

Robe River Mining Co. Pty Limited  
Mitsui Iron Ore Development Pty Limited  
North Mining Limited  
Cape Lambert Iron Associates  
Pannawonica Iron Associates  
City of Karratha

## Sub-Lease – Wickham Community Facilities

de Witt Location 68, Karratha – Lot 780 on Deposited Plan 31274

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**Sub-Lease dated**

2017

**Between**

- 1        **Robe River Mining Co. Pty Limited** (ABN 71 008 694 246);  
**Mitsui Iron Ore Development Pty Limited** (ABN 85 008 734 361);  
**North Mining Limited** (ABN 78 000 081 434);  
**Cape Lambert Iron Associates**; and  
**Pannawonica Iron Associates**,  
each of, c/o Robe River Mining Co. Pty Limited of Level 22, Central Park, 152-158 St  
Georges Terrace, Perth, Western Australia 6000 (together, the **Sub-Lessor**).
- 2        **City of Karratha** (ABN 83 812 049 708), a body corporate established under section 2.5 of  
the *Local Government Act 1995* (WA), of Welcome Road, Karratha, Western Australia 6714  
(**Sub-Lessee**).

**Recitals**

- A        The Crown has leased certain land to the Sub-Lessor under the Crown Lease, including the  
Land, and the Sub-Lessor is, pursuant to the Crown Lease, the primary interest holder and  
registered lessee of the Land.
- B        Under the Crown Lease, the Sub-Lessor committed to the construction and development of a  
townsite on the Land in accordance with the Approved Proposals.
- C        Over time, the Sub-Lessor has developed the Land pursuant to the Approved Proposals and  
as required by the Crown Lease, including by constructing the Existing Improvements.
- D        Pursuant to the Crown Lease, the Sub-Lessor may sublet the Land to persons engaged in, or  
associated with, the operations or activities of the Sub-Lessor (as lessee) under the Crown  
Lease.
- E        The Sub-Lessee is engaged in, or associated with, the operations or activities of the Sub-  
Lessor (as lessee) under the Crown Lease, and has operational management responsibility  
for day to day provision of services and facility management for the Premises developed on  
the Land..
- F        Subject to obtaining the necessary approvals, the Sub-Lessor has agreed to sub-lease the  
Premises to the Sub-Lessee for the Permitted Use on the terms and conditions of this Sub-  
Lease.

**The parties covenant and agree as follows.**

**1 Definitions and Interpretation**

**1.1 Definitions**

In this Sub-Lease unless the contrary intention appears the following words have the following meanings:

**Agents** means, in respect of a party to this Sub-Lease, that party's employees, agents, contractors, invitees, licencees, and any other person permitted by that party to access, or undertake activities on, the Premises, and any other person acting with the authority of that party.

**Agreement Minister** means the Minister in the Government of Western Australia for the time being responsible (under whatsoever title) for administering the Robe State Agreement, and includes the successors in the office of that Minister.

**Approved Proposals** means the proposals approved by the Agreement Minister under the Robe State Agreement in relation to the Crown Lease, and includes all additional proposals and variations of proposals approved by the Agreement Minister under the Robe State Agreement in relation to the Sub-Lessor's use of the Land (as lessee) under the Crown Lease.

**Authority** means:

- (a) a government or government (or semi-government) department, board, instrumentality, agency, authority or other body (whether of the Commonwealth, State of Western Australia, local government or otherwise); and
- (b) a governmental, semi-governmental or judicial person (whether of the Commonwealth, State of Western Australia, local government or otherwise).

**Business Day** means any day except a Saturday, Sunday or public holiday in Western Australia.

**Cape Lambert Iron Associates** means the partnership carried on between Nippon Steel & Sumitomo Metal Australia Pty Ltd (ACN 001 445 049), Nippon Steel & Sumikin Resources Australia Pty Ltd (ACN 001 444 604) and Mitsui Iron Ore Development Pty Ltd (ACN 008 734 361).

**Commencement Date** means [insert date].

**Confidential Information** means the terms of this Sub-Lease and any information in relation to a party's operations which is disclosed to another party in connection with this Sub-Lease, or the subject matter of this Sub-Lease in any form, including orally, in writing or on a computer disk or other media device and whether marked or otherwise indicated as being confidential or not and whether incorporated into other materials and information or not, and includes any copy (in whatever form) of such information, whether or not it is in the same form as that in which it was disclosed.

**Contamination** is the state of being contaminated as that term is defined in the *Contaminated Sites Act 2003* (WA).

**Crown** means the Crown in the right of the State of Western Australia.

**Crown Lease** means Crown Lease I195322L.

**Encumbrances** means all:

- (a) limitations, interests, encumbrances and notifications specified under the heading of 'Limitations, Interests, Encumbrances and Notifications' in schedule 2 of the Certificate of Crown Land Title;

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- (b) conditions, reservations, exceptions, rights of way and easements noted on the Crown Lease; and
- (c) rights of access over the Land granted to third parties, including any such rights granted under this Sub-Lease.

**Environmental Harm** includes environmental harm, material environmental harm and serious environmental harm as those terms are defined in the *Environmental Protection Act 1986* (WA).

**Environmental Law** means all planning, environmental, Contamination or Pollution laws applicable to the Premises, and any regulations, orders, directions, ordinances or all requirements, permission, permits or licences issued thereunder.

**Environmental Notice** means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from any Governmental Agency, whether written or oral and in connection with any Environmental Law.

**Existing Improvements** means all of the infrastructure and buildings on the Land the subject of this Sub-Lease in the nature of fixtures, that were constructed or developed by or on behalf of the Sub-Lessor in accordance with the Crown Lease, Approved Proposals and/or Robe State Agreement, and that are existing, either wholly or partially as at the Commencement Date, but excluding the Utilities Infrastructure.

**Expert** means, in relation to a dispute under this Sub-Lease, a person who:

- (a) has reasonable qualifications and commercial and practical experience in the area of the dispute;
- (b) has no interest or duty which conflicts or may conflict with his or her function as an Expert (unless all parties to the dispute waive this requirement); and
- (c) is not a present (or within the previous five years a past) employee, contractor or consultant of any of the parties or their respective Related Bodies Corporate.

**Expiry Date** means 30 October 2033, being the day prior to the expiration of the term of the Crown Lease that is current as at the Commencement Date.

(d)

**Governmental Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Head Lessor** means the lessor under the Crown Lease.

**Land** means the natural surface and so much as is below the natural surface to a depth of 40 feet, of the whole of the land contained in Lot 780 on Deposited Plan 31274, a map of which is contained in Schedule 1.

**Land Administration Act** means the *Land Administration Act 1997* (WA).

**Law** means the common law, all present and future Acts of the Parliament of the Commonwealth or of the Parliament of the State of Western Australia, regulations, codes, ordinances, local laws, by-laws, orders, judgments, licences, authorisations and rules and requirements of all Authorities.

**Liquor Laws** means the Laws that apply in the State of Western Australia relating to the sale, supply and consumption of liquor and the use of premises on which liquor is sold, and any other matters in connection with those things.

**Minister** means the Minister for Lands, a body corporate under section 7 of the Land Administration Act.

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**New Improvements** means all of the infrastructure and buildings in the nature of fixtures that are constructed or developed on the Land by or on behalf of the Sub-Lessee.

