



Western Australia

Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972

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Defined terms

Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972

An Act to ratify an agreement relating to the exploration for, and development of, iron ore in certain areas in the North West of the State, and for incidental and other purposes.

1. Short title

This Act may be cited as the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*¹.

2. Interpretation

In this Act, unless the contrary intention appears —

the Agreement means the agreement of which a copy is set forth in Schedule 1, and if that agreement is added to or varied or any of its provisions are cancelled, in accordance with the provisions of the Agreement, includes the Agreement as so altered from time to time;

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

the Joint Venturers has the same meaning as that expression has in, and for the purposes of, the Agreement;

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

the Third Variation Agreement means the agreement a copy of which is set out in Schedule 4.

[Section 2 amended: No. 57 of 2000 s. 4; No. 61 of 2010 s. 35; No. 62 of 2011 s. 12.]

3. Ratification of the Agreement

- (1) The Agreement is ratified and the provisions thereof, subject to the Agreement, shall operate and take effect, notwithstanding the provisions of any other Act or law.
- (2) Notwithstanding any other Act or law, and without limiting the effect of subsection (1), the Joint Venturers shall be permitted to enter upon the Crown lands referred to in paragraph (b) of clause 3 of the Agreement to the extent, and for the purposes, provided in that paragraph.
- (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 the Agreement.

4. First Variation Agreement

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

[Section 4 inserted: No. 57 of 2000 s. 5.]

5. 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 Schedule 1 —
 - (a) as varied from time to time in accordance with its provisions; and
 - (b) as varied by the First Variation Agreement.

- (2) Clause 33(1) of the Agreement is varied —
- (a) in subparagraph (ii) by deleting “3.75%” and inserting —

5.625%
 - (b) in subparagraph (iii) by deleting “3.25%” and inserting —

5%
- (3) Clause 33(1)(ii) 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 33 of the Agreement in respect of any period before the commencement of the *Iron Ore Agreements Legislation Amendment Act 2010* Part 2.
[Section 5 inserted: No. 34 of 2010 s. 4.]

6. Second Variation Agreement

- (1) The Second Variation Agreement is ratified.
- (2) The implementation of the Second Variation Agreement is authorised.
- (3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Second Variation Agreement is to operate and take effect despite any other Act or law.
[Section 6 inserted: No. 61 of 2010 s. 36.]

s. 7

7. State empowered under clause 16C(9)(a)

The State has power in accordance with clause 16C(9)(a) of the Agreement.

[Section 7 inserted: No. 61 of 2010 s. 36.]

8. Third Variation Agreement

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

[Section 8 inserted: No. 62 of 2011 s. 13.]

Schedule 1 — Agreement

[Heading inserted: No. 57 of 2000 s. 6.]

s. 2.

THIS AGREEMENT made this 12th day of April One thousand nine hundred and seventy-two BETWEEN THE HONOURABLE JOHN TREZISE TONKIN, 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 CONSOLIDATED GOLD FIELDS AUSTRALIA LIMITED a company incorporated under the Companies Ordinances of the Australian Capital Territory and having its executive office at Gold Fields House Sydney Cove in the State of New South Wales and its registered office in the State of Western Australia (hereinafter referred to as “the said State”) at 156 Saint George’s Terrace Perth CYPRUS MINES CORPORATION a corporation incorporated in the State of New York in the United States of America and having its executive offices situate at 1234 Pacific Mutual Building 523 West Sixth Street Los Angeles California in the United States of America and UTAH DEVELOPMENT COMPANY a corporation incorporated under the laws of the State of Nevada in the United States of America with its executive offices situate at 550 California Street San Francisco in the said United States of America and having its registered office in the State of Queensland at Pearl Assurance House at the corner of Queen and Eagle Streets Brisbane (hereinafter called “the Joint Venturers” in which term shall be included the Joint Venturers and each of them and their and each of their respective successors and assigns) of the other part.

WHEREAS —

- (a) The Joint Venturers pursuant to an agreement with the State made the fifteenth day of October One thousand nine hundred and sixty-four and approved by the *Iron Ore (Mount Goldsworthy) Agreement Act 1964* as varied by an agreement with the State made the twenty-sixth day of August 1971 and approved by the *Iron Ore (Mount Goldsworthy) Agreement Act Amendment Act 1971* are engaged in the exploration for and development of certain iron ore deposits referred to in the said agreements as mining area “A”, mining area “B” and mining area “C” and the mining transportation and shipment of iron ore therefrom.
- (b) The Joint Venturers desire to expand their activities and the State has agreed to make available to them certain additional areas now the

subject of the temporary reserves comprising mining area “D” and mining area “E” (as hereinafter defined) on the terms and conditions hereinafter set out.

NOW THIS AGREEMENT WITNESSETH —

Interpretation³

1. In this agreement subject to the context —

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

“associated company” means —

- (a) any company having a paid-up capital of not less than two million dollars (\$2,000,000) notified in writing by the Joint Venturers or any of them to the Minister which is incorporated in the United Kingdom the United States of America or the Commonwealth of Australia and which —
 - (i) is promoted by the Joint Venturers or any of them for all or any of the purposes of this agreement and in which the Joint Venturers or any of them hold not less than twenty per cent (20%) of the issued ordinary share capital; or
 - (ii) is related within the meaning of the term “subsidiary” in section 6 of the *Companies Act 1961* to any company in which the Joint Venturers or any of them hold 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 Joint Venturers or any of them in their business or operations hereunder;

“clause” means a clause of this agreement;

“commencement date” means the date referred to as the commencement date in clause 7(6);

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

“deposits’ townsite” means an existing townsite approved by the Minister or the townsite to be established on or near mining area “D” pursuant to this agreement and where the context so permits shall extend to and be deemed to include the townsite to be established on or near mining area “E”;

“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 12;
- (b) the date when the Joint Venturers first export iron ore hereunder from mining area “D” (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 ore from the mineral lease the subject of any shipment or sale which is payable by the ultimate purchaser or the person smelting the ore to the Joint Venturers or an associated company, less all export duties and export taxes and all costs and charges properly incurred and paid by the Joint Venturers to a third party after the departure of the ship on which

the ore is loaded from the Joint Venturers' wharf to the time the same is delivered and accepted by the ultimate purchaser or the person smelting the ore, including —

- (1) ocean freight;
- (2) marine insurance;
- (3) port and handling charges at the port of discharge;
- (4) costs incurred in delivering the ore from the port of discharge to the ultimate purchaser or the person smelting the ore;
- (5) all weighing, sampling, assaying, inspection and representation costs at the port of discharge;
- (6) shipping agency charges;
- (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.

For the purposes of this definition —

- (a) the expression “export duties and export taxes” shall refer to taxes payable by the Joint Venturers to the Commonwealth directly relating to the export of ore but excluding any State taxes, duties or charges and any taxes, duties or charges levied by the Commonwealth for or on behalf of the State;
- (b) a cost or charge shall be deemed to be properly incurred if the Minister in his discretion so determines and in making his determination the Minister may have regard to such matters as the parties to and the *bona fide* nature of the transaction, resulting in the cost or charge;

“Goldsworthy Agreement” means the agreement and variation thereof referred to in recital (a) hereof;

“harbour” means the port or harbour serving the Joint Venturers’ wharf;

“Joint Venturers’ railway” means the railway constructed or now under construction in terms of the Goldsworthy Agreement;

“Joint Venturers’ wharf” means the wharf constructed by the Joint Venturers pursuant to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*;

“Land Act” means the *Land Act 1933*;

“locally used ore” means ore used by the Joint Venturers or an associated company both within the Commonwealth and within the limits referred to in clause 37 for secondary processing and includes ore used by any other person or company north of the twenty-sixth parallel of latitude in the said State for secondary processing;

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

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

“mineral lease” means the mineral lease or mineral leases referred to in clause 9 and includes any renewal thereof and where the context so permits shall extend to and be deemed to include a mineral lease granted under the provisions of clause 25 and any renewal thereof;

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

“mining area ‘D’ ” means the area delineated and coloured red and blue on the plan marked “D” initialled by or on behalf of the parties hereto for the purposes of identification;

“mining area ‘E’ ” means the area delineated and coloured blue on the plan marked “E” 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 Joint Venturers and includes the successors in office of the Minister;

“month” means calendar month;

“notice” means notice in writing;

“ore” means iron ore, manganiferous ore and manganese ore;

“person” or “persons” includes bodies corporate;

“port” means the port at or near Port Hedland;

“Ratifying Act” means the Act to ratify this agreement and referred to in clause 3(a);

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

“Sentinel” means Sentinel Mining Company Inc. a company incorporated in the United States of America and registered in the State of Western Australia as a foreign company under the provisions of the *Companies Act 1961* and having its registered office situate at 6th Floor Law Chambers Cathedral Square Perth;

“special lease” means a special lease or licence 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” includes 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) lb. net dry weight;

marginal notes shall not affect the interpretation or construction of this agreement³;

monetary references in this agreement are to Australian currency;

any covenant or agreement on the part of the Joint Venturers hereunder will be deemed to be a joint and several covenant or agreement as the case may be;

power given under any clause other than clause 44 to extend any period or date shall be without prejudice to the power of the Minister under the said clause 44;

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.

Ratification and operation³

2. (1) The provisions of this agreement other than this clause and clauses 1, 3, 4, 5, 23, 25, 36 and 38 shall not come into operation until the Bill referred to in clause 3(a) has been passed by the Parliament of Western Australia and comes into operation as an Act.

(2) If before the 30th day of June, 1972 or such later date as may be agreed between the parties the said Bill is not passed 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.

(3) On the said Bill commencing to operate as an Act all provisions of this agreement shall operate and take effect notwithstanding the provisions of any Act or law.

Initial obligations of the State³

3. The State shall —

- (a) 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 the 30th day of June, 1972; and
- (b) to the extent reasonably necessary for the purposes of this agreement allow the Joint Venturers to enter upon Crown lands (including, if applicable, land the subject of a pastoral lease).

Grant of rights of occupancy of mining area “D”³

4. The State shall, upon application by the Joint Venturers cause to be granted to the Joint Venturers the sole and exclusive right to search and prospect for ore over all or any part of mining area “D” by granting to the Joint Venturers and to the Joint Venturers alone rights of occupancy pursuant to section 276 of the Mining Act of the areas now the subject of the temporary reserves comprising mining area “D” (or such other prospecting licence right or concession as may be appropriate in terms of the Mining Act for the time being in force) subject to such terms and conditions as the Minister for Mines may require at a rental at the rate of twenty-six dollars (\$26) per square mile per annum payable quarterly in advance for a period of twelve (12) months and shall then and thereafter subject to the continuance of this agreement maintain such exclusive rights as aforesaid for the benefit of the Joint Venturers and cause to be granted to the Joint Venturers as may be necessary such renewals of the rights of occupancy of the said temporary reserves or other the exploration licence or concession then in force (each renewal to be for a period of twelve (12) months at the same rental and upon the same terms) the last of which renewals notwithstanding its currency to expire —

- (i) in the case of that part of mining area “D” coloured red, on the date of grant of a mineral lease to the Joint Venturers under clause 9(1); and in the case of that part of mining area “D” coloured blue, on the date of grant of a mineral lease to the Joint Venturers under clause 9(2);
- (ii) in the case of that part of mining area “D” coloured red, at the expiration of three (3) months from the commencement date; and in the case of that part of mining area “D” coloured blue, on the expiration of the period of two (2) years from the commencement date as specified in clause 9(2);
- (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 Joint Venturers to the effect that the Joint Venturers abandon and cancel this agreement,

whichever shall first happen PROVIDED ALWAYS that the Joint Venturers may at any time relinquish their rights of occupancy to the area the subject of any temporary reserve or any part thereof by notice in writing in that behalf to the State.

Initial obligations of Joint Venturers³

5. (1) Insofar as has not already been done to the satisfaction of the Minister the Joint Venturers shall commence forthwith and carry out at their expense (with the assistance of experienced consultants where appropriate) —

- (a) a thorough geological and (as necessary) geophysical investigation of the ore deposits in mining area “D” and the testing and sampling of such deposits;
- (b) a general reconnaissance of the various sites of proposed operations pursuant to the agreement together with the preparation of suitable maps and drawings;
- (c) an engineering investigation of the route for a railway and/or road from mining area “D” to connect with the Joint Venturers’ railway;
- (d) a study of the technical and economic feasibility of the mining transporting processing and shipping of ore from mining area “D”;
- (e) the planning of a suitable deposits’ townsite in consultation with the State for use by others (if and to the extent applicable) as well as the Joint Venturers;
- (f) the investigation, as and when approved by the Minister, of suitable water supplies for mining industrial and townsite purposes; and
- (g) metallurgical and market research.

(2) The Joint Venturers shall collaborate with and 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 Joint Venturers’ operations under subclause (1) of this clause. The Joint Venturers shall furnish the Minister with copies of all reports received by them from consultants in connection with the matters referred to under subclause (1) of this clause and with copies of all findings made and reports prepared by them.

(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 the Joint Venturers 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.

Joint Venturers to submit proposals³

6. (1) On or before the 31st day of December, 1972 (or thereafter within such extended time as the Minister may allow as hereinafter provided) the Joint Venturers shall submit to the Minister —

- (a) to the fullest extent reasonably practicable the Joint Venturers' detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister and measures to be taken for the protection of the environment) so far as is relevant to mining area "D" (or so much thereof as shall be comprised within the mineral lease) relating to the transport and shipment of ore to be mined and including 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 —
 - (i) the use of the Joint Venturers' existing facilities;
 - (ii) the railway or road or other appropriate form of transport from mining area "D" to connect with the Joint Venturers railway or other appropriate form of transport and their proposed operation including fencing (if any) and as circumstances may reasonably require such crossing places including in the case of a road or other appropriate form of transport either over-passes or under-passes where level crossings are inadequate for reasonable safety or other reasonable requirements;
 - (iii) deposits' townsite in connection with mining area "D" 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 15(3) shall operate);

- (vii) mining crushing screening handling transport and storage of ore;
 - (viii) airfields;
 - (ix) any leases licences or other tenures of land required from the State; and
 - (x) any other works, services or facilities proposed or desired by the Joint Venturers; and
- (b) (subject to the provisions of subclause (3) of this clause) satisfactory evidence —
- firstly* of the making or the likelihood of making suitable contracts for the sale and shipment by the Joint Venturers of ore from the mineral lease;
 - secondly* of the availability of finance necessary for the fulfilment of the Joint Venturers' proposals under this clause; and
 - thirdly* of any necessary licence to the Joint Venturers from the Commonwealth to export hereunder ore the subject of the ore contracts referred to in this paragraph in the quantities at the rate or rates and in the years stated in the contracts.

