

Iron Ore Agreements Legislation (Amendment, Termination and Repeals) Bill 2011

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Western Australia

LEGISLATIVE ASSEMBLY

**Iron Ore Agreements Legislation (Amendment,
Termination and Repeals) Bill 2011**

A Bill for

An Act —

- **to amend these Acts —**
 - *the Iron Ore (Mount Newman) Agreement Act 1964;*
 - *the Iron Ore (Mount Goldsworthy) Agreement Act 1964;*
 - *the Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972;*
 - *the Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972;*
 - *the Iron Ore (Marillana Creek) Agreement Act 1991;*

and

- **to ratify an agreement between the State and BHP Billiton Direct Reduced Iron Pty. Ltd. and others that provides for the termination of an agreement made on 16 October 1995 and subsequently varied by an agreement made on 11 April 2000, between the State and BHP Billiton Direct Reduced Iron Pty. Ltd. (under its former name, BHP Direct Reduced Iron Pty. Ltd.);**

and

- to repeal these Acts —
 - the *Iron Ore Beneficiation (BHP) Agreement Act 1996*;
 - the *Iron Ore - Direct Reduced Iron (BHP) Agreement Act 1996*;
 - the *Iron Ore Processing (BHP Minerals) Agreement Act 1994*.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Iron Ore Agreements Legislation (Amendment, Termination and Repeals) Act 2011*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 —on the day on which this Act receives the Royal Assent (*assent day*);
- (b) the rest of the Act — on the day after assent day.

1 **Part 2 — Iron Ore (Mount Newman) Agreement**
2 **Act 1964 amended**

3 **3. Act amended**

4 This Part amends the *Iron Ore (Mount Newman) Agreement*
5 *Act 1964*.

6 **4. Section 2 amended**

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

8
9 *the Seventh Variation Agreement* means the
10 agreement a copy of which is set out in the Eighth
11 Schedule;

12
13 (2) In section 2 in the definition of *the Agreement* delete “Part 8
14 and the Sixth Variation Agreement;” and insert:

15
16 Part 8, the Sixth Variation Agreement and the Seventh
17 Variation Agreement;

18
19 **5. Section 4D inserted**

20 After section 4C insert:

21
22 **4D. Seventh Variation Agreement**

23 (1) The Seventh Variation Agreement is ratified.

24 (2) The implementation of the Seventh Variation
25 Agreement is authorised.

26 (3) Without limiting or otherwise affecting the application
27 of the *Government Agreements Act 1979*, the Seventh
28 Variation Agreement is to operate and take effect
29 despite any other Act or law.
30

6. Eighth Schedule inserted

After the Seventh Schedule insert:

Eighth Schedule — Seventh Variation Agreement

[s. 2]

2011

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

AND

BHP BILLITON MINERALS PTY. LTD.

ACN 008 694 782

MITSUI-ITOCHU IRON PTY. LTD.

ACN 008 702 761

ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.

ACN 009 256 259

IRON ORE (MOUNT NEWMAN) AGREEMENT 1964

RATIFIED VARIATION AGREEMENT

[Solicitor's details]

s. 6

1 **THIS AGREEMENT** is made this 7th day of November 2011

2

3 **BETWEEN**

4

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

8 **AND**

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

16

17 **RECITALS:**

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

23 B. The State and the Joint Venturers wish to vary the Principal
24 Agreement.

25

26 **THE PARTIES AGREE AS FOLLOWS:**

27 **1. Interpretation**

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

2. Ratification and Operation

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

3. Variation of Principal Agreement

The Principal Agreement is varied as follows:

- (1) in clause 1 by inserting in the appropriate alphabetical positions the following new definitions:
- "Eligible Existing Tenure" means:
- (a) (i) a miscellaneous licence or general purpose lease granted to the Company under the Mining Act 1978; or
- (ii) a lease or easement granted to the Company under the LAA,
- and not clearly, to the satisfaction of the Minister, granted under or pursuant to or held pursuant to this Agreement; or
- (b) an application by the Company for the grant to it of a tenement referred to in paragraph (a)(i) (which application

s. 6

- 1 has not clearly, to the satisfaction of the Minister, been made
2 under or pursuant to this Agreement) and as the context
3 requires the tenement granted pursuant to such an
4 application,
- 5 where that tenure was granted or that application was made (as the
6 case may be) on or before 1 October 2011;
- 7 "LAA" means the *Land Administration Act 1997* (WA);
- 8 "Relevant Land", in relation to Eligible Existing Tenure or Special
9 Advance Tenure, means the land which is the subject of that Eligible
10 Existing Tenure or Special Advance Tenure, as the case may be;
- 11 "second variation date" means the date on which clause 3 of the
12 variation agreement made on or about 7 November 2011 between the
13 State and the Company comes into operation;
- 14 "Special Advance Tenure" means:
- 15 (a) a miscellaneous licence or general purpose lease requested
16 under clause 8(2b) to be granted to the Company under the
17 Mining Act 1978; or
- 18 (b) an easement or a lease requested under clause 8(2b) to be
19 granted to the Company under the LAA,
- 20 and as the context requires such tenure if granted;
- 21 (2) by inserting after clause 7C the following new clauses:
- 22 **"Community development plan**
- 23 7D. (1) In this Clause, the term "community and social
24 benefits" includes:
- 25 (a) assistance with skills development and
26 training opportunities to promote work
27 readiness and employment for persons
28 living in the Pilbara region of the said State;
- 29 (b) regional development activities in the
30 Pilbara region of the said State, including
31 partnerships and sponsorships;

- 1 (c) contribution to any community projects,
2 town services or facilities; and
- 3 (d) a regionally based workforce.
- 4 (2) The Company acknowledges the need for community
5 and social benefits flowing from this Agreement.
- 6 (3) The Company agrees that:
- 7 (a) it shall prepare a plan which describes the
8 Company's proposed strategies for
9 achieving community and social benefits in
10 connection with its activities under this
11 Agreement; and
- 12 (b) the Company shall, not later than 3 months
13 after the second variation date, submit to
14 the Minister the plan prepared under
15 paragraph (a) and confer with the Minister
16 in respect of the plan.
- 17 (4) The Minister shall within 2 months after receipt of a
18 plan submitted under subclause (3)(b), either notify
19 the Company that the Minister approves the plan as
20 submitted or notify the Company of changes which
21 the Minister requires be made to the plan. If the
22 Company is unwilling to accept the changes which
23 the Minister requires it shall notify the Minister to
24 that effect and either party may refer to arbitration
25 hereunder the question of the reasonableness of the
26 changes required by the Minister.
- 27 (5) The effect of an award made on an arbitration
28 pursuant to subclause (4) shall be that the relevant
29 plan submitted by the Company pursuant to
30 subclause (3)(b) shall, with such changes required by
31 the Minister under subclause (4) as the arbitrator
32 determines to be reasonable (with or without
33 modification by the arbitrator), be deemed to be the
34 plan approved by the Minister under this clause.

s. 6

- 1 (6) At least 3 months before the anticipated submission
2 of proposals relating to a proposed development
3 pursuant to any of Clauses 7A, 9A or 9E, the
4 Company must, unless the Minister otherwise
5 requires, give to the Minister information about how
6 the proposed development may affect the plan
7 approved or deemed to be approved by the Minister
8 under this Clause. This obligation operates in
9 relation to all proposals submitted on or after the date
10 that is 4 months after the date when a plan is first
11 approved or deemed to be approved under this
12 Clause.
- 13 (7) The Company shall at least annually report to the
14 Minister about the Company's implementation of the
15 plan approved or deemed to be approved by the
16 Minister under this Clause.
- 17 (8) At the request of either of them made at any time and
18 from time to time, the Minister and the Company
19 shall confer as to any amendments desired to any plan
20 approved or deemed to be approved by the Minister
21 under this Clause and may agree to amendment of the
22 plan or adoption of a new plan. Any such amended
23 plan or new plan will be deemed to be the plan
24 approved by the Minister under this Clause in respect
25 of the development to which it relates.
- 26 (9) During the currency of this Agreement, the Company
27 shall implement the plan approved or deemed to be
28 approved by the Minister under this Clause.

29 **Local participation plan**

- 30 7E. (1) In this Clause, the term "local industry participation
31 benefits" means:
- 32 (a) the use and training of labour available
33 within the said State;
- 34 (b) the use of the services of engineers,
35 surveyors, architects and other professional
36 consultants, experts, specialists, project

- 1 managers and contractors available within
2 the said State; and
- 3 (c) the procurement of works, materials, plant,
4 equipment and supplies from Western
5 Australian suppliers, manufacturers and
6 contractors.
- 7 (2) The Company acknowledges the need for local
8 industry participation benefits flowing from this
9 Agreement.
- 10 (3) The Company agrees that it shall, not later than
11 3 months after the second variation date, prepare and
12 provide to the Minister a plan which contains:
- 13 (a) a clear statement on the strategies which the
14 Company will use, and require a third party
15 as referred to in subclause (7) to use, to
16 maximise the uses and procurement
17 referred to in subclause (1);
- 18 (b) detailed information on the procurement
19 practices the Company will adopt, and
20 require a third party as referred to in
21 subclause (7) to adopt, in calling for tenders
22 and letting contracts for works, materials,
23 plant, equipment and supplies stages in
24 relation to a proposed development and
25 how such practices will provide fair and
26 reasonable opportunity for suitably
27 qualified Western Australian suppliers,
28 manufacturers and contractors to tender or
29 quote for works, materials, plant,
30 equipment and supplies;
- 31 (c) detailed information on the methods the
32 Company will use, and require a third party
33 as referred to in subclause (7) to use, to
34 have its respective procurement officers
35 promptly introduced to Western Australian
36 suppliers, manufacturers and contractors
37 seeking such introduction; and

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- 1 (d) details of the communication strategies the
2 Company will use, and require a third party
3 as referred to in subclause (7) to use, to
4 alert Western Australian engineers,
5 surveyors, architects and other professional
6 consultants, experts, specialists, project
7 managers and consultants and Western
8 Australian suppliers, manufacturers and
9 contractors to services opportunities and
10 procurement opportunities respectively as
11 referred to in subclause (1).
- 12 It is acknowledged by the Company that the strategies
13 of the Company referred to in subclause (3)(a) will
14 include strategies of the Company in relation to
15 supply of services, labour, works, materials, plant,
16 equipment or supplies for the purposes of this
17 Agreement.
- 18 (4) At the request of either of them made at any time and
19 from time to time, the Minister and the Company
20 shall confer as to any amendments desired to any plan
21 provided under this clause and may agree to the
22 amendment of the plan or the provision of a new plan
23 in substitution for the one previously provided.
- 24 (5) At least 6 months before the anticipated submission
25 of proposals relating to a proposed development
26 pursuant to any of Clauses 7A, 9A or 9E, the
27 Company must, unless the Minister otherwise
28 requires, give to the Minister information about the
29 implementation of the plan provided under this
30 Clause in relation to the proposed development. This
31 obligation operates in relation to all proposals
32 submitted on or after the date that is 7 months after
33 the date when a plan is first provided under this
34 Clause.
- 35 (6) During the currency of this Agreement the Company
36 shall implement the plan provided under this Clause.

- 1 (7) The Company shall:
- 2 (a) in every contract entered into with a third
- 3 party where the third party has an
- 4 obligation or right to procure the supply of
- 5 services, labour, works, materials, plant,
- 6 equipment or supplies for or in connection
- 7 with a proposed development, ensure that
- 8 the contract contains appropriate provisions
- 9 requiring the third party to undertake
- 10 procurement activities in accordance with
- 11 the plan provided under this Clause; and
- 12 (b) use reasonable endeavours to ensure that
- 13 the third party complies with those
- 14 provisions.";
- 15 (3) in clause 8:
- 16 (a) by inserting after paragraph (b)(ii) of subclause (1) the
- 17 following new paragraph:
- 18 "Notwithstanding clause 9C(2)(b)(iv), detailed proposals may
- 19 refer to activities on tenure which is proposed to be granted
- 20 pursuant to this paragraph (b) as if that tenure was granted
- 21 pursuant to this Agreement (but this does not limit the
- 22 powers or discretions of the Minister under this Agreement or
- 23 the Minister responsible for the administration of any
- 24 relevant Act with respect to the grant of the tenure);";
- 25 (b) by inserting after subclause (2) the following new subclauses:
- 26 **"Application for Eligible Existing Tenure to be held**
- 27 **pursuant to this Agreement**
- 28 (2a) (a) The Minister may at the request of the
- 29 Company from time to time made during
- 30 the continuance of this Agreement approve
- 31 Eligible Existing Tenure becoming held
- 32 pursuant to this Agreement on such
- 33 conditions as the Minister sees fit
- 34 (including, without limitation and
- 35 notwithstanding the Mining Act 1978 and

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- 1 the LAA, as to the surrender of land, the
2 submission of detailed proposals and the
3 variation of the terms and conditions of the
4 Eligible Existing Tenure (including for the
5 Eligible Existing Tenure to be held
6 pursuant to this Agreement and for the
7 more efficient use of the Relevant Land))
8 and the Minister may from time to time
9 vary such conditions in order to extend any
10 specified time for the doing of any thing or
11 otherwise with the agreement of the
12 Company.
- 13 (b) Eligible Existing Tenure the subject of an
14 approval by the Minister under this
15 subclause will be held by the Company
16 pursuant to this Agreement:
- 17 (i) if the Minister's approval was not
18 given subject to conditions, on and
19 from the date of the Minister's
20 notice of approval;
- 21 (ii) unless paragraph (iii) applies, if the
22 Minister's approval was given
23 subject to conditions, on the date
24 on which all such conditions have
25 been satisfied; and
- 26 (iii) if the Minister's approval was
27 given subject to a condition
28 requiring that the Company submit
29 detailed proposals in accordance
30 with this Agreement, on the later
31 of the date on which the Minister
32 approves proposals submitted in
33 discharge of that specified
34 condition and the date upon which
35 all other specified conditions have
36 been satisfied, but the Company is
37 authorised to implement any
38 approved proposal to the extent

1 such implementation is consistent
2 with the then terms and conditions
3 of the Eligible Existing Tenure
4 pending the satisfaction of any
5 conditions relating to the variation
6 of the terms or conditions of the
7 Eligible Existing Tenure. Where
8 this paragraph (iii) applies, prior to
9 any approval of proposals and
10 satisfaction of other conditions, the
11 relevant tenure will be treated for
12 (but only for) the purposes of
13 clause 9C(2)(b)(iv) as tenure held
14 pursuant to this Agreement.

15 **Application for Special Advance Tenure to be granted**
16 **pursuant to this Agreement**

17 (2b) Without limiting clause 8(1)(c), the Minister may
18 at the request of the Company from time to time
19 made during the continuance of this Agreement
20 approve Special Advance Tenure being granted to
21 the Company pursuant to this Agreement if:

22 (a) the Company proposes to submit detailed
23 proposals under this Agreement (other than
24 under clause 9E) to construct works
25 installations or facilities on the Relevant
26 Land and the Company's request is so far as
27 is practicable made, unless the Minister
28 approves otherwise, no less than 6 months
29 before the submission of those detailed
30 proposals; and

31 (b) the Minister is satisfied that it is necessary
32 and appropriate that Special Advance
33 Tenure, rather than tenure granted under or
34 pursuant to the other provisions of this
35 Agreement, be used for the purposes of the
36 proposed works installations or facilities on
37 the Relevant Land,

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- 1 and if the Minister does so approve:
- 2 (c) notwithstanding the Mining Act 1978 or the
3 LAA, the appropriate authority or
4 instrumentality of the State shall obtain the
5 consent of the Minister to the form and
6 substance of the Special Advance Tenure
7 prior to its grant (which for the avoidance
8 of doubt neither the State nor the Minister
9 is obliged to cause) to the Company; and
- 10 (d) if the Company does not submit detailed
11 proposals relating to construction of the
12 relevant works installations or facilities on
13 the Relevant Land within 24 months after
14 the date of the Minister's approval or such
15 later time subsequently allowed by the
16 Minister, or if submitted the Minister does
17 not approve such detailed proposals, the
18 Special Advance Tenure (if then granted)
19 shall be surrendered at the request of the
20 Minister.
- 21 (2c) The decisions of the Minister under
22 subclauses (2a) and (2b) shall not be referable to
23 arbitration and any approval of the Minister under
24 this clause shall not in any way limit, prejudice or
25 otherwise affect the exercise by the Minister of
26 the Minister's powers, or the performance of the
27 Minister's obligations, under this Agreement or
28 otherwise under the laws from time to time of the
29 said State.";
- 30 (c) in subclause (3), by deleting "subclause (2)" and substituting
31 "subclauses (2), (2a) and (2b)";
- 32 (d) in subclause (3B), by deleting "subclause (1)" and inserting
33 "subclauses (1), (2a) and (2b)";
- 34 (4) in clause 9(2) by:
- 35 (a) in paragraph (a), deleting "allow crossing places for roads
36 stock and other railways and"; and

- 1 (b) inserting after paragraph (a) the following new paragraph:
- 2 **"Crossings over Railway**
- 3 (aa) for the purposes of livestock and infrastructure such
- 4 as roads, railways, conveyors, pipelines, transmission
- 5 lines and other utilities proposed to cross the land the
- 6 subject of the Company's railway the Company shall:
- 7 (i) if applicable, give its consent to, or
- 8 otherwise facilitate the grant by the State or
- 9 any agency, instrumentality or other
- 10 authority of the State of any lease, licence
- 11 or other title over land the subject of the
- 12 Company's railway so long as such grant
- 13 does not in the Minister's opinion unduly
- 14 prejudice or interfere with the activities of
- 15 the Company under this Agreement; and
- 16 (ii) on reasonable terms and conditions allow
- 17 access for the construction and operation of
- 18 such crossings and associated
- 19 infrastructure,
- 20 provided that in forming his opinion under this
- 21 clause, the Minister must consult with the
- 22 Company;"
- 23 (c) in paragraph (j), deleting subparagraphs (ii) and (iia) and
- 24 substituting the following paragraph:
- 25 "(ii) on fine ore sold or shipped separately as such at the
- 26 rate of:
- 27 (A) 5.625% of the f.o.b. value, for ore shipped
- 28 prior to or on 30 June 2012;
- 29 (B) 6.5% of the f.o.b. value, for ore shipped
- 30 during the period from 1 July 2012 to
- 31 30 June 2013 (inclusive of both dates); and
- 32 (C) 7.5% of the f.o.b. value, for ore shipped on
- 33 or after 1 July 2013;" and

s. 6

- 1 (5) in clause 9E by:
- 2 (a) deleting in subclause (1) "'LAA" means the *Land*
- 3 *Administration Act 1997* (WA)";
- 4 (b) inserting after subclause (3)(c) the following new paragraph:
- 5 "(d) Without limiting subclause (9), the Minister may
- 6 waive the requirement under this clause for the
- 7 Company to obtain and to furnish the consent of a
- 8 title holder if the title holder has refused to give the
- 9 required consent and the Minister is satisfied that:
- 10 (i) the title holder's affected land is or was
- 11 subject to a miscellaneous licence granted
- 12 under the Mining Act 1978 for the purpose
- 13 of a railway to be constructed and operated
- 14 in accordance with this Agreement; and
- 15 (ii) in the Minister's opinion, the title holder's
- 16 refusal to give the required consent is not
- 17 reasonable in all the circumstances
- 18 including having regard to:
- 19 (A) the rights of the Company in
- 20 relation to the affected land as the
- 21 holder of the miscellaneous
- 22 licence, relative to its rights as the
- 23 holder of the sought Special
- 24 Railway Licence or Lateral Access
- 25 Road Licence (as the case may be);
- 26 and
- 27 (B) the terms of any agreement
- 28 between the Company and the title
- 29 holder.";
- 30 (c) deleting in subclause (4)(a) the comma after "the provisions
- 31 of this Agreement" and substituting "and"; and
- 32 (d) in subclause (7):
- 33 (i) deleting all words in paragraph (c) after "at the date
- 34 of such inclusion"; and

- 1 (ii) inserting after paragraph (k) the following new
2 paragraph:
3 "(l) The provisions of clause 9(2)(aa) shall
4 apply mutatis mutandis to any Railway or
5 Railway spur line constructed pursuant to
6 this clause."

