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2010 RTL-THA Agreement

Rio Tinto Limited

and

Tinto Holdings Australia Pty Limited

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Date	This Agreement is made on	2010 between:
Parties	1. Rio Tinto Limited (ABN 96 004 458 404) of 120 Collins Street, Melbourne (<i>RTL</i>); and 2. Tinto Holdings Australia Pty Limited (ABN 80 004 327 922) of 120 Collins Street, Melbourne (<i>THA</i>).	
Recitals	A THA is the registered holder and beneficial owner of 171,072,520 Shares as at the date of this Agreement. B THA has offered to sell Buy-back Shares to RTL, and RTL has agreed to buy back these shares, on the terms set out in this Agreement.	

It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

ASX means Australian Securities Exchange.

Business Day means a day on which banks are open for general banking business in Melbourne.

Buy-back Price means the price per Share to be agreed between RTL and THA in respect of Buy-back Shares to be bought back pursuant to a Relevant Agreement on a Completion Date, provided that that price must not be greater than the average of the market price (as that term is defined in the Listing Rules of the ASX) of Shares calculated over the last five days on which sales were recorded on ASX before the day on which the purchase of those Buy-back Shares is to be made.

Buy-back Shares means that number of Shares notified from time to time by RTL to THA as being the number of Shares to be bought back by RTL pursuant to a Relevant Agreement on a Completion Date and may, in aggregate or under one Relevant Agreement, be equal to the THA Holding.

Completion means completion of a buy-back of Buy-back Shares in accordance with clause 3 of this Agreement.

Completion Date means a date for Completion of a buy-back of Buy-back Shares notified from time to time by RTL to THA.

Encumbrance means any mortgage, pledge, lien, charge, assignment, option, title retention, preferential right or trust arrangement or any other security arrangement of whatsoever kind.

Purchase Consideration means the consideration to be paid by RTL to THA as consideration for a sale of Buy-back Shares, being, in the case of each parcel of Buy-back Shares, an aggregate consideration equal to the number of such Buy-back Shares multiplied by the relevant Buy-back Price.

Relevant Agreement means an agreement substantially in the form of the draft agreement set out in the Schedule to this Agreement.

Shares means fully paid ordinary shares in the capital of RTL.

THA Holding means the Shares in respect of which THA is the registered holder and beneficial owner from time to time. The THA Holding as at the date of this Agreement is set out in Recital A.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a Clause or Schedule is a reference to a clause of, or schedule to, this Agreement.
- (f) A reference to an agreement or document (including, without limitation, a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (g) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (j) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (k) A reference to *dollars* and *\$* is to Australian currency.

1.3 Consents or Approvals

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless express provision to the contrary has been made.

2. Share Buy-Backs

Subject to the terms of this Agreement, on each Completion Date THA shall sell to RTL and RTL shall buy from THA the Buy-back Shares free from all Encumbrances for the Purchase Consideration.

3. Completion

3.1 Completion Date

On each Completion Date:

- (a) RTL and THA shall enter into a Relevant Agreement in relation to the relevant Buy-back Shares;
- (b) THA must deliver to RTL a duly executed instrument of transfer of the relevant Buy-back Shares in favour of RTL together with the share certificate (if any) for those Shares; and
- (c) RTL must pay the Purchase Consideration for the relevant Buy-back Shares to THA, or to another person on the direction of THA, by bank cheque (or other immediately available funds) or by the transfer of securities or such other valuable consideration as agreed by the parties.

3.2 Completion time

Completion will be at 10.00am on the relevant Completion Date at 120 Collins Street, Melbourne or at any other time and place as the parties may agree.

4. Representations and Warranties

4.1 THA representations and warranties

THA represents and warrants to RTL that as at the date of this Agreement:

- (a) THA is the legal and beneficial owner of the number of Shares specified in Recital A free from all Encumbrances; and
- (b) THA has full power and authority to transfer to RTL good legal and equitable title to those Shares free from all Encumbrances.

