

Iron Ore Agreements Legislation Amendment Bill 2011

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Western Australia

LEGISLATIVE ASSEMBLY

**Iron Ore Agreements Legislation Amendment
Bill 2011**

A Bill for

An Act to amend these Acts —

- ***the Iron Ore (Hamersley Range) Agreement Act 1963;***
- ***the Iron Ore (Robe River) Agreement Act 1964;***
- ***the Iron Ore (Mount Bruce) Agreement Act 1972;***
- ***the Iron Ore (Hope Downs) Agreement Act 1992;***
- ***the Iron Ore (Yandicoogina) Agreement Act 1996.***

The Parliament of Western Australia enacts as follows:

1

Part 1 — Preliminary

2

1. Short title

3

This is the *Iron Ore Agreements Legislation Amendment*
4 *Act 2011*.

5

2. Commencement

6

This Act comes into operation as follows —

7

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

8

9

(b) the rest of the Act — on the day after assent day.

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

3. Act amended

This Part amends the *Iron Ore (Hamersley Range) Agreement Act 1963*.

4. Section 2 amended

(1) At the end of section 2 insert:

the Thirteenth Supplementary Agreement means the agreement a copy of which is set out in the Fourteenth Schedule;

the Fourteenth Supplementary Agreement means the agreement a copy of which is set out in the Fifteenth Schedule.

(2) In section 2 in the definition of *the Twelfth Supplementary Agreement* delete “Schedule.” and insert:

Schedule;

5. Sections 4F and 4G inserted

After section 4E insert:

4F. Thirteenth Supplementary Agreement

(1) The Thirteenth Supplementary Agreement is ratified and its implementation is authorised.

(2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the

1 Thirteenth Supplementary Agreement is to operate and
2 take effect despite any other Act or law.

3 **4G. Fourteenth Supplementary Agreement**

4 (1) The Fourteenth Supplementary Agreement is ratified
5 and its implementation is authorised.

6 (2) Without limiting or otherwise affecting the application
7 of the *Government Agreements Act 1979*, the
8 Fourteenth Supplementary Agreement is to operate and
9 take effect despite any other Act or law.
10

6. Fourteenth and Fifteenth Schedules inserted

After the Thirteenth Schedule insert:

**Fourteenth Schedule — Thirteenth Supplementary
Agreement**

[s. 2]

2011

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

AND

**HAMERSLEY IRON PTY. LIMITED
ACN 004 558 276**

**IRON ORE (HAMERSLEY RANGE) AGREEMENT 1963
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 **HAMERSLEY IRON PTY. LIMITED** ACN 004 558 276 of Level 22,
10 Central Park, 152-158 St Georges Terrace, Perth, Western Australia
11 (**Company**).

12

13 **RECITALS:**

14 A. The State and the Company are the parties to the agreement dated
15 30 July 1963, approved by and scheduled to the *Iron Ore (Hamersley*
16 *Range) Agreement Act 1963* and which as subsequently added to,
17 varied or amended is referred to in this Agreement as the "**Principal**
18 **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:
- 19 (a) inserting in the appropriate alphabetical positions the
20 following new definitions:
- 21 "Eligible Existing Tenure" means:
- 22 (a) (i) a miscellaneous licence or general purpose
23 lease granted to the Company under the
24 Mining Act 1978; or
- 25 (ii) a lease or easement granted to the Company
26 under the LAA,
- 27 and not clearly, to the satisfaction of the Minister,
28 granted under or pursuant to or held pursuant to this
29 Agreement; or
- 30 (b) an application by the Company for the grant to it of a
31 tenement referred to in paragraph (a)(i) (which
32 application has not clearly, to the satisfaction of the
33 Minister, been made under or pursuant to this

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- 1 Agreement) and as the context requires the tenement
2 granted pursuant to such an application,
3 where that tenure was granted or that application was made
4 (as the 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
7 Special Advance Tenure, means the land which is the
8 subject of that Eligible Existing Tenure or Special Advance
9 Tenure, as the case may be;
10 "second variation date" means the date on which clause 3 of
11 the variation agreement made on or about 7 November 2011
12 between the State and the Company comes into operation;
13 "Special Advance Tenure" means:
14 (a) a miscellaneous licence or general purpose lease
15 requested under clause 9(2b) to be granted to the
16 Company under the Mining Act 1978; or
17 (b) an easement or a lease requested under clause 9(2b)
18 to be granted to the Company under the LAA,
19 and as the context requires such tenure if granted;
20 (b) inserting after the words "reference in this Agreement to an
21 Act other than the Mining Act 1904 shall include the
22 amendments to such Act for the time being in force and also
23 any Act passed in substitution therefor or in lieu thereof and
24 the regulations for the time being in force thereunder" the
25 words "(and for the avoidance of doubt this principle, subject
26 to the context and without limitation to its application to other
27 Acts, may apply in respect of references to the Land Act
28 notwithstanding references in this Agreement to the LAA)";

- 1 (2) by inserting after clause 8C the following new clauses:
- 2 "Community development plan
- 3 8D. (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 Company acknowledges the need for community
- 16 and social benefits flowing from this Agreement.
- 17 (3) The Company agrees that:
- 18 (a) it shall prepare a plan which describes the
- 19 Company's proposed strategies for
- 20 achieving community and social benefits in
- 21 connection with its activities under this
- 22 Agreement; and
- 23 (b) the Company shall, not later than 3 months
- 24 after the second variation date, submit to
- 25 the Minister the plan prepared under
- 26 paragraph (a) and confer with the Minister
- 27 in respect of the plan.
- 28 (4) The Minister shall within 2 months after receipt of a
- 29 plan submitted under subclause (3)(b), either notify
- 30 the Company that the Minister approves the plan as
- 31 submitted or notify the Company of changes which
- 32 the Minister requires be made to the plan. If the
- 33 Company is unwilling to accept the changes which
- 34 the Minister requires it shall notify the Minister to

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

- 1 (9) During the currency of this Agreement, the Company
2 shall implement the plan approved or deemed to be
3 approved by the Minister under this clause.
- 4 Local participation plan
- 5 8E. (1) In this clause, the term "local industry participation
6 benefits" means:
- 7 (a) the use and training of labour available
8 within the said State;
- 9 (b) the use of the services of engineers,
10 surveyors, architects and other professional
11 consultants, experts, specialists, project
12 managers and contractors available within
13 the said State; and
- 14 (c) the procurement of works, materials, plant,
15 equipment and supplies from Western
16 Australian suppliers, manufacturers and
17 contractors.
- 18 (2) The Company acknowledges the need for local
19 industry participation benefits flowing from this
20 Agreement.
- 21 (3) The Company agrees that it shall, not later than
22 3 months after the second variation date, prepare and
23 provide to the Minister a plan which contains:
- 24 (a) a clear statement on the strategies which the
25 Company will use, and require a third party
26 as referred to in subclause (7) to use, to
27 maximise the uses and procurement
28 referred to in subclause (1);
- 29 (b) detailed information on the procurement
30 practices the Company will adopt, and
31 require a third party as referred to in
32 subclause (7) to adopt, in calling for tenders
33 and letting contracts for works, materials,
34 plant, equipment and supplies stages in
35 relation to a proposed development and

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

- 1 (5) At least 6 months before the anticipated submission
2 of proposals relating to a proposed development
3 pursuant to any of clauses 8A, 10G, 10I, 10K or 10N,
4 the Company must, unless the Minister otherwise
5 requires, give to the Minister information about the
6 implementation of the plan provided under this clause
7 in relation to the proposed development. This
8 obligation operates in relation to all proposals
9 submitted on or after the date that is 7 months after
10 the date when a plan is first provided under this
11 clause.
- 12 (6) During the currency of this Agreement the Company
13 shall implement the plan provided under this clause.
- 14 (7) The Company shall:
- 15 (a) in every contract entered into with a third
16 party where the third party has an
17 obligation or right to procure the supply of
18 services, labour, works, materials, plant,
19 equipment or supplies for or in connection
20 with a proposed development, ensure that
21 the contract contains appropriate provisions
22 requiring the third party to undertake
23 procurement activities in accordance with
24 the plan provided under this clause; and
- 25 (b) use reasonable endeavours to ensure that
26 the third party complies with those
27 provisions.";
- 28 (3) in clause 9(1)(b):
- 29 (a) by deleting "1904" in subparagraph (i) and substituting
30 "1978"; and
- 31 (b) by inserting after sub-subparagraph E. the following new
32 paragraph:
- 33 "Notwithstanding clause 10L(2)(b)(iv), detailed proposals
34 may refer to activities on tenure which is proposed to be
35 granted pursuant to this paragraph (b) as if that tenure was

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

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

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- 1 (7) in clause 10N 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."; and
- 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 10(2)(aa) shall
4 apply mutatis mutandis to any Railway or
5 Railway spur line constructed pursuant to
6 this clause."

EXECUTED as a deed.

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

Signature of witness

Name of witness

THE COMMON SEAL of)
HAMERSLEY IRON PTY. LIMITED)
 ACN 004 558 276 was hereunto affixed)
 by authority of the Directors in the presence of:)

[C.S.]

