IRON ORE AGREEMENTS LEGISLATION AMENDMENT BILL (No.2) 2010

EXPLANTORY MEMORANDUM

Part 1 – Preliminary

Section 1

Contains the short title of the Act.

When enacted the Bill will be cited as the *Iron Ore Agreements Legislation Amendment Act (No.2) 2010.*

Section 2

Paragraph (a) provides that Part 1 (section 1 and 2) comes into operation on which the Act receives Royal Assent.

Paragraph (b) provides that section 45 is deemed to have come into operation on 1 July 2010 immediately after the *Iron Ore Agreements Legislation Amendment Act 2010* Part 4 came into operation.

[This provision having retrospective effect is intended to correct from this earlier time (1 July 2010) the basis upon which royalty is calculated in relation to pisolite fine ore (as defined in section 45) produced pursuant to the Iron Ore (Marillana Creek) Agreement 1991]

Paragraph (c) provides that the rest of the Act comes into operation on the day after the Act receives Royal Assent.

Part 2 – Iron Ore (Hamersley Range) Agreement Act 1963 amended

Section 3

States that this Part amends the *Iron Ore (Hamersley Range) Agreement Act 1963* (referred to below as **the subject Act** for the purposes of explaining this Part).

Section 4

Sections 4(1) and (2) insert definitions for "the Eleventh Supplementary Agreement" and "the Twelfth Supplementary Agreement" into section 2 of the subject Act.

Section 5

Inserts section 4C into the subject Act which ratifies and authorises the implementation of the Eleventh Supplementary Agreement (a variation to the agreement approved by the subject Act and known as the Iron Ore (Hamersley Range) Agreement 1963).

The standard ratification formula used in section 4C and generally by this Act in relation to each variation also includes a subclause providing that without limiting or otherwise affecting the application of the *Government Agreements Act 1979,* the relevant variation is to operate and take effect despite any other Act or law.

Inserts section 4D into the subject Act which ratifies and authorises the implementation of the Twelfth Supplementary Agreement (a variation to the Second Supplementary Agreement approved by the subject Act and known as the Iron Ore (Hamersley Range) Agreement 1968 (Paraburdoo)).

Inserts section 4E into the subject Act which provides that:

(1) the State has power in accordance with clause 10N(9)(a) of the Iron Ore (Hamersley Range) Agreement 1963 to take land for the purposes of a railway the subject of clause 10N as and for a public work under Parts 9 and 10 of the *Land Administration Act 1997*; and

(2) the State has power in accordance with clause 7E(9)(a) of the Iron Ore (Hamersley Range) Agreement 1968 (Paraburdoo) to take land for the purposes of a railway the subject of clause 7E as and for a public work under Parts 9 and 10 of the *Land Administration Act 1997.*

Section 6

Inserts the Eleventh Supplementary Agreement and the Twelfth Supplementary Agreement into the subject Act as the Twelfth and Thirteenth Schedules respectively.

Part 3 – Iron Ore (Robe River) Agreement Act 1964 amended

Section 7

States that this Part amends the *Iron Ore (Robe River) Agreement Act 1964* (referred to below as **the subject Act** for the purposes of explaining this Part).

Section 8

Inserts a definition for "the sixth variation agreement" into section 2 of the subject Act.

Section 9

Inserts section 4B into the subject Act which ratifies and authorises the implementation of the sixth variation agreement (a variation to the agreement approved by the subject Act and known as the Iron Ore (Robe River) Agreement 1964).

Inserts section 4C into the subject Act which provides that the State has power in accordance with clause 9D(9)(a) of the Iron Ore (Robe River) Agreement 1964 to take land for the purposes of a railway the subject of clause 9D as and for a public work under Parts 9 and 10 of the *Land Administration Act 1997*.

Section 10

Inserts the sixth variation agreement as the Seventh Schedule to the subject Act.

Part 4 – Iron Ore (Mount Bruce) Agreement Act 1972 amended

Section 11

States that this Part amends the *Iron Ore (Mount Bruce) Agreement Act 1972* (referred to below as **the subject Act** for the purposes of explaining this Part).

Section 12

Inserts a definition for "the 2010 Variation Agreement" into section 2 of the subject Act and makes consequential amendments for that purpose.

Section 13

Inserts section 4B into the subject Act which ratifies and authorises the implementation of the 2010 Variation Agreement (a variation to the agreement ratified by the subject Act and known as the Iron Ore (Mount Bruce) Agreement 1972).

Inserts section 4C into the subject Act which provides that the State has power in accordance with clause 20E(9)(a) of the Iron Ore (Mount Bruce) Agreement 1972 to take land for the purposes of a railway the subject of clause 20E as and for a public work under Parts 9 and 10 of the *Land Administration Act 1997*.

Section 14

Inserts the 2010 Variation Agreement as the Fourth Schedule to the subject Act.

Part 5 – Iron Ore (Hope Downs) Agreement Act 1992 amended

Section 15

States that this Part amends the *Iron Ore (Hope Downs) Agreement Act 1992* (referred to below as **the subject Act** for the purposes of explaining this Part).

Section 16

Inserts a definition for "the First Variation Agreement" into section 2 of the subject Act and makes consequential amendments for that purpose.

Section 17

Inserts section 4(2A) into the subject Act which ratifies the First Variation Agreement (a variation to the agreement ratified by the subject Act and known as the Iron Ore (Hope Downs) Agreement 1992).

Inserts a new section 4(4) clarifying that section 96 of the *Public Works Act 1902* does not apply to a railway constructed under this Agreement.

Section 18

Inserts section 5 into the subject Act which provides that the State has power in accordance with clause 15C(9)(a) of the Iron Ore (Hope Downs) Agreement 1992 to take land for the purposes of a railway the subject of clause 15C as and for a public work under Parts 9 and 10 of the *Land Administration Act 1997*.

Section 19

Amends title to Schedule of the subject Act to read "Schedule 1".

Section 20

Inserts the First Variation Agreement as Schedule 2 to the subject Act.

Part 6 – Iron Ore (Yandicoogina) Agreement Act 1996 amended

Section 21

States that this Part amends the *Iron Ore (Yandicoogina) Agreement Act 1996* (referred to below as **the subject Act** for the purposes of explaining this Part).

Section 22

Inserts a definition for "the First Variation Agreement" into section 2 of the subject Act and makes consequential amendments for that purpose.

Section 23

Inserts section 4(2A) into the subject Act which ratifies the First Variation Agreement (a variation to the agreement ratified by the subject Act and known as the Iron Ore (Yandicoogina) Agreement 1996).

Inserts a new section 4(4) clarifying that section 96 of the *Public Works Act 1902* does not apply to a railway constructed under this Agreement.

Section 24

Inserts section 5 into the subject Act which provides that the State has power in accordance with clause 12C(9)(a) of the Iron Ore (Yandicoogina) Agreement 1996 to take land for the purposes of a railway the subject of clause 12C as and for a public work under Parts 9 and 10 of the *Land Administration Act 1997*.

Section 25

Inserts the First Variation Agreement as Schedule 2 to the subject Act.

Part 7 – Iron Ore (Mount Newman) Agreement Act 1964 amended

Section 26

States that this Part amends the *Iron Ore (Mount Newman) Agreement Act 1964* (referred to below as **the subject Act** for the purposes of explaining this Part).

Section 27

Inserts a definition for "the Sixth Variation Agreement" into section 2 of the subject Act and makes consequential amendments for that purpose.

Section 28

Inserts section 4B into the subject Act which ratifies and authorises the implementation of the Sixth Variation Agreement (a variation to the agreement approved by the subject Act and known as the Iron Ore (Mount Newman) Agreement 1964).

Inserts section 4C into the subject Act which provides that the State has power in accordance with clause 9E(9)(a) of the Iron Ore (Mount Newman) Agreement

1964 to take land for the purposes of a railway the subject of clause 9E as and for a public work under Parts 9 and 10 of the *Land Administration Act 1997*.

Section 29

Inserts the Sixth Variation Agreement as the Seventh Schedule to the subject Act.

Part 8 – Iron Ore (Mount Goldsworthy) Agreement Act 1964 amended

Section 30

States that this Part amends the *Iron Ore (Mount Goldsworthy) Agreement Act 1964* (referred to below as **the subject Act** for the purposes of explaining this Part).

Section 31

Inserts a definition for "the fourth Variation Agreement" into section 2 of the subject Act and makes consequential changes for the purpose.

Section 32

Inserts section 5B into the subject Act which ratifies and authorises the implementation of the fourth Variation Agreement (a variation to the agreement approved by the subject Act and known as the Iron Ore (Mount Goldsworthy) Agreement 1964).

Inserts section 5C into the subject Act which provides that the State has power in accordance with clause 9E(9)(a) of the Iron Ore (Mount Goldsworthy) Agreement 1964 to take land for the purposes of a railway the subject of clause 9E as and for a public work under Parts 9 and 10 of the *Land Administration Act 1997*.

Section 33

Inserts the fourth Variation Agreement as the Fifth Schedule to the subject Act.

Part 9 – Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972 amended

Section 34

States that this Part amends the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972* (referred to below as **the subject Act** for the purposes of explaining this Part).

Section 35

Inserts a definition for "the Second Variation Agreement" into section 2 of the subject Act and makes consequential amendments for that purpose.

Section 36

Inserts section 6 into the subject Act which ratifies and authorises the implementation of the Second Variation Agreement (a variation to the agreement ratified by the subject Act and known as the Iron Ore (Goldsworthy-Nimingarra) Agreement 1972).

Inserts section 7 into the subject Act which provides that the State has power in accordance with clause 16C(9)(a) of the Iron Ore (Goldsworthy-Nimingarra) Agreement 1972 to take land for the purposes of a railway the subject of clause 16C as and for a public work under Parts 9 and 10 of the *Land Administration Act 1997*.

Section 37

Inserts the Second Variation Agreement as the Schedule 3 to the subject Act.

Part 10 – Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972 amended

Section 38

States that this Part amends the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972* (referred to below as **the subject Act** for the purposes of explaining this Part).

Section 39

Inserts a new section 2A defining the term "current Agreement".

Section 40

Amends existing section 3 so that it becomes section 3(1) and inserts a new section 3(2) clarifying that section 96 of the *Public Works Act 1902* does not apply to a railway constructed under the current Agreement.

Section 41

Amends sections 4(3), 5(3) and 6(4) to refer to section 3(1), rather than section 3.

Section 42

Inserts a new section 8 which ratifies and authorises the implementation of the fourth Variation Agreement (a variation to the agreement authorised by the subject Act and known as the Iron Ore (McCamey's Monster) Agreement 1972).

Inserts a new section 9 which provides that the State has power in accordance with section 11E(9)(a) of the Iron Ore (McCamey's Monster) Agreement 1972 to take land for the purposes of a railway the subject of section 11E as and for a public work under Parts 9 and 10 of the *Land Administration Act 1997*.

Section 43

Inserts the fourth Variation Agreement as Schedule 5 to the subject Act.

Part 11 – Iron Ore (Marillana Creek) Agreement Act 1991 amended

Section 44

States that this Part amends the *Iron Ore (Marillana Creek) Agreement Act 1991* (referred to below as **the subject Act** for the purposes of explaining this Part).

Section 45

Inserts a new section 7 into the subject Act which varies the Agreement (as defined by section 7(1)) in the manner described in sections 7(2) (by substituting definitions of "fine ore" and "lump ore" and inserting a new definition of "pisolite fine ore") and 7(3) (by amending clause 13(1) of the Agreement in relation to royalty rates for fine ore and pisolite fine ore). These amendments to the Agreement have effect despite any other provision of the Agreement or any other law (section 7(4), and without affecting any royalty payable before 1 July 2010 (see section 7(5)).

The effect of section 7 is to apply the royalty rates specified by the *Iron Ore Agreements Legislation Amendment Act 2010* to the types of ore described and inserted by this section into the Agreement (namely, fine ore, lump ore and pisolite fine ore).

The error being addressed by this amendment is that under this Agreement the only fine ore that has been produced since 1 July 2010 is "pisolite fine ore" and such ore was always intended to be subject to fine ore royalty rates.

Accordingly, these amendments have the effect (read with section 2(b) of this Act) that such pisolite fine ore is to be treated from 1 July 2010 as being subject to royalty at the rate of 5.625% of fob value (as per general fine ore).

Section 46

Inserts a definition for "the Third Variation Agreement" into section 3 of the subject Act and makes consequential amendments for that purpose.

Section 47

Inserts a new section 4(4) clarifying that section 96 of the *Public Works Act 1902* does not apply to a railway constructed under this Agreement.

Section 48

Inserts section 8 into the subject Act which ratifies the Third Variation Agreement (a variation to the agreement ratified by the subject Act and known as the Iron Ore (Marillana Creek) Agreement 1991).

Inserts a new section 9 into the subject Act which provides that the State has power in accordance with clause 14C(9)(a) of the Iron Ore (Marillana Creek) Agreement 1992 to take land for the purposes of a railway the subject of clause 14C as and for a public work under Parts 9 and 10 of the *Land Administration Act 1997*.

Section 49

Inserts the Third Variation Agreement as Schedule 4 to the subject Act.

TWELFTH SCHEDULE – ELEVENTH SUPPLEMENTARY AGREEMENT

IRON ORE (HAMERSLEY RANGE) AGREEMENT ACT 1963

VARIATION AGREEMENT

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the State and its instrumentalities (**the State**) and Hamersley Iron Pty Limited (**the Company**).

Recitals

A. Provides details of the State Agreement as originally approved and acknowledges past variations made to it. The State Agreement as so varied is called the Principal Agreement.

B. Advises that the parties wish to vary the Principal Agreement on the terms and conditions set out in the Variation.

Clause 1
Provides subject to the context for words and expressions used in the Variation Agreement to have the same meanings respectively as they have in and for the purpose of the Principal Agreement.

Clause 2
The State commits to introduce and sponsor a Bill into State Parliament to ratify the Variation Agreement and endeavour to secure its passage as an Act by 31 December 2010 or such later date as the parties may agree.

Clause 3
Paragraph (a) provides that clause 4 (which sets out the proposed variations to the Principal Agreement) shall not come into operation unless or until an Act passed in accordance with clause 2 ratifies the Variation Agreement.

Paragraph (b) provides, unless the parties otherwise agree, for the cessation and determination of the Variation Agreement (and without any party having a claim against the other) if by 30 June 2011 or such later date as may be agreed pursuant to clause 2, clause 4 has not come into operation.

Clause 4
Sets out the proposed variations to the Principal Agreement.

Subclause (1) varies clause 1 definitions

Paragraph (a) deletes from clause 1 of the Principal Agreement the existing definitions of "fine ore" and lump ore" [new standardised definitions for these phrases are inserted by paragraph (b) below].

