Company shall while the holder of a Special Railway Licence at all times keep and maintain in good repair and working order and condition (which obligation includes, where necessary, replacing or renewing all parts which are worn out or in need of replacement or renewal due to their age or condition) the Railway, access roads and Additional Infrastructure (if any) the subject of that licence and all such other works installations plant machinery and equipment for the time being the subject of this Agreement and used in connection with the operation use and maintenance of that Railway, access roads and Additional Infrastructure (if any).
- (j) Subject to clause 9D, the Company shall:
 - (i) be responsible for the cost of construction and maintenance of all Private Roads constructed pursuant to this clause; and
 - (ii) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles (other than those engaged upon the Company's activities and its invitees and licensees) from using the Private Roads; and

- (iii) at any place where any Private Roads are constructed by the Company so as to cross any railways or public roads provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the Public Transport Authority as the case may be.
- (k) The provisions of clauses 9(2)(a) and (3) regarding third party access as well as the proviso to clause 9(2)(a) shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause except that the Company shall not be obliged to transport passengers upon any such Railway or Railway spur line.

Aboriginal Heritage Act 1972 (WA)

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

"and the expression "the Company" means the persons from time to time comprising "the Company" in their capacity as such under the agreement approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended in relation to the use or proposed use of land pursuant to clause 9E of that agreement after and in accordance with approved proposals under clause 9E of that agreement and in relation to the use of that land before any such approval of proposals where the Company has the requisite authority to enter upon and so use the land";

- (b) the insertion in sections 18(2), 18(4), 18(5) and 18(7) of the words "or the Company as the case may be" after the words "owner of any land";
- (c) the insertion in section 18(3) of the words "or the Company as the case may be" after the words "the owner";
- (d) the insertion of the following sentences at the end of section 18(3):

"In relation to a notice from the Company the conditions that the Minister may specify can as appropriate include, among other conditions, a condition restricting the Company's use of the relevant land to after the approval or deemed approval as the case may be under the abovementioned agreement of all of the Company's submitted initial proposals thereunder for the Railway Operation (as defined in clause 9E(1) of the abovementioned agreement), or in the case of additional proposals submitted or to be submitted by the Company to after the approval or deemed approval under that agreement of such additional proposals, and to the extent so approved. "; and

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

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

Taking of land for the purposes of this clause

- (9) (a) The State is hereby empowered, as and for a public work under Parts 9 and 10 of the LAA, to take for the purposes of this clause any land (other than any part of a Port) which in the opinion of the Company is necessary for the relevant Railway Operation and which the Minister determines is appropriate to be taken for the relevant Railway Operation (except any land the taking of which would be contrary to the provisions of a Government agreement entered into before the submission of the proposals relating to the proposed taking) and notwithstanding any other provisions of that Act may license that land to the Company.
- (b) In applying Parts 9 and 10 of the LAA for the purposes of this clause:
- (i) "land" in that Act includes a legal or equitable estate or interest in land;
 - (ii) sections 170, 171, 172, 173, 174, 175 and 184 of that Act do not apply; and
 - (iii) that Act applies as if it were modified in section 177(2) by inserting –
 - (A) after "railway" the following -

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

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

payable to any holder of native title or of native title rights and interests in the land.

Notification of Railway Operation Date

- (10) (a) The Company shall from the date occurring 6 months before the date for completion of construction of a Railway specified in its time program for the commencement and completion of construction of that Railway submitted under subclause (4)(a), keep the Minister fully informed as to:
- (i) the progress of that construction and its likely completion and commissioning; and
 - (ii) the likely Railway Operation Date.
- (b) The Company shall on the Railway Operation Date notify the Minister that the first carriage of iron ore, freight goods or other products as the case may be over the Railway (other than for construction or commissioning purposes) has occurred.
- (c) The Company shall from the date occurring 6 months before the date for completion of construction of a Railway spur line specified in its time program for the commencement and completion of construction of that spur line submitted under subclause (5)(c) keep the Minister fully informed as to:
- (i) the progress of that construction and its likely completion and commissioning; and
 - (ii) in respect of it, the likely Railway spur line Operation Date.
- (d) The Company shall on the Railway spur line Operation Date in respect of any Railway spur line notify the Minister that the first carriage of

iron ore, freight goods or other products as the case may be over such spur line (other than for construction or commissioning purposes) has occurred";