**Pannawonica Iron Associates** means the partnership carried on between Nippon Steel & Sumitomo Metal Australia Pty Ltd (ACN 001 445 049) and Nippon Steel & Sumikin Resources Australia Pty Ltd (ACN 001 444 604).

**Permitted Use** means the construction, development, maintenance, use and operation of the Premises as a community facility, and consistent with the terms of the Crown Lease..

**Pollution** means anything that is pollution within the meaning of that term as defined in the *Environmental Protection Act 1986* (WA) that is not authorised under any Law.

**Premises** means the Land and the Existing Improvements, and upon expiry or determination of the Term, includes any New Improvements.

**Related Body Corporate** has the meaning given in the *Corporations Act 2001* (Cth), but on the basis that, in the case of any member of the Rio Tinto Group, the term extends to include any other member of the Rio Tinto Group.

**Rent** means the sum of \$1.

**Rio Tinto Group** means the dual listed company structure incorporating Rio Tinto plc and Rio Tinto Limited and including:

- (a) any Related Body Corporate of Rio Tinto plc or Rio Tinto Ltd;
- (b) any unincorporated joint venture in which Rio Tinto plc or Rio Tinto Ltd or any Related Body Corporate of Rio Tinto plc or Rio Tinto Ltd has a participating interest of not less than 50%; and
- (c) any body corporate or unincorporated joint venture managed by Rio Tinto plc or Rio Tinto Ltd or any Related Body Corporate of Rio Tinto plc or Rio Tinto Ltd.

**Rio Tinto Ltd** means Rio Tinto Limited (ACN 004 458 404) having its registered office at 120 Collins Street, Melbourne, Victoria, 3000.

**Rio Tinto plc** means Rio Tinto plc (Company No. 719885) having its registered office at 2 Eastbourne Terrace, London W2 6LG, United Kingdom.

**Robe State Agreement** means the agreement ratified by, and scheduled to the *Iron Ore (Robe River) Agreement Act 1964* (WA), as varied from time to time.

**Sub-Lease** means this sub-lease including the Schedules.

**Sub-Lessee's Covenants** means the covenants contained in or implied by this Sub-Lease to be performed by the Sub-Lessee.

**Sub-Lessee's Cyclone Procedure Plan** means the document outlining the Sub-Lessee's procedure for responding to cyclones at Wickham as agreed by the parties and amended from time to time in accordance with this Sub-Lease.

**Sub-Lessor's Powers** means the rights powers and remedies contained in or implied by this Sub-Lease or at Law exercisable by the Sub-Lessor.

**Term** means the term of this Sub-Lease commencing on the Commencement Date and ending on the Expiry Date unless terminated prior to that date.

**TLA Agency** means the agency or department responsible for the registration of dealings relating to land in the register kept pursuant to the *Transfer of Land Act 1893* (WA).

**Utilities Infrastructure** means all the utilities infrastructure and facilities on the Premises existing as at the Commencement Date and from time to time during the Term, including without

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limitation, infrastructure in connection with power supply, water supply, gas supply, telecommunications, drainage, sewerage and roads.

### 1.2 Interpretation

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Sub-Lease, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document (including this Sub-Lease) or agreement, or a provision of a document (including this Sub-Lease) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a Party to this Sub-Lease or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in Law of the person; and
  - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A reference to dollars or \$ is to an amount in Australian currency.
- (h) A reference to an annexure, schedule or attachment is a reference to an annexure, schedule or attachment to this Sub-Lease and all annexures, schedules and attachments form part of this Sub-Lease, and the terms of any annexure, schedule and attachment are binding on the Parties as if those terms were set out in full in this Sub-Lease.
- (i) The covenants on the part of the Sub-Lessor bind only the lessee from time to time of the Crown Lease.

### 1.3 Business Days

Where the day or last day for doing something under this Sub-Lease is not a Business Day, the day or last day for doing that thing is deemed to be the next following Business Day.

### 1.4 Sub-Lessor

- (a) Robe River Mining Co Pty Ltd (**RRMC**) in its capacity as manager and agent of the joint venture known as the Robe River Iron Associates acts in all respects in connection with this Sub-Lease for and on behalf of the other persons comprising the Sub-Lessor. All consents, reports, communications, notices, approvals or other action to be given to the



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Sub-Lessor under this Sub-Lease will be made, received or taken by RRM in that capacity, and in dealing with the Sub-Lessor, the Sub-Lessee must only deal with RRM in that capacity.

- (b) Any action that must be taken or thing that must be done by the Sub-Lessor under this Sub-Lease, may, at the election of RRM, be done or taken by any of the RRM's Related Bodies Corporate, and in which case, that action or thing will be deemed to have been done or taken by the Sub-Lessor.

## 2 Precedence of Documents

This Sub-Lease is to be read in conjunction with the Crown Lease. If there is any conflict between this Sub-Lease and the Crown Lease, then the Crown Lease shall take precedence.

## 3 Sub-Lease Framework

### 3.1 Sub-Lessee acknowledgements

The Sub-Lessee acknowledges that:

- (a) this Sub-Lease is granted in accordance with, and is subject to, the provisions of the Robe State Agreement and the Crown Lease;
- (b) the provisions of this Sub-Lease do not in any way affect, alter or derogate from:
  - (i) the Agreement Minister's rights and powers conferred under the Robe State Agreement, its ratifying Act and the Crown Lease; and
  - (ii) the Minister's rights and powers conferred under the Land Administration Act and the Crown Lease; and
- (c) in respect of the Land, all minerals, petroleum, geothermal energy resources and geothermal energy are reserved to the Crown.

### 3.2 Transfer of Land Act not applicable

The provisions of the *Transfer of Land Act 1893* (WA) do not apply to this Sub-Lease and are not to be implied in this Sub-Lease.

### 3.3 Approval by Sub-Lessor, Agreement Minister or Minister

In any case under this Sub-Lease where the doing or executing of any act, matter or thing by the Sub-Lessee is dependent upon the approval or consent of the Sub-Lessor, Head Lessor, Agreement Minister or Minister or all of them (as the case requires), such approval or consent will not be effective unless it is given in writing.

### 3.4 Sub-Lease conditional

- (a) The parties acknowledge that this Sub-Lease and the obligations of the parties (other than clauses 1, 2, 8, 9, 11, 15, 17, 18, 19, 20, 21) are subject to and conditional upon the Agreement Minister and Minister consenting to this Sub-Lease of the Premises.
- (b) Within 5 Business Days of the condition in clause 3.4(a) being satisfied, the Sub-Lessor must notify the Sub-Lessee that the condition has been satisfied.
- (c) If the condition in clause 3.4(a) is not capable of being satisfied or has not been satisfied or waived by the Sub-Lessor by [insert date that is 1 day before the Commencement Date], then this Sub-Lease will automatically terminate on that date and no party will have any further obligation to any other party other than any obligation which has accrued prior to the date of termination, or which is expressed to continue in effect after termination

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(including the clauses referred to in clause 3.4(a) above).

## **4 Grant of Sub-Lease**

### **4.1 Sub-Lease**

The Sub-Lessor sub-leases to the Sub-Lessee and the Sub-Lessee takes on the sub-lease of the Premises for the Term subject to:

- (a) the terms and conditions of this Sub-Lease; and
- (b) the Encumbrances and any other encumbrances affecting the Premises that are imposed by Law.