Paragraph (b) inserts into clause 1 of the Principal Agreement the following new definitions:

> "approved proposal" – defined as a proposal approved or determined under the Principal Agreement.
>
> "beneficiated ore" – defined to mean iron ore that has been concentrated or upgraded (otherwise than solely by crushing, screening, separating by hydrocloning or a similar technology which uses primarily size as a criterion, washing, scrubbing, tromelling or drying or by a combination of two or more of those processes) by the Company in a plant constructed pursuant to a proposal approved pursuant to an Integration Agreement or in such other plant approved by the Minister after consultation with the Minister for Mines (and includes for the avoidance of doubt iron ore

concentration products from the Mount Tom Price concentration plant). [standardised definition]

"fine ore" – defined as iron ore (not being beneficiated ore) which is screened and will pass through a 6.3mm mesh screen. [standardised definition]

"Integration Agreement" is defined to mean:

- 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;
- 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;
- 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;
- 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;
- the agreement ratified by and scheduled to the *Iron Ore (Hope Downs) Agreement Act 1992*, as from time to time added to, varied or amended;
- the agreement ratified by and scheduled to the *Iron Ore (Yandicoogina) Agreement Act 1996*, as from time to time added to, varied or amended;
- the agreement approved by and scheduled to the *Iron Ore (Mount Newman) Agreement Act 1964*, as from time to time added to, varied or amended;
- the agreement approved by and scheduled to the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*, as from time to time added to, varied or amended;
- 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 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;
- 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" – in relation to a particular Integration Agreement, is defined as "the Company" or "the Joint Venturers", as the case may be, as such phrase is defined in and for the purposes of the relevant

Integration Agreement for example, in relation to the agreement approved by and scheduled to the *Iron Ore (Hamersley Range) Agreement Act 1963,* the Integration Proponent is the Company (Hamersley Iron Pty Ltd).

"laws relating to native title" – defined as laws applicable from time to time in the Western Australia in respect of native title and includes the *Native Title Act 1993* (Commonwealth).

"lump ore" – defined as iron ore (not being beneficiated ore) which is screened and will not pass through a 6.3 millimetre mesh screen. [standardised definition]

"Related Entity" – defined as a company in which as at 21 June 2010 (and 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 Rio Tinto Limited ABN 96 004 458 404 or BHP Billiton Limited ABN 49 004 028 077 or those two companies in aggregate. [This definition is principally relevant to the scope of rights of integration use contemplated by clause 10L and blending rights (clause 10(4))]

"variation date" – defined as the date on which clause 4 of the Variation Agreement comes into operation. [ie. The day after the Bill receives Royal Assent]

"washing" - defined as a process of separation by water using only size as a criterion. [this term is used in the definition of "beneficiated ore"]

The following definitions in clause 1 of the Principal Agreement are amended:

Paragraph (c)

"agreed or determined" by 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 paragraph (B) of the proviso to clause 10(2)(e), the prices for that type of iron ore prevailing at the time the price for such iron ore was agreed between the arm's length purchaser referred to in paragraph (B)(iii) of that proviso and the seller in relation to the type of sale and the relevant international seaborne iron ore market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value; and

(ii) in any other case, the prices for that type of iron ore prevailing at the time the price for such iron ore was agreed between the Company and the purchaser in relation to the type of sale and the market into which such iron ore was sold and where prices beyond the deemed f.o.b. point are being considered the deductions mentioned in the definition of f.o.b. value.

[See commentary regarding amendments to clauses 10(2)(e) and new clause 10(2)(ea)]

Paragraph (d)

"Company's wharf" by inserting "and in clauses 10(2)(e) and (f) also any additional wharf constructed by the Company pursuant to this Agreement" before the semi colon. [This extends the concept of "Company's wharf" for clauses 10(2)(e) and (f)]

Paragraph (e)

"f.o.b. value" by inserting a new paragraph (ii) into this definition, dealing with iron ore initially sold at cost pursuant to paragraph (B) of the proviso to clause 10(2)(e), providing that the f.o.b value is the price payable for the iron ore by the arm's length purchaser as referred to in paragraph (B)(iii) of that proviso or, where the Minister considers, following advice from the appropriate Government department, that the price payable in respect of the iron ore does not represent a fair and reasonable market value for that type of iron ore assessed on an arm's length basis in the relevant international seaborne iron ore market, such amount as is agreed or determined as representing such a fair and reasonable market value, less all duties, taxes, costs and charges referred to in paragraph (i) above.

[See commentary regarding amendments to clauses 10(2)(e) and new clause 10(2)(ea)]

Paragraph (f)

"iron ore" by deleting "iron ore concentration products" and substituting ", without limitation, beneficiated ore". [iron ore concentration products now fall within new standardised definition of "beneficiated ore"]

Paragraph (g)

"loading port" by also including the Port of Port Hedland and any other port constructed after the variation date under an Integration Agreement.

Paragraph (h)

"metallised agglomerates" by deleting "or iron ore concentration products". [deleted as already captured by definition of "iron ore" as amended]

Paragraph (i)

"mineral lease" by inserting "10H," after "10F". [recognises areas may be added to mineral lease pursuant to clause 10H]

Paragraph (j)

"secondary processing" by deleting "concentration or other benefaction of iron ore other than by crushing or screening" and substituting "beneficiaton of iron ore";

The following changes are made as to general interpretation principles for the Principal Agreement set out at the end of clause 1:

Paragraph (k)

- directing that clause headings shall not affect the interpretation of the Principal Agreement in the sentence regarding marginal notes by inserting "and clause headings" after "marginal notes",

Paragraph (l)

- directing that words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context,

- directing that nothing in the Principal Agreement shall be construed:

- to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under the Principal Agreement that may be made by or under the *Environmental Protection Act 1986* (WA);

  [see commentary regarding subclause (28) which deletes clause 30 of the Principal Agreement]

- to exempt the State or the Company from compliance with or to require the State or the Company to do anything contrary to any laws relating to native title or any lawful obligation or requirement imposed on the State or the Company as the case may be pursuant to any laws relating to native title;

- to exempt the Company from compliance with the provisions of the *Aboriginal Heritage Act 1972* (WA).

Subclause (2) inserts new clauses 8A (Additional Proposals), 8B (Consideration of Company's proposals under clause 8A) and 8C (Notification of possible proposals)

Clause 8A (Additional Proposals)

Clause 8A(1) provides that if the Company, at any time during the continuance of the Principal Agreement after the variation date, desires to significantly modify, expand or otherwise vary its activities carried on pursuant to the Principal Agreement (other than under clauses 10A, 10G, 10I, 10K on 10N [which each contain their own specific process/requirements for the submission of proposals]) beyond those activities specified in any proposals already approved pursuant to clauses 6 and 7 it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in clause 5(1)(a) as the Minister may require.

Clause 8A(2) provides that a proposal may with the consent of the Minister (except in relation to an Integration Agreement where the Minister's consent is not required) and that of any parties concerned (being in respect of an Integration Agreement the Integration Proponent for that agreement) provide for the use by the Company of any works installations or facilities constructed or established under a Government agreement (ie a Government agreement for the purposes of the Government Agreements Act 1979).

Clause 8A(3) provides that 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.

Clause 8A(4) provides that at the time when the Company submits the proposals it shall submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works materials, plant, equipment and supplies that it proposes to consider obtaining from outside Australia together with its reasons and shall, if required by the Minister, consult with the Minister.

Clause 8A(5) provides that the Company may withdraw its proposals pursuant to subclause (1) at any time before approval of them, or where any decision in respect of them is referred to arbitration as referred to in clause 8B, within 3 months after the award by notice to the Minister that it shall not be proceeding with them.

Clause 8B (Consideration of Company's proposals under clause 8A)

Clause 8B(1) provides that in respect of each proposal pursuant to clause 8A(1) the Minister shall:

(a) 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;

(b) approve of the proposal without qualification or reservation;

(c) defer consideration of or decision upon the proposal until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in clause 8A(1) not covered by the proposal;

(d) require as a condition precedent to the giving of his approval to the proposal that the Company make such alteration to it or comply with such conditions in respect to it as he thinks reasonable, and in such a case the Minister shall disclose his reasons for the conditions,

provided that where implementation of any proposals hereunder has been approved pursuant to the *Environmental Protection Act 1986* (WA) subject to conditions or procedures, any approval or decision of the Minister under this clause shall if the case requires include a requirement that the Company make alterations to the proposals as necessary to make them accord with those conditions or procedures.

The Minister's capacity to refuse to approve a proposal as contemplated by (a) above is not standard or usual for State Agreements.

Clause 8B(1) provides that in considering whether to refuse to approve a proposal as contemplated by (a) above 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 State, including without limitation, infrastructure development in the State;

(ii) be contrary to or inconsistent with the planning and development policies and objectives of the State;

(iii) detrimentally affect the rights and interests of third parties; or

(iv) detrimentally affect access to and use by others of the lands the subject of any grant or proposed grant to the Company.

This right to refuse to approve a proposal conferred by (a) above 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 clause 10L(7)) as contemplated by clause 10L.

The right to refuse may not be exercised in respect of a proposal if pursuant to clause 8C(5) the Minister, prior to the submission of the proposal, advised the Company in writing that the Minister has no public interest concerns (as defined in that clause) with the single preferred development (as referred to in clause 8C(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 8C(5) in respect of that single preferred development. [see comments regarding clause 8C]

Clause 8B(2) provides that the Minister shall within 2 months after receipt of proposals pursuant to clause 8A(1) give notice to the Company of his decision in respect to the proposals. However, where a proposal is to be assessed under Part IV of the *Environmental Protection Act 1986* (WA) the Minister shall only give notice to the Company of his decision in respect to the proposal within 2 months after service on him of an authority under section 45(7) of the *Environmental Protection Act 1986* (WA). Clause 8B(2) is a relatively standard clause in State Agreements.

Clause 8B(3) provides that if the decision of the Minister is as mentioned in clauses 8B(1)(a), (c) or (d) the Minister shall afford the Company full opportunity to consult with him and to submit new or revised proposals generally or in respect to some particular matter.

Clause 8B(4) provides that if the decision of the Minister is as mentioned in clause 8B(1)(c) or (d) and the Company considers that the decision is unreasonable the Company within 2 months after receipt of the notice mentioned in clause 8B(2) may elect to refer to arbitration the question of the reasonableness of the decision. However, any requirement of the Minister that the Company make alterations to the proposal to accord with conditions or procedures required by approvals under the *Environmental Protection Act 1986* (WA) is not be referable to arbitration.

Further, a decision of the Minister under clause 8B(1)(a) to refuse a proposal on the basis it is not in the public interest to approve the proposal is not be referable to arbitration under the Principal Agreement.

Clause 8B(5) provides that if by the award made on the arbitration pursuant to clause 8B(4) the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is satisfied with and approves the matter the subject of the arbitration.

Clause 8B(6) provides that the Company shall implement the approved proposals in accordance with their terms.

Clause 8B(7) makes clear that the Minister may during the implementation of approved proposals approve variations to those proposals.

Clause 8C (Notification of possible proposals)

Clause 8C(1) provides that if the Company, upon completion of a pre-feasibility study in respect of any matter that would require the submission and approval of proposals pursuant to the Principal Agreement, and such proposals will have as their purpose, or one of their purposes, the integrated use of works installations or facilities as contemplated by clause 10L for the matter to be undertaken, intends to further consider the matter with a view to possibly submitting such proposals it shall promptly notify the Minister in writing giving reasonable particulars of the relevant matter.

Clause 8C(2) provides that within one (1) month after receiving the notification the Minister may inform the Company of the Minister's views of the matter at that stage.

Clause 8C(3) provides that if the Company is informed of the Minister's views, it shall take them into account in deciding whether or not to proceed with its consideration of the matter and the submission of proposals.

Clause 8C(4) provides that 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 the Principal Agreement or otherwise under the laws from time to time of Western Australia.

Clause 8C(5)(a) provides that clause 8C(5) applies where the Company has settled upon a single preferred development a purpose of which is the integrated use of works installations or facilities (as defined in clause 10L(7)) as contemplated by clause 10L.

Clause 8C(5)(b) provides that for the purpose of clause 8C(5) "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 State, including without limitation, infrastructure development in the State;

(ii) be contrary to or inconsistent with the planning and development policies and objectives of the State;

(iii) detrimentally affect the rights and interests of third parties; or

(iv) detrimentally affect access to and use by others of the lands the subject of any grant or proposed grant to the Company.

Clause 8C(5)(c) provides that at any time prior to submission of proposals the Company may give to the Minister notice of its single preferred development and request the Minister to confirm that the Minister has no public interest concerns with that single preferred development.

Clause 8C(5)(d) provides that the Company shall furnish to the Minister with its notice reasonable particulars of the single preferred development including, without limitation:

(i) as to the matters that would be required to be addressed in submitted proposals;

(ii) its progress in undertaking any feasibility or other studies or matters to be completed before submission of proposals;

(iii) its timetable for obtaining required statutory and other approvals in relation to the submission and approval of proposals;

(iv) its tenure requirements.

Clause 8C(5)(e) provides that if so required by the Minister, the Company will provide to the Minister such further information regarding the single preferred development as the Minister may require from time to time for the purpose of considering the Company's request and also consult with the Minister or representatives or officers of the State in regard to the single preferred development.

Clause 8C(5)(f) provides that within 2 months after receiving the notice (or if the Minister requests further information, within 2 months after the provision of that information) the Minister must advise the Company:

(i) that the Minister has no public interest concerns with the single preferred development; or

(ii) that he is not then in a position to advise that he has no public interest concerns with the single preferred development and the Minister's reasons in that regard.

Clause 8C(5)(g) provides that if the Minister gives the advice mentioned in paragraph (f)(ii) the Company may, should it 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 to it.

Subclause (3) amends clause 9(1)(b) (Obligations of State under Company's proposals)

Paragraph (i) extends the State's obligations under clause 9(1)(b) (to grant tenure and provide services and facilities to the Company) to include proposals approved or determined under clauses 8B, 10I or 10K (ie in addition to clauses 6 and 7).

Paragraph (ii) extends the State's obligations under clause 9(1)(b) in relation to the grant of tenure (following approval or determination of proposals) to:

- include an obligation to cause tenure to be granted where the grant is by another authority;

- extend to tenure to be granted pursuant to the *Port Authorities Act 1999* (within the Port of Dampier in the context of the Principal Agreement);

- include tenure the Company reasonably requires for its "works installations or facilities" (the new broad phrase in clause 10L(7), rather than the former term "works").

Paragraph (ii) also amends clause 9(1)(b) to recognise that tenure granted pursuant to the *Port Authorities Act 1999* will be on the basis of commercial rentals and fees.

Paragraph (iii) deletes from the proviso to clause 9(1)(b) the reference to iron ore concentration products as such products now fall within the phrase "iron ore".

Subclause (4) inserts a new clause 9(3a) (Native Title)

Subclause (4) inserts a new clause 9(3a) which provides that clause 9(1) [which includes the State's obligations in relation to the granting of tenure to the Company in accordance with approved or determined proposals and tenure reasonably required by the Company on or near the mineral lease as approved by the Minister] 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.

