

Railway (Roy Hill Infrastructure Pty Ltd) Agreement Bill 2010

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Schedule 1 — Railway (Roy Hill Infrastructure Pty Ltd) Agreement 2010

Western Australia

LEGISLATIVE ASSEMBLY

**Railway (Roy Hill Infrastructure Pty Ltd)
Agreement Bill 2010**

A Bill for

An Act —

- **to ratify, and authorise the implementation of, an agreement between the State and Roy Hill Infrastructure Pty Ltd, Roy Hill Holdings Pty Ltd and Roy Hill Iron Ore Pty Ltd relating to the development of a railway in the Pilbara region of the State;**
 - **to modify the operation of the *Railways (Access) Act 1998* and the *Railways (Access) Code 2000*,**
- and for incidental and other purposes.**

The Parliament of Western Australia enacts as follows:

1

Part 1 — Preliminary

2

1. Short title

3

This is the *Railway (Roy Hill Infrastructure Pty Ltd) Agreement Act 2010*.

4

5

2. Commencement

6

This Act comes into operation as follows —

7

(a) Part 1 — on the day on which this Act receives the Royal Assent;

8

9

(b) Part 2 — on the day after that day;

10

(c) Part 3 — on a day fixed by proclamation, and different days may be fixed for different provisions.

11

Part 2 — General provisions about the Agreement

3. Terms used

In this Part —

scheduled agreement means the agreement of which a copy is set out in Schedule 1;

the Agreement means the scheduled agreement or, if it is varied in accordance with its terms, that agreement as varied from time to time.

4. Ratification and authorisation

(1) The scheduled agreement is ratified.

(2) The implementation of the Agreement is authorised.

5. State empowered under clause 20

The State has power in accordance with clause 20 of the Agreement.

6. Effect on other laws

(1) The Agreement operates and takes effect despite any enactment or other law.

(2) If a provision of the scheduled agreement expressly or by implication purports to modify or exclude the application or operation of an enactment for a purpose or in relation to a person or thing, the application or operation of the enactment is modified or excluded for that purpose, or in relation to that person or thing, to the extent or for the period mentioned in the provision or necessary for the provision to have effect.

(3) To avoid doubt, it is declared that the provisions of the *Public Works Act 1902* section 96 do not apply to the railway constructed pursuant to the Agreement.

(4) This section does not limit or otherwise affect the application of the *Government Agreements Act 1979*.

1 **Part 3 — Provisions about access to the railway**
2 **constructed under the Agreement**

3 **Division 1 — Modification of the *Railways (Access) Act 1998***

4 **7. *Railways (Access) Act 1998* modified**

5 The *Railways (Access) Act 1998* must be applied as if amended
6 as set out in this Division.

7 **8. Section 3 amended**

8 (1) In section 3(1) insert in alphabetical order:
9

10 ***Railway (Roy Hill Infrastructure) Agreement*** means
11 the Agreement as defined in the *Railway (Roy Hill*
12 *Infrastructure Pty Ltd) Agreement Act 2010* section 3;
13

14 (2) In section 3(1) in the definition of ***railways network*** after
15 paragraph (ba) insert:
16

17 (ca) the railway constructed pursuant to the Railway
18 (Roy Hill Infrastructure) Agreement; and
19

20 (3) After section 3(4) insert:
21

22 (5) Subsections (3) and (4) do not apply to a siding or spur
23 line associated with the railway constructed pursuant to
24 the Railway (Roy Hill Infrastructure) Agreement.
25

1 **9. Section 12A inserted**

2 After section 11B insert:

3

4 **12A. Modification of the Code for the purposes of the**
5 **Railway (Roy Hill Infrastructure) Agreement**

- 6 (1) The Minister may, under this section, modify the Code
7 for the purposes of its application to the railway
8 constructed pursuant to the Railway (Roy Hill
9 Infrastructure) Agreement.
- 10 (2) If, after the *Railway (Roy Hill Infrastructure Pty Ltd)*
11 *Agreement Act 2010* section 9 has come into operation,
12 the railway constructed pursuant to the Railway (Roy
13 Hill Infrastructure) Agreement is expanded or extended
14 (including by the addition of a spur line), the Minister
15 must, under this section, modify the Code so that it
16 applies to the expansion or extension.
- 17 (3) Section 5 (where relevant) and sections 10 to 11A do
18 not apply to or in relation to a modification under this
19 section.
- 20 (4) Modifications under this section are to be made by
21 order published in the *Gazette*.
- 22 (5) Modifications under or for the purposes of
23 subsection (2) are not amendments of the Code for the
24 purposes of section 9(2) to (6) of this Act.
25

26 **Division 2 — Modification of the *Railways (Access) Code 2000***

27 **10. *Railways (Access) Code 2000* modified**

28 The *Railways (Access) Code 2000* must be applied as if
29 amended as set out in this Division.

Railway (Roy Hill Infrastructure Pty Ltd) Agreement Bill 2010

Part 3 Provisions about access to the railway constructed under the Agreement

Division 2 Modification of the Railways (Access) Code 2000

s. 11

1 **11. Section 3 amended**

2 (1) In section 3 insert in alphabetical order:

3

4 ***Railway (Roy Hill Infrastructure) Agreement*** means
5 the Agreement as defined in the *Railway (Roy Hill*
6 *Infrastructure Pty Ltd) Agreement Act 2010* section 3;

7

8 (2) In section 3 in the definition of ***railways network*** after
9 paragraph (ba) insert:

10

11 (ca) the railway constructed pursuant to the Railway
12 (Roy Hill Infrastructure) Agreement; and

13

14 **12. Section 54 inserted**

15 At the end of Part 6 insert:

16

17 **54. Transitional provision — Railway (Roy Hill**
18 **Infrastructure) Agreement**

19 Until the Regulator publishes in the *Gazette* notice of a
20 determination under Schedule 4 clause 3(1)(a)
21 subparagraph (iia), the weighted average cost of capital
22 for the railway infrastructure referred to in that
23 subparagraph is such percentage as the Regulator fixes
24 by notice published in the *Gazette* under this section.

25

26 **13. Schedule 1 amended**

27 After Schedule 1 item 52 insert:

28

29 **Railway (Roy Hill Infrastructure) Agreement Route**

30 53. All tracks that are part of the railway constructed pursuant to
31 the Railway (Roy Hill Infrastructure) Agreement.

32

1 **14. Schedule 4 amended**

2 After Schedule 4 clause 3(1)(a)(ia) insert:

- 3
- 4 (iiia) the railway infrastructure associated with
- 5 that part of the railways network described
- 6 in item 53 in that Schedule; and
- 7

8 **Division 3 — Expiry of Part**

9 **15. Expiry of Part**

10 (1) In this section —

11 ***TPA Undertaking Acceptance Date*** has the meaning given in

12 clause 15(1) of the Agreement.

13 (2) This Part expires at the end of the day immediately before the

14 TPA Undertaking Acceptance Date.

15 (3) The Minister must publish, in the *Gazette*, notice of the TPA

16 Undertaking Acceptance Date.

17 (4) The *Interpretation Act 1984* section 37 applies, under section 39

18 of that Act, subject to clause 15(6)(d) of the Agreement.

**Schedule 1 — Railway (Roy Hill Infrastructure Pty Ltd)
Agreement 2010**

[s. 3]

2010

THE STATE OF WESTERN AUSTRALIA

and

**ROY HILL INFRASTRUCTURE PTY LTD
ACN 130 249 633**

and

**ROY HILL HOLDINGS PTY LTD
ACN 123 721 077**

**ROY HILL IRON ORE PTY LTD
ACN 123 722 038**

**RAILWAY (ROY HILL INFRASTRUCTURE PTY LTD)
AGREEMENT 2010**

[Solicitor's details]

1 **THIS AGREEMENT** is made this 22 day of June 2010

2 **BETWEEN**

3 **THE HONOURABLE COLIN JAMES BARNETT**, MEc., M.L.A.,
4 Premier of the State of Western Australia, acting for and on behalf of
5 the said State and its instrumentalities from time to time (hereinafter
6 called “the State”) of the first part,

7 **ROY HILL INFRASTRUCTURE PTY LTD** ACN 130 249 633 of
8 Level 3, Hppl House, 28 42 Ventnor Avenue, West Perth, Western
9 Australia (hereinafter called “**the Company**” in which term shall be
10 included its successors and permitted assigns) of the second part, and

11 **ROY HILL HOLDINGS PTY LTD** ACN 123 721 077 (hereinafter
12 called “**RHH**”) and **ROY HILL IRON ORE PTY LTD**
13 ACN 123 722 038 (hereinafter called “**RHIO**”) both of Level 3,
14 Hppl House, 28-42 Ventnor Avenue, West Perth, Western Australia
15 (hereinafter collectively called “**the Guarantors**”) of the third part.

16 **WHEREAS:**

- 17 A. RHH is investigating the feasibility of RHIO, a subsidiary of
18 RHH, developing under the Mining Act a project for the mining
19 and sale, by export to overseas purchasers, of iron ore from the
20 Roy Hill mining area in the Pilbara region of Western Australia.
- 21 B. RHH is also investigating the feasibility of the Company
22 constructing and operating a railway from the Roy Hill mining
23 area to the Port of Port Hedland together with train unloading,
24 stockpiles, re-claimers, conveyors, ship loading and associated
25 facilities within that port primarily for the transport to, and
26 shipment from that port, of such iron ore.
- 27 C. The State for the purposes of promoting development of the
28 iron ore industry and employment opportunity generally in Western
29 Australia and for the purpose of promoting the development of multi
30 user infrastructure facilities in the Pilbara region of Western Australia
31 has agreed to assist the development of the abovementioned railway,
32 port and associated facilities upon and subject to the terms of this
33 Agreement.

1 **NOW THIS AGREEMENT WITNESSES:**

2 **Definitions**

- 3 1. In this Agreement subject to the context:
- 4 “**Access Act**” means the *Railways (Access) Act 1998* (WA);
- 5 “**Access Code**” means the *Railways (Access) Code 2000* (WA);
- 6 “**advise**”, “**apply**”, “**approve**”, “**approval**”, “**consent**”,
- 7 “**certify**”, “**direct**”, “**notice**”, “**notify**”, “**request**”, or
- 8 “**require**”, means advise, apply, approve, approval, consent,
- 9 certify, direct, notice, notify, request or require in writing as the
- 10 case may be and any inflexion or derivation of any of those
- 11 words has a corresponding meaning;
- 12 “**approved proposal**” means a proposal approved or deemed to
- 13 be approved under this Agreement;
- 14 “**Boodarie multi-user stockyard area**” means that area
- 15 adjacent to the boundary of the Port (as at the date of this
- 16 Agreement), which the State intends be vested in the Port
- 17 Authority under the Port Authorities Act, the approximate
- 18 boundaries of which are outlined and shaded red on the plan
- 19 marked “A” initialled by or on behalf of the parties for the
- 20 purpose of identification only;
- 21 “**Commonwealth**” means the Commonwealth of Australia and
- 22 includes the Government for the time being thereof;
- 23 “**EP Act**” means the *Environmental Protection Act 1986* (WA);
- 24 “**Government agreement**” has the meaning given in the
- 25 *Government Agreements Act 1979* (WA);
- 26 “**iron ore products**” includes iron ore of all grades and all
- 27 products from the processing of iron ore;
- 28 “**LAA**” means the *Land Administration Act 1997* (WA);
- 29 “**Lateral Access Roads**” has the meaning given in clause 7(1);
- 30 “**Lateral Access Road Licence**” means a miscellaneous licence
- 31 granted pursuant to clause 13(1)(b) or clause 13(2) as the case
- 32 may be and according to the requirements of the context
- 33 describes the area of land from time to time the subject of that
- 34 licence;

1 **“laws relating to native title”** means laws applicable from time
2 to time in Western Australia in respect of native title and
3 includes the *Native Title Act 1993* (Commonwealth);

4 **“local government”** means a local government established
5 under the *Local Government Act 1995* (WA);

6 **“manganese ore products”** means manganese ore of all grades
7 from the Nicholas Downs mining area and all products solely
8 from the processing of such manganese ore;

9 **“Mining Act”** means the *Mining Act 1978* (WA);

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

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

19 **“month”** means calendar month;

20 **“Nicholas Downs mining area”** means the area the subject of
21 mining leases 46/80, 46/81 and 46/121 held at the date of this
22 Agreement by Nicholas Downs Pty Ltd ACN 131 992 295, a
23 company related to RHH;

24 **“other products”** includes manganese ore products and mineral
25 ores other than iron ore products;

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

27 **“Pilbara Iron Ore Railways”** means each railway constructed
28 under a Government agreement which is located wholly or
29 substantially in one or more of the local government districts of
30 Ashburton, East Pilbara, Port Hedland and Roebourne at the
31 date of this Agreement;

