

**RAILWAY AND PORT (THE PILBARA INFRASTRUCTURE PTY LTD)
AGREEMENT**

CLAUSE NOTES AND EXPLANATORY INFORMATION

RAILWAY AND PORT (THE PILBARA INFRASTRUCTURE PTY LTD) AGREEMENT

Parties

The State of Western Australia ("the State") and The Pilbara Infrastructure Pty Ltd ("the Company") and Fortescue Metals Group Ltd ("the Guarantor").

Recitals

- A. Advises that the Guarantor is investigating the feasibility of developing iron ore mining operations in the vicinity of the Chichester Ranges and is negotiating a separate Mining Agreement with the State to facilitate that proposed mining development.
- B. Advises that the Guarantor is conducting detailed feasibility studies to construct and operate a multi-user railway and multi-user port facilities for the transport and export of iron ore products, freight goods and other products from Port Hedland.
- C. The railway and port facilities to be constructed and operated pursuant to this Agreement will operate under open third party access arrangements.
- D. The State has agreed to assist the development of multi-user infrastructure facilities in the Pilbara region to promote the development of the iron ore industry and employment opportunity in Western Australia.

Clause 1 – Definitions

Defines the terms used in the Agreement.

Clause 2 - Interpretation

Subclause (1)

Provides legal interpretations of how the Agreement is to be generally read.

Subclauses (2) and (3)

Provides that nothing in the Agreement shall be construed to exempt the State or the Company from compliance with laws relating to native title or the Environmental Protection Act 1986.

Clause 3 - Ratification and operation

Subclause (1)

The State commits to introduce and sponsor a Bill into Parliament prior to 31 December 2004 or such later date as the parties may agree.

Subclause (2)

States that the Agreement, other than clauses 1, 2 and 3, will not come into operation until the Bill is passed and comes into operation as an Act and the Mining Agreement is signed by all of the parties to it.

Subclause (3)

Provides, unless the parties otherwise agree, for the determination of the Agreement if the Bill has not commenced to operate as an Act, or if the Mining Agreement has not been signed by all of the parties to it, by 31 December 2005.

Subclause (4)

Provides that on the later of the Bill commencing to operate as an Act and the date on which the Mining Agreement is signed by all of the parties to it, all the provisions of the Agreement will operate and take effect despite any enactment or other law.

Clause 4 – Initial Obligations of the State

Obliges the State, subject to certain conditions, to arrange the issue of requisite authority under the Land Administration Act 1997 to allow the Company to enter upon Crown land, (excluding Port land), to carry out all works to the extent reasonably necessary for the purpose of undertaking its obligations under clause 5(1).

Clause 5 – Initial obligations of the Company

Subclause (1)

Obliges the Company to continue the studies and investigations necessary for the purposes of clauses 7 and 8 and to finalise and submit proposals under clause 10.

Subclause (2)

Obliges the Company to keep the State fully informed about the progress and result of its investigations and studies under subclause (1) and to supply the Minister such information in relation thereto as may be requested from time to time.

Subclause 3

Obliges the Company to co-operate and consult with the State about matters referred to in subclauses (1) and (2) and any other relevant studies in relation to those subclauses that the Minister may wish the Company to undertake.

Clause 6 – Aboriginal Heritage Act 1972

Modifies the Aboriginal Heritage Act 1972 for the purposes of the Agreement to enable the Company to obtain clearances under section 18 of that Act.

Clause 7 – Railway Corridor

Subclause (1)

Requires the Company during its studies under clause 5 to consult with the Minister to seek the Minister's agreement as to a corridor, up to the Port boundary, within which the Railway, the access roads and Additional Infrastructure (if any) to be located outside the Port are to be constructed, the nature and capacity of any such Additional Infrastructure and the routes of any Lateral Access Roads. The arbitration provisions contained in clause 35 of the Agreement will not apply to this subclause.

In agreeing the railway corridor, the Company and the Minister have to balance engineering matters including costs, the nature and use of any lands concerned and interests therein and all costs of acquiring the land (all of which shall be borne by the Company).