Subclause (5) deletes clause 10(2)(e) and substitutes the following paragraphs (e) and (ea) (Shipment of and Price of Ore and Designated Purchaser)

New clause 10(2)(e) obliges the Company to:

- ship, or procure the shipment of [this new extension to "procure the shipment of" recognises that, for example, a third party purchaser of the ore may now be shipping the ore], all iron ore mined from the mineral lease, all iron ore mined from the mining lease and all iron ore referred to in clause 10(2)(ja) [iron ore mined by or supplied to the Company from the mining lease granted pursuant to the Channar State Agreement] and (in each case) sold:

  (i) from the Company's wharf (as defined in clause 1 to extend to any additional wharf constructed by the Company pursuant to the Principal Agreement);

  (ii) from any other wharf in a loading port which wharf has been constructed under an Integration Agreement [this reflects the new capacity for the Company to use wharfs in a loading port constructed under an Integration Agreement]; or

  (iii) with the Minister's approval given before submission of proposals in that regard, from any other wharf in a loading port which wharf has been constructed under another Government agreement (excluding the Integration Agreements) [this reflects the new capacity, subject to relevant approvals, for the Company to use a wharf in a loading port constructed under another Government agreement]; and

- use its best endeavours to obtain for such iron ore the best price possible having regard to market conditions from time to time prevailing,

provided that:

(A) paragraph (e) does not apply to iron ore used for secondary processing or for the manufacture of iron or steel in any part of the Western Australia lying north of the twenty sixth parallel of latitude [this is an existing proviso]; and

(B) iron ore from the mineral lease or the mining lease may be sold by the Company prior to or at the time of the shipment under the Principal 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;

(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;

(iii) there is included in the return lodged pursuant to subclause (2)(k) particulars of the transaction in which the ore sold at cost was subsequently purchased in the relevant international seaborne iron ore market by an arm's length purchaser specifying the purchaser, the seller, the price and the date when the sale was agreed between the arm's length purchaser and the seller; and

(iv) the arm's length purchaser referred to in (iii) above is not then a designated purchaser as referred to in clause 10(2)(ea). [see commentary below regarding new paragraph (ea)].

Paragraph (B) of clause 10(2)(e) is a new proviso/permission that contemplates that the Company may sell iron ore at cost to a third party prior to or at the time of shipment under the Principal Agreement provided that the conditions set out in (i) to (iv) above are satisfied in relation the sale. These conditions are intended to ensure that in the standard case of ore initially sold at cost, the State will be able to assess and be paid royalty on an arm's length price payable by a purchaser that is an independent participant in the relevant international seaborne iron ore market.

New subclause 10(2)(ea) provides a mechanism by which the Minister may query whether a sale was to an independent participant in the relevant international seaborne iron ore market and ultimately determine whether the purchaser should be regarded as an independent participant.

Paragraph (ea) provides that if required by notice in writing from the Minister, the Company is to provide the Minister within 30 days after receiving the notice with evidence that the transaction as included in the royalty return pursuant to clause 10(2)(e)(B)(iii) was a sale in the relevant international seaborne iron ore market to an independent participant in that market. If no evidence is provided or the Minister is not so satisfied on the evidence provided or other information obtained, the Minister may by notice to the Company designate the purchaser to be a designated purchaser and that designation will remain in force unless and until lifted by further notice from the Minister to the Company. The Company is precluded from entering into further cost sales (ie no permission under clause 10(2)(e)(B) to do so) if the ore the subject of such sales is proposed to be purchased by the designated purchaser.

Paragraph (ea) further provides for the avoidance of doubt that the parties acknowledge that marketing entities forming part of the corporate group including

the Company (or part of the parallel corporate group if the Company is part of a dual-listed corporate structure) are not independent participants.

It should also be noted that the definitions in clause 1 of the phrases "agreed or determined" and "f.o.b. value" are also amended to provide specific limbs dealing with the case of iron ore initially sold at cost pursuant to clause 10(2)(e)(B).

New paragraph (ii) of the definition of "f.o.b. value" provides that the f.o.b. value for royalty calculation purposes in relation to iron ore initially sold at cost pursuant to clause 10(2)(e)(B) is the price payable for the iron ore by the arm's length purchaser disclosed in the royalty return lodged in accordance with clause 10(2)(e)(B)(iii). Where the Minister considers that the price so payable does not represent a fair or reasonable market value for that type of iron ore assessed on an arm's length basis in the international seaborne iron ore market, the "agreed or determined" mechanism for determining such a fair and reasonable market value applies.

New paragraph (i) of the definition of "agreed or determined" provides that the Minister and the Company in agreeing or, failing agreement, the Minister determining a fair and reasonable market value on an arm's length basis shall have regard to, in the case of iron ore initially sold at cost pursuant to clause 10(2)(e)(B), 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 disclosed in the royalty return lodged in accordance with clause 10(2)(e)(B)(iii) and the seller in relation to the type of sale and the relevant international seaborne market into which such iron ore was sold.

Subclause (6) amends clause 10(2)(j) (Royalties)

Paragraph (i) amends clause 10(2)(j)(iii) to read that royalty is payable on beneficiated ore (rather than iron ore concentration products, which phrase is deleted). [reflects the replacement of "iron ore concentration products" with beneficiated ore"].

Paragraph (ii) makes consequential amendments to the paragraph following 10(2)(j)(iii) [dealing with apportionment of iron ore from the mineral lease and/or the mining lease used in the production of beneficiated ore for royalty calculation purposes] to similarly replace references to "iron ore concentration products" with the new standardised phrase of "beneficiated ore".

Paragraph (iii) inserts at the end of clause 10(2)(j) the following principles regarding currency conversion and GST relevant to the calculation of royalties:

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

and in the absence of such request as determined by the Minister to be a reasonable rate for the purpose.

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

Subclause (7) amends clause 10(2)(k) (Payment of Royalties)

Paragraph (a) extends the information to be provided by the Company in its quarterly royalty returns to include such other information 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 clauses 10(2)(j) and (ja).

Paragraph (b) inserts the basis for provisional royalties for iron ore initially sold at cost. It provides that if at the time royalty is payable to the Minister the f.o.b. value is not then finally calculated, agreed or determined the Company shall pay royalty to the Minister in the case of iron ore initially sold at cost pursuant to clause 10(2)(e)(B) at the price notified in the royalty return in accordance with clause 10(2)(e)(B)(iii).

Subclause (8) amends clause 10(2)(n) (Inspection)

Paragraph (a) extends the information of the Company that may be inspected by the Minister or his nominee for royalty calculation purposes to include books, records, accounts, documents (including contracts), data and information of the Company stored by any means relating to the shipment or sale of iron ore.

Paragraph (b) allows the Minister or his nominee to take copies or extracts of the information in whatever form.

Paragraph (c) extends the Company's obligations to provide the Minister with access etc for inspection of records etc and information (including prices) required by the Minister for the purpose of agreeing or determining f.o.b. value to iron ore "the subject of royalty" under the Principal Agreement.

Subclause (9) inserts a new clause 10(2)(o)

New clause 10(2)(j)(o) provides that the Company shall cause to be produced in Perth all books, records, accounts, documents (including contracts), data and information of the kind referred to in clause 10(2)(n) to enable the exercise of rights by the Minister or the Minister's nominee under that paragraph, 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.

Subclause (10) amends clause 10(4) (Blending of Iron Ore)

Paragraph (a) substitutes a new clause 10(4)(a) providing that the Company may blend iron ore mined from the mineral lease and the mining lease or either of them with any:

(i) iron ore mined from a mining tenement or other mining title granted under, or pursuant to, an Integration Agreement;

(ii) iron ore mined from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of Western Australia 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);

(iii) with the prior approval of the Minister, iron ore mined in, or proximate to the Pilbara region of Western Australia under a Government agreement (excluding an Integration Agreement);

(iv) with the prior approval of the Minister, iron ore mined by a third party from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of the said State (excluding under a Government agreement) which has been purchased by an Integration Proponent from the third party.

Paragraph (b) is amended to provide that the authority to blend is subject to the Minister being 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 clause 10(4)(a).

Subclause (11) amends clause 10A (Additional Proposals for townsites)

Clause 10A is amended to provide by new clause 10A(3a) that after the variation date (as defined in clause 1), the provisions of clauses 8A(2) to (5) and of 8B shall mutatis mutandis apply to proposals submitted pursuant to clause 10A and consequential amendments (including deletion of clause 10A(4)) are made.

Subclauses (12) and (13) amend clause 10I(10) and 10I(11) respectively (Brockman No.2 Detritals Deposit)

Subclause (12) amends clause 10I(10) to provide that any proposals submitted by the Company to significantly modify expand or otherwise vary its activities at the Brockman No. 2 Detritals Deposit shall be subject to new clauses 8A(2) to (5) and 8B.

Subclause (11) amends clause 10I(11) to describe proposals referred to in clause 10I(2)(k) that have been approved or determined “environmental

approved proposals" and further provides that if the Minister requires additional proposals to be submitted for the protection of the environment then clause 8B and clause 10I(10) will apply mutatis mutandis.

Subclause (14) amends clause 10J(1) (Additional areas)

Paragraphs (a) and (b) amend clause 10J(1) to provide that the total area of the mineral lease, the mining lease, any land that may be included in the mineral lease or mining lease pursuant to clauses 10F, 10H, 10I or 10K and of any other mineral lease or mining lease granted under or pursuant to the Principal Agreement (as aggregated) shall not at any time exceed 777 square kilometres (formerly 300 square miles limit).

Paragraph (c) clarifies that inclusion of an additional land in the mineral lease shall be by endorsement.

Subclause (15) inserts a new clause 10J(1a) (Additional areas)

New clause 10J(1a) provides that the Minister may approve from time to time, on application by the Company, for the total area limit referred to in clause 10J(1) to be increased up to 1,000 square kilometres.

Subclauses (16) amends clause 10J(3) and subclause (17) deletes clause 10J(4) (Additional areas)

The effect of these amendments is that proposals relating to mining of iron ore or other activities (not including exploration and testing) on areas added to the mineral lease shall be submitted as additional proposals pursuant to clause 8A.

Subclause (18) inserts new clauses 10K(4)(d), (e) and (f) (Wittenoom mining areas)

Clause 10K(4) applies the provisions of clauses 10I(2) to (15) to proposals submitted by the Company under clause 10K(3) with respect to the mining of iron ore within the Wittenoom mining areas. The application of the clause 10I process is qualified by new paragraphs (d), (e) and (f) so that:

- the Minister could refuse to approve a submitted proposal as provided in clause 8B(1);
- any such refusal will require the Minister to afford the Company a full opportunity to consult with him and to submit new or revised proposals; and
- a decision of the Minister to refuse to approve a submitted proposal shall not be referable to arbitration.

Subclause (19) inserts new clauses 10K(8)(c)(c),(d), (e) and (f) (Wittenoom mining areas)

Clause 10K(8)(c) applies the provisions of clauses 10I(2) to (15) to proposals submitted by the Company under clause 10K(8) with respect to the mining of iron ore within the areas added to the mining lease pursuant to clause 10K(8)(a). The application of the clause 10I process is qualified by new paragraphs (c), (d) and (e) so that:

- the Minister could refuse to approve a submitted proposal as provided in clause 8B(1);
- any such refusal will require the Minister to afford the Company a full opportunity to consult with him and to submit new or revised proposals; and
- a decision of the Minister to refuse to approve a submitted proposal shall not be referable to arbitration.

Subclause (20) inserts new clause 10L (Integrated Use of works, installations or facilities under the Integration Agreements)

Clause 10L is the key provision dealing with the scope and extent of the Company's rights in relation to integrated use of existing and new works, installations or facilities.

Clause 10L(1) provides that subject to clause 10L(2) to (7) and to the other provisions of the Principal Agreement, the Company may during the continuance of the Principal Agreement:

<u>Use by Company of existing or new works installations or facilities under the Principal Agreement, Integration Agreements and other Government agreements</u>

(a) use any existing or new works installations or facilities constructed or held:

(i) under the Principal Agreement; or

(ii) under any other Integration Agreement which are made available for such use and during the continuance of such Integration Agreement; or

(iii) with the approval of the Minister, under a Government agreement (excluding an Integration Agreement) which are made available for such use and during the continuance of that agreement,

(wholly or in part) in the activities of the Company carried on by it pursuant to the Principal 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 10(4)) of:

(A) iron ore mined from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of Western Australia 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 Western Australia 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 Western Australia (excluding under a Government agreement) which has been purchased by the Company from the third party;

(D) iron ore mined under an Integration Agreement;

Company making existing or new works installations or facilities available for use by another Integration Proponent for its activities under its Integration Agreement

(b) make any existing or new works installations or facilities constructed or held under the Principal 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:

(A) iron ore mined from a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of Western Australia 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 (as defined in that Integration Agreement), iron ore mined in, or proximate to, the

Pilbara region of Western Australia under a Government agreement (excluding an Integration Agreement);

(C) 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 Western Australia (excluding under a Government agreement) which has been purchased by the Company from the third party;

(D) iron ore mined under an Integration Agreement;

Make existing or new works installations or facilities available for use by others (Related Entity iron ore mining operations and other Government agreement iron ore mining operations)

(c) make any existing or new works installations or facilities constructed or held under the Principal 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 Western Australia, 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 Western Australia;

Connection of existing or new works installations or facilities to existing or new works installations or facilities under another Integration Agreement

(d) subject to subclause (2), under the Principal 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 the Principal Agreement to any existing or new works installations or facilities constructed or held under another Integration Agreement;

Right of Company to construct or expand etc works installation or facilities for the purposes of clauses 10(L)(1)(a), (b), (c) or (d)

(e) subject to subclause (2), under the Principal 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 and facilities constructed or held under the Principal Agreement;

Right of Company to allow a railway or spur line (not held under an Integration Agreement) to be connected to a railway or other works installations or facilities held under the Principal 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 the Principal 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

Right of Company to allow an electricity transmission line (not held under an Integration Agreement) to be connected to an electricity transmission line held under the Principal Agreement

(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.

Clause 10L(2) regulates the right of the Company to connect and construct and expand works installations and facilities as described in clauses 10L(1)(d) and (e).

Proposals required to be submitted by Company and approved or determined for connection and new or expanded works installation or facilities

Clause 10(2)(a) provides that a connection referred to in clause (1)(d) [connection of existing or new works installations or facilities to existing or new works installations or facilities under another Integration Agreement] or construction, expansion, modification or other variation referred to in subclause (1)(e) [right of Company to construct or expand etc works installation or facilities for the purposes of clauses 10(L)(1)(a), (b), (c) or (d)] by the Company shall, to the extent not already authorised under the Principal Agreement as at the variation date (as defined), be regarded as a significant modification expansion or other variation of the Company's activities carried on by it pursuant to this Agreement and may only be made in accordance with proposals submitted and

approved or determined under this Agreement in accordance with clauses 8A and 8B or clauses 10A, 10I, 10K or 10N as the case may require and otherwise in compliance with the provisions of the Principal Agreement and the laws from time to time of Western Australia.

Clause 10L(2)(a) clarifies that any use or making available for use contemplated by clauses 10L(1)(a), (1)(b) or (1)(c) shall not, otherwise than as required by clause 10L(2)(a), require the submission and approval of further proposals under the Principal Agreement.