(2) The Joint Venturers shall have the right to submit to the Minister their detailed proposals aforesaid in regard to a matter or matters the subject of any of the subparagraphs numbered (i)-(x) inclusive of paragraph (a) of subclause (1) of this clause as and when the detailed proposals become finalised by the Joint Venturers 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 subparagraphs 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 (1) and that the last two detailed proposals submitted to the Minister relate to and cover the ore contracts and the finance necessary for the ore export project.

(3) If the Joint Venturers 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 1972 (or such later

date if any previously granted or approved by the Minister) within which to make the ore contracts referred to in paragraph (b) of subclause (1) of this clause and then demonstrate to the satisfaction of the Minister that the Joint Venturers have duly complied with their other obligations hereunder have genuinely and actively but unsuccessfully endeavoured to make such ore contracts on a competitive basis and reasonably require an additional period for the purpose of making such 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 (1) month of the 31st day of December 1972;
- (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 (1) 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 (1) month of the expiration of the period of extension granted under the said paragraph (b) unless the Minister shows to the Joint Venturers 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 ore (or processed ore) from the leased land which contracts are comparable with ore contracts referred to in paragraph (b) of subclause (1) of this clause on terms from the State not more favourable on the whole (having regard *inter alia* to initial expenditure) to that party than those applicable to the Joint Venturers hereunder;

subject always and in every case to the condition that the Joint Venturers duly comply (or comply to the satisfaction of the Minister) with their other obligations hereunder.

Consideration of proposals under clause 6³

7. (1) In considering the proposals of the Joint Venturers submitted pursuant to this agreement the Minister shall have regard to the approved proposals of the Joint Venturers and to the implementation of such proposals under the Goldsworthy Agreement and any further amendment or variation thereof.

(2) Within two (2) months after receipt of the detailed proposals of the Joint Venturers in regard to any of the matters mentioned in clause 6(1)(a) the Minister shall give to the Joint Venturers notice either of his approval of the proposals or of alterations desired thereto and in the latter case shall afford to the Joint Venturers 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 (subject to the provisions of clause 9(7) and clause 32(2)) by others as well as the Joint Venturers of the Joint Venturers' facilities and services but the Minister shall in any notice to the Joint Venturers disclose his reasons for any such alteration or condition. Within two (2) months of the receipt of the notice the Joint Venturers 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 Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain 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 36) but if the question is decided in favour of the Joint Venturers 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.

(3) Within two (2) months after receipt of evidence from the Joint Venturers with regard to the matters mentioned in clause 6(1)(b) to the reasonable satisfaction of the Minister the State shall give to the Joint Venturers 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 Joint Venturers 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 Joint Venturers may within a further period of thirty (30) days elect by notice to the State to refer to arbitration as hereinafter provided and shall 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 Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain 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 36) but if the

question is decided in favour of the Joint Venturers 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 time³

(4) The arbitrator, arbitrators or umpire (as the case may be) of any submission to arbitration under this clause is hereby empowered upon application by either party hereto to grant any interim extension of time or date referred to in this clause 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 Joint Venturers may in the name of the Minister grant any further extension of time for that purpose.

(5) Notwithstanding that under this clause any detailed proposals of the Joint Venturers 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 1973 or by such extended date if any as the Joint Venturers shall be entitled to or shall be granted pursuant to the provisions of this clause then at any time after the said 28th day of February 1973 or if any extension or extensions should be granted under clause 6(3) 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 Joint Venturers 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 36.

Commencement date³

(6) 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 6(1) the date upon which the last of those proposals of the Joint Venturers shall have been so approved or determined shall be the commencement date for the purposes of this agreement.

(7) If under any arbitration under this clause the dispute is decided against the Joint Venturers 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 mining area "D" on terms more favourable on the whole to the other party than those which would

have applied to the Joint Venturers hereunder if the question had been determined in favour of the Joint Venturers.

Further proposals³

8. Notwithstanding the final approval pursuant to clause 7 or clause 25 of the Joint Venturers' proposals, in the event that the Joint Venturers desire at any time during the currency hereof to expand their activities beyond those specified in the Joint Venturers' proposals as approved hereunder the Joint Venturers shall submit to the Minister further or additional proposals relating to such expansion in which case the provisions of clauses 6 and 7 so far as applicable shall apply thereto *mutatis mutandis*.

Mineral lease of mining area "D"³

9. (1) As soon as conveniently may be after the commencement date the State shall after application is made by the Joint Venturers for a mineral lease of any part or parts (not exceeding in total area one hundred (100) square miles and in the shape of a parallelogram or parallelograms) of that part of mining area "D" coloured red in conformity with the Joint Venturers' detailed proposals under clause 6 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 Joint Venturers on demand after completion of the survey) and shall subject to compliance with the provisions of clause 10(1) cause to be granted to the Joint Venturers as tenants in common in equal shares a mineral lease thereof for iron ore at rentals specified from time to time in the Mining Act such mineral lease to be granted under and except as otherwise provided in this agreement subject to the Mining Act but in the form of the schedule hereto.

(2) Subject to compliance by the Joint Venturers with the provisions of clause 10(1) the Joint Venturers shall within a period of two (2) years from the commencement date have the right subject to six (6) months prior notice to the State to make application for a mineral lease of any part or parts (not exceeding in total area two hundred (200) square miles and in the shape of a parallelogram or parallelograms) of that part of mining area "D" coloured blue on the same terms and conditions as the mineral lease granted under subclause (1) of this clause.

(3) Subject to the performance and observance by the Joint Venturers of their obligations under this agreement and the Mining Act and notwithstanding any provisions of the Mining Act to the contrary, the term of any mineral lease

granted pursuant to this clause 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 Joint Venturers 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.

Labour conditions³

(4) The State shall ensure that during the currency of this agreement and subject to compliance with their obligations hereunder the Joint Venturers shall not be required to comply with the labour conditions imposed by or under the Mining Act in regard to any mineral lease granted pursuant to this agreement.

Access through mining areas³

(5) The Joint Venturers shall allow the State and third parties to have access (with or without stock vehicles and rolling stock) over any mineral lease granted pursuant to this agreement (by separate route road or railway) PROVIDED THAT such access over shall not unduly prejudice or interfere with the Joint Venturers' operations hereunder.

Rights to other minerals³

(6) The State shall where and to the extent reasonably practicable on application by the Joint Venturers from time to time grant or assist in obtaining the grant to the Joint Venturers of prospecting rights and mining leases with respect to limestone dolomite and other minerals reasonably required by the Joint Venturers for their purposes under this agreement.

Other mining tenements³

(7) The State 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 Joint Venturers 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 1967*) 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 Joint Venturers hereunder assuming the taking by the Joint Venturers of all reasonable steps to avoid the interference.

Payment towards previous exploration expenditure³

10. (1) The Joint Venturers shall pay to or to the order of Sentinel the sum of two million dollars (\$2,000,000) by way of compensation towards expenditure previously incurred by Sentinel in the exploration of land within mining area "D" and mining area "E". Such amount shall be payable by three (3) equal consecutive annual instalments, free of interest, the first such instalment being due within seven (7) days of the date this agreement is ratified by the Parliament of Western Australia. The Joint Venturers acknowledge the receipt of such information as they required from Sentinel relating to Sentinel's exploration of the land within mining area "D" and mining area "E".

Additional payments to Sentinel³

(2) In addition to the payments referred to in subclause (1) of this clause the Joint Venturers shall pay to or to the order of Sentinel by way of compensation towards expenditure previously incurred by Sentinel in the exploration of land within mining area "D" and mining area "E" —

- (a) not later than six (6) months after the date of the notice referred to in subclause (2) of clause 9 the sum of one million and fifty thousand two hundred and thirty dollars (\$1,050,230);
- (b) not later than twelve (12) months after the due date of the payment referred to in paragraph (a) of this subclause the sum of one million and fifty thousand two hundred and thirty dollars (\$1,050,230);
- (c) not later than twelve (12) months after the due date of the payment referred to in paragraph (b) of this subclause the sum of one million and fifty thousand two hundred and twenty dollars (\$1,050,220).

Lands³

11. (1) The State shall, in accordance with the Joint Venturers' proposals as finally approved or determined under clause 7 grant to the Joint Venturers as tenants in common in equal shares or to a company nominated by the Joint Venturers and approved by the Minister (referred to in this clause as "the nominated 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 Joint Venturers 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 Joint Venturers and of services and facilities provided by the Joint Venturers —

- (i) for nominal consideration — townsite lots;
- (ii) at a rental to be determined by the State — special leases of Crown lands within the harbour area;
- (iii) at peppercorn rental — land for townsites and railways; and
- (iv) at rentals as prescribed by law or are otherwise reasonable — leases rights mining tenements easements reserves and licences in on or under Crown lands

under the Mining Act, the *Jetties Act 1926* or under the provisions of the Land Act as modified by subclause (5) of this clause (as the case may require) as the Joint Venturers reasonably require for their works and operations hereunder.

(2) The Joint Venturers hereby covenant with the State that the Joint Venturers will duly and punctually observe perform and comply with all the covenants agreements and obligations to be performed or observed by the nominated company contained in any lease licence reserve and tenement and any renewal thereof granted pursuant to the provisions of subclause (1) of this clause to the intent that the same shall be binding upon the Joint Venturers in the same manner and to the same extent as if the Joint Venturers were expressly named therein severally with the nominated company and the Joint Venturers acknowledge that a default by the nominated company in the due performance or observance of any such covenant agreement or obligation shall be or be deemed to be a default under clause 35 by the Joint Venturers in the due performance or observance of that covenant agreement or obligation and that default entitles the State to exercise against the Joint Venturers its rights powers and remedies under and in conformity with that clause.

(3) From and after the fifteenth anniversary of the export date or the twentieth anniversary of the date of ratification of this agreement 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 6(3)) the Joint Venturers shall in addition to the rentals already referred to in this clause pay to the State during the currency of this agreement after such anniversary as aforesaid a rental equal to twenty-five (25) cents per ton on all ore in respect of which royalty is payable under clause 33 in any financial year and such additional rental to be paid at the same times as the said

royalty SO NEVERTHELESS that the additional rental to be paid under this proviso shall not be less than three hundred thousand dollars (\$300,000) in respect of any such year.

Other rights³

(4) The State shall on application by the Joint Venturers cause to be granted to them as tenants in common in equal shares or to the nominated company, should the Joint Venturers so require, such machinery and tailings leases (including leases for the dumping of overburden) and such other leases licences reserves and tenements under the Mining Act or under the provisions of the Land Act as modified by subclause (5) of this clause as the Joint Venturers may reasonably require for their purposes under this agreement on or near the mineral lease.

(5) For the purposes 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 designated for use as a townsite in terms of the Joint Venturers' proposals as finally approved or determined under clause 7 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 licences for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this agreement in lieu of 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 Joint Venturers or the

nominated company in forms consistent as aforesaid in lieu of in the forms referred to in the Act.

(6) The provisions of subclause (5) of this clause shall not operate so as to prejudice the rights of the State to determine any lease licence or other right or title in accordance with the other provisions of this agreement.

Improvements on leases³

(7) The State shall as and when required by the Joint Venturers or the nominated company (but without prejudice to the foregoing provisions of this agreement relating to the detailed proposals and matters referred to in clause 6) consent to the Joint Venturers or the nominated company making improvements reasonably necessary or desirable for the purposes of this agreement on the land comprised in any lease granted by the State to the Joint Venturers or the nominated company pursuant to this agreement PROVIDED THAT the Joint Venturers or the nominated company shall also obtain any other consents legally required in relation to such improvements.

(8) The Joint Venturers or the nominated company shall not have any tenant rights in improvements made by the Joint Venturers or the nominated company on the land comprised in any lease granted by the State to the Joint Venturers or the nominated company pursuant to this agreement in any case where pursuant to clause 34 such improvements will remain or become the absolute property of the State.

Obligations of the Joint Venturers to construct³

12. The Joint Venturers shall within five (5) years next following the commencement date (or within such extended period not exceeding a further two (2) years as the Joint Venturers may satisfy the Minister that the Joint Venturers reasonably require and the Minister approves), and at a cost of not less than five million dollars (\$5,000,000) construct install provide and do all things necessary to enable them to mine from the land in the mineral lease granted to the Joint Venturers pursuant to clause 9 to transport by rail or road or other appropriate form of transport to the Joint Venturers' wharf and to ship ore therefrom and without lessening the generality of this provision the Joint Venturers shall within the aforesaid period or extended period as the case may be —

- (a) construct install and provide upon the land in 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 Joint Venturers to meet and discharge their obligations hereunder and under the ore contracts and to mine handle load and deal with not less than three thousand (3,000) tons of ore per day such capacity to be built up progressively to not less than five thousand (5,000) tons of ore per day within three (3) years next following the export date; and

To commence exports³

- (b) commence to mine transport by rail road or other appropriate form of transport and ship from the Joint Venturers' wharf ore from the land in the mineral lease so that the average annual rate during the first three (3) years next following the export date shall not be less than one and one half million (1,500,000) tons.

Shipment of and price for ore³

13. During the currency of this agreement the Joint Venturers shall ship from the Joint Venturers' wharf all ore mined from the mineral lease and sold save only and excluding locally used ore. In every case, whether the ore be locally used or otherwise, the Joint Venturers shall use their best endeavours to obtain therefor the best price possible having regard to market conditions from time to time prevailing.

Construction of railway or road³

14. Subject to the State having assured to the Joint Venturers all necessary rights in or over Crown lands available for the purpose the Joint Venturers shall 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 7 (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 mining area "D" to connect with the Joint Venturers' railway and shall provide for crossing places grade separation (where appropriate) or other protective devices including flashing lights and boom gates at major road crossings or intersections with existing railways and the running of such railway with sufficient and adequate locomotives freight cars and other railway stock and

equipment to haul at least one and one half million (1,500,000) tons of ore per annum to the Joint Venturers' wharf or as required for the purposes of this agreement or in lieu thereof in accordance with the Joint Venturers' proposals as finally approved or determined under clause 7 construct and equip in the manner provided in clause 15(1) a road along such route aforesaid and shall provide sufficient road trucks or other appropriate forms of transport to enable the annual tonnage aforesaid to be hauled from mining area "D" to the Joint Venturers' railway.