Subclause (2)

Provides that any agreement pursuant to subclause (1) shall lapse if the date for submission of detailed proposals is extended or varied by the Minister pursuant to clause 30, unless the Minister notifies the Company otherwise.

This gives the Company a strong incentive to submit proposals by the due date and is intended to ensure that at the time the Minister considers whether or not to extend

the date for submission of proposals, proper consideration can be given to whether or not land previously allocated to the Company should continue to be so allocated in the particular circumstances.

Subclause (3)

Requires the Company to liaise with all relevant title holders to obtain their consents to, and also to obtain all statutory consents required for, the issue of authority to enter land as referred to in clause 4 and to the grant of the Special Railway Licence and any Lateral Access Road Licences.

The consents referred to in subclauses 3(b) and (c) are required by clause 10(5)(b) to be submitted to the Minister together with the Company's clause 10 proposals.

Subclause (4)

Acknowledges land constraints within the Port of Port Hedland on the extension of the Railway into it and foreshadows an approach to deal with this.

Clause 8 – Port Facilities

Subclause (1)

Requires the Company to consult with the Minister to seek agreement as to areas of the Port that can be allocated to the Company's Project as referred to therein.

Subclause (2)

Provides that any agreement pursuant to subclause (1) shall lapse if the date for submission of detailed proposals is extended or varied pursuant to clause 30, unless the Minister notifies the Company otherwise.

This gives the Company a strong incentive to submit proposals by the due date and is intended to ensure that at the time the Minister considers whether or not to extend the date for submission of proposals, proper consideration can be given to whether or not land previously allocated to the Company should continue to be so allocated in the particular circumstances.

Subclause (3)

Provides that the arbitration provisions of clause 35 of the Agreement will not apply to clause 8.

Clause 9 – Community development plan

This clause provides for the Company to produce a community development plan for approval by the Minister. The intent of the clause is meet the Government's sustainability objective and ensure that the Project to be developed under the Agreement will give rise to benefits for the community in which it is located.

Subclause (1)

Defines community and social benefits.

Subclause (2)

Company acknowledges the need for community and social benefits to flow from this Agreement.

Subclause (3)

Provides for the Company, prior to submission of detailed project proposals, to consult with local governments and prepare a plan which describes the Company's proposed strategies for achieving social and community benefits from the Project, and to submit the plan to the Minister. Requires the plan to include provision for the Company to undertake regular consultation with local government.

Subclause (4)

Provides for the Minister to either approve the plan, within one month of receipt, or to notify the Company of any changes required. Provides for either party to refer the plan to arbitration if the Company is unwilling to accept the changes required by the Minister.

Subclause (5)

Provides that the plan resulting from a determination made by the arbitrator shall become the approved plan.

Subclause (6)

Obliges the Company to implement the approved plan.

Subclause (7)

Requires the Company to report to the Minister the results of its regular consultation with local government.

Subclause (8)

Provides for the State and the Company at the request of either of them from time to time to confer and agree to amend the plan or to adopt a new plan, which would then become the approved plan under this clause.

Clause 10 – Company to submit proposals

Subclause (1)

Requires the Company, subject to the matters referred to therein, to submit detailed proposals for its Project by 31 December 2005.

Subclause (2)

Proposals must provide for the Railway to have a capacity of not less than 70 million tonnes per annum and must have (without modification or with modifications which are technically feasible at reasonable cost), characteristics which enable:

- (a) the Railway to be connected to any one or more of the other railways currently operating in the Pilbara that have been constructed under Government agreements; and
- (b) rail operations of the kind carried out those Pilbara railways to be carried out on the Railway and vice versa.

Proposals have to be consistent with the agreements reached under clauses 7(1) and 8.

Subclause (3)

Provides that proposals may, with the Minister's approval, be submitted separately and in any order and enables the Company to withdraw and resubmit proposals at any time up until the proposals have been approved.

Subclause (4)

Requires the Company to submit to and consult with the Minister about any services, works, materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out outside of Australia, and to provide reasons for this.