Restrictions on Company's rights under clause 10L(1)

Clause 10L(2)(b) provides that the Company shall not be entitled to:

(i) submit proposals to construct any new port or to establish harbour or port works installations or facilities, or to expand modify or otherwise vary harbour or works installations or facilities otherwise than at or near the town of Dampier within the boundaries of the Port of Dampier;

(ii) generate and supply power, take and supply water or dispose of water otherwise than in accordance with the other clauses of the Principal Agreement and subject to any restrictions contained in those clauses;

(iii) 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 the Principal Agreement, immediately before the variation date, did not permit or contemplate the Company constructing, establishing or making as the case may be otherwise than for integration use as contemplated by clauses 10L(1)(a), (1)(b) or (1)(c) or as permitted by clause 10N;

(iv) submit proposals to make a connection as referred to in clause 10L(1)(d) or a construction, expansion, modification or other variation as referred to in clause 10L(1)(e) otherwise than on tenure granted under or pursuant to the Principal Agreement from time to time or held pursuant to the Principal Agreement from time to time;

(v) submit proposals to make a connection referred to in clause 10L(1)(d) or a construction, expansion, modification or other variation as referred to in 10L(1)(e) for the purpose of use as contemplated by clause 10L(1)(c)(i) [ie use in connection with a Related Entity's iron ore mining operations under the *Mining Act 1978*], if in the reasonable opinion of the Minister the activity which is the subject of

the proposals would give to the holder or holders of the relevant Mining Act 1978 mining lease the benefit of rights or powers granted to the Company under the Principal Agreement, over and above the right of access to and use of the relevant works, installations or facilities;

(vi) submit proposals to make a connection as referred to in clause 10L(1)(d) or a construction, expansion, modification or other variation as referred to in clause 10L(1)(e) for the purpose of use as contemplated by subclause (1)(c) [ie use in connection with a Related Entity's iron ore mining operations under the *Mining Act 1978* or iron ore mining operations under another Government agreement (other than an Integration Agreement)] 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 the Principal Agreement or any leases, licences, easements or other titles under or pursuant to this Agreement for any purpose referred to in this clause.

Minister may defer consideration of a proposal until corresponding proposals submitted under another Integration Agreement

Clause 10L(2)(c) provides that the Minister may defer consideration of, or a decision upon, a proposal submitted by the Company for a connection as referred to in clause 10L(1)(d) or a construction, expansion, modification or other variation as referred to in clause 10L(1)(e), for the purpose of use or making available for use as referred to in clauses 10L(1)(a) or (1)(b), until relevant corresponding proposals under the relevant Integration Agreement have been submitted and those proposals can be approved under that Integration Agreement concurrently with the Minister's approval under this Agreement of the Company's proposal.

Confirmation of status of Related Entity

Clause 10L(3) provides that any use or making available for use as referred to in clause 10L(1), or submission of additional proposals as referred to in clause 10L(2), in respect of a Related Entity shall be subject to the Company first confirming with the Minister that the Minister is satisfied that the relevant company is a Related Entity.

Prior notice to be given to Minister of any significant change proposed as to use of works, installations or facilities and Minister to be informed of proposed rail and electricity transmission line connections

Clause 10L(4) provides that the Company shall give the Minister prior written notice of any significant change (other than a temporary one for maintenance or to respond to an emergency) proposed in its use, or in it making available for use, works installations or facilities as referred to in clause 10L:

- from that authorised under the Principal Agreement immediately before the variation date; and
- subsequently from that previously notified to the Minister under clause 10L(4),

as soon as practicable before such change occurs.

The Company shall also keep the Minister fully informed with respect to any proposed connection as referred to in clause 10L(1)(f) or (1)(g) or request of the Company for such connection to be allowed.

Activities of each Integration Proponent to be the subject of proposals approved under its Integration Agreement

Clause 10L(5) provides that nothing in the Principal Agreement shall be construed to:

- exempt another Integration Proponent from complying with, or the application of, the provisions of its Integration Agreement; or
- restrict the Company's rights under clause 20 (Assignment).

It further clarifies that the approval of proposals under the Principal Agreement shall not be construed as authorising another Integration Proponent to undertake any activities under the Principal Agreement or under another Integration Agreement.

Company to comply with provisions of Principal Agreement generally

Clause 10L(6) provides that nothing in clause 10L shall be construed to exempt the Company from complying with, or the application of, the other provisions of the Principal Agreement and of relevant laws from time to time of the Western Australia.

Definition of “works installations or facilities”

Clause 10L(7) provides that for the purpose of clause 10L(7)"works installations or facilities" means any:

- harbour or port works installations or facilities including, without limitation, stockpiles, reclaimers, conveyors and wharves;
- railway or rail spur lines;

- 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;
- train loading and unloading works installations or facilities;
- conveyors;
- private roads;
- mine aerodrome and associated aerodrome works installations and facilities;
- iron ore mining, crushing, screening, beneficiation or other processing works installations or facilities;
- mine administration buildings including, without limitation, offices, workshops and medical facilities;
- borrow pits;
- accommodation and ancillary facilities including, without limitation, construction camps and townsites constructed pursuant to and held under any Integration Agreement;
- water, sewerage, electricity, gas and telecommunications works installations and facilities including, without limitation, pipelines, transmission lines and cables; and
- any other works installations or facilities approved of by the Minister for the purpose of clause 10L(7).

Subclause (20) also inserts new clause 10M (Transfer of rights to shared works installations or facilities)

Clause 10M provides a mechanism by which the Company may maintain its use of (and secure or obtain tenure for) infrastructure constructed or held under another Integration Agreement where the operational need for that infrastructure under the other Integration Agreement has ceased (due to cessation of mining operations under the other Integration Agreement) or for some other reason acceptable to the Minister.

Clause 10M(1) defines the phrase "Relevant Infrastructure" for the purposes of clause 10M as any works installations or facilities (as defined in clause 10L(7)):

- constructed or held under another Integration Agreement;

- which the Company is using in its activities pursuant to the Principal Agreement;

- which the Minister is satisfied (after consulting with the Company and the Integration Proponent for that other Integration Agreement):

    (i) are no longer required by that other Integration Proponent to carry on its activities pursuant to its Integration Agreement

because of the cessation of the Integration Proponent's mining operations in respect of which such Relevant Infrastructure was constructed or held or because of any other reason acceptable to the Minister; and

(ii) are required by the Company to continue to carry on its activities pursuant to the Principal Agreement; and

- in respect of which that other Integration Proponent has notified the Minister it consents to the Company submitting proposals as referred to in clause 10M(2).

Clause 10M(2) provides that the Company may as an additional proposal pursuant to clause 8A propose:

- that it be granted a lease licence or other title over the Relevant Infrastructure pursuant to the Principal 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

- 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 the Principal Agreement (to be held by the Company) 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 8B shall mutatis mutandis apply to any additional proposal contemplated by clause 10M(2). In addition the Company acknowledges that the Minister may require variations of the other Integration Agreement and/or proposals under it or of the Principal Agreement in order to give effect to the matters contemplated by this clause.

Clause 10M(3) provides that clause 10M does not apply in the event the State gives notice of default to the Company pursuant to clause 11(l) (Default) of the Principal Agreement and while such notice remains unsatisfied**.**

Subclause (20) also inserts clause 10N (Miscellaneous Licences for Railways)

This clause provides for a new and general capacity, subject to compliance with clause 10N, for the Company to construct and operate new railways and railway spur lines (including associated infrastructure) on a modified miscellaneous licence (ie a Special Railway Licence) in, or proximate to, the Pilbara region of Western Australia (but outside the boundaries of ports) for the transport of iron ore, freight goods and other products.

This clause is based on and largely replicates the process for the provision of rights to construct and operate a new railway or rail spur contained in the agreement recently ratified by the *Railway (Roy Hill Infrastructure Pty Ltd) Agreement Act 2010*.

Clause 10N(1) (Definitions) sets out definitions used in clause 10N (specifically definitions for the following terms: Additional Infrastructure, LAA, Lateral Access Roads, Lateral Access Road Licence, Port, Private Roads, Rail Safety Act, Railway, Railway Corridor, Railway Operation, Railway spur line, Railway Operation Date, Railway spur line Operation Date, Special Railway Licence, Train Loading Infrastructure and Train Unloading Infrastructure).

Clause 10N(2) ((Company to obtain prior Ministerial in-principle approval) requires the Company to give notice to the Minister if it desires to develop a Railway and to furnish with that notice an outline of its plan. The Minister is required to respond within one month of receiving the notice advising the Company whether or not he approves in-principle the proposed plan and is to afford the Company full opportunity to consult with him. Any in-principle approval of the Minister shall lapse if the Company fails to submit detailed proposals in respect of the plan within 18 months of the giving of the in-principle approval.

Clause 10N(3) (Railway Corridor) provides that if the Minister gives in-principle approval to a plan to develop a Railway in accordance with clause 10N(2) the Company is to consult with the Minister to seek the agreement of the Minister as to:

- where the Railway will begin and end;
- a route for the Railway and access roads within the Railway Corridor (including land for that route, Additional Infrastructure (if any) and areas required for taking stone, sand, clay and gravel, temporary accommodation facilities and water bores;
- the nature and capacity of any Additional Infrastructure; and
- the routes and land required for Lateral Access Roads.

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).

The Company is required to liaise with all relevant title holders to obtain in a form and substance acceptable to the Minister all unconditional and irrevocable consents of each such title holder, and all statutory consents, required for the grant of the Special Railway Licence and any Lateral Access Road Licences.

The consents referred to in clause 10N(3)(c) are required by clause 10N(4)(e) to be submitted to the Minister together with the Company's proposals for the Railway under clause 10N(4).

Clause 10N(4) (Company to submit proposals for Railway) provides for the Company, subject to the *Environmental Protection Act 1986* (WA), the provisions of the Principal Agreement, agreement at the time subsisting in relation to the matters required by clause 10N(3)(a), to submit detailed proposals for the Railway by the latest date applying under clause 10N(2)(c). Clause 10N(4)(a) sets out the matters to be covered by such proposals.

The proposals are to be consistent with the matters agreed pursuant to clause 10N(3)(a).

The 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.

The Company is to submit details 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.

At the time the Company submits the last of its proposals it shall to furnish evidence of all accreditations under the *Rail Safety Act 1998* (WA) required for the construction of the Railway and the written consents referred to in clause 10N(3)(c).

The provisions of clause 8B apply mutatis mutandis to consideration by the Minister of the proposals submitted under clause 10N(4).

Clause 10N(5) (Additional Railway Proposals) provides that if during the currency of a Special Railway Licence the Company desires to construct a railway spur line, or to significantly modify, expand or otherwise vary its approved activities within the Special Railway Licence area, it shall give notice of such desire to the Minister and furnish an outline of its proposals.

If the notice relates to a Railway spur line, or to the construction of Train Loading Infrastructure or Train Unloading Infrastructure outside the then Railway Corridor,

the Minister is required within one month of the notice to advise the Company whether or not he approves in-principle the proposed construction.

If the Minister gives in-principle approval in that regard clause 10N(3) (ministerial agreement) applies mutatis mutandis prior to the submission of such proposals.

The Company, subject to the *Environmental Protection Act 1986* (WA), the provisions of the Principal Agreement, the agreement at the time subsisting in relation to the matters required by clause 10N(3)(a), is required to submit within a reasonable timeframe determined by the Minister detailed proposals in respect of the proposed Railway spur line, Train Loading Infrastructure, Train Unloading Infrastructure or other proposed modification, expansion or variation of its activities including such of the matters mentioned in clause 10N(4)(a) as the Minister may require.

The provisions of clause 10N(4) (with timing modifications) and clause 8B apply mutatis mutandis to proposals submitted under clause 10N(5).

Clause 10N(6)(Grant of Tenure)

Clause 10N(6)(a) provides for the terms of and grant of Special Railway Licences (paragraph (a)(i)) and Lateral Access Road Licences (both in respect of a railway (paragraph (a)(ii) and in respect of a spur line (paragraph (b)).

The form of the Special Railway Licence is set out in the new Third Schedule to the Principal Agreement.

The form of a Lateral Access Road Licence relating to the construction of a railway is set out in the new Fourth Schedule to the Principal Agreement.

The form of a Lateral Access Road Licence relating to the construction of a spur line is set out in the new Fifth Schedule to the Principal Agreement.

Clause 10N(6)(c) provides that, subject to the earlier determination of the Principal Agreement, the term of a Special Railway Licence is 50 years.

Clause 10N(6)(d) provides that, subject to the earlier determination of the Principal Agreement, the term of a Lateral Access Road Licence is 4 years.

Clause 10N(6)(e) precludes the surrender of the Special Railway Licence or any Lateral Access Road Licence (except as required by the terms of the Special Railway Licence) without the prior consent of the Minister.

Clause 10N(6)(f) provides for the Company to take in accordance with approved proposals stone, sand, clay and gravel from the Rail Corridor for the construction of the railway, including any spur lines, and that no royalty shall be payable under the *Mining Act 1978* (WA) for the taking of that material.

Clause 10N(6)(g) sets out for the purposes of the Principal Agreement specific modifications of the *Mining Act 1978* (WA) and *Mining Regulations 1981* (WA) to facilitate the grant of a Special Railway Licence and any Lateral Access Road Licences.

Clause 10N(h) and (i) provide for land approved for the construction of a spur line, Train Loading Infrastructure or Train Unloading Infrastructure that is then outside the Rail Corridor to be included in the Special Railway Licence by endorsement.

Clause 10N(6)(j) provides that clause 10N(6) does not operate so as to require the State to cause a Special Railway Licence or a Lateral Access Road Licence to be granted or for any land to be included by endorsement until all processes necessary under any laws relating to native title have been completed.

Clause 10N(7) (Construction and operation of Railway)

This clause deals with how the SRL Railway is to be constructed and the Railway operated and sets out provisions relating to Private Roads.

Clause 10N(7)(a) obliges the Company, subject to and in accordance with approved proposals and other matters (including the *Rail Safety Act 1998* (WA)), to construct the railway, associated Additional Infrastructure and access roads in a proper and workmanlike manner and in accordance with recognised standards for railways of a similar nature operating under similar conditions. This paragraph also obliges the Company to construct sidings, crossings, bridges, protective/safety devises (such as lights and boom gates where the railway crosses major roads or other railways).

Clause 10N(7)(b) obliges the Company to keep the railway in an operable state, to ensure that the railway is operated in a safe and proper manner in compliance with all applicable laws (in particular, the Company is to ensure compliance with obligations under the *Rail Safety Act 1998* (WA)). Nothing in the Principal Agreement shall be construed to exempt the Company or any other person from compliance with the *Rail Safety Act 1998* (WA).

Clause 10N(7)(c) 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.

Clause 10N(7)(d) provides, subject to clause 10M, that the Company shall at all times be the holder of the Special Railway Licence and Lateral Access Road Licences and (without limiting clause 11(j)) shall own, manage and control the use of each railway the subject of a Special Railway Licence.

Clause 10N(7)(e) provides that a 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 and also 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.