(17) by inserting after paragraph (a) of clause 10 the following new paragraph:

"(aa) the purposes for which the Company may in accordance with paragraph (a) generate transmit and supply electricity shall, without limiting paragraph (a), include the purpose of supply to:

(i) "the Company" or "Joint Venturers" as the case may be as defined in, and for the purpose of an Integration Agreement, for its or their purposes thereunder;

(ii) the holders from time to time of a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State which is held by a Related Entity alone or with a third party or parties (excluding any mining lease granted pursuant to, or held under, a Government agreement) for the purpose of their iron ore mining operations on that mining lease; and

(iii) with the prior approval of the Minister, "the Company" or "the Joint Venturers" as the case may be as defined in, and for the purpose of a Government agreement (excluding an Integration Agreement) for the mining of iron ore in, or proximate to, the Pilbara region of the said State for the purpose of its or their operations under that agreement;"

(18) in clause 10(d)(i) by inserting "or held pursuant hereto" after "granted hereunder or pursuant hereto";

(19) in clause 10(e) by:

(a) inserting "or pursuant hereto" after "easement granted hereunder"; and

(b) inserting "or held pursuant hereto" after "under clause 19 hereof";

(20) in clause 10(1) by:

(a) inserting "granted under or pursuant to this Agreement or held pursuant to this Agreement" after "licence or other title";

(b) inserting "or held pursuant hereto" after the 2 references to "granted hereunder or pursuant hereto"; and

(c) deleting "occupied by the Company" and substituting "the subject of any lease, licence, easement or other title granted under or pursuant to this Agreement or held pursuant to this Agreement";

(21) by inserting the following new sentence at the end of clause 18:

"As a separate independent indemnity the Company will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any use, making available for use or other activities of the Company as referred to in clause 9C.";

(22) in clause 20(1) by inserting "or held pursuant hereto" after "granted hereunder or pursuant hereto";

(23) by deleting clause 28; and

(24) by inserting after the Schedule the following new schedules:

"SECOND SCHEDULE

WESTERN AUSTRALIA

IRON ORE (MOUNT NEWMAN) AGREEMENT ACT 1964

MINING ACT 1978

**MISCELLANEOUS LICENCE FOR A RAILWAY AND OTHER
PURPOSES**

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called "the Company") a miscellaneous licence for the construction operation and maintenance of a Railway (as defined in clause 9E(1) of the Agreement and otherwise as provided in the Agreement) and, if applicable, other purposes AND WHEREAS the Company pursuant to clause 9E(6)(a) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended, the Company is hereby granted by this licence authority to conduct on the land the subject of this licence as more particularly delineated and described from time to time in the Schedule hereto all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce in accordance with the Agreement and, subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance on the land the subject of this licence of the Railway and Additional Infrastructure (as defined in clause 9E(1) of the Agreement) and access roads to be located on the land the subject of this licence in accordance with the provisions of the Agreement and proposals approved under the Agreement, for the term of 50 years from the date hereof (subject to the sooner determination of the term upon the determination of the Agreement) and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 9E(6)(a)(i) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

- If the Company be more than one the liability of the Company hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefore or in

lieu thereof and to the regulations and by-laws of the time being in force thereunder.

- Reference to "the Agreement" means such agreement as from time to time added to, varied or amended.
- The terms "approved proposals", "Railway", "Railway Operation Date", and "Railway spur line" have the meanings given in the Agreement.

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [/], and approved by the Minister (as defined in the Agreement) on [/], under the Agreement.
2. The Company is permitted to, in accordance with approved proposals, take stone, sand, clay and gravel from the land the subject of this licence for the construction, operation and maintenance of the Railway (including any Railway spur line) constructed within or approved for construction within the area of land the subject of this licence.
3. Notwithstanding the *Mining Act 1978*, no royalty shall be payable under the *Mining Act 1978* in respect of stone, sand, clay and gravel which the Company is permitted by the Agreement to obtain from the land the subject of this licence.
4. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determine and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

1. (a) Except as provided in paragraph (b), the Company shall within 2 years after the Railway Operation Date surrender in accordance with the provisions of the *Mining Act 1978* the area of this licence down to a maximum of 100 metres width or as otherwise approved by the Minister (as defined in the Agreement) for the safe operation of the Railway then

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with its successors and permitted assigns called "the Company") a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 9E(6)(a)(ii) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended, the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 9E(6)(a)(ii) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

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

ENDORSEMENTS AND CONDITIONS

Company") a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 9E(6)(b) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended, the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 9E(6)(b) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

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

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.