Subclause (5)

Requires the Company to submit to the Minister additional information on the financial viability of the Company, accreditations under the Rail Safety Act, arrangements and agreements in respect of the Railway and Port Facilities, evidence of readiness to embark on the operations referred to in proposals and the written consents referred to in clauses 7(3)(b) and (c).

The submission of detailed proposals for the Project is a standard feature of State agreements and it gives the Minister detailed oversight of the project plans.

Clause 11 – Consideration of proposals**Subclause (1)**

Details the procedure for consideration of proposals, subject to the Environmental Protection Act 1986.

Subclause (2)

Requires the Minister to give notice of his decision to the Company within 2 months of

- receiving proposals;
- authority to proceed under the Environmental Protection Act 1986; and
- completion of all native title processes,

whichever is later.

Subclause (3)

Requires the Minister to consult with the Company if he defers his decision or requires changes to a proposal.

Subclause (4)

Makes certain decisions of the Minister under this clause subject to arbitration.

Subclause (5)

Details how an arbitration decision on a proposal is to be implemented.

Subclause (6)

Provides, notwithstanding any provisions of the Agreement (other than clause 30), for determination of the Agreement, on 12 months notice, if all proposals are not approved by 31 December 2006. Determination can take place even if agreement has not been reached in relation to matters required by clauses 7(1) and 8 to be agreed or the community development plan required by clause 9 has not been approved.

Subclause (7)

Requires the implementation of approved proposals and the Railway, Lateral Access Roads and Additional Infrastructure (if any) to be constructed and operational within 3 years of approval of proposals.

Subclause (8)

Provides that the Minister may approve a variation to approved proposals during implementation.

Subclause (9)

Gives the Minister authority to extend periods in subclauses (1) and (7) to enable the Company to comply with native title laws.

Clause 12 – Additional proposals

Enables the Company, subject to clause 13, to expand its activities under the Agreement as referred to therein by:

Subclause (1) – giving notice to the Minister;

Subclause (2) – if the additional proposal is in relation to a spur line, complying with the provisions for defining the spur line route and for a community development plan; and

Subclause (3) and (4) – submitting detailed proposals to the Minister, which would be assessed under the same provisions (with minor exceptions) as for the Company's initial project proposals.

Clause 13 – Expansion of Project within the Port**Subclause (1)**

Requires the prior consent of the Minister for any changes to the Company's activities in the Port as referred to therein and approval of proposals in that regard.

If the Company wishes to change its activities in the Port it must provide an outline of its proposals to the Minister and seek in principle approval for the changes.

Subclause (2)

The Minister shall advise the Company whether he gives his in-principle approval for such changes in the Port, which can be subject to conditions, except the Minister cannot, without the Company's approval, impose a condition requiring a variation of the term or rentals of leases and licences granted pursuant to the Agreement or of the Agreement itself.

Subclause (3)

Requires the Company to submit detailed proposals within 18 months of receipt of an in-principle approval, otherwise the in-principle approval lapses.

Requires the Company to comply with its community development plan obligations.

Subclause (4)

All of the provisions of this clause are to apply to any further proposed changes to Port activities sought by the Company.

Clause 14 – Grant of Licences and Lease**Subclause (1)**

Details procedures for the grant of the Special Railway Licence and Lateral Access Road Licences. The intended forms of those licences are set out in Schedule 1 and 2 to the Agreement.

Subclause (2) and (3)

Sets the term for the Special Railway Licence, at 50 years from grant, and of any Lateral Access Road Licences at 4 years from grant.

Subclause (4)

Prohibits the surrender of the Special Railway Licence or any Lateral Access Road Licence or any parts thereof (except as required by the terms thereof) without the prior consent of the Minister.

Subclause (5)

Provides for the Mining Act 1978 to apply to the Special Railway and Lateral Access Road Licences granted under the Agreement, except as provided in the Agreement.

Subclause (6)

Provides for the purposes of the Agreement, specific modifications of the Mining Act 1978 to facilitate the grant of the Special Railway Licence and any Lateral Access Road Licences.

Subclause (7)

Details procedures for the grant of a Port Lease and either a Port Railway Licence (if the Railway is to extend into the Port) or otherwise a Port Additional Infrastructure Licence.