Director

Secretary

**Fifteenth Schedule — Fourteenth Supplementary
Agreement**

[s. 2]

2011

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

AND

**HAMERSLEY IRON PTY. LIMITED
ACN 004 558 276**

**IRON ORE (HAMERSLEY RANGE) AGREEMENT 1968
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 **HAMERSLEY IRON PTY. LIMITED** ACN 004 558 276 of Level 22,
10 Central Park, 152-158 St Georges Terrace, Perth, Western Australia
11 (**Company**).

12

13 **RECITALS:**

14 A. The State and the Company are the parties to the agreement dated
15 30 July 1963, approved by and scheduled to the *Iron Ore (Hamersley*
16 *Range) Agreement Act 1963* and which as subsequently added to,
17 varied or amended is referred to in this Agreement as the "**Principal**
18 **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
28 Parliament of Western Australia prior to 31 December 2011 or
29 such later date as may be agreed between the parties hereto to

- 1 ratify this Agreement. The State shall endeavour to secure the
2 timely passage of such Bill as an Act.
- 3 (2) The provisions of this Agreement other than this clause and
4 clause 1 will not come into operation until the day after the day
5 on which the Bill referred to in subclause (1) has been passed
6 by the State Parliament of Western Australia and commences to
7 operate as an Act.
- 8 (3) If by 30 June 2012 the said Bill has not commenced to operate
9 as an Act then, unless the parties hereto otherwise agree, this
10 Agreement will then cease and determine and no party hereto
11 will have any claim against any other party hereto with respect
12 to any matter or thing arising out of, done, performed, or
13 omitted to be done or performed under this Agreement.
- 14 (4) On the day after the day on which the said Bill commences to
15 operate as an Act all the provisions of this Agreement will
16 operate and take effect despite any enactment or other law.

17 **3. Variation of Principal Agreement**

18 The Principal Agreement is varied as follows:

- 19 (1) in clause 1 by:
- 20 (a) inserting in the appropriate alphabetical positions the
21 following new definitions:
- 22 "Eligible Existing Tenure" means:
- 23 (a) (i) a miscellaneous licence or general purpose
24 lease granted to the Company under the
25 Mining Act 1978; or
- 26 (ii) a lease or easement granted to the Company
27 under the LAA,
- 28 and not clearly, to the satisfaction of the Minister,
29 granted under or pursuant to or held pursuant to this
30 Agreement; or
- 31 (b) an application by the Company for the grant to it of a
32 tenement referred to in paragraph (a)(i) (which
33 application has not clearly, to the satisfaction of the

s. 6

- 1 Minister, been made under or pursuant to this
2 Agreement) and as the context requires the tenement
3 granted pursuant to such an application,
- 4 where that tenure was granted or that application was made
5 (as the 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
8 Special Advance Tenure, means the land which is the subject
9 of that Eligible Existing Tenure or Special Advance Tenure,
10 as the case may be;
- 11 "second variation date" means the date on which clause 3 of
12 the variation agreement made on or about 7 November 2011
13 between the State and the Company comes into operation;
- 14 "Special Advance Tenure" means:
- 15 (a) a miscellaneous licence or general purpose lease
16 requested under clause 6(3b) to be granted to the
17 Company under the Mining Act 1978; or
- 18 (b) an easement or a lease requested under clause 6(3b)
19 to be granted to the Company under the LAA,
- 20 and as the context requires such tenure if granted;
- 21 (b) inserting after the words "Reference in this Agreement to an
22 Act other than the Mining Act 1904 shall include the
23 amendments to such Act for the time being in force and also
24 any Act passed in substitution therefor or in lieu thereof and
25 the regulations for the time being in force thereunder" the
26 words "(and for the avoidance of doubt this principle, subject
27 to the context and without limitation to its application to other
28 Acts, may apply in respect of references to the Land Act
29 notwithstanding references in this Agreement to the LAA)";

1 (2) by inserting after clause 5C the following new clauses:

2 "Community development plan

3 5D. (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.

(2) The Company acknowledges the need for community and social benefits flowing from this Agreement.

17 (3) The Company agrees that:

- (a) it shall prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with its activities under this Agreement; and
- (b) the Company shall, not later than 3 months after the second variation date, submit to the Minister the plan prepared under paragraph (a) and confer with the Minister in respect of the plan.

(4) The Minister shall within 2 months after receipt of a plan submitted under subclause (3)(b), either notify the Company that the Minister approves the plan as submitted or notify the Company of changes which the Minister requires be made to the plan. If the Company is unwilling to accept the changes which the Minister requires it shall notify the Minister to

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

- 1 (9) During the currency of this Agreement, the Company
2 shall implement the plan approved or deemed to be
3 approved by the Minister under this clause.

4 **Local participation plan**

- 5 5E. (1) In this clause, the term "local industry participation
6 benefits" means:

- 7 (a) the use and training of labour available
8 within the said State;
- 9 (b) the use of the services of engineers,
10 surveyors, architects and other professional
11 consultants, experts, specialists, project
12 managers and contractors available within
13 the said State; and
- 14 (c) the procurement of works, materials, plant,
15 equipment and supplies from Western
16 Australian suppliers, manufacturers and
17 contractors.

- 18 (2) The Company acknowledges the need for local
19 industry participation benefits flowing from this
20 Agreement.

- 21 (3) The Company agrees that it shall, not later than
22 3 months after the second variation date, prepare and
23 provide to the Minister a plan which contains:

- 24 (a) a clear statement on the strategies which the
25 Company will use, and require a third party
26 as referred to in subclause (7) to use, to
27 maximise the uses and procurement
28 referred to in subclause (1);
- 29 (b) detailed information on the procurement
30 practices the Company will adopt, and
31 require a third party as referred to in
32 subclause (7) to adopt, in calling for tenders
33 and letting contracts for works, materials,
34 plant, equipment and supplies stages in
35 relation to a proposed development and

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

- 1 (5) At least 6 months before the anticipated submission
2 of proposals relating to a proposed development
3 pursuant to clauses 5A or 7E of this Agreement and
4 10G of the Principal Agreement (as applying to this
5 Agreement pursuant to clause 11(1)), the Company
6 must, unless the Minister otherwise requires, give to
7 the Minister information about the implementation of
8 the plan provided under this clause in relation to the
9 proposed development. This obligation operates in
10 relation to all proposals submitted on or after the date
11 that is 7 months after the date when a plan is first
12 provided under this clause.
- 13 (6) During the currency of this Agreement the Company
14 shall implement the plan provided under this clause.
- 15 (7) The Company shall:
- 16 (a) in every contract entered into with a third
17 party where the third party has an
18 obligation or right to procure the supply of
19 services, labour, works, materials, plant,
20 equipment or supplies for or in connection
21 with a proposed development, ensure that
22 the contract contains appropriate provisions
23 requiring the third party to undertake
24 procurement activities in accordance with
25 the plan provided under this clause; and
- 26 (b) use reasonable endeavours to ensure that
27 the third party complies with those
28 provisions.";
- 29 (3) in clause 6(2) by:
- 30 (a) in subparagraph (b)(i), deleting "1904" and substituting
31 "1978"; and
- 32 (b) at the end of paragraph (b) inserting the following new
33 paragraph:
- 34 "Notwithstanding clause 7C(2)(b)(iv), detailed proposals may
35 refer to activities on tenure which is proposed to be granted

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1 pursuant to this paragraph (b) as if that tenure was granted
2 pursuant to this Agreement (but this does not limit the powers
3 or discretions of the Minister under this Agreement or the
4 Minister responsible for the administration of any relevant
5 Act with respect to the grant of the tenure).";

6 (4) by inserting after clause 6(3) the following new subclauses:

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

9 (3a) (a) The Minister may at the request of the Company from
10 time to time made during the continuance of this
11 Agreement approve Eligible Existing Tenure
12 becoming held pursuant to this Agreement on such
13 conditions as the Minister sees fit (including, without
14 limitation and notwithstanding the Mining Act 1978
15 and the LAA, as to the surrender of land, the
16 submission of detailed proposals and the variation of
17 the terms and conditions of the Eligible Existing
18 Tenure (including for the Eligible Existing Tenure to
19 be held pursuant to this Agreement and for the more
20 efficient use of the Relevant Land)) and the Minister
21 may from time to time vary such conditions in order
22 to extend any specified time for the doing of any
23 thing or otherwise with the agreement of the
24 Company.

25 (b) Eligible Existing Tenure the subject of an approval by
26 the Minister under this subclause will be held by the
27 Company pursuant to this Agreement:

28 (i) if the Minister's approval was not given
29 subject to conditions, on and from the date
30 of the Minister's notice of approval;

31 (ii) unless paragraph (iii) applies, if the
32 Minister's approval was given subject to
33 conditions, on the date on which all such
34 conditions have been satisfied; and

35 (iii) if the Minister's approval was given subject
36 to a condition requiring that the Company

1 submit detailed proposals in accordance
2 with this Agreement, on the later of the date
3 on which the Minister approves proposals
4 submitted in discharge of that specified
5 condition and the date upon which all other
6 specified conditions have been satisfied, but
7 the Company is authorised to implement
8 any approved proposal to the extent such
9 implementation is consistent with the then
10 terms and conditions of the Eligible
11 Existing Tenure pending the satisfaction of
12 any conditions relating to the variation of
13 the terms or conditions of the Eligible
14 Existing Tenure. Where this paragraph (iii)
15 applies, prior to any approval of proposals
16 and satisfaction of other conditions, the
17 relevant tenure will be treated for (but only
18 for) the purposes of clause 7C(2)(b)(iv) as
19 tenure held pursuant to this Agreement.