32 **“Port”** means the Port of Port Hedland and pending the vesting
33 of the land comprising the Boodarie multi-user stockyard area
34 in the Port Authority a reference to the “Port” in this Agreement
35 shall include the Boodarie multi-user stockyard area;

- 1 **“Port Authority”** means the Port Hedland Port Authority,
2 being the body corporate established for the Port under the Port
3 Authorities Act;
- 4 **“Port Authorities Act”** means the *Port Authorities Act 1999*
5 (WA);
- 6 **“Port Authorities Minister”** means the Minister in the
7 Government of the State for the time being responsible for the
8 administration of the Port Authorities Act;
- 9 **“Port Facilities”** means facilities (excluding the Port Railway
10 and associated access roads within the Port Railway Area)
11 within the Port necessary for the construction, operation and
12 maintenance of train unloading, stockpiles, re-claimers,
13 conveyors and other facilities (including access roads) for the
14 unloading of iron ore products and, with the consent of the Port
15 Authority, manganese ore products and other products from the
16 Port Railway and the transport of iron ore products and, with
17 the consent of the Port Authority, manganese ore products and
18 other products to ship loading facilities for shipment from the
19 Port and of a ship loading terminal, which may include
20 conveyors, wharves and ship loading facilities, maintenance and
21 administration buildings and roads;
- 22 **“Port Facilities Area”** means before the grant of the Port
23 Facilities Lease and Licence that part or those parts (as the case
24 may be) of the Port the subject of a subsisting agreement
25 pursuant to clause 8(1)(a) and after the grant of the Port
26 Facilities Lease and Licence, the area or areas (as the case may
27 be) from time to time leased or licensed to the Company under
28 the Port Facilities Lease and Licence;
- 29 **“Port Facilities Lease and Licence”** means a lease and licence
30 granted by the Port Authority to the Company (and unless
31 otherwise agreed with the State during the currency of this
32 Agreement, under the Port Authorities Act) in relation to the
33 construction, operation and maintenance of the Port Facilities
34 for a term which ends at the same time as the Special Railway
35 Licence (including as renewed), as varied in accordance with its
36 provisions, and according to the requirements of the context
37 describes the area or areas (as the case may be) from time to
38 time the subject of that lease and licence;
- 39 **“Port Railway”** means that part of the Railway within the Port;

1 **“Port Railway Area”** means before the grant of the Port
2 Railway Lease and Licence that part or those parts (as the case
3 may be) of the Port the subject of a subsisting agreement
4 pursuant to clause 8(1)(c) and after the grant of the Port Lease
5 and Licence, the area or areas (as the case may be) from time to
6 time the subject of that lease and licence;

7 **“Port Railway Lease and Licence”** means a lease and licence
8 granted by the Port Authority to the Company (and unless
9 otherwise agreed with the State during the currency of this
10 Agreement, under the Port Authorities Act) in relation to the
11 construction, operation and maintenance of the Port Railway for
12 a term which ends at the same time as the Special Railway
13 Licence (including as renewed), and according to the
14 requirements of the context describes the area or areas (as the
15 case may be) from time to time the subject of that lease and
16 licence;

17 **“Private Roads”** means Lateral Access Roads and the
18 Company’s access roads within the Railway Corridor;

19 **“Project”** means the construction and operation under this
20 Agreement of the SRL Railway and associated infrastructure
21 within the Railway Corridor including access roads and of the
22 Lateral Access Roads in accordance with approved proposals;

23 **“Rail Safety Act”** means the *Rail Safety Act 1998*;

24 **“Railway”** means a standard gauge heavy haul railway initially
25 from the Roy Hill mining area to the Port Facilities Area for the
26 transport of iron ore products, freight goods and other products
27 to the Port together with all railway track, associated track
28 structures including sidings, turning loops, over or under track
29 structures, supports (including supports for equipment or items
30 associated with the use of a railway) tunnels, bridges, train
31 control systems, signalling systems, switch and other gear,
32 communication systems, electric traction infrastructure,
33 buildings (excluding office buildings, housing and freight
34 centres), workshops and associated plant, machinery and
35 equipment and including rolling stock maintenance facilities,
36 terminal yards, depots, culverts and weigh bridges which
37 railway is or is to be (as the case may be) the subject of
38 approved proposals under clauses 10 and 11 of this Agreement
39 and includes any expansion or extension thereof outside the

1 Port which is the subject of additional proposals approved in
2 accordance with clause 12 and any expansion or extension
3 thereof within the Port which has been approved by the Port
4 Authority under the provisions of the Port Railway Lease and
5 Licence;
6 **“Railway Corridor”** means, prior to the grant of the Special
7 Railway Licence, the land for the route of the SRL Railway,
8 access roads (other than Lateral Access Roads), areas from
9 which stone, sand, clay and gravel may be taken, temporary
10 accommodation facilities for the railway workforce and water
11 bores which is the subject of a subsisting agreement pursuant to
12 clause 7(1) and after the grant of the Special Railway Licence
13 the land from time to time the subject of the Special Railway
14 Licence;
15 **“Railway Operation Date”** means the date of the first carriage
16 of iron ore products, freight goods or other products over the
17 Railway (other than for construction or commissioning
18 purposes);
19 **“Roy Hill mining area”** means the area outlined and shaded
20 red on the plan marked “B” initialled by or on behalf of the
21 parties for the purpose of identification and being at the date of
22 this Agreement the subject of exploration licences 46/334,
23 46/335 and 46/592 held by RHIO;
24 **“said State”** means the State of Western Australia;
25 **“Special Railway Licence”** means the miscellaneous licence
26 for railway and, if applicable, other purposes, granted to the
27 Company pursuant to clause 13(1)(a), as varied in accordance
28 with clause 13(8) and according to the requirements of the
29 context describes the area of land from time to time the subject
30 of that licence;
31 **“SRL Railway”** means that part of the Railway which is or is
32 to be (as the case may be) located outside the Port;
33 **“SRL Railway spur line”** means a standard gauge heavy haul
34 railway spur line from a mine, or in the vicinity of a mine, in
35 the Pilbara region of the said State connecting to the SRL
36 Railway (and whether to the initial railway line the subject of
37 approved proposals under clauses 10 and 11 or to an expansion
38 or extension thereof, including a spur line, which is the subject

1 of additional proposals approved in accordance with clause 12)
2 for the transport upon the SRL Railway to the Port of iron ore
3 products, freight goods and other products;

4 **“SRL Railway spur line Operation Date”** means in respect of
5 a SRL Railway spur line, the date of the first carriage of iron
6 ore products, freight goods or other products over that spur line
7 (other than for construction or commissioning purposes);

8 **“this Agreement”**, **“hereof”** and **“hereunder”** refer to this
9 Agreement, whether in its original form or as from time to time
10 added to, varied or amended; and

11 **“Trade Practices Act”** means the *Trade Practices Act 1974*
12 (Commonwealth).

13 **Interpretation**

14 2. (1) In this Agreement:

- 15 (a) monetary references are references to Australian
16 currency unless otherwise specifically expressed;
- 17 (b) power given under any clause other than clause 27 to
18 extend any period or date shall be without prejudice
19 to the power of the Minister under clause 27;
- 20 (c) clause headings do not affect interpretation or
21 construction;
- 22 (d) words in the singular shall include the plural and
23 words in the plural shall include the singular
24 according to the requirements of the context;
- 25 (e) one gender includes the other genders;
- 26 (f) a covenant or agreement by more than one person
27 binds, and is enforceable against, those persons
28 jointly and each of them severally;
- 29 (g) reference to an Act includes the amendments to that
30 Act for the time being in force and also any Act
31 passed in substitution therefor or in lieu thereof and
32 the regulations for the time being in force
33 thereunder;
- 34 (h) reference to the Access Code includes the
35 amendments to that code for the time being in force

- 1 and also any code established or made in
2 substitution therefor or in lieu thereof;
- 3 (i) reference in this Agreement to any other document
4 includes that document as from time to time added
5 to, varied or amended and notwithstanding any
6 change in the identity of the parties;
- 7 (j) reference to a clause or schedule is a reference to a
8 clause or schedule to this Agreement, and a
9 reference to a subclause or paragraph is a reference
10 to the subclause of the clause or paragraph of the
11 clause or subclause as the case may be in, or in
12 relation to, which the reference is made;
- 13 (k) “including” means “including, but not limited to”;
14 and
- 15 (l) reference to a “person” includes a body corporate.
- 16 (2) Nothing in this Agreement shall be construed to exempt
17 the State or the Company from compliance with or to
18 require the State or the Company to do anything contrary
19 to any law relating to native title or any lawful obligation
20 or requirement imposed on the State or the Company as
21 the case may be pursuant to any law relating to native
22 title.
- 23 (3) Nothing in this Agreement shall be construed to exempt
24 the Company from compliance with any requirement in
25 connection with the protection of the environment arising
26 out of or incidental to its activities under this Agreement
27 that may be made by or under the EP Act.
- 28 **Ratification and operation**
- 29 3. (1) The State shall introduce and sponsor a Bill in the State
30 Parliament of Western Australia prior to
31 31 December 2010 or such later date as may be agreed
32 between the parties hereto to ratify this Agreement. The
33 State shall endeavour to secure the timely passage of such
34 Bill as an Act.
- 35 (2) The provisions of this Agreement other than this clause
36 and clauses 1 and 2 will not come into operation until the

- 1 Bill referred to in subclause (1) has been passed by the
2 State Parliament of Western Australia and comes into
3 operation as an Act.
- 4 (3) If by 30 June 2011 the said Bill has not commenced to
5 operate as an Act then, unless the parties hereto otherwise
6 agree, this Agreement will then cease and determine and
7 no party hereto will have any claim against any other
8 party hereto with respect to any matter or thing arising
9 out of, done, performed, or omitted to be done or
10 performed under this Agreement.
- 11 (4) On the date on which the said Bill commences to operate
12 as an Act all the provisions of this Agreement will
13 operate and take effect despite any enactment or other
14 law.

15 **Initial obligations of the State**

- 16 4. The State shall subject to the adequate protection of the
17 environment (including flora and fauna) and the land affected
18 (including improvements thereon), and subject to the Company
19 (unless the Minister otherwise allows) furnishing to the
20 Minister the written consents referred to in clause 7(3)(a),
21 arrange for the issue of requisite authority under the LAA to
22 allow the Company to enter upon Crown land as defined in the
23 LAA (including, if applicable, land the subject of a pastoral
24 lease, but excluding land within the Port other than the
25 Boodarie multi-user stockyard area before any vesting of the
26 land comprising it in, or any placing of the land comprising it
27 under the care, control and management of, the Port Authority)
28 with plant and equipment to carry out all works to the extent
29 reasonably necessary for the purposes of undertaking its
30 obligations under clause 5(1).

31 **Initial obligations of the Company**

- 32 5. (1) The Company shall continue field and office geological,
33 geophysical, geotechnical, engineering and
34 environmental investigations and studies and marketing
35 and finance studies and other matters necessary for the
36 purposes of clauses 7 and 8 and to enable it to finalise

(3) The Company shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclauses (1) and (2) and any other relevant studies in relation to those subclauses that the Minister may wish the Company to undertake.

“and the expression “**the Company**” means the persons from time to time comprising “the Company” in their capacity as such under the agreement made on 22 June 2010 between The Honourable Colin James Barnett, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, Roy Hill Infrastructure Pty Ltd ACN 130 249 633, Roy Hill Holdings Pty Ltd ACN 123 721 077 and Roy Hill Iron Ore Pty Ltd ACN 123 722 038, as varied from time to time, in relation to the use or proposed use of land pursuant to that agreement after and in accordance with approved proposals under that agreement and in relation to the use of that land before any such approval of proposals where the Company has the requisite authority to enter upon and so use the land”;

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

9 “In relation to a notice from the Company the
10 conditions that the Minister may specify can as
11 appropriate include, among other conditions, a
12 condition restricting the Company’s use of the
13 relevant land to after the approval or deemed
14 approval as the case may be under the
15 abovementioned agreement of all of the
16 Company’s submitted initial proposals thereunder
17 for the Project (as defined in the abovementioned
18 agreement), or in the case of additional proposals
19 submitted or to be submitted by the Company to
20 after the approval or deemed approval under that
21 agreement of such additional proposals, and to the
22 extent so approved. ”; and

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

25 The Company acknowledges that nothing in this clause 6 nor
26 the granting of any consents under section 18 of the *Aboriginal*
27 *Heritage Act 1972* (WA) will constitute or is to be construed as
28 constituting the approval of any proposals submitted or to be
29 submitted by the Company under this Agreement or as the grant
30 or promise of land tenure for the purposes of this Agreement.

