

Western Australia

## **Alumina Refinery (Worsley) Agreement Act 1973**

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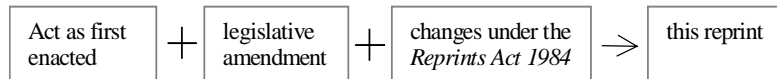
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## Guide for using this reprint

### *What the reprint includes*



### ***Endnotes, Compilation table, and Table of provisions that have not come into operation***

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### ***Notes amongst text (italicised and within square brackets)***

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### **THE TEXT OF THE LEGISLATION FOLLOWS**

# Alumina Refinery (Worsley) Agreement Act 1973

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## **Alumina Refinery (Worsley) Agreement Act 1973**

**An Act to authorise the execution on behalf of the State of an Agreement with Alwest Pty. Limited and Dampier Mining Company Limited relating to the establishment at or near Worsley of a refinery to produce alumina and for incidental and other purposes.**

**1. Short title**

This Act may be cited as the *Alumina Refinery (Worsley) Agreement Act 1973*<sup>1</sup>.

**2. Commencement**

- (1) Subject to subsection (2), this Act shall come into operation on the day on which it receives the Royal Assent<sup>1</sup>.
- (2) Section 5 shall come into operation on a date to be fixed by proclamation, being a date not earlier than the date on which the Agreement referred to in section 3 is duly executed by all the parties thereto<sup>1</sup>.

**3. Execution of Agreement authorised**

The execution by the Premier of the State of Western Australia acting for and on behalf of the State of an Agreement in or substantially in accordance with the form set out in the First Schedule is authorised.

*[Section 3 amended by No. 10 of 1978 s. 2.]*

**4. Executed Agreement to operate and take effect**

When the Agreement referred to in section 3 is duly executed by all the parties thereto, the Agreement shall, subject to its provisions, operate and take effect as though those provisions were enacted in this Act.

**5. Repeal**

The *Alumina Refinery (Bunbury) Agreement Act 1970*, is hereby repealed.

**6. First Supplementary Agreement approved and ratified**

The Agreement a copy of which is set forth in the Second Schedule, in this Act referred to as the First Supplementary Agreement, is approved and ratified.

*[Section 6 inserted by No. 10 of 1978 s. 3; amended by No. 95 of 1982 s. 2.]*

**6A. Second Supplementary Agreement approved and ratified**

The Agreement a copy of which is set in the Third Schedule, in this Act referred to as the Second Supplementary Agreement, is approved and ratified.

*[Section 6A inserted by No. 95 of 1982 s. 3.]*

**6B. Third Supplementary Agreement approved and ratified**

The Agreement a copy of which is set forth in the Fourth Schedule, in this Act referred to as the Third Supplementary Agreement, is approved and ratified.

*[Section 6B inserted by No. 63 of 1992 s. 4.]*

**6C. Fourth Supplementary Agreement approved and ratified**

The Agreement, a copy of which is set forth in the Fifth Schedule, in this Act referred to as the Fourth Supplementary Agreement, is approved and ratified.

*[Section 6C inserted by No. 15 of 1995 s. 4.]*

**7. Effect of Supplementary Agreement**

Notwithstanding the provisions of section 4, on and after the coming into operation of the *Alumina Refinery (Worsley) Agreement Act Amendment Act 1978*<sup>1</sup>, the Agreement which is referred to in section 3 and which was executed pursuant to that section shall operate and take effect subject to its provisions as those provisions are amended by the First Supplementary Agreement.

*[Section 7 inserted by No. 10 of 1978 s. 4; amended by No. 95 of 1982 s. 4.]*

**8. Effect of Second Supplementary Agreement**

Notwithstanding section 4 but without affecting any agreement made pursuant to clause 24(1) of the Agreement referred to in section 3, that Agreement shall, on and after the coming into operation of the *Alumina Refinery (Worsley) Agreement Amendment Act 1982*<sup>1</sup>, operate and take effect subject to its provisions as those provisions are amended by the First and Second Supplementary Agreements.

*[Section 8 inserted by No. 95 of 1982 s. 5.]*

**9. Effect of Third Supplementary Agreement**

Notwithstanding section 4 but without affecting any agreement made pursuant to clause 24(1) of the Agreement referred to in section 3, that Agreement shall, on and after the coming into operation of the *Alumina Refinery (Worsley) Agreement Amendment Act 1992*<sup>1</sup>, operate and take effect subject to its provisions as those provisions are amended by the First, Second and Third Supplementary Agreements.