20 **Application for Special Advance Tenure to be granted pursuant**
21 **to this Agreement**

22 (3b) Without limiting clause 6(2)(c), the Minister may at the
23 request of the Company from time to time made during the
24 continuance of this Agreement approve Special Advance
25 Tenure being granted to the Company pursuant to this
26 Agreement if:

27 (a) the Company proposes to submit detailed proposals
28 under this Agreement (other than under clause 7E) to
29 construct works installations or facilities on the
30 Relevant Land and the Company's request is so far as
31 is practicable made, unless the Minister approves
32 otherwise, no less than 6 months before the
33 submission of those detailed proposals; and

34 (b) the Minister is satisfied that it is necessary and
35 appropriate that Special Advance Tenure, rather than
36 tenure granted under or pursuant to the other
37 provisions of this Agreement, be used for the

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

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

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- 1 (c) deleting in subclause (4)(a) the comma after "the provisions
2 of this Agreement" and substituting "and"; and
- 3 (d) in subclause (7):
- 4 (i) deleting all words in paragraph (c) after "at the date
5 of such inclusion"; and
- 6 (ii) inserting after paragraph (k) the following new
7 paragraph:
- 8 "(l) The provisions of clause 10(2)(aa) of the
9 Principal Agreement (as applying pursuant to
10 clause 7(4)) shall apply mutatis mutandis to
11 any Railway or Railway spur line
12 constructed pursuant to this clause."

2

6

1 **Part 3 — *Iron Ore (Robe River) Agreement***
2 ***Act 1964* amended**

3 **7. Act amended**

4 This Part amends the *Iron Ore (Robe River) Agreement*
5 *Act 1964*.

6 **8. Section 2 amended**

7 In section 2 insert in alphabetical order:

8
9 *the seventh variation agreement* means the agreement
10 a copy of which is set forth in the Eighth Schedule to
11 this Act;
12

13 **9. Section 4D inserted**

14 After section 4C insert:

15

16 **4D. Seventh variation agreement**

- 17 (1) The seventh variation agreement is ratified.
- 18 (2) The implementation of the seventh variation agreement
19 is authorised.
- 20 (3) Without limiting or otherwise affecting the application
21 of the *Government Agreements Act 1979*, the seventh
22 variation agreement is to operate and take effect
23 despite any other Act or law.
24

1 **10. Eighth Schedule inserted**

2 After the Seventh Schedule insert:
3

4 **Eighth Schedule — Seventh variation agreement**

5 [s. 4D]

6 **2011**

7

8 **THE HONOURABLE COLIN JAMES BARNETT**

9 **PREMIER OF THE STATE OF WESTERN AUSTRALIA**

10

11 **AND**

12

13 **ROBE RIVER LIMITED**

14 **ACN 008 478 493**

15

16 **ROBE RIVER MINING CO PTY. LIMITED**

17 **ACN 008 694 246**

18

19 **MITSUI IRON ORE DEVELOPMENT PTY. LTD.**

20 **ACN 008 734 361**

21

22 **NORTH MINING LIMITED**

23 **ACN 000 081 434**

24

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NIPPON STEEL AUSTRALIA PTY. LTD.

ACN 001 445 049

SUMITOMO METAL AUSTRALIA PTY. LTD.

ACN 001 444 604

IRON ORE (ROBE RIVER) AGREEMENT 1964

RATIFIED VARIATION AGREEMENT

[Solicitor's details]

1 **THIS AGREEMENT** is made this 8th 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 **ROBE RIVER LIMITED** ACN 008 478 493 of Level 33, 120 Collins Street,
10 Melbourne, Victoria (**RRL**)

11 **AND**

12 **ROBE RIVER MINING CO PTY. LIMITED** ACN 008 694 246 of Level 27,
13 Central Park, 152-158 St Georges Terrace, Perth, Western Australia (**RRMC**),

14 **mitsui iron ore development pty. ltd.** ACN 008 734 361 of
15 Level 26, Exchange Plaza, 2 The Esplanade, Perth, Western Australia (**Mitsui**),

16 **NORTH MINING LIMITED** ACN 000 081 434 of Level 33, 120 Collins
17 Street, Melbourne, Victoria (**NML**),

18 **nippon steel australia pty. ltd.** ACN 001 445 049 of Level 24, 1
19 York Street, Sydney, New South Wales, **SUMITOMO METAL AUSTRALIA**
20 **PTY. LTD.** ACN 001 444 604 of Level 39, Australia Square, 264 George
21 Street, Sydney, New South Wales, and the said **MITSUI IRON ORE**
22 **DEVELOPMENT PTY. LTD.** which 3 companies carry on business under the
23 name of **Cape Lambert Iron Associates (CLIA)**, and

24 the said **NIPPON STEEL AUSTRALIA PTY LTD** and **SUMITOMO**
25 **METAL AUSTRALIA PTY LTD** which 2 companies carry on business
26 together under the name **Pannawonica Iron Associates (PIA)**.

27 (RRMC, Mitsui, NML, CLIA and PIA are collectively referred to in this
28 Agreement as the **Robe Participants**.)

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1 **RECITALS:**

2 A. The State, RRL and the Robe Participants are now the parties to the
3 agreement dated 18 November 1964, approved by and scheduled to
4 the *Iron Ore (Robe River) Agreement Act 1964* and which as
5 subsequently added to, varied or amended is referred to in this
6 Agreement as the "**Principal Agreement**".

7 B. The parties wish to vary the Principal Agreement.

8

9 **THE PARTIES AGREE AS FOLLOWS:**

10 **1. Interpretation**

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

14 **2. Ratification and Operation**

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

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

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

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

1 **3. Variation of Principal Agreement**

2 The Principal Agreement is varied as follows:

3 (1) in clause 1 by:

4 (a) inserting in the appropriate alphabetical positions the
5 following new definitions:

6 **"Eligible Existing Tenure"** means:

7 (a) (i) a miscellaneous licence or general purpose
8 lease granted to the Company under the Mining
9 Act 1978; or

10 (ii) a lease or easement granted to the Company
11 under the LAA,

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

15 (b) an application by the Company for the grant to it of a
16 tenement referred to in paragraph (a)(i) (which
17 application has not clearly, to the satisfaction of the
18 Minister, been made under or pursuant to this
19 Agreement) and as the context requires the tenement
20 granted pursuant to such an application,

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

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

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

28 **"second variation date"** means the date on which clause 3
29 of the variation agreement made on or about
30 7 November 2011 between the State and the Company
31 comes into operation;

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- 1 **"Special Advance Tenure"** means:
- 2 (a) a miscellaneous licence or general purpose lease
- 3 requested under clause 8(2b) to be granted to the
- 4 Company under the Mining Act 1978; or
- 5 (b) an easement or a lease requested under clause 8(2b)
- 6 to be granted to the Company under the LAA,
- 7 and as the context requires such tenure if granted;
- 8 (b) inserting after the words "reference in this Agreement to an
- 9 Act shall include the amendments to such Act for the time
- 10 being in force and also any Act passed in substitution therefor
- 11 or in lieu thereof and the regulations for the time being in
- 12 force thereunder" the words "(and for the avoidance of doubt
- 13 this principle, subject to the context and without limitation to
- 14 its application to other Acts, may apply in respect of
- 15 references to the Land Act and the Mining Act
- 16 notwithstanding references in this Agreement to the LAA and
- 17 the Mining Act 1978);";
- 18 (2) by inserting after clause 7F the following new clauses:
- 19 **"Community development plan**
- 20 7G. (1) In this clause, the term "community and social
- 21 benefits" includes:
- 22 (a) assistance with skills development and
- 23 training opportunities to promote work
- 24 readiness and employment for persons
- 25 living in the Pilbara region of the said State;
- 26 (b) regional development activities in the
- 27 Pilbara region of the said State, including
- 28 partnerships and sponsorships;
- 29 (c) contribution to any community projects,
- 30 town services or facilities; and
- 31 (d) a regionally based workforce.
- 32 (2) The Company acknowledges the need for community
- 33 and social benefits flowing from this Agreement.