**Iron Ore Agreements Legislation (Amendment, Termination and Repeals)
Bill 2011**

Part 2 Iron Ore (Mount Newman) Agreement Act 1964 amended

s. 6

1 **EXECUTED** as a deed.

2

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

6

[Signature]

Signature of witness

[Signature]

Peter Goodall

Name of witness

7

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

12

[Signature]

Signature of Director

[Signature]

Signature of Secretary

Uvashni Raman

Full Name

Robin Lees

Full Name

13

1 **EXECUTED** by **MITSUI-ITOCHU IRON**)
2 **PTY. LTD** ACN 008 702 761)
3 in accordance with section)
4 127(1) of the Corporations Act)

5

[Signature]

Signature of Director

[Signature]

Signature of Secretary

Ryuzo Nakamura

Full Name

Jiahe He

Full Name

6

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

13

[Signature]

Signature of witness

[Signature]

Signature of Attorney

Yasushi Fukumura

Name

Shuzaburo Tsuchihashi

Name

14

1 **Part 3 — Iron Ore (Mount Goldsworthy) Agreement**
2 **Act 1964 amended**

3 **7. Act amended**

4 This Part amends the *Iron Ore (Mount Goldsworthy) Agreement*
5 *Act 1964*.

6 **8. Section 3 amended**

7 (1) At the end of section 3 insert:

8
9 *the fifth Variation Agreement* means the agreement a
10 copy of which is set out in the Sixth Schedule.
11

12 (2) In section 3 in the definition of *the fourth Variation Agreement*
13 delete “Schedule.” and insert:

14
15 Schedule;
16

17 **9. Section 5D inserted**

18 After section 5C insert:

19

20 **5D. Fifth Variation Agreement**

21 (1) The fifth Variation Agreement is ratified.

22 (2) The implementation of the fifth Variation Agreement is
23 authorised.

24 (3) Without limiting or otherwise affecting the application
25 of the *Government Agreements Act 1979*, the fifth
26 Variation Agreement is to operate and take effect
27 despite any other Act or law.
28

10. Sixth Schedule inserted

After the Fifth Schedule insert:

Sixth Schedule — Fifth Variation Agreement

[s. 3]

2011

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

AND

BHP BILLITON MINERALS PTY. LTD.

ACN 008 694 782

MITSUI IRON ORE CORPORATION PTY. LTD.

ACN 050 157 456

ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.

ACN 009 256 259

IRON ORE (MOUNT GOLDSWORTHY) AGREEMENT 1964

RATIFIED VARIATION AGREEMENT

[Solicitor's details]

s. 10

1 **THIS AGREEMENT** is made this 7th day of November 2011

2

3 **BETWEEN**

4

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

8

9 **AND**

10

11 **BHP BILLITON MINERALS PTY. LTD.** ACN 008 694 782 of Level 17, St
12 Georges Square, 225 St Georges Terrace, Perth, Western Australia, **MITSUI**
13 **IRON ORE CORPORATION PTY. LTD.** ACN 050 157 456 of Level 16,
14 Exchange Plaza, 2 The Esplanade, Perth, Western Australia and **ITOCHU**
15 **MINERALS & ENERGY OF AUSTRALIA PTY. LTD.** ACN 009 256 259
16 of Level 22, Forrest Centre, 221 St Georges Terrace, Perth, Western Australia
17 (**Joint Venturers**).

18

19 **RECITALS**

20 **A.** The State and the Joint Venturers are now the parties to the agreement
21 dated 15 October 1964 approved by and scheduled to the *Iron Ore*
22 *(Mount Goldsworthy) Agreement Act 1964* and which as subsequently
23 added to, varied or amended is referred to in this Agreement as the
24 "**Principal Agreement**".

25 **B.** The State and the Joint Venturers wish to vary the Principal
26 Agreement.

27

1 **THE PARTIES AGREE AS FOLLOWS:**

2 **1. Intepretation**

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

6 **2. Ratification and Operation**

7 (1) The State shall introduce and sponsor a Bill in the State Parliament of
8 Western Australia prior to 31 December 2011 or such later date as
9 may be agreed between the parties hereto to ratify this Agreement.
10 The State shall endeavour to secure the timely passage of such Bill as
11 an Act.

12 (2) The provisions of this Agreement other than this clause and clause 1
13 will not come into operation until the day after the day on which the
14 Bill referred to in subclause (1) has been passed by the State
15 Parliament of Western Australia and commences to operate as an Act.

16 (3) If by 30 June 2012 the said Bill has not commenced to operate as an
17 Act then, unless the parties hereto otherwise agree, this Agreement
18 will then cease and determine and no party hereto will have any claim
19 against any other party hereto with respect to any matter or thing
20 arising out of, done, performed, or omitted to be done or performed
21 under this Agreement.

22 (4) On the day after the day on which the said Bill commences to operate
23 as an Act all the provisions of this Agreement will operate and take
24 effect despite any enactment or other law.

25 **3. Variation of Principal Agreement**

26 The Principal Agreement is varied as follows:

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

29 "Eligible Existing Tenure" means:

30 (a) (i) a miscellaneous licence or general purpose lease
31 granted to the Joint Venturers under the Mining
32 Act 1978; or

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- 1 (ii) a lease or easement granted to the Joint Venturers
2 under the LAA,
3 and not clearly, to the satisfaction of the Minister, granted
4 under or pursuant to or held pursuant to this Agreement; or
5 (b) an application by the Joint Venturers for the grant to them of
6 a tenement referred to in paragraph (a)(i) (which application
7 has not clearly, to the satisfaction of the Minister, been made
8 under or pursuant to this Agreement) and as the context
9 requires the tenement granted pursuant to such an application,
10 where that tenure was granted or that application was made (as the
11 case may be) on or before 1 October 2011;
12 "LAA" means the *Land Administration Act 1997* (WA);
13 "Relevant Land", in relation to Eligible Existing Tenure or Special
14 Advance Tenure, means the land which is the subject of that Eligible
15 Existing Tenure or Special Advance Tenure, as the case may be;
16 "second variation date" means the date on which clause 3 of the
17 variation agreement made on or about 7 November 2011 between the
18 State and the Joint Venturers comes into operation;
19 "Special Advance Tenure" means:
20 (a) a miscellaneous licence or general purpose lease requested
21 under clause 8(3b) to be granted to the Joint Venturers under
22 the Mining Act 1978; or
23 (b) an easement or a lease requested under clause 8(3b) to be
24 granted to the Joint Venturers under the LAA,
25 and as the context requires such tenure if granted;
26 (2) by inserting after clause 7C the following new clauses:
27 **"Community development plan**
28 7D. (1) In this Clause, the term "community and social
29 benefits" includes:
30 (a) assistance with skills development and
31 training opportunities to promote work

- 1 readiness and employment for persons
2 living in the Pilbara region of the said State;
- 3 (b) regional development activities in the
4 Pilbara region of the said State, including
5 partnerships and sponsorships;
- 6 (c) contribution to any community projects,
7 town services or facilities; and
- 8 (d) a regionally based workforce.
- 9 (2) The Joint Venturers acknowledge the need for
10 community and social benefits flowing from this
11 Agreement.
- 12 (3) The Joint Venturers agree that:
- 13 (a) they shall prepare a plan which describes
14 the Joint Venturers' proposed strategies for
15 achieving community and social benefits in
16 connection with their activities under this
17 Agreement; and
- 18 (b) the Joint Venturers shall, not later than
19 3 months after the second variation date,
20 submit to the Minister the plan prepared
21 under paragraph (a) and confer with the
22 Minister in respect of the plan.
- 23 (4) The Minister shall within 2 months after receipt of a
24 plan submitted under subclause (3)(b), either notify
25 the Joint Venturers that the Minister approves the
26 plan as submitted or notify the Joint Venturers of
27 changes which the Minister requires be made to the
28 plan. If the Joint Venturers are unwilling to accept
29 the changes which the Minister requires they shall
30 notify the Minister to that effect and either party may
31 refer to arbitration hereunder the question of the
32 reasonableness of the changes required by the
33 Minister.
- 34 (5) The effect of an award made on an arbitration
35 pursuant to subclause (4) shall be that the relevant

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- 1 plan submitted by the Joint Venturers pursuant to
2 subclause (3)(b) shall, with such changes required by
3 the Minister under subclause (4) as the arbitrator
4 determines to be reasonable (with or without
5 modification by the arbitrator), be deemed to be the
6 plan approved by the Minister under this clause.
- 7 (6) At least 3 months before the anticipated submission
8 of proposals relating to a proposed development
9 pursuant to any of Clauses 7A, 9E, 11 or 12, the Joint
10 Venturers must, unless the Minister otherwise
11 requires, give to the Minister information about how
12 the proposed development may affect the plan
13 approved or deemed to be approved by the Minister
14 under this Clause. This obligation operates in
15 relation to all proposals submitted on or after the date
16 that is 4 months after the date when a plan is first
17 approved or deemed to be approved under this
18 Clause.
- 19 (7) The Joint Venturers shall at least annually report to
20 the Minister about the Joint Venturers'
21 implementation of the plan approved or deemed to be
22 approved by the Minister under this Clause.
- 23 (8) At the request of either of them made at any time and
24 from time to time, the Minister and the Joint
25 Venturers shall confer as to any amendments desired
26 to any plan approved or deemed to be approved by
27 the Minister under this Clause and may agree to
28 amendment of the plan or adoption of a new plan.
29 Any such amended plan or new plan will be deemed
30 to be the plan approved by the Minister under this
31 Clause in respect of the development to which it
32 relates.
- 33 (9) During the currency of this Agreement, the Joint
34 Venturers shall implement the plan approved or
35 deemed to be approved by the Minister under this
36 Clause.

Local participation plan

7E. (1) In this Clause, the term "local industry participation benefits" means:

- (a) the use and training of labour available within the said State;
- (b) the use of the services of engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and contractors available within the said State; and
- (c) the procurement of works, materials, plant, equipment and supplies from Western Australian suppliers, manufacturers and contractors.

(2) The Joint Venturers acknowledge the need for local industry participation benefits flowing from this Agreement.

(3) The Joint Venturers agree that they shall, not later than 3 months after the second variation date, prepare and provide to the Minister a plan which contains:

- (a) a clear statement on the strategies which the Joint Venturers will use, and require a third party as referred to in subclause (7) to use, to maximise the uses and procurement referred to in subclause (1);
- (b) detailed information on the procurement practices the Joint Venturers will adopt, and require a third party as referred to in subclause (7) to adopt, in calling for tenders and letting contracts for works, materials, plant, equipment and supplies stages in relation to a proposed development and how such practices will provide fair and reasonable opportunity for suitably qualified Western Australian suppliers,

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- 1 manufacturers and contractors to tender or
2 quote for works, materials, plant,
3 equipment and supplies;
- 4 (c) detailed information on the methods the
5 Joint Venturers will use, and require a third
6 party as referred to in subclause (7) to use,
7 to have its respective procurement officers
8 promptly introduced to Western Australian
9 suppliers, manufacturers and contractors
10 seeking such introduction; and
- 11 (d) details of the communication strategies the
12 Joint Venturers will use, and require a third
13 party as referred to in subclause (7) to use,
14 to alert Western Australian engineers,
15 surveyors, architects and other professional
16 consultants, experts, specialists, project
17 managers and consultants and Western
18 Australian suppliers, manufacturers and
19 contractors to services opportunities and
20 procurement opportunities respectively as
21 referred to in subclause (1).
- 22 It is acknowledged by the Joint Venturers that the
23 strategies of the Joint Venturers referred to in
24 subclause (3)(a) will include strategies of the Joint
25 Venturers in relation to supply of services, labour,
26 works, materials, plant, equipment or supplies for the
27 purposes of this Agreement.
- 28 (4) At the request of either of them made at any time and
29 from time to time, the Minister and the Joint
30 Venturers shall confer as to any amendments desired
31 to any plan provided under this clause and may agree
32 to the amendment of the plan or the provision of a
33 new plan in substitution for the one previously
34 provided.
- 35 (5) At least 6 months before the anticipated submission
36 of proposals relating to a proposed development
37 pursuant to any of Clauses 7A, 9E, 11 or 12, the Joint

- 1 Venturers must, unless the Minister otherwise
2 requires, give to the Minister information about the
3 implementation of the plan provided under this
4 Clause in relation to the proposed development. This
5 obligation operates in relation to all proposals
6 submitted on or after the date that is 7 months after
7 the date when a plan is first provided under this
8 Clause.
- 9 (6) During the currency of this Agreement the Joint
10 Venturers shall implement the plan provided under
11 this Clause.
- 12 (7) The Joint Venturers shall:
- 13 (a) in every contract entered into with a third
14 party where the third party has an
15 obligation or right to procure the supply of
16 services, labour, works, materials, plant,
17 equipment or supplies for or in connection
18 with a proposed development, ensure that
19 the contract contains appropriate provisions
20 requiring the third party to undertake
21 procurement activities in accordance with
22 the plan provided under this Clause; and
- 23 (b) use reasonable endeavours to ensure that
24 the third party complies with those
25 provisions.";
- 26 (3) by inserting after clause 8(2)(b)(ii) the following new paragraph:
- 27 "notwithstanding clause 9C(2)(b)(iv), detailed proposals may refer to
28 activities on tenure which is proposed to be granted pursuant to this
29 paragraph (b) as if that tenure was granted pursuant to this Agreement
30 (but this does not limit the powers or discretions of the Minister under
31 this Agreement or the Minister responsible for the administration of
32 any relevant Act with respect to the grant of the tenure);";

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- 1 (4) by inserting after clause 8(3) the following new subclauses:
- 2 **"Application for Eligible Existing Tenure to be held pursuant to**
3 **this Agreement**
- 4 (3a) (a) The Minister may at the request of the Joint
5 Venturers from time to time made during the
6 continuance of this Agreement approve Eligible
7 Existing Tenure becoming held pursuant to this
8 Agreement on such conditions as the Minister sees fit
9 (including, without limitation and notwithstanding the
10 Mining Act 1978 and the LAA, as to the surrender of
11 land, the submission of detailed proposals and the
12 variation of the terms and conditions of the Eligible
13 Existing Tenure (including for the Eligible Existing
14 Tenure to be held pursuant to this Agreement and for
15 the more efficient use of the Relevant Land)) and the
16 Minister may from time to time vary such conditions
17 in order to extend any specified time for the doing of
18 any thing or otherwise with the agreement of the Joint
19 Venturers.
- 20 (b) Eligible Existing Tenure the subject of an approval by
21 the Minister under this subclause will be held by the
22 Joint Venturers pursuant to this Agreement:
- 23 (i) if the Minister's approval was not given
24 subject to conditions, on and from the date
25 of the Minister's notice of approval;
- 26 (ii) unless paragraph (iii) applies, if the
27 Minister's approval was given subject to
28 conditions, on the date on which all such
29 conditions have been satisfied; and
- 30 (iii) if the Minister's approval was given subject
31 to a condition requiring that the Joint
32 Venturers submit detailed proposals in
33 accordance with this Agreement, on the
34 later of the date on which the Minister
35 approves proposals submitted in discharge
36 of that specified condition and the date
37 upon which all other specified conditions

1 have been satisfied, but the Joint Venturers
2 are authorised to implement any approved
3 proposal to the extent such implementation
4 is consistent with the then terms and
5 conditions of the Eligible Existing Tenure
6 pending the satisfaction of any conditions
7 relating to the variation of the terms or
8 conditions of the Eligible Existing Tenure.
9 Where this paragraph (iii) applies, prior to
10 any approval of proposals and satisfaction
11 of other conditions, the relevant tenure will
12 be treated for (but only for) the purposes of
13 clause 9C(2)(b)(iv) as tenure held pursuant
14 to this Agreement.