*[Section 9 inserted as section 8 by No. 63 of 1992 s. 5; renumbered as section 9 by No. 15 of 1995 s. 5.]*

**10. Effect of Fourth Supplementary Agreement**

Notwithstanding section 4 but without affecting any agreement made pursuant to clause 24(1) of the Agreement referred to in section 3, that Agreement shall, on and after the coming into operation of the *Alumina Refinery (Worsley) Agreement Amendment Act 1995*<sup>1</sup>, operate and take effect subject to its provisions as those provisions are amended by the First, Second, Third and Fourth Supplementary Agreements.

*[Section 10 inserted by No. 15 of 1995 s. 6.]*

**11. Minister to seek advice from Minister for the Environment in certain circumstances**

(1) Before —

- (a) making an agreement under clause 12C(2) of the Agreement; or
- (b) approving amendments to Plan Z under clause 12C(7)(b) of the Agreement,

the Minister is to seek advice from the Minister for the Environment as to whether, if not for this Act, any matter to be included in the agreement or in the amendments would be in breach of the *Environmental Protection Act 1986*.

(2) The Minister is to cause —

- (a) the text of any advice received by the Minister from the Minister for the Environment as a result of seeking advice under subsection (1);
- (b) the text of any agreement made by the Minister under clause 12C(2) of the Agreement; and
- (c) a copy of any amendments to Plan Z approved by the Minister under clause 12C(7)(b) of the Agreement,

to be laid before each House of Parliament within 12 sitting days of that House after the advice is received, the agreement is made or the amendments are approved by the Minister.



(3) In this section —

“**the Agreement**” means the Agreement referred to in section 3, as amended by the Fourth Supplementary Agreement;

“**Minister for the Environment**” means the Minister to whom the administration of the *Environmental Protection Act 1986* is for the time being committed by the Governor;

“**Plan Z**” means the plan marked Z referred to in clause 12C(1) of the Agreement.

*[Section 11 inserted by No. 15 of 1995 s. 6.]*

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**First Schedule**

THIS AGREEMENT is made the            day of            197  
BETWEEN THE HONOURABLE JOHN TREZISE TONKIN, M.L.A.,  
Premier and Treasurer of the State of Western Australia, acting for and on  
behalf of the said State and its instrumentalities from time to time (hereinafter  
called "the State") of the one part and ALWEST PTY. LIMITED (hereinafter  
called "Alwest") a Company incorporated under the *Companies Act 1961*, of  
Western Australia and having its registered office at 34-36 Stirling Street, Perth,  
in the said State and DAMPIER MINING COMPANY LIMITED (hereinafter  
called "Dampier") a Company also incorporated under the said Act and having  
its registered office at 37 Saint George's Terrace, Perth (hereinafter collectively  
called "the Joint Venturers" in which term shall be included their respective  
successors and permitted assigns and appointees) of the other part.

WHEREAS:

- A. By an agreement made between the State and Alwest dated the 10th day of November, 1970 which was ratified by the *Alumina Refinery (Bunbury) Agreement Act 1970* the State agreed to grant to Alwest certain rights to mine bauxite and Alwest undertook, subject to the provisions of the said agreement, to erect an alumina refinery at or near Bunbury in the said State.
- B. By an agreement dated the 28th day of July, 1971 made between the State, Alwest and Dampier Alwest assigned to Dampier an undivided one half share or moiety in and to all the right title interest claim and demand of Alwest in and under the said Agreement to the intent that the Joint Venturers should thereafter hold the said rights as tenants in common in equal shares.
- C. Since the date of the said Agreement extensive investigations have been made by Alwest and by the Joint Venturers as to the suitability of an area near Worsley as a refinery site and of the use in the refinery of coal from the Collie coalfield and extensive geological investigations of the bauxite reserves on both Crown and private land within the areas the subject of the said Agreement have been carried out the cost of which exceeds four million dollars (\$4,000,000).
- D. The parties hereto have agreed to enter into this Agreement in substitution for the said Agreement and that on the execution hereof the said Agreement shall be terminated.