- 1 (3) The Company agrees that:
- 2 (a) it shall prepare a plan which describes the
- 3 Company's proposed strategies for
- 4 achieving community and social benefits in
- 5 connection with its activities under this
- 6 Agreement; and
- 7 (b) the Company shall, not later than 3 months
- 8 after the second variation date, submit to
- 9 the Minister the plan prepared under
- 10 paragraph (a) and confer with the Minister
- 11 in respect of the plan.
- 12 (4) The Minister shall within 2 months after receipt of a
- 13 plan submitted under subclause (3)(b), either notify
- 14 the Company that the Minister approves the plan as
- 15 submitted or notify the Company of changes which
- 16 the Minister requires be made to the plan. If the
- 17 Company is unwilling to accept the changes which
- 18 the Minister requires it shall notify the Minister to
- 19 that effect and either party may refer to arbitration
- 20 hereunder the question of the reasonableness of the
- 21 changes required by the Minister.
- 22 (5) The effect of an award made on an arbitration
- 23 pursuant to subclause (4) shall be that the relevant
- 24 plan submitted by the Company pursuant to
- 25 subclause (3)(b) shall, with such changes required by
- 26 the Minister under subclause (4) as the arbitrator
- 27 determines to be reasonable (with or without
- 28 modification by the arbitrator), be deemed to be the
- 29 plan approved by the Minister under this clause.
- 30 (6) At least 3 months before the anticipated submission
- 31 of proposals relating to a proposed development
- 32 pursuant to clauses 7A or 9D, the Company must,
- 33 unless the Minister otherwise requires, give to the
- 34 Minister information about how the proposed
- 35 development may affect the plan approved or deemed
- 36 to be approved by the Minister under this clause.
- 37 This obligation operates in relation to all proposals

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- 1 submitted on or after the date that is 4 months after
2 the date when a plan is first approved or deemed to be
3 approved under this clause.
- 4 (7) The Company shall at least annually report to the
5 Minister about the Company's implementation of the
6 plan approved or deemed to be approved by the
7 Minister under this clause.
- 8 (8) At the request of either of them made at any time and
9 from time to time, the Minister and the Company
10 shall confer as to any amendments desired to any plan
11 approved or deemed to be approved by the Minister
12 under this clause and may agree to amendment of the
13 plan or adoption of a new plan. Any such amended
14 plan or new plan will be deemed to be the plan
15 approved by the Minister under this clause in respect
16 of the development to which it relates.
- 17 (9) During the currency of this Agreement, the Company
18 shall implement the plan approved or deemed to be
19 approved by the Minister under this clause.

20 **Local participation plan**

- 21 7H. (1) In this clause, the term "local industry participation
22 benefits" means:
- 23 (a) the use and training of labour available
24 within the said State;
- 25 (b) the use of the services of engineers,
26 surveyors, architects and other professional
27 consultants, experts, specialists, project
28 managers and contractors available within
29 the said State; and
- 30 (c) the procurement of works, materials, plant,
31 equipment and supplies from Western
32 Australian suppliers, manufacturers and
33 contractors.

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

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- 1 managers and consultants and Western
2 Australian suppliers, manufacturers and
3 contractors to services opportunities and
4 procurement opportunities respectively as
5 referred to in subclause (1).
- 6 It is acknowledged by the Company that the strategies
7 of the Company referred to in subclause (3)(a) will
8 include strategies of the Company in relation to
9 supply of services, labour, works, materials, plant,
10 equipment or supplies for the purposes of this
11 Agreement.
- 12 (4) At the request of either of them made at any time and
13 from time to time, the Minister and the Company
14 shall confer as to any amendments desired to any plan
15 provided under this clause and may agree to the
16 amendment of the plan or the provision of a new plan
17 in substitution for the one previously provided.
- 18 (5) At least 6 months before the anticipated submission
19 of proposals relating to a proposed development
20 pursuant to clauses 7A or 9D, the Company must,
21 unless the Minister otherwise requires, give to the
22 Minister information about the implementation of the
23 plan provided under this clause in relation to the
24 proposed development. This obligation operates in
25 relation to all proposals submitted on or after the date
26 that is 7 months after the date when a plan is first
27 provided under this clause.
- 28 (6) During the currency of this Agreement the Company
29 shall implement the plan provided under this clause.
- 30 (7) The Company shall:
- 31 (a) in every contract entered into with a third
32 party where the third party has an
33 obligation or right to procure the supply of
34 services, labour, works, materials, plant,
35 equipment or supplies for or in connection
36 with a proposed development, ensure that
37 the contract contains appropriate provisions

1 requiring the third party to undertake
2 procurement activities in accordance with
3 the plan provided under this clause; and

4 (b) use reasonable endeavours to ensure that
5 the third party complies with those
6 provisions.";

7 (3) in clause 8(1)(b) by:

8 (a) inserting a comma after "Mining Act"; and

9 (b) inserting after subparagraph (iii) the following new
10 paragraph:

"and notwithstanding clause 9B(2)(b)(iv), detailed proposals may refer to activities on tenure which is proposed to be granted pursuant to this paragraph (b) as if that tenure was granted pursuant to this Agreement (but this does not limit the powers or discretions of the Minister under this Agreement or the Minister responsible for the administration of any relevant Act with respect to the grant of the tenure);";

18 (4) by inserting after clause 8(2) the following new subclauses:

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

(2a) (a) The Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Eligible Existing Tenure becoming held pursuant to this Agreement on such conditions as the Minister sees fit (including, without limitation and notwithstanding the Mining Act 1978 and the LAA, as to the surrender of land, the submission of detailed proposals and the variation of the terms and conditions of the Eligible Existing Tenure (including for the Eligible Existing Tenure to be held pursuant to this Agreement and for the more efficient use of the Relevant Land)) and the Minister may from time to time vary such conditions in order to extend any specified time for the doing of any thing or otherwise with the agreement of the Company.

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

32 **Application for Special Advance Tenure to be granted pursuant**
33 **to this Agreement**

- 34 (2b) Without limiting clause 8(1)(c), the Minister may at the
35 request of the Company from time to time made during the
36 continuance of this Agreement approve Special Advance

- 1 Tenure being granted to the Company pursuant to this
2 Agreement if:
- 3 (a) the Company proposes to submit detailed proposals
4 under this Agreement (other than under clause 9D) to
5 construct works installations or facilities on the
6 Relevant Land and the Company's request is so far as
7 is practicable made, unless the Minister approves
8 otherwise, no less than 6 months before the
9 submission of those detailed proposals; and
- 10 (b) the Minister is satisfied that it is necessary and
11 appropriate that Special Advance Tenure, rather than
12 tenure granted under or pursuant to the other
13 provisions of this Agreement, be used for the
14 purposes of the proposed works installations or
15 facilities on the Relevant Land,
- 16 and if the Minister does so approve:
- 17 (c) notwithstanding the Mining Act 1978 or the LAA, the
18 appropriate authority or instrumentality of the State
19 shall obtain the consent of the Minister to the form
20 and substance of the Special Advance Tenure prior to
21 its grant (which for the avoidance of doubt neither the
22 State nor the Minister is obliged to cause) to the
23 Company; and
- 24 (d) if the Company does not submit detailed proposals
25 relating to construction of the relevant works
26 installations or facilities on the Relevant Land within
27 24 months after the date of the Minister's approval or
28 such later time subsequently allowed by the Minister,
29 or if submitted the Minister does not approve such
30 detailed proposals, the Special Advance Tenure (if
31 then granted) shall be surrendered at the request of
32 the Minister.
- 33 (2c) The decisions of the Minister under subclauses (2a) and (2b)
34 shall not be referable to arbitration and any approval of the
35 Minister under this clause shall not in any way limit,
36 prejudice or otherwise affect the exercise by the Minister of
37 the Minister's powers, or the performance of the Minister's

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- 1 obligations, under this Agreement or otherwise under the
2 laws from time to time of the said State.";
- 3 (5) in clause 8 by:
- 4 (a) deleting in subclause (3) "subclause (2)" and substituting
5 "subclauses (2), (2a) and (2b)"; and
- 6 (b) deleting in subclause (3a) "subclause (1)" and substituting
7 "subclauses (1), (2a) and (2b)";
- 8 (6) in clause 9(2) by:
- 9 (a) deleting in paragraph (a) the words "allow crossing places for
10 roads stock and other railways and";
- 11 (b) inserting after paragraph (a) the following new paragraph:
- 12 **"Crossings over Railway**
- 13 (aa) for the purposes of livestock and infrastructure such
14 as roads, railways, conveyors, pipelines, transmission
15 lines and other utilities proposed to cross the land the
16 subject of the Company's railway the Company shall:
- 17 (i) if applicable, give its consent to, or
18 otherwise facilitate the grant by the State or
19 any agency, instrumentality or other
20 authority of the State of any lease, licence
21 or other title over land the subject of the
22 Company's railway so long as such grant
23 does not in the Minister's opinion unduly
24 prejudice or interfere with the activities of
25 the Company under this Agreement; and
- 26 (ii) on reasonable terms and conditions allow
27 access for the construction and operation of
28 such crossings and associated
29 infrastructure,
- 30 provided that in forming his opinion under this
31 clause, the Minister must consult with the
32 Company;"

- 1 (c) deleting paragraph (j)(ii) and substituting the following
2 subparagraph:
- 3 " (ii) on fine ore and pisolite fine ore sold or shipped
4 separately as such at the rate of:
- 5 (A) 5.625% of the f.o.b. value, for ore shipped
6 prior to or on 30 June 2012;
- 7 (B) 6.5% of the f.o.b. value, for ore shipped
8 during the period from 1 July 2012 to
9 30 June 2013 (inclusive of both dates); and
- 10 (C) 7.5% of the f.o.b. value, for ore shipped on
11 or after 1 July 2013;";
- 12 (7) in clause 9D by:
- 13 (a) deleting in subclause (1) "'LAA" means the *Land*
14 *Administration Act 1997* (WA)";
- 15 (b) inserting after subclause (3)(c) the following new paragraph:
- 16 "(d) Without limiting subclause (9), the Minister may
17 waive the requirement under this clause for the
18 Company to obtain and to furnish the consent of a
19 title holder if the title holder has refused to give the
20 required consent and the Minister is satisfied that:
- 21 (i) the title holder's affected land is or was
22 subject to a miscellaneous licence granted
23 under the Mining Act 1978 for the purpose
24 of a railway to be constructed and operated
25 in accordance with this Agreement; and
- 26 (ii) in the Minister's opinion, the title holder's
27 refusal to give the required consent is not
28 reasonable in all the circumstances
29 including having regard to:
- 30 (A) the rights of the Company in
31 relation to the affected land as the
32 holder of the miscellaneous
33 licence, relative to its rights as the
34 holder of the sought Special

1 **EXECUTED** as a deed.