Subclause (8)

Addresses the issue of rentals and charges to be imposed on the Company by the Port Authority and the basis on which different rental and charges may be imposed on the Company as compared with other users of the Port.

Clause 15–Construction and Operation of Railway and Additional Infrastructure

This clause deals with how the Railway and any Additional Infrastructure are to be constructed and operated and sets out provisions relating to Private Roads.

Subclause (1)

Obliges the Company, subject to approved proposals and other matters, to construct the Railway and associated access roads in accordance with approved proposals and with recognised standards for railways of a similar nature operating under similar conditions and with other requirements, emphasising safety requirements. Also obliges the Company to construct infrastructure related to the Railway.

Subclause (2)

Obliges the Company to keep the Railway and any Additional Infrastructure in operation, to ensure that the Railway and Additional Infrastructure are operated in a safe and proper manner in compliance with all applicable laws. In particular obliges the Company to ensure compliance with the Rail Safety Act 1998 and the Railways (Access) Act 1998 and the Railways (Access) Code 2000 in connection with the Railway. Confirms that nothing in the Agreement shall be construed to exempt the Company or any other person from compliance with the Rail Safety Act 1998, the Railways (Access) Act 1998 or the Railways (Access) Code 2000 or limit their application to the Company's operations generally.

Subclause (3)

Obliges the Company to provide crossings for livestock and for existing roads, other railways, conveyors, pipelines and other utilities and to allow crossings for roads,

railways, conveyors, pipelines and other utilities constructed for future needs on reasonable terms and conditions.

Subclause (4)

States that the Company shall not be deemed to be a common carrier when transporting passengers or carrying iron ore, freight goods or other products.

Subclause (5)

Provides that the Company shall at all times be the holder of the Special Railway Licence, Lateral Access Road Licences, the Port Additional Infrastructure Licence and the Port Railway Licence and (without limiting clause 34) own, manage and control the use of the Railway and Additional Infrastructure.

Subclauses (6) and (7)

Provides that the Special Railway Licence and each Lateral Access Road Licence do not entitle the Company to exclusive possession of the land which is the subject of them. Provides for a right of access to that land for the State, the Minister, the Minister for Mines and any persons authorised by them from time to time, on certain conditions. The Company's ownership of the railway and any additional infrastructure do not give it an interest in the land underlying them.

Subclause (8)

Provides that the Company shall not without the prior consent of the Minister dismantle, sell or otherwise dispose of any part of the Railway or Additional Infrastructure or permit this to occur, other than for purposes of maintenance, repair, upgrade or renewal.

Subclause (9)

Obliges the Company to use all reasonable endeavours to ensure that the Railway has, or could with modifications that are technically feasible at a reasonable cost, have, characteristics which enable:

- (a) the Railway to be connected to any one or more of the other railways currently operating in the Pilbara that have been constructed under Government agreements; and
- (b) rail operations of the kind carried out on those Pilbara railways to be carried out on the Railway and vice versa.

Subclauses (10) and (11)

Provides for the Company to construct Additional Infrastructure approved for construction under the Agreement, associated access roads and Lateral Access Roads subject to and in accordance with the matters specified in subclause (10). Imposes a range of obligations on the Company in connection with Lateral Access Roads and the Company's access roads within the Railway Corridor constructed under the Agreement.

Subclause (12)

Prohibits the Company from trading in iron ore products during the continuance of the Agreement.

Clause 16 – Access Obligations for Railway

This clause sets out the intention of the State and the Company that the Railways (Access) Act 1998 and the Railways (Access) Code 2000 will apply to the Railway, sets out related provisions and imposes a range of obligations on the Company in respect of access by persons to the Railway.

Subclause (1)

Defines terms for the purposes of this clause.

Subclause (2)

Confirms that the State and the Company intend that the Railways (Access) Act 1998 and the Railways (Access) Code 2000 apply to the Railway as soon as possible after it is constructed but before the "**Railway Operation Date**", which is defined in the Agreement as the date of the first carriage of iron ore products, freight goods or other products over the Railway other than for construction or commissioning purposes.