31 **Railway Corridor**

- 32 7. (1) As soon as practicable during its studies under clause 5,
33 and from time to time during those studies as required by
34 either the Company or the State, the Company shall
35 consult with the Minister to seek the agreement of the
36 Minister as to:
37 (a) where the SRL Railway will begin and end;

- 1 (b) a route for the SRL Railway, access roads to be
2 within the Railway Corridor and the land required
3 for that route as well as associated infrastructure
4 including areas from which stone, sand, clay and
5 gravel may be taken, temporary accommodation
6 facilities for the railway workforce and water bores;
7 and
8 (c) the routes of, and the land required for, roads outside
9 the Railway Corridor for access to it to construct the
10 SRL Railway (such roads as agreed being “**Lateral**
11 **Access Roads**”).
- 12 In seeking such agreement, regard shall be had to
13 achieving a balance between engineering matters
14 including costs, the nature and use of any lands
15 concerned and interests therein and the costs of acquiring
16 the land (all of which shall be borne by the Company).
17 The parties acknowledge the intention is for the
18 Company to construct the SRL Railway and the access
19 roads for the construction and maintenance of the SRL
20 Railway which are to be within the Railway Corridor
21 along the centreline of the Railway Corridor subject to
22 changes in that alignment to the extent necessary to avoid
23 heritage, environmental or poor ground conditions that
24 are not identified during preliminary investigation work,
25 and recognise the width of the Railway Corridor may
26 need to vary along its route to accommodate associated
27 infrastructure including access roads, areas from which
28 stone, sand, clay and gravel may be taken, temporary
29 accommodation facilities for the railway workforce and
30 water bores. The provisions of clause 32 shall not apply
31 to this subclause.
- 32 (2) If the date by which the Company must submit detailed
33 proposals under clause 10(1) is extended or varied by the
34 Minister pursuant to clause 27, any agreement made
35 pursuant to subclause (1) before such date is extended or
36 varied shall unless the Minister notifies the Company
37 otherwise be deemed to be at an end and neither party
38 shall have any claim against the other in respect of it.

- 1 (3) The Company acknowledges that it shall be responsible
2 for liaising with every title holder in respect of the land
3 affected and for obtaining in a form and substance
4 acceptable to the Minister all unconditional and
5 irrevocable consents of each such title holder to, and all
6 statutory consents required in respect of the land affected
7 for:
- 8 (a) the issue of requisite authority under the LAA
9 pursuant to clause 4 and the undertaking of the
10 matters referred to in clause 5(1) (including as
11 applying pursuant to clause 12(2));
- 12 (b) the grant of the Special Railway Licence for the
13 construction, operation and maintenance within the
14 Railway Corridor of the SRL Railway and access
15 roads to be within the Railway Corridor;
- 16 (c) the grant of Lateral Access Road Licences for the
17 construction, use and maintenance of Lateral Access
18 Roads over the routes for the Lateral Access Roads
19 agreed pursuant to clause 7(1) (including as applying
20 pursuant to clause 12(2)); and
- 21 (d) the inclusion of additional land in the Special
22 Railway Licence as referred to in clause 13(8),
- 23 in accordance with this Agreement. For the purposes of
24 this subclause (3), “title holder” means a management
25 body (as defined in the LAA) in respect of any part of the
26 affected land, a person who holds a mining, petroleum or
27 geothermal energy right (as defined in the LAA) in
28 respect of any part of the affected land, a person who
29 holds a lease or licence under the LAA in respect of any
30 part of the affected land, a person who holds any other
31 title granted under or pursuant to a Government
32 agreement in respect of any part of the affected land, a
33 person who holds a lease or licence in respect of any part
34 of the affected land under any other Act applying in the
35 said State and a person in whom any part of the affected
36 land is vested, immediately before in respect of
37 paragraph (a) the grant of the authority referred to therein
38 and in respect of paragraphs (b), (c) and (d) the provision
39 of such consents to the Minister as referred to in

1 clause 10(5)(b) (including as applying pursuant to
2 clause 12(4)).

3 **Port Facilities**

- 4 8. (1) As soon as practicable during its studies under clause 5,
5 and from time to time during those studies as required by
6 either the Company or the State, the Company shall
7 consult with the Minister to seek the agreement of the
8 Minister (acting with the concurrence of the Port
9 Authorities Minister) as to:
- 10 (a) (i) an area or areas (as the case may be) of the Port
11 to be leased to the Company; and
12 (ii) an area or areas (as the case may be) of the Port
13 to be licensed (on a non-exclusive basis) to the
14 Company,
15 under the Port Facilities Lease and Licence and in
16 which Port Facilities and access roads to be used by
17 the Company in constructing, operating and
18 maintaining the Port Facilities are to be constructed;
- 19 (b) the nature and characteristics of the Port Facilities
20 including, subject to subclause (2), the capacity of
21 the Port Facilities;
- 22 (c) (i) an area or areas (as the case may be) of the Port
23 to be leased to the Company; and
24 (ii) an area or areas (as the case may be) of the Port
25 to be licensed (on a non-exclusive basis) to the
26 Company,
27 under the Port Railway Lease and Licence and
28 within which the Port Railway and access roads to
29 be used by the Company in constructing, operating
30 and maintaining the Port Railway are to be
31 constructed;
- 32 (d) where the Port Railway will end within the Port
33 Railway Area and a route within that area for the
34 Port Railway and access roads to be used by the
35 Company in constructing, operating and maintaining
36 the Port Railway; and

- 1 (e) the nature and characteristics of the Port Railway
2 including a design capacity which enables the
3 transport of not less than 55 million tonnes of iron
4 ore products per annum over the Port Railway.
- 5 (2) The Port Facilities must include:
- 6 (a) 2 berths with a total handling capacity of up to but
7 not exceeding 55 million tonnes per annum; and
- 8 (b) a train unloader with a design capacity which
9 enables the unloading within the Port of not less than
10 55 million tonnes of iron ore products per annum
11 from the Railway.
- 12 (3) If the date by which the Company must submit detailed
13 proposals under clause 10(1) is extended or varied by the
14 Minister pursuant to clause 27, any agreement made
15 pursuant to subclause (1) before such date is extended or
16 varied shall unless the Minister notifies the Company
17 otherwise be deemed to be at an end and neither party
18 shall have any claim against the other in respect of it.
- 19 (4) Notwithstanding any agreement (including for the
20 avoidance of doubt pursuant to clauses 8(1) or 10(1)),
21 representation or understanding between the Company
22 and any one or more of the Minister, the Port Authorities
23 Minister, the State or the Port Authority in connection
24 with the vesting of the Boodarie multi-user stockyard
25 area, none of the Minister, the Port Authorities Minister,
26 the State or the Port Authority:
- 27 (a) has any obligation, whether under this Agreement or
28 otherwise, to ensure that the vesting is pursued,
29 completed or completed without delay; or
- 30 (b) is liable to any person (including the Company) for
31 any loss or damage of any kind whatsoever and
32 howsoever arising out of or in connection with any
33 failure or refusal to vest the land (or part thereof) or
34 any delay in vesting the land (or part thereof) for any
35 reason whatsoever.
- 36 (5) Nothing in this Agreement, including any agreement
37 between the Company and the Minister pursuant to

1 subclause (1), shall be construed to oblige the State or
2 any Minister in the Government of the said State to cause
3 the Port Authority to grant to the Company or any other
4 person tenure or other rights including the Port Facilities
5 Lease and Licence or the Port Railway Lease and
6 Licence.

7 (6) The provisions of clause 32 shall not apply to this clause.

8 **Community development plan**

- 9 9. (1) In this clause, the term “community and social benefits”
10 includes:
- 11 (a) training and guaranteed employment for indigenous
12 and non-indigenous persons living in the Pilbara
13 region of the said State;
- 14 (b) regional development and local procurement of
15 goods and services;
- 16 (c) contribution to community services and facilities;
17 and
- 18 (d) a regionally based workforce.
- 19 (2) The Company acknowledges the need for community and
20 social benefits flowing from this Agreement.
- 21 (3) The Company agrees that, prior to the time at which it
22 submits any proposals pursuant to clause 10, and, if
23 required by the Minister, prior to the time at which it
24 submits any additional proposals pursuant to clause 12, it
25 shall:
- 26 (a) consult with the relevant local government or local
27 governments with respect to the need for community
28 and social benefits in relation to the developments
29 proposed;
- 30 (b) following such consultation, prepare a plan which
31 describes the Company’s proposed strategies for
32 achieving community and social benefits in
33 connection with the developments proposed, and
34 such plan shall include a process for regular
35 consultation by the Company with the relevant local

- government or local governments in respect of the strategies; and
- (c) submit to the Minister the plan prepared pursuant to subclause (3)(b) and confer with the Minister in respect of the plan.
- (4) The Minister shall within one month after receipt of a plan submitted under subclause (3)(c), either notify the Company that the Minister approves the plan as submitted or notify the Company of changes which the Minister requires be made to the plan. If the Company is unwilling to accept the changes which the Minister requires it shall notify the Minister to that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes required by the Minister.
- (5) The effect of an award made on an arbitration pursuant to subclause (4) shall be that the plan submitted by the Company pursuant to subclause (3)(c) shall, with such changes required by the Minister under subclause (4) as the arbitrator determines to be reasonable (with or without modification by the arbitrator), be deemed to be the plan approved by the Minister under this clause.
- (6) During the currency of this Agreement, the Company shall implement the plan approved or deemed to be approved by the Minister under this clause.
- (7) The Company shall report to the Minister about the results of its periodic ongoing consultation with the relevant local government or local governments in accordance with the plan approved or deemed to be approved by the Minister under this clause and as soon as practicable after each such consultation takes place.
- (8) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan approved or deemed to be approved by the Minister under this clause and may agree to amendment of the plan or adoption of a new plan. Any such amended plan

1 or new plan will be deemed to be the plan approved by
2 the Minister under this clause.

3 **Company to submit proposals**

4 10. (1) The Company shall, subject to the EP Act, the provisions
5 of this Agreement, agreement at that time subsisting in
6 respect of the matters required to be agreed pursuant to
7 clauses 7(1) and 8(1), approval of a plan as referred to in
8 clause 9 and, unless otherwise agreed with the State
9 during the currency of this Agreement, the vesting of the
10 Boodarie multi-user stockyard area in the Port Authority,
11 submit to the Minister by 31 December 2011 to the
12 fullest extent reasonably practicable its detailed proposals
13 (including plans where practicable and specifications
14 where reasonably required by the Minister and any other
15 details normally required by a local government in whose
16 area any works are to be situated) with respect to
17 undertaking of the Project, which proposals shall include
18 the location, area, layout, design, materials and time
19 program for the commencement and completion of
20 construction or the provision (as the case may be) of each
21 of the following matters namely:

- 22 (a) the SRL Railway including fencing (if any) and
23 crossing places within the Railway Corridor and the
24 matters referred to in subclause (2)(a);
- 25 (b) temporary accommodation and ancillary temporary
26 facilities for the railway workforce on, or in the
27 vicinity of, the Railway Corridor and housing and
28 other appropriate facilities elsewhere for the
29 Company's workforce;
- 30 (c) water supply;
- 31 (d) energy supplies;
- 32 (e) access roads within the Railway Corridor and
33 Lateral Access Roads both along the routes for those
34 roads agreed between the Minister and the Company
35 pursuant to clause 7(1);
- 36 (f) any other works, services or facilities desired by the
37 Company; and

- 1 (g) use of local labour, professional services,
2 manufacturers, suppliers contractors and materials
3 and measures to be taken with respect to the
4 engagement and training of employees by the
5 Company, its agents and contractors.
- 6 (2) (a) Proposals as to the matters specified in
7 subclause (1)(a) must provide for the SRL Railway
8 to have:
- 9 (i) a design capacity which enables the transport of
10 not less than 55 million tonnes of iron ore
11 products per annum over the SRL Railway; and
- 12 (ii) a railway track configuration which enables:
- 13 (A) rail operations of the kind carried out on
14 the Pilbara Iron Ore Railways to be carried
15 out on the Railway, and vice versa; and
- 16 (B) connection of the SRL Railway outside the
17 Port to any one or more of the Pilbara Iron
18 Ore Railways.
- 19 (b) Proposals pursuant to subclause (1) must specify the
20 matters agreed for the purpose pursuant to
21 clauses 7(1) and must not be contrary to or
22 inconsistent with such agreed matters.
- 23 (3) Each of the proposals pursuant to subclause (1) may with
24 the approval of the Minister, or must if so required by the
25 Minister, be submitted separately and in any order as to
26 the matter or matters mentioned in one or more of
27 paragraphs (a) to (g) of subclause (1), and until all of its
28 proposals under this clause have been approved the
29 Company may withdraw and may resubmit any proposal
30 but the withdrawal of any proposal shall not affect the
31 obligations of the Company to submit a proposal under
32 this clause in respect of the subject matter of the
33 withdrawn proposal.
- 34 (4) The Company shall, whenever any of the following
35 matters referred to in this subclause are proposed by the
36 Company (whether before or during the submission of