NOW THIS AGREEMENT WITNESSETH —

**Interpretation** <sup>2</sup>

1. In this Agreement subject to the context —

“access channel” means the channel to be dredged to provide access for shipping to the new inner harbour at the port of Bunbury;

“apply” “approve” “approval” “consent” “certify” “direct” “notify” or “request” mean apply, approve, approval, consent, certify, direct, notify or request in writing as the case may be and the same rule shall apply with regard to derivatives, inflexions and variants of the quoted words;

“associated company” means —

- (a) any company providing for the purposes of this Agreement capital of not less than Two Million Dollars (\$2,000,000) which is incorporated or formed within the United Kingdom the United States of America or Australia or such other country as the Minister may approve and which —
  - (i) is promoted by the Joint Venturers or any of them for all or any of the purposes of this Agreement and in which the Joint Venturers or any of them or some other company, acceptable to the Minister hold not less than a twenty five per cent (25%) interest or some lesser interest acceptable to the Minister; or
  - (ii) being a corporation is related within the meaning of that term as used in section 6 of the *Companies Act 1961*, to any company in which the Joint Venturers or any of them or some other company acceptable to the Minister hold not

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less than twenty five per cent  
(25%) of the issued ordinary share  
capital; and

(iii) is notified to the Minister by the  
Joint Venturers or any of them as  
being such a company;

(b) any company approved in writing by the  
Minister;

“bauxite” means ore which either with or without crushing  
washing and screening is sold as bauxite or is used for  
processing into alumina;

“Bunbury Port Authority” and “the Authority” means the body  
corporate established pursuant to the *Bunbury Port Authority  
Act 1909*;

“commencement date” means the date on which the Joint  
Venturers give to the Minister the notice mentioned in  
Clause 2 hereof;

“Commonwealth” means the Commonwealth of Australia and  
includes the Government thereof for the time being;

“Conservator of Forests” and “Conservator” means the  
Conservator of Forests appointed under the *Forests  
Act 1918*;

“Crown land” means all land of the Crown including —

(a) all land dedicated as a State forest under the  
*Forests Act 1918*, other than land reserved as  
State Forest No. 51 as it existed on the  
14th May, 1973;

(b) all land reserved for the purpose of water  
conservation;

(c) land reserved under the Land Act and numbered  
15410, 18534, 19738, 19739, 19740, 19741,  
19958, 20063, 20182, 21287, 24791, 26363,  
26666, 30394 and 31890; and

- (d) land reserved under the Forests Act as Timber Reserves and numbered 66/25, 69/25, 131/25, 144/25, 145/25, 146/25, 147/25, 148/25, 151/25, 160/25, 171/25, 172/25 and 189/25,

but excluding —

- (e) land granted or agreed to be granted in fee simple;
- (f) land held or occupied under the Crown by lease or licence for any purpose other than pastoral or timber purposes; and
- (g) all other land reserved under the Land Act or the Forests Act unless the Minister, after consultation with the Environmental Protection Authority established under the *Environmental Protection Act 1971*, otherwise determines;

“inner harbour” means the harbour to be dredged at Bunbury;

“Land Act” means the *Land Act 1933*;

“mineral lease” means the mineral lease referred to in Clause 7(1) hereof and includes any renewal thereof;

“Mining Act” means the *Mining Act 1904*;

“Minister” means the Minister in the Government of the State for the time being responsible for the administration of this Agreement;

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

“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“production date” means the date on which the regular production of alumina commences at the refinery;

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“Railways Commission” means the Western Australian Government Railways Commission established pursuant to the *Government Railways Act 1904*;

“refinery” means a refining plant established pursuant to this Agreement in which bauxite is treated to produce alumina;

“smelter” means an electrolytic reduction plant for the conversion of alumina to aluminium using alumina produced from bauxite;

“special grade bauxite” means ore which is saleable as refractory grade abrasive grade or chemical grade bauxite;

“State Electricity Commission” means the State Electricity Commission of Western Australia established pursuant to the *State Electricity Commission Act 1945*;

“stockpile area” means the land to be made available to the Joint Venturers in the Port of Bunbury, in accordance with the terms of this Agreement, for use as a stockpile area;

“this Agreement” “hereof” “hereto” and “hereunder” includes this Agreement as from time to time added to varied or amended;

“ton” means a ton of two thousand two hundred and forty (2,240) lbs net dry weight unless otherwise specified;

“turning basin” means the dredged waters of the inner harbour as developed by the State for the turning and navigation of vessels in the inner harbour;

reference in this Agreement to a company includes any joint venture, partnership or other association of companies;

monetary references in this Agreement are to Australian currency;

power given under any clauses of this Agreement other than Clause 25 hereof to extend or alter any period or date shall be without prejudice to the power of the Minister under the said Clause 25;

Reference in this Agreement to an Act shall include the amendments to such Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;

Marginal notes shall not affect the interpretation or construction hereof<sup>2</sup>;

any covenant or agreement on the part of the Joint Venturers hereunder shall be deemed to be a joint and several covenant or agreement as the case may be.