Construction of roads³

15. (1) The Joint Venturers shall subject to the State having assured to the Joint Venturers all necessary rights in or over Crown lands or reserves available for the purpose at their own cost and expense and in accordance with their proposals as approved hereunder construct within three (3) years of the commencement date such new roads as the Joint Venturers may reasonably require for the purposes of this agreement such roads to be of such widths, of such materials, with such gates, crossings (level or grade separated) and passovers for cattle and for sheep and along such routes as the parties hereto shall agree after consideration of the requirements of the respective shire councils through whose districts any such roads may pass and after prior consultation with the Minister.

Operation of roads³

(2) Throughout the continuance of this agreement the Joint Venturers shall operate the roads referred to in subclause (1) of this clause in a safe and proper manner and where and to the extent that they can do so without unduly prejudicing or interfering with their operations hereunder allow crossing places for roads stock and railways.

Use of roads by others³

(3) Except to the extent that the Joint Venturers' proposals as finally approved or determined under clause 7 otherwise provide allow the public to use free of charge any roads (to the extent that it is reasonable and practicable so to do) constructed or upgraded under this clause PROVIDED THAT such use shall not unduly prejudice or interfere with the Joint Venturers' operations hereunder.

Use of public roads³

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

(5) If required by the Joint Venturers the State shall at the Joint Venturers' cost and expense (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or any part of the cost) widen upgrade or re-align any public road existing from time to time which the Joint Venturers desire to use for their operations hereunder over which the State has control subject to the prior approval of the Commissioner of Main Roads to the proposed work.

Liability of Joint Venturers³

- (6) (a) For the purposes of determining whether and the extent to which —
- (i) the Joint Venturers are liable to any person or body corporate (other than the State); or
 - (ii) an action is maintainable by any such person or body corporate

in respect of the death or injury of any person or damage to any property arising out of the use of any of the roads for the maintenance of which the Joint Venturers are responsible hereunder and for no other purpose the Joint Venturers 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 Joint Venturers; and

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

(7) In the event that the implementation of approved proposals submitted by the Joint Venturers pursuant to this agreement imposes an obligation upon the State to provide additional services works equipment and facilities for the projected populations at Shay Gap, Goldsworthy, Finucane Island-South Hedland and Port Hedland the Joint Venturers shall bear the cost of establishing or extending such services works equipment and facilities to a standard normally adopted by the State in similar circumstances.

Deposits’ townsite³

16. (1) Unless the Minister otherwise determines the Joint Venturers shall collaborate with the State in the planning, location and development of the deposits’ townsite and shall employ a skilled and experienced town planner to prepare a town plan for initial and long-term town development which town plan shall be submitted by the Joint Venturers as a proposal pursuant to clause 6.

(2) The Joint Venturers shall, at their cost in accordance with the relevant approved proposal, provide and maintain at the deposits’ townsite and make available —

- (i) at such prices, rentals or charges and upon such terms and conditions as are fair and reasonable under the circumstances, housing accommodation, services and works including sewerage reticulation and treatment works, water supply works, main drainage works and social, cultural and civic facilities; and
- (ii) without charge public roads and buildings and other works and equipment required for educational, hospital, medical, police, recreation, fire or other services,

to the extent to which any of the foregoing are necessary to provide for the needs of persons and the dependants of such persons engaged in connection with the Joint Venturers’ operations hereunder whether or not employed by the Joint Venturers.

(3) The Joint Venturers shall at their cost provide equipment for the buildings referred to in subclause (2) of this clause to a standard normally adopted by the State in similar types of buildings in comparable townsites.

(4) The Joint Venturers shall as may be reasonably required by the State from time to time provide at their cost adequate housing accommodation for married and single staff directly connected with the educational hospital medical and police services referred to in subclause (2)(ii) of this clause.

Deposits' townsite air field³

(5) The Joint Venturers shall if so required by the State construct an air field near the deposits' townsite at the Joint Venturers' expense to the standard required by the Director General of Civil Aviation and in accordance with the relevant approved proposal of the Joint Venturers hereunder.

Water³

17. (1) The Joint Venturers shall give to the State not less than six (6) months notice in respect of their requirements of water both at the deposits' townsite and within the mineral lease to implement their proposals hereunder (which amounts or such other amounts as shall be agreed between the parties hereto are hereinafter called "the Joint Venturers' water requirements").

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

(3) The Joint Venturers shall make application to the State for a licence to draw water from suitable artesian or non-artesian subterranean water sources identified pursuant to the investigations referred to in subclause (2) of this clause from which the State considers that adequate supplies are available to meet the Joint Venturers' water requirements and the State shall grant to the Joint Venturers such licence PROVIDED HOWEVER that the State may stipulate a limit to the amount of water which may be taken at any one time or from time to time under such licence and may for water conservation or water management purposes reduce the amount of water which may be drawn from sources licensed to the Joint Venturers.

(4) The Joint Venturers shall provide and construct at their own expense to standards and in accordance with designs approved by the State and in accordance with their relevant proposals as approved all necessary bores valves pipelines meters tanks equipment and appurtenances necessary to draw transport use and dispose of water drawn from sources licensed to the Joint Venturers.

(5) The Joint Venturers shall design and construct their plant and facilities for the mining handling processing and transportation of ore so that as far as practicable saline water may be used therein.

(6) The Joint Venturers shall collaborate with the State in an investigation of surface water, catchments and storage dams should water supplies from available underground sources prove insufficient to meet the Joint Venturers' water requirements. The Joint Venturers shall pay to the State a sum or sums to be agreed towards the cost of such investigation and towards the cost of constructing any water storage dam or dams and reticulation facilities required PROVIDED THAT the State may in its sole discretion elect to construct a water storage dam or dams and reticulation facilities having a capacity in excess of that needed to supply the Joint Venturers' water requirements and in that event the Joint Venturers' contribution shall be limited to a fair and reasonable proportion of the total cost of constructing such water storage dam or dams and reticulation facilities having regard to the Joint Venturers' water requirements.

(7) (a) If during the currency of a licence granted under the provisions of this clause the Minister is of the opinion that it would be desirable for water conservation purposes or water management purposes that sources of water licensed to the Joint Venturers be controlled and operated by the State as part of a regional water supply scheme, the Minister may on giving six (6) months prior notice to the Joint Venturers of his intention, revoke the licence and take over the Joint Venturers' water supply facilities in each case without payment of compensation.

(b) In the event of the revocation of a licence pursuant to the provisions of paragraph (a) of this subclause the State shall subject to the continued availability of water from the sources previously licensed to the Joint Venturers supply sufficient water to meet the Joint Venturers' water requirements.

(8) The State may in its discretion develop any district or regional water supply or construct any works to a greater capacity than that required to supply

the Joint Venturers' water requirements but in that event the cost of the system as so enlarged shall be shared by the parties hereto in such manner as may be agreed to be fair in all the circumstances.

(9) The Joint Venturers shall pay to the State for water supplied by it pursuant to this clause a fair price to be negotiated between the parties hereto which shall be equal to the actual costs incurred by the State in supplying water to the Joint Venturers including operating maintenance and overhead costs and a provision for replacement of the water supply facilities. Notwithstanding the foregoing in respect of water supplied by the State to the Joint Venturers for domestic purposes the Joint Venturers shall pay to the State therefor charges as levied from time to time pursuant to the provisions of the *Country Areas Water Supply Act 1947*.

(10) Any reference in this clause to a licence is a reference to a licence under the *Rights in Water and Irrigation Act 1914* and the provisions of that Act relating to water rights and licences shall apply to any water sources developed for the Joint Venturers' purpose under this agreement.

Electricity³

18. (1) The Joint Venturers shall subject to the provisions of the *Electricity Act 1945* and the *State Electricity Commission Act 1945* and in accordance with their proposals as approved construct without cost or expense to the State facilities for the generation and transmission of electricity needed to enable the Joint Venturers to carry out their obligations hereunder. The Joint Venturers shall design and construct their electrical generation plant equipment and transmission system so as to facilitate the ultimate connection of such plant equipment and transmission system with facilities owned by the State Electricity Commission or other third parties.

(2) The State may at any time give to the Joint Venturers twelve (12) months' notice of its intention to acquire and may thereafter acquire the Joint Venturers' electrical generation plant equipment and transmission system or any of them at a price to be agreed between the parties and the Joint Venturers shall take all such steps as may be necessary to give effect to the acquisition.

(3) In the event of the State acquiring the Joint Venturers' facilities or any of them as provided by subclause (2) of this clause the State shall supply the Joint Venturers' electricity requirements for the time being and in so doing shall afford the Joint Venturers first priority over the electricity requirements of any other user or potential user of electricity from such facilities to the extent of the capacity of such facilities as at the date of the State's acquisition pursuant to

subclause (2) of this clause. The Joint Venturers shall pay to the State Electricity Commission the cost of all electricity supplied to the Joint Venturers by the Commission at a rate equal to the standard tariff from time to time applying to the Commission's system less the difference (if any) between the Commission's standard tariff in force at the time of the State's acquisition of the facilities pursuant to subclause (2) of this clause and the Joint Venturers' costs of operating those facilities (including *inter alia* appropriate capital charges) at the time of the said acquisition. The Commission's rate for electricity calculated as aforesaid shall apply to an amount of electricity equal to the continuous full load capacity of the facilities so acquired and the Joint Venturers shall pay for all electricity supplied to them by the Commission in excess of such amount at the Commission's standard tariff applicable from time to time.

Maintenance³

19. The Joint Venturers shall at all times keep and maintain in good repair and working order and condition and where necessary replace at their expense all works installations plant machinery equipment service or facility provided or controlled by the Joint Venturers for the purposes of this agreement the continued use whereof is requisite or necessary within the scope of the Joint Venturers' activities hereunder and excluding any works installations plant machinery equipment service or facility appropriated or otherwise acquired by the State.

Compliance with laws³

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

Drainage³

21. (1) The Joint Venturers shall drain all land and related facilities used by the Joint Venturers for their operations hereunder and dispose of the drainage in accordance with plans and specifications approved by the Minister.

Disposal of waste materials³

(2) The Joint Venturers shall dispose of all waste materials generated within mining area "D", mining area "E" the port and the deposits' townsite in such manner as to prevent the pollution of the sea, rivers, ground water and

underground water and shall comply with all reasonable directions that the Minister may give with regard to any such waste materials.

Dust nuisance³

22. The Joint Venturers shall so design construct and maintain their mining crushing handling transportation storage and reclaiming facilities and maintain their ship-loading facilities as to minimise dust nuisance and shall comply with such reasonable directions as the Minister may give with regard to any dust nuisance arising directly or indirectly from the Joint Venturers' operations hereunder.

Environmental protection³

23. Nothing in this agreement shall be construed to exempt the Joint Venturers from compliance with any requirement in connection with the protection of the environment arising out of or incidental to the Joint Venturers' operations hereunder 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.

Use of local labour and materials³

24. The Joint Venturers shall for the purposes of this agreement so far as reasonably and economically practicable use labour available within the State and give preference to *bona fide* Western Australian contractors and manufacturers in the placement of orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere and in calling tenders and letting contracts for works materials plant equipment and supplies required by them they shall ensure *bona fide* Western Australian contractors and manufacturers are given reasonable opportunity to tender or quote or otherwise be properly considered for such works materials plant equipment and supplies.

Mining area "E" Grant of rights of occupancy³

25. (1) The State shall on application by the Joint Venturers cause to be granted to the Joint Venturers the sole and exclusive right to search and prospect for ore over the whole of mining area "E" by granting to the Joint Venturers and to the Joint Venturers alone rights of occupancy pursuant to section 276 of the Mining Act of the areas now the subject of the temporary reserves comprising mining area "E" (or such other prospecting licence right or concession as may be appropriate in terms of the Mining Act for the time being in force) subject to

such terms and conditions as the Minister for Mines may require at a rental at the rate of twenty-six dollars (\$26) per square mile per annum payable quarterly in advance for a period of twelve (12) months and shall then and thereafter subject to the continuance of this agreement maintain such exclusive rights as aforesaid for the benefit of the Joint Venturers and cause to be granted to the Joint Venturers as may be necessary such renewals of the rights of occupancy of the said temporary reserves or other the exploration licence or concession then in force (each renewal to be for a period of twelve (12) months at the same rental and upon the same terms) the last of which renewals notwithstanding its currency to expire —

- (i) on the date of grant of the mineral lease (referred to as “the second mineral lease” in this clause) to the Joint Venturers under this clause; or
- (ii) at the expiration of one (1) month from the date on which the detailed proposals and matters referred to in subclause (3) of this clause shall have been approved by the Minister or deemed to have been approved by decision of arbitration; or
- (iii) at the expiration of the time within which the detailed proposals and matters referred to in subclause (3) of this clause must be required to be submitted by the Joint Venturers to the Minister; or
- (iv) on the determination of this agreement pursuant to its terms; or
- (v) on the day of the receipt by the State of a notice from the Joint Venturers to the effect that the Joint Venturers abandon and cancel this agreement,

whichever shall first happen PROVIDED ALWAYS that the Joint Venturers may at any time relinquish their rights of occupancy to the area the subject of any temporary reserve or any part thereof by notice in writing in that behalf to the State.

Joint Venturers may submit proposals in respect of mining area “E”³

(2) From the date of grant of the rights of occupancy or other the exploration licence or concession referred to in subclause (1) of this clause the Joint Venturers shall with all reasonable diligence continue their preliminary exploration and investigation preparatory to making a complete and thorough geological and (as necessary) geophysical investigation of mining area “E” and within two (2) years next following the date of ratification of this agreement the

Joint Venturers shall complete their geological and (as necessary) geophysical exploration and investigation with a view to proving ore deposits in mining area “E” and testing and sampling such deposits. Such investigations shall include a general reconnaissance of mining area “E” with a view to the establishment of various sites for the operations pursuant to this agreement and a feasibility study relating to the establishment of a plant for the secondary processing of ore from mining area “E”. The Joint Venturers shall keep the State fully informed at least quarterly commencing within one quarter after the date of grant of the rights of occupancy or other licence or concession aforesaid as to the progress and results of the Joint Venturers’ operations under this subclause.