### **4.2 Reservations**

Without limiting any other clause of this Sub-Lease, the Sub-Lessor reserves the right:

- (a) to install, maintain, use, repair, alter and replace the Utilities Infrastructure leading through the Premises and to pass and run gas, water, sewerage, heat, oil, electricity and other power through the Utilities Infrastructure and to enter and temporarily remain upon the Premises for these purposes with any necessary plant, equipment and personnel;
- (b) to mortgage or charge the whole or any part of the Premises, and to discharge the same; and
- (c) to accept the surrender of easements and restrictive covenants and other encumbrances over the whole or any part of the Premises.

### **4.3 Option to renew**

- (a) If the term of the Crown Lease is renewed or extended, then subject to clause 4.3(b), the Sub-Lessee will have the option to renew this Sub-Lease for a further term, not exceeding the term of the renewed or extended Crown Lease (less one day). To exercise its option to renew this Sub-Lease, the Sub-Lessee must give notice in writing to the Sub-Lessor of its desire to renew the Sub-Lease, at least 3 months but not earlier than 6 months prior to the Expiry Date.
- (b) If:
  - (i) the Sub-Lessee gives notice in accordance with clause 4.3(a);
  - (ii) there is no subsisting default by the Sub-Lessee of this Sub-Lease at the date of service of the notice and at the date of commencement of the further term; and
  - (iii) as at the date of commencement of the further term, the Crown Lease (as renewed or extended) is on foot and permits the grant of a sub-lease,the Sub-Lessor must grant to the Sub-Lessee a further term at the Rent and on the terms and conditions of this Sub-Lease.

### **4.4 Quiet enjoyment**

Subject to this Sub-Lease, in particular the rights reserved to the Sub-Lessor and its Related Bodies Corporate, and the Sub-Lessee observing and performing the Sub-Lessee's Covenants, the Sub-Lessor covenants with the Sub-Lessee that the Sub-Lessee may peaceably possess and enjoy the Premises during the Term without any interruption or disturbance from the Sub-Lessor or any other person or persons lawfully claiming by from or under the Sub-Lessor.

#### **4.5 Entry by Head Lessor and others**

The Sub-Lessee shall permit the Head Lessor, the Agreement Minister and other Ministers of the Crown and the State of Western Australia, by its or their agents or servants with or without workmen vehicles plant machinery and equipment at any time, and from time to time, to enter onto the Premises at any time in exercise of the rights to enter reserved to the Head Lessor, the Agreement Minister and other Ministers of the Crown and the State of Western Australia under the Crown Lease and/or the Robe State Agreement.

#### **4.6 Exclusion of warranties**

- (a) The Sub-Lessee acknowledges having inspected the Premises, and that in entering into this Sub-Lease, the Sub-Lessee has not relied on any statement, representation or warranty (other than those implied by or deemed to have been given by Law and which cannot be contracted out of), by or on behalf of the Sub-Lessor, the Agreement Minister or the Minister, whether express or implied, other than the statements, representations and warranties expressly set out in this Sub-Lease.
- (b) The Sub-Lessor does not represent or warrant:
  - (i) that the Premises is suitable for the purpose of the Permitted Use; or
  - (ii) the existence or non-existence of Contamination, Pollution or Environmental Harm in relation to the Premises.

#### **4.7 Termination of Crown Lease**

The Sub-Lessee agrees that if the Crown Lease is terminated at any time prior to the determination of the Term, then this Sub-Lease shall be deemed to have terminated on the date before the date of such expiration or termination, and in such case the Sub-Lessee shall forthwith yield up the Premises to the Sub-Lessor in a condition consistent with the due performance of the Sub-Lessee's Covenants and the Sub-Lessee shall have no claim of any kind against Head Lessor or the Sub-Lessor as the case may be, for damages, compensation or otherwise arising from such termination.

#### **4.8 Assignment and Subletting**

- (a) Subject to paragraph (b), the Sub-Lessee must not assign, encumber, sublet, mortgage, charge or otherwise part with the possession of, or dispose of, the Premises or the benefit of this Sub-Lease without the prior written consent of the Sub-Lessor, Agreement Minister and Minister, which consent may be withheld or given subject to conditions. The provisions of Sections 80 and 82 of the *Property Law Act 1969* (WA) are excluded from this Sub-Lease.
- (b) The Sub-Lessee may:
  - (i) subject to paragraph (ii), without the prior written consent of the Sub-Lessor, Agreement Minister and Minister, grant non-exclusive licences to third parties to enable any part(s) of the Premises to be operated or managed by such third parties; and
  - (ii) with the prior written consent of the Sub-Lessor, grant an exclusive licence to a third party in respect of that part of the Premises comprising the Wickham Sportsman's Bar and Bistro to enable that business to be operated and managed by the third party in accordance with all relevant legislative and regulatory requirements and licenses such as Liquor Laws,

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provided that the terms of that licence are not inconsistent with the obligations of the Sub-Lessee under this Sub-Lease.

- (c) The Sub-Lessee will remain liable for the performance and observance of the Sub-Lessee's Covenants despite any assignment, sub-letting or other parting with all or any part of the Premises or any interest in the Premises, including in respect of any licence(s) granted under paragraph (b).

## 5 Rent and Other Payments

### 5.1 Rent

In consideration for the grant of the Sub-Lease of the Premises by the Sub-Lessor in accordance with the terms of this Sub-Lease, the Sub-Lessee will pay the Rent to the Sub-Lessor, which will be deemed to have been paid upon execution of this Sub-Lease.

### 5.2 Other payments

The Sub-Lessee must duly and punctually pay and discharge throughout the Term, all costs and charges (including GST levied on the same) in respect of utilities and services used in, or charged against, the Premises when such accounts become due and payable, including without limitation, costs and charges for water and electricity consumption, meter installation, telephone connection and rents, waste disposal and other services.

## 6 Use, Maintenance and Development of the Premises

### 6.1 Permitted Use

The Sub-Lessee must not occupy or use, or cause or permit the Premises or any part of it to be occupied or used, for any purpose other than the Permitted Use..

### 6.2 Repair and maintenance of the Premises

- (a) The Sub-Lessee must:
  - (i) keep and maintain the Premises in good and safe repair and condition consistent with the Permitted Use, including by complying with all reasonable conditions imposed by the Sub-Lessors, or otherwise on terms agreed between the Sub-Lessor and Sub-Lessee, from time to time;
  - (ii) keep and maintain the Premises in a clean and tidy state and free from litter and hazards;
  - (iii) keep and maintain the Premises in accordance with all relevant Laws;
  - (iv) treat and maintain the Premises so as to give an aesthetically pleasing appearance to a reasonable standard consistent with the Permitted Use; and
  - (v) make good any damage caused to the Premises by the Sub-Lessee or by the Sub-Lessee's employees, agents, contractors, invitees or licensees, and otherwise on terms as agreed between the Sub-Lessor and Sub-Lessee,to ensure that the Premises operates at its optimum level and achieves its full useful life.
- (b) The Sub-Lessor may inspect the Premises on reasonable notice given to the Sub-Lessee to ensure that the Sub-Lessee is complying with its obligations under clause 6.2(a).