- 1 proposals under this clause), submit to the Minister
2 details of any services (including any elements of the
3 project investigations, design and management) and any
4 works, materials, plant, equipment and supplies that it
5 proposes to consider obtaining from or having carried out
6 or permitting to be obtained from or carried out outside
7 Australia, together with its reasons therefor and shall, if
8 required by the Minister consult with the Minister with
9 respect thereto.
- 10 (5) At the time when the Company submits the last of the
11 said proposals pursuant to this clause, it shall:
- 12 (a) furnish to the Minister's reasonable satisfaction
13 evidence of:
- 14 (i) the financial capability of the Company to
15 undertake the operations to which the said
16 proposals refer;
- 17 (ii) all accreditations under the Rail Safety Act
18 which are required to be held by the Company
19 or any other person for the construction of the
20 SRL Railway;
- 21 (iii) the readiness of the project proponent for the
22 mining of iron ore from the Roy Hill mining
23 area to embark upon and to proceed to carry out
24 that project in a timeframe consistent with the
25 commencement of the undertaking of the
26 Project;
- 27 (iv) the Company having a binding agreement for
28 the transport upon the Railway and ship loading
29 at the Port Facilities over the term of this
30 Agreement of the iron ore to be mined after the
31 date of this Agreement from the Roy Hill
32 mining area;
- 33 (v) all other arrangements and agreements it has at
34 that time made or proposes to make in respect
35 of access (as defined in clause 15) to the
36 Railway, in respect of transport of any iron ore

1 products, freight goods or other products over
2 the Railway; and

(vi) the readiness of the Company to embark upon and proceed to carry out the operations referred to in the said proposals; and

6 (b) furnish to the Minister the written consents referred
7 to in clause 7(3)(b) and 7(3)(c); and

(c) furnish to the Minister's reasonable satisfaction evidence that the Port Authority has granted to the Company the Port Facilities Lease and Licence (which includes terms as agreed by the Company and the Port Authority relating to access to the Port Facilities, including use by persons of the services provided by the Port Facilities) and the Port Railway Lease and Licence each of which may be conditional upon the grant of the Special Railway Licence and that the term of each of those titles will commence within 3 months after approval under clause 11 of all of the Company's proposals submitted under subclause (1).

21 Consideration of proposals

22 11. (1) In respect of each proposal pursuant to clause 10(1) the
23 Minister shall subject to the EP Act:

24 (a) approve of the proposal without qualification or
25 reservation; or

(b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in clause 10(1) not covered by the said proposal or until such time as clause 10(5) has been complied with by the Company; or

(c) require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto or comply with such conditions in respect thereto as he (having regard to the circumstances including the overall development

- 1 of and the use by others as well as the Company of
2 all or any of the facilities proposed to be provided)
3 thinks reasonable and in such a case the Minister
4 shall disclose his reasons for such conditions,
- 5 PROVIDED ALWAYS that where implementation of
6 any proposals hereunder have been approved pursuant to
7 the EP Act subject to conditions or procedures, any
8 approval or decision of the Minister under this clause
9 shall if the case so requires incorporate a requirement that
10 the Company make such alterations to the proposals as
11 may be necessary to make them accord with those
12 conditions or procedures.
- 13 (2) The Minister shall within 2 months after the later of:
- 14 (a) receipt of proposals pursuant to clause 10(1);
- 15 (b) where the proposals are to be assessed under Part IV
16 of the EP Act, service on the Minister of an authority
17 under section 45(7) of the EP Act; and
- 18 (c) where a proposal will or may require the State to do
19 any act which affects any native title rights and
20 interests, completion of all processes required by
21 laws relating to native title to be undertaken by the
22 State before that act may be done by the State,
- 23 give notice to the Company of his decision in respect to
24 the proposals.
- 25 (3) If the decision of the Minister is as mentioned in either of
26 paragraphs (b) or (c) of subclause (1) the Minister shall
27 afford the Company full opportunity to consult with him
28 and should it so desire to submit new or revised proposals
29 either generally or in respect to some particular matter.
- 30 (4) If the decision of the Minister is as mentioned in either of
31 paragraphs (b) or (c) of subclause (1) and the Company
32 considers that the decision is unreasonable the Company
33 within 2 months after receipt of the notice mentioned in
34 subclause (2) may elect to refer to arbitration in the
35 manner hereinafter provided the question of the
36 reasonableness of the decision PROVIDED THAT any

- 1 requirement of the Minister pursuant to the proviso to
2 subclause (1) shall not be referable to arbitration
3 hereunder.
- 4 (5) An award made on an arbitration pursuant to
5 subclause (4) shall have force and effect as follows:
- 6 (a) if by the award the dispute is decided against the
7 Company then unless the Company within 3 months
8 after delivery of the award gives notice to the
9 Minister of its acceptance of the award this
10 Agreement shall on the expiration of that period of
11 3 months cease and determine; or
- 12 (b) if by the award the dispute is decided in favour of
13 the Company the decision shall take effect as a
14 notice by the Minister that he is so satisfied with and
15 approves the matter or matters the subject of the
16 arbitration.
- 17 (6) Notwithstanding any provision of this Agreement (other
18 than clause 27) or that any matter required to be agreed
19 pursuant to clauses 7(1) and 8(1) has not been agreed, or
20 that the plan required to be approved pursuant to clause 9
21 has not been approved, or that the Boodarie multi-user
22 stockyard area has not been vested in the Port Authority,
23 or that under this clause any proposals of the Company
24 are approved by the Minister or determined by arbitration
25 award, unless each and every proposal and matter
26 required pursuant to clause 10 is so approved or
27 determined by 30 June 2012:
- 28 (a) subject to paragraph (b), the Minister may give the
29 Company 12 months notice of intention to determine
30 this Agreement and unless before the expiration of
31 the said 12 months period all the detailed proposals
32 and matters are so approved or determined this
33 Agreement shall on the expiration of that period
34 cease and determine; or
- 35 (b) if the State has determined or determines that it will
36 not vest or complete the vesting of the Boodarie
37 multi-user stockyard area (or part thereof) in the Port

- 1 Authority for any reason whatsoever and the
2 Company's right to submit proposals pursuant to
3 clause 10(1) is still subject to such vesting having
4 first occurred, the Minister may give the Company
5 notice of intention to determine this Agreement
6 immediately and this Agreement shall cease and
7 determine on the date the notice is given to the
8 Company,
9 subject to the provisions of clause 29.
- 10 (7) Subject to and in accordance with the EP Act and any
11 approvals and licences required under that Act the
12 Company shall implement the approved proposals in
13 accordance with the terms thereof so that the SRL
14 Railway, access roads and the Lateral Access Roads are
15 constructed and operational within 3 years of the
16 approval of the proposals.
- 17 (8) Notwithstanding clause 25, the Minister may during the
18 implementation of approved proposals approve variations
19 to those proposals.
- 20 (9) The Minister may extend the periods set forth in
21 clause 10(1) and subclause (7) of this clause (in addition
22 to any extension granted under clauses 26 and 27) upon
23 request of the Company for such reasonable period or
24 periods as the Minister considers appropriate to enable
25 the Company to comply with laws relating to native title.

26 **Expansion of Project outside the Port**

- 27 12. (1) If the Company at any time during the currency of this
28 Agreement desires to construct outside the Port an SRL
29 Railway spur line or desires to significantly modify,
30 expand or otherwise vary its activities that are the subject
31 of this Agreement and that may be carried on by it
32 pursuant to this Agreement (other than by the
33 construction of a spur line) beyond those activities
34 specified in any approved proposals, it shall give notice
35 of such desire to the Minister and furnish to the Minister
36 with that notice an outline of its proposals in respect
37 thereto (including such matters mentioned in clause 10(1))

- 1 as are relevant or as the Minister otherwise requires and
2 in the case of the proposed construction of a SRL
3 Railway spur line the proposed capacity of such spur
4 line).
- 5 (2) If the notice relates to a SRL Railway spur line, the
6 Minister shall within one month of receipt of such notice
7 advise the Company whether or not he approves
8 in-principle the proposed construction of such spur line.
9 If the Minister gives in-principle approval the Company
10 may (but not otherwise) submit detailed proposals in
11 respect thereof provided that the provisions of clauses 4,
12 5, 7 and 9 shall mutatis mutandis apply prior to
13 submission of detailed proposals in respect thereof.
- 14 (3) Subject to the EP Act, the provisions of this Agreement
15 and agreement at that time subsisting in respect of any
16 matters required to be agreed pursuant to clause 7(1) as
17 referred to in subclause (2), and approval of a plan as
18 referred to in clause 9, the Company shall submit to the
19 Minister within a reasonable timeframe, as determined by
20 the Minister after receipt of the notice referred to in
21 subclause (1) (or in the case of a notice referred to in
22 subclause (2) the giving of the Minister's in-principle
23 consent as referred to in that subclause), detailed
24 proposals in respect of the proposed construction of such
25 spur line or the proposed modification, expansion or
26 variation of its activities including such of the matters
27 mentioned in clause 10(1) as the Minister may require.
- 28 (4) The provisions of clause 10 (other than subclause (2)(a)
29 and with the reference in subclause 5(b) to clause 7(3)(b)
30 being read as a reference to clause 7(3)(d)) and clause 11
31 (other than subclauses (5)(a), (6) and (7) of clause 11)
32 shall mutatis mutandis apply to detailed proposals
33 submitted pursuant to this clause provided that the
34 Company may withdraw such proposals at any time
35 before approval thereof or, where any decision of the
36 Minister in respect thereof is referred to arbitration,
37 within 3 months after the award by notice to the Minister
38 that it shall not be proceeding with the same. Subject to
39 and in accordance with the EP Act and any approvals or

1 licences required under that Act, the Company shall
2 implement approved proposals pursuant to this clause in
3 accordance with the terms thereof.

4 **Grant of Tenure**

5 13. (1) On application made by the Company to the Minister in
6 such manner as the Minister may determine, not later
7 than 3 months after all its proposals submitted pursuant
8 to clause 10(1) have been approved or deemed to be
9 approved and the Company has complied with the
10 provisions of clause 10(5), the State notwithstanding the
11 Mining Act shall cause to be granted to the Company:

12 (a) a miscellaneous licence to conduct within the
13 Railway Corridor and in accordance with its
14 approved proposals all activities (including the
15 taking of stone, sand, clay and gravel, the provision
16 of temporary accommodation facilities for the
17 railway workforce and, subject to the *Rights in*
18 *Water and Irrigation Act 1914* (WA), the operation
19 of water bores) necessary for the planning, design,
20 construction, commissioning, operation and
21 maintenance within the Railway Corridor of the SRL
22 Railway and access roads (“**the Special Railway**
23 **Licence**”) such licence to be granted under and
24 subject to, except as otherwise provided in this
25 Agreement, the Mining Act in the form of
26 Schedule 1 hereto and subject to such terms and
27 conditions as the Minister for Mines may from time
28 to time consider reasonable and at a rental calculated
29 in accordance with the Mining Act:

30 (i) prior to the Railway Operation Date, as if the
31 width of the Railway Corridor were 100 metres;
32 and

33 (ii) on and from the Railway Operation Date, at the
34 rentals from time to time prescribed under the
35 Mining Act; and

36 (b) a miscellaneous licence or licences to allow the
37 construction, use and maintenance of Lateral Access

Roads within the routes agreed for those Lateral Access Roads under clause 7(1) (each a “**Lateral Access Road Licence**”), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act in the form of Schedule 2 hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the Mining Act.

(2) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after its proposals submitted pursuant to clause 12(1) for the construction of Lateral Access Roads for access to the Railway Corridor to construct a SRL Railway spur line have been approved or deemed to be approved and the Company has complied with the provisions of clause 10(5)(b) (as applying pursuant to clause 12(4)), the State notwithstanding the Mining Act shall cause to be granted to the Company a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under clause 7(1) (as applying pursuant to clause 12(2) (each a “**Lateral Access Road Licence**”), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act in the form of Schedule 3 hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the Mining Act.