Clause 10N(7)(f) provides that the Company's ownership of a railway constructed pursuant to clause 10N does not give it an interest in the land underlying it.

Clause 10N(7)(g) provides that the Company shall not without the prior consent of the Minister dismantle, sell or otherwise dispose of any part of a railway constructed pursuant to clause 10N or permit this to occur, other than for purposes of maintenance, repair, upgrade or renewal.

Clause 10N(7)(h) obliges the Company to construct any Additional Infrastructure, access roads, Lateral Access Roads in accordance with approved proposals and in a proper workmanlike manner.

Clause 10N(7)(i) obliges the Company while the holder of a Special Railway Licence to keep and maintain the Railway, access roads and Additional Infrastructure the subject of the licence and all other infrastructure and equipment the subject of the Principal Agreement used in connection with the railway, access roads and Additional Infrastructure.

Clause 10N(7)(j) obliges the Company to be responsible for the construction and maintenance of all Private Roads (as defined) and to ensure safe conduct on those roads.

Clause 10N(7)(k) provides that the existing provisions of clauses 10(2)(a) and (3) regarding third party access as well as the proviso to clause 10(2)(a) shall apply mutatis mutandis to any railway or spur line constructed pursuant to clause 10N (except that the Company is not obliged to transport passengers upon such railway or spur line).

Clause 10N(8) (Aboriginal Heritage Act 1972) modifies the *Aboriginal Heritage Act 1972* (WA) for the purposes of the Agreement to enable the Company to obtain clearances under section 18 of that Act.

Clause 10N(9) (Taking land for the purposes of Clause 10N) empowers the State to take land, other than any part of a Port (as defined) or land the taking of which would be contrary to the provisions of a Government agreement, for the relevant Railway Operation as if for a public work under Parts 9 and 10 of the *Land Administration Act 1997* (WA), if the Company considers it necessary for the relevant Railway Operation and the Minister determines it is appropriate to be taken.

Clause 10N(9)(b) modifies the application of Parts 9 and 10 of the *Land Administration Act 1997* (WA) for the purposes of clause 10N(9).

Clause 10N(9)(c) provides that the Company shall pay to the State the cost of any land taken at the request of the Company including but not limited to any compensation payable to a holder of native title rights or interests.

Clause 10N(10) (Notification of Railway Operation Date)
This clause obliges the Company to keep the Minister informed of:

- the progress of construction and likely completion and commissioning of a railway or spur line; and
- the likely railway operation date for the railway or spur line; and

The Company is also to notify the Minister of the first carriage of iron ore, freight goods or other products on the relevant railway or spur line.

Subclause (21) amends clause 11(a) (in relation to Power Supplies)

Clause 11(a) is amended to by inserting a new paragraph (v) providing that the Company may subject to and in accordance with proposals approved or determined under the Principal Agreement in relation to electrical energy (but not water), the Company for the purpose of supply to:

- an Integration Proponent for the purposes of activities under its Integration Agreement;

- the holders from time to time of a Mining Act 1978 mining lease located in, or proximate to, the Pilbara region of Western Australia 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

- with the prior approval of the Minister, the proponent under a Government agreement (excluding an Integration Agreement) for the mining of iron ore in, or proximate to, the Pilbara region of Western Australia for the purpose of its or operations under that agreement,

may generate transmit and supply and charge for electrical energy and in that regard the Company has the powers of a supply authority.

Subclauses (22), (23), (24), (26) and (27) amend clause 11(d)(l) (Effect of Determination of Agreement), clause 11(e) (Effect of Determination of

Lease), clause 11(l) (Default), 20A(a) (Assignment) and clause 21 (Variation) respectively

Clauses 11(d)(l), 11(e) 11(l) and 21 are amended to embrace titles that may now be held pursuant to the Principal Agreement, as opposed to merely granted under or pursuant to the Principal Agreement, for consistency with and to cater for clause 10M.

Subclause (25) amends clause 19 (Indemnity)

Clause 19 is amended to include a separate indemnity providing that the Company will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any use, making available for use or other activities of the Company as referred to in clause 10L. This indemnity caters for claims relating to the broader integration uses contemplated by clause 10L.

Subclause (28) deletes clause 30 (Environmental Protection)

Clause 30 is deleted as the former provision has been moved to the end of clause 1 in new paragraph (a).

New Schedules (Form of Special Railway Licence and Lateral Access Road Licences) inserted

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NOTE: Given that the majority of the amendments made to the Iron Ore (Hamersley Range) Agreement 1963 by the Eleventh Supplementary Agreement Variation (herein "*the Hamersley Agreement 1963*") are also made in respect of the ten other State Agreements varied by this Act, the following commentary in relation to the other ten Variation Agreements will:

- **focus on significant differences between the content of each of the following Variations and the content of the Hamersley Agreement 1963; and**

- **where similar amendments are made by each of the following Variations to those made by the Hamersley Agreement 1963, the commentary will be cross-referenced to the equivalent clause of the Iron Ore (Hamersley Range) Agreement 1963, as it will be varied by the Hamersley Agreement 1963 (herein "*the Hamersley Agreement 1963*"), rather than repeat those comments.**

THIRTEENTH SCHEDULE – TWELFTH SUPPLEMENTARY AGREEMENT

IRON ORE (HAMERSLEY RANGE) AGREEMENT ACT 1968 (PARABURDOO)

VARIATION AGREEMENT

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (**the State**) and Hamersley Iron Pty Limited (**the Company**).

Recitals

A. Provides details of the State Agreement as originally approved and of past variations made to it. The State Agreement as so varied is called the Principal Agreement.

B. Advises that the parties wish to add to and vary the Principal Agreement on the terms and conditions set out in the Variation.

Clauses 1, 2 and 3 are identical to the corresponding clauses 1, 2 and 3 in the Hamersley Agreement 1963.

Clause 4

Sets out the proposed variations to the Principal Agreement.

Subclause (1) varies clause 1 definitions

The varied, deleted and new definitions are substantially the same as described in the equivalent clause 1of the Hamersley Agreement 1963.

Subclause (2) inserts new clauses 5A (Additional Proposals), 5B (Consideration of Company's proposals under clause 5A) and 5C (Notification of possible proposals). These clauses are equivalent in application to those in the corresponding clauses 8A, 8B and 8C of the Hamersley Agreement 1963.

Subclause (3) amends clause 6(2)(b) (Obligations of the State)

This clause includes references to new clauses dealing with proposals and inserts reference to the Port Authorities Act 1999 to ensure commercial rentals apply to future grants of tenure in Port Authority areas.

Subclause (4) inserts new clause 6(4a) (Lands) corresponding to clause 9(3a) in the Hamersley Agreement 1963.

Subclause (5) inserts new references in subclause 7(4) (Application of clause 10(2) of Principal Agreement) to ensure the application of provisions in the Principal Agreement also apply in this Agreement.

Subclause (6) deletes paragraph (a) of clause 7(7) (Blending of iron ore) and substitutes with new paragraphs (a) and (b) having corresponding provisions to those in clause 10(4)(a) of the Hamersley Agreement 1963.

Subclause (7) amends clause 7A to link changes in this Agreement to those in the Principal Agreement**.**

Subclause (8) inserts after clause 7A new clauses 7B (Additional Areas), 7C (Integrated Use of works, installations or facilities under the Integration Agreements), 7D (Transfer of rights to shared works installations or facilities) and 7E (Miscellaneous Licences for Railways) with similar provisions to those in the corresponding clauses 10J, 10L, 10M 10N of Hamersley Agreement 1963.

Subclause (9) inserts an additional sentence in clause 11(1) (Indemnity) which links the changes in this Agreement to clause 19 in the Principal Agreement, for the avoidance of doubt.

Subclause (10) amends clause 12 (Default) to extend the default and remedy provisions to any tenure granted or held under or pursuant to this Agreement.

Subclause (11) deletes clause 16 (Environmental Protection) as the former provision has been moved to the end of clause 1 in new paragraph (a).

Subclause (12) inserts new Third, Fourth and Fifth Schedules (Miscellaneous Licence for a Railway and Other Purposes, and a Miscellaneous Licence for a Lateral Access Road) associated with the Miscellaneous Licences for Railways provisions.

SEVENTH SCHEDULE – SIXTH VARIATION AGREEMENT

IRON ORE (ROBE RIVER) AGREEMENT ACT 1964

VARIATION AGREEMENT

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (**the State**) and Robe River Limited, Robe River Mining Co Pty. Limited, Mitsui Iron Ore Development Pty. Ltd., North Mining Limited, Nippon Steel Australia Pty. Ltd. And Sumitomo Metal Industries Australia Pty. Ltd. **(the Robe Participants**.)

Recitals

A. Provides details of the State Agreement as originally approved and of past variations made to it. The State Agreement as so varied is called the Principal Agreement.

B. Advises that the parties wish to add to and vary the Principal Agreement on the terms and conditions set out in the Variation.

Clauses 1, 2 and 3 are identical to the corresponding clauses 1, 2 and 3 in the Hamersley Agreement 1963.

Clause 4

Sets out the proposed variations to the Principal Agreement.

Subclause (1) varies clause 1 definitions

The varied, deleted and new definitions are substantially the same as in the equivalent clause 1 of the Hamersley Agreement 1963, other than for the inclusion in this Variation Agreement of the new definition:

> "pistolite fine ore" – defined to mean iron ore (not being beneficiated ore) derived from channel iron deposits that appear to be chemically precipitated sedimentary deposits comprise of a pisolitic texture of hematite grains rimmed with goethite in a goethite matrix and:
>
> (a) having a product grade loss on ignition of 8.5% or greater; and
>
> (b) which will pass through a 9.5 millimetre mesh screen.

Subclause (2) deletes clauses 7A and 7AB and inserts new clauses 7A (Additional Proposals), 7AB (Consideration of Company's proposals under

clause 7A). These clauses are equivalent in application to those in the corresponding Additional Proposals clauses 8A and 8B of the Hamersley Agreement 1963.

Subclause (3) inserts new clause 7AD (Notification of possible proposals) after 7AC. This has provisions equivalent to those in clause 8C of the Hamersley Agreement 1963.

Subclause (4) amends clause 8(1)(b) (Phase 2 – Obligations of State Mineral Lease). The provisions of this clause are similar to those in clause 9 of the Hamersley Agreement 1963, ensuring that any new tenure grants in areas administered by a Port Authority will be at commercial rentals. This clause also introduces the Marine and Harbours Act 1981 (WA) and removes the obligation for additional rentals to apply to iron concentrates and iron ore pellets, since the additional rental will apply to all iron ore that may be used to produce these products in the State.

Subclause (5) inserts new clause 8(3a) corresponding to clause 9(3a) in the Hamersley Agreement 1963.

Subclause (6) deletes clause 9(2)(e) and substitutes paragraphs (e) (Shipment of and Price of Ore) and (ea) (Designated Purchaser) with identical provisions to those in the corresponding clause 10(2) of the Hamersley Agreement 1963.

Subclause (7) deletes clause 9(2)(j) (Royalties)and substitutes a new clause 9(2)(j) with corresponding provisions to those in clause 10(2)(j) of the Hamersley Agreement 1963.

Subclause (8) amends clause 9(2)(k) (Payment of Royalties) with identical provisions to those in the corresponding clause 10(2)(k) of the Hamersley Agreement 1963.

Subclause (9) amends clause 9(2)(n) (Inspection) with similar provisions to those in the corresponding clauses 10(2)(n) and (o) of the Hamersley Agreement 1963.

Subclause (10) amends clause 9(4) (Blending of Iron Ore) by deleting the existing subclause (a) and substitutes with new subclause (a) and amends (b) with corresponding provisions to those in clause 10(4) of the Hamersley Agreement 1963.

Subclause (11) adds a new clause 9A (Additional areas) with similar provisions to those in the corresponding clause 10J of the Hamersley Agreement 1963.

Clause 9A(1)(b) also provides for an area known as the Beasley River Deposits to be included in the mineral lease upon its surrender from Mineral Lease 4SA under the Hamersley Agreement 1963, and on such conditions of the surrendered area as the Minister for Mines determines. This provision has been inserted at the request of the proponents of both the Iron Ore (Robe River) Agreement 1964 and the Hamersley Agreement 1963.

Subclause (11) also inserts new clause 9B (Integrated Use of works, installations or facilities under the Integration Agreements), new clause 9C (Transfer of rights to shared works installations or facilities) and new clause 9D (Miscellaneous Licences for Railways) with identical provisions to those in the corresponding clauses 10L, 10M and 10N of the Hamersley Agreement 1963, with the exception that the Robe Participants are not entitled to submit a proposal for a new port otherwise than within the boundaries of Port Walcott.

Subclause (12) amends clause 10(a) (Power) with corresponding provisions to those in the clause 11 of the Hamersley Agreement 1963.

Subclauses (13), (14) and (15) amend clauses 10(d) (Effect of Determination of Agreement), clause 10(e) (Effect of determination of lease) and clause 10(l) (Determination of Agreement), respectively, with equivalent provisions to those in the corresponding clauses 11(d), (e) and (l) of the Hamersley Agreement 1963.

Subclause (16) deletes clause 11A (Environmental Protection), as the former provision has been moved to the end of clause 1 in new paragraph (a).

Subclause (17) amends clause 12 (Indemnity) with identical provisions to those in the corresponding clause 19 of the Hamersley Agreement 1963.

Subclause (18) amends clause 14(1) (Variation) with identical provisions to those in the corresponding clause 21 of the Hamersley Agreement 1963.

Subclause (19) inserts new Second, Third and Fourth Schedules to provide for a Miscellaneous Licence for a Railway and Other Purposes, as well as Miscellaneous Licences for Lateral Access Roads.

FOURTH SCHEDULE – 2010 VARIATION AGREEMENT

IRON ORE (MOUNT BRUCE) AGREEMENT 1972

VARIATION AGREEMENT

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (**the State**) and Mount Bruce Mining Pty. Limited (**the Company**).

Recitals

A. Provides details of the State Agreement as originally approved and of past variations made to it. The State Agreement as so varied is called the Principal Agreement.

B. Advises that the parties wish to add to and vary the Principal Agreement on the terms and conditions set out in the Variation.

Clauses 1, 2 and 3 are identical to the corresponding clauses 1, 2 and 3 in the Hamersley Agreement 1963.

Clause 4

Sets out the proposed variations to the Principal Agreement.

Subclause (1) varies clause 1 definitions

The varied, deleted and new definitions are substantially the same as those in clause 1 of the Hamersley Agreement 1963.

Subclause (2) inserts new subclauses (4a) and (4b) (Proposals of the Company) with provisions corresponding to clauses 8A(2) and (4) of the Hamersley Agreement 1963.

Subclause (3) amends clause 5(5) (Proposals of the Company) to link the Minister's approval of any proposals to the service on him of a notice under section 45(7) of the Environmental Protection Act 1986 that such a proposal may proceed and on what conditions it may do so. It also provides that the Minister may specify such alterations to the proposals as are fair and reasonable in the particular circumstances attaching to the proposal.