2

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

6

[Signature]

[Signature]

Signature of witness

Stephen Bombardieri

Name of witness

7

8 Signed for **ROBE RIVER LIMITED**)
9 ACN 008 478 493 by its attorney in the)
10 presence of:)

11

[Signature]

[Signature]

Witness signature

Attorney signature

Christopher Richards

Paul Shannon

Print Name

Print Name

12

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14

15

1 Signed by **NORTH MINING**)
2 **LIMITED** ACN 000 081 434 by)
3 its attorney in the presence of:)
4)

Print Name

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1 Signed by **SUMITOMO METAL**)
2 **AUSTRALIA PTY. LTD.**)
3 ACN 001 444 604 by its duly appointed)
4 attorney **MITSUI IRON ORE**) [C.S.]
5 **DEVELOPMENTS PTY. LTD.**)
6 ACN 008 734 361 hereunto affixing)
7 its Seal by authority of the Directors)
8 in the presence of:)

9

<u>[Signature]</u>	<u>Hirofumi Fujita</u>
Director	

<u>[Signature]</u>	<u>John William Smith</u>
Director /Secretary	

10

11 **THE COMMON SEAL of MITSUI**)
12 **IRON ORE DEVELOPMENT PTY.**)
13 **LTD.** ACN 008 734 361 was hereunto) [C.S.]
14 affixed by authority of the Directors in)
15 the presence of:)

16

<u>[Signature]</u>	<u>Hirofumi Fujita</u>
Director	

<u>[Signature]</u>	<u>John William Smith</u>
Secretary	

17

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3 Signed by **NIPPON STEEL**)
4 **AUSTRALIA PTY. LTD.**)
5 ACN 001 445 049 by its duly appointed)
6 attorney **MITSUI IRON ORE**) [C.S.]
7 **DEVELOPMENTS PTY. LTD.**)
8 ACN 008 734 361 hereunto affixing)
9 its Seal by authority of the Directors)
10 in the presence of:)

[Signature] _____ John William Smith _____
Secretary

13 Signed by **SUMITOMO METAL**)
14 **AUSTRALIA PTY. LTD.**)
15 ACN 001 444 604 by its duly appointed)
16 attorney **MITSUI IRON ORE**) [C.S.]
17 **DEVELOPMENT PTY. LTD.**)
18 ACN 008 734 361 hereunto affixing)
19 its Seal by authority of the Directors)
20 in the presence of:)

[Signature] _____ John William Smith _____
Secretary

1 **Part 4 — *Iron Ore (Mount Bruce) Agreement***
2 ***Act 1972* amended**

3 **11. Act amended**

4 This Part amends the *Iron Ore (Mount Bruce) Agreement*
5 *Act 1972*.

6 **12. Section 2 amended**

7 (1) At the end of section 2 insert:

8
9 *the 2011 Variation Agreement* means the agreement a
10 copy of which is set forth in the Fifth Schedule.
11

12 (2) In section 2 in the definition of *the Agreement* delete “Part 6
13 and the 2010 Variation Agreement;” and insert:

14
15 Part 6, the 2010 Variation Agreement and the
16 2011 Variation Agreement;
17

18 (3) In section 2 in the definition of *the 2010 Variation Agreement*
19 delete “Schedule.” and insert:

20
21 Schedule;
22

23 **13. Section 4D inserted**

24 After section 4C insert:

25

26 **4D. 2011 Variation Agreement**

27 (1) The 2011 Variation Agreement is ratified and its
28 implementation is authorised.

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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 **MOUNT BRUCE MINING PTY. LTD.** ACN 008 714 010 of Level 22,
10 Central Park, 152-158 St Georges Terrace, Perth, Western Australia
11 (**Company**).

12

13 **RECITALS:**

14 A. The State and the Company are the parties to the agreement dated
15 10 March 1972, ratified by and scheduled to the *Iron Ore (Mount*
16 *Bruce) Agreement Act 1972* and which as subsequently added to,
17 varied or amended is referred to in this Agreement as the "**Principal**
18 **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:
- 19 (a) inserting in the appropriate alphabetical positions the
20 following new definitions:
- 21 "Eligible Existing Tenure" means:
- 22 (a) (i) a miscellaneous licence or general purpose
23 lease granted to the Company under the
24 Mining Act 1978; or
- 25 (ii) a lease or easement granted to the Company
26 under the LAA,
- 27 and not clearly, to the satisfaction of the Minister,
28 granted under or pursuant to or held pursuant to this
29 Agreement; or
- 30 (b) an application by the Company for the grant to it of a
31 tenement referred to in paragraph (a)(i) (which
32 application has not clearly, to the satisfaction of the
33 Minister, been made under or pursuant to this

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- 1 Agreement) and as the context requires the tenement
2 granted pursuant to such an application,
- 3 where that tenure was granted or that application was made
4 (as the 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
7 Special Advance Tenure, means the land which is the subject
8 of that Eligible Existing Tenure or Special Advance Tenure,
9 as the case may be;
- 10 "second variation date" means the date on which clause 3 of
11 the variation agreement made on or about 7 November 2011
12 between the State and the Company comes into operation;
- 13 "Special Advance Tenure" means:
- 14 (a) a miscellaneous licence or general purpose lease
15 requested under clause 7(3b) to be granted to the
16 Company under the Mining Act 1978; or
- 17 (b) an easement or a lease requested under clause 7(3b)
18 to be granted to the Company under the LAA,
- 19 and as the context requires such tenure if granted;
- 20 (b) inserting after the words "reference in this Agreement to an
21 Act shall include the amendments to such Act for the time
22 being in force and also any Act passed in substitution therefor
23 or in lieu thereof and the regulations for the time being in
24 force thereunder" the words "(and for the avoidance of doubt
25 this principle, subject to the context and without limitation to
26 its application to other Acts, may apply in respect of
27 references to the Land Act and the Mining Act
28 notwithstanding references in this Agreement to the LAA and
29 the Mining Act 1978)";
- 30 (2) in clause 7(1) by inserting after paragraph (c) the following new
31 paragraph:
- 32 "Notwithstanding clause 20C(2)(b)(iv), detailed proposals may refer
33 to activities on tenure which is proposed to be granted pursuant to this
34 subclause (1) as if that tenure was granted pursuant to this Agreement

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1 with this Agreement, on the later of the date
2 on which the Minister approves proposals
3 submitted in discharge of that specified
4 condition and the date upon which all other
5 specified conditions have been satisfied, but
6 the Company is authorised to implement
7 any approved proposal to the extent such
8 implementation is consistent with the then
9 terms and conditions of the Eligible
10 Existing Tenure pending the satisfaction of
11 any conditions relating to the variation of
12 the terms or conditions of the Eligible
13 Existing Tenure. Where this paragraph (iii)
14 applies, prior to any approval of proposals
15 and satisfaction of other conditions, the
16 relevant tenure will be treated for (but only
17 for) the purposes of clause 20C(2)(b)(iv) as
18 tenure held pursuant to this Agreement.

19 **Application for Special Advance Tenure to be granted pursuant**
20 **to this Agreement**

21 (3b) Without limiting clause 7(2), the Minister may at the request
22 of the Company from time to time made during the
23 continuance of this Agreement approve Special Advance
24 Tenure being granted to the Company pursuant to this
25 Agreement if:

26 (a) the Company proposes to submit detailed proposals
27 under this Agreement (other than under clause 20E)
28 to construct works installations or facilities on the
29 Relevant Land and the Company's request is so far as
30 is practicable made, unless the Minister approves
31 otherwise, no less than 6 months before the
32 submission of those detailed proposals; and

33 (b) the Minister is satisfied that it is necessary and
34 appropriate that Special Advance Tenure, rather than
35 tenure granted under or pursuant to the other
36 provisions of this Agreement, be used for the

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

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- 1 (5) by inserting after clause 11B the following new clauses:
- 2 **"Community development plan**
- 3 11C. (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 Company acknowledges the need for community
- 16 and social benefits flowing from this Agreement.
- 17 (3) The Company agrees that:
- 18 (a) it shall prepare a plan which describes the
- 19 Company's proposed strategies for
- 20 achieving community and social benefits in
- 21 connection with its activities under this
- 22 Agreement; and
- 23 (b) the Company shall, not later than 3 months
- 24 after the second variation date, submit to
- 25 the Minister the plan prepared under
- 26 paragraph (a) and confer with the Minister
- 27 in respect of the plan.
- 28 (4) The Minister shall within 2 months after receipt of a
- 29 plan submitted under subclause (3)(b), either notify
- 30 the Company that the Minister approves the plan as
- 31 submitted or notify the Company of changes which
- 32 the Minister requires be made to the plan. If the
- 33 Company is unwilling to accept the changes which
- 34 the Minister requires it shall notify the Minister to