(3) Subject to the performance by the Company of its obligations under this Agreement and the Mining Act and notwithstanding any provisions of the Mining Act to the contrary the term of the Special Railway Licence shall be for a period of 30 years commencing on the date of grant thereof (subject to sooner determination thereof upon the determination of this Agreement) with the right as provided herein for the Company to take during the currency of this Agreement 2 successive renewals each of

- 1 10 years (subject to sooner determination thereof upon
2 the determination of this Agreement) upon the same
3 terms and conditions, such right to be exercised by the
4 Company making application for such renewal not later
5 than one month before the expiration of the then current
6 term of the Special Railway Licence. For the avoidance
7 of doubt the Company acknowledges that the term of the
8 Special Railway Licence may only be renewed twice.
- 9 (4) Notwithstanding the Mining Act, the term of any Lateral
10 Access Road Licence shall, subject to the sooner
11 determination thereof on the cessation or sooner
12 determination of this Agreement, be for a period of
13 4 years commencing on the date of grant thereof.
- 14 (5) Notwithstanding the Mining Act, and except as required
15 to do so by the terms of the Special Railway Licence, the
16 Company shall not be entitled to surrender the Special
17 Railway Licence or any Lateral Access Road Licence or
18 any part or parts of them without the prior consent of the
19 Minister.
- 20 (6) (a) The Company may in accordance with approved
21 proposals take stone, sand, clay and gravel from the
22 Railway Corridor (for the avoidance of doubt
23 including any area of land included in the Special
24 Railway Licence pursuant to subclause (8)) for the
25 construction, operation and maintenance of the SRL
26 Railway (including any SRL Railway spur line)
27 constructed within or approved for construction
28 within the Railway Corridor.
- 29 (b) Notwithstanding the Mining Act no royalty shall be
30 payable under the Mining Act in respect of stone,
31 sand, clay and gravel which the Company is
32 permitted by subclause (6) to obtain from the land
33 the subject of the Special Railway Licence.
- 34 (7) For the purposes of this Agreement and without limiting
35 the operation of subclauses (1) to (6) above and
36 subclause (6), the application of the Mining Act and the
37 regulations made thereunder are specifically modified;

- 1 (a) in section 91(1) by:
- 2 (i) deleting “the mining registrar or the warden, in
- 3 accordance with section 42 (as read with
- 4 section 92)” and substituting “the Minister”;
- 5 (ii) deleting “any person” and substituting “the
- 6 Company (as defined in the agreement made on
- 7 22 June 2010 between The Honourable Colin
- 8 James Barnett, Premier of the State of Western
- 9 Australia acting for and on behalf of the said
- 10 State and its instrumentalities from time to
- 11 time, Roy Hill Infrastructure Pty Ltd
- 12 ACN 130 249 633, Roy Hill Holdings Pty Ltd
- 13 ACN 123 721 077 and Roy Hill Iron Ore
- 14 Pty Ltd ACN 123 722 038 as varied from time
- 15 to time)”;
- 16 (iii) deleting “for any one or more of the purposes
- 17 prescribed” and substituting “for the purpose
- 18 specified in clause 13(1)(a), clause 13(1)(b) or
- 19 clause 13(2), of the agreement made on
- 20 22 June 2010 between The Honourable Colin
- 21 James Barnett, Premier of the State of Western
- 22 Australia acting for and on behalf of the said
- 23 State and its instrumentalities from time to
- 24 time, Roy Hill Infrastructure Pty Ltd
- 25 ACN 130 249 633 Roy Hill Holdings Pty Ltd
- 26 ACN 123 721 077 and Roy Hill Iron Ore
- 27 Pty Ltd ACN 123 722 038, and as varied from
- 28 time to time”;
- 29 (b) in section 91(3)(a), by deleting “prescribed form”
- 30 and substituting “form required by the agreement
- 31 made on 22 June 2010 between The Honourable
- 32 Colin James Barnett, Premier of the State of Western
- 33 Australia acting for and on behalf of the said State
- 34 and its instrumentalities from time to time, Roy Hill
- 35 Infrastructure Pty Ltd ACN 130 249 633, Roy Hill
- 36 Holdings Pty Ltd ACN 123 721 077 and Roy Hill
- 37 Iron Ore Pty Ltd ACN 123 722 038, as varied from
- 38 time to time”;
- 39 (c) by deleting sections 91(6), 91(9), 91(10) and 91B;

- 1 (d) in section 92, by deleting “Sections 41, 42, 44, 46,
2 46A, 47 and 52 apply,” and inserting “Section 46A
3 (excluding in subsection (2)(a) “the mining registrar,
4 the warden or”) applies,” and by deleting “in those
5 provisions” and inserting “in that provision”;
- 6 (e) by deleting the full stop at the end of the
7 section 94(1) and inserting, “except to the extent
8 otherwise provided in, or to the extent that such
9 terms and conditions are inconsistent with, the
10 agreement made on 22 June 2010 between
11 The Honourable Colin James Barnett, Premier of the
12 State of Western Australia acting for and on behalf
13 of the said State and its instrumentalities from time
14 to time, Roy Hill Infrastructure Pty Ltd
15 ACN 130 249 633, Roy Hill Holdings Pty Ltd
16 ACN 123 721 077 and Roy Hill Iron Ore Pty Ltd
17 ACN 123 722 038, as varied from time to time.”;
- 18 (f) by deleting sections 94(2), (3) and (4);
- 19 (g) in section 96(1), by inserting after “miscellaneous
20 licence” the words “(not being a miscellaneous
21 licence granted pursuant to the agreement made on
22 22 June 2010 between The Honourable Colin
23 James Barnett, Premier of the State of Western
24 Australia acting for and on behalf of the said State
25 and its instrumentalities from time to time, Roy Hill
26 Infrastructure Pty Ltd ACN 130 249 633, Roy Hill
27 Holdings Pty Ltd ACN 123 721 077 and Roy Hill
28 Iron Ore Pty Ltd ACN 123 722 038, as varied from
29 time to time”;
- 30 (h) by deleting mining regulations 37(2), 37(3), 42 and
31 42A; and
- 32 (i) by inserting at the beginning of mining
33 regulations 41(c) and (f) the words “subject to the
34 agreement made on 22 June 2010 between The
35 Honourable Colin James Barnett, Premier of the
36 State of Western Australia acting for and on behalf
37 of the said State and its instrumentalities from time

1 to time, Roy Hill Infrastructure Pty Ltd
2 ACN 130 249 633, Roy Hill Holdings Pty Ltd
3 ACN 123 721 077 and Roy Hill Iron Ore Pty Ltd
4 ACN 123 722 038, as varied from time to time.”.

- 5 (8) If additional proposals are approved in accordance with
6 clause 12 for the construction of a SRL Railway spur line
7 outside the then Railway Corridor, the Minister for Mines
8 shall include the area of land within which such
9 construction is to occur in the Special Railway Licence
10 by endorsement. The area of such land may be included
11 notwithstanding that the survey of the land has not been
12 completed but subject to correction to accord with the
13 survey when completed at the Company’s expense.

14 **Construction and operation of Railway and retention of Port**
15 **Facilities**

- 16 14. (1) Subject to and in accordance with approved proposals,
17 the Rail Safety Act and the State having assured to the
18 Company all necessary rights over Crown land (as
19 defined in the LAA) available for the purpose the
20 Company shall in a proper and workmanlike manner and
21 in accordance with recognised standards for railways of a
22 similar nature operating under similar conditions
23 construct the SRL Railway and associated access roads
24 within the Railway Corridor and shall also construct inter
25 alia any necessary sidings, crossing points, bridges,
26 signalling switches and other works and appurtenances
27 and provide for crossings and (where appropriate and
28 required by the Minister) grade separation or other
29 protective devices including flashing lights and boom
30 gates at places where the SRL Railway crosses or
31 intersects with major roads or existing railways.
- 32 (2) The Company shall during the currency of this
33 Agreement:
- 34 (a) keep the Railway in an operable state;
- 35 (b) ensure that the Railway is operated in a safe and
36 proper manner in compliance with all applicable
37 laws from time to time; and

- 1 (c) without limiting subclause (2)(b) or clause 17,
2 ensure that the obligations imposed under the Rail
3 Safety Act on an owner and an operator (as those
4 terms are therein defined) are complied with in
5 connection with the Railway and (from such time as
6 the Access Act and the Access Code apply to the
7 Railway) ensure that the obligations imposed under
8 the Access Act and the Access Code on a railway
9 owner (as that term is therein defined) are complied
10 with in connection with the Railway.
- 11 Nothing in this Agreement shall be construed to exempt
12 the Company or any other person from compliance with
13 the Rail Safety Act and (from and during such time as
14 they apply as referred to in clause 15(2)) the Access Act
15 and the Access Code, or limit their application to the
16 Company's operations generally.
- 17 (3) The Company shall provide crossings for livestock and
18 also for any roads, other railways, conveyors, pipelines
19 and other utilities which now exist and the Company
20 shall on reasonable terms and conditions allow such
21 crossings for roads, railways, conveyors, pipelines and
22 other utilities which may be constructed for future needs
23 and which may be required to cross the SRL Railway.
- 24 (4) In relation to its use of the Railway when transporting
25 passengers or carrying iron ore products, freight goods or
26 other products, the Company shall not be deemed to be a
27 common carrier at law or otherwise.
- 28 (5) The Company shall at all times be the holder of the
29 Special Railway Licence and Lateral Access Road
30 Licences and (without limiting clause 31) shall at all
31 times own manage and control the use of the Railway.
- 32 (6) The Company shall not be entitled to exclusive
33 possession of the land the subject of the Special Railway
34 Licence or any Lateral Access Road Licence to the intent
35 that the State, the Minister, the Minister for Mines and
36 any persons authorised by any of them from time to time
37 shall be entitled to enter upon the land or any part of it at

- 1 all reasonable times and on reasonable notice with all
2 necessary vehicles, plant and equipment and for purposes
3 related to this Agreement or such other purposes as they
4 think fit but in doing so shall be subject to the reasonable
5 directions of the Company so as not to unreasonably
6 interfere with the Company's operations.
- 7 (7) The Company's ownership of the SRL Railway shall not
8 give it an interest in the land underlying it.
- 9 (8) The Company shall not at any time without the prior
10 consent of the Minister dismantle, sell or otherwise
11 dispose of any part or parts of the Railway, or permit this
12 to occur, other than for the purpose of maintenance,
13 repair, upgrade or renewal.
- 14 (9) The Company shall use all reasonable endeavours to
15 ensure that, during the currency of this Agreement, the
16 SRL Railway has a railway track configuration which
17 enables:
- 18 (a) rail operations of the kind carried out on the Pilbara
19 Iron Ore Railways to be carried out on the Railway,
20 and vice versa; and
- 21 (b) connection of the SRL Railway to any one or more
22 of the Pilbara Iron Ore Railways.
- 23 (10) The Company shall at all times be the holder of the Port
24 Facilities Lease and Licence and (without limiting
25 clause 31) shall at all times manage and control the use of
26 the Port Facilities.
- 27 (11) The Company shall not at any time without prior consent
28 of the Minister (acting with the concurrence of the Port
29 Authorities Minister) dismantle, sell or otherwise dispose
30 of any part or parts of the Port Facilities, or permit this to
31 occur other than for the purpose of maintenance, repair,
32 upgrade or renewal.
- 33 (12) The Company shall not be entitled to surrender the Port
34 Facilities Lease and Licence or the Port Railway Lease
35 and Licence or any part or parts of them without the prior
36 consent of the Minister.

- 1 (13) The Company shall, subject to and in accordance with
2 approved proposals, in a proper and workmanlike
3 manner, construct any access roads, Lateral Access
4 Roads and other works approved for construction under
5 this Agreement.
- 6 (14) The Company shall:
- 7 (a) be responsible for the cost of construction and
8 maintenance of all Private Roads;
- 9 (b) at its own cost erect signposts and take other steps
10 that may be reasonable in the circumstances to
11 prevent any persons and vehicles (other than those
12 engaged upon the Company's activities and its
13 invitees and licensees and persons who have rights
14 under the Access Act and the Access Code to use
15 those roads) from using the Private Roads; and
- 16 (c) at any place where any Private Roads are
17 constructed by the Company so as to cross any
18 railways or public roads provide at its cost such
19 reasonable protection and signposting as may be
20 required by the Commissioner of Main Roads or the
21 Public Transport Authority as the case may be.
- 22 (15) During the currency of this Agreement the Company
23 shall not trade in iron ore products.

24 **Access Obligations for Railway**

- 25 15. (1) For the purposes of this clause:
- 26 (a) “**access**” includes use by persons of the Railway
27 and, in connection with such use, use by persons of
28 the Company's access roads within the Railway
29 Corridor and within the Port Railway Area but does
30 not, for the purposes of subclause (5)(c) or (7)(a)
31 include use of the Company's rolling stock, rolling
32 stock maintenance facilities, office buildings,
33 housing, freight centres, terminal yards and depots
34 or other facilities which are not railway
35 infrastructure (as that term is defined in the Access
36 Act) and, for the avoidance of doubt, does not
37 include use of unloading facilities and the associated

- 1 railway track loop constructed under this
2 Agreement;
- 3 (b) “**Access Date**” means the date on which all of the
4 documents and matters referred to in
5 subclause (8)(c) are approved or determined under
6 the relevant section of the Access Act or of the
7 Access Code;
- 8 (c) “**agreement**” includes an agreement, commitment or
9 arrangement which is binding or takes effect when
10 made and an agreement, commitment or
11 arrangement which becomes binding or takes effect
12 during the currency of this Agreement with the
13 giving of notice, lapse of time, occurrence of any
14 event, passing of any date or for any other reason;
- 15 (d) “**Expansion Access Date**” in relation to an
16 expansion or extension (including any spur line) of
17 the Railway means the date on which all of the
18 documents and matters referred to in
19 subclause (8)(d) are approved or determined under
20 the relevant section of the Access Act or of the
21 Access Code in connection with the expansion or
22 extension of the Railway;
- 23 (e) “**railway owner**” has the same meaning as in the
24 Access Act;
- 25 (f) “**Regulator**” has the same meaning as in the
26 Access Act;
- 27 (g) “**TPA Undertaking Acceptance Date**” means the
28 date on which, under section 44ZZBA of the Trade
29 Practices Act, the decision of the Commission (as
30 defined in section 4(1) of the Trade Practices Act) to
31 accept under Division 6 of Part IIIA of the Trade
32 Practices Act the Company’s proposed undertaking
33 for the provision of haulage services referred to in
34 subclause (6)(b) comes into operation; and
- 35 (h) “**year**” means the period of 12 months commencing
36 on the Railway Operation Date or any subsequent
37 period of 12 months during the currency of this
38 Agreement.