EXECUTED as a deed.

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

[Signature]
STEPHEN WOOD

EXECUTED by **BHP BILLITON**)
MINERALS PTY. LTD. ACN 008 694)
782 in accordance with section 127(1) of)
the Corporations Act)

[Signature] Signature of Director)

[Signature] Signature of ~~Director~~/Company Secretary)

STEWART HART Name of Director)

ROBIN B LEES Name of ~~Director~~/Company Secretary)

EXECUTED by **mitsui-itochu**)
IRON PTY. LTD. ACN 008 702 761)
in accordance with section 127(1))
of the Corporations Act)

[Signature] Signature of Director)

[Signature] Signature of ~~Director~~/Company Secretary)

RYUZO NAKAMURA Name of Director)

GAVIN PETER PATTERSON Name of ~~Director~~/Company Secretary)

Signed by Shuzaburo Tsuchihashi as)
attorney for **ITOCHU MINERALS &**)
ENERGY OF AUSTRALIA PTY.)
LTD. ACN 009 256 259 under power)
of attorney dated 12 November 2010)
in the presence of:)

[Signature] _____

Signature of witness

[Signature] _____

Shuzaburo Tsuchihashi

YASUSHI FUKUMURA

Name of witness (print)

[Seventh Schedule inserted by No. 61 of 2010 s. 29.]

Notes

¹ This is a compilation of the *Iron Ore (Mount Newman) Agreement Act 1964* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any previous reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Iron Ore (Mount Newman) Agreement Act 1964</i>	75 of 1964	14 Dec 1964	14 Dec 1964
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
<i>Iron Ore (Mount Newman) Agreement Act Amendment Act 1967</i>	63 of 1967	5 Dec 1967	5 Dec 1967
Reprint of the <i>Iron Ore (Mount Newman) Agreement Act 1964</i> approved 10 Aug 1971 (includes amendments listed above)			
<i>Iron Ore (Mount Newman) Agreement Act Amendment Act 1979</i>	12 of 1979	24 May 1979	24 May 1979
<i>Iron Ore (Mount Newman) Agreement Amendment Act 1990</i>	51 of 1990	4 Dec 1990	4 Dec 1990 (see s. 2)
<i>Iron Ore (Mount Newman) Agreement Amendment Act 1994</i>	8 of 1994	15 Apr 1994	15 Apr 1994 (see s. 2)
<i>Acts Amendment (Iron Ore Agreements) Act 2000 Pt. 6</i>	57 of 2000	7 Dec 2000	7 Dec 2000 (see s. 2)
Reprint of the <i>Iron Ore (Mount Newman) Agreement Act 1964</i> as at 8 Mar 2002 (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010</i> s. 4 and 42(2)	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Iron Ore Agreements Legislation Amendment Act 2010</i> Pt. 8	34 of 2010	26 Aug 2010	1 Jul 2010 (see s. 2(b)(ii))

Iron Ore (Mount Newman) Agreement Act 1964

Short title	Number and year	Assent	Commencement
<i>Iron Ore Agreements Legislation Amendment Act (No. 2) 2010 Pt. 7</i>	61 of 2010	10 Dec 2010	11 Dec 2010 (see s. 2(c))

² Repealed by the *Mining Act 1978*.

³ Repealed by the *Land Administration Act 1997*.

⁴ Formerly referred to the *Local Government Act 1960* the short title of which was changed to the *Local Government (Miscellaneous Provisions) Act 1960* by the *Local Government Act 1995* s. 9.70. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).

⁵ Repealed by the *Interpretation Act 1984*.

⁶ Repealed by the *Property Law Act 1969*.

⁷ Marginal notes in the agreement set out in the First Schedule have been represented as bold headnotes in this reprint, but that does not change their status as marginal notes.