Obliges the Company to keep the Minister fully informed about the progress of construction of the Railway and the likely Railway Operation Date.

Obliges the Company to notify the Minister on the Railway Operation Date of that date having occurred.

Subclause (3)

The Company acknowledges that the State shall from time to time be entitled to make any legislative changes necessary to enable the Railways (Access) Act 1998 and the Railways (Access) Code 2000 to apply to and in respect of the Railway and the Company's access roads within the Railway Corridor and within the Port Railway Area.

Obliges the Company to do all such things as the Minister reasonably requests for the purposes of the Railways (Access) Code 2000 applying and continuing to apply to the Railway, which are not inconsistent with the Agreement.

Subclause (4)

Subclause (4)(a) prohibits, subject to subclause (4)(b), any agreement for access to the Railway, or provision of rail transport services over the Railway, being made during the period prior to the "**Access Date**" without the prior consent of the Minister.

The "**Access Date**" is defined as the date on which all of the documents and matters referred to in clause 16(8)(c) are approved or determined under the relevant section of the Railways (Access) Act 1998 or the Railways (Access) Code 2000.

Subclause (4)(b) permits the Company to enter into one or more agreements, without the prior approval of the Minister, for access to the Railway or provision of rail transport services over the Railway for the purposes of the transport of iron ore products, but only if the agreement or agreements meet specified criteria. One criterion is that the agreement or agreements, either alone or when taken together, must not allow or provide for the transport, whether by the Company or any other person using the Railway, of more than 45 million tonnes of iron ore products over the Railway in any year during the currency of the Agreement. The Company requested that it be permitted to enter into such agreements without the prior approval of the Minister in order to justify the initial investment decision.

Subclause (5)

Sets out requirements in respect of each agreement for access to the Railway or provision of rail transport services over the Railway which is entered into prior to the Access Date, and in particular, obliges the Company to ensure that each agreement:

- (a) does not and will not in any way prevent alteration of practices or methods of operation in relation to control and management of the Railway and its use to the extent necessary to comply with obligations of a railway owner in connection with the Railway under the Railways (Access) Act 1998 and the Railways (Access) Code 2000 after the Access Date;
- (b) does not and will not in any way limit the discretion of the Regulator (as defined in the Railways (Access) Act) 1998 in exercising certain functions under the Railways (Access) Act 1998 and the Railways (Access) Code 2000;
- (c) contains certain provisions dealing with inconsistency between a provision of the agreement and particular provisions of the Railways (Access) Act 1998, the Railways (Access) Code 2000 or particular statements, documents, determinations or other requirements in connection with the Railways (Access) Act 1998 or the Railways (Access) Code 2000;
- (d) does not impose on the Company obligations, or create in favour of any other person any interest, in relation to use of the Railway which may in effect preclude other entities from access to the railway in accordance with the Railways (Access) Act 1998 and the Railways (Access) Code 2000; and
- (e) meets other specified requirements referred to in subclause (5)(d) and is altered in the manner required in subclause (5)(e).

Subclause (6)

Obliges the Company to consult with and inform the State about any steps or proposed steps of the Company or other persons to make the Railway subject to Part IIIA of the Trade Practices Act 1974 (Commonwealth).

Subclause (7)

Obliges the Company to use all reasonable endeavours to promote access to, and attract customers for, the Railway. Prohibits the making of particular arrangements or agreements or the adoption of particular practices in connection with the Railway without the prior consent of the Minister.

Subclause (8)

Sets out required timeframes for submission to the Regulator (as defined in the Railways (Access) Act 1998) or publication (as the case may be) of documentation and matters required to be submitted to the Regulator or published by a railway owner under the Railways (Access) Act 1998 and the Railways (Access) Code 2000.

Obliges the Company to conduct itself in such a manner as to, and to do all such things as are reasonable to, facilitate the approval or determination of the documents and matters listed in clause 16(8)(c) as soon as possible after the Railways (Access) Act 1998 and the Railways (Access) Code 2000 apply to the Railway.

Clause 16(8) clarifies that nothing in its provisions shall be taken to exempt the railway owner in respect of the Railway from any obligation or requirement of the

railway owner under the Railways (Access) Act 1998 or the Railways (Access) Code 2000.