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

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- 1 (9) During the currency of this Agreement, the Company
2 shall implement the plan approved or deemed to be
3 approved by the Minister under this clause.
- 4 **Local participation plan**
- 5 11D. (1) In this clause, the term "local industry participation
6 benefits" means:
- 7 (a) the use and training of labour available
8 within the said State;
- 9 (b) the use of the services of engineers,
10 surveyors, architects and other professional
11 consultants, experts, specialists, project
12 managers and contractors available within
13 the said State; and
- 14 (c) the procurement of works, materials, plant,
15 equipment and supplies from Western
16 Australian suppliers, manufacturers and
17 contractors.
- 18 (2) The Company acknowledges the need for local
19 industry participation benefits flowing from this
20 Agreement.
- 21 (3) The Company agrees that it shall, not later than
22 3 months after the second variation date, prepare and
23 provide to the Minister a plan which contains:
- 24 (a) a clear statement on the strategies which the
25 Company will use, and require a third party
26 as referred to in subclause (7) to use, to
27 maximise the uses and procurement
28 referred to in subclause (1);
- 29 (b) detailed information on the procurement
30 practices the Company will adopt, and
31 require a third party as referred to in
32 subclause (7) to adopt, in calling for tenders
33 and letting contracts for works, materials,
34 plant, equipment and supplies stages in
35 relation to a proposed development and

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

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- 1 (5) At least 6 months before the anticipated submission
2 of proposals relating to a proposed development
3 pursuant to any of clauses 5, 11 or 20E, the Company
4 must, unless the Minister otherwise requires, give to
5 the Minister information about the implementation of
6 the plan provided under this clause in relation to the
7 proposed development. This obligation operates in
8 relation to all proposals submitted on or after the date
9 that is 7 months after the date when a plan is first
10 provided under this clause.
- 11 (6) During the currency of this Agreement the Company
12 shall implement the plan provided under this clause.
- 13 (7) The Company shall:
- 14 (a) in every contract entered into with a third
15 party where the third party has an
16 obligation or right to procure the supply of
17 services, labour, works, materials, plant,
18 equipment or supplies for or in connection
19 with a proposed development, ensure that
20 the contract contains appropriate provisions
21 requiring the third party to undertake
22 procurement activities in accordance with
23 the plan provided under this clause; and
- 24 (b) use reasonable endeavours to ensure that
25 the third party complies with those
26 provisions.";
- 27 (6) in clause 12(1) by:
- 28 (a) deleting in paragraph (a) "allow crossing places for roads
29 stock and other railways and also";
- 30 (b) inserting after paragraph (a) the following new paragraph:
- 31 **"Crossings over Railway**
- 32 (aa) for the purposes of livestock and infrastructure
33 such as roads, railways, conveyors, pipelines,
34 transmission lines and other utilities proposed to

- 1 cross the land the subject of the Company's railway
2 the Company shall:
- 3 (i) if applicable, give its consent to, or
4 otherwise facilitate the grant by the State or
5 any agency, instrumentality or other
6 authority of the State of any lease, licence
7 or other title over land the subject of the
8 Company's railway so long as such grant
9 does not in the Minister's opinion unduly
10 prejudice or interfere with the activities of
11 the Company under this Agreement; and
- 12 (ii) on reasonable terms and conditions allow
13 access for the construction and operation of
14 such crossings and associated
15 infrastructure,
- 16 provided that in forming his opinion under this
17 clause, the Minister must consult with the
18 Company;" and
- 19 (c) deleting paragraph (h)(ii) and substituting the following
20 subparagraph:
- 21 "(ii) on fine ore sold or shipped separately as such at the
22 rate of:
- 23 (A) 5.625% of the f.o.b. value, for ore shipped
24 prior to or on 30 June 2012;
- 25 (B) 6.5% of the f.o.b. value, for ore shipped
26 during the period from 1 July 2012 to
27 30 June 2013 (inclusive of both dates); and
- 28 (C) 7.5% of the f.o.b. value, for ore shipped on
29 or after 1 July 2013;" and
- 30 (7) in clause 20E by:
- 31 (a) deleting in subclause (1) "'LAA" means the *Land*
32 *Administration Act 1997* (WA)";

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

- 1 (ii) inserting after paragraph (k) the following new
2 paragraph:
3 "(l) The provisions of clause 12(1)(aa) shall
4 apply mutatis mutandis to any Railway or
5 Railway spur line constructed pursuant to
6 this clause."

s. 14

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]

Stephen Bombardieri

Name of witness

7 **THE COMMON SEAL** of **MOUNT**)
8 **BRUCE MINING PTY. LIMITED**)
9 ACN 008 714 010 was hereunto affixed)
10 by authority of the Directors in the)
11 presence of:)

[C.S.]

12

[Signature]

Director

Robert Paul Shannon

[Signature]

Secretary

Helen Fernihough

13

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

15. Act amended

This Part amends the *Iron Ore (Hope Downs) Agreement Act 1992*.

16. Section 3 amended

(1) In section 3 insert in alphabetical order:

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

(2) In section 3 in the definition of ***Agreement*** delete “Agreement;”
and insert:

Agreement and the Second Variation Agreement;

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

Schedule 2;

17. Section 4 amended

After section 4(2A) insert:

(2B) The Second Variation Agreement is ratified.

s. 18

18. Schedule 3 inserted

After Schedule 2 insert:

Schedule 3 — Second Variation Agreement

[s. 3]

2011

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

AND

HOPE DOWNS IRON ORE PTY. LTD.

ACN 071 514 308

HAMERSLEY WA PTY. LTD.

ACN 115 004 138

IRON ORE (HOPE DOWNS) AGREEMENT 1992

RATIFIED VARIATION AGREEMENT

[Solicitor's details]

1 **THIS AGREEMENT** is made this 9th 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 **HOPE DOWNS IRON ORE PTY LTD** ACN 071 514 308 of Level 3, Hppl
10 House, 28-42 Ventnor Avenue, West Perth, Western Australia and
11 **HAMERSLEY WA PTY. LTD.** ACN 115 004 138 of Level 22, Central Park,
12 152-158 St Georges Terrace, Perth, Western Australia (**Joint Venturers**).

13

14 **RECITALS:**

15 **A.** The State and the Joint Venturers are now the parties to the agreement
16 dated 30 November 1992 ratified by and scheduled to the *Iron Ore*
17 (*Hope Downs*) *Agreement Act 1992* and which as subsequently added
18 to, varied or amended is referred to in this Agreement as the
19 **"Principal Agreement"**.

20 **B.** The State and the Joint Venturers wish to vary the Principal
21 Agreement.

22

23 **THE PARTIES AGREE AS FOLLOWS:**

24 **1. Interpretation**

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

28 **2. Ratification and Operation**

29 (1) The State shall introduce and sponsor a Bill in the State Parliament of
30 Western Australia prior to 31 December 2011 or such later date as

s. 18

- 1 may be agreed between the parties hereto to ratify this Agreement.
2 The State shall endeavour to secure the timely passage of such Bill as
3 an Act.
- 4 (2) The provisions of this Agreement other than this clause and clause 1
5 will not come into operation until the day after the day on which the
6 Bill referred to in subclause (1) has been passed by the State
7 Parliament of Western Australia and commences to operate as an Act.
- 8 (3) If by 30 June 2012 the said Bill has not commenced to operate as an
9 Act then, unless the parties hereto otherwise agree, this Agreement
10 will then cease and determine and no party hereto will have any claim
11 against any other party hereto with respect to any matter or thing
12 arising out of, done, performed, or omitted to be done or performed
13 under this Agreement.
- 14 (4) On the day after the day on which the said Bill commences to operate
15 as an Act all the provisions of this Agreement will operate and take
16 effect despite any enactment or other law.
- 17 **3. Variation of Principal Agreement**
- 18 The Principal Agreement is varied as follows:
- 19 (1) in clause 1 by inserting in the appropriate alphabetical positions the
20 following new definitions:
- 21 "Eligible Existing Tenure" means:
- 22 (a) (i) a miscellaneous licence or general purpose lease
23 granted to the Company under the Mining Act 1978;
24 or
- 25 (ii) a lease or easement granted to the Company under the
26 LAA,
- 27 and not clearly, to the satisfaction of the Minister, granted
28 under or pursuant to or held pursuant to this Agreement; or
- 29 (b) an application by the Company for the grant to it of a
30 tenement referred to in paragraph (a)(i) (which application
31 has not clearly, to the satisfaction of the Minister, been made
32 under or pursuant to this Agreement) and as the context
33 requires the tenement granted pursuant to such an application,