4.2 Reciprocal representations and warranties

Each of the parties represents and warrants to the other that:

- (a) it has the corporate power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement in accordance with the terms of this Agreement;
- (b) it has taken all necessary corporate action to authorise the entry into, and the performance by it of, this Agreement and to carry out the transactions contemplated by this Agreement in accordance with the terms of this Agreement;
- (c) this Agreement is its valid and binding obligation in accordance with its terms; and
- (d) neither the execution and performance by it of, nor any transaction contemplated under, this Agreement will violate in any respect any provision of:
 - (i) any treaty, law or judgment binding on it;
 - (ii) its constituent documents; or
 - (iii) any other document, agreement or other arrangement binding upon it or its assets.

4.3 Representations and Warranties in Clauses 4.1 and 4.2

Each of the representations and warranties in Clauses 4.1 and 4.2 will remain in full force and effect after each Completion Date despite Completion.

4.4 Indemnities

Each of the parties indemnifies the other against all losses, liabilities, costs and expenses suffered or incurred which arise out of or relate to any breach of or non-compliance with any of the provisions of this Agreement (including representations and warranties in this clause) by it.

5. Notices

Any notice, demand, consent or other communication (the *Notice*) given or made under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (or, if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:
 - (i) to RTL: 120 Collins Street
Melbourne 3000 Australia
Attention: The Company Secretary
Fax No: 613 9283 3151
 - (ii) to THA 120 Collins Street
Melbourne 3000 Australia
Attention: The Company Secretary
Fax No: 613 9283 3151; and
- (c) will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;

- (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
- (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

6. Entire Agreement

This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

7. Amendment

No amendment or variation of this Agreement is valid or binding on a party unless made in writing executed by all parties.

8. Assignment

The rights and obligations of each party under this Agreement are personal. They cannot be assigned, encumbered or otherwise dealt with and no party shall attempt, or purport, to do so without the prior consent of all parties.

9. No Waiver

No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

10. 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 Agreement and the transactions contemplated by it.

11. No Merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

12. Costs and Stamp Duty

Each party shall bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this Agreement and any instrument executed under this Agreement shall be borne by RTL.

13. GST

If GST is levied, imposed, assessed or becomes payable under this Agreement, the parties agree to negotiate an equitable adjustment to take into account the effect of that GST. For the purposes of this clause, GST means any tax on the supply of any thing other than any stamp duty or any wholesale sales tax, or any interest, fine, penalty or other amount imposed in respect of stamp duty or wholesale sales tax.

14. Governing Law and Jurisdiction

This Agreement is governed by the laws of Victoria. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.

15. Counterparts

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

Schedule

(Relevant Agreement)

Date	This Agreement is made on _____ between:
Parties	
1.	Rio Tinto Limited (ABN 96 004 458 404) of 120 Collins Street, Melbourne (<i>RTL</i>); and
2.	Tinto Holdings Australia Pty Limited (ABN 80 004 327 922) of 120 Collins Street, Melbourne (<i>THA</i>).
Recitals	
A	THA is the registered holder and beneficial owner of fully paid ordinary shares in the capital of RTL.
B	THA has agreed to sell, and RTL has agreed to buy, the Buy-back Shares on the terms of this Agreement.

It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Buy-back Shares means fully paid ordinary shares in the capital of RTL.

Encumbrance means any mortgage, pledge, lien, charge, assignment, option, title retention, preferential right or trust arrangement or any other security arrangement of whatsoever kind.

Purchase Consideration means

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.

- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a Clause or Schedule is a reference to a clause of, or schedule to, this Agreement.
- (f) A reference to an agreement or document (including, without limitation, a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (g) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (j) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (k) A reference to *dollars* and \$ is to Australian currency.

2. Share Buy-Back

THA hereby sells to RTL and RTL hereby buys from THA the Buy-back Shares free from all Encumbrances for an aggregate of the Purchase Consideration.