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- 1 line notify the Minister that the first carriage of iron
2 ore products, freight goods or other products as the
3 case may be over such spur line (other than for
4 construction or commissioning purposes) has
5 occurred.
- 6 (3) The Company acknowledges that one of the intentions of
7 the State and the Company in entering into this
8 Agreement is that the Access Act and the Access Code
9 apply, until the TPA Undertaking Acceptance Date, to
10 and in respect of the Railway (but not to the Company's
11 rolling stock, rolling stock maintenance facilities, office
12 buildings, housing, freight centres, terminal yards and
13 depots and any other facilities which are not railway
14 infrastructure (as that term is defined in the Access Act))
15 and access roads of the Company within the Railway
16 Corridor and within the Port Railway Area. The
17 Company:
- 18 (a) acknowledges that the State shall from time to time
19 be entitled to make such legislative changes as are
20 necessary to achieve that purpose; and
- 21 (b) shall do all such things as the Minister reasonably
22 requests for the purposes of the Access Code
23 applying and continuing to apply to and in respect of
24 the Railway which are not inconsistent with this
25 Agreement.
- 26 (4) During the period prior to the Access Date:
- 27 (a) subject to subclause (4)(b), no agreement for access
28 to the Railway or provision of rail transport services
29 over the Railway (including for purposes of
30 transport of iron ore products, freight goods or other
31 products) shall be made without the prior consent of
32 the Minister; and
- 33 (b) one or more agreements for access to the Railway or
34 provision of rail transport services over the Railway
35 for the purposes of the transport of iron ore products
36 may be made without the prior consent of the
37 Minister, but such agreements:
- 38 (i) shall only be entered into by the Company;

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- 1 section 44 of the Access Code or under
2 section 29 of the Access Act approving an
3 arrangement for or issuing a direction to the
4 railway owner in respect of the Railway; and
- 5 (ii) provides that, if any provision of the agreement
6 is inconsistent with a provision of the Access
7 Act or the Access Code in effect as at the
8 Access Date (other than a provision in
9 Schedule 4 of the Access Code), or inconsistent
10 with any statement, document, determination or
11 other requirement issued, made, approved or
12 determined under either or both of the Access
13 Act and the Access Code as at the Access Date,
14 the relevant provision of the Access Act or the
15 Access Code or the statement, document,
16 determination or other requirement (as the case
17 may be) shall prevail over the provision of the
18 agreement to the extent of that inconsistency;
- 19 (c) does not impose on the Company obligations, or
20 create in favour of any other person any interest, in
21 relation to use of the Railway (including in relation
22 to allocation of train paths on the Railway and
23 management of train control for the Railway) which
24 may in effect preclude other entities from access to
25 the Railway in accordance with the Access Act and
26 the Access Code;
- 27 (d) would, if that agreement were an “access
28 agreement” within the meaning of the Access Code,
29 comply with sections 17(1)(a), 17(1)(c) and 36(2)(c)
30 of the Access Code; and
- 31 (e) is, with effect from the Access Date, altered to
32 comply with and to be consistent with the Access
33 Act and the Access Code (except Schedule 4 of the
34 Access Code) as at that time and with each
35 statement, document, determination and other
36 requirement at that time issued, made, approved or
37 determined under the Access Act or the Access
38 Code as if the agreement were an access agreement
39 (as that term is defined in the Access Code).

1 The above provisions of this subclause (5) shall apply
2 mutatis mutandis in respect of any expansion or
3 extension (including any spur line) of the Railway on the
4 basis that references in the above provisions of this
5 subclause (5) to “Railway” are to be read as including the
6 relevant expansion or extension and to “Access Date” are
7 to be read as references to “Expansion Access Date”.

- 8 (6) (a) Without limiting clause 33, the Company must,
9 during the currency of this Agreement, consult with
10 and keep the State fully informed concerning any
11 steps that the Company proposes to take or is taking,
12 or concerning any steps which the Company is
13 aware any other person proposes to take or is taking,
14 to have the Railway made subject to Part IIIA of the
15 Trade Practices Act.
- 16 (b) The Company has advised the State that it intends to
17 give a written undertaking to the Commission under
18 Division 6 of Part IIIA of the Trade Practices Act for
19 the provision of haulage services (including of iron
20 ore) over the Railway and to obtain the
21 Commission’s acceptance of the undertaking by the
22 Railway Operation Date.
- 23 (c) Without limiting its obligation under paragraph (a)
24 the Company must consult with and keep the State
25 fully informed with respect to the proposed
26 provisions of such access undertaking.
- 27 (d) From and including the TPA Undertaking
28 Acceptance Date the Company shall be released
29 from any outstanding obligation it may have under
30 subclauses (3)(b), (4), (5) or (8) or to promote under
31 (7)(a) use by persons of the Railway as formerly
32 proposed by the application of the Access Act and
33 the Access Code.
- 34 (e) Nothing in this clause shall be taken to limit rights
35 of the State to make under the Trade Practices Act or
36 otherwise such submissions as it thinks fit in respect
37 of any such access undertaking application by the
38 Company.

- 1 (f) The Company must from and including the TPA
2 Undertaking Acceptance Date have in place during
3 the currency of this Agreement an undertaking under
4 Division 6 of Part IIIA of the Trade Practices Act for
5 the provision of haulage services (including of iron
6 ore) over the Railway.
- 7 (7) The Company shall:
- 8 (a) after the Railway Operation Date use all reasonable
9 endeavours to promote access to, and attract
10 customers for, the Railway; and
- 11 (b) not without the prior consent of the Minister enter
12 into or allow to be entered into any agreement or
13 arrangement, or otherwise adopt any practice,
14 whereby the Railway is connected to another railway
15 for the purpose of running rolling stock in a circuit
16 over them, or whereby the Railway otherwise does
17 not or cannot accommodate traffic moving in both
18 directions.
- 19 (8) The Company shall:
- 20 (a) ensure that the publication referred to in Part 2A of
21 the Access Code is prepared and made available for
22 purchase no later than 7 days after the Access Act
23 and the Access Code apply to the Railway;
- 24 (b) ensure the submission to the Regulator of the
25 arrangement for the railway owner in respect of the
26 Railway required to be approved by the Regulator
27 under section 29 of the Access Act, each of the
28 statements in connection with the Railway required
29 to be prepared and submitted to the Regulator under
30 sections 43(3), 44(2), 46(1) and 47(1) of the Access
31 Code and any other document the subject of a notice
32 from the Minister to the Company, being a
33 document which the Access Act or the Access Code
34 requires to be submitted by a railway owner to the
35 Regulator, no later than 7 days after the Access Act
36 and the Access Code apply to the Railway or such
37 earlier date specified in the Access Act or the Access
38 Code (as the case may be) for preparation and
39 submission of such arrangement or statements;

- 1 (c) conduct itself in such a manner as to, and do all such
2 things as are reasonable to, facilitate the approval or
3 determination of:
- 4 (i) train management guidelines in connection with
5 the Railway under section 43 of the Access
6 Code;
- 7 (ii) statements of policy in connection with the
8 Railway under section 44 of the Access Code;
- 9 (iii) costing principles in connection with the
10 Railway under section 46 of the Access Code;
- 11 (iv) over-payment rules in connection with the
12 Railway under section 47 of the Access Code;
- 13 (v) an arrangement referred to in section 29(1) of
14 the Access Act for the railway owner in respect
15 of the Railway; and
- 16 (vi) any other document or matter the subject of a
17 notice from the Minister to the Company, being
18 a document or matter which the Access Act or
19 the Access Code requires be approved or
20 determined in connection with a railway owner,
21 as soon as possible after the Access Act and the
22 Access Code apply to the Railway; and
- 23 (d) ensure the submission to the Regulator within
24 3 months of the Access Act and the Access Code
25 applying to any expansion or extension (including
26 any spur line) of the Railway of new or amended
27 guidelines, statements of policy, principles, rules,
28 arrangements and other documents and matters
29 referred to in this subclause (8) as may be required
30 by the Access Act and the Access Code in respect of
31 the relevant expansion or extension of the Railway
32 and conduct itself in such manner as to, and do all
33 such things as are reasonable to, facilitate the
34 approval or determination of new or amended
35 document and matters.
- 36 (9) Nothing in this clause shall be taken to exempt the
37 railway owner in respect of the Railway from any

1 obligation or requirement of the railway owner under the
2 Access Act or the Access Code.

- 3 (10) Nothing in this Agreement shall be taken to limit the
4 rights of the State to regulate access to the Port and to the
5 Port Facilities in the future, or the Company's obligations
6 to comply in respect of any such regulation.

7 **Compliance with Laws**

- 8 16. (1) In the construction operation maintenance and use of any
9 work installation plant machinery equipment service or
10 facility provided or controlled by the Company, the
11 Company shall throughout the currency of this
12 Agreement comply with and observe the provisions
13 hereof and subject thereto the laws for the time being in
14 force in the said State.

- 15 (2) Except as otherwise provided in this Agreement, the
16 Company shall be responsible for obtaining such leases,
17 authorities, permits and licences as it shall require for the
18 obtaining of stone, sand, clay and gravel for the
19 construction of the Railway and the Lateral Access
20 Roads.

21 **Maintenance**

- 22 17. Throughout the currency of this Agreement the Company shall
23 at all times keep and maintain in good repair and working order
24 and condition (which obligation includes, where necessary,
25 replacing or renewing all parts which are worn out or in need of
26 replacement or renewal due to their age or condition) the
27 Railway, access roads, and all such other works installations
28 plant machinery and equipment for the time being the subject of
29 this Agreement.

30 **Use of local labour professional services and materials**

- 31 18. (1) Except as otherwise agreed by the Minister the Company
32 shall, for the purposes of this Agreement:
33 (a) except in those cases where the Company can
34 demonstrate it is not reasonable and economically
35 practicable so to do, use labour available within the

- 1 said State (using all reasonable endeavours to ensure
2 that as many as possible of the workforce be
3 recruited from the Pilbara region) or if such labour is
4 not available then, except as aforesaid, use labour
5 otherwise available within Australia;
- 6 (b) as far as it is reasonable and economically
7 practicable so to do, use the services of engineers,
8 surveyors, architects and other professional
9 consultants experts and specialists, project
10 managers, manufacturers, suppliers and contractors
11 resident and available within the said State, or if
12 such services are not available within the said State,
13 then, as far as practicable as aforesaid, use the
14 services of such persons otherwise available within
15 Australia;
- 16 (c) during design and when preparing specifications,
17 calling for tenders and letting contracts for works,
18 materials, plant, equipment and supplies (which
19 shall at all times, except where it is impracticable so
20 to do, use or be based upon Australian Standards and
21 Codes) ensure that suitably qualified Western
22 Australian and Australian suppliers, manufacturers
23 and contractors are given fair and reasonable
24 opportunity to tender or quote;
- 25 (d) give proper consideration and, where possible,
26 preference to Western Australian suppliers,
27 manufacturers and contractors when letting contracts
28 or placing orders for works, materials, plant,
29 equipment and supplies where price, quality,
30 delivery and service are equal to or better than that
31 obtainable elsewhere or, subject to the foregoing,
32 give that consideration and, where possible,
33 preference to other Australian suppliers,
34 manufacturers and contracts; and
- 35 (e) if, notwithstanding the foregoing provisions of this
36 subclause, a contract is to be let or an order is to be
37 placed with other than a Western Australian or
38 Australian supplier, manufacturer or contractor, give
39 proper consideration and, where possible, preference

1 to tenders, arrangements or proposals that include
2 Australian participation where price, delivery and
3 service are otherwise equal or better.

(2) Except as otherwise agreed by the Minister, the Company shall, in every contract entered into with a third party for the supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) and shall report to the Company concerning such third party's implementation of that condition.