15 **Application for Special Advance Tenure to be granted pursuant**
16 **to this Agreement**

17 (3b) Without limiting clause 8(2)(c), the Minister may at the
18 request of the Joint Venturers from time to time made
19 during the continuance of this Agreement approve Special
20 Advance Tenure being granted to the Joint Venturers
21 pursuant to this Agreement if:

22 (a) the Joint Venturers propose to submit detailed
23 proposals under this Agreement (other than under
24 clause 9E) to construct works installations or
25 facilities on the Relevant Land and the Joint
26 Venturers' request is so far as is practicable made,
27 unless the Minister approves otherwise, no less than
28 6 months before the submission of those detailed
29 proposals; and

30 (b) the Minister is satisfied that it is necessary and
31 appropriate that Special Advance Tenure, rather than
32 tenure granted under or pursuant to the other
33 provisions of this Agreement, be used for the
34 purposes of the proposed works installations or
35 facilities on the Relevant Land,

s. 10

- 1 and if the Minister does so approve:
- 2 (c) notwithstanding the Mining Act 1978 or the LAA, the
3 appropriate authority or instrumentality of the State
4 shall obtain the consent of the Minister to the form
5 and substance of the Special Advance Tenure prior to
6 its grant (which for the avoidance of doubt neither the
7 State nor the Minister is obliged to cause) to the Joint
8 Venturers as tenants in common in equal shares; and
- 9 (d) if the Joint Venturers do not submit detailed
10 proposals relating to construction of the relevant
11 works installations or facilities on the Relevant Land
12 within 24 months after the date of the Minister's
13 approval or such later time subsequently allowed by
14 the Minister, or if submitted the Minister does not
15 approve such detailed proposals, the Special Advance
16 Tenure (if then granted) shall be surrendered at the
17 request of the Minister.
- 18 (3c) The decisions of the Minister under subclauses (3a) and
19 (3b) shall not be referable to arbitration and any approval of
20 the Minister under this clause shall not in any way limit,
21 prejudice or otherwise affect the exercise by the Minister of
22 the Minister's powers, or the performance of the Minister's
23 obligations, under this Agreement or otherwise under the
24 laws from time to time of the said State.";
- 25 (5) in subclauses (4) and (4a) of clause 8 by deleting "subclause (2)" and
26 substituting "subclauses (2), (3a) and (3b)";
- 27 (6) in clause 8(5) by:
- 28 (a) deleting "and" after the semicolon at the end of paragraph (e);
- 29 (b) inserting "and" after the semicolon at the end of
30 paragraph (f); and

- 1 (c) inserting after paragraph (f) the following new paragraph:
- 2 **"Reservation of land within the Port of Port Hedland for**
- 3 **leases**
- 4 (g) without limiting the State's obligations under
- 5 clause 8(2)(b), shall ensure that the land within the
- 6 areas coloured red and green on the plan marked 'Plan
- 7 D' (initialled by or on behalf of the parties hereto for
- 8 the purposes of identification) is reserved until
- 9 31 December 2030 for the purposes of the Port
- 10 Authority granting from time to time to the Joint
- 11 Venturers in accordance with proposals approved or
- 12 determined under clauses 7B, 11 or 12 leases of that
- 13 reserved land:
- 14 (i) at commercial rental; and
- 15 (ii) upon such other terms and conditions as
- 16 approved by the Minister responsible for
- 17 the Port Authorities Act (acting with the
- 18 concurrence of the Minister) including as to
- 19 the facilitation and allowance on reasonable
- 20 terms and conditions of future crossings of
- 21 the land within the area coloured green on
- 22 the plan marked 'Plan D' so long as such
- 23 crossings do not unduly prejudice or
- 24 interfere with the operations of the Joint
- 25 Venturers under this Agreement,
- 26 provided that this obligation to ensure reservation of
- 27 the land shall cease:
- 28 (iii) if the Joint Venturers do not submit detailed
- 29 proposals prior to 31 December 2013 (or
- 30 such later date prior to 31 December 2014
- 31 as the Minister may allow) under and in
- 32 accordance with clause 7B, 11 or 12
- 33 relating to the construction of at least a two
- 34 berth wharf facility and associated jetty
- 35 within the area the subject of the
- 36 reservation;

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- 1 (iv) if a lease or leases are granted to the Joint
2 Venturers as contemplated by this clause in
3 relation to a two berth wharf facility and
4 associated jetty development, in respect of
5 the land within the areas coloured red and
6 green on the plan marked 'Plan D' that are
7 subject to such lease or leases or laterally
8 adjacent to the area of the lease or leases;
9 and
- 10 (v) progressively thereafter if a lease is granted
11 as contemplated by this clause, or any
12 existing lease relating to the wharf facility
13 is varied, to accommodate additional
14 berths, in respect of the land within the area
15 coloured red on the plan marked 'Plan D'
16 that is subject to such lease (including as
17 varied) or laterally adjacent to the area of
18 the lease (including as varied).
- 19 The parties agree that clause 24 shall not apply to this
20 paragraph (g).";
- 21 (7) in clause 9(2)(a) by deleting "allow crossing places for roads stock
22 and other railways and also";
- 23 (8) by inserting after clause 9(2)(a) the following new paragraph:
- 24 **"Crossings over Railway**
- 25 (aa) for the purposes of livestock and infrastructure such as roads,
26 railways, conveyors, pipelines, transmission lines and other
27 utilities proposed to cross the land the subject of the Joint
28 Venturers' railway the Joint Venturers shall:
- 29 (i) if applicable, give their consent to, or otherwise
30 facilitate the grant by the State or any agency,
31 instrumentality or other authority of the State of any
32 lease, licence or other title over land the subject of the
33 Joint Venturers' railway so long as such grant does
34 not in the Minister's opinion unduly prejudice or
35 interfere with the activities of the Joint Venturers
36 under this Agreement; and

- 1 (ii) on reasonable terms and conditions allow access for
2 the construction and operation of such crossings and
3 associated infrastructure,
4 provided that in forming his opinion under this clause, the
5 Minister must consult with the Joint Venturers;"
- 6 (9) by deleting clause 9(2)(j)(ii) and substituting the following new
7 subparagraph:
8 "(ii) on fine ore sold or shipped separately as such at the rate of:
9 (A) 5.625% of the f.o.b. value, for ore shipped prior to or
10 on 30 June 2012;
11 (B) 6.5% of the f.o.b. value, for ore shipped during the
12 period from 1 July 2012 to 30 June 2013 (inclusive of
13 both dates); and
14 (C) 7.5% of the f.o.b. value, for ore shipped on or after
15 1 July 2013;"
- 16 (10) by deleting clause 9(2)(j)(iia);
- 17 (11) by inserting after clause 9D the following new clause:
18 **"Transfer of rights to section of Goldsworthy-Nimingarra**
19 **Railway**
20 9DA (1) The Joint Venturers may as an additional proposal
21 pursuant to clause 7A propose that they be granted a
22 lease under the LAA and pursuant to this Agreement
23 over the section of the railway held pursuant to the
24 agreement ratified by the *Iron Ore*
25 *(Goldsworthy-Nimingarra) Agreement Act 1972* that
26 is:
27 (a) near the Port of Port Hedland; and
28 (b) west of the intersection of that railway with the
29 railway constructed pursuant to the agreement
30 approved by the *Iron Ore (Mount Newman)*
31 *Agreement Act 1964*,

s. 10

- 1 subject to and conditional upon the Joint Venturers
2 (as defined in the former agreement) surrendering
3 wholly or in part (and upon such terms as the
4 Minister considers reasonable) its lease or leases over
5 that section of railway.
- 6 (2) The provisions of clause 7B shall mutatis mutandis
7 apply to any such additional proposal, except that the
8 Minister's right to refuse to approve a proposal under
9 clause 7B(1) does not apply to a proposal
10 contemplated by this clause.
- 11 (3) The Joint Venturers acknowledge that the lease
12 referred to in subclause (1) will on reasonable terms
13 and conditions allow for crossings relating to the
14 proposed Boodarie industrial estate infrastructure
15 corridor (including the grant of tenure and rights
16 reasonably necessary for infrastructure and utilities
17 proposed to be constructed and operated within such
18 corridor).";
- 19 (12) in clause 9E by:
- 20 (a) deleting in subclause (1) "'LAA" means the *Land*
21 *Administration Act 1997* (WA)";
- 22 (b) inserting after subclause (3)(c) the following new paragraph:
- 23 "(d) Without limiting subclause (9), the Minister may
24 waive the requirement under this clause for the Joint
25 Venturers to obtain and to furnish the consent of a
26 title holder if the title holder has refused to give the
27 required consent and the Minister is satisfied that:
- 28 (i) the title holder's affected land is or was
29 subject to a miscellaneous licence granted
30 under the Mining Act 1978 for the purpose
31 of a railway to be constructed and operated
32 in accordance with this Agreement; and
- 33 (ii) in the Minister's opinion, the title holder's
34 refusal to give the required consent is not

- 1 reasonable in all the circumstances
2 including having regard to
- 3 (A) the rights of the Joint Venturers in
4 relation to the affected land as the
5 holders of the miscellaneous
6 licence, relative to their rights as
7 the holders of the sought Special
8 Railway Licence or Lateral Access
9 Road Licence (as the case may be);
10 and
- 11 (B) the terms of any agreement
12 between the Joint Venturers and
13 the title holder.";
- 14 (c) deleting in subclause (4)(a) the comma after "the provisions
15 of this Agreement" and substituting "and"; and
- 16 (d) in subclause (7):
- 17 (i) deleting all words in paragraph (c) after "at the date
18 of such inclusion"; and
- 19 (ii) inserting after paragraph (k) the following new
20 paragraph:
- 21 "(1) The provisions of clause 9(2)(aa) shall apply
22 mutatis mutandis to any Railway or Railway
23 spur line constructed pursuant to this
24 clause.";
- 25 (13) in clause 12 by:
- 26 (a) in subclause (1), deleting the definition of "approved
27 production limit under this clause";
- 28 (b) in subclause (5)(a):
- 29 (i) deleting "Subject to subclauses (6) to (9) of this
30 Clause if" and substituting "If"; and
- 31 (ii) deleting "produce more than the approved production
32 limit under this Clause or to"; and

s. 10

- 1 (c) deleting subclauses (6), (7), (8) and (9) and substituting the
2 following new subclause:
- 3 "(6) For the avoidance of doubt, nothing in this clause 12
4 requires the Joint Venturers to seek or obtain the
5 Minister's approval or consent (by submitting
6 proposals or otherwise) to a mere increase in
7 production limits."; and
- 8 (14) by deleting clause 12A.

1 **EXECUTED** as a deed.

2

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

6

[Signature]

Signature of witness

[Signature]

Peter Goodall

Name of witness

7

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

12

[Signature]

Signature of Director

[Signature]

Signature of Secretary

Uvashni Raman

Full Name

Robin Lees

Full Name

13

**Iron Ore Agreements Legislation (Amendment, Termination and Repeals)
Bill 2011**

Part 3

Iron Ore (Mount Goldsworthy) Agreement Act 1964 amended

s. 10

1 **EXECUTED** by **MITSUI IRON ORE**)
2 **CORPORATION PTY. LTD**)
3 ACN 050 157 456 in accordance with section)
4 127(1) of the Corporations Act)

5

[Signature]

Signature of Director

[Signature]

Signature of Secretary

Ryuzo Nakamura

Full Name

Jiahe He

Full Name

6

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

13

[Signature]

Signature of witness

[Signature]

Signature of Attorney

Yasushi Fukumura

Name

Shuzaburo Tsuchihashi

Name

14

**Part 4 — Iron Ore (Goldsworthy-Nimigarra)
Agreement Act 1972 amended**

11. Act amended

This Part amends the *Iron Ore (Goldsworthy-Nimigarra)
Agreement Act 1972*.

12. Section 2 amended

(1) In section 2 insert in alphabetical order:

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

(2) In section 2 in the definition of *the Second Variation
Agreement* delete “Schedule 3.” and insert:

Schedule 3;

13. Section 8 inserted

After section 7 insert:

8. Third Variation Agreement

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

s. 14

14. Schedule 4 inserted

After Schedule 3 insert:

Schedule 4 — Third Variation Agreement

[s. 2]

2011

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

AND

BHP BILLITON MINERALS PTY. LTD.

ACN 008 694 782

mitsui iron ore corporation Pty. Ltd.

ACN 050 157 456

ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.

ACN 009 256 259

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

[Solicitor's details]

1 **THIS AGREEMENT** is made this 7th day of November 2011

2

3 **BETWEEN**

4

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

8 **AND**

9 **BHP BILLITON MINERALS PTY. LTD.** ACN 008 694 782 of Level 17, St
10 Georges Square, 225 St Georges Terrace, Perth, Western Australia, **MITSUMI**
11 **IRON ORE CORPORATION PTY. LTD.** ACN 050 157 456, of Level 16,
12 Exchange Plaza, 2 The Esplanade, Perth, Western Australia and **ITOCHU**
13 **MINERALS & ENERGY OF AUSTRALIA PTY. LTD.** ACN 009 256 259
14 of Level 22, Forrest Centre, 221 St Georges Terrace, Perth, Western Australia
15 (**Joint Venturers**).

16

17 **RECITALS:**

18 A. The State and the Joint Venturers are now the parties to the agreement
19 dated 12 April 1972 approved by and scheduled to the *Iron Ore*
20 (*Goldsworthy-Nimingarra*) *Agreement Act 1972* and which as
21 subsequently added to, varied or amended is referred to in this
22 Agreement as the "**Principal Agreement**".

23 B. The State and the Joint Venturers wish to vary the Principal
24 Agreement.

25

26 **THE PARTIES AGREE AS FOLLOWS:**

27 **1. Interpretation**

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

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2. Ratification and Operation

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

3. Variation of Principal Agreement

The Principal Agreement is varied as follows:

- (1) in clause 1 by inserting in the appropriate alphabetical positions the following new definitions:
- "Eligible Existing Tenure" means:
- (a) (i) a miscellaneous licence or general purpose lease granted to the Joint Venturers under the Mining Act 1978; or
- (ii) a lease or easement granted to the Joint Venturers under the LAA,
- and not clearly, to the satisfaction of the Minister, granted under or pursuant to or held pursuant to this Agreement; or

- 1 (b) an application by the Joint Venturers for the grant to them of
2 a tenement referred to in paragraph (a)(i) (which application
3 has not clearly, to the satisfaction of the Minister, been made
4 under or pursuant to this Agreement) and as the context
5 requires the tenement granted pursuant to such an application,
6 where that tenure was granted or that application was made (as the
7 case may be) on or before 1 October 2011;
8 "LAA" means the *Land Administration Act 1997* (WA);
9 "Relevant Land", in relation to Eligible Existing Tenure or Special
10 Advance Tenure, means the land which is the subject of that Eligible
11 Existing Tenure or Special Advance Tenure, as the case may be;
12 "second variation date" means the date on which clause 3 of the
13 variation agreement made on or about 7 November 2011 between the
14 State and the Joint Venturers comes into operation;
15 "Special Advance Tenure" means:
16 (a) a miscellaneous licence or general purpose lease requested
17 under clause 11(5b) to be granted to the Joint Venturers under
18 the Mining Act 1978; or
19 (b) an easement or a lease requested under clause 11(5b) to be
20 granted to the Joint Venturers under the LAA,
21 and as the context requires such tenure if granted;
22 (2) by inserting after clause 8B the following new clauses:
23 **"Community development plan**
24 8C. (1) In this Clause, the term "community and social
25 benefits" includes:
26 (a) assistance with skills development and
27 training opportunities to promote work
28 readiness and employment for persons
29 living in the Pilbara region of the said State;
30 (b) regional development activities in the
31 Pilbara region of the said State, including
32 partnerships and sponsorships;

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- 1 (c) contribution to any community projects,
2 town services or facilities; and
- 3 (d) a regionally based workforce.
- 4 (2) The Joint Venturers acknowledge the need for
5 community and social benefits flowing from this
6 Agreement.
- 7 (3) The Joint Venturers agree that:
- 8 (a) they shall prepare a plan which describes
9 the Joint Venturers' proposed strategies for
10 achieving community and social benefits in
11 connection with their activities under this
12 Agreement; and
- 13 (b) the Joint Venturers shall, not later than
14 3 months after the second variation date,
15 submit to the Minister the plan prepared
16 under paragraph (a) and confer with the
17 Minister in respect of the plan.
- 18 (4) The Minister shall within 2 months after receipt of a
19 plan submitted under subclause (3)(b), either notify
20 the Joint Venturers that the Minister approves the
21 plan as submitted or notify the Joint Venturers of
22 changes which the Minister requires be made to the
23 plan. If the Joint Venturers are unwilling to accept
24 the changes which the Minister requires they shall
25 notify the Minister to that effect and either party may
26 refer to arbitration hereunder the question of the
27 reasonableness of the changes required by the
28 Minister.
- 29 (5) The effect of an award made on an arbitration
30 pursuant to subclause (4) shall be that the relevant
31 plan submitted by the Joint Venturers pursuant to
32 subclause (3)(b) shall, with such changes required by
33 the Minister under subclause (4) as the arbitrator
34 determines to be reasonable (with or without
35 modification by the arbitrator), be deemed to be the
36 plan approved by the Minister under this clause.

- 1 (6) At least 3 months before the anticipated submission
2 of proposals relating to a proposed development
3 pursuant to Clauses 8 or 16C, the Joint Venturers
4 must, unless the Minister otherwise requires, give to
5 the Minister information about how the proposed
6 development may affect the plan approved or deemed
7 to be approved by the Minister under this Clause.
8 This obligation operates in relation to all proposals
9 submitted on or after the date that is 4 months after
10 the date when a plan is first approved or deemed to be
11 approved under this Clause.
- 12 (7) The Joint Venturers shall at least annually report to
13 the Minister about the Joint Venturers'
14 implementation of the plan approved or deemed to be
15 approved by the Minister under this Clause.
- 16 (8) At the request of either of them made at any time and
17 from time to time, the Minister and the Joint
18 Venturers shall confer as to any amendments desired
19 to any plan approved or deemed to be approved by
20 the Minister under this Clause and may agree to
21 amendment of the plan or adoption of a new plan.
22 Any such amended plan or new plan will be deemed
23 to be the plan approved by the Minister under this
24 Clause in respect of the development to which it
25 relates.
- 26 (9) During the currency of this Agreement, the Joint
27 Venturers shall implement the plan approved or
28 deemed to be approved by the Minister under this
29 Clause.

30 **Local participation plan**

- 31 8D. (1) In this Clause, the term "local industry participation
32 benefits" means:
- 33 (a) the use and training of labour available
34 within the said State;
- 35 (b) the use of the services of engineers,
36 surveyors, architects and other professional

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- 1 consultants, experts, specialists, project
2 managers and contractors available within
3 the said State; and
- 4 (c) the procurement of works, materials, plant,
5 equipment and supplies from Western
6 Australian suppliers, manufacturers and
7 contractors.
- 8 (2) The Joint Venturers acknowledge the need for local
9 industry participation benefits flowing from this
10 Agreement.
- 11 (3) The Joint Venturers agree that they shall, not later
12 than 3 months after the second variation date, prepare
13 and provide to the Minister a plan which contains:
- 14 (a) a clear statement on the strategies which the
15 Joint Venturers will use, and require a third
16 party as referred to in subclause (7) to use,
17 to maximise the uses and procurement
18 referred to in subclause (1);
- 19 (b) detailed information on the procurement
20 practices the Joint Venturers will adopt, and
21 require a third party as referred to in
22 subclause (7) to adopt, in calling for tenders
23 and letting contracts for works, materials,
24 plant, equipment and supplies stages in
25 relation to a proposed development and
26 how such practices will provide fair and
27 reasonable opportunity for suitably
28 qualified Western Australian suppliers,
29 manufacturers and contractors to tender or
30 quote for works, materials, plant,
31 equipment and supplies;
- 32 (c) detailed information on the methods the
33 Joint Venturers will use, and require a third
34 party as referred to in subclause (7) to use,
35 to have its respective procurement officers
36 promptly introduced to Western Australian

- 1 suppliers, manufacturers and contractors
2 seeking such introduction; and
- 3 (d) details of the communication strategies the
4 Joint Venturers will use, and require a third
5 party as referred to in subclause (7) to use,
6 to alert Western Australian engineers,
7 surveyors, architects and other professional
8 consultants, experts, specialists, project
9 managers and consultants and Western
10 Australian suppliers, manufacturers and
11 contractors to services opportunities and
12 procurement opportunities respectively as
13 referred to in subclause (1).
- 14 It is acknowledged by the Joint Venturers that the
15 strategies of the Joint Venturers referred to in
16 subclause (3)(a) will include strategies of the Joint
17 Venturers in relation to supply of services, labour,
18 works, materials, plant, equipment or supplies for the
19 purposes of this Agreement.
- 20 (4) At the request of either of them made at any time and
21 from time to time, the Minister and the Joint
22 Venturers shall confer as to any amendments desired
23 to any plan provided under this clause and may agree
24 to the amendment of the plan or the provision of a
25 new plan in substitution for the one previously
26 provided.
- 27 (5) At least 6 months before the anticipated submission
28 of proposals relating to a proposed development
29 pursuant to Clauses 8 or 16C, the Joint Venturers
30 must, unless the Minister otherwise requires, give to
31 the Minister information about the implementation of
32 the plan provided under this Clause in relation to the
33 proposed development. This obligation operates in
34 relation to all proposals submitted on or after the date
35 that is 7 months after the date when a plan is first
36 provided under this Clause.