**Commencement and Operation<sup>2</sup>**

2. (1) The provisions of this Agreement other than Clause 3 hereof shall not come into operation until the Joint Venturers have given the Minister notice that they desire to proceed with the objects of this Agreement.

(2) If before the 30th of June 1974 the notice referred to in subclause (1) of this Clause is not given this Agreement will then cease and determine and neither of the parties hereto will have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

**Right to Enter on Crown Land<sup>2</sup>**

3. (1) The State shall to the extent reasonably necessary for the purposes of this Agreement allow the Joint Venturers to enter upon Crown land and survey possible sites for their operations under this Agreement.

**Creation of Temporary Reserve<sup>2</sup>**

(2) The State shall on the execution of this Agreement create a temporary reserve over all the Crown land within the area delineated in blue on this plan marked "X" referred to in Clause 7(1) hereof.

**Rights of Occupancy<sup>2</sup>**

(3) As soon as the temporary reserve referred to under subclause (2) of this Clause has been created the Joint Venturers shall apply for and the State shall grant to them for a period terminating with the granting of the mineral lease referred to in Clause 7(1) hereof, or the sooner determination of this Agreement, rights of occupancy for the purposes of this Agreement (including the sole right to search and prospect for bauxite) in respect of such land on such terms and conditions as the Minister for Mines may determine.

(4) The provisions of the Mining Act shall be deemed to be modified to permit the creation of the temporary reserve under subclause (2) of this Clause and the grant of the rights of occupancy under subclause (3) of this Clause.

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**Resumptions <sup>2</sup>**

4. The State may as and for a public work under the *Public Works Act 1902*, resume any land required for the purposes of this Agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of the same to the Joint Venturers and the provisions of subsections (2) to (7) inclusive of Section 17 and Section 17A of that Act shall not apply to or in respect of that land or the resumption thereof.

**Obligations of the Joint Venturers <sup>2</sup>**

5. The Joint Venturers shall —

- (1) as soon as reasonably possible after the coming into operation of this Agreement commence the construction of a refinery on a site at or near Worsley as may be agreed by the Minister or at such other place as the parties may agree and thereafter continue such construction and within four years from the commencement date complete and have in operation the first stage of the refinery with a capacity to produce not less than two hundred thousand (200,000) tons of alumina per annum (which refinery the Joint Venturers may expand from time to time as they deem appropriate) PROVIDED THAT if the Joint Venturers shall in writing reasonably demonstrate to the Minister that they have used their best endeavours to negotiate the finance required to construct the refinery and to complete the sales contracts necessary for the sale of alumina produced at the refinery to make the Joint Venturers' project economically practicable, but they have been unsuccessful in either of these endeavours, the Minister shall grant the Joint Venturers such extensions of time as are appropriate to the situation PROVIDED FURTHER that nothing in this subclause shall limit the effect of Clause 19 or Clause 25 hereof;

**Facilities for Transport of Bauxite and Coal <sup>2</sup>**

- (2) transport all bauxite mined within the mineral lease to the refinery and all alumina produced at the refinery to the port of Bunbury and to facilitate such transport and the transport of coal fuel oil caustic soda lime and limestone required by the Joint Venturers for use within the site of the refinery —
  - (a) shall at their expense construct along a route approved by the Minister and in accordance with recognised standards an appropriate conveyor or



pipeline between the mineral lease and the refinery and a pipeline between the refinery and the Port of Bunbury with all proper ancillary equipment and without unduly interfering with any existing means of communication (including roads and railways), and/or

- (b) shall request the Railways Commission, at the expense of and in consultation with the Joint Venturers, to —
  - (i) construct along a route approved by the Commission an appropriate railway having a gauge of 3' 6" between the mineral lease via the refinery to a point on the Commission's existing railway system (the precise location of such point to be decided by the Commission) together with all necessary signalling switch and other gear, all proper and usual works and all crossing places as the Commission may reasonably require;
  - (ii) upgrade the Commission's existing railway as may be necessary from the point of connection with the railway referred to in subparagraph (i) above to the port of Bunbury so as to make it adequate for the Joint Venturers' requirements as to the transport of alumina and other products and goods and materials required for the construction operation repair and maintenance of the refinery and ancillary facilities;
- (c) shall request the Railways Commission at the expense of and in consultation with the Joint Venturers to upgrade the Commission's