- 1 where that tenure was granted or that application was made (as the
2 case may be) on or before 1 October 2011;
- 3 "LAA" means the *Land Administration Act 1997* (WA);
- 4 "Relevant Land", in relation to Eligible Existing Tenure or Special
5 Advance Tenure, means the land which is the subject of that Eligible
6 Existing Tenure or Special Advance Tenure, as the case may be;
- 7 "second variation date" means the date on which clause 3 of the
8 variation agreement made on or about 7 November 2011 between the
9 State and the Company comes into operation;
- 10 "Special Advance Tenure" means:
- 11 (a) a miscellaneous licence or general purpose lease requested
12 under Clause 23(2c) to be granted to the Company under the
13 Mining Act 1978; or
- 14 (b) an easement or a lease requested under Clause 23(2c) to be
15 granted to the Company under the LAA,
- 16 and as the context requires such tenure if granted;
- 17 (2) in clause 2(e) by inserting after "for the time being in force
18 thereunder" the words "(and for the avoidance of doubt this principle,
19 subject to the context and without limitation to its application to other
20 Acts, may apply in respect of references to the Land Act
21 notwithstanding references in this Agreement to the LAA)";
- 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, 15, 15C and 27 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, 15, 15C and 27,
27 the 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) by deleting clause 13(1)(ii) and substituting the following paragraph:
- 16 "(ii) on fine ore sold or shipped separately as such at the rate of:
- 17 (A) 5.625% of the f.o.b. value, for ore shipped prior to or
- 18 on 30 June 2012;
- 19 (B) 6.5% of the f.o.b. value, for ore shipped during the
- 20 period from 1 July 2012 to 30 June 2013 (inclusive of
- 21 both dates); and
- 22 (C) 7.5% of the f.o.b. value, for ore shipped on or after
- 23 1 July 2013;
- 24 (5) in clause 15C by:
- 25 (a) deleting in subclause (1) "'LAA" means the *Land*
- 26 *Administration Act 1997* (WA)";
- 27 (b) inserting after subclause (3)(c) the following new paragraph:
- 28 "(d) Without limiting subclause (9), the Minister may
- 29 waive the requirement under this Clause for the
- 30 Company to obtain and to furnish the consent of a

- 1 title holder if the title holder has refused to give the
2 required consent and the Minister is satisfied that:
- 3 (i) the title holder's affected land is or was
4 subject to a miscellaneous licence granted
5 under the Mining Act 1978 for the purpose
6 of a railway to be constructed and operated
7 in accordance with this Agreement; and
- 8 (ii) in the Minister's opinion, the title holder's
9 refusal to give the required consent is not
10 reasonable in all the circumstances
11 including having regard to:
- 12 (A) the rights of the Company in
13 relation to the affected land as the
14 holder of the miscellaneous
15 licence, relative to its rights as the
16 holder of the sought Special
17 Railway Licence or Lateral Access
18 Road Licence (as the case may be);
19 and
- 20 (B) the terms of any agreement
21 between the Company and the title
22 holder.";
- 23 (c) deleting in subclause (4)(a) the comma after "the provisions
24 of this Agreement" and substituting "and"; and
- 25 (d) in subclause (7):
- 26 (i) deleting all words in paragraph (c) after "at the date
27 of such inclusion"; and
- 28 (ii) inserting after paragraph (k) the following new
29 paragraph:
- 30 "(l) The provisions of clause 24(2a) shall apply
31 mutatis mutandis to any Railway or
32 Railway spur line constructed pursuant to
33 this Clause.";

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- 1 (6) in clause 23 by:
- 2 (a) inserting at the end of subclause (1) the following new
- 3 paragraph:
- 4 "Notwithstanding Clause 15A(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 (2b) and (2c)";
- 13 (c) in subclause (2a), deleting "subclause (1)" and substituting
- 14 "subclauses (1), (2b) and (2c)"; and
- 15 (d) inserting after subclause (2a) the following new subclauses:
- 16 **"Application for Eligible Existing Tenure to be held**
- 17 **pursuant to this Agreement**
- 18 (2b) (a) The Minister may at the request of the
- 19 Company from time to time made during
- 20 the continuance of this Agreement approve
- 21 Eligible Existing Tenure becoming held
- 22 pursuant to this Agreement on such
- 23 conditions as the Minister sees fit
- 24 (including, without limitation and
- 25 notwithstanding the Mining Act 1978 and
- 26 the LAA, as to the surrender of land, the
- 27 submission of detailed proposals and the
- 28 variation of the terms and conditions of the
- 29 Eligible Existing Tenure (including for the
- 30 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 any
- 35 specified time for the doing of any thing or

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

s. 18

- 1 relevant tenure will be treated for
2 (but only for) the purposes of
3 clause 15A(2)(b)(iv) as tenure held
4 pursuant to this Agreement.
- 5 **Application for Special Advance Tenure to be granted**
6 **pursuant to this Agreement**
- 7 (2c) The Minister may at the request of the Company from
8 time to time made during the continuance of this
9 Agreement approve Special Advance Tenure being
10 granted to the Company pursuant to this Agreement
11 if:
- 12 (a) the Company proposes to submit detailed
13 proposals under this Agreement (other than
14 under Clause 15C) to construct works
15 installations or facilities on the Relevant
16 Land and the Company's request is so far as
17 is practicable made, unless the Minister
18 approves otherwise, no less than 6 months
19 before the submission of those detailed
20 proposals; and
- 21 (b) the Minister is satisfied that it is necessary
22 and appropriate that Special Advance
23 Tenure, rather than tenure granted under or
24 pursuant to the other provisions of this
25 Agreement, be used for the purposes of the
26 proposed works installations or facilities on
27 the Relevant Land,
- 28 and if the Minister does so approve:
- 29 (c) notwithstanding the Mining Act 1978 or the
30 LAA, the appropriate authority or
31 instrumentality of the State shall obtain the
32 consent of the Minister to the form and
33 substance of the Special Advance Tenure
34 prior to its grant (which for the avoidance
35 of doubt neither the State nor the Minister
36 is obliged to cause) to the Company; and

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

s. 18

1 or interfere with the activities of the
2 Company under this Agreement; and
3 (ii) on reasonable terms and conditions allow
4 access for the construction and operation of
5 such crossings and associated
6 infrastructure,
7 provided that in forming his opinion under this
8 clause, the Minister must consult with the
9 Company.".

2

6

7

13

14

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

5

6

**Part 6 — *Iron Ore (Yandicoogina) Agreement*
Act 1996 amended**

19. Act amended

This Part amends the *Iron Ore (Yandicoogina) Agreement Act 1996*.

20. Section 3 amended

(1) In section 3 insert in alphabetical order:

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

(2) In section 3 in the definition of *Agreement* delete “Agreement;”
and insert:

Agreement and the Second Variation Agreement;

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

Schedule 2;

21. Section 4 amended

After section 4(2A) insert:

(2B) The Second Variation Agreement is ratified.

s. 22

22. Schedule 3 inserted

After Schedule 2 insert:

Schedule 3 — Second Variation Agreement

[s. 3]

2011

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

AND

HAMERSLEY IRON-YANDI PTY. LIMITED

ACN 009 181 793

AND

HAMERSLEY IRON PTY. LIMITED

ACN 004 558 276

**IRON ORE (YANDICOOGINA) AGREEMENT 1996
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 **HAMERSLEY IRON-YANDI PTY. LIMITED** ACN 009 181 793 of Level
10 22, Central Park, 152-158 St Georges Terrace, Perth, Western Australia
11 (**Company**)

12 **AND**

13 **HAMERSLEY IRON PTY. LIMITED** ACN 004 558 276 of Level 22,
14 Central Park, 152-158 St Georges Terrace, Perth, Western Australia
15 (**Hamersley**).

16

17 **RECITALS:**

18 A. The State, the Company and Hamersley are the parties to the
19 agreement dated 22 October 1996 ratified by and scheduled to the
20 *Iron Ore (Yandicoogina) Agreement Act 1996* 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, the Company and Hamersley 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.

s. 22

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 **"Mount Bruce Agreement"** means the agreement ratified by and
8 scheduled to the *Iron Ore (Mount Bruce) Agreement Act 1972*, as
9 from time to time added to, varied or amended;

10 **"Mount Bruce Agreement Minister"** means the Minister in the
11 Government of the State for the time being responsible for the *Iron*
12 *Ore (Mount Bruce) Agreement Act 1972*;

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, the Company and Hamersley comes into operation;

19 **"Special Advance Tenure"** means:

20 (a) a miscellaneous licence or general purpose lease requested
21 under clause 21(2b) to be granted to the Company under the
22 Mining Act; or

23 (b) an easement or a lease requested under clause 21(2b) to be
24 granted to the Company under the LAA,

25 and as the context requires such tenure if granted;

26 (2) in clause 2(1) by inserting after "and the regulations for the time being
27 in force thereunder" in paragraph (f) "(and for the avoidance of doubt
28 this principle, subject to the context and without limitation to its
29 application to other Acts, may apply in respect of references to the
30 Land Act notwithstanding references in this Agreement to the LAA)";

2 "Community development plan

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;

12 (c) contribution to any community projects,
13 town services or facilities; and

15 (2) The Company acknowledges the need for community
16 and social benefits flowing from this Agreement.