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- 1 (6) During the currency of this Agreement the Joint
2 Venturers shall implement the plan provided under
3 this Clause.
- 4 (7) The Joint Venturers shall:
- 5 (a) in every contract entered into with a third
6 party where the third party has an
7 obligation or right to procure the supply of
8 services, labour, works, materials, plant,
9 equipment or supplies for or in connection
10 with a proposed development, ensure that
11 the contract contains appropriate provisions
12 requiring the third party to undertake
13 procurement activities in accordance with
14 the plan provided under this Clause; and
- 15 (b) use reasonable endeavours to ensure that
16 the third party complies with those
17 provisions.";
- 18 (3) by inserting after clause 11(3) the following new subclause:
- 19 "(3a) Notwithstanding clause 16A(2)(b)(iv), detailed proposals
20 may refer to activities on tenure which is proposed to be
21 granted pursuant to subclause (1) as if that tenure was granted
22 pursuant to this Agreement (but this does not limit the powers
23 or discretions of the Minister under this Agreement or the
24 Minister responsible for the administration of any relevant
25 Act with respect to the grant of the tenure).";
- 26 (4) by inserting after clause 11(5) the following new subclauses:
- 27 **"Application for Eligible Existing Tenure to be held pursuant to**
28 **this Agreement**
- 29 (5a) (a) The Minister may at the request of the Joint
30 Venturers from time to time made during the
31 continuance of this Agreement approve Eligible
32 Existing Tenure becoming held pursuant to this
33 Agreement on such conditions as the Minister sees fit
34 (including, without limitation and notwithstanding the
35 Mining Act 1978 and the LAA, as to the surrender of

- 1 land, the submission of detailed proposals and the
2 variation of the terms and conditions of the Eligible
3 Existing Tenure (including for the Eligible Existing
4 Tenure to be held pursuant to this Agreement and for
5 the more efficient use of the Relevant Land)) and the
6 Minister may from time to time vary such conditions
7 in order to extend any specified time for the doing of
8 any thing or otherwise with the agreement of the Joint
9 Venturers.
- 10 (b) Eligible Existing Tenure the subject of an approval by
11 the Minister under this subclause will be held by the
12 Joint Venturers pursuant to this Agreement:
- 13 (i) if the Minister's approval was not given
14 subject to conditions, on and from the date
15 of the Minister's notice of approval;
- 16 (ii) unless paragraph (iii) applies, if the
17 Minister's approval was given subject to
18 conditions, on the date on which all such
19 conditions have been satisfied; and
- 20 (iii) if the Minister's approval was given subject
21 to a condition requiring that the Joint
22 Venturers submit detailed proposals in
23 accordance with this Agreement, on the
24 later of the date on which the Minister
25 approves proposals submitted in discharge
26 of that specified condition and the date
27 upon which all other specified conditions
28 have been satisfied, but the Joint Venturers
29 are authorised to implement any approved
30 proposal to the extent such implementation
31 is consistent with the then terms and
32 conditions of the Eligible Existing Tenure
33 pending the satisfaction of any conditions
34 relating to the variation of the terms or
35 conditions of the Eligible Existing Tenure.
36 Where this paragraph (iii) applies, prior to
37 any approval of proposals and satisfaction

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- 1 of other conditions, the relevant tenure will
2 be treated for (but only for) the purposes of
3 clause 16A(2)(b)(iv) as tenure held
4 pursuant to this Agreement.
- 5 **Application for Special Advance Tenure to be granted pursuant**
6 **to this Agreement**
- 7 (5b) Without limiting clause 11(4), the Minister may at the
8 request of the Joint Venturers from time to time made during
9 the continuance of this Agreement approve Special Advance
10 Tenure being granted to the Joint Venturers pursuant to this
11 Agreement if:
- 12 (a) the Joint Venturers propose to submit detailed
13 proposals under this Agreement (other than under
14 clause 16C) to construct works installations or
15 facilities on the Relevant Land and the Joint
16 Venturers' request is so far as is practicable made,
17 unless the Minister approves otherwise, no less than
18 6 months before the submission of those detailed
19 proposals; and
- 20 (b) the Minister is satisfied that it is necessary and
21 appropriate that Special Advance Tenure, rather than
22 tenure granted under or pursuant to the other
23 provisions of this Agreement, be used for the
24 purposes of the proposed works installations or
25 facilities on the Relevant Land,
- 26 and if the Minister does so approve:
- 27 (c) notwithstanding the Mining Act 1978 or the LAA, the
28 appropriate authority or instrumentality of the State
29 shall obtain the consent of the Minister to the form
30 and substance of the Special Advance Tenure prior to
31 its grant (which for the avoidance of doubt neither the
32 State nor the Minister is obliged to cause) to the Joint
33 Venturers as tenants in common in equal shares; and
- 34 (d) if the Joint Venturers do not submit detailed
35 proposals relating to construction of the relevant
36 works installations or facilities on the Relevant Land

- 1 within 24 months after the date of the Minister's
2 approval or such later time subsequently allowed by
3 the Minister, or if submitted the Minister does not
4 approve such detailed proposals, the Special Advance
5 Tenure (if then granted) shall be surrendered at the
6 request of the Minister.
- 7 (5c) The decisions of the Minister under subclauses (5a) and (5b)
8 shall not be referable to arbitration and any approval of the
9 Minister under this clause shall not in any way limit,
10 prejudice or otherwise affect the exercise by the Minister of
11 the Minister's powers, or the performance of the Minister's
12 obligations, under this Agreement or otherwise under the
13 laws from time to time of the said State.";
- 14 (5) in clause 11 by:
- 15 (a) deleting in subclause (6) "subclause (5)" and substituting
16 "subclauses (5), (5a) and (5b); and
- 17 (b) deleting in subclause (6a) "and (4)" and substituting ", (4),
18 (5a) and (5b)";
- 19 (6) in clause 12A by deleting " allow crossing places for roads stock and
20 other railways and also";
- 21 (7) by inserting after clause 12A the following new clause:
- 22 **"Crossings over Railway**
- 23 12B. For the purposes of livestock and infrastructure such as
24 roads, railways, conveyors, pipelines, transmission lines and
25 other utilities proposed to cross the land the subject of the
26 railway of the Joint Venturers, the Joint Venturers shall:
- 27 (a) if applicable, give their consent to, or otherwise
28 facilitate the grant by the State or any agency,
29 instrumentality or other authority of the State of any
30 lease, licence or other title over land the subject of the
31 railway so long as such grant does not in the
32 Minister's opinion unduly prejudice or interfere with
33 the activities of the Joint Venturers under this
34 Agreement; and

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- 1 (b) on reasonable terms and conditions allow access for
2 the construction and operation of such crossings and
3 associated infrastructure,
4 provided that in forming his opinion under this clause, the
5 Minister must consult with the Joint Venturers.";
- 6 (8) by inserting after clause 16B the following new clause:
- 7 **"Transfer of rights to section of Goldsworthy-Nimingarra**
8 **Railway**
- 9 16BA. The Joint Venturers may surrender their lease or leases over
10 the section of the railway held pursuant to this Agreement
11 that is described in clause 9DA of the agreement approved
12 by the Iron Ore (Mount Goldsworthy) Agreement Act 1964
13 in accordance with and as contemplated by that clause.";
- 14 (9) in clause 16C by:
- 15 (a) deleting in subclause (1) "'LAA" means the *Land*
16 *Administration Act 1997* (WA)";
- 17 (b) inserting after subclause (3)(c) the following new paragraph:
- 18 "(d) Without limiting subclause (9), the Minister may
19 waive the requirement under this clause for the Joint
20 Venturers to obtain and to furnish the consent of a
21 title holder if the title holder has refused to give the
22 required consent and the Minister is satisfied that:
- 23 (i) the title holder's affected land is or was
24 subject to a miscellaneous licence granted
25 under the Mining Act 1978 for the purpose
26 of a railway to be constructed and operated
27 in accordance with this Agreement; and
- 28 (ii) in the Minister's opinion, the title holder's
29 refusal to give the required consent is not
30 reasonable in all the circumstances
31 including having regard to:
- 32 (A) the rights of the Joint Venturers in
33 relation to the affected land as the

- 1 holders of the miscellaneous
2 licence, relative to their rights as
3 the holders of the sought Special
4 Railway Licence or Lateral Access
5 Road Licence (as the case may be);
6 and
- 7 (B) the terms of any agreement
8 between the Joint Venturers and
9 title holder.";
- 10 (c) deleting in subclause (4)(a) the comma after "the provisions
11 of this Agreement" and substituting "and"; and
- 12 (d) in subclause (7):
- 13 (i) deleting all words in paragraph (c) after "at the date
14 of such inclusion"; and
- 15 (ii) inserting after paragraph (k) the following new
16 paragraph:
- 17 "(l) The provisions of clause 12B shall apply
18 mutatis mutandis to any Railway or
19 Railway spur line constructed pursuant to
20 this clause."; and
- 21 (10) by deleting clause 33(1)(ii) and substituting the following paragraph:
- 22 "(ii) on fine ore sold or shipped separately as such at the rate of:
- 23 (A) 5.625% of the f.o.b. value, for ore shipped prior to or
24 on 30 June 2012;
- 25 (B) 6.5% of the f.o.b. value, for ore shipped during the
26 period from 1 July 2012 to 30 June 2013 (inclusive of
27 both dates); and
- 28 (C) 7.5% of the f.o.b. value, for ore shipped on or after
29 1 July 2013;".
- 30

Part 4 Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972
amended

EXECUTED as a deed.

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

[Signature] _____ [Signature] _____

Signature of witness

Peter Goodall

Name of witness

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

<u>[Signature]</u> Signature of Director	<u>[Signature]</u> Signature of Secretary
---	--

Uvashni Raman	Robin Lees
Full Name	Full Name

1 **EXECUTED** by **mitsui iron ore**)
2 **CORPORATION PTY. LTD**)
3 ACN 050 157 456 in accordance with section)
4 127(1) of the Corporations Act)

5

[Signature]

Signature of Director

Ryuzo Nakamura

Full Name

[Signature]

Signature of Secretary

Jiahe He

Full Name

6

7 **SIGNED** by **Shuzaburo Tsuchihashi**)
8 as attorney for **ITOCHU MINERALS &**)
9 **ENERGY OF AUSTRALIA PTY. LTD.**)
10 ACN 009 256 259 under power)
11 of attorney dated 27 October 2011)
12 in the presence of:)
13

[Signature]

Signature of witness

Yasushi Fukumura

Name

[Signature]

Signature of Attorney

Shuzaburo Tsuchihashi

Name

14

s. 15

1 **Part 5 — *Iron Ore (McCamey's Monster) Agreement***
2 ***Authorisation Act 1972* amended**

3 **15. Act amended**

4 This Part amends the *Iron Ore (McCamey's Monster)*
5 *Agreement Authorisation Act 1972*.

6 **16. Section 10 inserted**

7 After section 9 insert:
8

9 **10. Fifth Variation Agreement**

- 10 (1) The agreement (***fifth Variation Agreement***) a copy of
11 which is set out in Schedule 6 is ratified.
- 12 (2) The implementation of the fifth Variation Agreement is
13 authorised.
- 14 (3) Without limiting or otherwise affecting the application
15 of the *Government Agreements Act 1979*, the fifth
16 Variation Agreement is to operate and take effect
17 despite any other Act or law.
18

17. Schedule 6 inserted

After Schedule 5 insert:

Schedule 6 — Fifth Variation Agreement

[s. 10]

2011

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

AND

BHP IRON ORE (JIMBLEBAR) PTY. LTD.

ACN 009 114 210

IRON ORE (McCAMEY'S MONSTER) AGREEMENT 1972
RATIFIED VARIATION AGREEMENT

[Solicitor's details]

s. 17

1 **THIS AGREEMENT** is made this 7th day of November 2011

2

3 **BETWEEN**

4

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

8 **AND**

9 **BHP IRON ORE (JIMBLEBAR) PTY. LTD.** ACN 009 114 210 of Level 17,
10 St Georges Square, 225 St Georges Terrace, Perth, Western Australia
11 (**Company**).

12

13 **RECITALS:**

14 A. The State and the Company are now the parties to the agreement
15 authorised by and scheduled to the *Iron Ore (McCamey's Monster)*
16 *Agreement Authorisation Act 1972* and which as subsequently added
17 to, varied or amended is referred to in this Agreement as the
18 "**Principal Agreement**".

19 B. The State and the Company wish to vary the Principal Agreement.

20

21 **THE PARTIES AGREE AS FOLLOWS:**

22 **1. Interpretation**

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

26 **2. Ratification and Operation**

27 (1) The State shall introduce and sponsor a Bill in the State Parliament of
28 Western Australia prior to 31 December 2011 or such later date as
29 may be agreed between the parties hereto to ratify this Agreement.

1 The State shall endeavour to secure the timely passage of such Bill as
2 an Act.

3 (2) The provisions of this Agreement other than this clause and clause 1
4 will not come into operation until the day after the day on which the
5 Bill referred to in subclause (1) has been passed by the State
6 Parliament of Western Australia and commences to operate as an Act.

7 (3) If by 30 June 2012 the said Bill has not commenced to operate as an
8 Act then, unless the parties hereto otherwise agree, this Agreement
9 will then cease and determine and no party hereto will have any claim
10 against any other party hereto with respect to any matter or thing
11 arising out of, done, performed, or omitted to be done or performed
12 under this Agreement.

13 (4) On the day after the day on which the said Bill commences to operate
14 as an Act all the provisions of this Agreement will operate and take
15 effect despite any enactment or other law.

16 **3. Variation of Principal Agreement**

17 The Principal Agreement is varied as follows:

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

20 "Eligible Existing Tenure" means:

21 (a) (i) a miscellaneous licence or general purpose lease
22 granted to the Joint Venturers under the Mining
23 Act 1978; or

24 (ii) a lease or easement granted to the Joint Venturers
25 under the LAA;

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

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

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- 1 under or pursuant to this Agreement) and as the context
2 requires the tenement granted pursuant to such an application,
3 where that tenure was granted or that application was made (as the
4 case may be) on or before 1 October 2011;
5 "LAA" means the *Land Administration Act 1997* (WA);
6 "Relevant Land", in relation to Eligible Existing Tenure or Special
7 Advance Tenure, means the land which is the subject of that Eligible
8 Existing Tenure or Special Advance Tenure, as the case may be;
9 "second variation date" means the date on which clause 3 of the
10 variation agreement made on or about 7 November 2011 between the
11 State and the Joint Venturers comes into operation;
12 "Special Advance Tenure" means:
13 (a) a miscellaneous licence or general purpose lease requested
14 under clause 13(2b) to be granted to the Joint Venturers under
15 the Mining Act 1978; or
16 (b) an easement or a lease requested under clause 13(2b) to be
17 granted to the Joint Venturers under the LAA,
18 and as the context requires such tenure if granted;
19 (2) in clause 9 by:
20 (a) in subclause (1):
21 (i) deleting "Subject to Clause 11A, if" and substituting
22 "If"; and
23 (ii) deleting ", 11A"; and
24 (b) in subclause (6), deleting "or Clause 11A";

- 1 (3) by inserting after clause 9B the following new clauses:
- 2 **"Community development plan**
- 3 9BA. (1) In this Clause, the term "community and social
- 4 benefits" includes:
- 5 (a) assistance with skills development and
- 6 training opportunities to promote work
- 7 readiness and employment for persons
- 8 living in the Pilbara region of the said State;
- 9 (b) regional development activities in the
- 10 Pilbara region of the said State, including
- 11 partnerships and sponsorships;
- 12 (c) contribution to any community projects,
- 13 town services or facilities; and
- 14 (d) a regionally based workforce.
- 15 (2) The Joint Venturers acknowledge the need for
- 16 community and social benefits flowing from this
- 17 Agreement.
- 18 (3) The Joint Venturers agree that:
- 19 (a) they shall prepare a plan which describes
- 20 the Joint Venturers' proposed strategies for
- 21 achieving community and social benefits in
- 22 connection with their activities under this
- 23 Agreement; and
- 24 (b) the Joint Venturers shall, not later than
- 25 3 months after the second variation date,
- 26 submit to the Minister the plan prepared
- 27 under paragraph (a) and confer with the
- 28 Minister in respect of the plan.
- 29 (4) The Minister shall within 2 months after receipt of a
- 30 plan submitted under subclause (3)(b), either notify
- 31 the Joint Venturers that the Minister approves the
- 32 plan as submitted or notify the Joint Venturers of
- 33 changes which the Minister requires be made to the

s. 17

- 1 plan. If the Joint Venturers are unwilling to accept
2 the changes which the Minister requires they shall
3 notify the Minister to that effect and either party may
4 refer to arbitration hereunder the question of the
5 reasonableness of the changes required by the
6 Minister.
- 7 (5) The effect of an award made on an arbitration
8 pursuant to subclause (4) shall be that the relevant
9 plan submitted by the Joint Venturers pursuant to
10 subclause (3)(b) shall, with such changes required by
11 the Minister under subclause (4) as the arbitrator
12 determines to be reasonable (with or without
13 modification by the arbitrator), be deemed to be the
14 plan approved by the Minister under this clause.
- 15 (6) At least 3 months before the anticipated submission
16 of proposals relating to a proposed development
17 pursuant to Clauses 9 or 11E, the Joint Venturers
18 must, unless the Minister otherwise requires, give to
19 the Minister information about how the proposed
20 development may affect the plan approved or deemed
21 to be approved by the Minister under this Clause.
22 This obligation operates in relation to all proposals
23 submitted on or after the date that is 4 months after
24 the date when a plan is first approved or deemed to be
25 approved under this Clause.
- 26 (7) The Joint Venturers shall at least annually report to
27 the Minister about the Joint Venturers'
28 implementation of the plan approved or deemed to be
29 approved by the Minister under this Clause.
- 30 (8) At the request of either of them made at any time and
31 from time to time, the Minister and the Joint
32 Venturers shall confer as to any amendments desired
33 to any plan approved or deemed to be approved by
34 the Minister under this Clause and may agree to
35 amendment of the plan or adoption of a new plan.
36 Any such amended plan or new plan will be deemed
37 to be the plan approved by the Minister under this

1 Clause in respect of the development to which it
2 relates.

3 (9) During the currency of this Agreement, the Joint
4 Venturers shall implement the plan approved or
5 deemed to be approved by the Minister under this
6 Clause.