### 6.3 Construction of New Improvements

- (a) The Sub-Lessee may undertake further development of the Premises during the Term consistent with the Permitted Use, including by constructing New Improvements on the

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Land, provided that the Sub-Lessor, and if applicable the Agreement Minister and Minister, provide their prior written consent to such development.

- (b) All of the Sub-Lessee's obligations under this Sub-Lease that apply to the Premises, shall be deemed to apply to the New Improvements, and the Sub-Lessee agrees that it will at all times construct, operate, maintain and manage all New Improvements consistent with the Sub-Lessee's obligations in respect of the Premises under this Sub-Lease.

## **7 Sub-Lessee's General Obligations**

### **7.1 Compliance with Crown Lease etc**

- (a) The Sub-Lessee agrees that to the extent that the terms, covenants and conditions of the Crown Lease, the Robe State Agreement and the Approved Proposals are applicable to the Premises, those terms, covenants, conditions and provisions which apply to and bind the Sub-Lessor (as lessee) under the Crown Lease or proponent under the Robe State Agreement (as applicable), shall apply to and bind the Sub-Lessee as if those terms, covenants, conditions and provisions were repeated in full in this Sub-Lease.
- (b) The Sub-Lessee agrees to indemnify and keep indemnified the Sub-Lessor, Head Lessor, Agreement Minister and Minister against all actions claims demands notices losses damages costs and expenses incurred by any of them as a result of any breach by the Sub-Lessee of the terms, covenants and conditions of the Crown Lease, the Robe State Agreement and the Approved Proposals.

### **7.2 Compliance with Directions**

The Sub-Lessee must comply with any lawful directions of any Authority having jurisdiction over either or both of the Crown Lease and the Premises.

### **7.3 Compliance with Laws**

The Sub-Lessee must at all times during the Term:

- (a) comply in all respects with the provisions of all Laws in respect of, or affecting the Premises and/or the operations of the Sub-Lessee on the Premises; and
- (b) execute all requisitions and works and do and perform all such acts and things upon and to the Premises or any part of them as are, or may reasonably be, required or directed to be executed or done from time to time by any Authority.

### **7.4 Offensive and nuisance activities**

The Sub-Lessee must not carry on or permit any person to carry on upon the Premises, any illegal, noxious or offensive act trade business occupation or calling or to do any act matter or thing whatever which may cause nuisance damage or disturbance to the Sub-Lessor or the occupier of any neighbouring land.

### **7.5 Removal of materials**

- (a) The Sub-Lessee must not extract or excavate any sand, stone, gravel, clay, loam, shell or similar substance, or permit any other person to undertake any such action on the Premises without the prior approval of the Sub-Lessor, the Agreement Minister, Minister and any other Governmental Agency that would ordinarily be consulted, and subject to any such conditions attaching to those approvals.
- (b) Clause 7.5(a) does not apply to any removal, digging up or excavation as may be necessary to construct or undertake any improvement or alteration on the Premises that

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is authorised by or under this Sub-Lease, provided that any such removal, digging up or excavation is undertaken in accordance with Law.

### 7.6 Dangerous or flammable substances

- (a) The Sub-Lessee must take all necessary precautions and appropriate action to avoid and prevent the uncontrollable escape of petroleum or any other inherently dangerous or flammable liquid from the Premises, and in the event of any such escape (whether with or without fault or negligence on the part of the Sub-Lessee or its employees, agents, contractors, invitees or licensees) the Sub-Lessee must, at its own cost and expense, take immediate action to stop the escape and rectify and repair any injury or damage whatsoever caused, and clean up and reinstate the Premises to its former condition prior to the escape.
- (b) The Sub-Lessee must not store chemical inflammable liquids acetylene gas or alcohol volatile or explosive oils compounds or substances on the Premises except substances or fluids which are used for customary purposes incidental to the Permitted Use of the Premises and then only in quantities which are permitted by Law.

### 7.7 Fire prevention and control equipment

The Sub-Lessee must take all precautions against causing an outbreak of fire on the Premises, and must observe and comply with Laws and directions and requirements of any relevant Authority relating to fire prevention and control in or about the Premises including, but not limited to, any requirement of the Department of Fire and Emergency Services.

### 7.8 Cyclones

- (a) If a cyclone warning is issued or a cyclone is expected to impact the Premises, the Sub-Lessee must comply with the cyclone drill procedures in the Sub-Lessee's Cyclone Procedure Plan and/or otherwise as notified from time to time by the Department of Fire and Emergency Services or other relevant Authority.
- (b) The Sub-Lessee must provide the Sub-Lessor with a copy of the Sub-Lessee's Cyclone Procedure Plan prior to the execution of this Sub-Lease.
- (c) The Sub-Lessor must be consulted before the Sub-Lessee proposes any amendments to the Sub-Lessee's Cyclone Procedure Plan and must take into consideration any comments of the Sub-Lessor prior to approving any changes. The Sub-Lessor may also request reasonable amendments be made to the Sub-Lessee's Cyclone Procedure Plan and, unless the Sub-Lessee has a legitimate objection to any such amendments, the Sub-Lessee will adopt these requested amendments.
- (d) If the Sub-Lessee fails to comply with the cyclone drill procedures referred to in clauses 7.8(a) and 7.8(b), the Sub-Lessor may, but is not obliged to, take whatever steps the Sub-Lessor considers necessary to prepare for imminent cyclone. The Sub-Lessee must reimburse the Sub-Lessor within 5 Business Days of demand for any costs and expenses incurred by the Sub-Lessor due to the Sub-Lessee's failure to comply with this clause.

### 7.9 Cost of Sub-Lessee's obligations

Unless this Sub-Lease provides otherwise, anything which must be done by the Sub-Lessee under this Sub-Lease, whether or not at the request of the Sub-Lessor, Agreement Minister or Minister, must be done at the cost of the Sub-Lessee.

### **7.10 Registration of Sub-Lease**

- (a) Within 30 days of the Commencement Date, the Sub-Lessee must lodge this Sub-Lease with the TLA Agency for registration.
- (b) The Sub-Lessee must not lodge a caveat against the title to the Land or any part of the Land except a subject to claim caveat to protect the Sub-Lessee's interest under this Sub-Lease. The subject to claim caveat must be withdrawn by the Sub-Lessee at the Sub-Lessee's expense at the expiration or earlier termination of this Sub-Lease and whenever the Sub-Lessor gives written notice to the Sub-Lessee of its intention to exercise a right reserved by the Sub-Lessor under this Sub-Lease that requires the caveat to be withdrawn.