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existing railway so as to make it adequate for the Joint Venturers' requirements as to the transport of coal from the point of connection referred to in paragraph (b) to an agreed point in the Collie coalfield;

**PROVIDED THAT —**

- (i) in the event of the State or the Railways Commission within five years of the date of this Agreement or within three years of the completion of the upgrading referred to in paragraph (b)(ii) and paragraph (c) of this subclause, whichever period is the longer, receiving contributions towards the cost of those upgradings from other users of the railways involved, then the State or the Commission shall return to the Joint Venturers such part of the moneys advanced by the Joint Venturers for those upgradings as is equitable;
- (ii) in the event of any other person making use of the railway referred to in paragraph (b)(i) of this subclause within 15 years of the date of this Agreement and moving over that railway in any one year within that period 500,000 tons or more of bulk products the State shall require such other user to make a fair contribution to the cost of the establishment of the railway and from the proceeds of any such contribution or contributions shall return to the Joint Venturers such part of the moneys advanced by the Joint Venturers for the establishment of the railway as shall be equitable;

and, in the event of the Joint Venturers electing to have a railway constructed as aforesaid the Joint Venturers shall —

**Joint Venturers to Notify Requirements**<sup>2</sup>

- (d) provide to the satisfaction of the Railways Commission not less than twelve months in advance of their first requiring the use of rail transport such details of their requirements (including anticipated or provisional annual tonnages) as to the use of the railways as will enable the Commission to make arrangements to meet those requirements and shall thereafter give adequate notice of any change in those requirements;

**Ancillary Facilities**<sup>2</sup>

- (e) at their cost provide and maintain such sidings, shunting loops, spurs and other connections as they require for their operations under this Agreement and provide and maintain loading and unloading facilities sufficient to meet train operating requirements and terminal equipment (including weighing devices), together with a staff adequate to ensure the proper operation of all such loading and unloading facilities and terminal equipment;
- (f) ensure that all wagons are properly trimmed and loaded to prescribed tonnages;

**Rolling Stock**<sup>2</sup>

- (g) provide sufficient wagons (to a design and specification approved by the Railways Commission) to carry all bauxite coal fuel oil caustic soda lime and limestone to the refinery and alumina to the port of Bunbury and necessary replacements therefor except replacements made necessary solely by the negligence of the Commission;

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**Freight Rates <sup>2</sup>**

- (h) pay in respect of all commodities carried in trains operated by the Railways Commission the appropriate freight rates set out or referred to in the First Schedule hereto by monthly payments on the basis of the anticipated or provisional annual tonnage indicated in the forward pattern of working referred to in Clause 5(2)(d) hereof subject to annual adjustment after the expiration of each year with regard to tonnages actually carried and in ascertaining the number of tons actually carried railway weighbridge weights or such alternative method of measuring as is mutually agreed shall be used but in no event shall any allowance be made for moisture contained in the material transported;

**Costs of dredging <sup>2</sup>**

- (3) (a) (i) advance to the State a sum of one million five hundred thousand dollars (\$1,500,000) towards the cost of the dredging in progress in the port of Bunbury for an access channel and turning basin, and for the dredging of a berth for the Joint Venturers in that port and also for the reclamation of adequate areas of land for the establishment of the stockpile area;
- (ii) advance to the State a sum of four hundred thousand dollars (\$400,000) towards the cost of dredging the access channel and turning basin from 36 feet to 40 feet PROVIDED THAT in the event of the State or the Bunbury Port Authority receiving contributions towards the cost of such dredging from other users of the port (other than Alcoa of Australia (W.A.) N.L.) requiring a greater depth than 36 feet the State, having regard to the amount of the contributions of such other users as aforesaid and to the State's existing obligations to refund

to Alcoa of Australia (W.A.) N.L. part of any contribution that the Joint Venturers may have made to the cost of such dredging, shall return to the Joint Venturers such part of the said sum of four hundred thousand dollars (\$400,000) as is equitable;