(3) Within five (5) years from the commencement date the Joint Venturers having complied with all their obligations pursuant to subclause (2) of this clause and subject to the Joint Venturers having become bound to pay Sentinel all the monies referred to in clause 10 may apply for the second mineral lease in respect of any part or parts of mining area “E” (not exceeding in total area three hundred (300) square miles and in the shape of a parallelogram or parallelograms) and shall with such application submit to the Minister —

- (a) to the fullest extent reasonably practicable the Joint Venturers’ detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister and measures to be taken for the protection of the environment) so far as is relevant to mining area “E” (or so much thereof as shall be comprised within the land in the second mineral lease) relating to the establishment of a plant for the secondary processing of the ore with provision for expansion of such plant when economically feasible and for the transport and shipment of ore to be mined and of ore to be the subject of secondary processing and including 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 —
 - (i) the use of the Joint Venturers’ existing facilities;
 - (ii) the railway or road or other appropriate form of transport from mining area “E” to connect with the Joint Venturers’ existing railway or other appropriate form of

transport and their proposed operation including fencing (if any) and as circumstances may reasonably require such crossing places including in the case of a road or other appropriate form of transport either over-passes or under-passes where level crossings are inadequate for reasonable safety or other reasonable requirements;

- (iii) deposits' townsite in connection with mining area "E" 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 15(3) shall operate);
 - (vii) mining crushing screening handling transport and storage of ore;
 - (viii) secondary processing;
 - (ix) airfields;
 - (x) any leases licences or other tenures of land required from the State; and
 - (xi) any other works, services or facilities proposed or desired by the Joint Venturers; and
- (b) (subject to the provisions of subclause (4) of this clause) satisfactory evidence —

firstly of the making or the likelihood of making suitable contracts for the sale and shipment by the Joint Venturers of ore from the second mineral lease,

secondly of the availability of finance necessary for the fulfilment of the Joint Venturers' proposals under this clause, and

thirdly of any necessary licence to the Joint Venturers from the Commonwealth to export hereunder ore the subject

of the ore contracts referred to in this paragraph in the quantities at the rate or rates and in the years stated in the contracts.

(4) If the Joint Venturers 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 1977 (or such later date if any previously granted or approved by the Minister) within which to make the ore contracts referred to in paragraph (b) of subclause (3) of this clause and then demonstrate to the satisfaction of the Minister that the Joint Venturers have duly complied with their other obligations hereunder have genuinely and actively but unsuccessfully endeavoured to make such ore contracts on a competitive basis and reasonably require an additional period for the purpose of making such 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 (1) month of the 31st day of December 1977;
- (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 (1) 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 (1) month of the expiration of the period of extension granted under the said paragraph (b) unless the Minister shows to the Joint Venturers 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 ore (or processed ore) from the leased land which contracts are comparable with ore contracts referred to in paragraph (b) of subclause (3) of this clause on terms from the State not more favourable on the whole (having regard *inter alia* to initial expenditure) to that party than those applicable to the Joint Venturers hereunder;

subject always and in every case to the condition that the Joint Venturers duly comply (or comply to the satisfaction of the Minister) with their other obligations hereunder.

(5) Within two (2) months after receipt of the detailed proposals of the Joint Venturers in regard to any of the matters mentioned in subclause (3)(a) of this clause the Minister shall give to the Joint Venturers notice either of his approval of the proposals or of alterations desired thereto and in the latter case shall afford to the Joint Venturers 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 Joint Venturers of the Joint Venturers' facilities and services but the Minister shall in any notice to the Joint Venturers disclose his reasons for any such alteration or condition. Within two (2) months of the receipt of the notice the Joint Venturers 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 Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain the approval of the Minister as to the matter or matters the subject of the arbitration the application for the second mineral lease shall on the expiration of that period of three (3) months cease and determine (save as provided in clause 36) but if the question is decided in favour of the Joint Venturers 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.

(6) Within two (2) months after receipt of evidence from the Joint Venturers with regard to the matters mentioned in subclause 3(b) of this clause to the reasonable satisfaction of the Minister the State shall give to the Joint Venturers 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 Joint Venturers 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 Joint Venturers may within a further period of thirty (30) days elect by notice to the State to refer to arbitration as hereinafter provided and shall 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 Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain the approval of the Minister as to the matter or matters the subject of the arbitration the application for the second mineral lease shall on the expiration of that period cease and determine (save as provided in

clause 36) but if the question is decided in favour of the Joint Venturers the decision shall 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.

Effect of Joint Venturers applying for mineral lease in respect of mining area “E”³

(7) If the Joint Venturers shall have applied for the second mineral lease within five (5) years of the commencement date and shall have complied with their obligations in respect of such application and if the Minister shall have approved the Joint Venturers’ proposals or be deemed to have approved the Joint Venturers’ proposals by decision of arbitration then the Minister shall cause any necessary survey to be made of the land so applied for (the cost of the survey to the State will be recouped or repaid to the State by the Joint Venturers on demand after completion of the survey) and shall cause to be granted to the Joint Venturers the second mineral lease for ore in the form *mutatis mutandis* of the lease in the schedule hereto for a term which subject to the payments of rental and royalties hereinbefore mentioned and to the performance and observance by the Joint Venturers of their obligations under the second mineral lease shall be for a period commencing from the date of issue of the second mineral lease for a period co-extensive with the residue of the term then unexpired of the mineral lease granted under clause 9(1) with rights to successive renewal for twenty-one (21) years upon the same terms and subject to earlier determination upon the cessation or determination of this agreement.

(8) If the Joint Venturers shall have applied for the second mineral lease within five (5) years of the commencement date and shall have complied with their obligations in respect of such application and the Minister shall have approved the Joint Venturers’ proposals or be deemed to have approved the Joint Venturers’ proposals by decision of arbitration all the provisions of this agreement shall apply *mutatis mutandis* and so far as the context admits in respect of the area the subject of the second mineral lease and the operations relating thereto in the same manner and to the same extent as they apply in respect of mining area “D” and the operations relating to that mining area.

(9) If the Joint Venturers’ proposals made pursuant to this clause are not approved by the Minister or if by the award on arbitration pursuant to this clause the question is decided in favour of the Minister the State will not grant mining area “E” to any party other than the Joint Venturers until after ten (10) years from the commencement date on terms more favourable on the whole than those available to the Joint Venturers.

(10) The Joint Venturers shall not without the consent of the Minister in any three (3) year period commencing at the expiration of three (3) years after the Minister shall have approved or be deemed to have approved the Joint Venturers' proposals under this clause export from the Commonwealth a quantity of ore (other than processed ore) won from the second mineral lease which is more than four (4) times the quantity of locally used ore won from the second mineral lease during that period.

Effect of Joint Venturers not applying for mineral lease in respect of mining area "E"³

(11) If the Joint Venturers do not apply within five (5) years from the commencement date or cease to be entitled to apply for the second mineral lease the Joint Venturers shall cease to have any rights or interest to or in respect of mining area "E" or any part or parts thereof and this agreement with the exception of this clause will continue in force for twenty-one (21) years from the export date or until the Joint Venturers have mined all the available ore from the mineral lease in respect of mining area "D" (whichever later happens) or until this agreement is otherwise determined.

(12) Notwithstanding anything herein contained no failure by the Joint Venturers to submit to the Minister proposals under this clause nor any non approval by the Minister of such proposals shall constitute a breach of this agreement by the Joint Venturers and the only consequence arising from such failure or non approval (as the case may be) shall be those set out in the last preceding subclause and the cessation of the Joint Venturers' right to apply for the second mineral lease.

Zoning³

26. The State shall ensure that the mineral lease and any lands the subject of any Crown Grant lease licence or easement granted to the Joint Venturers 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 Joint Venturers 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.

No discriminatory taxes rates or charges³

27. Except as provided in this agreement the State 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 Joint Venturers in the conduct of the Joint Venturers' 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 Joint Venturers of full enjoyment of the rights granted and intended to be granted under this agreement.

Rating³

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

No charge for the handling of cargoes³

29. Subject to the Joint Venturers at their own expense providing all works buildings dredging and things of a capital nature reasonably required for their 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 Joint Venturers' wharf whether such cargoes shall be the property of the Joint Venturers 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 Joint Venturers' wharf ordinary light conservancy and tonnage dues.

Rentals and evictions³

30. The State shall ensure that any State legislation for the time being in force in the State relating to the fixation of rentals shall not apply to any houses belonging to the Joint Venturers in the deposits' townsite and that in relation to each such house the Joint Venturers shall have the right to include as a condition of letting thereof that the Joint Venturers 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 Joint Venturers.

Subcontracting³

31. The State shall ensure that without affecting the liabilities of the parties to this agreement either party shall have the right from time to time to entrust to third persons the carrying out of any portions of the operations which that party is authorised or obliged to carry out hereunder.

Resumptions³

32. (1) The State may as and for a public work under the *Public Works Act 1902* resume any land required for the purposes of this agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of the same to the Joint Venturers and the provisions of subsections (2) to (7) inclusive of section 17 and section 17A of that Act shall not apply to or in respect of that land or the resumption thereof. The Joint Venturers shall pay the State, as required the costs of and incidental to any land resumed on behalf of the Joint Venturers pursuant to this clause.

(2) Subject to the performance by the Joint Venturers of their obligations under this agreement the State shall not during the currency hereof without the consent of the Joint Venturers resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the State any of the works installations plant equipment or other property for the time being belonging to the Joint Venturers and the subject of or used for the purposes of this agreement nor any of the works on the lands the subject of any lease or licence granted to the Joint Venturers in terms of this agreement AND without such consent (which shall not be unreasonably withheld) the State shall not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road right-of-way water right or easement of any nature or kind whatsoever over or in respect of

any such lands which may unduly prejudice or interfere with the Joint Venturers' operations hereunder.

Royalties³

33. (1) The Joint Venturers shall pay to the State royalty on all ore from the mineral lease shipped sold or locally used (other than ore shipped solely for testing purposes) as follows: —

- (i) on direct shipping ore and on fine ore and fines where such fine ore or fines are not sold or shipped separately as such (not being locally used) at the rate of eleven per centum (11%) of the f.o.b. revenue (computed at the rate of exchange prevailing on date of receipt by the Joint Venturers of the purchase price in respect of iron ore shipped or sold hereunder) PROVIDED NEVERTHELESS that such royalty shall not be less than eighty-five (85) cents per ton (subject to paragraph (vii) of this clause) in respect of such ore the subject of any shipment or sale;
- (ii) on fine ore sold or shipped separately as such (not being locally used ore) at the rate of eleven per centum (11%) of the f.o.b. revenue (computed as aforesaid) PROVIDED NEVERTHELESS that such royalty shall not be less than fifty-five (55) cents per ton (subject to paragraph (viii) of this clause) in respect of such ore the subject of any shipment or sale;
- (iii) on fines sold or shipped separately as such (not being locally used ore) at the rate of eleven per centum (11%) of the f.o.b. revenue (computed as aforesaid) without any minimum royalty;
- (iv) on ore with an average pure iron content of less than sixty per cent (60%) but which would otherwise be within the meaning of the definitions of direct shipping ore or fine ore, at the rate of eleven per centum (11%) of the f.o.b. revenue (computed as aforesaid) without any minimum royalty;
- (v) on manganese ore fifteen (15) cents per ton which rate shall apply for a period of five (5) years after the commencement of production of manganese ore. Thereafter the royalty payable on manganese ore shall be as prescribed from time to time under or pursuant to the provisions of the Mining Act;

- (vi) on manganiferous ore and on all locally used ore at the rate of fifteen (15) cents per ton;
- (vii) if the amount ascertained by multiplying the total tonnage of ore shipped or sold and which is liable to royalty under paragraph (i) of this clause in any financial year by eighty-five (85) cents is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that paragraph then that proviso shall not apply in respect of that ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made accordingly;
- (viii) if the amount ascertained by multiplying the total tonnage of fine ore shipped or sold as such and which is liable to royalty under paragraph (ii) of this subclause in any financial year by fifty-five (55) cents is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that paragraph then that proviso shall not apply in respect of fine ore shipped or sold as such in that year and at the expiration of that year any necessary adjustments shall be made accordingly;
- (ix) the royalty at the rate of fifteen (15) cents per ton referred to in paragraph (vi) of this clause shall be adjusted up or down (as the case may be) as at the first day of January, 1969 and as at the beginning of every fifth year thereafter in accordance with any variation in the average of the basic prices of foundry pig iron c.i.f. Australian capital city ports as announced by The Broken Hill Proprietary Company Limited or any subsidiary thereof from time to time during the calendar year immediately preceding the date at which the adjustment is required to be made as compared with such average for the calendar year 1963.

Payment of royalties³

(2) The Joint Venturers shall within fourteen (14) 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 ore from the mineral lease from the Joint Venturers' wharf furnish to the Minister a return showing the quantity of all ore the subject of royalty hereunder and shipped sold or used (as the case may be) during the quarter immediately

preceding the due date of the return and shall not later than two (2) months after such due date pay to the Minister the royalty payable in respect of ore used and in respect of all 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 Joint Venturers to the purchaser (which invoices the Joint Venturers shall render without delay simultaneously furnishing copies thereof to the Minister) of such 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.

Inspection³

(3) The Joint Venturers shall permit the Minister or his nominee to inspect at all reasonable times the books of account and records of the Joint Venturers relative to the Joint Venturers' operations under this agreement including contracts relative to the shipment or sale of ore hereunder and to take copies or extracts therefrom. For the purpose of determining the f.o.b. revenue payable in respect of any shipment or sale of ore hereunder the Joint Venturers shall if required satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the Minister's satisfaction as to all relevant weights analyses and assays of the ore and the origin of the ore.

Mixed ore³

(4) In the event that ore from mining area "D" and/or mining area "E" is mixed with ore produced by the Joint Venturers pursuant to either the *Iron Ore (Mount Goldsworthy) Agreement Act 1964* or some subsequent arrangement entered into by the Joint Venturers with the State the royalty applicable in respect of that portion of the mixed ore which comes from the mineral lease hereunder shall notwithstanding any provision to the contrary in the agreement or in any other agreement be calculated at the applicable rate or rates set out in this clause.

Additional royalties³

(5) The Joint Venturers shall pay to the State in addition to the royalties payable under the foregoing subclauses of this clause —

- (a) a royalty amounting to the sum of Five hundred thousand dollars (\$500,000) within seven (7) days of the date this

agreement is ratified by the Parliament of Western Australia PROVIDED that no such payment will be required if prior to that due date the Joint Venturers have elected to make and have made a gift of not less than Five hundred thousand dollars (\$500,000) to any one or more of the funds, authorities or institutions prescribed by section 78(1)(a) of the *Income Tax Assessment Act 1936-1971* and situate or resident in the said State; and

- (b) in the event of the grant of a mineral lease to the Joint Venturers over that part of mining area "D" coloured blue a royalty amounting to the sum of Three hundred and twenty-four thousand three hundred and twenty dollars (\$324,320) within seven (7) days of the date of such grant PROVIDED that no such payment will be required if prior to that due date the Joint Venturers have elected to make and have made a gift of not less than Three hundred and twenty-four thousand three hundred and twenty dollars (\$324,320) to any one or more of the funds, authorities or institutions prescribed by section 78(1)(a) of the *Income Tax Assessment Act 1936-1971* and situate or resident in the said State.