7 **Local participation plan**

8 9BB. (1) In this Clause, the term "local industry participation
9 benefits" means:

10 (a) the use and training of labour available
11 within the said State;

12 (b) the use of the services of engineers,
13 surveyors, architects and other professional
14 consultants, experts, specialists, project
15 managers and contractors available within
16 the said State; and

17 (c) the procurement of works, materials, plant,
18 equipment and supplies from Western
19 Australian suppliers, manufacturers and
20 contractors.

21 (2) The Joint Venturers acknowledge the need for local
22 industry participation benefits flowing from this
23 Agreement.

24 (3) The Joint Venturers agree that they shall, not later
25 than 3 months after the second variation date, prepare
26 and provide to the Minister a plan which contains:

27 (a) a clear statement on the strategies which the
28 Joint Venturers will use, and require a third
29 party as referred to in subclause (7) to use,
30 to maximise the uses and procurement
31 referred to in subclause (1);

32 (b) detailed information on the procurement
33 practices the Joint Venturers will adopt, and
34 require a third party as referred to in

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- 1 subclause (7) to adopt, in calling for tenders
2 and letting contracts for works, materials,
3 plant, equipment and supplies stages in
4 relation to a proposed development and
5 how such practices will provide fair and
6 reasonable opportunity for suitably
7 qualified Western Australian suppliers,
8 manufacturers and contractors to tender or
9 quote for works, materials, plant,
10 equipment and supplies;
- 11 (c) detailed information on the methods the
12 Joint Venturers will use, and require a third
13 party as referred to in subclause (7) to use,
14 to have its respective procurement officers
15 promptly introduced to Western Australian
16 suppliers, manufacturers and contractors
17 seeking such introduction; and
- 18 (d) details of the communication strategies the
19 Joint Venturers will use, and require a third
20 party as referred to in subclause (7) to use,
21 to alert Western Australian engineers,
22 surveyors, architects and other professional
23 consultants, experts, specialists, project
24 managers and consultants and Western
25 Australian suppliers, manufacturers and
26 contractors to services opportunities and
27 procurement opportunities respectively as
28 referred to in subclause (1).
- 29 It is acknowledged by the Joint Venturers that the
30 strategies of the Joint Venturers referred to in
31 subclause (3)(a) will include strategies of the Joint
32 Venturers in relation to supply of services, labour,
33 works, materials, plant, equipment or supplies for the
34 purposes of this Agreement.
- 35 (4) At the request of either of them made at any time and
36 from time to time, the Minister and the Joint
37 Venturers shall confer as to any amendments desired

- 1 to any plan provided under this clause and may agree
2 to the amendment of the plan or the provision of a
3 new plan in substitution for the one previously
4 provided.
- 5 (5) At least 6 months before the anticipated submission
6 of proposals relating to a proposed development
7 pursuant to Clauses 9 or 11E, the Joint Venturers
8 must, unless the Minister otherwise requires, give to
9 the Minister information about the implementation of
10 the plan provided under this Clause in relation to the
11 proposed development. This obligation operates in
12 relation to all proposals submitted on or after the date
13 that is 7 months after the date when a plan is first
14 provided under this Clause.
- 15 (6) During the currency of this Agreement the Joint
16 Venturers shall implement the plan provided under
17 this Clause.
- 18 (7) The Joint Venturers shall:
- 19 (a) in every contract entered into with a third
20 party where the third party has an
21 obligation or right to procure the supply of
22 services, labour, works, materials, plant,
23 equipment or supplies for or in connection
24 with a proposed development, ensure that
25 the contract contains appropriate provisions
26 requiring the third party to undertake
27 procurement activities in accordance with
28 the plan provided under this Clause; and
- 29 (b) use reasonable endeavours to ensure that
30 the third party complies with those
31 provisions.";
- 32 (4) by deleting clause 11A;
- 33 (5) in clause 11B(4) by deleting "clauses 9 or 11A as the case may be"
34 and substituting "clause 9";

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- 1 (6) in clause 11C(2)(a) by deleting "clauses 11A or" and substituting
2 "clause";
- 3 (7) in clause 11E by:
- 4 (a) deleting in subclause (1) "'LAA" means the *Land*
5 *Administration Act 1997* (WA)";
- 6 (b) inserting after subclause (3)(c) the following new paragraph:
- 7 "(d) Without limiting subclause (9), the Minister may
8 waive the requirement under this clause for the Joint
9 Venturers to obtain and to furnish the consent of a
10 title holder if the title holder has refused to give the
11 required consent and the Minister is satisfied that:
- 12 (i) the title holder's affected land is or was
13 subject to a miscellaneous licence granted
14 under the Mining Act 1978 for the purpose
15 of a railway to be constructed and operated
16 in accordance with this Agreement; and
- 17 (ii) in the Minister's opinion, the title holder's
18 refusal to give the required consent is not
19 reasonable in all the circumstances
20 including having regard to:
- 21 (A) the rights of the Joint Venturers in
22 relation to the affected land as the
23 holders of the miscellaneous
24 licence, relative to their rights as
25 the holders of the sought Special
26 Railway Licence or Lateral Access
27 Road Licence (as the case may be);
28 and
- 29 (B) the terms of any agreement
30 between the Joint Venturers and
31 the the title holder.";
- 32 (c) deleting in subclause (4)(a) the comma after "the provisions
33 of this Agreement" and substituting "and"; and

- 1 (d) in subclause (7):
- 2 (i) deleting all words in paragraph (c) after "at the date
- 3 of such inclusion"; and
- 4 (ii) inserting after paragraph (k) the following new
- 5 paragraph:
- 6 "(l) The provisions of clause 19(2aa) shall
- 7 apply mutatis mutandis to any Railway or
- 8 Railway spur line constructed pursuant to
- 9 this clause.";
- 10 (8) in clause 13 by:
- 11 (a) inserting at the end of subclause (1) the following new
- 12 paragraph:
- 13 "Notwithstanding clause 11C(2)(b)(iv), detailed proposals
- 14 may refer to activities on tenure which is proposed to be
- 15 granted pursuant to this subclause as if that tenure was
- 16 granted pursuant to this Agreement (but this does not limit
- 17 the powers or discretions of the Minister under this
- 18 Agreement or the Minister responsible for the administration
- 19 of any relevant Act with respect to the grant of the tenure).";
- 20 (b) renumbering subclause (2a) as subclause (2d) and inserting
- 21 the following new subclauses before the renumbered
- 22 subclause (2d):
- 23 **"Application for Eligible Existing Tenure to be held**
- 24 **pursuant to this Agreement**
- 25 (2a) (a) The Minister may at the request of the Joint
- 26 Venturers from time to time made during
- 27 the continuance of this Agreement approve
- 28 Eligible Existing Tenure becoming held
- 29 pursuant to this Agreement on such
- 30 conditions as the Minister sees fit
- 31 (including, without limitation and
- 32 notwithstanding the Mining Act 1978 and
- 33 the LAA, as to the surrender of land, the
- 34 submission of detailed proposals and the

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- 1 variation of the terms and conditions of the
2 Eligible Existing Tenure (including for the
3 Eligible Existing Tenure to be held
4 pursuant to this Agreement and for the
5 more efficient use of the Relevant Land))
6 and the Minister may from time to time
7 vary such conditions in order to extend any
8 specified time for the doing of any thing or
9 otherwise with the agreement of the Joint
10 Venturers.
- 11 (b) Eligible Existing Tenure the subject of an
12 approval by the Minister under this
13 subclause will be held by the Joint
14 Venturers pursuant to this Agreement:
- 15 (i) if the Minister's approval was not
16 given subject to conditions, on and
17 from the date of the Minister's
18 notice of approval;
- 19 (ii) unless paragraph (iii) applies, if the
20 Minister's approval was given
21 subject to conditions, on the date
22 on which all such conditions have
23 been satisfied; and
- 24 (iii) if the Minister's approval was
25 given subject to a condition
26 requiring that the Joint Venturers
27 submit detailed proposals in
28 accordance with this Agreement,
29 on the later of the date on which
30 the Minister approves proposals
31 submitted in discharge of that
32 specified condition and the date
33 upon which all other specified
34 conditions have been satisfied, but
35 the Joint Venturers are authorised
36 to implement any approved
37 proposal to the extent such

1 implementation is consistent with
2 the then terms and conditions of
3 the Eligible Existing Tenure
4 pending the satisfaction of any
5 conditions relating to the variation
6 of the terms or conditions of the
7 Eligible Existing Tenure. Where
8 this paragraph (iii) applies, prior to
9 any approval of proposals and
10 satisfaction of other conditions, the
11 relevant tenure will be treated for
12 (but only for) the purposes of
13 clause 11C(2)(b)(iv) as tenure held
14 pursuant to this Agreement.

15 **Application for Special Advance Tenure to be granted**
16 **pursuant to this Agreement**

17 (2b) The Minister may at the request of the Joint
18 Venturers from time to time made during the
19 continuance of this Agreement approve Special
20 Advance Tenure being granted to the Joint Venturers
21 pursuant to this Agreement if:

22 (a) the Joint Venturers propose to submit
23 detailed proposals under this Agreement
24 (other than under clause 11E) to construct
25 works installations or facilities on the
26 Relevant Land and the Joint Venturers'
27 request is so far as is practicable made,
28 unless the Minister approves otherwise, no
29 less than 6 months before the submission of
30 those detailed proposals; and

31 (b) the Minister is satisfied that it is necessary
32 and appropriate that Special Advance
33 Tenure, rather than tenure granted under or
34 pursuant to the other provisions of this
35 Agreement, be used for the purposes of the
36 proposed works installations or facilities on
37 the Relevant Land,

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- 1 and if the Minister does so approve:
- 2 (c) notwithstanding the Mining Act 1978 or the
3 LAA, the appropriate authority or
4 instrumentality of the State shall obtain the
5 consent of the Minister to the form and
6 substance of the Special Advance Tenure
7 prior to its grant (which for the avoidance
8 of doubt neither the State nor the Minister
9 is obliged to cause) to the Joint Venturers;
10 and
- 11 (d) if the Joint Venturers do not submit detailed
12 proposals relating to construction of the
13 relevant works installations or facilities on
14 the Relevant Land within 24 months after
15 the date of the Minister's approval or such
16 later time subsequently allowed by the
17 Minister, or if submitted the Minister does
18 not approve such detailed proposals, the
19 Special Advance Tenure (if then granted)
20 shall be surrendered at the request of the
21 Minister.
- 22 (2c) The decisions of the Minister under subclauses (2a)
23 and (2b) shall not be referable to arbitration and any
24 approval of the Minister under this clause shall not in
25 any way limit, prejudice or otherwise affect the
26 exercise by the Minister of the Minister's powers, or
27 the performance of the Minister's obligations, under
28 this Agreement or otherwise under the laws from time
29 to time of the said State.";
- 30 (c) in the renumbered subclause (2d), deleting "and (2)" and
31 inserting ", (2), (2a) and (2b)";
- 32 (9) in clause 19(2) by:
- 33 (a) deleting all words in subclause (2) after "other railways
34 which now exist"; and

(b) inserting after subclause (2) the following new subclause:

"Crossings over Railway

(2aa) For the purposes of livestock and infrastructure such as roads, railways, conveyors, pipelines, transmission lines and other utilities proposed to cross the land the subject of the Joint Venturers' said railway the Joint Venturers shall:

(a) if applicable, give their consent to, or otherwise facilitate the grant by the State or any agency, instrumentality or other authority of the State of any lease, licence or other title over land the subject of the said railway so long as such grant does not in the Minister's opinion unduly prejudice or interfere with the activities of the Joint Venturers under this Agreement; and

(b) on reasonable terms and conditions allow access for the construction and operation of such crossings and associated infrastructure,

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

(10) in clause 31(1), by deleting paragraphs (aa) and (ab) and substituting the following paragraph:

"(ab) on iron ore products being fine ore where such fine ore is sold or shipped separately as such – at the rate of:

(i) 5.625% of the f.o.b. value, for ore shipped prior to or on 30 June 2012;

(ii) 6.5% of the f.o.b. value, for ore shipped during the period from 1 July 2012 to 30 June 2013 (inclusive of both dates); and

(iii) 7.5% of the f.o.b. value, for ore shipped on or after 1 July 2013;"

**Iron Ore Agreements Legislation (Amendment, Termination and Repeals)
Bill 2011**

Part 5 Iron Ore (McCamey's Monster) Agreement Authorisation Act
1972 amended

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1 **EXECUTED** as a deed.

2

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

6

[Signature]

Signature of witness

[Signature]

Peter Goodall

Name of witness

7

8 **EXECUTED** by **BHP IRON ORE**)
9 **(JIMBLEBAR) PTY LTD**)
10 ACN 009 114 210)
11 in accordance with section 127(1) of)
12 the Corporations Act)

13

[Signature]

Signature of Director

[Signature]

Signature of Secretary

Uvashni Raman

Full Name

Robin Lees

Full Name

14

Part 6 — *Iron Ore (Marillana Creek) Agreement Act 1991* amended

18. Act amended

This Part amends the *Iron Ore (Marillana Creek) Agreement Act 1991*.

19. Section 3 amended

(1) At the end of section 3 insert:

Fourth Variation Agreement means the agreement a copy of which is set out in Schedule 5.

(2) In section 3 in the definition of *Third Variation Agreement* delete “Schedule 4.” and insert:

Schedule 4;

20. Section 10 inserted

After section 9 insert:

10. Fourth Variation Agreement

(1) The Fourth Variation Agreement is ratified.

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

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

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21. Schedule 5 inserted

After Schedule 4 insert:

Schedule 5 — Fourth Variation Agreement

[s. 3]

2011

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

AND

BHP BILLITON MINERALS PTY. LTD.

ACN 008 694 782

ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.

ACN 009 256 259

MITSUI IRON ORE CORPORATION PTY. LTD.

ACN 050 157 456

**IRON ORE (MARILLANA CREEK) AGREEMENT 1991
RATIFIED VARIATION AGREEMENT**

[Solicitor's Details]

1 **THIS AGREEMENT** is made this 7th day of November 2011

2

3 **BETWEEN**

4

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

8 **AND**

9 **BHP BILLITON MINERALS PTY. LTD.** ACN 008 694 782 of Level 17, St
10 Georges Square, 225 St Georges Terrace, Perth, Western Australia, **ITOCHU**
11 **MINERALS & ENERGY OF AUSTRALIA PTY. LTD.** ACN 009 256 259
12 of Level 22, 221 St Georges Terrace, Perth, Western Australia and **MITSUI**
13 **IRON ORE CORPORATION PTY. LTD.** ACN 050 157 456 of Level 24,
14 221 St Georges Terrace, Perth, Western Australia (**Joint Venturers**).

15

16 **RECITALS:**

17 A. The State and the Joint Venturers are now the parties to the agreement
18 dated 20 December 1990 ratified by and scheduled to the *Iron Ore*
19 *(Marillana Creek) Agreement Act 1991* and which as subsequently
20 added to, varied or amended is referred to in this Agreement as the
21 **"Principal Agreement"**.

22 B. The State and the Joint Venturers wish to vary the Principal
23 Agreement.

24

25 **THE PARTIES AGREE AS FOLLOWS:**

26 **1. Interpretation**

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

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2. Ratification and Operation

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

3. Variation of Principal Agreement

The Principal Agreement is varied as follows:

- (1) in clause 1 by inserting in the appropriate alphabetical positions the following new definitions:
- "Eligible Existing Tenure" means:
- (a) (i) a miscellaneous licence or general purpose lease granted to the Company under the Mining Act; or
- (ii) a lease or easement granted to the Company under the LAA,
- and not clearly, to the satisfaction of the Minister, granted under or pursuant to or held pursuant to this Agreement; or
- (b) an application by the Company for the grant to it of a tenement referred to in paragraph (a)(i) (which application has not clearly, to the satisfaction of the Minister, been made

1 under or pursuant to this Agreement) and as the context
2 requires the tenement granted pursuant to such an
3 application,

4 where that tenure was granted or that application was made (as the
5 case may be) on or before 1 October 2011;

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

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

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

13 "Special Advance Tenure" means:

14 (a) a miscellaneous licence or general purpose lease requested
15 under clause 22(2b) to be granted to the Company under the
16 Mining Act; or

17 (b) an easement or a lease requested under clause 22(2b) to be
18 granted to the Company under the LAA,

19 and as the context requires such tenure if granted;

20 (2) in clause 10(1) by deleting "produce more than 5,500,000 tonnes of
21 iron ore per annum for transportation from the mining lease or to";

22 (3) by inserting after clause 10B the following new clauses:

23 **"Community development plan**

24 10C. (1) In this Clause, the term "community and social
25 benefits" includes:

26 (a) assistance with skills development and
27 training opportunities to promote work
28 readiness and employment for persons
29 living in the Pilbara region of the said State;

30 (b) regional development activities in the
31 Pilbara region of the said State, including
32 partnerships and sponsorships;

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- 1 (c) contribution to any community projects,
2 town services or facilities; and
- 3 (d) a regionally based workforce.
- 4 (2) The Company acknowledges the need for community
5 and social benefits flowing from this Agreement.
- 6 (3) The Company agrees that:
- 7 (a) it shall prepare a plan which describes the
8 Company's proposed strategies for
9 achieving community and social benefits in
10 connection with its activities under this
11 Agreement; and
- 12 (b) the Company shall, not later than 3 months
13 after the second variation date, submit to
14 the Minister the plan prepared under
15 paragraph (a) and confer with the Minister
16 in respect of the plan.
- 17 (4) The Minister shall within 2 months after receipt of a
18 plan submitted under subclause (3)(b), either notify
19 the Company that the Minister approves the plan as
20 submitted or notify the Company of changes which
21 the Minister requires be made to the plan. If the
22 Company is unwilling to accept the changes which
23 the Minister requires it shall notify the Minister to
24 that effect and either party may refer to arbitration
25 hereunder the question of the reasonableness of the
26 changes required by the Minister.
- 27 (5) The effect of an award made on an arbitration
28 pursuant to subclause (4) shall be that the relevant
29 plan submitted by the Company pursuant to
30 subclause (3)(b) shall, with such changes required by
31 the Minister under subclause (4) as the arbitrator
32 determines to be reasonable (with or without
33 modification by the arbitrator), be deemed to be the
34 plan approved by the Minister under this clause.

- 1 (6) At least 3 months before the anticipated submission
2 of proposals relating to a proposed development
3 pursuant to any of Clauses 10, 11 or 14C, the
4 Company must, unless the Minister otherwise
5 requires, give to the Minister information about how
6 the proposed development may affect the plan
7 approved or deemed to be approved by the Minister
8 under this Clause. This obligation operates in
9 relation to all proposals submitted on or after the date
10 that is 4 months after the date when a plan is first
11 approved or deemed to be approved under this
12 Clause.
- 13 (7) The Company shall at least annually report to the
14 Minister about the Company's implementation of the
15 plan approved or deemed to be approved by the
16 Minister under this Clause.
- 17 (8) At the request of either of them made at any time and
18 from time to time, the Minister and the Company
19 shall confer as to any amendments desired to any plan
20 approved or deemed to be approved by the Minister
21 under this Clause and may agree to amendment of the
22 plan or adoption of a new plan. Any such amended
23 plan or new plan will be deemed to be the plan
24 approved by the Minister under this Clause in respect
25 of the development to which it relates.
- 26 (9) During the currency of this Agreement, the Company
27 shall implement the plan approved or deemed to be
28 approved by the Minister under this Clause.