**Additional Dredging <sup>2</sup>**

- (iii) in the event of the Joint Venturers desiring to use vessels requiring a greater depth of water than forty (40) feet and/or a greater width of access channel than four hundred and fifty (450) feet advance to the State a sum to be agreed towards the additional dredging necessary PROVIDED THAT in the event or any such additional dredging being carried out in accordance with this provision the State will to such extent and for such period as is reasonable having regard to the cost of that dredging charge for the use of the additional depth so provided all persons (including the Joint Venturers) having industrial or trading establishments at Bunbury and who in any one year move cargo of 300,000 tons or more (whether inward or outward) through the port of Bunbury in vessels drawing more than forty (40) feet AND the State shall from the proceeds of such charges return to the Joint Venturers the agreed sum;
- (iv) in the event of their electing to construct a wharf in the port of Bunbury, construct such wharf in accordance with plans and specifications approved by the State;

**Use of Wharf by Others <sup>2</sup>**

- (v) provided that such use shall not interfere with the Joint Venturers' own requirements in regard thereto, permit any wharf constructed by them to be used by any other person for the handling

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of inward and outward cargo belonging to that person; the Joint Venturers and the Bunbury Port Authority shall from time to time mutually agree upon terms and conditions (including charges) for such handling and if required by the Authority the Joint Venturers shall act as its agent for and in relation to the collection of such charges and shall remit to the Authority the portion thereof which shall be payable to the Authority; the Joint Venturers may in addition to allowing any other person to use that part of the wharf as aforesaid, permit, in their sole discretion, such other person to use the Joint Venturers' bulk loading and other facilities at the berth on reasonable terms and conditions;

**Construction of Ship Loader and Conveyor System<sup>2</sup>**

- (b) (i) whether or not the Joint Venturers construct a wharf as aforesaid, if required by the Authority, at a place within the port of Bunbury and in accordance with plans and specifications first approved by the Authority, construct a shiploader and conveyor system at the Joint Venturers' expense capable of loading alumina into ships at a rate of not less than 1,200 tons per hour;
- (ii) at the sole discretion of the Joint Venturers permit any shiploader and conveyor system constructed at their expense to be used by third parties on reasonable terms and conditions;
- (iii) in the event of the Bunbury Port Authority's electing to construct the shiploader and conveyor system at the Authority's expense, pay such handling charges for the use of the shiploader and conveyor system as the Authority may from time to time determine;

**Wharfage<sup>2</sup>**

- (c) (i) throughout the continuance of this Agreement pay to the Bunbury Port Authority a wharfage charge for cargo passing over the wharf at the rate of 15 cents per ton or such other rate as may be agreed in respect of alumina and associated chemicals and by-products loaded through the shiploader and conveyor system and at rates to be negotiated for all other cargoes;

PROVIDED THAT in each calendar year in which the total tonnage of bulk materials passing through the inner harbour exceeds two million (2,000,000) tons the wharfage charge payable by the Joint Venturers on all alumina and associated chemicals and by-products loaded through the shiploader and conveyor system in excess of eight hundred thousand (800,000) tons shipped in that year shall be reduced by three cents per ton;

**Handling Charges<sup>2</sup>**

- (ii) pay to the Bunbury Port Authority standard handling charges on all the Joint Venturers cargo other than alumina and associated chemicals and by-products loaded through the shiploader and conveyor system handled by the Authority but no charge shall be made in respect of liquid caustic and fuel oil if and when a pipeline and related facilities are constructed at the expense of the Joint Venturers to convey these substances from the point of import at Bunbury to the stockpile area or refinery;

PROVIDED THAT the wharfage and handling charges (if any) payable pursuant to this Agreement shall be adjusted from time to time in proportion to any increase or decrease in the scale of wharfage and handling charges of the Bunbury Port Authority in

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respect of locally manufactured goods AND PROVIDED FURTHER that nothing in this Clause shall be taken to imply any exemption from the payment of tonnage rates, conservancy dues or any other charges that would normally be payable by ships using the port of Bunbury;

- (d) throughout the continuance of this Agreement pay to the Bunbury Port Authority an annual rental to be agreed between the parties for land leased to the Joint Venturers at the port of Bunbury;

**Red mud <sup>2</sup>**

- (4) not less than two years prior to the estimated production date have submitted to and have had approved by the Minister proposals for the ponding of the red mud that is to be anticipated from 63 years production of alumina at the refinery and such proposals must provide —
  - (a) for the progressive acquisition or leasing of land suitably situated and sufficient in area for residue storage;
  - (b) for the formation of the ponds by constructing raised earth embankments to standards similar to those of an earth dam;
  - (c) for the location, construction and maintenance of the ponds so as to avoid interference to or pollution of underground water, groundwater or the land drainage system and for the establishment of an adequate system of observation wells for testing for such pollution, for the taking of samples from these wells every three months, the submission of such samples to chemical analysis and for producing to the Minister in writing the results of all such analyses;
  - (d) an alternative and satisfactory method of disposal should the particular ponding prove inadequate to prevent pollution;