3. Completion

Completion of the buy-back by RTL of the Buy-back Shares from THA shall take place on the date of this Agreement at 10.00am at 120 Collins Street, Melbourne or at any other time and place as the parties may agree. At Completion:

- (a) THA must deliver to RTL a duly executed instrument of transfer of the Buy-back Shares in favour of RTL together with the share certificate (if any) for those shares; and
 - (b) RTL must pay the Purchase Consideration to THA, or to another person on the direction of THA, by bank cheque (or other immediately available funds) or by the transfer of securities or such other valuable consideration as agreed by the parties.
-

4. Representations and Warranties

4.1 THA representations and warranties

THA represents and warrants to RTL that as at Completion:

- (a) THA is the legal and beneficial owner of the Buy-back Shares the subject of Completion free from all Encumbrances; and
- (b) THA has full power and authority to transfer to RTL good legal and equitable title to the Buy-back Shares the subject of Completion free from all Encumbrances.

4.2 Reciprocal representations and warranties

Each of the parties represents and warrants to the other that:

- (a) it has the corporate power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement in accordance with the terms of this Agreement;
- (b) it has taken all necessary corporate action to authorise the entry into, and the performance by it of, this Agreement and to carry out the transactions contemplated by this Agreement in accordance with the terms of this Agreement;
- (c) this Agreement is its valid and binding obligation in accordance with its terms; and
- (d) neither the execution and performance by it of, nor any transaction contemplated under, this Agreement will violate in any respect any provision of:
 - (i) any treaty, law or judgment binding on it;
 - (ii) its constituent documents; or
 - (iii) any other document, agreement or other arrangement binding upon it or its assets.

4.3 Representations and Warranties in Clauses 4.1 and 4.2

Each of the representations and warranties in Clauses 4.1 and 4.2:

- (a) will remain in full force and effect after Completion despite Completion; and
- (b) is given at:
 - (i) the date of this Agreement; and
 - (ii) the time immediately before Completion.

5. Amendment

No amendment or variation of this Agreement is valid or binding on a party unless made in writing executed by all parties.

6. Assignment

The rights and obligations of each party under this Agreement are personal. They cannot be assigned, encumbered or otherwise dealt with and no party shall attempt, or purport, to do so without the prior consent of all parties.

7. No Waiver

No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

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11. GST

If GST is levied, imposed, assessed or becomes payable under this Agreement, the parties agree to negotiate an equitable adjustment to take into account the effect of that GST. For the purposes of this clause, GST means any tax on the supply of any thing other than any stamp duty or any wholesale sales tax, or any interest, fine, penalty or other amount imposed in respect of stamp duty or wholesale sales tax.


12. Governing Law and Jurisdiction

This Agreement is governed by the laws of Victoria. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.

13. Counterparts

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

2010 RTL-THA Agreement

Allens Arthur Robinson 

Executed as an agreement.

Each attorney executing this Agreement states that he or she has no notice of revocation or suspension of his or her power of attorney.

RTL

Signed for and on behalf of **Rio Tinto Limited** by its attorneys in the presence of:

Attorney Signature

Witness Signature

Print Attorney Name

Print Witness Name

Attorney Signature

Witness Signature

Print Attorney Name

Print Witness Name

THA

Signed for and on behalf of **Tinto Holdings Australia Pty Limited** by its attorney in the presence of:

Attorney Signature

Print Attorney Name

Witness Signature

Print Witness Name

2010 RTL-THA Agreement

Allens Arthur Robinson 

Executed as an agreement.

Each attorney executing this Agreement states that he or she has no notice of revocation or suspension of his or her power of attorney.

RTL

Signed for and on behalf of **Rio Tinto Limited** by its attorneys in the presence of:

Attorney Signature

Witness Signature

Print Attorney Name

Print Witness Name

Attorney Signature

Witness Signature

Print Attorney Name

Print Witness Name

THA

Signed for and on behalf of **Tinto Holdings Australia Pty Limited** by its attorney in the presence of:

Attorney Signature

Print Attorney Name

Witness Signature

Print Witness Name