Clause 17 – Construction of Port Facilities

This clause deals with how the Port Facilities are to be constructed and operated.

Subclause (1)

Obliges the Company, subject to and in accordance with approved proposals, to construct the Port Facilities in accordance with recognised standards for port facilities of a similar nature operating under similar conditions and in accordance with other requirements, to keep the Port Facilities in operation and to ensure the Port Facilities are operated in a safe and proper manner in compliance with all applicable laws.

Subclause (2)

Provides that the Company shall at all times be the holder of the Port Lease and (without limiting clause 34) manage and control the use of the Port Facilities.

Subclause (3)

Provides that the Company shall not without the prior consent of the Minister dismantle, sell or otherwise dispose of any part of the Port Facilities or permit this to occur, other than for purposes of maintenance, repair, upgrade or renewal.

Clause 18 – Access Obligations for Port Facilities and Additional Infrastructure

This clause sets out a range of obligations on the Company in respect of access by persons to the Port Facilities.

Subclause (1)

Defines terms for the purposes of this clause.

Subclause (2)

Requires the Company to have in place, prior to the time at which iron ore products, freight goods or other products are first shipped from the Port Facilities, and thereafter maintain, an access regime that is approved by the Minister which provides for access to the Port Facilities and any Additional Infrastructure. In considering whether an access regime proposed by the Company under the subclause is acceptable the Minister shall have regard for the principles for access contained in Section 6(4) of the Competition Principles Agreement.

Subclause (3)

Requires the Company to implement and comply with the access regime approved under subclause (2).

Subclause (4)

Subclause (4)(a) prohibits, subject to subclause (4)(b), any agreement for access to or use by any person of the Port Facilities or Additional Infrastructure, being made during the period prior to the "Access Date" without the prior consent of the Minister.

The "**Access Date**" is defined as the date on which the access regime referred to in subclause (2) is approved by the Minister.

Subclause (4)(b) permits the Company to enter into one or more agreements, without the prior approval of the Minister, for access to the Port Facilities and Additional

Infrastructure for the purposes of shipping or transport (as applicable) of iron ore products, but only if the agreement or agreements meet specified criteria. One criterion is that the agreement or agreements, either alone or when taken together, must not allow or provide for the shipping, whether by the Company or any other person using the Port Facilities or Additional Infrastructure, of more than 45 million tonnes of iron ore products from the Port of Port Hedland in any year during the currency of the Agreement.

Subclause (4)(c) obliges the Company (subject to subclause (4)(a)) to provide persons, or ensure that persons are provided with access to the Port Facilities and Additional Infrastructure in accordance with certain requirements, in the event the capacity of the Port Facilities is expanded to exceed 45 million tonnes per annum.

Subclause (4) is expressed to be subject to subclause (9).

Subclause (5)

Sets out requirements in respect of each agreement for access to the Port Facilities or Additional Infrastructure which is entered into prior to the Access Date, and in particular, obliges the Company to ensure that each agreement:

- (a) does not and will not prevent alteration of practices or methods of operation in relation to control and management of the Port Facilities and Additional Infrastructure and their use to the extent necessary to comply with the obligations of the Company under the access regime approved by the Minister under subclause (2);
- (b) contains certain provisions dealing with inconsistency between a provision of the agreement and a provision of the access regime approved by the Minister under subclause (2);
- (c) does not impose on the Company obligations, or create in favour of any other person any interest, in relation to access to the Port Facilities or the Additional Infrastructure which may in effect preclude other entities from access to the Port Facilities or the Additional Infrastructure in accordance with the access regime approved by the Minister under subclause (2); and
- (d) is altered in the manner required in subclause (5)(d).

Subclause (6)

Obliges the Company to consult with and inform the State about any steps or proposed steps of the Company or other persons to make the port facilities or additional infrastructure subject to Part IIIA of the Trade Practices Act.

Subclause (7)

Obliges the Company to use all reasonable endeavours to promote access to, and attract customers for, the Port Facilities and Additional Infrastructure.