29 **Local participation plan**

- 30 10D. (1) In this Clause, the term "local industry participation
31 benefits" means:
- 32 (a) the use and training of labour available
33 within the said State;
- 34 (b) the use of the services of engineers,
35 surveyors, architects and other professional
36 consultants, experts, specialists, project

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- 1 managers and contractors available within
2 the said State; and
- 3 (c) the procurement of works, materials, plant,
4 equipment and supplies from Western
5 Australian suppliers, manufacturers and
6 contractors.
- 7 (2) The Company acknowledges the need for local
8 industry participation benefits flowing from this
9 Agreement.
- 10 (3) The Company agrees that it shall, not later than
11 3 months after the second variation date, prepare and
12 provide to the Minister a plan which contains:
- 13 (a) a clear statement on the strategies which the
14 Company will use, and require a third party
15 as referred to in subclause (7) to use, to
16 maximise the uses and procurement
17 referred to in subclause (1);
- 18 (b) detailed information on the procurement
19 practices the Company will adopt, and
20 require a third party as referred to in
21 subclause (7) to adopt, in calling for tenders
22 and letting contracts for works, materials,
23 plant, equipment and supplies stages in
24 relation to a proposed development and
25 how such practices will provide fair and
26 reasonable opportunity for suitably
27 qualified Western Australian suppliers,
28 manufacturers and contractors to tender or
29 quote for works, materials, plant,
30 equipment and supplies;
- 31 (c) detailed information on the methods the
32 Company will use, and require a third party
33 as referred to in subclause (7) to use, to
34 have its respective procurement officers
35 promptly introduced to Western Australian
36 suppliers, manufacturers and contractors
37 seeking such introduction; and

1 (d) details of the communication strategies the
2 Company will use, and require a third party
3 as referred to in subclause (7) to use, to
4 alert Western Australian engineers,
5 surveyors, architects and other professional
6 consultants, experts, specialists, project
7 managers and consultants and Western
8 Australian suppliers, manufacturers and
9 contractors to services opportunities and
10 procurement opportunities respectively as
11 referred to in subclause (1).

12 It is acknowledged by the Company that the strategies
13 of the Company referred to in subclause (3)(a) will
14 include strategies of the Company in relation to
15 supply of services, labour, works, materials, plant,
16 equipment or supplies for the purposes of this
17 Agreement.

18 (4) At the request of either of them made at any time and
19 from time to time, the Minister and the Company
20 shall confer as to any amendments desired to any plan
21 provided under this clause and may agree to the
22 amendment of the plan or the provision of a new plan
23 in substitution for the one previously provided.

24 (5) At least 6 months before the anticipated submission
25 of proposals relating to a proposed development
26 pursuant to any of Clauses 10, 11 or 14C, the
27 Company must, unless the Minister otherwise
28 requires, give to the Minister information about the
29 implementation of the plan provided under this
30 Clause in relation to the proposed development. This
31 obligation operates in relation to all proposals
32 submitted on or after the date that is 7 months after
33 the date when a plan is first provided under this
34 Clause.

35 (6) During the currency of this Agreement the Company
36 shall implement the plan provided under this Clause.

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- 1 (7) The Company shall:
- 2 (a) in every contract entered into with a third
- 3 party where the third party has an
- 4 obligation or right to procure the supply of
- 5 services, labour, works, materials, plant,
- 6 equipment or supplies for or in connection
- 7 with a proposed development, ensure that
- 8 the contract contains appropriate provisions
- 9 requiring the third party to undertake
- 10 procurement activities in accordance with
- 11 the plan provided under this Clause; and
- 12 (b) use reasonable endeavours to ensure that
- 13 the third party complies with those
- 14 provisions.";
- 15 (4) in clause 11 by:
- 16 (a) in subclause (1), deleting the definition of "approved
- 17 production limit under this Clause";
- 18 (b) in subclause (2):
- 19 (i) deleting "produce iron ore under this Agreement for
- 20 transportation in any calendar year in excess of the
- 21 approved production limit nor shall" and substituting
- 22 "increase";
- 23 (ii) deleting "exceed" and substituting "above";
- 24 (c) in subclause 3, deleting "the approved production limit under
- 25 this Clause or";
- 26 (d) deleting subclause (5);
- 27 (e) in subclause (8)(a):
- 28 (i) deleting "approved production limit or"; and
- 29 (ii) deleting ", in respect of a consent in relation to a
- 30 proposed increase in the approved mine workforce,";
- 31 and

- 1 (f) inserting after subclause (8) a new subclause as follows:
- 2 "(9) For the avoidance of doubt, nothing in this clause 11
- 3 requires the Company to seek or obtain the
- 4 Minister's approval or consent (by submitting
- 5 proposals or otherwise) to a mere increase in
- 6 production limits.";
- 7 (5) in clause 13(1) by:
- 8 (a) deleting paragraph (aa); and
- 9 (b) deleting paragraph (ac) and substituting the following
- 10 paragraph:
- 11 "(ac) on fine ore and on pisolite fine ore sold or shipped
- 12 separately as such at the rate of:
- 13 (i) 5.625% of the f.o.b. value, for ore shipped
- 14 prior to or on 30 June 2012;
- 15 (ii) 6.5% of the f.o.b. value, for ore shipped
- 16 during the period from 1 July 2012 to
- 17 30 June 2013 (inclusive of both dates); and
- 18 (iii) 7.5% of the f.o.b. value, for ore shipped on
- 19 or after 1 July 2013;"
- 20 (6) in clause 14C by:
- 21 (a) deleting in subclause (1) "'LAA" means the *Land*
- 22 *Administration Act 1997* (WA)";
- 23 (b) inserting after subclause (3)(c) the following new paragraph:
- 24 "(d) Without limiting subclause (9), the Minister may
- 25 waive the requirement under this clause for the
- 26 Company to obtain and to furnish the consent of a
- 27 title holder if the title holder has refused to give the
- 28 required consent and the Minister is satisfied that:
- 29 (i) the title holder's affected land is or was
- 30 subject to a miscellaneous licence granted
- 31 under the Mining Act 1978 for the purpose

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- 1 of a railway to be constructed and operated
2 in accordance with this Agreement; and
- 3 (ii) in the Minister's opinion, the title holder's
4 refusal to give the required consent is not
5 reasonable in all the circumstances
6 including having regard to:
- 7 (A) the rights of the Company in
8 relation to the affected land as the
9 holder of the miscellaneous
10 licence, relative to its rights as the
11 holder of the sought Special
12 Railway Licence or Lateral Access
13 Road Licence (as the case may be);
14 and
- 15 (B) the terms of any agreement
16 between the Company and the title
17 holder.";
- 18 (c) deleting in subclause (4)(a) the comma after "the provisions
19 of this Agreement" and substituting "and"; and
- 20 (d) in subclause (7):
- 21 (i) deleting all words in paragraph (c) after "at the date
22 of such inclusion"; and
- 23 (ii) inserting after paragraph (k) the following new
24 paragraph:
- 25 "(l) The provisions of clause 23A shall apply
26 mutatis mutandis to any Railway or
27 Railway spur line constructed pursuant to
28 this clause.";
- 29 (7) in clause 21(2)(a) by deleting "the approved production limit or";

1 (8) in clause 22 by:

2 (a) inserting at the end of subclause (1) the following new
3 paragraph:

4 "Notwithstanding clause 14A(2)(b)(iv), detailed proposals
5 may refer to activities on tenure which is proposed to be
6 granted pursuant to this subclause (1) as if that tenure was
7 granted pursuant to this Agreement (but this does not limit
8 the powers or discretions of the Minister under this
9 Agreement or the Minister responsible for the administration
10 of any relevant Act with respect to the grant of the tenure).";

11 (b) in subclause (2) inserting after "The provisions of this
12 subclause" the words "and subclauses (2a) and (2b)";

13 (c) renumbering subclause (2a) as subclause (2d) and inserting
14 the following new subclauses before the renumbered
15 subclause (2d):

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

18 (2a) (a) The Minister may at the request of the
19 Company from time to time made during
20 the continuance of this Agreement
21 approve Eligible Existing Tenure
22 becoming held pursuant to this Agreement
23 on such conditions as the Minister sees fit
24 (including, without limitation and
25 notwithstanding the Mining Act and the
26 LAA, as to the surrender of land, the
27 submission of detailed proposals and the
28 variation of the terms and conditions of
29 the Eligible Existing Tenure (including for
30 the Eligible Existing Tenure to be held
31 pursuant to this Agreement and for the
32 more efficient use of the Relevant Land))
33 and the Minister may from time to time
34 vary such conditions in order to extend
35 any specified time for the doing of any
36 thing or otherwise with the agreement of
37 the Company.

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- 1 (b) Eligible Existing Tenure the subject of an
2 approval by the Minister under this
3 subclause will be held by the Company
4 pursuant to this Agreement:
- 5 (i) if the Minister's approval was not
6 given subject to conditions, on and
7 from the date of the Minister's
8 notice of approval;
- 9 (ii) unless paragraph (iii) applies, if the
10 Minister's approval was given
11 subject to conditions, on the date
12 on which all such conditions have
13 been satisfied; and
- 14 (iii) if the Minister's approval was
15 given subject to a condition
16 requiring that the Company submit
17 detailed proposals in accordance
18 with this Agreement, on the later
19 of the date on which the Minister
20 approves proposals submitted in
21 discharge of that specified
22 condition and the date upon which
23 all other specified conditions have
24 been satisfied, but the Company is
25 authorised to implement any
26 approved proposal to the extent
27 such implementation is consistent
28 with the then terms and conditions
29 of the Eligible Existing Tenure
30 pending the satisfaction of any
31 conditions relating to the variation
32 of the terms or conditions of the
33 Eligible Existing Tenure. Where
34 this paragraph (iii) applies, prior to
35 any approval of proposals and
36 satisfaction of other conditions, the
37 relevant tenure will be treated for
38 (but only for) the purposes of

1 clause 14A(2)(b)(iv) as tenure held
2 pursuant to this Agreement.

3 **Application for Special Advance Tenure to be granted**
4 **pursuant to this Agreement**

5 (2b) The Minister may at the request of the Company from
6 time to time made during the continuance of this
7 Agreement approve Special Advance Tenure being
8 granted to the Company pursuant to this Agreement
9 if:

10 (a) the Company proposes to submit detailed
11 proposals under this Agreement (other than
12 under clause 14C) to construct works
13 installations or facilities on the Relevant
14 Land and the Company's request is so far as
15 is practicable made, unless the Minister
16 approves otherwise, no less than 6 months
17 before the submission of those detailed
18 proposals; and

19 (b) the Minister is satisfied that it is necessary
20 and appropriate that Special Advance
21 Tenure, rather than tenure granted under or
22 pursuant to the other provisions of this
23 Agreement, be used for the purposes of the
24 proposed works installations or facilities on
25 the Relevant Land,

26 and if the Minister does so approve:

27 (c) notwithstanding the Mining Act or the
28 LAA, the appropriate authority or
29 instrumentality of the State shall obtain the
30 consent of the Minister to the form and
31 substance of the Special Advance Tenure
32 prior to its grant (which for the avoidance
33 of doubt neither the State nor the Minister
34 is obliged to cause) to the Company; and

35 (d) if the Company does not submit detailed
36 proposals relating to construction of the

s. 21

- 1 relevant works installations or facilities on
2 the Relevant Land within 24 months after
3 the date of the Minister's approval or such
4 later time subsequently allowed by the
5 Minister, or if submitted the Minister does
6 not approve such detailed proposals, the
7 Special Advance Tenure (if then granted)
8 shall be surrendered at the request of the
9 Minister.
- 10 (2c) The decisions of the Minister under subclauses (2a)
11 and (2b) shall not be referable to arbitration and any
12 approval of the Minister under this clause shall not in
13 any way limit, prejudice or otherwise affect the
14 exercise by the Minister of the Minister's powers, or
15 the performance of the Minister's obligations, under
16 this Agreement or otherwise under the laws from time
17 to time of the said State.";
- 18 (d) in the renumbered subclause (2d), deleting "subclause (1)"
19 and substituting "subclauses (1), (2a) and (2b)";
- 20 (9) in clause 23(2) by deleting all words in the subclause after " railways
21 which now exist"; and
- 22 (10) by inserting after clause 23 the following new clause:
- 23 "23A. **Crossings over Rail Spur**
- 24 For the purposes of livestock and infrastructure such as
25 roads, railways, conveyors, pipelines, transmission lines and
26 other utilities proposed to cross the land the subject of the
27 rail spur referred to in clause 23 the Company shall:
- 28 (a) if applicable, give its consent to, or otherwise
29 facilitate the grant by the State or any agency,
30 instrumentality or other authority of the State of any
31 lease, licence or other title over land the subject of the
32 rail spur so long as such grant does not in the
33 Minister's opinion unduly prejudice or interfere with
34 the activities of the Company under this Agreement;
35 and

- 1 (b) on reasonable terms and conditions allow access for
2 the construction and operation of such crossings and
3 associated infrastructure,
4 provided that in forming his opinion under this clause, the
5 Minister must consult with the Company."

Part 6 Iron Ore (Marillana Creek) Agreement Act 1991 amended

EXECUTED as a deed.

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

Signature of witness

Name of witness

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

Signature of Director

Full Name

Signature of Secretary

Full Name

1 **EXECUTED** by **MITSUI IRON ORE**)
2 **CORPORATION PTY. LTD**)
3 ACN 050 157 456 in accordance with section)
4 127(1) of the Corporations Act)

5

[Signature]

Signature of Director

[Signature]

Signature of Secretary

Ryuzo Nakamura

Full Name

Jiahe He

Full Name

6

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

13

[Signature]

Signature of witness

[Signature]

Signature of Attorney

Yasushi Fukumura

Name

Shuzaburo Tsuchihashi

Name

14

1 **Part 7 — Port Hedland iron ore processing projects**

2 **Division 1 — Termination agreement**

3 **22. Ratification and operation of termination agreement**

4 (1) In this section —

5 *termination agreement* means the agreement a copy of which is
6 set out in Schedule 1.

7 (2) The termination agreement is ratified.

8 (3) Without limiting or otherwise affecting the application of the
9 *Government Agreements Act 1979*, the termination agreement is
10 to operate and take effect despite any other Act or law.

11 **Division 2 — Repeal of Acts relating to the Port Hedland iron**
12 **ore processing projects**

13 **23. Acts repealed**

14 These Acts are repealed:

- 15 (a) the *Iron Ore Beneficiation (BHP) Agreement Act 1996*;
16 (b) the *Iron Ore - Direct Reduced Iron (BHP) Agreement*
17 *Act 1996*;
18 (c) the *Iron Ore Processing (BHP Minerals) Agreement*
19 *Act 1994*.

Schedule 1 — Termination agreement

[s. 22]

2011

THE STATE OF WESTERN AUSTRALIA

and

BHP BILLITON DIRECT REDUCED IRON PTY. LTD.

ACN 058 025 960

and

BHP BILLITON MINERALS PTY. LTD.

ACN 008 694 782

MITSUI IRON ORE CORPORATION PTY. LTD.

ACN 050 157 456

ITOCHU MINERALS & ENERGY OF AUSTRALIA PTY. LTD.

ACN 009 256 259

IRON ORE BENEFICIATION (BHP) AGREEMENT 1996

TERMINATION AGREEMENT

[Solicitor's details]

1 **THIS AGREEMENT** is made this 7th day of November 2011

2
3 **BETWEEN**

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

9
10 **BHP BILLITON DIRECT REDUCED IRON PTY. LTD.** ACN 058 025 960
11 of Level 17, St Georges Square, 225 St Georges Terrace, Perth, Western
12 Australia (hereinafter called "**the Company**") in which term shall be included its
13 successors and permitted assigns) of the second part,

14
15 **BHP BILLITON MINERALS PTY. LTD.** ACN 008 694 782 of Level 17, St
16 Georges Square, 225 St Georges Terrace, Perth, Western Australia, **MITSUMI**
17 **IRON ORE CORPORATION PTY. LTD.** ACN 050 157 456 of Level 16,
18 Exchange Plaza, 2 The Esplanade, Perth, Western Australia and **ITOCHU**
19 **MINERALS & ENERGY OF AUSTRALIA PTY. LTD.** ACN 009 256 259
20 of Level 22, Forrest Centre, 221 St Georges Terrace, Perth, Western Australia
21 (hereinafter called "**Joint Venturers**" in which term shall be included their
22 successors and permitted assigns) of the third part.

23
24 **WHEREAS:**

25
26 A. The State and the Company are the parties to the agreement dated
27 16 October 1995, which agreement was ratified by the *Iron Ore*
28 *Beneficiation (BHP) Agreement Act 1996* (WA), as varied by an
29 agreement dated 11 April 2000 which was ratified by the *Acts*
30 *Amendment (Iron Ore Agreements) Act 2000*. The first mentioned
31 agreement as so varied is referred to in this Agreement as "**the**
32 **Beneficiation Agreement**".

1 B. The State and the Joint Venturers are now the parties to the agreement
2 dated 15 October 1964 approved by and scheduled to the *Iron Ore*
3 (*Mount Goldsworthy*) *Agreement Act 1964* and which as subsequently
4 added to, varied or amended is referred to in this Agreement as the
5 "**Mount Goldsworthy Agreement**".

6 C. The State and the Company wish to terminate the Beneficiation
7 Agreement in the manner and on the terms set out in this Agreement,
8 including the transfer to the Joint Venturers of rights in respect of
9 certain land relating to the Beneficiation Agreement on the terms set
10 out in this Agreement.