## **8 Sub-Lessee's Environmental Obligations**

- (a) The Sub-Lessee:
  - (i) must not cause or permit any Contamination, Pollution or Environmental Harm to the Premises during the Term and, for the avoidance of doubt, this includes Contamination, Pollution and Environmental Harm that manifests after the expiry of the Term but which was caused or permitted by the Sub-Lessee during the Term;
  - (ii) must, during the Term, use the Premises in a manner which complies with each Environmental Law;
  - (iii) must notify the Sub-Lessor immediately on becoming aware of:
    - (A) any Contamination, Pollution or Environmental Harm which occurs on the Premises;
    - (B) an Environmental Notice being served on the Sub-Lessee or any other person which relates to or arises from the Sub-Lessee's use of the Premises or from another's use of the Premises permitted by the Sub-Lessee during the Term; and
    - (C) the making of a complaint to any person, including but not limited to the Sub-Lessee, or the commencement of any proceedings against the Sub-Lessee relating to an alleged failure by the Sub-Lessee to comply with, observe or perform an obligation under an Environmental Law; and
  - (iv) subject to any rights of appeal, must, at the Sub-Lessee's own cost, comply with every Environmental Notice issued in respect of, arising from or related to, the Sub-Lessee's use of the Premises during the Term, whether the notice is served on the Sub-Lessor or the Sub-Lessee.
- (b) Without affecting:
  - (i) the obligations of the Sub-Lessee under this clause; or
  - (ii) limiting any right of, or indemnity in favour of, the Sub-Lessor,if any Contamination, Pollution or Environmental Harm occurs in breach of this clause 8, the Sub-Lessee must do everything necessary to minimise the effect of the Contamination, Pollution or Environmental Harm as soon as reasonably practicable, and must, in compliance with all applicable Laws, remediate any resultant damage and harm to the reasonable satisfaction of the Sub-Lessor and any relevant Authority.
- (c) The obligations of the Sub-Lessee under this clause 8 continue after the expiration or earlier determination of the Term.

## **9 Indemnity, Release and Insurance**

### **9.1 Indemnity**

- (a) The Sub-Lessee must indemnify, and keep indemnified the Sub-Lessor from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be brought, maintained or made against the Sub-Lessor in respect of:
  - (i) any loss, injury or damage of or to property of any nature or kind, including without limitation the New Improvements, Existing Improvements and Utilities Infrastructure;
  - (ii) any death or injury sustained by any person; and
  - (iii) any breach or non-compliance by the Sub-Lessor with its covenants and agreements contained in the Robe State Agreement and the Crown Lease,that is directly or indirectly during the Term caused by, arising out of, or in connection with:
  - (iv) any wrongful act or omission by the Sub-Lessee or its Agents;
  - (v) the use or occupation of the Premises by the Sub-Lessee or its Agents;
  - (vi) the Sub-Lessee's activities, operations, business or other use of any kind under this Sub-Lease;
  - (vii) the Contamination, Pollution or Environmental Harm to the Land, Premises, or of any part of the surrounding land by any matter or thing whatsoever caused or contributed to by the act, neglect or omission of the Sub-Lessee or of its Agents including the escape of petroleum or any other inherently dangerous or inflammable liquid or matter; or
  - (viii) any default by the Sub-Lessee in the due and punctual performance, observance and compliance with any of the Sub-Lessee's Covenants or obligations under this Sub-Lease otherwise than as a result of the negligence of the Sub-Lessor or its employees, agents or contractors.
- (b) The obligations of the Sub-Lessee under this clause 9.1 shall continue after the expiration or earlier determination of the Term in respect of any act, deed, matter or thing occurring before the expiration or earlier determination of the Term.

### **9.2 Release**

- (a) The Sub-Lessee:
  - (i) agrees to occupy, use and keep the Premises at the risk of the Sub-Lessee; and
  - (ii) releases, to the fullest extent permitted by law, the Sub-Lessor from any liability, claims and costs in respect of loss of or damage to the Premises or personal property of the Sub-Lessee and loss of profits and other consequential losses where such liability, claims and costs arise directly or indirectly either out of the state of the Premises or the occupation or use of the Premises by the Sub-Lessee or its Agents, except to the extent of any liability caused or contributed to by the Sub-Lessor's negligence.
- (b) The obligations of the Sub-Lessee under this clause 9.2 continue after the expiration or earlier determination of the Term in respect of any act, deed, matter or thing occurring before the expiration or earlier determination of the Term.



### 9.3 Insurance

- (a) The Sub-Lessee must effect and maintain throughout the Term:
- (i) a public risk insurance policy for an amount not less than \$100,000,000 for any one claim (or such other amount as the Sub-Lessor, Agreement Minister or Minister may reasonably require from time to time after notice to the Sub-Lessee); and
  - (ii) building and contents insurance to fully cover the replacement costs of their New Improvements; and
  - (iii) any other policy of insurance reasonably required by the Sub-Lessor,
- under which the Sub-Lessor, Agreement Minister and Minister shall during the Term be indemnified against all actions, suits, claims, demands, proceedings, losses, damages, compensation, costs, charges and expenses mentioned or referred to in this Sub-Lease to which the Sub-Lessor, Agreement Minister and Minister may be liable.
- (b) The following provisions apply to all policies of insurance required to be effected by the Sub-Lessee under this Sub-Lease.
- (i) All policies must be for such amounts and cover such risks and contain such conditions, endorsements and exclusions as are reasonable having regard to insurance commonly effected in relation to the types of business or activity carried out on the Premises and the nature of the Premises.
  - (ii) If required by the Sub-Lessor, duplicate or certified copies of the policies and all renewal certificates and endorsements slips are to be lodged by the Sub-Lessee with the Sub-Lessor as soon as possible after the policies are granted or renewed or the endorsements are made as the case may be. In addition, at the request from time to time of the Sub-Lessor the Sub-Lessee must provide to the Sub-Lessor evidence which shows that the policies remain, or a particular policy, as the case may be remains current.
  - (iii) All premiums in respect of all such policies and renewals of policies are to be paid punctually by the Sub-Lessee and not allowed to lapse.
  - (iv) The Sub-Lessee must not at any time during the Term do or bring upon the Premises, or allow to be done or brought upon the Premises, anything where any insurance relating to the Premises against damage by fire and other risks may be rendered void or voidable. If the Sub-Lessee does or brings anything onto the Premises, or allows to be done or brought anything upon the Premises, where the rate of premium on such insurance will be liable to be increased, the Sub-Lessee will obtain insurance cover for such increased risk and pay all additional premiums on the Premises (if any) required on account of the additional risk caused by the use to which the Premises are put by the Sub-Lessee.

## 10 Default

### 10.1 Default by Sub-Lessee

If:

- (a) any moneys payable by the Sub-Lessee under this Sub-Lease are not paid within 15 Business Days after becoming due and remain unpaid for 28 days after notice has been served on the Sub-Lessee by the Sub-Lessor;

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- (b) the Sub-Lessee breaches any other of the Sub-Lessee's Covenants and the breach continues for 14 days after notice has been served on the Sub-Lessee by the Sub-Lessor;
- (c) the Sub-Lessee goes into liquidation whether compulsory or voluntary (except for the purpose of amalgamation or reconstruction) or a receiver or manager is appointed;
- (d) the Sub-Lessee assigns, sub-lets or mortgages the Premises otherwise than in accordance with this Sub-Lease;
- (e) any mortgagee of the Sub-Lessee's property enters into possession of the Premises;
- (f) any execution or process is levied against the property of the Sub-Lessee; or
- (g) the Sub-Lessee abandons or vacates the Premises,

**(Event of Default)** then and in any of such cases, the Sub-Lessor may at its option at any time after that event and without any notice or demand enter and repossess the Premises and as a result of that, the Term and the estate and interest of the Sub-Lessee in the Premises will immediately determine but without prejudice to any other of the Sub-Lessor's Powers and without releasing the Sub-Lessee from liability in respect of the Sub-Lessee's Covenants.