Subclause (8)

Obliges the Company, subject to clauses 9 and 13, to invest in additional infrastructure to expand the capacity of the Port Facilities and Additional Infrastructure to accommodate demand for access, provided such investment can be justified commercially.

Obliges the Company to consult with the Minister as required by subclause (8) and to provide the Minister with such information and documents as the Minister requests to review whether such investment can be justified commercially.

In the event of disagreement between the Minister and the Company with respect to whether any particular investment proposed can be justified commercially, either party may refer it to arbitration under the Agreement.

Subclause (9)

Prohibits the Port Facilities from being subject to an agreement for shipping of products produced under a Government agreement in existence at the date of the Agreement, without the prior consent of the Minister.

Subclause (10)

Provides that nothing in the Agreement shall be taken to limit the rights of the State to regulate access to the Port of Port Hedland, the Port Facilities and the Additional Infrastructure in the future, or to limit the Company's obligations to comply in respect of any such regulation.

Clause 19 – Compliance with Laws

Subclause (1)

Requires the Company during the continuance of the Agreement as provided therein, to comply with and observe the provisions of the Agreement and subject thereto with the laws for the time being in force in Western Australia.

Subclause (2)

Makes the Company responsible for obtaining any authority necessary to allow it to obtain stone, sand, clay or gravel for its activities.

Clause 20 – Maintenance

Makes the Company responsible for maintenance of the Railway, any Additional Infrastructure and the Port Facilities.

Clause 21 – Use of local labour professional services and materials

Subclause (1)

Details the obligations of the Company with respect to the use of labour and professional services within Western Australia and Australia, giving suitably qualified Western Australian and Australian suppliers, manufacturers and contractors fair and reasonable opportunities to tender or quote for works and with respect to giving preference to contracts and orders that include participation by Western Australian or Australian suppliers, manufacturers and contractors.

Subclause (2)

Obliges the Company, except as otherwise agreed by the Minister, to include the same local content obligations, as in subclause (1), in contracts with third parties.

Subclause (3)

Obliges the Company to submit reports to the Minister concerning the implementation of the local content requirements.

Subclause (4)

Obliges the Company to keep the Minister informed on elements of the Project proposed to be sourced overseas and consult with the Minister as and when required with respect thereto.

Clause 22 – No discriminatory charges

Obliges the State, except as otherwise provided in the Agreement, to ensure the titles, property or other assets, products, materials or services used or produced by the Company by or through its activities under the Agreement are not subjected to discriminatory rates, taxes or charges by the State or any of its agencies or instrumentalities or any local government or other authority of the State. The conferral of rights upon parties to Government agreements is to be disregarded in applying this clause.

Clause 23 – Taking of land for the purposes of this Agreement**Subclause (1) and (2)**

Empowers the State to take land, other than any part of the Port of Port Hedland or land the taking of which would be contrary to the provisions of a Government agreement as referred to therein, for the Project as if for a public work, if the Company considers it necessary for the Project and the Minister determines it is appropriate to be taken.

Subclause (3)

Provides for the Company to pay all compensation in respect of any land taken for the purposes of this Agreement.

Clause 24 – No taking of land

Provides assurance to the Company, subject to the performance by it of its obligations under the Agreement and without limiting clause 15(3), against resumption of its works, installations, plant, equipment or other property the subject of or used for the purposes of the Agreement.

Clause 25 – Commonwealth licences and consents

Obliges the Company to apply for licences and consents from the Commonwealth or any agency, authority or instrumentality thereof necessary to enable or permit the Company to enter into the Agreement and to perform its obligations thereunder. Provides for the State on request by the Company to make representations for the grant to the Company of such licences and consents.

Clause 26 – Zoning

Obliges the State to ensure after consultation with the relevant local government that any lands the subject of the Special Railway Licence or Lateral Access Road Licences shall be and remain zoned for use or otherwise protected during the currency of the Agreement so that the Company's activities under the Agreement can be carried on without interference of interruption on the ground of being contrary to any zoning by-law regulation or order.