11

12 **NOW THIS AGREEMENT WITNESSES:**

13 **1. Definitions**

14 In this Agreement subject to the context:

15 "**Beneficiation Agreement Minister**" means the Minister in the
16 Government of the State for the time being responsible for the
17 administration of the Beneficiation Agreement;

18 "**Boodarie GPLs**" means the general purpose leases granted under the
19 Mining Act and held by the Company as at the date of this Agreement
20 as described in schedule A and "**Boodarie GPL**" means as the context
21 requires any or a particular one of them and includes any tenement or
22 title which is a renewal, replacement or successor of or which is
23 granted in lieu of or in substitution for, any of them;

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

25 "**Goldsworthy-Nimingarra Agreement**" means the agreement
26 ratified by and scheduled to the *Iron Ore (Goldsworthy-Nimingarra)*
27 *Agreement Act 1972* (WA), as from time to time added to, varied or
28 amended;

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

31 "**laws relating to native title**" means laws applicable from time to
32 time in Western Australia in respect of native title and includes the
33 *Native Title Act 1993* (Commonwealth);

- 1 **"Mining Act"** means the *Mining Act 1978* (WA);
- 2 **"Minister"** means the Minister in the Government of the State for the
3 time being responsible for the administration of the Act to ratify this
4 Agreement and pending the passing of that Act means the Minister for
5 the time being designated in a notice from the State to the Company
6 and includes the successors in office of the Minister;
- 7 **"Minister for Mines"** means the Minister in the Government of the
8 State for the time being responsible for the administration of the
9 Mining Act;
- 10 **"Minister for Environment"** means the Minister in the Government
11 of the State for the time being responsible for the administration of the
12 EP Act;
- 13 **"Ministerial Statement"** means the *Statement That a Proposal May*
14 *be Implemented (Pursuant to the Provisions of the Environmental*
15 *Protection Act 1986)* number 393 entitled "Hot Briquetted Iron
16 Project, Port Hedland (899) BHP Direct Reduced Iron Pty Ltd" and
17 issued by the then Minister for Environment on 4 September 1995;
- 18 **"Mount Goldsworthy Agreement Minister"** means the Minister in
19 the Government of the State for the time being responsible for the
20 administration of the Mount Goldsworthy Agreement;
- 21 **"Operative Date"** has the meaning given in clause 3(4);
- 22 **"PEP Agreement"** means the agreement ratified by the *Pilbara*
23 *Energy Project Agreement Act 1994* (WA), as from time to time
24 added to, varied or amended;
- 25 **"PEP Joint Venturers"** means the Joint Venturers as defined in the
26 PEP Agreement;
- 27 **"Port Authorities Act"** means the *Port Authorities Act 1999* (WA);
- 28 **"Port Authority"** means the Port Hedland Port Authority established
29 by the Port Authorities Act;
- 30 **"Surrender GPLs"** means the general purpose leases granted under
31 the Mining Act and held by the Company as at the date of this
32 Agreement as described in Schedule B; and

"**this Agreement**", "**hereof**" and "**hereunder**" refer to this Agreement, whether in its original form or as from time to time added to, varied or amended;

"**Utah Jild lease**" means registered lease K693814L of the land the subject of Deposited Plan 59462 being portion of Lot 370 on Deposited Plan 35619, part of the land in Crown Land Title Volume LR3118 Folio 753 granted to the Company by the Port Authority under the Port Authorities Act and pursuant to the Beneficiation Agreement; and

"**Water Agreement**" means the Water Supply Agreement dated 8 February 2000 between the Water Corporation and BHP Iron Ore Pty Ltd.

2. Interpretation

(1) In this Agreement:

- (a) clause headings do not affect interpretation or construction;
- (b) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
- (c) one gender includes the other genders;
- (d) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (e) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;
- (f) reference in this Agreement to any other document includes that document as from time to time added to, varied or amended and notwithstanding any change in the identity of the parties;
- (g) reference to a clause or schedule is a reference to a clause or schedule to this Agreement, and a reference to a subclause or paragraph is a reference to the subclause of the clause or

- 1 paragraph of the clause or subclause as the case may be in, or
2 in relation to, which the reference is made; and
- 3 (h) "including" means "including, but not limited to".
- 4 (2) Nothing in this Agreement shall be construed to exempt the State or
5 the Company from compliance with or to require the State or the
6 Company to do anything contrary to any law relating to native title or
7 any lawful obligation or requirement imposed on the State or the
8 Company as the case may be pursuant to any law relating to native
9 title. The provisions of this Agreement shall not operate so as to
10 require the State or the Port Authority to grant or vary, or cause to be
11 granted or varied, any lease licence or other right or title until all
12 processes necessary under any laws relating to native title to enable
13 that grant or variation to proceed, have been completed.
- 14 (3) Nothing in this Agreement shall be construed to exempt the Company
15 from compliance with any requirement in connection with the
16 protection of the environment arising out of or incidental to its
17 activities under this Agreement that may be made by or under the EP
18 Act.
- 19 **3. Ratification and operation**
- 20 (1) The State shall introduce and sponsor a Bill in the State Parliament of
21 Western Australia prior to 31 December 2011 or such later date as
22 may be agreed between the parties hereto to ratify this Agreement.
23 The State shall endeavour to secure the timely passage of such Bill as
24 an Act.
- 25 (2) The provisions of this Agreement other than this clause and clauses 1
26 and 2 will not come into operation until the day after the day on
27 which the Bill referred to in subclause (1) has been passed by the
28 State Parliament of Western Australia and commences to operate as
29 an Act.
- 30 (3) If by 30 June 2012 the said Bill has not commenced to operate as an
31 Act then, unless the parties hereto otherwise agree, this Agreement
32 will then cease and determine and no party hereto will have any claim
33 against any other party hereto with respect to any matter or thing
34 arising out of, done, performed, or omitted to be done or performed
35 under this Agreement.

-
- 1 (4) On the day after the day on which the said Bill commences to operate
2 as an Act ("**Operative Date**") all the provisions of this Agreement
3 will operate and take effect despite any enactment or other law.

4 **4. Termination of Agreement**

- 5 (1) Subject to subclause (2), the Beneficiation Agreement is hereby
6 terminated with effect on and from the Operative Date and, except as
7 otherwise provided in this Agreement, neither the State nor the
8 Company shall have any claim against the other with respect to any
9 matter or thing in or arising out of the Beneficiation Agreement.

- 10 (2) Notwithstanding subclause (1), the Company shall remain liable for
11 any antecedent breach or default under the Beneficiation Agreement
12 and in respect of any indemnity given under the Beneficiation
13 Agreement.

- 14 (3) (a) On and from the Operative Date:

- 15 (i) for the avoidance of doubt, the holder of the Boodarie
16 GPLs and the Surrender GPLs shall cease to have the
17 benefit of any rights and privileges conferred by the
18 Beneficiation Agreement; and

- 19 (ii) each of the Boodarie GPLs is varied by deleting the
20 following condition which it contains:

21 "The construction and operation of the
22 project and measures to protect the
23 environment being carried out generally in
24 accordance with detailed proposals
25 submitted and approved under Clauses 6
26 and 7 of the Iron Ore Processing (BHP
27 Minerals) Agreement Act 1994".

- 28 (b) The Joint Venturers and the Company acknowledge that the
29 Minister for Environment has given the requisite approval for
30 the purposes of condition 3-1 of the Ministerial Statement
31 and has made the requisite nomination under section 38(7) of
32 the EP Act in respect of the passing of responsibility for the
33 proposal the subject of the Ministerial Statement to the Joint
34 Venturers.

- 1 (c) As soon as practicable after the Operative Date, the Company
2 shall make application under the Mining Act to transfer the
3 Boodarie GPLs to the Joint Venturers and the State shall,
4 notwithstanding section 276 of the *Duties Act 2008* (WA) and
5 without otherwise affecting the application of that Act, cause
6 the Boodarie GPLs to be transferred to the Joint Venturers
7 and:
- 8 (i) upon and from the date such transfers are registered
9 under the Mining Act the Boodarie GPLs shall be
10 held by the Joint Venturers pursuant to the Mount
11 Goldsworthy Agreement for the purposes of the
12 Mount Goldsworthy Agreement; and
- 13 (ii) as soon as practicable after the date such transfers are
14 registered under the Mining Act:
- 15 (A) the Company shall unconditionally
16 surrender the Surrender GPLs; and
- 17 (B) in respect of each Boodarie GPL listed in
18 Schedule C, the Joint Venturers shall
19 unconditionally surrender that portion of
20 the Boodarie GPL described in Schedule C.
- 21 Section 114C of the Mining Act applies in respect of any
22 land formerly the subject of a tenement surrendered pursuant
23 to subparagraph (A) or (B) as if the reference in that section
24 to "former holder" includes the Joint Venturers.
- 25 (d) Notwithstanding the Mining Act and without limiting the
26 operation of clause 21(1) of the Mount Goldsworthy
27 Agreement, the Minister for Mines, acting with the
28 concurrence of the Mount Goldsworthy Agreement Minister,
29 may on and from the Operative Date from time to time make,
30 vary or cancel such conditions in respect of the Boodarie
31 GPLs as the Minister for Mines considers reasonable.
- 32 (e) (i) The Joint Venturers and the Company acknowledge
33 that with the Company's consent plant, facilities and
34 other works have been constructed upon the land the
35 subject of the Boodarie GPLs by other persons,
36 including the PEP Joint Venturers pursuant to

-
- 1 proposals approved under the PEP Agreement, and
2 that such plant, facilities and other works continue to
3 be operated by and for the benefit of those other
4 persons or their successors or assigns.
- 5 (ii) Upon the request of the Mount Goldsworthy
6 Agreement Minister and subject to the prior transfer
7 of the Boodarie GPLs to the Joint Venturers as
8 referred to in subclause (3)(c), the Company and the
9 Joint Venturers shall:
- 10 (A) facilitate the grant under the Land
11 Administration Act of any lease that is
12 reasonably necessary for the plant, facilities
13 or other works identified in Plan C in
14 Schedule D by:
- 15 (I) surrendering those portions of the
16 Boodarie GPLs:
- 17 (i) described in Schedule D;
18 and
- 19 (ii) such further areas as are
20 reasonably required for the
21 operation of the plant,
22 facilities or other works
23 identified in Plan C for
24 which an easement or
25 licence is not reasonably
26 sufficient; and
- 27 (II) if reasonably required, on
28 reasonable terms and conditions
29 allowing the relevant third party
30 access to the land the subject of
31 any such lease and (if applicable)
32 consenting to the grant to the
33 relevant third party of an easement
34 or licence under the Land
35 Administration Act; and
-

- 1 (B) facilitate (including if necessary by the
2 Joint Venturers giving their consent where
3 it is requested) the grant under the Land
4 Administration Act of any licences or
5 easements that are reasonably necessary for
6 other plant, facilities and other works
7 referred to in subparagraph (i).
- 8 (iii) The Company and the Joint Venturers acknowledge
9 that the State proposes to develop an industrial estate
10 proximate to the land the subject of the Boodarie
11 GPLs and an infrastructure corridor connecting the
12 industrial estate to the Port of Port Hedland along or
13 in the vicinity of the indicative corridor alignment set
14 out in Plan D in Schedule E and the Company and
15 Joint Venturers agree:
- 16 (A) to use their best and continuing endeavours
17 to facilitate as soon as practicable the
18 identification of and their agreement to the
19 optimal infrastructure corridor area along or
20 in the vicinity of the indicative corridor
21 alignment having regard to the planned
22 operations of the Joint Venturers in relation
23 to the land the subject of the Boodarie
24 GPLs and the planned requirements of the
25 industrial estate and associated corridor
26 (such agreed area being **"the Boodarie
27 Industrial Estate Corridor Area"**); and
- 28 (B) that upon the request of the Mount
29 Goldsworthy Agreement Minister and
30 subject to the prior transfer of the Boodarie
31 GPLs to the Joint Venturers as referred to
32 in subclause 3(c), the Company and Joint
33 Venturers shall facilitate the establishment
34 and operation of the infrastructure corridor
35 within the Boodarie Industrial Estate
36 Corridor Area including by:
- 37 (I) the Joint Venturers surrendering
38 any Boodarie GPLs to the extent

-
- 1 that they relate to land within the
2 Boodarie Industrial Estate Corridor
3 Area;
- 4 (II) giving their consent (if applicable)
5 to the grant of tenure or other
6 rights for the construction and
7 operation of infrastructure and
8 utilities within the Boodarie
9 Industrial Estate Corridor Area;
10 and
- 11 (III) on reasonable terms and conditions
12 facilitating and allowing such
13 crossings for the infrastructure
14 corridor and any future
15 infrastructure and utilities within
16 the Boodarie Industrial Estate
17 Corridor Area that may be required
18 including in relation to the railway
19 and associated facilities currently
20 held pursuant to the
21 Goldsworthy-Nimingarra
22 Agreement,
- 23 and the State agrees that immediately after
24 the Joint Venturers surrender the Boodarie
25 GPLs to the extent referred to in
26 subparagraph (I) it shall grant or cause the
27 relevant agency, instrumentality or other
28 authority of the State to grant appropriate
29 and adequate tenure and access rights to the
30 Joint Venturers in respect of any works,
31 installations or facilities of the Joint
32 Venturers located within the Boodarie
33 Industrial Estate Corridor Area and that
34 continue to be required for the purposes of
35 the Mount Goldsworthy Agreement and
36 that such tenure shall be held by the Joint
37 Venturers pursuant to the Mount
38 Goldsworthy Agreement for the purposes
39 of the Mount Goldsworthy Agreement.

- 1 (iv) The Joint Venturers further acknowledge that the
2 Boodarie GPLs relate to land that is located
3 proximate to the Port of Port Hedland and of strategic
4 importance and that the State and third parties may in
5 the future wish to construct and operate infrastructure
6 such as roads, railways, conveyors, pipelines,
7 transmission lines and other utilities on such land and
8 to have access to such land for such purposes and in
9 light of this acknowledgment the Joint Venturers
10 shall:
- 11 (A) if applicable, give their consent to, or
12 otherwise facilitate the grant by the State or
13 any agency, instrumentality or other
14 authority of the State, of any lease, licence
15 or other title over land the subject of the
16 Boodarie GPLs so long as such grant does
17 not unduly prejudice or interfere with the
18 operations of the Joint Venturers under the
19 Mount Goldsworthy Agreement; and
- 20 (B) on reasonable terms and conditions allow
21 access for the construction and operation of
22 such infrastructure.
- 23 (v) The State acknowledges that the Joint Venturers plan
24 to develop under the Mount Goldsworthy Agreement
25 a conveyor and associated infrastructure corridor
26 connecting planned stockpile facilities to be located
27 upon the Boodarie GPLs to planned port facilities
28 within the Port of Port Hedland upon the land
29 described in Plan E in Schedule F and the State
30 agrees, subject to and in accordance with any
31 proposals approved or determined in that regard
32 under the Mount Goldsworthy Agreement, to cause
33 the Port Authority to grant from time to time to the
34 Joint Venturers easements under the Port Authorities
35 Act over so much of the described land as the Joint
36 Venturers reasonably require:
- 37 (i) at commercial rental; and

(ii) upon such other terms and conditions as approved by the Minister responsible for the Port Authorities Act (acting with the concurrence of the Mount Goldsworthy Agreement Minister) including as to the facilitation and allowance on reasonable terms and conditions of future crossings of the land the subject of that easement and the future location of infrastructure and utilities upon that land so long as such

- 1 crossings, infrastructure or utilities do not
2 unduly prejudice or interfere with the
3 operations of the Joint Venturers under the
4 Mount Goldsworthy Agreement,
- 5 and from the date such easement is registered under
6 the *Transfer of Land Act 1893* (WA) the easement
7 shall be held by the Joint Venturers pursuant to the
8 Mount Goldsworthy Agreement for the purposes of:
- 9 (iii) the Mount Goldsworthy Agreement; and
- 10 (iv) performing their obligations (to the extent
11 not then performed) under subclause (5)
12 and the EP Act and the Ministerial
13 Statement generally to the extent such
14 obligations are referable to that land.
- 15 (f) The State shall cause an endorsement to be made in the
16 register maintained under section 103F of the Mining Act that
17 the provisions of this subclause apply to the Boodarie GPLs.
- 18 (4) (a) On and from the Operative Date and subject to paragraph (b),
19 the Utah Jild lease shall continue in force subject to its terms
20 and conditions and for the avoidance of doubt the holder of
21 the Utah Jild lease shall cease to have the benefit of any rights
22 and privileges conferred by the Beneficiation Agreement.
- 23 (b) For the purposes of clause 3.1(b) of the Utah Jild lease the
24 Beneficiation Agreement Minister has approved and the Port
25 Authority has consented to the Company allowing the Joint
26 Venturers to use the land the subject of that lease for the
27 purposes of:
- 28 (i) performing their obligations under subclause (5) and
29 the EP Act and the Ministerial Statement generally to
30 the extent such obligations are referable to that land;
- 31 (ii) constructing a section of railway in accordance with
32 proposals dated 27 May 2011 and entitled "Project
33 Proposals for Goldsworthy Rail Infrastructure
34 Expansion" submitted by the Joint Venturers under
35 the Mount Goldsworthy Agreement; and

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- 1 with the EP Act, the Ministerial Statement and (to the extent required
2 by the Port Authority) the Utah Jild lease forthwith:
- 3 (a) decommission and remove plant, facilities and other works
4 established by the Company upon the land the subject of the
5 Boodarie GPLs and the Utah Jild lease in accordance with
6 and to the extent contemplated by the decommissioning plan
7 prepared in accordance with clause 8 of the Ministerial
8 Statement; and
- 9 (b) rehabilitate the land affected by the construction, operation
10 and removal of such works in accordance with and to the
11 extent contemplated by the rehabilitation plan prepared in
12 accordance with clause 8 of the Ministerial Statement.
- 13 (6) For the avoidance of doubt, termination of the Beneficiation
14 Agreement effected pursuant to clause 4(1) shall not affect the
15 operation of the Water Agreement.
- 16 (7) (a) On and from the Operative Date the Joint Venturers will
17 indemnify and keep indemnified the State and its employees,
18 agents and contractors in respect of all actions, suits, claims,
19 demands or costs of third parties arising out of or in
20 connection with any work carried out by the Company
21 pursuant to the Beneficiation Agreement or relating to its
22 operations under the Beneficiation Agreement or arising out
23 of or in connection with the construction, maintenance or
24 use by the Company or its employees, agents, contractors or
25 assignees of the Company's works or services the subject of
26 the Beneficiation Agreement or the plant, apparatus or
27 equipment installed in connection with the Beneficiation
28 Agreement.
- 29 (b) The Joint Venturers will indemnify and keep indemnified the
30 State and its employees, agents and contractors in respect of
31 all actions, suits, claims, demands or costs of third parties
32 arising out of or in connection with any work carried out by
33 the Joint Venturers or their employees, agents, contractors or
34 assignees on or subsequent to the Operative Date in relation
35 to their obligations under clause 4(5) of this Agreement.
- 36 (c) The indemnities in paragraphs (a) and (b) shall remain in
37 force for a period ending on the date which is 20 years after:

-
- 1 (i) the date agreed between the State and the Joint
2 Venturers; or
- 3 (ii) if the parties fail to agree a date under paragraph (i),
4 the date determined by the State,
- 5 as being the date upon which the Joint Venturers have
6 performed their obligations under subclause (5).
- 7 (d) The Joint Venturers acknowledge that clause 19 of the Mount
8 Goldsworthy Agreement applies in relation to their use,
9 making available for use or any other activities of the Joint
10 Venturers upon or in relation to the land the subject of any of
11 the Boodarie GPLs, the Utah Jild lease and the lease
12 contemplated by subclause (4)(c) for the purposes of the
13 Mount Goldsworthy Agreement and any tenure and access
14 rights granted to the Joint Venturers as contemplated by
15 subclauses (3)(e)(iii) and (v) for the purposes of the Mount
16 Goldsworthy Agreement.