Effect of determination of lease³

34. On the cessation or determination of any lease licence or easement granted hereunder by the State to the Joint Venturers or (except as otherwise agreed by the Minister) to an associated company or other assignee of the Joint Venturers under clause 39 the improvements and things other than plant equipment and removable buildings 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 Joint Venturers 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 Joint Venturers immediately prior to such expiration or determination or subsequent thereto deciding to remove their locomotives rolling stock plant equipment and removable buildings or any of them from any land they shall not do so without first notifying the State in writing of their decision and thereby granting to the State the right or option exercisable within three (3) 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.

Determination of agreement³

35. In any of the following events namely if the Joint Venturers 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 licence or other title or document granted or assigned under this agreement on their part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to them by the State (or if the alleged default is contested by the Joint Venturers and promptly submitted to arbitration then within a reasonable time fixed by the arbitration award where the question is decided against the Joint Venturers the arbitrator finding that there was a *bona fide* dispute and that the Joint Venturers had not been dilatory in pursuing the arbitration) or if the Joint Venturers shall abandon or repudiate their operations under this agreement or if any of the Joint Venturers shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within three (3) months from the date of such liquidation the other or others of the Joint Venturers acquire absolutely the share estate and interest of the Joint Venturer in liquidation in or under this agreement and in or under the mineral lease and any other lease licence easement or right granted hereunder or pursuant hereto then and in any of such events the State may by notice to the Joint Venturers determine this agreement and the rights of the Joint Venturers hereunder and under any lease licence easement or right granted hereunder or pursuant hereto or if the Joint Venturers shall surrender the entire mineral lease as permitted under clause 9(3) then the rights of the Joint Venturers hereunder and under any lease licence easement or right granted hereunder or pursuant hereto shall thereupon determine; PROVIDED HOWEVER that if the Joint Venturers 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 Joint Venturers 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 Joint Venturers to the State on demand.

Effect of determination of agreement³

36. On the cessation or determination of this agreement —

- (a) except as otherwise agreed by the Minister the rights of the Joint Venturers to in or under this agreement and the rights of the Joint Venturers or of any assignee of the Joint Venturers or any mortgagee to in or under the mineral lease and any other lease licence 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 Joint Venturers shall 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;
- (b) the Joint Venturers shall forthwith pay to the State all moneys which may then have become payable or accrued due;
- (c) the Joint Venturers shall forthwith furnish to the State complete factual statements of the work research surveys and reconnaissances carried out pursuant to clause 5 if and insofar as the statements may not have been so furnished; and
- (d) save as aforesaid and as otherwise provided in this agreement 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.

Export to places outside the Commonwealth³

37. The Joint Venturers shall ensure that unless with the prior written approval of the Minister to do otherwise all iron ore shipped pursuant to this agreement shall be off-loaded at a place outside the Commonwealth and if they fail so to ensure the Joint Venturers will subject to the provisions of this clause be in default hereunder. Where any such shipment is off-loaded within the Commonwealth without such prior written approval the Joint Venturers shall forthwith on becoming aware thereof give to the State notice of the fact and pay to the State in respect of the ore the subject of the shipment such further and additional rental calculated at a rate not exceeding one dollar (\$1) per ton of the 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 Joint Venturers of the provisions hereof. If ore is shipped in a vessel not owned by the Joint Venturers or an associated company or any other company in which the Joint Venturers have a controlling interest and such ore is off-loaded in the Commonwealth the Joint Venturers will not be or be deemed to be in default hereunder if they take appropriate action to prevent a recurrence of such an off-loading PROVIDED FURTHER that the foregoing provisions of this clause 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 Joint Venturers could not reasonably have been expected to take steps to prevent that particular off-loading PROVIDED ALSO that the provisions of this clause shall not apply —

- (i) to ore used in secondary processing by the Joint Venturers or an associated company within the said State;
- (ii) to ore so used by the Joint Venturers or an associated company within the Commonwealth but outside the said State to the extent that the tonnage of ore so used does not in any year exceed fifty per centum (50%) of the total quantity of ore used in secondary processing by the Joint Venturers or an associated company within the State; or
- (iii) to ore so used by the Joint Venturers 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 used in secondary processing by the Joint Venturers or an associated company within the said State with the prior approval of the Minister as aforesaid.

Indemnity³

38. The Joint Venturers shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Joint Venturers pursuant to this agreement or relating to their operations hereunder or arising out of or in connection with the construction maintenance or use by the Joint Venturers or their servants agents contractors or assignees of the Joint Venturers' works or services the subject of this agreement or the plant apparatus or equipment installed in connection therewith.

Assignment³

39. (1) Subject to the provisions of this clause the Joint Venturers or any of them 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 Joint Venturers hereunder (including their rights to or as the holder of any lease licence easement grant or other title) and of the obligations of the Joint Venturers hereunder; and
- (b) appoint as of right an associated company or with the consent of the Minister any other company or person to exercise all or any of the powers functions and authorities which are or may be conferred on the Joint Venturers 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 Joint Venturers 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 Joint Venturers 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 their part contained herein and in any lease licence easement grant or other title the subject of an assignment under the said subclause (1).

(3) 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* in so far as the same or any of them may apply —

- (a) no mortgage or charge in a form commonly known as a floating charge made or given pursuant to this clause over any lease, licence, reserve or tenement granted hereunder or pursuant hereto by the Joint Venturers or any assignee or appointee who has executed, and is for the time being bound by deed of covenant made pursuant to this clause;

- (b) no transfer or assignment made or given at any time in exercise of any power of sale contained in any such mortgage or charge;

shall require any approval or consent (other than such consent as may be necessary under this clause) and no 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 this clause) or because the same is not registered under the provisions of the Mining Act.

Variation³

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

(2) Where in the opinion of the Minister an agreement made pursuant to subclause (1) of this clause would constitute a material or substantial alteration of the rights or obligations of either party hereto, the agreement shall contain a provision to that effect and the Minister shall cause that agreement to be laid on the table of each House of Parliament within twelve (12) sitting days of the date of its execution.

(3) If either House does not pass a resolution disallowing the agreement within twelve (12) sitting days of that House after the agreement has been laid before it, the agreement shall have effect, from and after the last day on which the agreement might have been disallowed.

Variation of works³

41. Subject to the provisions of clause 40 —

- (1) The Minister may from time to time approve variations or require reasonable variations in the detailed 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.

Alteration of works³

- (2) If at any time the State finds it necessary to request the Joint Venturers to alter the situation of any of the installations or other works erected, constructed or provided hereunder and gives to the Joint Venturers notice of the request the Joint Venturers shall within a reasonable time after receipt of the notice but at the expense in all things (including increased running costs) of the State (unless the alteration is rendered necessary by reason of a breach by the Joint Venturers of any of their obligations hereunder) alter the situation thereof accordingly.

Export licence³

42. (1) On request by the Joint Venturers the State shall make representations to the Commonwealth for the grant to the Joint Venturers of a licence or licences under Commonwealth law for the export of 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 Joint Venturers and to maximum tonnages of ore for the time being permitted by the Commonwealth for export from the said State and in a manner or on terms not less favourable to the Joint Venturers (except as to rate or quantity) than the Commonwealth has given or intends to give in relation to such a licence or licences to any other exporter of ore from the said State.

(2) If at any time the Commonwealth limits by export license the total permissible tonnage of ore for export from the said State then the Joint Venturers will at the request of the State and within three (3) months of such request inform the State whether or not they intend to export to the limit of the tonnage permitted to them under Commonwealth licences in respect of the financial year next following and if they do 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 Joint Venturers do 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 licence the total permissible tonnage of ore for export from the said State.

(3) The Joint Venturers shall be in default hereunder if at any time they fail to obtain any licence or licences under Commonwealth law for the export of

ore as may be necessary for the purpose of enabling the Joint Venturers to fulfil their obligations hereunder or if any such licence 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 Joint Venturers or to the Joint Venturers not being *bona fide* in application to the Commonwealth or otherwise having failed to use their best endeavours to have the licence granted or restored (as the case may be) but save as aforesaid if at any time any necessary licence is not granted or any licence granted to the Joint Venturers shall be withdrawn or suspended by the Commonwealth and so that as a result thereof the Joint Venturers are not for the time being permitted to export at least the tonnage they have undertaken with the State they will export then the Joint Venturers shall be relieved from the obligation to export that tonnage during the period such licence is not granted or is withdrawn or suspended. The State shall at all times be entitled to apply on behalf of the Joint Venturers (and is hereby authorised by the Joint Venturers so to do) for any licence or licences under Commonwealth law for the export of ore as may from time to time be necessary for the purposes of this agreement.

Delays³

43. 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 Joint Venturers) 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 or insufficient supply of labour or water 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 but in so doing that party shall not be obliged to settle any labour dispute or difference on unreasonably disadvantageous terms.

Power to extend periods³

44. The Minister may whether or not the period to be extended has expired or the date to be varied has passed at the request of the Joint Venturers from time to time extend or further extend any period or vary or further vary any date referred to in this agreement for such period or to such later date as the Minister thinks fit.

Arbitration³

45. Except where otherwise specifically provided in this agreement 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 provisions in this agreement to the contrary be referred to the arbitration of two arbitrators one to be appointed by each party the arbitrators to appoint their umpire before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the *Arbitration Act 1895*, but this clause does not apply to any case where the State the Minister or any Minister is by this agreement given either expressly or impliedly a discretionary power.

Notices³

46. Any notice consent or other writing authorised by or required by this agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or any senior officer of the Public Service of the State acting by the direction of the Minister and forwarded by prepaid post to the Joint Venturers at their respective registered offices for the time being in the State or to a corporation nominated by a Joint Venturer by notice in that behalf pursuant to this clause and at its registered office for the time being in the State or as otherwise designated in that notice and by the Joint Venturers if signed on their behalf by a director manager or secretary of the Joint Venturers or by any person or persons authorised by the Joint Venturers in that behalf or by their solicitors (which solicitors have been 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 duty³

47. (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 Joint Venturers or any permitted assignee of the Joint Venturers any tenement lease easement licence 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 39; and
- (d) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment to or in favour of the Joint Venturers 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 39;

PROVIDED THAT this clause shall not apply to any instrument or other document executed or made more than seven (7) years from the date hereof.

(2) If prior to the date on which the Bill referred to in clause 3(a) 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.

Relevant law³

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

SCHEDULE.

WESTERN AUSTRALIA.

IRON ORE (GOLDSWORTHY-NIMINGARRA) AGREEMENT ACT 1972.

Mineral Lease

Lease No. Mineral Field

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

TO ALL WHOM THESE PRESENTS shall come GREETINGS: KNOW YE
that WHEREAS by an agreement made the day of 1972
between the State of Western Australia of the one part and CONSOLIDATED
GOLD FIELDS AUSTRALIA LIMITED, CYPRUS MINES CORPORATION
and UTAH DEVELOPMENT COMPANY (hereinafter called "the Joint
Venturers" in which term shall be included the Joint Venturers and each of them
and their and each of their respective successors and assigns and including
where the context so admits the assignees of the Joint Venturers under clause 39
of the said agreement) of the other part the said State agreed to grant to the Joint
Venturers a mineral lease of portion or portions of the lands referred to in the
said agreement as mining area "D" AND WHEREAS the said agreement was
ratified by the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972* which
said Act (*inter alia*) authorised the grant of a mineral lease or leases to the Joint
Venturers 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 Joint Venturers as
tenants in common in equal shares 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 Joint Venturers are 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 (21) years from

the day of 19 with the right to renew the same from time to time for further periods each of twenty-one (21) 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 Joint Venturers of the following covenants and conditions, that is to say: —

- (1) The Joint Venturers 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 Joint Venturers 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 1967*.

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

THE SCHEDULE ABOVE REFERRED TO:

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

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

H. E. GRAHAM,
Minister for Development
and Decentralisation.

D. G. MAY,
Minister for Mines.

SIGNED SEALED AND DELIVERED
for and on behalf of CONSOLIDATED
GOLD FIELDS AUSTRALIA LIMITED
by its duly authorised agent in the
presence of — } B. C. RYAN

D. E. MOORE

SIGNED SEALED AND DELIVERED
for and on behalf of CYPRUS MINES
CORPORATION by its duly authorised
agent in the presence of — } B. C. RYAN

D. E. MOORE

SIGNED SEALED AND DELIVERED
for and on behalf of UTAH
DEVELOPMENT COMPANY by its
duly authorised agent in the presence
of — } B. C. RYAN

D. E. MOORE

[Schedule 1 amended: No. 57 of 2000 s. 6.]

Schedule 2 — First Variation Agreement

[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 and having its registered office at Level 18,
200 St George’s Terrace, Perth, **CI MINERALS AUSTRALIA PTY. LTD.**
ACN 009 256 259 a company incorporated in the State of Western Australia
and having its registered office at 22nd Floor, Forrest Centre, 221 St George’s
Terrace, Perth and **MITSUI IRON ORE CORPORATION PTY. LTD.**
ACN 050 157 456 a company incorporated in the State of Western Australia
and having its registered office at 24th Floor, Forrest Centre, 221 St George’s
Terrace, Perth (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) are now the parties to the agreement approved by the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*, which agreement as amended from time to time is hereinafter called “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 purpose of the Principal Agreement.
- 2. The State shall introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 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., Mitsui-Itochu Iron Pty. Ltd. and CI Minerals Australia Pty. Ltd. to vary the Iron Ore (Mount Newman) 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 (Mount Goldsworthy) 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 in Clause 11 by inserting after subclause (1) the following subclause —
- “(1a) Notwithstanding any provision in this Agreement for the grant of titles hereunder to the Joint Venturers as tenants in common in equal shares, if the Joint Venturers hold their interests in this Agreement in other than equal shares, the grant of titles and the renewal of any leases hereunder shall be made to the Joint Venturers, if they so request the State, in accordance with their percentage interests in this Agreement.”.

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 Directors —

} [C.S.]

STEFANO GIORGINI
Director

MICHAEL KNOWLES
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

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

YOICHI HASHIMOTO
Director

JOHN SMITH
Secretary

[Schedule 2 inserted: No. 57 of 2000 s. 7.]

Schedule 3 — Second Variation Agreement

[s. 2]

[Heading inserted: No. 61 of 2010 s. 37.]

2010

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

AND

BHP BILLITON MINERALS PTY. LTD.

ACN 008 694 782

MITSUI IRON ORE CORPORATION PTY. LTD.