## 10.2 Indemnities

- (a) The Sub-Lessee indemnifies the Sub-Lessor against any cost, expense, loss or other liability resulting from an Event of Default including legal costs and expenses relating to an Event of Default.
- (b) This indemnity is not affected by the Sub-Lessor accepting a repudiation of this Sub-Lease by the Sub-Lessor.

## 11 Determination of Sub-Lease

### 11.1 New Improvements

On the expiration or earlier determination of the Term, the Sub-Lessee agrees that the New Improvements shall be deemed to form part of the Premises.

### 11.2 Re-entry by Sub-Lessor

On the expiration or earlier determination of the Term, the Sub-Lessor may, without prejudice to any right of action of any party in respect of any breach, non-performance, non-observance or non-compliance with any of the Sub-Lessee's Covenants and obligations to be performed under this Sub-Lease, enter into and upon the Premises or any part of it in the name of the whole, to retake possession of the Premises as if this Sub-Lease had never been executed.

### 11.3 Yielding up

Upon the expiration or sooner determination of the Term, the Sub-Lessee must:

- (a) peaceably surrender and yield up to the Sub-Lessor the Premises to the Sub-Lessor clean, free from rubbish and in a state of repair and condition that is consistent with the Sub-Lessee's Covenants and obligations under this Sub-Lease, to the absolute satisfaction of the Sub-Lessor; and
- (b) remove any fixtures, fittings installed by the Sub-Lessee or any other Sub-Lessee property on the Premises as may be required by the Sub-Lessor on termination, and promptly make good any damage caused by that removal.

The Sub-Lessee's obligations under this clause 11.3 shall survive expiration or earlier determination of the Term.

#### **11.4 Ownership of Improvements on determination of Term**

Except as otherwise determined by the Agreement Minister, when the Term expires or determines, all Existing Improvements and New Improvements shall become and remain the property of the Sub-Lessor under the Crown Lease without the payment of any compensation or consideration to the Sub-Lessee or any other party, and free and discharged from all mortgages and other encumbrances. The Sub-Lessee shall do and execute and cause to be done and executed all such deeds, documents and other acts, matters and things as the Sub-Lessor may reasonably require to give effect to the provisions of this clause 11.4.

#### **11.5 Effect on rights or liabilities**

Termination of this Lease does not affect the rights or liabilities of the parties in relation to any cause or action accruing prior to determination.

#### **12 Holding over**

If the Sub-Lessee, with the consent of the Sub-Lessor, continues to occupy the Premises after the expiry or termination of this Sub-Lease then the Sub-Lessee shall be a monthly tenant of the Premises, and:

- (a) the monthly tenancy may be terminated by either party giving to the other at least one month's notice which may expire on any day; and
- (b) all provisions of this Sub-Lease apply to the monthly tenancy.

#### **13 Acceptance of Rent not to prejudice Sub-Lessor's right**

Demand for or acceptance of Rent by the Sub-Lessor after default by the Sub-Lessee under this Sub-Lease (other than on the grounds of non-payment of that Rent) will be without prejudice to the exercise by the Sub-Lessor of the Sub-Lessor's Powers and will not operate as an election by the Sub-Lessor either to exercise or not to exercise any of the Sub-Lessor's Powers.

#### **14 Sub-Lessor may remedy Sub-Lessee's default**

If the Sub-Lessee fails to perform the Sub-Lessee's Covenants then without prejudice to any of the Sub-Lessor's Powers the Sub-Lessor may (but is not obliged to) pay the money or to do the thing required to be done as if it were the Sub-Lessee and for that purpose the Sub-Lessor may enter upon the Premises for the purpose of doing that thing and any moneys expended by the Sub-Lessor in so doing will be repayable by the Sub-Lessee to the Sub-Lessor upon demand.

#### **15 Notices**

- (a) Any notice required to be served under this Sub-Lease will be sufficiently served on:
  - (i) the Sub-Lessee if:
    - (A) delivered to the Sub-Lessee at its registered office;
    - (B) sent by electronic mail (**email**) to an account nominated in writing by the Sub-Lessee; or
    - (C) sent to the Sub-Lessee by registered post at its registered office; and
  - (ii) the Sub-Lessor, if:
    - (A) addressed to RPMC at Level 22, Central Park, 152-158 St Georges Terrace, Perth, WA 6000 and sent by registered post; or
    - (B) sent by email to an account nominated in writing by the Sub-Lessor.

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- (b) A notice sent by post will be deemed to be given at the time when it ought to be delivered in due course of ordinary postal service.
- (c) A notice sent by email will be deemed to be given at the time the sender of the notice receives a "read receipt" by email from the recipient's nominated email account. If the sender receives an "out of office" response, the sender will re-send the notice by post or to the recipient's registered office.

## 16 Easements

The Sub-Lessor may for the purposes of the provision of public or private access to, and egress from, the Premises, or the provision to the Premises or adjoining lands of utilities services including water, drainage, gas supply, electricity supply and telephone and electronic communications, grant rights of support or enter into any arrangement or agreement with any person interested in any land adjacent or near to the Premises or with any Authority as the Sub-Lessor thinks fit, and the Sub-Lessor may for those purposes dedicate, transfer, grant or create any land easement or privilege in favour of any person over or affecting the Premises. This Sub-Lease will be subject to any of those easements or privileges *provided that* in exercising its rights under this clause the Sub-Lessor must not unreasonably interfere with the Sub-Lessee's use and occupation of the Premises.

## 17 Sub-Lessor not liable to third parties

Except to the extent that any loss or damage or injury is caused by the Sub-Lessor, the Sub-Lessor will not, to the maximum extent permitted by Law, be responsible for the loss of or damage or injury to any person or property of the Sub-Lessee or any other person in or about the Premises however occurring.

## 18 Confidentiality

- (a) Subject to clause 18(c), a party may not disclose or permit to be disclosed any Confidential Information to any person.
- (b) No party may use or permit to be used (whether directly or indirectly) for its own benefit or the benefit of any third party any information in relation to another party's operations which is disclosed to the first party in connection with this Sub-Lease.
- (c) A party may disclose Confidential Information:
  - (i) which at the time of its creation or disclosure, is in the public domain;
  - (ii) which was in the possession, knowledge or control of that party immediately prior to the time of its creation or first disclosure and was not acquired directly or indirectly from the other party;
  - (iii) if the disclosure is reasonably necessary to enforce this Sub-Lease or in a proceeding arising out of or in connection with this Sub-Lease provided the other parties are given reasonable opportunity in an appropriate forum to challenge the proposed disclosure or secure an order or ruling to protect or preserve the confidentiality of the relevant information;
  - (iv) if required to do so in order to secure any authorisation or to comply with any applicable law or legally binding order of any court, recognised securities exchange, government, semi-government authority or administrative or judicial body;

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- (v) to professional advisers and consultants, or Related Bodies Corporate provided the person to whom disclosure is made is informed of the confidential nature of the information and required to respect that confidentiality; or
- (vi) with the prior written consent of the party whose Confidential Information is proposed to be disclosed.
- (d) The restrictions contained in this clause 18 will continue to apply after the termination or expiry of this Sub-Lease, for a period of 10 years.