Subclause (4) is a simple deletion of a heading and renumbering of the subclause.

Subclause (5) inserts new subclause (7) with provisions corresponding to those in clause 8B of the Hamersley Agreement 1963.

Subclause (6) inserts new subclause (14) requiring the Company to implement the approved proposals, and also to allow the Minister to approve variations of those proposals, if so requested by the Company, under new subclause (15).

Subclause (7) amends clause 7 (Further Obligations of State) in terms consistent with the provisions of clause 9(1)(b) of the Hamersley Agreement 1963.

Subclause (8) inserts new subclause (4a) to clause 7 having provisions identical to clause 9(3a) of the Hamersley Agreement 1963 in relation to the State's obligations to grant tenure.

Subclause (9) amends clause 11 (Additional Proposals) by including references to new relevant clauses or subclauses in the Agreement, as varied.

Subclause (10) inserts new subclauses (3) to (6) in clause 11 with provisions corresponding to those in clauses 8A(2) to 8A(5) of the Hamersley Agreement 1963.

Subclause (11) inserts new subclauses 11A (Consideration of Company's proposals under clause 11), and 11B (**Notification of possible proposals)** which are equivalent in application to those in the corresponding clauses 8B and 8C of the Hamersley Agreement 1963.

Subclause (12) deletes existing paragraph 12(1)(d) (Shipment of and price for ore) and substitutes new paragraph (d) and (da) with corresponding provisions to those in clause 10(2)(e) and (ea) of the Hamersley Agreement 1963.

Subclause (13) amends paragraph (h) of clause 12(1) (Royalties) and includes new provisions corresponding to those in clause 10(2)(j) of the Hamersley Agreement 1963.

Subclauses (14), (15) and (16) amend clause 12 in relation to access by the State to the Company's documents and records for inspection purposes, with similar provisions to those in the corresponding clause 10(2)(n) of the Hamersley Agreement 1963.

Subclause (17) inserts new clauses 20A (Blending of iron ore), 20B (Additional areas), 20C (Integrated Use of works, installations or facilities under the Integration Agreements), 20D (Transfer of rights to shared works installations or facilities) and 20E (Miscellaneous Licences for Railways) that correspond to the provisions of clauses 10(4), 10J, 10L, 10M and 10N, respectively, of the Hamersley Agreement 1963.

Subclauses (18), (19) and (20) amend clause 21 (Determination of Agreement), 22 (Effect of Determination of Agreement) and 23 (Effect of Determination of Lease) to ensure their provisions cover not only tenure and titles granted under or pursuant to the Agreement, but also such titles held pursuant to the Agreement, as varied.

Subclause (21) deletes clause 30 (Environmental Protection) as the former provision has been moved to new paragraph (a) at the end of clause 1.

Subclause (22) amends clause 41(A)(1) (Company to elect whether to produce metallised agglomerates or steel) by extending the date for the submission of proposals for the production of steel to 31 December 2012 and allows the Company to seek an extension of time prior to that date if it reasonably considers that it needs more time to develop the proposals or that such proposals would be non-viable.

Subclauses (23) and (24) amend clause 41(A)(5) and insert a new subclause (6) that enable the Company to apply to the Minister for an alternative project to be accepted in lieu of all or some part of the Company's obligations in this respect. It also allows for the obligation to be undertaken by others, including a joint venture in which the Company or a related body corporate has a majority participating interest, or by any third person acceptable to both the Minister and the Company.

Subclause (25) amends clause 42 (Indemnity) with identical provisions to clause 19 of the Hamersley Agreement 1963.

Subclauses (26) and (27) amend clauses 44 and 46 (Variation), respectively, to ensure their provisions cover not only tenure and titles granted under or pursuant to the Agreement, but also such titles held pursuant to the Agreement, as varied.

Subclause (28) inserts new Third, Fourth and Fifth Schedules (Miscellaneous Licence for a Railway and Other Purposes, and a Miscellaneous Licence for a Lateral Access Road) associated with the Railway Licence provisions.

SCHEDULE 2 – FIRST VARIATION AGREEMENT

IRON ORE (HOPE DOWNS) AGREEMENT ACT 1992

VARIATION AGREEMENT

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (**the State**) and Hope Downs Iron Ore Pty Ltd and Hamersley WA Pty Ltd (**the Joint Venturers**).

Recitals

A. Provides details of the State Agreement as originally approved. The State Agreement is called the Principal Agreement.

B. Advises that the parties wish to add to and vary the Principal Agreement on the terms and conditions set out in the Variation.

Clauses 1, 2 and 3 are identical to the corresponding clauses 1, 2 and 3 in the Hamersley Agreement 1963.

Clause 4

Sets out the proposed variations to the Principal Agreement.

Subclause (1) varies clause 1 Definitions

The varied, deleted and new definitions are as described in the equivalent clause 1 of the Hamersley Agreement 1963, except where specifically varied for the purposes of this Variation. Subclause (1)(b) definitions specific to this Variation are:

"Beneficiated manganese and manganiferous ore" – this definition is varied to include the manganese ore that is produced under this Agreement.

"East Angelas Deposit" – means the land held under exploration licences within Mining Area 'C' which, upon surrender, can be included in the mining lease issued pursuant to this Agreement.

"Fine ore" – for the purposes of the definition in the Hamersley Agreement 1963, manganese ore is included.

"Lump ore" – for the purposes of the definition in this Agreement, manganese ore is added to the similar definition in the Hamersley Agreement 1963.

"Mining lease" – by including **Clause 12A** into the definition of a Mining Lease, areas held by the Joint Venturers or associated companies that are subsequently brought under this Agreement are for the purposes of this Agreement included in the definition of a Mining Lease. By including **Clause 15(3)** in the definition of a Mining Lease, areas held under exploration licences by the Joint Venturers in Area C that are subsequently brought under the Agreement are for the purposes of this Agreement included in the definition of a Mining Lease .

Subclause (2) inserts new clause 2A(a) (Environmental Compliance), 2A(b) (Native Title Compliance) and 2A(c) (Compliance with Aboriginal Heritage Act 1972 (WA)). These subclauses are equivalent in application to those in the corresponding paragraphs (a) and (b) of clause 1 variation in the Hamersley Agreement 1963.

Subclause (3) clarifies in Clause 10(1) (Additional Proposals) that the East Angelas Deposit is not covered by the provisions of this clause. Under Clause 10, the Joint Venturers may give notice to the Minister of their intentions to increase tonnage, modify, expand or otherwise vary their activities pursuant to this Agreement from areas not included in the East Angelas Deposit

Subclause (4) inserts in Clause 10(1) the requirement to comply with the provisions of clause 7(4)(b). This is a requirement to provide the Minister with advice on marketing arrangements, finance availability and the readiness of the Joint Venturers to proceed with the proposal.

Subclause (5) deletes clause 10(2) (Additional Proposals) and substitutes new Clauses 10(2), (3), (4) and (5). These provisions are identical to the new provisions in the corresponding clause 8A(2), (3), (4) and (5) of the Hamersley Agreement 1963.

Subclause (6) inserts new clauses 10A (Consideration of Company's proposals under clause 10) and 10B (Notification of Possible Proposals). These provisions are identical to the new provisions in the corresponding clauses 8A and 8B of the Hamersley Agreement 1963.

Subclause (7) inserts in Clause 11(1) (Aspects of a Larger Project) specific reference to the initial mining project and the East Angelas Deposit Project. If the Joint Venturers wish to exceed 15,000,000 tonnes in annual production and a workforce of 150 at their mine camp, as well as developing port facilities, town sites and railways, they must obtain the prior consent of the Minister and approval of detailed proposals.

Subclause (8) brings the East Angelas Deposit under the provisions of clause 11(2). Part (a) inserts into paragraph (a) the requirement for the Joint Venturers to provide the Minister with an outline of their proposals, including matters mentioned in clause 15(4)(a) to (m). This clause obliges the Joint Venturers to provide the Minister with proposals for the Development of the East

Angelas Deposit. **Part (b)** inserts into paragraph (c) reference to clause 15 (Area C) which takes account of the need to consider environmental issues when the Minister imposes conditions on any proposal for a larger project.

Subclause (9) inserts new provisions in clause 11(3) (Proposed production of more than 30,000,000 tonnes of iron ore per annum) dealing with increased production from either the initial mining project or the East Angelas Deposit Project, as follows:

> **Subclause (9)(a)** inserts into paragraph 11(3)(a) an amendment that specifically ensures that the provisions of this clause relate to the initial mining project referred to in clause 7.
>
> **Subclause (9)(c)** inserts a new subclause 11(3)(b) into the Agreement. This paragraph details the requirements placed on the Joint Venturers to comply with the provisions of clause 15 if the Minister gives approval in principle to an increase in production from the East Angelas Deposit Project.
>
> **Subclause 9(d)** inserts into paragraph 11(3) provisions for the approval of detailed proposals for both the initial production from the East Angelas Deposit Project and any future increase in production. The relevant provisions of the Proposals clause, as well as the Area C clause, are specifically introduced.

Subclause (10) amends subclause 11(4) to specifically relate the provisions of the subclause only to the East Angelas Deposit Project. Any further increase in production beyond that approved under subclause 11(b) will also be subject to the provisions of clause 11.

Subclause (11) inserts a new subclause 12(9) (Blending of iron ore) which is equivalent in application to the corresponding clause 10(4) in the Hamersley Agreement 1963.

Subclause (11) also inserts a new subclause 12(10) (Shipment of and price for iron ore) which is similar in intent to subclause 10(2)(e) of the Hamersley Agreement 1963.

Subclause (12) inserts a new clause 12(A) (Additional areas) that corresponds to the provisions of clauses 10J of the Hamersley Agreement 1963.

Subclause (13) inserts into clause 13(1) (Royalties) an amendment equivalent to subclause 10(2)(j) of the Hamersley Agreement 1963.

Subclause (14) i**nserts into clause 13(2)** provisions that are similar to clauses 10(2)(k) and (m) of the Hamersley Agreement 1963.

Subclause (15) inserts into clause 15(1) (Area C) an amendment for the purpose of extending the dates contained in clauses 15(1)(a) and 15(1)(b) to 31 December 2012 to ensure the continuance of certain exploration licences and for the continuance of those exploration licences, where necessary, beyond that date.

Subclause (16) deletes subclause 15(3) and inserts a replacement subclause 15(3) and new subclauses 15(4) to 15(15), as follows:

> **Subclause 15(3)** now enables the Joint Venturers to apply for the inclusion of all exploration licences within Area C to be included in the Mining Lease and the Minister may include them, provided they have been explored to his satisfaction.
>
> **Subclause 15(4)** requires the Company, within 2 years of the areas being included in the Mining Lease, to submit detailed proposals for the production and shipment of iron ore from the East Angelas Deposit and specifies the matters that must be addressed.
>
> **Subclause 15(5)** is equivalent in application to the corresponding clause 8A(2) contained in the Hamersley Agreement 1963.
>
> **Subclause 15(6)** is equivalent in application to the corresponding clause 8A(3) contained in the Hamersley Agreement 1963.
>
> **Subclause 15(7)** is equivalent in application to the corresponding clause 8A(4) contained in the Hamersley Agreement 1963.
>
> **Subclause 15(8) to 15(14)** are equivalent in application to the corresponding clauses 8B(1) to 8B(7) contained in the Hamersley Agreement 1963.
>
> **Subclause 15(15)** inserts into the Agreement a requirement for the Company to give notice to the Minister and to submit detailed proposals if it desires to produce more iron ore from the East Angelas Deposit than that approved under already approved proposals. If the Minister agrees, the provisions of subclauses (5) to (14) will apply, where appropriate.

Subclause (17) inserts new subclauses 15A (Integrated use of works installations or facilities under the Integration Agreements), 15B (Transfer of rights to shared works installation and facilities) and 15C (Miscellaneous Licences for Railways) that correspond to the provisions of clause 10L, 10M and 10N, respectively, of the Hamersley Agreement 1963.

Subclause (18) brings the East Angelas Deposit under the provisions of subclause 16(1) (Protection and Management of the Environment)

Subclause (19) introduces clause 10A into subclause 16(6). If the Company is required to provide additional detailed proposals for the protection and management of the environment, the provisions of Clause 10A (Consideration of Company's proposals under clause 10) will apply where appropriate.

Subclause (20) removes from the provisions in subclause 23(1) the area coloured red on Plan 'A'.

Subclause (21) introduces into subclause 23(2) (**Modification of Land Act)** a new subclause 23(2a) which ensures that the provisions of any native title legislation are satisfied before the grant or variation of any lease, licence or right.

Subclause (22) (Modification of Aboriginal Heritage Act 1972) removes from the provisions of the Agreement subclause 23(3).

Subclause (23) deletes subclause 24(5) which served to prevent the Joint Venturers from entering into an agreement for the transport of iron ore over a railway not established by them.

Subclause (24) introduces into clause 27(6) the capacity for a third party to implement an 'alternative project'.

Subclause (25) deletes subclause 27(7) and introduces a new subclause 27(7) which defines an **alternative project** as a project for the production of metallised agglomerates, a project that processes and adds value to minerals and any other project approved by the Minister that adds an equivalent benefit to a plant that might have been established by the Joint Venturers to produce metallised agglomerates. The **alternative project** can be undertaken by the Joint Venturers, a related body or a joint venture in which the Joint Venturers have a majority interest and any other third person which the Joint Venturers and the Minister accept.

Subclause (26) incorporates into subclause 33(3)(a) and for the purposes of clause 33 **(Assignment)**, leases, licences, easements, grants and other titles that are held pursuant to this Agreement.

Subclause (27) for the purposes of clause 34 **(Variation),** incorporates into subclause 34(1) the ability to substitute, cancel or vary any lease, licence or easement, grant and other title held pursuant to this Agreement.

Subclause (28) the inserted phases are equivalent in their application to the corresponding inserts into clause 11(l) contained in the Hamersley Agreement 1963.

Subclause (29) in clause 38(1)(a) and 38(2) ensures that any form of title held pursuant to this Agreement is subject to the provisions of this clause.

Subclause (30) inserts into clause 30 **(Indemnity)** a sentence that ensures that the State and its employees are indemnified by the Joint Venturers in relation to any matter arising out of or connected with clause 15A **(Integrated use of works installations or facilities under the Integration Agreements).**

Subclause (31) inserts new schedules into the Agreement. The Second Schedule is a draft **Miscellaneous Licence for a Railway and Other Purposes.** The Third Schedule is a draft **Miscellaneous Licence for a lateral access road.**

SCHEDULE 2 – FIRST VARIATION AGREEMENT

IRON ORE (YANDICOOGINA) AGREEMENT ACT 1996

VARIATION AGREEMENT

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (**the State**) and Hamersley Iron-Yandi Pty Limited (**the Company**) and Hamersley Iron Pty Limited (**Hamersley**).

Recitals

A. Provides details of the State Agreement as originally approved and of past variations made to it. The State Agreement as so varied is called the Principal Agreement.

B. Advises that the parties wish to add to and vary the Principal Agreement on the terms and conditions set out in the Variation.