ACN 050 157 456

ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.

ACN 009 256 259

**IRON ORE (GOLDSWORTHY-NIMINGARRA) AGREEMENT 1972
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, **MITSUMI IRON ORE CORPORATION PTY. LTD.** ACN 050 157 456, 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, Forrest Centre, 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 12 April 1972 approved by and scheduled to the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B.** The State and the Joint Venturers wish to vary the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

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

3. (a) Clause 4 does not come into operation unless or until an Act passed in accordance with clause 2 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 of 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 Joint Venturers 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 Joint Venturers 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;

"EP Act" means the *Environmental Protection Act 1986* (WA);

"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;

"iron ore" includes, without limitation, beneficiated ore;

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

"loading port" means:

- (a) the Port of Dampier; or
- (b) Port Walcott; or
- (c) the Port of Port Hedland; or
- (d) any other port constructed after the variation date under an Integration Agreement; or
- (e) such other port approved by the Minister at the request of the Joint Venturers 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;

"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 1904 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;

"said State" means the State of Western Australia;

"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 Joint Venturers comes into operation;

- (c) in the definition of "agreed or determined" by:
 - (i) inserting "(following, if requested by the Joint Venturers, consultation with the Joint Venturers and their consultants in regard thereto)" after "as determined by the Minister";
 - (ii) deleting "assessed at" and substituting "assessed on"; and
 - (iii) deleting all the words after "shall have regard to" and substituting a colon followed by:

- "(i) in the case of iron ore initially sold at cost pursuant to the proviso to clause 13, the prices for that type of iron ore prevailing at the time the price for such iron ore was agreed between the arm's length purchaser referred to in paragraph (iii) of that proviso and the seller in relation to the type of sale and the relevant international seaborne iron ore market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value; and
 - (ii) in any other case, the prices for that type of iron ore prevailing at the time the price for such iron ore was agreed between the Joint Venturers 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 "deemed f.o.b. point" by deleting "Joint Venturers' wharf" and substituting "relevant loading port";
- (e) 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";
 - (C) deleting "Joint Venturers' wharf" and substituting "relevant loading port"; and
 - (D) inserting "after loading on and departure of ship from the relevant loading port" before the semi colon at the end of subparagraph (6);
 - (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 the proviso to clause 13, the price which is payable for the iron ore by the arm's length purchaser as referred to in paragraph (iii) of that proviso or, where the Minister considers, following advice from the appropriate Government department, that the price payable in respect of the iron ore does not represent a fair and reasonable market value for that type of iron ore assessed on an arm's length basis in the relevant international seaborne iron ore market, such amount as is agreed or determined as representing such a fair and reasonable market value, less all duties, taxes, costs and charges referred to in paragraph (i) above";

(f) in the definition of "Joint Venturers' wharf" by inserting "and in clause 13 also any additional wharf constructed by the Joint Venturers pursuant to this Agreement" before the semi colon;

(g) in the definition of "mineral lease" by inserting "(and any areas added to it pursuant to clause 9A)" after "clause 9(1)";

(h) 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";

(i) in the sentence commencing "marginal notes" by inserting "and clause headings" after "marginal notes"; and

(j) by inserting at the end of clause 1 the following new sentences:

"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 Joint Venturers from compliance with any requirement in connection with the protection of the environment arising out of or incidental to their activities under this Agreement that may be made by or under the EP Act; or
 - (b) to exempt the State or the Joint Venturers from compliance with or to require the State or the Joint Venturers to do anything contrary to any laws relating to native title or any lawful obligation or requirement imposed on the State or the Joint Venturers as the case may be pursuant to any laws relating to native title; or
 - (c) to exempt the Joint Venturers from compliance with the provisions of the *Aboriginal Heritage Act 1972* (WA).";
- (2) by deleting clause 8 and substituting the following new clauses:

"Additional Proposals

8. (1) If the Joint Venturers, at any time during the continuance of this Agreement after the variation date, desire to significantly modify, expand or otherwise vary their activities carried on pursuant to this Agreement (other than under clause 16C) beyond those activities specified in any proposals approved pursuant to clause 7 they 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 6(1)(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 Joint Venturers 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 Joint Venturers submit the said proposals they 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 they propose to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with their reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto.
- (5) The Joint Venturers may withdraw their 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 8A, within 3 months after the award by notice to the Minister that they shall not be proceeding with the same.

Consideration of Joint Venturers' proposals under clause 8

- 8A. (1) In respect of each proposal pursuant to subclause (1) of clause 8 the Minister shall:
- (a) subject to the limitations set out below, refuse to approve the proposal (whether it requests the grant of new tenure or not) if the Minister is satisfied on reasonable grounds that it is not in the public interest for the proposal to be approved; or
 - (b) approve of the proposal without qualification or reservation; or
 - (c) defer consideration of or decision upon the same until such time as the Joint Venturers submit a further proposal or proposals in respect of some other of the

matters mentioned in clause 8(1) not covered by the said proposal; or

- (d) require as a condition precedent to the giving of his approval to the said proposal that the Joint Venturers 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 Joint Venturers 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 Joint Venturers.

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 16A for the purpose of that clause) as contemplated

by clause 16A. It may not be so exercised in respect of a proposal if pursuant to clause 8B(5) the Minister, prior to the submission of the proposal, advised the Joint Venturers 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 8B(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 8B(5) in respect of that single preferred development.

- (2) The Minister shall within 2 months after receipt of proposals pursuant to clause 8(1) give notice to the Joint Venturers 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 Joint Venturers 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 Joint Venturers full opportunity to consult with him and should they 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 Joint Venturers consider that the decision is unreasonable the Joint Venturers 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 Joint Venturers 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 Joint Venturers shall implement the approved proposals in accordance with the terms thereof.
- (7) Notwithstanding clause 40, the Minister may during the implementation of approved proposals approve variations to those proposals.

Notification of possible proposals

- 8B. (1) If the Joint Venturers, 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 this purpose, or one of their purposes, the integrated use of works installations or facilities as contemplated by clause 16A) for the matter to be undertaken, intend to further consider the matter with a view to possibly submitting such proposals they 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 Joint Venturers of the Minister's views of the matter at that stage.
 - (3) If the Joint Venturers are informed of the Minister's views, they shall take them into account in deciding whether or not to proceed with their 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 Joint Venturers have 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 16A for

the purpose of that clause) as contemplated by clause 16A.

- (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 Joint Venturers.
- (c) At any time prior to submission of proposals the Joint Venturers may give to the Minister notice of their single preferred development and request the Minister to confirm that the Minister has no public interest concerns with that single preferred development.
- (d) The Joint Venturers shall furnish to the Minister with their 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) their progress in undertaking any feasibility or other studies or matters to be completed before submission of proposals; and
 - (iii) their timetable for obtaining required statutory and other approvals in relation to the submission and approval of proposals; and
 - (iv) their tenure requirements.

- (e) If so required by the Minister, the Joint Venturers 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 Joint Venturers' 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 Joint Venturers:
 - (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 Joint Venturers may, should they 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.";
- (3) by inserting after clause 9 the following new clauses:

"Additional areas

- 9A. (1) Notwithstanding the provisions of the Mining Act 1904 or the Mining Act 1978 the Joint Venturers may from time to time during the currency of this Agreement apply to the Minister for areas held by the Joint Venturers or an associated company under a mining tenement granted under the Mining Act 1978 to be included in the mineral lease referred to in clause 9(1) but so that the total area of that mineral lease, the mining lease referred to in clause 9(2), any land that may be included in that mineral lease or

mining lease pursuant to this Agreement and of any other mineral lease or mining lease granted under or pursuant to this Agreement (as aggregated) shall not at any time exceed 777 square kilometres. The Minister shall confer with the Minister for Mines in regard to any such application and if they approve the application the Minister for Mines shall upon the surrender of the relevant mining tenement include the area the subject thereof in the relevant 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 relevant 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 Joint Venturers' expense.

- (2) The Minister may approve, upon application by the Joint Venturers 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 Joint Venturers shall not mine or carry out other activities (other than exploration, bulk sampling and testing) on any area or areas added to a 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 Joint Venturers desire to commence mining of iron ore or to carry out any other activities (other than as aforesaid) on the said areas they 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 their 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 8.

Blending of iron ore

- 9B. (1) The Joint Venturers may blend iron ore mined from the mineral lease with any:
- (a) iron ore mined from a mining tenement or other mining title granted under, or pursuant to, an Integration Agreement; or
 - (b) 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
 - (c) 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
 - (d) 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.
- (2) The authority given under subclause (1) 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 subclause (1), 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 Joint Venturers and provided the Joint Venturers have 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 Joint Venturers suspend the above authority in respect of the relevant blending arrangements until he is again satisfied in terms of this subclause (2).

- (3) If any blending of iron ore occurs as contemplated by this clause, then for the purposes of clauses 33(1) and (2), 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.";
- (4) in clause 11(1) by:
- (a) deleting "clause 7" and substituting "clauses 7 or 8A";
 - (b) inserting "or cause to be granted" after "grant";
 - (c) deleting "or to a company nominated by the Joint Venturers and approved by the Minister (referred to in this clause as "the nominated company") in fee simple or";
 - (d) deleting paragraph (ii) and substituting the following new subparagraph:
 - "(ii) at commercial rentals, licence or easement fees as applicable – leases, licences or easements within the Port of Port Hedland";
 - (e) inserting the ", the *Port Authorities Act 1999* (WA)" after "1926"; and
 - (f) inserting "installations or facilities" before "and operations hereunder";
- (5) by inserting after subclause (6) of clause 11 the following new subclause:
- "(6a) The provisions of subclauses (1) and (4) 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) by deleting clause 13 and substituting the following new clause:

"13. The Joint Venturers shall ship, or procure the shipment of, all iron ore mined from the mineral lease, and sold:

- (a) from the Joint Venturers' wharf; or
- (b) from any other wharf in a loading port which wharf has been constructed under an Integration Agreement; or
- (c) 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 their best endeavours to obtain therefor the best price possible having regard to market conditions from time to time prevailing PROVIDED THAT iron ore from the mineral lease may be sold by the Joint Venturers prior to or at the time of the shipment under this Agreement at a price equal to the production costs in respect of that iron ore up to the point of sale, if:

- (i) the Minister is notified before the time of shipment that the sale is to be made at cost, providing details of the proposed sale; and
- (ii) the Minister is notified of the proposed arm's length purchaser in the relevant international seaborne iron ore market of the iron ore the subject of the proposed sale at cost; and
- (iii) there is included in the return lodged pursuant to clause 33(2) particulars of the transaction in which the ore sold at cost was subsequently purchased in the relevant international seaborne iron ore market by an arm's length purchaser specifying the purchaser, the

seller, the price and the date when the sale was agreed between the arm's length purchaser and the seller; and

- (iv) the arm's length purchaser referred to in paragraph (iii) above is not then a designated purchaser as referred to below.

If required by notice in writing from the Minister, the Joint Venturers must provide the Minister within 30 days after receiving the notice with evidence that the transaction as included in the return pursuant to paragraph (iii) above was a sale in the relevant international seaborne iron ore market to an independent participant in that market. If no evidence is provided or the Minister is not so satisfied on the evidence provided or other information obtained, the Minister may by notice to the Joint Venturers 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 Joint Venturers. For the avoidance of doubt and without limiting the Minister's discretion above, the parties acknowledge that marketing entities forming part of a corporate group that includes the majority Joint Venturer (or part of a parallel corporate group if that Joint Venturer is part of a dual-listed corporate structure) are not independent participants for the purposes of this subclause.";

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

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

16A. (1) Subject to subclauses (2) to (7) of this clause and to the other provisions of this Agreement, the Joint Venturers 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 Joint Venturers carried on by them 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 9B) 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 Joint Venturers 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 Joint Venturers 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 Joint Venturers' activities carried on by them 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 8 and 8A or clause 16C as the case may require and otherwise in compliance with the provisions of this Agreement and the laws from time to time of the said State. For the avoidance of doubt, the parties acknowledge that any use or making available for use contemplated by subclause (1)(a), (1)(b) or (1)(c) shall not otherwise than as required by this paragraph (a) require the submission and approval of further proposals under this Agreement.
- (b) The Joint Venturers 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 Joint Venturers 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 16C; 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 Joint Venturers 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 8A and 16C, the Minister may defer consideration of, or a decision upon, a proposal submitted by the Joint Venturers 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 Joint Venturers' 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 Joint Venturers first confirming with the Minister that the Minister is satisfied that the relevant company is a Related Entity.
- (4) The Joint Venturers 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 their use, or in their 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 Joint Venturers 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 them 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 Joint Venturers' rights under clause 39.

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 Joint Venturers from complying with, or the application of, the other provisions of this Agreement including, without limitation, clause 39 and of relevant laws from time to time of the said State.
- (7) For the purpose of this clause "works installations or facilities" means any:
- (a) harbour or port works installations or facilities including, without limitation, stockpiles, reclaimers, conveyors and wharves;
 - (b) railway or rail spur lines;
 - (c) track structures and systems associated with the operation and maintenance of a railway including, without limitation, sidings, train control and signalling systems, maintenance workshops and terminal yards;
 - (d) train loading and unloading works installations or facilities;
 - (e) conveyors;
 - (f) private roads;
 - (g) mine aerodrome and associated aerodrome works installations and facilities;
 - (h) iron ore mining, crushing, screening, beneficiation or other processing works installations or facilities;
 - (i) mine administration buildings including, without limitation, offices, workshops and medical facilities;
 - (j) borrow pits;

- (k) accommodation and ancillary facilities including, without limitation, construction camps and in townsites constructed pursuant to and held under any Integration Agreement;
- (l) water, sewerage, electricity, gas and telecommunications works installations and facilities including, without limitation, pipelines, transmission lines and cables; and
- (m) any other works installations or facilities approved of by the Minister for the purpose of this clause.

Transfer of rights to shared works installations or facilities

- 16B. (1) For the purposes of this clause "Relevant Infrastructure" means any works installations or facilities (as defined in clause 16A(7)):
- (a) constructed or held under another Integration Agreement;
 - (b) which the Joint Venturers are using in their activities pursuant to this Agreement;
 - (c) which the Minister is satisfied (after consulting with the Joint Venturers 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 Joint Venturers to continue to carry on their activities pursuant to this Agreement; and

- (d) in respect of which that other Integration Proponent has notified the Minister it consents to the Joint Venturers submitting proposals as referred to in subclause (2).
- (2) The Joint Venturers may as an additional proposal pursuant to clause 8 propose:
 - (a) that they 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 Joint Venturers 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 8A shall mutatis mutandis apply to any such additional proposal. In addition the Joint Venturers acknowledge 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 Joint Venturers pursuant to clause 35 and while such notice remains unsatisfied.