- (e) for the progressive and adequate covering of filled ponds with soil and for the landscaping of such covered areas and the planting of trees and shrubs thereon;

AND PROVIDED THAT —

the Joint Venturers shall not sell or dispose of any land which, pursuant to the requirements of this subclause, has been acquired or leased by the Joint Venturers for the purpose of the disposal of red mud and which has been used for the ponding of red mud and subsequently covered with soil in accordance with the requirements of paragraph (e) of this subclause without having first offered to sell it to the State nor (other than to the State) within twenty-eight (28) days of any such offer having been made PROVIDED FURTHER THAT should the State notify the Joint Venturers that it desires to acquire any part of such land the Joint Venturers shall sell to the State at fair market value such part of the land as they do not reasonably require for their own industrial purposes;

**Disposal of Other Waste Materials**<sup>2</sup>

- (5) dispose of all waste materials other than red mud generated within the refinery site in such manner as to prevent the pollution of rivers, groundwater and underground water and comply with any reasonable direction which the Minister may give with regard to such disposal;

**Drainage**<sup>2</sup>

- (6) adequately drain the refinery site and related facilities and dispose of such drainage in accordance with plans and specifications to be submitted by the Joint Venturers and approved by the Minister;

**Housing**<sup>2</sup>

- (7) (a) provide (at such prices rentals or charges as are fair and reasonable under the circumstances) such services and facilities including housing assistance as may be necessary for the proper and reasonable

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accommodation health and recreation of workers employed by the Joint Venturers and of contractors engaged in carrying out the Joint Venturers' operations under this Agreement;

- (b) bear the capital cost involved to the State in the State's establishing on the mineral lease or adjacent areas any education, hospital, police or other services to the extent to which such services have been made necessary by the Joint Venturers' operations under this Agreement;
- (c) share with the State or the appropriate authority on a fair and reasonable basis the capital cost of establishing additional services and works, including sewerage treatments works, water supply works, main drains, education and hospital services to the extent to which such additional services and works have been made necessary in existing towns by the establishment of the refinery;
- (d) in the event of a material expansion of the designed capacity of the refinery which results in the refinery having a designed capacity to produce more than 1.2 million tons of alumina per year share with the State or the appropriate authority on a fair and reasonable basis the capital cost of establishing such further services and works of the kind referred to in paragraph (c) of this subclause as may be necessary in such existing towns by reason of such expansion. In determining the extend of the Joint Venturers' contribution the parties shall have regard *inter alia* to the current and anticipated composition of the town involved and the extent to which the ordinary responsibilities of the State with respect to the provision of the capital cost of such services and works are to be assumed by the State in the light of its then current capital resources;

**Use of local professional services labour and materials <sup>2</sup>**

- (8) as far as it is reasonable and economically practicable —
- (a) use the services of engineers, surveyors, architects and other professional consultants resident and available within the said State;
  - (b) use labour available within the said State;
  - (c) when calling for tenders and letting contracts for works materials plant equipment and supplies ensure that Western Australian suppliers manufacturers and contractors are given reasonable opportunity to tender or quote; and
  - (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere;

**Commonwealth Consent <sup>2</sup>**

- (9) make all necessary applications from time to time to the Commonwealth or Commonwealth constituted agency, authority or instrumentality which may be concerned for the grant to the Joint Venturers of all licence or consent under Commonwealth law required to permit the Joint Venturers to enter into this Agreement and perform their obligations hereunder;

**Royalties on Alumina and Bauxite During First Seven Year Period <sup>2</sup>**

- (10) (a) (i) subject to any increase or decrease provided for in the proviso to this paragraph pay to the State a royalty of 26.25 cents per ton on all alumina produced at the refinery from bauxite the property of the Crown during the period expiring at the end of seven years from the production date PROVIDED THAT the royalty

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payable under this paragraph shall be reviewed quarterly and shall be calculated separately for each of the quarterly periods mentioned in paragraph (d) of this subclause in accordance with the following formula

$$B \times \frac{M}{52,500} = R$$

Where B = the royalty mentioned in this paragraph (expressed in cents)

M = the mean quarterly world selling price per ton of aluminium as defined below (expressed in cents)