Clauses 1, 2 and 3 are identical to the corresponding clauses 1, 2 and 3 in the Hamersley Agreement 1963.

Clause 4

Sets out the proposed variations to the Principal Agreement.

Subclause (1) varies clause 1 definitions

The varied, deleted and new definitions are substantially the same as described in the equivalent clause 1 of the Hamersley Agreement 1963, other than for the inclusion in this Variation Agreement [Clause 4(1)(b)] of the following new definitions:

> "pisolite fine ore" – this new definition means iron ore (not being beneficiated ore) derived from channel iron deposits that appear to be chemically precipitated sedimentary deposits comprised of a pisolite texture of hematite grains rimmed with goethite in a goethite matrix and:
>
> (a) having a product grade loss on ignition of 8.5% or greater; and
>
> (b) which will pass through a 9.5 millimetre mesh screen.

Subclause (2) varies clause 2(3) (Interpretation) by inserting a new subclause 4 confirming that this Agreement shall not be construed to exempt the Company from the provisions of the *Aboriginal Heritage Act 1972 (WA).*

Subclause (3) varies clause 9(1) (Additional Proposals) by making it subject to clause 10 (Limits on Mining), and referencing activities carried on pursuant to this Agreement other than under clause 12C (Blending of iron ore).

Subclause (4) deletes subclause (2) of clause 9 and inserts new subclauses (2) to (5) that are equivalent in application to those in the corresponding Additional Proposals clause 8A of the Hamersley Agreement 1963.

Subclause (5) inserts new clause 9A (Consideration of Company's proposals under clause 9) and new clause 9B (Notification of possible proposals) equivalent in application to those in the corresponding Additional Proposals clauses 8B and 8C, respectively, of the Hamersley Agreement 1963

Subclause (6) amends clause 10(4)(b) (Limits on Mining – Detailed Proposals) to reflect the changes made in subclause (4) and (5) above.

Subclause (7) amends clause 11(8) (Mining Lease – Additional Areas) to make it similar to the provisions in the corresponding clause 10J of the Hamersley Agreement 1963.

Subclause (8) amends clause 11(10) (Commencement of Iron Ore Mining) to include the additional constraints on the limits of mining contained in clause 10.

Subclause (9) adds a new subclause 11(12) (Blending of Iron Ore) corresponding to clause 10(4) of the Hamersley Agreement 1963.

Subclause (9) also adds a new subclause 11(13) (Shipment of and price of iron ore) that is substantially the same as clause 10(2)(e) of the Hamersley Agreement 1963.

Subclause (10) amends clause 12(1) (Royalties) to introduce definitions similar to those included in the equivalent clause 1 of the Hamersley Agreement 1963

Subclause (11) deletes the heading "Period to 31 December 2010" that follows clause 12(1), as subclause 13 amends clause 12(2) and the heading becomes redundant

Subclause 12 amends clause 12(2) to substantially reflect the changes made to clause 10(2)(j) of the Hamersley Agreement 1963.

Subclause 13 amends clause 12(3) (Quarterly Reports – Beneficiated Ore) to reflect changes made to clause 10(2)(j) of the Hamersley Agreement 1963.

Subclause 14 inserts new subclause 12A (Integrated use of works installations or facilities under the Integration Agreements), new clause 12B (Transfer of rights to shared works installations or facilities) and new clause 12C (Miscellaneous Licences for Railways) with identical provisions to

those in the corresponding clauses 10L, 10M and 10N of the Hamersley Agreement 1963.

Subclause 15 amends clause 17 (Electricity – Purchase of Electricity), to the extent determined by the Minister, to allow the Company to generate transmit and supply electricity to other Integration Proponents and Related Entities operating under the Mining Act 1978.

Subclause 16 deletes clause 20(5) (Use of Third Party Railway) as this is now addressed in new clause 12A (Integrated use of works installations or facilities under the Integration Agreements).

Subclause 17 amends clause 21 (Lands – Modification of the Land Act) by inserting a new subclause requiring all processes required by laws relating to native title to be completed before grant or variation of titles proceeds.

Subclause 18 amends clause 23 by inserting a new subclause 7 (Further Processing – Acceptance of an Alternative Project) which further defines what an alternative project means and allows for the Company, a joint venture in which it holds a majority interest, or third parties acceptable to both the Minister and the Company to undertake the obligation.

Subclause 19 amends clause 31 (Indemnity) by ensuring the indemnity also refers to clause12A (Integrated use of works installations or facilities) and encompasses all related tenures and activities.

Subclause 20 amends clause 32(3)(a) (Assignment) by inserting “or held pursuant to this Agreement” to ensure its provisions cover not only tenure and titles granted under or pursuant to the Agreement, but also such titles held pursuant to the Agreement, as varied from time to time.

Subclause 21 amends clause 33(1) (Variation – Tabling of Agreement) by inserting “held pursuant hereto”.

Subclauses 22 and 23 amend clause 38 (Determination of Agreement) by qualifying leases, licences, etc., as those granted or held under or pursuant to the Agreement and ensuring power to enter upon all such lands applies to all tenure granted or held under or pursuant to the Agreement.

Subclauses 24 and 25 amend clause 39 (Effect of Cessation or Determination of Agreement) by inserting the words “or held pursuant hereto” to ensure its provisions cover not only tenure and titles granted under or pursuant to the Agreement, but also such titles held pursuant to the Agreement, as varied from time to time.

Subclause 25 inserts new Second, Third and Fourth Schedules to provide for a Miscellaneous Licence for a Railway and Other Purposes, as well as Miscellaneous Licences for Lateral Access Roads.

SEVENTH SCHEDULE– SIXTH VARIATION AGREEMENT

IRON ORE (MT NEWMAN) AGREEMENT ACT 1964

VARIATION AGREEMENT

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (**the State**) and BHP Billiton Minerals Pty. Ltd., Mitsui-Itochu Iron Pty. Ltd. and Itochu Minerals & Energy of Australia Pty. Ltd. (**the Joint Venturers**).

Recitals

A. Provides details of the State Agreement as originally approved and of past variations made to it. The State Agreement as so varied is called the Principal Agreement.

B. Advises that the parties wish to add to and vary the Principal Agreement on the terms and conditions set out in the Variation.

Clauses 1, 2 and 3 are identical to the corresponding clauses 1, 2 and 3 in the Hamersley Agreement 1963

Clause 4

Sets out the proposed variations to the Principal Agreement.

Clauses 1, 2 and 3 are identical to the corresponding clauses 1, 2 and 3 in the Hamersley Agreement 1963.

Clause 4

Sets out the proposed variations to the Principal Agreement.

Subclause (1) varies clause 1 definitions

The varied, deleted and new definitions are substantially the same as in the equivalent clause 1 of the Hamersley Agreement 1963.

Subclause (2) modifies Clause 6A (Additional Proposals) to address townsites and deletes subclause (2) and instead refers to clauses 7A and 7B to provide details about the processing of townsite proposals.

Subclause (3) inserts new clauses 7A (Additional Proposals), 7B (Consideration of Company's proposals under clause 7A) and 7C (Notification of possible proposals). These clauses are equivalent in

application to those in the corresponding Additional Proposals clause 8A, 8B and 8C of the Hamersley Agreement 1963.

Subclause (4) amends clause 8(1)(b) (Phase 2 - Obligations of State - Mineral Lease). The provisions of this clause are similar to the equivalent clause 9(1)(b) of the Hamersley Agreement 1963.

Subclause (5) inserts a new clause 8(3B) corresponding to clause 9(3a) in the Hamersley Agreement 1963.

Subclause (6) amends clause 8A (Lease for Tunnel) to provide for modifications to the term of the Under Harbour Tunnel.

Subclause (7) deletes clause 9(2)(e) and substitutes paragraphs (e) (Shipment of and Price of Ore) and (ea) (Designated Purchaser) with identical provisions to those in the corresponding clause 10(2)(e) and (ea) of the Hamersley Agreement 1963.

Subclause (8) amends clause 9(2)(j) (Royalties) with identical provisions to those in the corresponding clause 10(2)(j) of the Hamersley Agreement 1963.

Subclause (9) inserts after paragraph (j) of clause 9(2) new paragraph (ja) which refers to royalties to be paid on iron ore mined from the McCamey's mineral lease.

Subclause (10) amends clause 9(2)(k) (Payment of Royalties) with identical provisions to those in corresponding clause 10(2)(k) of the Hamersley Agreement 1963.

Subclause (11) amends clause 9(2)(n) (Inspection) with similar provisions to those in the corresponding clause 10(2)(n) of the Hamersley Agreement 1963. It provides that the Company shall cause to be produced in Perth all books, records, accounts, documents (including contracts), data and information of the kind referred to in clause 9(2)(n) to enable the exercise of rights by the Minister or the Minister's nominee under that paragraph, 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.

Subclause (12) inserts clause 9(2)(o) with identical provisions to those in the corresponding clause 10(2)(o) of the Hamersley Agreement 1963.

Subclause (13) inserts clause 9(4) (Blending of Iron Ore) with identical provisions to those in the corresponding clause 10(4) of the Hamersley Agreement 1963.

Subclause (13) amends clause 9A(11)(a) to refer to clauses 7A and 7B for processes associated with submission and approval of proposals.

Subclause (14) amends clause 9A(11) to refer to clause 7A(2) to (5) and 7B for processes associated with submission and approval of proposals.

Subclause (15) adds new clauses 9B (Additional areas) and 9C (Integrated Use of works, installations or facilities under the Integration Agreements) with identical provisions to those in the corresponding clause 10J and 10L of the Hamersley Agreement 1963.

Subclause (15) also inserts new clause 9D (Transfer of rights to shared works installations or facilities) and clause 9E (Miscellaneous Licences for Railways) with identical provisions to those in the corresponding clauses 10L and 10N of the Hamersley Agreement 1963.

Subclauses (16), (17) and (18) amend clause 10(d) (Effect of Determination of Agreement), clause 10(e) (Effect of Determination of Lease) and clause 10(l) (Determination of Agreement), respectively, with identical provisions to those in the corresponding clauses 11(d), 11(e) and 11(l) of the Hamersley Agreement 1963.

Subclause (19) amends clause 18 (Indemnity) with identical provisions to those in the corresponding clause 19 of the Hamersley Agreement 1963.

Subclause (20) amends clause 20 (Variation) with identical provisions to those in the corresponding clause 21 of the Hamersley Agreement 1963.

Subclause (21) deletes clause 11A (Environmental Protection) as the former provision has been moved to the end of clause 1 in new paragraph (a).

Subclause (22) inserts new Second, Third and Fourth Schedules to provide for a Miscellaneous Licence for a Railway and Other Purposes, as well as Miscellaneous Licences for Lateral Access Roads.

FIFTH SCHEDULE– FOURTH VARIATION AGREEMENT

IRON ORE (MOUNT GOLDSWORTHY) AGREEMENT ACT 1964

VARIATION AGREEMENT

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (**the State**) and BHP Billiton Minerals Pty. Ltd., Mitsui Iron Ore Corporation Pty. Ltd. and Itochu Minerals & Energy of Australia Pty. Ltd. (**the Joint Venturers**).

Recitals

A. Provides details of the State Agreement as originally approved and of past variations made to it. The State Agreement as so varied is called the Principal Agreement.

B. Advises that the parties wish to add to and vary the Principal Agreement on the terms and conditions set out in the Variation.

Clauses 1, 2 and 3 are identical to the corresponding clauses 1, 2 and 3 in the Hamersley Agreement 1963.

Clause 4

Sets out the proposed variations to the Principal Agreement.

Subclause (1) varies clause 1 definitions

The varied, deleted and new definitions are substantially the same as in the equivalent clause 1 of the Hamersley Agreement 1963.

Subclause (2) inserts new clauses 7A (Additional Proposals), 7B (Consideration of Company's proposals under clause 7A) and 7C (Notification of possible proposals). These clauses are equivalent in application to those in the corresponding clauses 8A, 8B and 8C of the Hamersley Agreement 1963.

Subclause (3) amends clause 8(2)(b) (Obligations of the State)

This clause includes references to new clauses dealing with proposals and inserts reference to the Port Authorities Act 1999 and provides for reasonable commercial rentals to apply to tenure granted in Ports.

Subclause (4) inserts a new clause 8(4) dealing with native title processes in the context of grants of tenure, corresponding to clause 9(3a) in the Hamersley Agreement 1963.

Subclause (5) deletes clause 9(2)(e) and substitutes the following paragraphs (e) (Shipment of and Price of Ore) and (ea) (Designated Purchaser) with identical provisions to those in the corresponding clause 10(2) of the Hamersley Agreement 1963.

Subclause (6) amends clause 9(2)(j) (Royalties) with identical provisions to those in the corresponding clause 10(2)(j) of the Hamersley Agreement 1963.

Subclause (7) amends clause 9(2)(k) (Payment of Royalties) with corresponding provisions to those in clause 10(2) of the Hamersley Agreement 1963.

Subclause (8) amends clause 9(2)(n) (Inspection) by inserting new paragraph (o) with similar provisions to the corresponding clause 10(2)(n) of the Hamersley Agreement 1963.

Subclause (9) amends clause 9(2) (Inspection) with corresponding provisions to those in clause 10(2)(o) of the Hamersley Agreement 1963.

Subclause (10) adds a new clause 9A (Additional areas) with similar provisions to those in the corresponding clause 10J of the Hamersley Agreement 1963.

Subclause (10) adds a new clause 9B (Blending of iron ore) with similar provisions to those in the corresponding clause 10(4)(a) of the Hamersley Agreement 1963.

Subclause (10) inserts new clause 9C (Integrated Use of works, installations or facilities under the Integration Agreements) with corresponding provisions to those in clause 10L of the Hamersley Agreement 1963.

Subclause (10) also inserts new clause 9D (Transfer of rights to shared works installations or facilities) and 9E (Miscellaneous Licences for Railways) with corresponding provisions to those in clauses 10M and 10N, respectively, of the Hamersley Agreement 1963.

Subclause (11) amends clause 10(l) (Effect of Determination of the Agreement) with corresponding provisions to those in clause 11(d) of the Hamersley Agreement 1963.

Subclause (12) amends clause 11(7) (Effect of Joint Venturers Not Applying for Mineral Lease in respect of Mining Area "B" and Mining Area "C") to oblige the Joint Venturers to give notice to the Minister and to submit detailed development proposals in relation to the third mineral lease within an agreed time for the Minister's consideration.

Subclause (13) amends clause 12(3e) (Mining Area "C") by inserting provisions relating to the Integration Agreements.

Subclause (14) amends clause 12(5) (Mining Area "C") to insert provisions relating to the new Additional Proposals clause 7A.

Subclause (15) inserts new clause 12A(1a) (Grant of Leases, Licences, Reserves and Easements) with provisions corresponding to clause 9(3a) of the Hamersley Agreement 1963.

Subclause (16) amends clause 19 (Indemnity) with identical provisions to clause 19 of the Hamersley Agreement 1963.

Subclause (17) amends clause 21 (Variation) with provisions corresponding to clause 21 of the Hamersley Agreement 1963.