## 19 Dispute Resolution

### (a) First referral

Any dispute arising out of this Sub-Lease will be referred for resolution in the first instance to the respective Chief Executive Officers of each party or his or her delegate relevant to the dispute to negotiate in good faith to resolve the dispute or if that position does not exist, a position of equivalent seniority or higher. If the dispute is not resolved within 15 Business Days, either party may appoint an Expert to resolve the dispute in accordance with clause 19(b).

### (b) Expert

- (i) If a matter is referred to an Expert pursuant to clause 19(a), an Expert will be appointed by the parties, or in default of agreement upon such appointment, either party may refer the matter to the Western Australian Chapter of the combined organisation of LEADR Association of Dispute Resolvers and the Institute of Arbitrators and Mediators Australia, known as "LEADR & IAMA" to appoint an Expert.
- (ii) The Expert will:
  - (A) accept written submissions from the parties as to the subject matter of the dispute within 15 Business Days of being appointed;
  - (B) not be bound by the rules of evidence;
  - (C) make a determination in writing; and
  - (D) act in accordance with principles of natural justice.
- (iii) The Expert will be required to undertake to keep confidential matters coming to the Expert's knowledge by reason of being appointed under this clause 19 and the performance of his or her duties.
- (iv) The Expert will have the following powers:
  - (A) to inform himself or herself independently as to facts and, if necessary, technical and/or financial matters to which the dispute relates;
  - (B) to receive written submissions, sworn and unsworn written statements and photocopies of documents and to photocopy documents and to act upon the same;
  - (C) to consult with such other professionally qualified persons (**Consultants**) as he or she in his or her absolute discretion thinks fit, provided the parties to the dispute are informed of the identity of any Consultant and the subject matter of the consultation and given the opportunity to make written submissions for consideration by the Consultant; and

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- (D) to take such measures as he or she thinks fit to expedite the completion of the resolution of the dispute.
- (v) Any person appointed as an Expert will be deemed not to be an arbitrator but an expert and the law relating to arbitration will not apply to him or her or his or her determination or the procedures by which he or she may reach a determination.
- (vi) Any hearings will be held in Perth unless the parties otherwise agree.
- (c) Decisions of Expert
  - (i) Unless otherwise provided in this Sub-Lease, it will be a term of the Expert's appointment that he or she will be required to make a determination of the dispute within three months of the Expert's appointment or such further period as the parties may agree.
  - (ii) In the absence of manifest error or fraud, the decision of the Expert will be final and binding upon the parties.
  - (iii) The Expert must provide the parties with a written determination setting out the reasons for the decision and the findings of fact on which the determination is based.
- (d) Costs
  - (i) The costs of the Expert and any advisers will be borne by one or both of the parties as determined in the discretion of the Expert, taking into account the Expert's decision in the dispute.
  - (ii) Except in the case of fraud, the Expert will have no liability whatsoever to the parties and the parties each agree to forever release the Expert in respect of the process of undertaking the determination and the determination of the Expert.
- (e) Information and representation
  - (i) The parties must give the Expert all information and assistance that the Expert may reasonably require.
  - (ii) The parties will be entitled to be legally represented in respect of any representations that they may wish to make to the Expert in writing.
- (f) Obligations continuing
  - (i) Notwithstanding a reference of a dispute to the dispute resolution procedure in this clause 19, the parties must, so far as it is reasonably practicable, continue to perform and comply with their respective obligations under this Sub-Lease to the extent that such obligations are not the subject of that dispute.
  - (ii) A determination by the Expert shall not operate to waive any right of indemnity under this Sub-Lease for any loss that may be incurred by the Sub-Lessor, Head Lessor, Agreement Minister or Minister as a result of the implementation of any Expert determination.
- (g) Court-order measures

Nothing in this clause 19 limits any party from seeking relief from a court of the State of Western Australia which would otherwise have jurisdiction to hear the matter being referred to expert determination under this clause 19 and a party does not waive any right to enforce the right to have the matter referred to expert determination by seeking or defending court proceedings.

## 20 Tax

### 20.1 Definitions

In this clause:

- (a) **Indirect Transaction Taxes** mean any relevant value added tax (**VAT**), goods and services tax (**GST**), sales, use or consumption or similar tax or impost imposed, levied or assessed by any Authority or otherwise payable, but does not include any related penalty, fine or interest thereon;
- (b) **Indirect Transaction Taxes Invoice** means an invoice in a form acceptable by applicable laws in the jurisdiction where the supply takes place which clearly identifies the amount of Indirect Transaction Taxes payable and any applicable registration or collector numbers of the supplier for purposes of Indirect Transaction Taxes, and which would enable the recipient to claim a credit or reimbursement for Indirect Transaction Taxes payable under the invoice under the applicable law; and
- (c) **Taxes** means any and all taxes, including, without limitation, Indirect Transaction Taxes, excise, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, corporation, capital, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever (other than taxes on a party's net income), together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any Governmental Agency or otherwise payable, on or in respect of the supply of products or services hereunder.

### 20.2 Taxes generally

All amounts payable under this Sub-Lease are inclusive of all Taxes, except for any eligible Indirect Transaction Taxes.

### 20.3 Indirect Transaction Taxes

- (a) All amounts payable under this Sub-Lease are exclusive of any Indirect Transaction Taxes.
- (b) Subject to paragraphs (c) and (d), if Indirect Transaction Taxes are payable under this Sub-Lease, and if the supplier is required by applicable laws to collect and remit Indirect Transaction Taxes to the appropriate Authority, the party being supplied shall pay to the supplier applicable Indirect Transaction Taxes at the percentage rate required by applicable laws in the jurisdiction where the supply takes place.
- (c) The supplier shall ensure that each invoice it presents in respect of any Indirect Transaction Taxes is a valid Indirect Transaction Taxes Invoice required by applicable laws in the jurisdiction where the supply takes place. If the supplier fails to provide a valid Indirect Transaction Taxes Invoice within the time period required by applicable laws in the jurisdiction where the supply takes place, the recipient may withhold payment of Indirect Transaction Taxes until such time as a valid Indirect Transaction Taxes Invoice is received.
- (d) Each party will take all reasonable steps to cooperate with and provide all necessary assistance to the other party to ensure so far as possible that the Indirect Transaction Taxes treatment is accepted by the relevant Authority, including the provision of invoices, proof of payment, proof of source and/or origination and other documentation for this purpose.

## **21 General**

### **21.1 Governing Law and jurisdiction**

- (a) This Sub-Lease is governed by the Laws of the State of Western Australia and of the Commonwealth of Australia as applicable in the State of Western Australia.
- (b) Subject to clause 19, the parties submit to the non-exclusive jurisdiction of the courts of the State of Western Australia and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Sub-Lease.

### **21.2 Civil Liability Act**

- (a) The operation of Part 1F of the *Civil Liability Act 2002* (WA) is excluded in relation to all and any rights, obligations and liabilities under this Sub-Lease whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at Law.
- (b) Without limiting the generality of paragraph (a), it is further agreed that the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Sub-Lease and not otherwise whether such rights, obligations and liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at Law.

### **21.3 Severance**

Any provision in this Sub-Lease which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this Sub-Lease or affecting the validity or enforceability of that provision in any other jurisdiction.

### **21.4 Amendment**

This Sub-Lease may only be amended or supplemented in writing, signed by all of the parties and approval or consent of the Agreement Minister and Minister obtained in accordance with clause 3.3 of this Sub-Lease as required.