Clause 27 – Assignment

Subclause (1)

Provides for the assignment, mortgaging, charging, subletting or disposition by the Company of rights under the Agreement, with the prior consent of the Minister

Subclause (2)

Provides for the Company, notwithstanding anything in or done under subclause (1), to remain liable for the performance of all covenants and agreements on its part under the Agreement unless the Minister agrees to approve a release from such liability where the Minister considers such release will not be contrary to the interests of the State.

Subclause (3)

Notwithstanding the Mining Act 1978 no assignment, mortgaging, charging, subletting or disposition by the Company of rights under the Agreement shall require any approval or consent other than under subclause (1) and no equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent (otherwise than as required by this clause) or because it is not registered under the provisions of the Mining Act 1978.

Clause 28 – Variation or determination

Subclause (1)

Enables the Agreement to be varied from time to time by agreement in writing between the parties for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of the Agreement.

Subclause (2)

Requires any variation to the Agreement to be tabled in both Houses of Parliament.

Subclause (3)

Details how the variation Agreement may come into operation.

Subclause (4)

Enables the Agreement to be determined by mutual agreement.

Clause 29 – Force majeure

Provides for the temporary suspension of the Agreement obligations as a result of a range of circumstances beyond the control of the Company or the State.

Clause 30 – Power to extend periods

Allows, at the request of the Company, the Minister to extend dates or periods referred to in the Agreement.

Clause 31 – Determination of Agreement

Subclause (1)

Specifies the events that can result in determination of the Agreement.

Subclause (2)

Requires specified details to be given in a notice of determination.

Subclause (3)

Enables the Company to contest a notice of default and allows the matter to be decided by arbitration. Where the arbitration decision is against the Company and the arbitrator finds there was a genuine dispute, the time for complying with such a decision shall be not less than 90 days.

Subclause (4)

Enables the State to remedy a default and recover costs of so doing from the Company.

Clause 32 – Effect of cessation or determination of Agreement

Details the effect of determination of the Agreement, requires payment of money payable or accrued due and provides that, other than as provided in the Agreement, no party has any claim against the others in respect of anything arising out of the Agreement. Also contains provisions regarding whether improvements to the land are to become the property of the State or are to be removed by the Company.

Clause 33 – Indemnity**Subclause (1)**

Requires the Company to indemnify the State in respect of actions, costs or demands of third parties resulting from activities undertaken by the Company under the Agreement or by third parties on their behalf, except where the State (or its agents) have been negligent.

Clause 34 – Subcontracting

The State and the Company may subcontract to third parties any activity they are authorised or obliged to carry out under the Agreement.

Clause 35 – Arbitration**Subclause (1)**

Defines the arbitration process applicable to the Agreement.

Subclause (2)

Arbitration will not apply where the State, the Minister or any other Minister has discretionary power.

Subclause (3)

Empowers the arbitrator to grant interim extensions to any date or period in the Agreement to preserve rights while a matter is before arbitration.

Clause 36 – Consultation

Requires the Company to consult with and keep the State informed on any action that it proposes to take with any third party, including the Commonwealth, which is likely to significantly affect the overall interest of the State under the Agreement.

Clause 37 – Notices

Specifies how notices are to be given under the Agreement.

Clause 38 – Mining Agreement

Provides for the State and the Company to negotiate the terms and conditions of the Mining Agreement and attempt to enter into that agreement by 31 January 2005 or as soon as possible thereafter. Ensures that the arbitration provisions of clause 35 of the Agreement do not apply to this clause.

Clause 39 – Guarantee of the Company's performance

Provides for the Guarantor to guarantee the Company's performance of its obligations under the Agreement. Provides for the Minister to release the Guarantor from the guarantee if satisfied that the Company has the necessary financial capacity. Provides for the guarantee to continue even if the Agreement ceases or is determined.

Clause 40 – Term of Agreement

Subclause (1)

Unless determined earlier, the Agreement will expire when the Special Railway Licence expires or is determined or surrendered.

Subclause (2)

Unless the Agreement has already determined, the Company may, after 1 January 2045, ask the State to confer about commencing negotiations for a new Agreement.

Clause 41 – Applicable law

The Agreement is subject to the laws of Western Australia.