Subclause (18) deletes clause 28 (Environmental Protection) as the former provision has been moved to the end of clause 1 in new paragraph (b).

Subclause (19) inserts new Second, Third and Fourth Schedules (Miscellaneous Licence for a Railway and Other Purposes, and a Miscellaneous Licence for a Lateral Access Road) associated with the Railway Licence provisions.

SCHEDULE 3 – SECOND VARIATION AGREEMENT

IRON ORE (GOLDSWORTHY- NIMINGARRA) AGREEMENT ACT 1972

VARIATION AGREEMENT

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (**the State**) and Pty Ltd BHP Billiton Minerals, Mitsui Iron Ore Corporation Pty Ltd and Itochu Minerals & Energy of Australia Pty Ltd (**Joint Venturers**).

Recitals

A. Provides details of the State Agreement as originally approved and of past variations made to it. The State Agreement as so varied is called the Principal Agreement.

B. Advises that the parties wish to add to and vary the Principal Agreement on the terms and conditions set out in the Variation.

Clauses 1, 2 and 3 are identical to the corresponding clauses 1, 2 and 3 in the Hamersley Agreement 1963.

Clause 4

Sets out the proposed variations to the Principal Agreement.

Subclause (1) varies clause 1 definitions

The varied, deleted and new definitions are substantially the same as described in the equivalent clause 1of the Hamersley Agreement 1963.

Subclause (2) deletes clause 8 and substitutes new clause 8 (Additional Proposals), 8A (Consideration of Joint Venturers' Proposals under clause 8) and 8B (Notification of possible proposals). These clauses are equivalent in application to those in the corresponding clauses 8A, 8B and 8C of the Hamersley Agreement 1963.

Subclause (3) adds a new clause 9A (Additional areas) with identical provisions to those in the corresponding clause 10J of the Hamersley Agreement 1963 and **adds a new subclause 9B (Blending of iron ore)** with similar provisions to those in the corresponding clause 10(4) of the Hamersley Agreement 1963.

Subclause (4) amends clause 11 (Lands) relating to the State's obligation to grant tenure following the approval of proposals and includes a reference to the Port Authorities Act 1999 for grants of tenure in areas governed under that Act.

Subclause (5) inserts a new subclause 6(a) with provisions corresponding to clause 9(3a) in the Hamersley Agreement 1963.

Subclause (6) deletes clause 13 (Shipment of and price for ore) and substitutes a new clause corresponding to clause 10(2)(e) of the Hamersley Agreement 1963.

Subclause (7) inserts after clause 16 a new clause 16A (Integrated use of works installations or facilities under the Integration Agreements), 16B (Transfer of rights to shared works installations and facilities) and 16C (Miscellaneous Licences for Railways) with similar provisions to those in the corresponding clauses 10L, 10M and 10N, respectively, of the Hamersley Agreement 1963, except in clause 16A(2)(b)(i) where the Joint Venturers are not entitled to submit proposals for a new port other than at or near the town of Port Hedland within the boundaries of the Port of Port Hedland.

Subclause (8) deletes clause 23 (Environmental Protection) as the former provision has been moved to the end of clause 1 in new paragraph (a).

Subclause (9) amends clause 33 (Royalties) with provisions corresponding to clause 10(2)(j) of the Hamersley Agreement 1963.

Subclause (10) inserts into clause 33(2) (Payment of royalties) provisions corresponding to clause 10(2)(k) of the Hamersley Agreement 1963.

Subclause (11) deletes clause 33(3) (Inspection) and substitutes new subclauses (3) and (3a) with provisions corresponding to clauses 10(2)(n) and (o) of the Hamersley Agreement 1963.

Subclause (12) amends clause (34) (Effect of determination of lease) with identical provisions to clause 11(e) of the Hamersley Agreement 1963.

Subclause (13) amends clause 35 (Determination of agreement) with corresponding provisions to clause 11(d) of the Hamersley Agreement 1963.

Subclause (14) inserts a new sentence at the end of clause 38 (Indemnity) corresponding to clause 19 of the Hamersley Agreement 1963.

Subclause (15) amends clause 39 (Assignment) consistent with the provisions of clause 20A of the Hamersley Agreement 1963.

Subclause (16) amends clause 40 (Variation) consistent with the provisions of clause 21 of the Hamersley Agreement 1963.

Subclause (17) inserts after Part Two of the Schedule Part Three (Miscellaneous Licence for a Railway and Other Purposes) and Part Four

(Miscellaneous Licence for a Lateral Access Road) associated with the Railway Licence provisions of clause 16C of this Agreement.

SCHEDULE 5 – FOURTH VARIATION AGREEMENT

IRON ORE (MCCAMEY'S MONSTER) AGREEMENT 1972

VARIATION AGREEMENT

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (**the State**) and BHP Billiton Iron Ore (Jimblebar) Pty. Ltd. (**Company**).

Recitals

A. Provides details of the State Agreement as originally approved and of past variations made to it. The State Agreement as so varied is called the Principal Agreement.

B. Advises that the parties wish to add to and vary the Principal Agreement on the terms and conditions set out in the Variation.

Clauses 1, 2 and 3 are identical to the corresponding clauses 1, 2 and 3 in the Hamersley Agreement 1963.

Clause 4

Sets out the proposed variations to the Principal Agreement.

Subclause (1) varies clause 1 definitions. The varied, deleted and new definitions are as described in the equivalent clause 1 of the Hamersley Agreement 1963.

Subclause (2) inserts new clause 2(4) (Interpretation) which is equivalent to the new paragraph at the end of clause 1 in the Hamersley Agreement 1963.

Subclause (3) amends clause 5 (**Rights of occupancy of mining areas)** by deleting the existing references to "Minister for Minerals and Energy" and substituting "Minister for Mines".

Subclause (4) amends clause 9(1) (Additional Proposals) with similar provisions to those in the corresponding clause 8A(1) of the Hamersley Agreement 1963.

Subclause (5) amends clause 9 (Additional Proposals) by renumbering subclauses (2) (Basis of Submission) and (3) (Determination of Extent of Joint Venturers' Obligations) as (6) and (7), respectively.

Subclause (6) inserts new subclauses (2), (3), (4) and (5) in clause 9 (Additional Proposals). These are equivalent in application to those subclauses in the corresponding clause 8A of the Hamersley Agreement 1963.

Subclause (7) renumbers clause 9A as clause 9C.

Subclause (8) inserts new clauses 9A (Consideration of Joint Venturers' proposals under clause 9) and 9B (Notification of possible proposals). These clauses are equivalent in application to those in the corresponding clauses 8B and 8C of the Hamersley Agreement 1963.

Subclause (9) amends clause 11(2) (**Survey)** by deleting the existing reference to "Minister for Minerals and Energy" and substituting "Minister for Mines".

Subclause (10) adds a new subclause 9 (Blending of iron ore) in Clause 11 (Mineral Lease) with similar provisions to those in the corresponding clause 10(4) of the Hamersley Agreement 1963.

Subclause (10) also adds a new subclause 10 (Shipment of and price of iron ore) in Clause 11 (Mineral Lease) with similar provisions to those in the corresponding clauses 10(2)(e) and (ea) of the Hamersley Agreement 1963 except it does not include paragraph A relating to secondary processing.

Subclause (11) amends subclause 7 of clause 11A (Limits on mining) by deleting existing paragraphs (b) and (c) and substituting a new paragraph (b) which states that the provisions of clauses 7(2), 7(5), 9(2) to (5) and 9A shall apply to detailed proposals pursuant to this subclause.

Subclause (12) inserts new clauses 11B (Additional areas), 11C (Integrated use of works installations or facilities under the Integration Agreements), 11D (Transfer of rights to shared works installations or facilities) and 11E (Miscellaneous Licences for Railways) with similar provisions to those in the corresponding clauses 10J, 10L, 10M and 10N respectively of the Hamersley Agreement 1963.

Subclause (13) amends clause 13(2)(ii) (Special Leases) by specifying that the rental payable is a commercial rental.

Subclause (14) inserts a new clause 13(2a) (Native Title) with similar provisions to those in corresponding clause 9(3a) in the Hamersley Agreement 1963.

Subclause (15) deletes clause 19(4) (Passengers and Freight).

Subclause (16) deletes clause 26 (Environmental Protection) as the former provision has been moved to new clause 2(4)(a).

Subclause (17) increases the royalty rate in clause 31(1) (Royalty) from 3.75% to 7.5% on "all other iron ore products" to remove an anomaly in this Agreement. It also includes amendments corresponding with those in clause 10(2)(j) of the Hamersley Agreement 1963.

Subclause (18) inserts a new clause 31(1a) (Royalty) which relieves the Joint Venturers from liability to pay royalty under this Agreement on iron ore products if and to the extent that royalty on such iron ore products has been paid under the Mount Newman Agreement.

Subclause (19) amends clause 31(2) (Payment of Royalties) with similar amendments corresponding to those in clause 10(2)(k) of the Hamersley Agreement 1963. It also deletes the existing reference to "Minister for Minerals and Energy" and substitutes "Minister for Mines".

Subclause (20) amends clause 31(3) (Inspection of Records) with similar amendments corresponding to those in clause 10(2)(n) and (2)(o) of the Hamersley Agreement 1963. It also deletes the existing reference to "Minister for Minerals and Energy" and substitutes "Minister for Mines".

Subclause (21) inserts a new clause 40(A) (Subcontracting) with similar provisions to those in the corresponding clause 11(j) of the Hamersley Agreement 1963.

Subclause (22) amends clause 42(1) (Determination of Agreement) with similar amendments to those in the corresponding clause 11(l) of the Hamersley Agreement 1963.

Subclause (23) amends clause 42(2) (Determination of Agreement) with similar amendments to those in the corresponding clause 11(l) of the Hamersley Agreement 1963.

Subclause (24) amends clause 43(1)(a) (Effect of cessation and determination of Agreement) with similar amendments to those in corresponding clause 11(d) of the Hamersley Agreement 1963.

Subclause (25) amends clause 43(2) (Effect of cessation and determination of Agreement) with similar amendments to those in corresponding clause 11(e) of the Hamersley Agreement 1963.

Subclause (26) amends clause 44 (Indemnity) with similar amendments to those in corresponding clause 19 of the Hamersley Agreement 1963 except reference is to clause 11C.

Subclause (27) amends clause 45 (Variation) with identical amendments to those in corresponding clause 21 of the Hamersley Agreement 1963.

Subclause (28) inserts new Second, Third and Fourth Schedules to provide for a Miscellaneous Licence for a Railway and Other Purposes, as well as Miscellaneous Licences for Lateral Access Roads.

SCHEDULE 4 – THIRD VARIATION AGREEMENT

IRON ORE (MARILLANA CREEK) AGREEMENT 1991

VARIATION AGREEMENT

Parties

The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (**the State**) and BHP Billiton Minerals Pty. Ltd., Itochu Minerals & Energy of Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. (**the Joint Venturers**).

Recitals

A. Provides details of the State Agreement as originally approved and of past variations made to it. The State Agreement as so varied is called the Principal Agreement.

B. Advises that the parties wish to add to and vary the Principal Agreement on the terms and conditions set out in the Variation.

Clauses 1, 2 and 3 are identical to the corresponding clauses 1, 2 and 3 in the Hamersley Agreement 1963.

Clause 4

Sets out the proposed variations to the Principal Agreement.

Subclause (1) varies clause 1 definitions which are substantially the same as those in clause 1 of the Hamersley Agreement 1963.

Subclause (2) inserts new clause 2(3) (Interpretation) which is equivalent to the new paragraph (a) at the end of clause 1 in the Hamersley Agreement 1963.

Subclause (3) clarifies that the requirement to give notice under clause 10 (Additional Proposals) does not apply in respect of proposals submitted pursuant to clause 14C (Miscellaneous Licences for Railways).

Subclause (4) inserts a new subclause (2) that is equivalent to clause 8A of the Hamersley Agreement 1963.

Subclause (5) inserts new clause 10A (Consideration of Company's proposals under clause 10) and new clause 10B (Notification of possible proposals), which are equivalent in application to those in the corresponding clauses 8B and 8C of the Hamersley Agreement 1963.

Subclause (6) amends clause 11(8)(b) (Limits on Mining) to make reference to the provisions of clause 10A.

Subclause (7) adds new clause 12(9) (Blending of iron ore) and 12(10) (Shipment of and price for iron ore) with similar provisions to those in corresponding clauses 10(4)(a) and 10(2)(e), respectively, of the Hamersley Agreement 1963.

Subclause (8) inserts new clause 12A (Additional areas) with similar provisions to those in the corresponding clause 10J of the Hamersley Agreement 1963.

Subclause (9) increases the royalty rate in clause 13(1) (Royalties) from 5.625% to 7.5% on "all other iron ore" to remove an anomaly in this Agreement. It also includes provisions corresponding with those in clause 10(2)(j) of the Hamersley Agreement 1963.

Subclause (10) amends clause 13(2) in relation to access by the State to documents and records for inspection purposes with provisions corresponding to those in clause 10(2)(n) of the Hamersley Agreement 1963.

Subclause (11) amends clause 14 (Protection and Management of the Environment) to take account of the new Additional Proposals provisions in Clause 10.

Subclause (12) inserts new clauses 14A (Integrated Use of works, installations or facilities under the Integration Agreements), 14B (Transfer of rights to shared works installations or facilities) and 14C (Miscellaneous Licences for Railways) that correspond to the provisions of clauses 10L, 10M and 10N, respectively, of the Hamersley Agreement 1963.

Subclause (13) adds new subclause 3(a) that enables the Joint Venturers, subject to approved proposals, to generate, supply and transmit electricity to other Integration Proponents, as well as to Related Entities operating on Mining Act 1978 tenure in or proximate to the Pilbara or, with the Minister's approval, another Government agreement in or proximate to the Pilbara.

Subclause (14) amends clause 22 (Lands) by the addition of new subclause (2a) having provisions identical to clause 9(3a) of the Hamersley Agreement 1963 in relation to the State's obligations to grant tenure.

Subclause (15) deletes clause 23(5) (Rail Spur) to provide for the flexibility of the new integration provisions associated with clauses 14A, 14B and 14C.

Subclause (16) amends clause 30(3) (Assignment) to ensure its provisions cover not only tenure and titles granted under or pursuant to the Agreement, but also such titles held pursuant to the Agreement, as varied

Subclauses (17) to (21) amend clauses 31(1) (Variation), 34(1)(a)(i) and 34(4) (Determination of Agreement), 35(1)(a) and 35(2) (Effect of Cessation or Determination of Agreement) to ensure their provisions cover not only tenure and titles granted under or pursuant to the Agreement, but also such titles held pursuant to the Agreement, as varied.

Subclause (22) deletes clause 36 (Environmental Protection) as the former provision has been moved to the end of clause 1 in new paragraph (b).

Subclause (24) inserts new Second, Third and Fourth Schedules (Miscellaneous Licence for a Railway and Other Purposes, and a Miscellaneous Licence for a Lateral Access Road) associated with the Railway Miscellaneous Licence provisions.