17 **5. Capacity of Joint Venturers**

18 The Joint Venturers enter into this Agreement in their capacity as the "Joint
19 Venturers" as defined in, and for the purpose of, the Mount Goldsworthy
20 Agreement save that in respect the obligations contained in
21 clause 4(3)(e)(iii) the Joint Venturers accept such obligations also in their
22 capacity as the "Joint Venturers" as defined in, and for the purpose of, the
23 Goldsworthy-Nimingarra Agreement.

1

SCHEDULE A

2

Boodarie GPLs

3

(to be transferred to the Joint Venturers pursuant to clause 4(3)(c))

4 General Purpose Leases 45/62, 45/63, 45/64, 45/65, 45/66, 45/67, 45/68, 45/69,
5 45/70, 45/71, 45/72, 45/73, 45/74, 45/75, 45/76, 45/77, 45/78, 45/79, 45/80,
6 45/81, 45/82, 45/83, 45/84, 45/85, 45/86, 45/87, 45/88, 45/89, 45/90, 45/91,
7 45/92, 45/93, 45/94, 45/95, 45/96, 45/97, 45/98, 45/99, 45/100, 45/101, 45/102,
8 45/103, 45/104, 45/105, 45/106, 45/107, 45/108, 45/109, 45/110, 45/111,
9 45/112, 45/113, 45/114, 45/115, 45/116, 45/117, 45/118, 45/119, 45/120,
10 45/121, 45/122, 45/123, 45/124, 45/125, 45/126, 45/127, 45/128, 45/129,
11 45/130, 45/131, 45/132, 45/133, 45/134, 45/135, 45/136, 45/137, 45/138,
12 45/139, 45/140, 45/141, 45/142, 45/143, 45/144, 45/145, 45/146, 45/147,
13 45/148, 45/149, 45/150, 45/151, 45/152, 45/153, 45/154, 45/155, 45/156,
14 45/157, 45/158, 45/159, 45/160, 45/161, 45/162, 45/163, 45/164, 45/165,
15 45/166, 45/167, 45/168, 45/169, 45/170, 45/171, 45/172, 45/173, 45/174,
16 45/175, 45/176, 45/177, 45/178, 45/179, 45/180, 45/181, 45/182, 45/183,
17 45/184, 45/185, 45/186, 45/187, 45/189, 45/190, 45/191, 45/192, 45/193,
18 45/194, 45/197, 45/198, 45/199, 45/200, 45/220, 45/221, 45/222, 45/223,
19 45/224, 45/235, 45/236, 45/237, 45/238, 45/239, 45/240, 45/241, 45/242,
20 45/243, 45/244, 45/245, 45/246, 45/247, 45/248, 45/249, 45/250, 45/251,
21 45/252, 45/253, 45/254, 45/255, 45/256

22

SCHEDULE B

23

Surrender GPLs

24

(to be surrendered by the Company pursuant to clause 4(3)(c)(ii)(A))

25

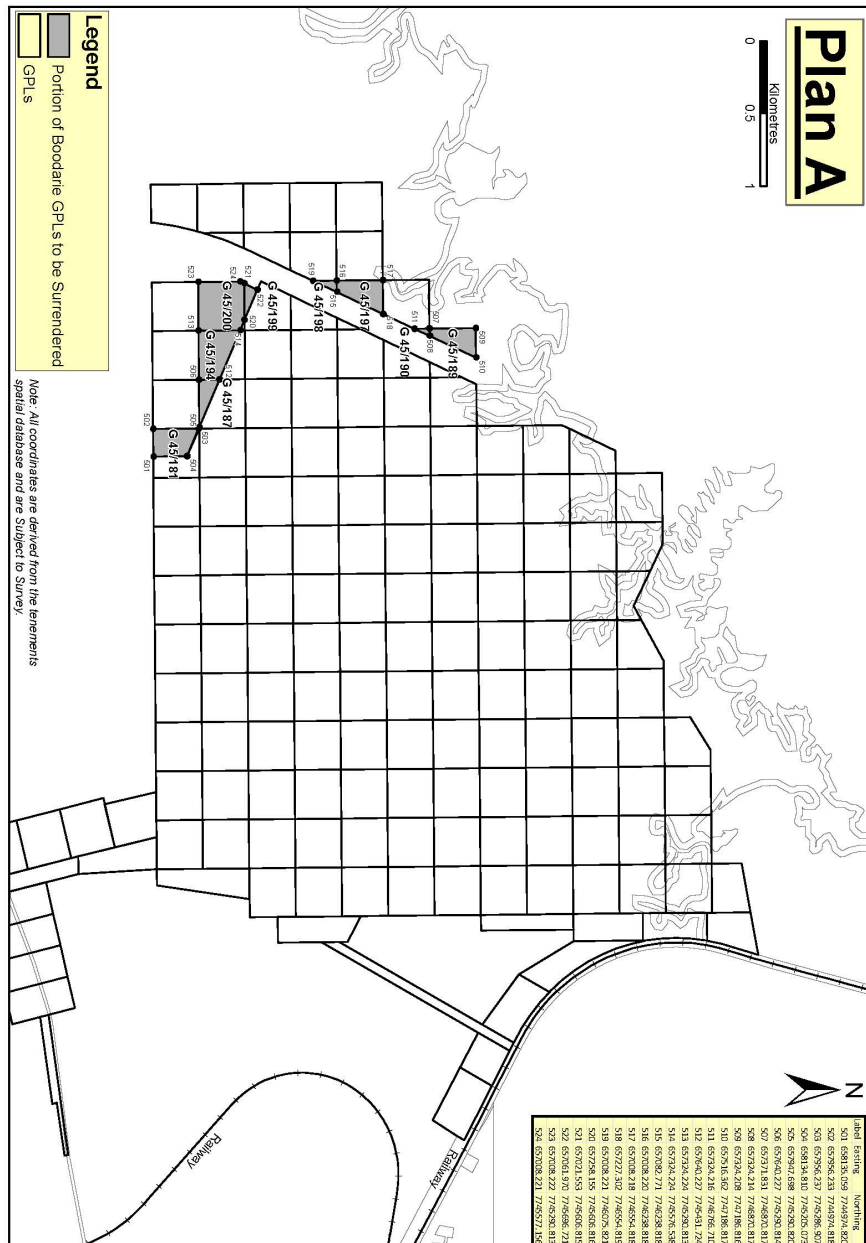
26 General Purpose Leases, 45/188, 45/195, 45/196, 45/201, 45/202, 45/203,
27 45/204, 45/205, 45/207, 45/208, 45/209, 45/210, 45/211

SCHEDULE C

**Portions of Boodarie GPLs to be surrendered pursuant to
clause 4(3)(c)(ii)(B)**

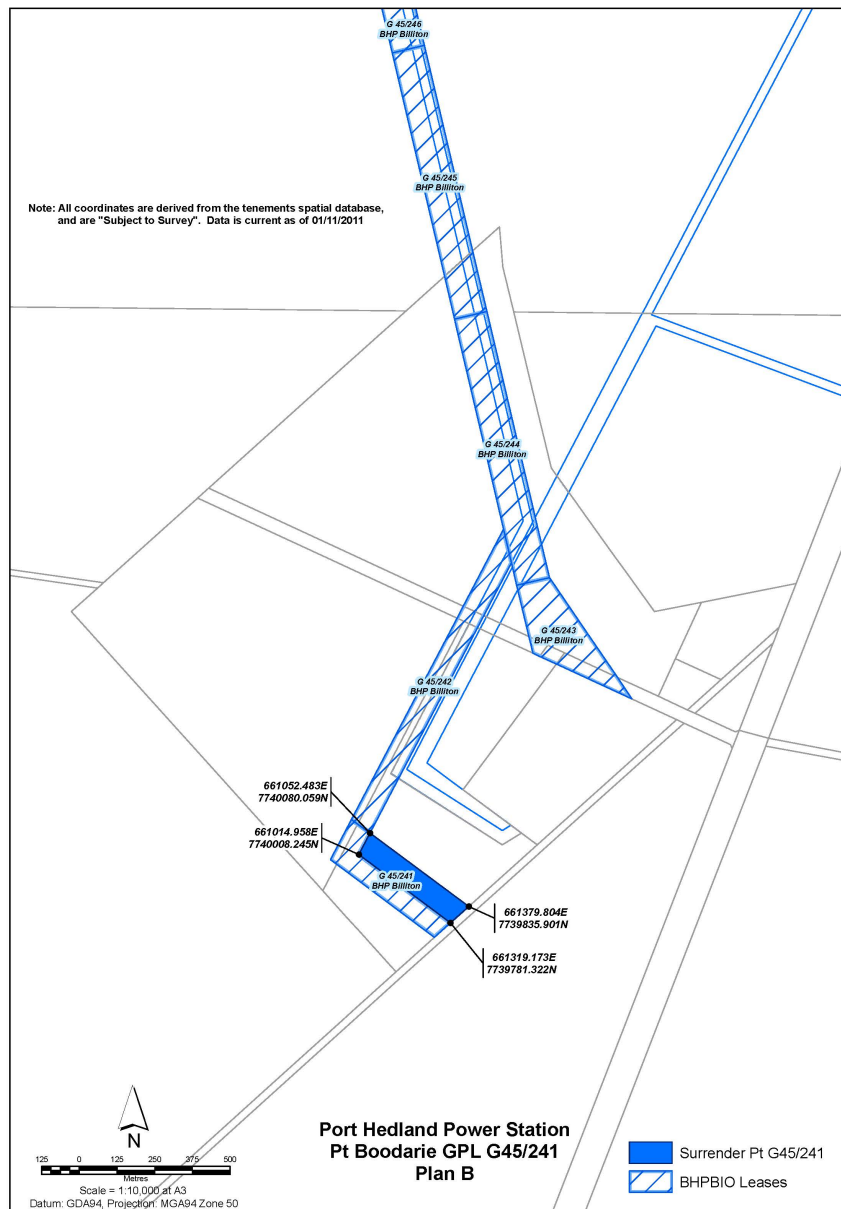
Boodarie GPL	Portion to be surrendered
G45/181	That portion of GPL 45/181 shown on Plan "A"
G45/187	That portion of GPL 45/187 shown on Plan "A"
G45/189	That portion of GPL 45/189 shown on Plan "A"
G45/190	That portion of GPL 45/190 shown on Plan "A"
G45/194	That portion of GPL 45/194 shown on Plan "A"
G45/197	That portion of GPL 45/197 shown on Plan "A"
G45/198	That portion of GPL 45/198 shown on Plan "A"
G45/199	That portion of GPL 45/199 shown on Plan "A"
G45/200	That portion of GPL 45/200 shown on Plan "A"
G45/241	That portion of GPL 45/241 shown on Plan "B"

Plan "A"



1

Plan "B"



2

1

SCHEDULE D

2

Portions of Boodarie GPLs to be surrendered pursuant to

3

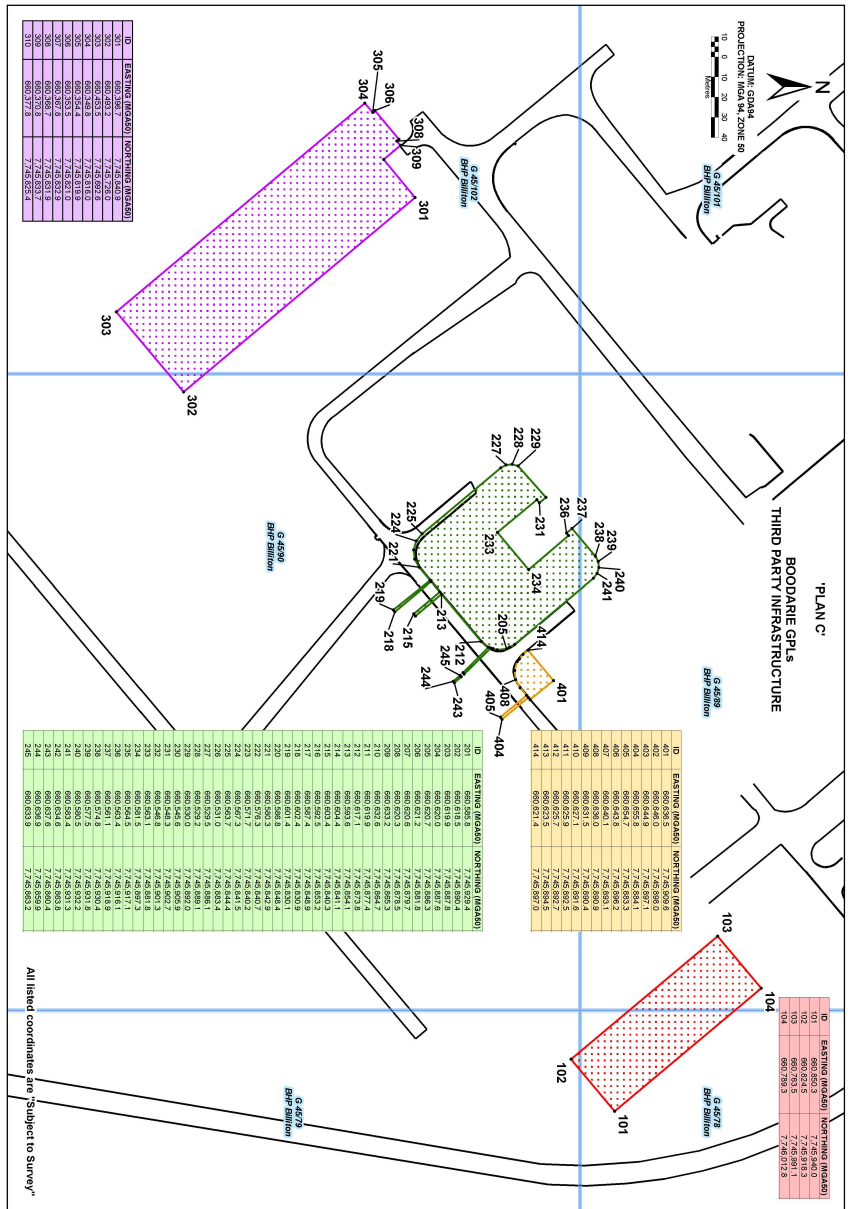
clause 4(3)(e)(ii)(A)(I)(i)

Boodarie GPL	Portion to be surrendered
G45/78	That portion of GPL 45/78 shown on Plan "C"
G45/79	That portion of GPL 45/79 shown on Plan "C"
G45/89	That portion of GPL 45/89 shown on Plan "C"
G45/90	That portion of GPL 45/90 shown on Plan "C"
G45/102	That portion of GPL 45/102 shown on Plan "C"

4

1

Plan "C"



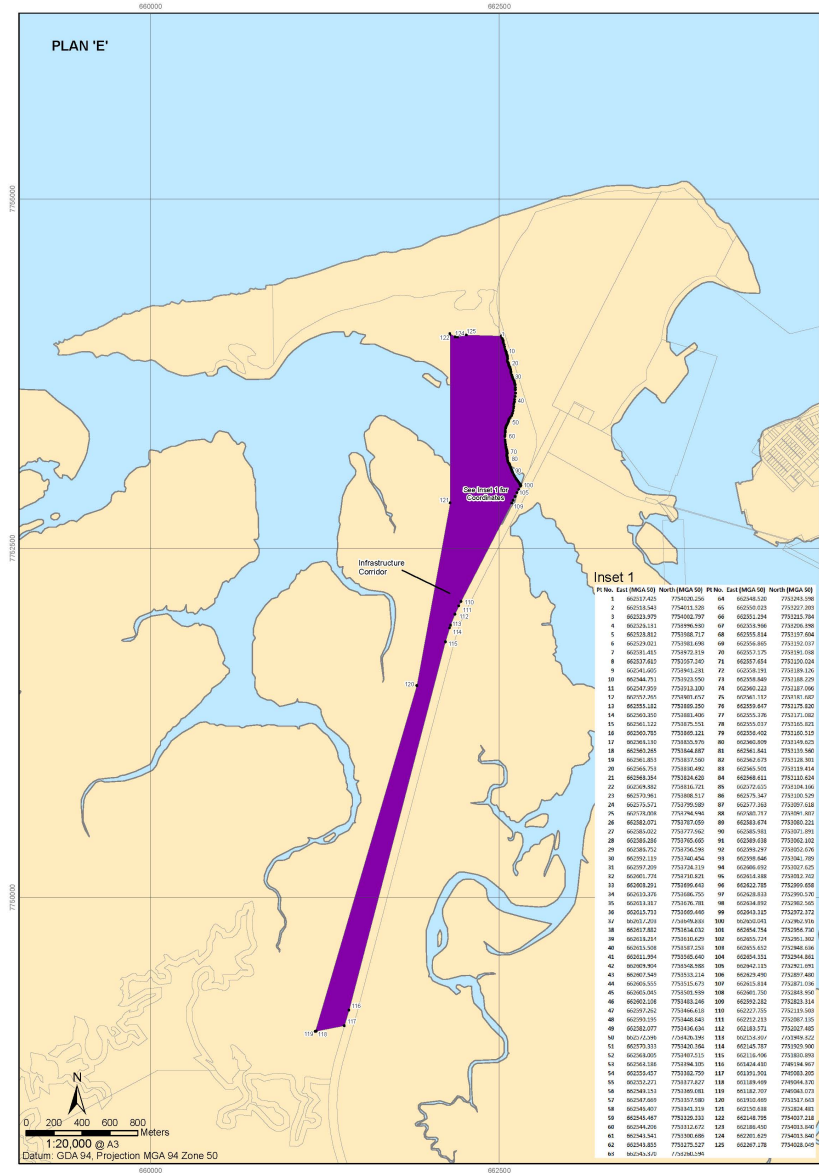
2

Proposed Boodarie Industrial Estate Corridor – Indicative Corridor Alignment

SCHEDULE F

Joint Venturers' planned conveyer and associated infrastructure corridor

Plan "E"



1 **EXECUTED** as a deed.

2

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

6

[Signature]

Signature of witness

[Signature]

Peter Goodall

Name of witness

7

8 **EXECUTED** by **BHP BILLITON DIRECT**)
9 **REDUCED IRON PTY. LTD.** ACN 058 025)
10 960 in accordance with section 127(1) of)
11 the Corporations Act)

12

[Signature]

Signature of Director

[Signature]

Signature of Secretary

Uvashni Raman

Full Name

Robin Lees

Full Name

13

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

5

[Signature]

Signature of Director

[Signature]

Signature of Secretary

Uvashni Raman

Full Name

Robin Lees

Full Name

6

7 **EXECUTED by MITSUI IRON ORE**)
8 **CORPORATION PTY. LTD**)
9 ACN 050 157 456 in accordance with section)
10 127(1) of the Corporations Act)

11

[Signature]

Signature of Director

[Signature]

Signature of Secretary

Ryuzo Nakamura

Full Name

Jiahe He

Full Name

12

**Iron Ore Agreements Legislation (Amendment, Termination and Repeals)
Bill 2011**

Schedule 1 Termination agreement

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

7

[Signature]

Signature of witness

[Signature]

Signature of Attorney

Yasushi Fukumura

Name

Shuzaburo Tsuchihashi

Name

8

=====