12 (3) The Company shall:

(a) in respect of developments the subject or to be the subject (as the case may be) of proposals submitted under clause 10, submit a report to the Minister at quarterly intervals from the date specified in clause 3(4) to the date of the first submission of proposals under clause 10 and thereafter at monthly intervals until commissioning of the Railway and thereafter as requested by the Minister from time to time; and

(b) in respect of developments the subject or to be the subject (as the case may be) of proposals submitted under clause 12, submit a report to the Minister at quarterly intervals from the date on which it gives notice under clause 12(1) to the date of the first submission of proposals in connection with that notice under clause 12 and thereafter at monthly intervals until commissioning of the developments the subject of the proposals approved pursuant to clause 12 and thereafter as requested by the Minister from time to time.

concerning its implementation of the provisions of this clause, together with a copy of any report received by the Company pursuant to subclause (2) during that month or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be

- 1 provided in respect of contracts of such kind or value as
2 the Minister may from time to time determine.
- 3 (4) The Company shall keep the Minister informed on a
4 regular basis as determined by the Minister from time to
5 time or otherwise as reasonably required by the Minister
6 during the currency of this Agreement of any services
7 (including any elements of the project investigations,
8 design and management) and any works, materials, plant,
9 equipment and supplies that it may be proposing to
10 obtain from or have carried out or permit to be obtained
11 from or carried out outside Australia, together with its
12 reasons therefor and shall, as and when required by the
13 Minister, consult with the Minister with respect thereto.

14 **No discriminatory charges**

- 15 19. Except as provided in this Agreement the State must not
16 impose, nor shall it permit or authorise any local government or
17 any agency, instrumentality or other authority of the State to
18 impose, discriminatory taxes, rates or charges of any nature
19 whatsoever on or in respect of the titles, property or other
20 assets, products, materials or services used or produced by or
21 through the activities of the Company in the conduct of the
22 Project nor will the State take or permit to be taken by any such
23 State agency, instrumentality or other authority any other
24 discriminatory action which would deprive the Company of full
25 enjoyment of the rights granted or intended to be granted under
26 this Agreement. In the application of this clause the conferral
27 of rights upon parties to other Government agreements shall be
28 disregarded.

29 **Taking of land for the purposes of this Agreement**

- 30 20. (1) The State is hereby empowered, as and for a public work
31 under Parts 9 and 10 of the LAA and the *Public Works*
32 *Act 1902*, to take for the purposes of this Agreement any
33 land (other than any part of the Port) which in the opinion
34 of the Company is necessary for the Project and which
35 the Minister determines is appropriate to be taken for the
36 Project (except any land the taking of which would be
37 contrary to the provisions of a Government agreement

1 entered into before the submission of the proposals
2 relating to the proposed taking) and notwithstanding any
3 other provisions of those Acts may license that land to
4 the Company.

5 (2) In applying Parts 9 and 10 of the LAA and the *Public*
6 *Works Act 1902* for the purposes of this Clause -

7 (a) “**land**” in those Acts includes a legal or equitable
8 estate or interest in land;

9 (b) sections 170, 171, 172, 173, 174, 175 and 184 of the
10 LAA do not apply; and

11 (c) the LAA applies as if it were modified in
12 section 177(2) by inserting -

13 (i) after “railway” the following -

14 “or land is being taken pursuant to a
15 Government agreement as defined in section 2
16 of the *Government Agreements Act 1979*”; and

17 (ii) after “that Act” the following -

18 “or that Agreement as the case may be”.

19 (3) The Company shall pay to the State on demand the costs
20 of or incidental to any land taken at the request of and on
21 behalf of the Company including but not limited to any
22 compensation payable to any holder of native title or of
23 native title rights and interests in the land.

24 **No taking of land**

25 21. Subject to the performance by the Company of its obligations
26 under this Agreement, but without limiting clause 14(3) the
27 State shall not, during the currency of this Agreement, without
28 the consent of the Company, take or suffer or permit to be taken
29 by any local government or by any agency, instrumentality or
30 other authority of the State any of the works, installations, plant,
31 equipment or other property for the time being belonging to the
32 Company and the subject of or used for the purpose of this
33 Agreement or any of the works on the lands the subject of the
34 Special Railway Licence and, without such consent (which shall
35 not be unreasonably withheld), the State shall not create or
36 grant or permit or suffer to be created or granted by any agency,

1 instrumentality or other authority of the State any road,
2 right-of-way, water right or easement of any nature or kind
3 whatsoever over or in respect of any such lands which may
4 unduly prejudice or interfere with the Company's activities
5 under this Agreement.

6 **Commonwealth licences and consents**

7 22. (1) The Company shall from time to time make application
8 to the Commonwealth or to the Commonwealth
9 constituted agency, authority or instrumentality
10 concerned for the grant to it of any licence or consent
11 under the laws of the Commonwealth necessary to enable
12 or permit the Company to enter into this Agreement and
13 to perform any of its obligations hereunder.

14 (2) On request by the Company the State shall make
15 representations to the Commonwealth or to the
16 Commonwealth constituted agency, authority or
17 instrumentality concerned for the grant to the Company
18 of any licence or consent mentioned in subclause (1).

19 **Zoning**

20 23. The State shall ensure after consultation with the relevant local
21 governments that the lands the subject of the Special Railway
22 Licence or a Lateral Access Road Licence shall be and remain
23 zoned for use or otherwise protected during the currency of this
24 Agreement so that the activities of the Company hereunder may
25 be undertaken and carried out thereon without any interference
26 or interruption by the State, by any agency, instrumentality or
27 other authority of the State or by any local government on the
28 ground that such activities are contrary to any zoning by-law,
29 regulation or order.

30 **Assignment**

31 24. (1) Subject to the provisions of this clause the Company may
32 at any time with the consent of the Minister assign,
33 mortgage, charge, sublet or dispose of to any person the
34 whole or any part of the rights of the Company hereunder
35 (including to ownership of the Railway and its right to or
36 as the holder of the Special Railway Licence or a Lateral

- 1 Access Road Licence) and of the obligations of the
2 Company hereunder subject however in the case of an
3 assignment or disposition to the assignee or disponent (as
4 the case may be) executing in favour of the State (unless
5 the Minister otherwise determines) a deed of covenant in
6 a form to be approved by the Minister to comply with
7 observe and perform the provisions hereof on the part of
8 the Company to be complied with, observed or performed
9 in regard to the matter or matters the subject of such
10 assignment or disposition.
- 11 (2) Notwithstanding anything contained in or anything done
12 under or pursuant to subclause (1) the Company will at
13 all times during the currency of this Agreement be and
14 remain liable for the due and punctual performance and
15 observance of all the covenants and agreements on its
16 part contained in this Agreement PROVIDED THAT the
17 Minister may agree to release the Company from such
18 liability where the Minister considers such release will
19 not be contrary to the interests of the State.
- 20 (3) Notwithstanding the provision of the Mining Act insofar
21 as the same may apply:
- 22 (a) no assignment, mortgage, charge, sublease or
23 disposition made or given of or over the Special
24 Railway Licence or any other licence granted
25 pursuant to this Agreement in accordance with the
26 provisions of subclause (1) and the terms of consent
27 thereunder; and
- 28 (b) no transfer, assignment, mortgage or sublease made
29 or given in exercise of any power contained in any
30 such mortgage or charge,
- 31 shall require any approval or consent other than such
32 consent as may be necessary under subclause (1) and no
33 equitable mortgage or charge shall be rendered
34 ineffectual by the absence of any approval or consent
35 (otherwise than as required by this clause) or because the
36 same is not registered under the provisions of the Mining
37 Act.

Variation or determination

25. (1) The parties to this Agreement may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.
- (2) The Minister shall cause any agreement made pursuant to subclause (1) to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.
- (3) Either House may, within 12 sitting days of that House after the agreement has been laid before it, pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.
- (4) The parties may at any time by mutual agreement determine this Agreement, PROVIDED THAT no matter in connection with a failure by the parties to agree under this subclause (4) shall be referable to arbitration hereunder.

Force majeure

26. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the temporary suspension of continuing obligations under this Agreement that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including (without limiting the generality of the foregoing) delays or any such temporary suspension as aforesaid caused by or arising from act of God, force majeure, earthquakes, floods, storms, tempest, washaways, fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war, act of public enemies, riots, civil commotions, strikes, lockouts, stoppages, restraint of labour or other similar acts (whether partial or general), acts or omissions of the

Commonwealth, shortages of labour or essential materials, reasonable failure to secure contractors, delays of contractors, factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any agency, instrumentality or other authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes must promptly give notice to the other party or parties of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

Power to extend periods

27. (1) Notwithstanding any provision of this Agreement but subject to subclause (2), the Minister may at the request of the Company from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such later date as the Minister thinks fit, whether or not the period to be extended has expired or the date to be varied has passed.
- (2) The date specified in clause 10(1) for the submission of proposals under it may only be extended once pursuant to this clause and for a period not exceeding:
- (a) subject to paragraph (b), 6 months; or
 - (b) if the reason for the Company's request is a delay in vesting the Boodarie multi-user stockyard area in the Port Authority, 2 years.

Determination of Agreement

28. (1) If:
- (a) (i) the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations of the Company in this Agreement or in the Special Railway Licence or in a Lateral Access Road Licence; or

page 60

1 therefor and shall be given to the Company and all such
2 assignees, mortgagees, chargees and disponees for the
3 time being of the Company's said rights to or in favour of
4 whom or by whom an assignment, mortgage, charge or
5 disposition has been effected in terms of clause 24,
6 whose name and address for service of notice has
7 previously been notified to the State by the Company or,
8 any such assignee, mortgagee, chargee or donee.

9 (3) (a) If the Company contests the alleged default or other
10 ground referred to in subclause (1)(a) the Company
11 shall within 60 days after notice given by the State
12 as provided in subclause (2) refer the matter in
13 dispute to arbitration.

14 (b) If the question is decided against the Company, the
15 Company must comply with the arbitration award
16 within a reasonable time to be fixed by that award
17 PROVIDED THAT if the arbitrator finds that there
18 was a bona fide dispute and that the Company was
19 not dilatory in pursuing the arbitration, the time for
20 compliance with the arbitration award shall not be
21 less than 90 days from the date of such award.

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

Effect of cessation or determination of Agreement

29. (1) On the cessation or determination of this Agreement:
- (a) except as otherwise agreed by the Minister the rights of the Company to, in or under this Agreement and the rights of the Company or any mortgagee or chargee to or in the Railway, access roads and other works constructed under this Agreement or to, in or under the Special Railway Licence or Lateral Access Road Licences (if still current), shall thereupon cease and determine but without prejudice to the liability of any of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any guarantee or indemnity given under this Agreement;
 - (b) the Company shall forthwith pay to the State all money which may then have become payable or accrued due; and
 - (c) save as aforesaid and as otherwise provided in this Agreement none of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.
- (2) Upon the cessation or determination of this Agreement;
- (a) the Minister may by notice to the Company require the Company to, at the Company's cost, remove the SRL Railway and any other works constructed under this Agreement from the Railway Corridor and return the land in the Railway Corridor to a condition as near as possible to the condition that land was in prior to the grant of authority under the LAA in respect of the land as contemplated by clause 4;
 - (b) unless the Minister gives notice under subclause (2)(a), the SRL Railway and the works constructed under this Agreement shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Company or any other party and freed and discharged from all mortgages and other

encumbrances and the Company shall do and execute all such deeds, documents and other acts, matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

Indemnity

30. The Company shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Company pursuant to this Agreement or relating to its activities hereunder or arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith PROVIDED THAT subject to the provisions of any relevant Act such indemnity will not apply in circumstances where the State, its servants, agents, or contractors are negligent in carrying out work for the Company pursuant to this Agreement.

Subcontracting

31. Without affecting the liabilities of the parties under this Agreement each of the State and the Company will have the right from time to time to entrust to third parties the carrying out as their agent of any portions of the activities which it is authorised or obliged to carry out hereunder.

Arbitration

32 (1) Except as provided in this Agreement, any dispute or difference between the State and the Company arising out of or in connection with this Agreement, the construction of this Agreement or as to the rights duties or liabilities of either of them under this Agreement or as to any matter to be agreed upon between them under this Agreement must, in default of agreement between them and in the absence of any provision in this Agreement to the contrary, be referred to and settled by arbitration under the provisions of the *Commercial Arbitration Act 1985*

- 1 (WA) and each party may be represented before the
2 arbitrator by a duly qualified legal practitioner or other
3 representative.
- 4 (2) Except where otherwise provided in this Agreement, the
5 provisions of this clause will not apply to any case where
6 the State, the Minister or any other Minister in the
7 Government of the State is by this Agreement given
8 either expressly or impliedly a discretionary power.
- 9 (3) The arbitrator of any submission to arbitration under this
10 Agreement is hereby empowered upon the application of
11 either the State or the Company, to grant in the name of
12 the Minister any interim extension of any period or
13 variation of any date referred to herein which having
14 regard to the circumstances may reasonably be required
15 in order to preserve the rights of that party or of the
16 parties to the arbitration and an award may in the name of
17 the Minister grant any further extension or variation for
18 that purpose.