Miscellaneous Licences for Railways

16C. (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 Joint Venturers' 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 Joint Venturers 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.

Joint Venturers to obtain prior Ministerial in-principle approval

- (2) (a) If the Joint Venturers wish, from time to time during the continuance of this Agreement, to proceed under this clause with a plan to develop a Railway they shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of their plan.
- (b) The Minister shall within one month of a notice under paragraph (a) advise the Joint Venturers whether or not he approves in-principle the proposed plan. The Minister shall afford the Joint Venturers 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 Joint Venturers have 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 Joint Venturers to develop a Railway they 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 Joint Venturers). The parties acknowledge the intention is for the Joint Venturers 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 45 shall not apply to this subclause.

- (b) If the date by which the Joint Venturers 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 44, any agreement made pursuant to paragraph (a) before such date is extended or varied shall unless the Minister notifies the Joint Venturers otherwise be deemed to be at an end and neither party shall have any claim against the other in respect of it.
- (c) The Joint Venturers acknowledge that they 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)).

Joint Venturers to submit proposals for Railway

- (4) (a) The Joint Venturers 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 their 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 Joint Venturers' 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 Joint Venturers pursuant to subclause 3(a);
 - (vii) any other works, services or facilities desired by the Joint Venturers; 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 Joint Venturers, their 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 Joint Venturers may

withdraw and may resubmit any proposal but the withdrawal of any proposal shall not affect the obligations of the Joint Venturers to submit a proposal under this subclause in respect of the subject matter of the withdrawn proposal.

- (d) The Joint Venturers shall, whenever any of the following matters referred to in this subclause are proposed by the Joint Venturers (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 they propose to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia, together with their reasons therefor and shall, if required by the Minister consult with the Minister with respect thereto.
- (e) At the time when the Joint Venturers submits the last of the said proposals pursuant to this subclause, they 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 Joint Venturers 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 8A shall apply mutatis mutandis to detailed proposals submitted under this subclause.

Additional Railway Proposals

- (5) (a) If the Joint Venturers at any time during the currency of a Special Railway Licence desire to construct a Railway spur line (connecting to the Railway the subject of that Special Railway Licence) or desire to significantly modify, expand or otherwise vary their 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 them 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, they shall give notice of such desire to the Minister and furnish to the Minister with that notice an outline of their 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 Joint Venturers 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 Joint Venturers 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 (4)(a) (as referred to in paragraph (b)), the Joint

Venturers 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 their 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 8A shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause.

Grant of Tenure

- (6) (a) On application made by the Joint Venturers to the Minister in such manner as the Minister may determine, not later than 3 months after all their proposals submitted pursuant to subclause (4)(a) have been approved or deemed to be approved and the Joint Venturers have complied with the provisions of subclause (4)(e), the State notwithstanding the Mining Act 1978 shall cause to be granted to the Joint Venturers:
 - (i) a miscellaneous licence to conduct within the Railway Corridor and in accordance with their 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 Part Three of the 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 Part Four of the 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 Joint Venturers to the Minister in such manner as the Minister may determine, not later than 3 months after their 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 Joint Venturers have 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 Joint Venturers 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 Part Five of the 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 Joint Venturers 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 Joint Venturers 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 Joint Venturers are 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 Joint Venturers (as defined in 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)";
- (C) deleting "for any one or more of the purposes prescribed" and substituting "for the purpose specified in clause 16C(6)(a)(i), clause 16C(6)(a)(ii) or clause 16C(6)(b), of 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";
 - (ii) in section 91(3)(a), by deleting "prescribed form" and substituting "form required by the agreement ratified by and scheduled to the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*, as from time to time added to, varied or amended";
 - (iii) by deleting sections 91(6), 91(9), 91(10) and 91B;
 - (iv) in section 92, by deleting "Sections 41, 42, 44, 46, 46A, 47 and 52 apply," and inserting "Section 46A (excluding in subsection (2)(a) "the mining registrar, the warden or") applies," and by deleting "in those provisions" and inserting "in that provision";
 - (v) by deleting the full stop at the end of the section 94(1) and inserting, "except to the

extent otherwise provided in, or to the extent that such terms and conditions are inconsistent with, the agreement ratified by and scheduled to the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*, as from time to time added to, varied or amended";

- (vi) by deleting sections 94(2), (3) and (4);
 - (vii) in section 96(1), by inserting after "miscellaneous licence" the words "(not being a miscellaneous licence granted pursuant to the agreement ratified by and scheduled to the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*, as from time to time added to, varied or amended";
 - (viii) by deleting mining regulations 37(2), 37(3), 42 and 42A; and
 - (ix) by inserting at the beginning of mining regulations 41(c) and (f) the words "subject to the agreement ratified by and scheduled to the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*, 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 Joint Venturers' 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 Joint Venturers' 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 Joint Venturers 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 Joint Venturers 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 Joint Venturers or any other person from compliance with the Rail Safety Act or limit its application to the Joint Venturers' operations generally (except as otherwise may be provided in that Act or regulations made under it).

- (c) The Joint Venturers 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 Joint Venturers 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 16B, the Joint Venturers 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 31 but subject to clause 16B) shall at all times own manage and control the use of each Railway the subject of a Special Railway Licence held by the Joint Venturers.
- (e) The Joint Venturers 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 Joint Venturers so as not to unreasonably interfere with the Joint Venturers' operations.
- (f) The Joint Venturers' ownership of a Railway constructed pursuant to this clause shall not give them an interest in the land underlying it.
- (g) The Joint Venturers 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 Joint Venturers 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 Joint Venturers 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 16B, the Joint Venturers shall:
 - (i) be responsible for the cost of construction and maintenance of all Private Roads constructed pursuant to this clause; and
 - (ii) at their 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 Joint Venturers' activities and their invitees and licensees) from using the Private Roads; and
 - (iii) at any place where any Private Roads are constructed by the Joint Venturers so as to cross any railways or public roads provide at their cost such reasonable protection and signposting as may be

required by the Commissioner of Main Roads or the Public Transport Authority as the case may be.

- (k) The provisions of clause 12A shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause except that the Joint Venturers 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 Joint Venturers" means the persons from time to time comprising "the Joint Venturers" in their capacity as such under 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 in relation to the use or proposed use of land pursuant to clause 16C of that agreement after and in accordance with approved proposals under clause 16C of that agreement and in relation to the use of that land before any such approval of proposals where the Joint Venturers have 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 Joint Venturers as the case may be" after the words "owner of any land";

- (c) the insertion in section 18(3) of the words "or the Joint Venturers 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 Joint Venturers the conditions that the Minister may specify can as appropriate include, among other conditions, a condition restricting the Joint Venturers' 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 Joint Venturers submitted initial proposals thereunder for the Railway Operation (as defined in clause 16C(1) of the abovementioned agreement), or in the case of additional proposals submitted or to be submitted by the Joint Venturers 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 Joint Venturers acknowledge 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 Joint Venturers 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 Joint Venturers are 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 Joint Venturers.

- (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 Joint Venturers 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 Joint Venturers 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 Joint Venturers shall from the date occurring 6 months before the date for completion of construction of a Railway specified in their 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 Joint Venturers 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 Joint Venturers shall from the date occurring 6 months before the date for completion of construction of a Railway spur line specified in their 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 Joint Venturers 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.";

- (8) by inserting after subclause (1) of clause 18 the following new subclause:
- "(1a) To the extent determined by the Minister and subject to the provisions of the laws from time to time of the said State governing the generation, supply and transmission of electricity, the Joint Venturers may subject to and in accordance with approved proposals generate transmit and supply electricity for the purpose of supply to:
- (a) "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;
- (b) 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
- (c) 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." ;
- (9) by deleting clause 23;
- (10) in clause 33(1) by:
- (a) deleting paragraph (iv); and
- (b) after paragraph (v), inserting the following new paragraphs:
- "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 Joint Venturers 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 subclause.";

(11) in clause 33(2) 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 subclause (1)" after "the due date of return"; and
- (b) deleting all the words after "calculated on the basis of" and substituting a colon followed by:
 - "(i) in the case of iron ore initially sold at cost pursuant to the proviso to clause 13, at the price notified pursuant to paragraph (iii) of that proviso:
 - (ii) in any other case, invoices or provisional invoices (as the case may be) rendered by the Joint Venturers to the purchaser (which invoices the Joint Venturers 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.";

(12) by deleting clause 33(3) and substituting the following new subclauses:

"(3) The Joint Venturers shall permit the Minister or his nominee to inspect at all reasonable times the books, records, accounts, documents (including contracts), data and information of the Joint Venturers stored by any means relating to any shipment or sale of iron ore the subject of royalty hereunder and to take copies or extracts (in whatever form) therefrom and for the purpose of determining the f.o.b. value in respect of any shipment sale transfer or other disposal or use or production of iron ore the subject of royalty hereunder the Joint Venturers will take reasonable steps (i) to provide the Minister with current prices for iron ore outside and within the Commonwealth and other details and information that may be required by the Minister for the purpose of agreeing or determining the f.o.b. value and (ii) to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the Minister's reasonable satisfaction as to all relevant weights and analyses and will give due regard to any objection or representation made by the Minister or his nominee as to any particular weight or assay as iron ore which may affect the amount of royalty payable hereunder.

(3a) The Joint Venturers shall 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 subclause (3) to enable the exercise of rights by the Minister or the Minister's nominee under subclause (3), 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 deleting clause 33(4);

(14) in clause 34 by inserting "or pursuant hereto or held pursuant hereto" after "granted hereunder";

(15) in clause 35 by:

(a) inserting "granted hereunder or pursuant hereto or held pursuant hereto" after "licence or other title";

- (b) inserting "or held pursuant hereto" after the 2 subsequent references to "granted hereunder or pursuant hereto";
 - (c) inserting "or held pursuant hereto" after "mineral lease as permitted"; and
 - (d) deleting "occupied by the Joint Venturers" and substituting "the subject of any lease licence easement or other title granted hereunder or pursuant hereto or held pursuant hereto";
- (16) in clause 36(a) by inserting "or held pursuant hereto" after "granted hereunder or pursuant hereto";
- (17) by inserting the following sentence at the end of clause 38:
- "As a separate independent indemnity the Joint Venturers 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 Joint Venturers as referred to in clause 16A.";
- (18) in clause 39(3)(a) by inserting "or held pursuant hereto" after "granted hereunder or pursuant hereto";
- (19) in clause 40(1) by inserting "or held pursuant hereto" after "granted hereunder or pursuant hereto"; and
- (20) by inserting after Part Two of the Schedule the following new Parts:

"PART THREE

WESTERN AUSTRALIA

**IRON ORE (GOLDSWORTHY-NIMINGARRA)
AGREEMENT ACT 1972**

MINING ACT 1978

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

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified by and scheduled to the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with their successors and permitted assigns called "the Joint Venturers") a miscellaneous licence for the construction operation and maintenance of a Railway (as defined in clause 16C(1) of the Agreement and otherwise as provided in the Agreement) and, if applicable, other purposes AND WHEREAS the Joint Venturers pursuant to clause 16C(6)(a) of the Agreement have 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 (Goldsworthy-Nimingarra) Agreement Act 1972*, as from time to time added to, varied or amended, the Joint Venturers are 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 16C(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 16C(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 Joint Venturers be more than one the liability of the Joint Venturers hereunder shall be joint and several.

- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution thereof or in lieu thereof and to the regulations and by-laws of the time being in force thereunder.

- Reference to "the Agreement" means such agreement as from time to time added to, varied or amended.

- The terms "approved proposals", "Railway", "Railway Operation Date", and "Railway spur line" have the meanings given in the Agreement.

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [], and approved by the Minister (as defined in the Agreement) on [], under the Agreement.
2. The Joint Venturers are 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 Joint Venturers are 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 Joint Venturers shall within 2 years after the Railway Operation Date surrender in accordance with the provisions of the *Mining Act 1978* the area of this licence down to a maximum of 100 metres width or as otherwise approved by the Minister (as defined in the Agreement) for the safe operation of the Railway then

constructed or approved for construction under approved proposals.

(b) Paragraph (a) shall not apply to land the subject of this licence that was included in this licence pursuant to clause 16C(6)(h) or clause 16C(6)(i) of the Agreement.

2. The Joint Venturers shall as soon as possible after the construction of a Railway spur line or of an expansion or extension thereof as the case may be surrender in accordance with the *Mining Act 1978* the land the subject of this licence that was included in this licence pursuant to clause 16C(6)(h) of the Agreement for the purpose of such construction down to a maximum of 100 metres in width or as otherwise approved by the Minister (as defined in the Agreement) for the safe operation of that Railway spur line or expansion or extension thereof as the case may be then constructed or approved for construction under approved proposals.
3. [Any further conditions which the Minister for Mines may, consistent with the provisions of the Agreement, determine and thereafter impose in respect of this licence including during the term of the Agreement.]

SCHEDULE

Land description

Locality:

Mineral Field

Area:

DATED at Perth this day of .

MINISTER FOR MINES

PART FOUR

WESTERN AUSTRALIA

**IRON ORE (GOLDSWORTHY-NIMINGARRA)
AGREEMENT ACT 1972**

MINING ACT 1978

**MISCELLANEOUS LICENCE FOR A LATERAL ACCESS
ROAD**

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called "the Agreement") ratified and scheduled to the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*, as from time to time added to, varied or amended, the State agreed to grant to [] (hereinafter with their successors and permitted assigns called "the Joint Venturers") a miscellaneous licence for the construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Joint Venturers

pursuant to clause 16C(6)(a)(ii) of the Agreement have 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 (Goldsworthy-Nimingarra) Agreement Act 1972*,, as from time to time added to, varied or amended, the Joint Venturers are 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 16C(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 Joint Venturers be more than one the liability of the Joint Venturers hereunder shall be joint and several.

- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefore or in lieu thereof and to the regulations and by-laws of the time being in force thereunder.

- Reference to "the Agreement" means such agreement as from time to time added to, varied or amended.

ENDORSEMENTS AND CONDITIONS

Endorsements

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

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

Conditions

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

SCHEDULE

Description of land

Locality:

Mineral Field:

Area:

construction use and maintenance of a Lateral Access Road (as defined in the Agreement) AND WHEREAS the Joint Venturers pursuant to clause 16C(6)(b) of the Agreement have 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 (Goldsworthy-Nimingarra) Agreement Act 1972*, as from time to time added to, varied or amended, the Joint Venturers are 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 16C(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 Joint Venturers be more than one the liability of the Joint Venturers hereunder shall be joint and several.

- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefore or in lieu thereof and to the regulations and by-laws of the time being in force thereunder.

- Reference to "the Agreement" means such agreement as from time to time added to, varied or amended.

ENDORSEMENTS AND CONDITIONS

Endorsements

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

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

Conditions

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

SCHEDULE

Description of land

Locality:

Mineral Field:

Area:

DATED at Perth this day of .

MINISTER FOR MINES".

EXECUTED as a deed.

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

[Signature]
STEPHEN WOOD

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

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

STEWART HART ROBIN B LEES
Signature of Director Signature of ~~Director~~/Company Secretary

EXECUTED by **MITSUI IRON ORE**)
CORPORATION PTY. LTD. ACN)
050 157 456 in accordance with section)
127(1) of the Corporations Act)

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

RYUZO NAKAMURA
Signature of Director

GAVIN PETER PATTERSON
Signature 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)

[Schedule 3 inserted: No. 61 of 2010 s. 37.]

Schedule 4 — Third Variation Agreement

[s. 2]

[Heading inserted: No. 62 of 2011 s. 14.]

2011

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

AND

BHP BILLITON MINERALS PTY. LTD.

ACN 008 694 782

MITSUI IRON ORE CORPORATION PTY. LTD.

ACN 050 157 456

ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.

ACN 009 256 259

**IRON ORE (GOLDSWORTHY-NIMINGARRA) AGREEMENT 1972
RATIFIED VARIATION AGREEMENT**

[Solicitor's details]

THIS AGREEMENT is made this 7th day of November 2011

BETWEEN

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

AND

BHP BILLITON MINERALS PTY. LTD. ACN 008 694 782 of Level 17, St Georges Square, 225 St Georges Terrace, Perth, Western Australia, **ITSUI IRON ORE CORPORATION PTY. LTD.** ACN 050 157 456, 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, Forrest Centre, 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 12 April 1972 approved by and scheduled to the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972* and which as subsequently added to, varied or amended is referred to in this Agreement as the "**Principal Agreement**".
- B. The State and the Joint Venturers wish to vary the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Interpretation

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

2. Ratification and Operation

- (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia prior to 31 December 2011 or such later date as may be agreed between the parties hereto to ratify this Agreement. The State shall endeavour to secure the timely passage of such Bill as an Act.
- (2) The provisions of this Agreement other than this clause and clause 1 will not come into operation until the day after the day on which the Bill referred to in subclause (1) has been passed by the State Parliament of Western Australia and commences to operate as an Act.
- (3) If by 30 June 2012 the said Bill has not commenced to operate as an Act then, unless the parties hereto otherwise agree, this Agreement will then cease and determine and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (4) On the day after the day on which the said Bill commences to operate as an Act all the provisions of this Agreement will operate and take effect despite any enactment or other law.

3. Variation of Principal Agreement

The Principal Agreement is varied as follows:

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

"Eligible Existing Tenure" means:

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

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

- (b) an application by the Joint Venturers for the grant to them of a tenement referred to in paragraph (a)(i) (which application has not clearly, to the satisfaction of the Minister, been made

under or pursuant to this Agreement) and as the context requires the tenement granted pursuant to such an application, where that tenure was granted or that application was made (as the case may be) on or before 1 October 2011;

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

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

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

"Special Advance Tenure" means:

- (a) a miscellaneous licence or general purpose lease requested under clause 11(5b) to be granted to the Joint Venturers under the Mining Act 1978; or
- (b) an easement or a lease requested under clause 11(5b) to be granted to the Joint Venturers under the LAA,

and as the context requires such tenure if granted;

- (2) by inserting after clause 8B the following new clauses:

"Community development plan

8C. (1) In this Clause, the term "community and social benefits" includes:

- (a) assistance with skills development and training opportunities to promote work readiness and employment for persons living in the Pilbara region of the said State;
- (b) regional development activities in the Pilbara region of the said State, including partnerships and sponsorships;
- (c) contribution to any community projects, town services or facilities; and

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

pursuant to Clauses 8 or 16C, the Joint Venturers must, unless the Minister otherwise requires, give to the Minister information about how the proposed development may affect the plan approved or deemed to be approved by the Minister under this Clause. This obligation operates in relation to all proposals submitted on or after the date that is 4 months after the date when a plan is first approved or deemed to be approved under this Clause.

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

Local participation plan

- 8D. (1) In this Clause, the term "local industry participation benefits" means:
- (a) the use and training of labour available within the said State;
 - (b) the use of the services of engineers, surveyors, architects and other professional consultants, experts, specialists, project

managers and contractors available within the said State; and

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

- (d) details of the communication strategies the Joint Venturers will use, and require a third party as referred to in subclause (7) to use, to alert Western Australian engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and consultants and Western Australian suppliers, manufacturers and contractors to services opportunities and procurement opportunities respectively as referred to in subclause (1).

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

- (4) At the request of either of them made at any time and from time to time, the Minister and the Joint Venturers shall confer as to any amendments desired to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.
- (5) At least 6 months before the anticipated submission of proposals relating to a proposed development pursuant to Clauses 8 or 16C, the Joint Venturers must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this Clause in relation to the proposed development. This obligation operates in relation to all proposals submitted on or after the date that is 7 months after the date when a plan is first provided under this Clause.
- (6) During the currency of this Agreement the Joint Venturers shall implement the plan provided under this Clause.

(7) The Joint Venturers shall:

- (a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this Clause; and
- (b) use reasonable endeavours to ensure that the third party complies with those provisions.";

(3) by inserting after clause 11(3) the following new subclause:

"(3a) Notwithstanding clause 16A(2)(b)(iv), detailed proposals may refer to activities on tenure which is proposed to be granted pursuant to subclause (1) as if that tenure was granted pursuant to this Agreement (but this does not limit the powers or discretions of the Minister under this Agreement or the Minister responsible for the administration of any relevant Act with respect to the grant of the tenure).";

(4) by inserting after clause 11(5) the following new subclauses:

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

- (5a) (a) The Minister may at the request of the Joint Venturers from time to time made during the continuance of this Agreement approve Eligible Existing Tenure becoming held pursuant to this Agreement on such conditions as the Minister sees fit (including, without limitation and notwithstanding the Mining Act 1978 and the LAA, as to the surrender of land, the submission of detailed proposals and the variation of the terms and conditions of the Eligible Existing Tenure (including for the Eligible Existing Tenure to be held pursuant to this Agreement and for the more

efficient use of the Relevant Land)) and the Minister may from time to time vary such conditions in order to extend any specified time for the doing of any thing or otherwise with the agreement of the Joint Venturers.

- (b) Eligible Existing Tenure the subject of an approval by the Minister under this subclause will be held by the Joint Venturers pursuant to this Agreement:
- (i) if the Minister's approval was not given subject to conditions, on and from the date of the Minister's notice of approval;
 - (ii) unless paragraph (iii) applies, if the Minister's approval was given subject to conditions, on the date on which all such conditions have been satisfied; and
 - (iii) if the Minister's approval was given subject to a condition requiring that the Joint Venturers submit detailed proposals in accordance with this Agreement, on the later of the date on which the Minister approves proposals submitted in discharge of that specified condition and the date upon which all other specified conditions have been satisfied, but the Joint Venturers are authorised to implement any approved proposal to the extent such implementation is consistent with the then terms and conditions of the Eligible Existing Tenure pending the satisfaction of any conditions relating to the variation of the terms or conditions of the Eligible Existing Tenure. Where this paragraph (iii) applies, prior to any approval of proposals and satisfaction of other conditions, the relevant tenure will be treated for (but only for) the purposes of clause 16A(2)(b)(iv) as tenure held pursuant to this Agreement.

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

- (5b) Without limiting clause 11(4), the Minister may at the request of the Joint Venturers from time to time made during the continuance of this Agreement approve Special Advance Tenure being granted to the Joint Venturers pursuant to this Agreement if:
- (a) the Joint Venturers propose to submit detailed proposals under this Agreement (other than under clause 16C) to construct works installations or facilities on the Relevant Land and the Joint Venturers' request is so far as is practicable made, unless the Minister approves otherwise, no less than 6 months before the submission of those detailed proposals; and
 - (b) the Minister is satisfied that it is necessary and appropriate that Special Advance Tenure, rather than tenure granted under or pursuant to the other provisions of this Agreement, be used for the purposes of the proposed works installations or facilities on the Relevant Land,

and if the Minister does so approve:

- (c) notwithstanding the Mining Act 1978 or the LAA, the appropriate authority or instrumentality of the State shall obtain the consent of the Minister to the form and substance of the Special Advance Tenure prior to its grant (which for the avoidance of doubt neither the State nor the Minister is obliged to cause) to the Joint Venturers as tenants in common in equal shares; and
- (d) if the Joint Venturers do not submit detailed proposals relating to construction of the relevant works installations or facilities on the Relevant Land within 24 months after the date of the Minister's approval or such later time subsequently allowed by the Minister, or if submitted the Minister does not approve such detailed proposals, the Special Advance

Tenure (if then granted) shall be surrendered at the request of the Minister.

- (5c) The decisions of the Minister under subclauses (5a) and (5b) shall not be referable to arbitration and any approval of the Minister under this clause shall not in any way limit, prejudice or otherwise affect the exercise by the Minister of the Minister's powers, or the performance of the Minister's obligations, under this Agreement or otherwise under the laws from time to time of the said State.";
- (5) in clause 11 by:
- (a) deleting in subclause (6) "subclause (5)" and substituting "subclauses (5), (5a) and (5b); and
 - (b) deleting in subclause (6a) "and (4)" and substituting ", (4), (5a) and (5b)";
- (6) in clause 12A by deleting " allow crossing places for roads stock and other railways and also";
- (7) by inserting after clause 12A the following new clause:

"Crossings over Railway

12B. For the purposes of livestock and infrastructure such as roads, railways, conveyors, pipelines, transmission lines and other utilities proposed to cross the land the subject of the railway of the Joint Venturers, the Joint Venturers shall:

- (a) if applicable, give their consent to, or otherwise facilitate the grant by the State or any agency, instrumentality or other authority of the State of any lease, licence or other title over land the subject of the railway so long as such grant does not in the Minister's opinion unduly prejudice or interfere with the activities of the Joint Venturers under this Agreement; and
- (b) on reasonable terms and conditions allow access for the construction and operation of such crossings and associated infrastructure,

provided that in forming his opinion under this clause, the Minister must consult with the Joint Venturers.";

- (8) by inserting after clause 16B the following new clause:

"Transfer of rights to section of Goldsworthy-Nimingarra Railway

16BA. The Joint Venturers may surrender their lease or leases over the section of the railway held pursuant to this Agreement that is described in clause 9DA of the agreement approved by the Iron Ore (Mount Goldsworthy) Agreement Act 1964 in accordance with and as contemplated by that clause.";

- (9) in clause 16C by:

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

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

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

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

(ii) in the Minister's opinion, the title holder's refusal to give the required consent is not reasonable in all the circumstances including having regard to:

(A) the rights of the Joint Venturers in relation to the affected land as the holders of the miscellaneous licence, relative to their rights as the holders of the sought Special Railway Licence or Lateral Access

- Road Licence (as the case may be);
and
- (B) the terms of any agreement between the Joint Venturers and title holder.";
- (c) deleting in subclause (4)(a) the comma after "the provisions of this Agreement" and substituting "and"; and
- (d) in subclause (7):
- (i) deleting all words in paragraph (c) after "at the date of such inclusion"; and
- (ii) inserting after paragraph (k) the following new paragraph:
- "(l) The provisions of clause 12B shall apply mutatis mutandis to any Railway or Railway spur line constructed pursuant to this clause."; and
- (10) by deleting clause 33(1)(ii) and substituting the following paragraph:
- "(ii) on fine ore sold or shipped separately as such at the rate of:
- (A) 5.625% of the f.o.b. value, for ore shipped prior to or on 30 June 2012;
- (B) 6.5% of the f.o.b. value, for ore shipped during the period from 1 July 2012 to 30 June 2013 (inclusive of both dates); and
- (C) 7.5% of the f.o.b. value, for ore shipped on or after 1 July 2013;"

EXECUTED as a deed.

SIGNED by the **HONOURABLE**)
COLIN JAMES BARNETT in the)
presence of:)

[Signature] [Signature]
Signature of witness

Peter Goodall
Name of witness

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

[Signature] [Signature]
Signature of Director Signature of Secretary

Uvashni Raman Robin Lees
Full Name Full Name

EXECUTED by **MITSUI IRON ORE**)
CORPORATION PTY. LTD)
ACN 050 157 456 in accordance with section)
127(1) of the Corporations Act)

[Signature]
Signature of Director

[Signature]
Signature of Secretary

Ryuzo Nakamura
Full Name

Jiahe He
Full Name

SIGNED by **Shuzaburo Tsuchihashi**)
as attorney for **ITOCHU MINERALS &**)
ENERGY OF AUSTRALIA PTY. LTD.)
ACN 009 256 259 under power)
of attorney dated 27 October 2011)
in the presence of:)

[Signature]
Signature of witness

[Signature]
Signature of Attorney

Yasushi Fukumura
Name

Shuzaburo Tsuchihashi
Name

[Schedule 4 inserted: No. 62 of 2011 s. 14.]

Notes

- ¹ This is a compilation of the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972</i>	30 of 1972	16 Jun 1972	16 Jun 1972
<i>Acts Amendment (Iron Ore Agreements) Act 2000 Pt. 2</i>	57 of 2000	7 Dec 2000	7 Dec 2000 (see s. 2)
Reprint 1: The <i>Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972</i> as at 5 Sep 2003 (includes amendments listed above)			
<i>Iron Ore Agreements Legislation Amendment Act 2010 Pt. 2</i>	34 of 2010	26 Aug 2010	1 Jul 2010 (see s. 2(b)(ii))
<i>Iron Ore Agreements Legislation Amendment Act (No. 2) 2010 Pt. 9</i>	61 of 2010	10 Dec 2010	11 Dec 2010 (see s. 2(c))
<i>Iron Ore Agreements Legislation (Amendment, Termination and Repeals) Act 2011 Pt. 4</i>	62 of 2011	14 Dec 2011	15 Dec 2011 (see s. 2(b))

- ² Repealed by the *Mining Act 1978*.
- ³ Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
the Agreement.....	2, 5(1)
the First Variation Agreement.....	2
the Joint Venturers	2
the Second Variation Agreement	2
the Third Variation Agreement	2