(a) it shall prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with its activities under this Agreement; and

(4) The Minister shall within 2 months after receipt of a plan submitted under subclause (3)(b), either notify the Company that the Minister approves the plan as submitted or notify the Company of changes which the Minister requires be made to the plan. If the Company is unwilling to accept the changes which the Minister requires it shall notify the Minister to

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

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- 1 (9) During the currency of this Agreement, the Company
2 shall implement the plan approved or deemed to be
3 approved by the Minister under this clause.
- 4 **Local participation plan**
- 5 9D. (1) In this clause, the term "local industry participation
6 benefits" means:
- 7 (a) the use and training of labour available
8 within the said State;
- 9 (b) the use of the services of engineers,
10 surveyors, architects and other professional
11 consultants, experts, specialists, project
12 managers and contractors available within
13 the said State; and
- 14 (c) the procurement of works, materials, plant,
15 equipment and supplies from Western
16 Australian suppliers, manufacturers and
17 contractors.
- 18 (2) The Company acknowledges the need for local
19 industry participation benefits flowing from this
20 Agreement.
- 21 (3) The Company agrees that it shall, not later than
22 3 months after the second variation date, prepare and
23 provide to the Minister a plan which contains:
- 24 (a) a clear statement on the strategies which the
25 Company will use, and require a third party
26 as referred to in subclause (7) to use, to
27 maximise the uses and procurement
28 referred to in subclause (1);
- 29 (b) detailed information on the procurement
30 practices the Company will adopt, and
31 require a third party as referred to in
32 subclause (7) to adopt, in calling for tenders
33 and letting contracts for works, materials,
34 plant, equipment and supplies stages in
35 relation to a proposed development and

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

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- 1 (5) At least 6 months before the anticipated submission
2 of proposals relating to a proposed development
3 pursuant to any of clauses 9, 10, 12C or 23, the
4 Company must, unless the Minister otherwise
5 requires, give to the Minister information about the
6 implementation of the plan provided under this clause
7 in relation to the proposed development. This
8 obligation operates in relation to all proposals
9 submitted on or after the date that is 7 months after
10 the date when a plan is first provided under this
11 clause.
- 12 (6) During the currency of this Agreement the Company
13 shall implement the plan provided under this clause.
- 14 (7) The Company shall:
- 15 (a) in every contract entered into with a third
16 party where the third party has an
17 obligation or right to procure the supply of
18 services, labour, works, materials, plant,
19 equipment or supplies for or in connection
20 with a proposed development, ensure that
21 the contract contains appropriate provisions
22 requiring the third party to undertake
23 procurement activities in accordance with
24 the plan provided under this clause; and
- 25 (b) use reasonable endeavours to ensure that
26 the third party complies with those
27 provisions.";
- 28 (4) in clause 12(2) by deleting subparagraph (ii) and substituting the
29 following subparagraph:
- 30 "(ii) on fine ore and on pisolite fine ore sold or shipped separately
31 as such at the rate of:
- 32 (A) 5.625% of the f.o.b. value, for ore shipped prior to or
33 on 30 June 2012;

- 1 (B) 6.5% of the f.o.b. value, for ore shipped during the
2 period from 1 July 2012 to 30 June 2013 (inclusive of
3 both dates); and
- 4 (C) 7.5% of the f.o.b. value, for ore shipped on or after
5 1 July 2013;"
- 6 (5) in clause 12C by:
- 7 (a) deleting in subclause (1) "'LAA" means the *Land*
8 *Administration Act 1997* (WA);";
- 9 (b) inserting after subclause (3)(c) the following new paragraph:
- 10 "(d) Without limiting subclause (9), the Minister may
11 waive the requirement under this clause for the
12 Company to obtain and to furnish the consent of a
13 title holder if the title holder has refused to give the
14 required consent and the Minister is satisfied that:
- 15 (i) the title holder's affected land is or was
16 subject to a miscellaneous licence granted
17 under the Mining Act 1978 for the purpose
18 of a railway to be constructed and operated
19 in accordance with this Agreement; and
- 20 (ii) in the Minister's opinion, the title holder's
21 refusal to give the required consent is not
22 reasonable in all the circumstances
23 including having regard to:
- 24 (A) the rights of the Company in
25 relation to the affected land as the
26 holders of the miscellaneous
27 licence, relative to their rights as
28 the holders of the sought Special
29 Railway Licence or Lateral Access
30 Road Licence (as the case may be);
31 and
- 32 (B) the terms of any agreement
33 between the Company and the title
34 holder.";

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- 1 (c) deleting in subclause (4)(a) the comma after "the provisions
2 of this Agreement" and substituting "and";
- 3 (d) in subclause (7):
- 4 (i) deleting all words in paragraph (c) after "at the date
5 of such inclusion"; and
- 6 (ii) inserting after paragraph (k) the following new
7 paragraph:
- 8 "(l) The provisions of clause 20(2a) shall apply
9 mutatis mutandis to any Railway or Railway
10 spur line constructed pursuant to this clause."
- 11 (6) in clause 20 by:
- 12 (a) in subclause (2), deleting all words in the subclause after "and
13 other railways which now exist"; and
- 14 (b) inserting after subclause (2) the following new subclause:
- 15 **"Crossings over Railway**
- 16 (2a) For the purposes of livestock and infrastructure such
17 as roads, railways, conveyors, pipelines, transmission
18 lines and other utilities proposed to cross the land the
19 subject of the railway the Company shall:
- 20 (a) if applicable, give its consent to, or
21 otherwise facilitate the grant by the State or
22 any agency, instrumentality or other
23 authority of the State of any lease, licence
24 or other title over land the subject of the
25 railway so long as such grant does not in
26 the Minister's opinion unduly prejudice or
27 interfere with the activities of the Company
28 under this Agreement; and
- 29 (b) on reasonable terms and conditions allow
30 access for the construction and operation of

1 such crossings and associated
2 infrastructure,

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

6 (7) at the end of clause 21(1) by inserting the following new paragraph:

7 "Notwithstanding clause 12A(2)(b)(iv), detailed proposals may refer
8 to activities on tenure which is proposed to be granted pursuant to this
9 subclause (1) as if that tenure was granted pursuant to this Agreement
10 (but this does not limit the powers or discretions of the Minister under
11 this Agreement or the Minister responsible for the administration of
12 any relevant Act with respect to the grant of the tenure).";

(8) in the last paragraph of clause 21(2) by inserting "and subclauses (2a) and (2b)" after "The provisions of this subclause";

15 (9) in clause 21 by:

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

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

(2a) (a) The Minister may at the request of the Company from time to time made during the continuance of this Agreement approve Eligible Existing Tenure becoming held pursuant to this Agreement on such conditions as the Minister sees fit (including, without limitation and notwithstanding the Mining Act and the LAA, as to the surrender of land, the submission of detailed proposals and the variation of the terms and conditions of the Eligible Existing Tenure (including for the Eligible Existing Tenure to be held pursuant to this Agreement and for the more efficient use of the Relevant Land))

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

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- 1 of doubt neither the State nor the Minister
2 is obliged to cause) to the Company; and
- 3 (d) if the Company does not submit detailed
4 proposals relating to construction of the
5 relevant works installations or facilities on
6 the Relevant Land within 24 months after
7 the date of the Minister's approval or such
8 later time subsequently allowed by the
9 Minister, or if submitted the Minister does
10 not approve such detailed proposals, the
11 Special Advance Tenure (if then granted)
12 shall be surrendered at the request of the
13 Minister.
- 14 (2c) The decisions of the Minister under
15 subclauses (2a) and (2b) shall not be referable to
16 arbitration and any approval of the Minister under
17 this clause shall not in any way limit, prejudice or
18 otherwise affect the exercise by the Minister of
19 the Minister's powers, or the performance of the
20 Minister's obligations, under this Agreement or
21 otherwise under the laws from time to time of the
22 said State.";
- 23 (b) in the renumbered subclause (2d), deleting "subclause (1)"
24 and substituting "subclauses (1), (2a) and (2b)"; and
- 25 (10) in clause 23 by:
- 26 (a) in the first line of subclause (2), deleting "The" and
27 substituting "Subject to subclause (8) the"; and
- 28 (b) inserting after subclause (7) the following new subclause:
- 29 **"Capacity to defer obligations of the Company under**
30 **subclause (2) if "alternative project" is approved under**
31 **the Mount Bruce Agreement**
- 32 (8) (a) Subject to paragraph (b), in the event that
33 the Mount Bruce Agreement Minister
34 approves in accordance with clause 41A(5)
35 of the Mount Bruce Agreement that the

- 1 carrying out of an alternative project (as
2 defined in clause 41A(6) of that agreement)
3 be accepted by the State in lieu of all of the
4 obligations of the Company (as defined in
5 that agreement) in respect of the
6 establishment of plant for the production of
7 steel pursuant to clause 41A of that
8 agreement, the Minister may agree
9 (including prior to and conditional upon
10 such approval being given by the Mount
11 Bruce Agreement Minister) to postpone the
12 obligation of the Company to submit
13 detailed proposals as contemplated by
14 subclause (2) for a maximum period of
15 10 years from the third anniversary of the
16 m.a. date immediately following the date on
17 which the Mount Bruce Agreement
18 Minister so approves.
- 19 (b) If any approved alternative project referred
20 to paragraph (a) is not implemented in
21 accordance with the Mount Bruce
22 Agreement Minister's approval and the
23 default is not remedied in accordance with
24 clause 21 of the Mount Bruce Agreement,
25 the Company shall (subject to
26 subclause (3)) submit detailed proposals in
27 accordance with subclause (2) within
28 12 months of the Mount Bruce Agreement
29 Minister notifying the Company (as defined
30 in the Mount Bruce Agreement) of its
31 failure to remedy the default.
- 32 (c) For the purposes of this clause:
- 33 (i) the date of expiry of any period of
34 postponement contemplated by
35 paragraph (a) of this subclause shall
36 be deemed to be the next third
37 anniversary of the m.a. date; and

Part 6 Iron Ore (Yandicoogina) Agreement Act 1996 amended

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1 **THE COMMON SEAL** of)
2 **HAMERSLEY IRON PTY. LIMITED**) [C.S.]
3 ACN 004 558 276 was hereunto affixed)
4 by authority of the Directors in the presence of:)

5

[Signature]

Robert Paul Shannon

Director

[Signature]

Helen Fernihough

Secretary

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