19 **Consultation**

- 20 33. (1) The Company must during the currency of this
21 Agreement consult with and keep the State fully
22 informed on a confidential basis concerning any action
23 that the Company proposes to take with any third party
24 (including the Commonwealth or any Commonwealth
25 constituted agency, authority, instrumentality or other
26 body) which might significantly affect the overall interest
27 of the State under this Agreement.
- 28 (2) The Company must during the currency of this
29 Agreement consult with and keep the State fully
30 informed with respect to the transport or proposed
31 transport (of which it becomes aware) of the iron ore
32 mined from the Roy Hill mining area other than on the
33 Railway or the shipment of such iron ore other than from
34 the Port Facilities.

Notices

34. Any notice consent or other writing authorised or required by this Agreement to be given or sent by the State to the Company or to a Guarantor will be deemed to have been duly given or sent if signed by the Minister or by any senior officer of the Public Service of the State acting by the direction of the Minister and forwarded by prepaid post or handed to the Company or to the Guarantor as the case may be at its address hereinbefore set forth or other address in Western Australia nominated by the Company, or by the Guarantor as the case may be, to the Minister and by the Company or by the Guarantor to the State if signed on its behalf by any person or persons authorised by the Company or by its solicitors, or by the Guarantor or by its solicitors as the case may be, as notified to the State from time to time and forwarded by prepaid post or handed to the Minister and except in the case of personal service any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

Guarantee of the Company's performance

35. Notwithstanding any addition to or deletion or variation of the provisions of this Agreement or any time or other indulgence granted by the State or by the Minister to the Company whether or not notice thereof is given to the Guarantors by the State, the Guarantors hereby guarantee to the State the due performance by the Company of all of the Company's obligations to be performed hereunder. The Minister may agree to release the Guarantors from this guarantee where the Minister is reasonably satisfied that the Company has the financial capacity to perform its obligations under this Agreement. Except as provided in a release given under this clause, the guarantee given under this clause shall continue notwithstanding the cessation or determination of this Agreement.

Term of Agreement

36. (1) Subject to the provisions of clause 11(6) and clauses 28 and 29, this Agreement shall expire on the expiration or sooner determination or surrender of the Special Railway Licence.
- (2) (a) As soon as practicable after:
- (i) the expiration of the 27th year of the initial term of the Special Railway Licence; and
 - (ii) the expiration of the 7th year of the first renewal (if made) of that initial term,
- the Minister is to carry out a review of the operation of this Agreement and in undertaking that review the Minister is to consider:
- (iii) the need for the operation of this Agreement to so continue from the perspective of both the State and of the Company;
 - (iv) the ability for the Company's activities under this Agreement to be undertaken under the general laws of the State if the Agreement was to be determined;
 - (v) then Government policies in relation to the benefits conferred by this Agreement; and
 - (vi) such other matters as appear to the Minister to be relevant to the operation of this Agreement.
- The Minister is also to consult with the Port Authorities Minister.
- (b) The Minister is to prepare a report based on the Minister's review under this subclause and provide the report to the State for the State's consideration within 18 months of commencement of the review.
- (c) The Minister shall afford the Company and the Guarantors full opportunity to make submissions to the Minister for the Minister's consideration in undertaking that review and to consult with the Minister in respect of the Minister's proposed report under this subclause.

- 1 (d) If following a review pursuant to paragraph (a)(i) or
2 (a)(ii) the State forms the view that this Agreement
3 should not continue the parties to this Agreement
4 may by mutual agreement determine this
5 Agreement.
6 (e) The provisions of clause 32 shall not apply to the
7 undertaking of a review under this clause (including
8 the preparation and provision of the Minister's
9 report), to any forming by the State under this clause
10 of the view that this Agreement should not continue
11 or to any matter in connection with a failure by the
12 parties to agree under paragraph (d) to determine
13 this Agreement.
14 (f) Nothing in this subclause (including any
15 negotiations as contemplated by subclause (d) to
16 determine this Agreement) shall prejudice rights of
17 the State under clause 28.

18 **Applicable law**

- 19 37. This Agreement is to be interpreted according to the law for the
20 time being in force in the State of Western Australia.
21

SCHEDULE 1

WESTERN AUSTRALIA

RAILWAY (ROY HILL INFRASTRUCTURE PTY LTD)

AGREEMENT ACT []

MINING ACT 1978

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

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called “the Agreement”) ratified by the Railway (Roy Hill Infrastructure Pty Ltd) Agreement Act [date] the State agreed to grant to Roy Hill Infrastructure Pty Ltd ACN 130 249 633 of Level 3, Hppl House, 28-42 Ventnor Avenue, West Perth, Western Australia (hereinafter with its successors and permitted assigns called “the Company”) a miscellaneous licence for the construction operation and maintenance of the SRL Railway (as defined in the Agreement and otherwise as provided in the Agreement) and, if applicable, other purposes AND WHEREAS the Company pursuant to clause 13(1) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the Railway (Roy Hill Infrastructure Pty Ltd) Agreement Act [date] the Company is hereby granted by this licence authority to conduct on the land the subject of this licence as more particularly delineated and described from time to time in the Schedule hereto all activities (including the taking of stone, sand, clay and gravel, the provision of temporary accommodation facilities for the railway workforce in accordance with the Agreement and, subject to the *Rights in Water and Irrigation Act 1914* (WA), the operation of water bores) necessary for the planning, design, construction, commissioning, operation and maintenance on the land the subject of this licence of the SRL Railway and access roads to be located on the land the subject of this licence in accordance with the provisions of the Agreement and proposals approved under the Agreement, for the term of 30 years from the date hereof (subject to the sooner determination of the term upon the determination of the Agreement) and upon and subject to the terms covenants and

1 conditions set out in the Agreement and the *Mining Act 1978* as it
2 applies to this licence, and any amendments to the Agreement and the
3 *Mining Act 1978* from time to time and to the terms and conditions (if
4 any) now or hereafter endorsed hereon and the payment of rentals in
5 respect of this licence in accordance with clause 13(1)(a) of the
6 Agreement with the right as provided in the Agreement for the
7 Company during the currency of the Agreement to take 2 successive
8 renewals of the term each for a further period of 10 years upon the
9 same terms and conditions (subject to the sooner determination of the
10 term upon the determination of the Agreement) PROVIDED
11 ALWAYS that this licence shall not be determined or forfeited
12 otherwise than in accordance with the Agreement.

13 In this licence:

- 14 - If the Company be more than one the liability of the Company
15 hereunder shall be joint and several.
- 16 - Reference to an Act includes all amendments to that Act for the
17 time being in force and also any Act passed in substitution
18 therefor or in lieu thereof and to the regulations and by-laws of
19 the time being in force thereunder.
- 20 - Reference to “the Agreement” means such agreement as varied
21 from time to time.
- 22 - The terms “approved proposals”, “Port Facilities”, “Railway”,
23 “Railway Operation Date”, “Roy Hill mining area”, “SRL
24 Railway” and “SRL Railway spur line” have the meanings
25 given in the Agreement.

26 ENDORSEMENTS AND CONDITIONS

27 Endorsements

- 28 1. This licence is granted in accordance with proposals submitted
29 on [/], and approved by the Minister (as defined in the
30 Agreement) on [/], under the Agreement.
- 31 2. The Company is permitted to, in accordance with approved
32 proposals, take stone, sand, clay and gravel from the land the
33 subject of this licence (including for the avoidance of doubt any
34 area of land included in this licence pursuant to clause 13(8) of
35 the Agreement) for the construction, operation and maintenance

- 1 of the SRL Railway (including any SRL Railway spur line)
2 constructed within or approved for construction within the area
3 of land the subject of this licence.
- 4 3. Notwithstanding the *Mining Act 1978*, no royalty shall be
5 payable under the *Mining Act 1978* in respect of stone, sand,
6 clay and gravel which the Company is permitted by the
7 Agreement to obtain from the land the subject of this licence.
- 8 4. [Any further endorsement which the Minister for Mines may,
9 consistent with the provisions of the Agreement, determine and
10 thereafter impose in respect of this licence including during the
11 term of the Agreement.]

12 Conditions

- 13 1. (a) Except as provided in paragraph (b), the Company shall
14 within 2 years after the Railway Operation Date surrender
15 in accordance with the provisions of the *Mining Act 1978*
16 the area of this licence down to a maximum of 100 metres
17 width or as otherwise approved by the Minister (as defined
18 in the Agreement) for the safe operation of the SRL
19 Railway then constructed or approved for construction
20 under approved proposals.
- 21 (b) Paragraph (a) shall not apply to land the subject of this
22 licence that was included in this licence pursuant to
23 clause 13(8) of the Agreement.
- 24 2. The Company shall as soon as possible after the construction of a
25 SRL Railway spur line or of an expansion or extension thereof as
26 the case may be surrender in accordance with the *Mining*
27 *Act 1978* the land the subject of this licence that was included in
28 this licence pursuant to clause 13(8) of the Agreement for the
29 purpose of such construction down to a maximum of 100 metres
30 in width or as otherwise approved by the Minister (as defined in
31 the Agreement) for the safe operation of that SRL Railway spur
32 line or expansion or extension thereof as the case may be then
33 constructed or approved for construction under approved
34 proposals.
- 35 3. [Any further conditions which the Minister for Mines may,
36 consistent with the provisions of the Agreement, determine and

1 thereafter impose in respect of this licence including during the
2 term of the Agreement.]

3 SCHEDULE

4 Land description

5 Locality:
6 Mineral Field
7 Area:

8 DATED at Perth this day of

9 **MINISTER FOR MINES**

SCHEDULE 2

WESTERN AUSTRALIA

RAILWAY (ROY HILL INFRASTRUCTURE PTY LTD)

AGREEMENT ACT []

MINING ACT 1978

**MISCELLANEOUS LICENCE FOR A LATERAL ACCESS
ROAD**

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called “the Agreement”) ratified by the Railway (Roy Hill Infrastructure Pty Ltd) Agreement Act [date] the State agreed to grant to Roy Hill Infrastructure Pty Ltd ACN 130 249 633 of Level 3, Hppl House, 28-42 Ventnor Avenue, West Perth, Western Australia (hereinafter with its successors and permitted assigns called “the Company”) a miscellaneous licence for the construction use and maintenance of the Lateral Access Roads (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 13(1) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the Railway (Roy Hill Infrastructure Pty Ltd) Agreement Act [date] the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 13(1)(b) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

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

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [/], and approved by the Minister (as defined in the Agreement) on [/], under the Agreement.
2. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determine and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

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

SCHEDULE

Description of land

Locality:

Mineral Field:

Area:

DATED at Perth this day of

MINISTER FOR MINES

SCHEDULE 3

WESTERN AUSTRALIA

RAILWAY (ROY HILL INFRASTRUCTURE PTY LTD)

AGREEMENT ACT []

MINING ACT 1978

**MISCELLANEOUS LICENCE FOR A LATERAL
ACCESS ROAD**

No. MISCELLANEOUS LICENCE []

WHEREAS by the Agreement (hereinafter called “the Agreement”) ratified by the Railway (Roy Hill Infrastructure Pty Ltd) Agreement Act [date] the State agreed to grant to Roy Hill Infrastructure Pty Ltd ACN 130 249 633 of Level 3, Hppl House, 28-42 Ventnor Avenue, West Perth, Western Australia (hereinafter with its successors and permitted assigns called “the Company”) a miscellaneous licence for the construction use and maintenance of the Lateral Access Roads (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 13(2) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the Railway (Roy Hill Infrastructure Pty Ltd) Agreement Act [date] the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof (subject to the sooner determination of the term upon the cessation or determination of the Agreement) and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 13(2) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

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

ENDORSEMENTS AND CONDITIONS

Endorsements

1. This licence is granted in accordance with proposals submitted on [/], and approved by the Minister (as defined in the Agreement) on [/], under the Agreement.
2. [Any further endorsement which the Minister for Mines may, consistent with the provisions of the Agreement, determine and thereafter impose in respect of this licence including during the term of the Agreement.]

Conditions

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

SCHEDULE

Description of land

Locality:

Mineral Field:

Area:

DATED at Perth this day of

MINISTER FOR MINES

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

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

Witness: [Signature]
Name: JOSEPH MATT OSTOJICH

THE COMMON SEAL of ROY HILL)
INFRASTRUCTURE PTY LTD ACN 130 249) [C.S.]
633 was hereunto affixed in accordance with its)
constitution in the presence of:

Director: [Signature]
Name: TADEUSZ J WATROBA

~~Director~~/Secretary: [Signature]
Name: JAY NEWBY

THE COMMON SEAL of ROY HILL)
HOLDINGS PTY LTD ACN 123 721 077) [C.S.]
was hereunto affixed in accordance with its)
constitution in the presence of:

Director: [Signature]
Name: TADEUSZ J WATROBA

~~Director~~/Secretary: [Signature]
Name: JAY NEWBY

THE COMMON SEAL of ROY HILL)
IRON ORE PTY LTD ACN 123 722 038) [C.S.]
was hereunto affixed in accordance with its)
constitution in the presence of:

Director: [Signature]
Name: TADEUSZ J WATROBA

~~Director~~/Secretary: [Signature]
Name: JAY NEWBY