### **21.5 Further Assurances**

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Sub-Lease and the transactions contemplated by it.

### **21.6 Act by agent**

Anything which the Sub-Lessor is required or empowered to do under this Sub-Lease may be done by the Sub-Lessor or the solicitor agent contractor or employee of the Sub-Lessor.

### **21.7 Waiver and exercise of powers**

- (a) The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right.
- (b) A power or right may only be waived in writing, signed by the party to be bound by the waiver.



## Sub-Lease

- (c) The Sub-Lessor may exercise the Sub-Lessor's Powers despite any laches neglect or previous waiver by the Sub-Lessor in respect of any of the Sub-Lessee's Covenants or the exercise of any of the Sub-Lessor's Powers.

### 21.8 Entire agreement

This Sub-Lease contains the entire agreement between the parties with respect to its subject matter, and it sets out the only conduct, representations, warranties, covenants, conditions, agreements or understanding (collectively **Conduct**) relied on by the parties and supersede all earlier Conduct by or between the parties in connection with its subject matter. No party has relied on or is relying on any other Conduct in entering into this Sub-Lease and completing the transactions contemplated by it.

### 21.9 Statutory powers

The powers conferred by or under any legislation applicable to this Sub-Lease are (except to the extent inconsistent with the terms and provisions expressed in this Sub-Lease) in addition to the Sub-Lessor's Powers.

### 21.10 No partnership

Nothing in this Sub-Lease will be treated as creating a partnership or joint venture between the parties under the Laws of any applicable jurisdiction and, except as specifically provided in this Sub-Lease, no party may act or has any authority to act as agent of or in any way bind or commit another party to any obligation.

### 21.11 Effect of Execution

This Sub-Lease is binding upon each person who has executed it notwithstanding:

- (a) the failure of any other person named as a party to execute it;
- (b) the avoidance or unenforceability of any part of this Sub-Lease; or
- (c) the avoidance or unenforceability of this Sub-Lease or any part of this Sub-Lease against any signatory or intended signatory.

### 21.12 Moratorium Negatived

The application to this Sub-Lease of any moratorium or other Law whether State or Federal having the effect of extending the Term, reducing or postponing the payment of the Rent reserved or otherwise affecting the Sub-Lessee's Covenants or providing for compensation rights or privileges at the expense of the Sub-Lessor in favour of the Sub-Lessee or any other person is expressly excluded and negatived.

### 21.13 Counterparts

This Sub-Lease may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Sub-Lease

Sub-Lease

## **Schedule 1**

### **Map of the Land**

[insert]

Sub-Lease

## Executed as a Deed

**Executed** as a Deed in accordance with  
s 127 of the *Corporations Act 2001* by **Robe  
River Mining Co. Pty Limited (ABN 71 008  
694 246)**

---

Director Signature

---

Print Name

---

Director/Secretary Signature

---

Print Name

**Executed** as a Deed in accordance with  
s 127 of the *Corporations Act 2001* by **Mitsui  
Iron Ore Development Pty Limited (ABN  
85 008 734 361)**

---

Director Signature

---

Print Name

---

Director/Secretary Signature

---

Print Name

**Executed** as a Deed in accordance with  
s 127 of the *Corporations Act 2001* by  
**North Mining Limited (ABN 78 000 081  
434)**

---

Director Signature

---

Print Name

---

Director/Secretary Signature

---

Print Name

Sub-Lease

**Nippon Steel & Sumitomo Metal Australia Pty Ltd** (ABN 64 001 445 049) (Cape Lambert Iron Associates member) by its duly appointed Attorney Mitsui Iron Ore Development Pty Limited (ABN 85 008 734 361) hereunto executes this document pursuant to a Power of Attorney dated 18 October, 1984 registered at the Office of Titles, Perth, Western Australia with number C883525 and which Attorney by its execution hereof also declares that it has no notice of revocation of the Power of Attorney aforesaid.

**Executed** as a Deed in accordance with  
s 127 of the *Corporations Act 2001* by  
**Mitsui Iron Ore Development Pty Limited**  
**(ABN 85 008 734 361)**

---

Director Signature

---

Director/Secretary Signature

---

Print Name

---

Print Name

**Nippon Steel & Sumikin Resources Australia Pty Ltd** (ABN 61 001 444 604) (Cape Lambert Iron Associates member) by its duly appointed Attorney Mitsui Iron Ore Development Pty Limited (ABN 85 008 734 361) hereunto executes this document pursuant to a Power of Attorney dated 18 October, 1984 registered at the Office of Titles, Perth, Western Australia with number C883524 and which Attorney by its execution hereof also declares that it has no notice of revocation of the Power of Attorney aforesaid.

**Executed** as a Deed in accordance with  
s 127 of the *Corporations Act 2001* by  
**Mitsui Iron Ore Development Pty Limited**  
**(ABN 85 008 734 361)**

---

Director Signature

---

Director/Secretary Signature

---

Print Name

---

Print Name

Sub-Lease

**Executed** as a Deed in accordance with  
s 127 of the *Corporations Act 2001* by  
**Mitsui Iron Ore Development Pty Limited**  
**(ABN 85 008 734 361)** (Cape Lambert Iron  
Associates member)

---

Director Signature

---

Director/Secretary Signature

---

Print Name

---

Print Name

**Nippon Steel & Sumitomo Metal Australia Pty Ltd** (ABN 64 001 445 049) (Pannawonica Iron  
Associates member) by its duly appointed Attorney Mitsui Iron Ore Development Pty Limited (ABN 85 008  
734 361) hereunto executes this document pursuant to a Power of Attorney dated 3 November, 1986  
registered at the Office of Titles, Perth, Western Australia with number D357648 and which Attorney by its  
execution hereof also declares that it has no notice of revocation of the Power of Attorney aforesaid.

**Executed** as a Deed in accordance with  
s 127 of the *Corporations Act 2001* by  
**Mitsui Iron Ore Development Pty Limited**  
**(ABN 85 008 734 361)**

---

Director Signature

---

Director/Secretary Signature

---

Print Name

---

Print Name

Sub-Lease

**Nippon Steel & Sumikin Resources Australia Pty Ltd** (ABN 61 001 444 604) (Pannawonica Iron Associates member) by its duly appointed Attorney Mitsui Iron Ore Development Pty Limited (ABN 85 008 734 361) hereunto executes this document pursuant to a Power of Attorney dated 21 October, 1986 registered at the Office of Titles, Perth, Western Australia with number D357649 and which Attorney by its execution hereof also declares that it has no notice of revocation of the Power of Attorney aforesaid.

**Executed** as a Deed in accordance with  
s 127 of the *Corporations Act 2001* by  
**Mitsui Iron Ore Development Pty Limited**  
**(ABN 85 008 734 361)**

---

Director Signature

---

Director/Secretary Signature

---

Print Name

---

Print Name



## Sub-Lease

The following persons are duly authorised by the *Council Policy CG-10* to execute this Deed on behalf of the **City of Karratha**:

*sign here* ►

\_\_\_\_\_  
**Mayor**

\_\_\_\_\_  
**Chief Executive Officer**

*print name* ►

\_\_\_\_\_  
**Name of Mayor**

\_\_\_\_\_  
**Name of Chief Executive Officer**