R = the royalty rate per ton (expressed in cents) which will become payable in respect of alumina as a result of the application of this formula;

the mean quarterly world selling price per ton of aluminium for any quarter is deemed to be the average (expressed in cents) of the four prices first quoted in the London Metal Bulletin in respect of one pound of Canadian primary aluminium of 99.5 per cent purity F.O.B. Toronto in each of the four quarters which immediately precede that quarter multiplied by 2,240 and for the purpose of this proviso the conversion rate for Canadian dollars to Australian dollars shall be the mean between the buying and selling rate for telegraphic transfers as quoted by a trading bank acceptable to the Minister for Mines;

- (ii) during the period referred to in sub-paragraph (i) of paragraph (a) of this subclause pay to the State a royalty of 50 cents per ton on all special grade bauxite the property

of the Crown mined by the Joint Venturers within the mineral lease;

- (iii) In the event that the Joint Venturers produce associated chemicals and by-products at the refinery, if the Minister so requires, pay to the State such royalty as may be agreed on between the parties hereto;

**Royalty on Alumina and Bauxite After First Seven Year Period<sup>2</sup>**

- (b) after the expiration of the period referred to in sub-paragraph (i) of paragraph (a) of this subclause pay to the State on all special grade bauxite mined by the Joint Venturers pursuant to this Agreement and on all alumina produced by them at the refinery from bauxite the property of the Crown royalties at the relevant rates specified in the regulations under the Mining Act PROVIDED THAT the amount payable by way of royalty on each ton of alumina shall not be greater than that payable by any other producer of alumina in the South West Division of the State of Western Australia as defined in the Land Act AND PROVIDED ALWAYS that subject to the proviso to sub-paragraph (i) of paragraph (a) of this subclause in no case shall the rate of royalty on alumina be less than 26.25 cents per ton;
- (c) except with the consent of the Minister not use bauxite (other than special grade bauxite) mined by the Joint Venturers pursuant to this Agreement in any other way than for the production of alumina and associated chemicals and by-products at the refinery;

**Return and Payment of Royalties<sup>2</sup>**

- (d) after the production date, before the fifteenth day in each of the months of January, April, July and October in each year furnish to the Minister for Mines a return of all bauxite and alumina and associated chemicals and by-products produced during the quarterly period ending on the last day of the

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preceding December, March, June and September as the case may be together with all other particulars necessary to enable the calculation of the royalty payable thereon and within thirty (30) days after the expiration of each such quarterly period pay the State the amount of royalty due and payable in respect of that quarter;

**Inspection<sup>2</sup>**

- (e) permit the Minister for Mines or his nominee to inspect at all reasonable times the records of the Joint Venturers relative to the quantities of special grade bauxite or alumina and associated chemicals and by-products produced hereunder and to take copies or extracts therefrom for the purpose of determining the royalty payable and take reasonable steps to satisfy the Minister for Mines either by certificate of a competent independent party acceptable to the State or otherwise to the reasonable satisfaction of the Minister for Mines as to all relevant weights and analyses and will give due regard to any objection or representation made by the Minister for Mines or his nominee as to any particular weight or assay of special grade bauxite or alumina and associated chemicals and by-products which may affect the amount of royalty payable hereunder;
- (11) take reasonable measures to purchase or lease land required by the Joint Venturers for the purposes of this Agreement.

**Smelter<sup>2</sup>**

6. (1) The Joint Venturers undertake to investigate the technical and economic feasibility of establishing a smelter in the State of Western Australia and from time to time review the matter and when requested by the Minister but not more than every twelve (12) months to inform the State fully in writing as to the progress and results of such investigations.

The State may if it so desires also undertake studies and for this purpose the Joint Venturers shall provide the State with such information as it may reasonably require but the Joint Venturers shall not be obliged to supply technical information of a confidential nature in respect of processes which

have been developed by the Joint Venturers or an associated company or acquired from other sources and which is not generally available to the aluminium industry, or financial and economic information of a confidential nature which, if disclosed, could unduly prejudice the contractual or commercial arrangements between the Joint Venturers or any of them and third parties.

(2) If the studies undertaken under subclause (1) of this Clause show that in the circumstances then applying to the Joint Venturers a smelter is technically and economically viable and competitive on world markets then the Joint Venturers shall establish a smelter and have it operating at a capacity and within a time to be agreed.

(3) If the Joint Venturers are unwilling or fail to establish the smelter as provided in subclause (2) of this Clause the State may negotiate with a third party to establish a smelter on terms and conditions not more favourable on the whole to the third party than any terms it has offered to the Joint Venturers. In such circumstances the Joint Venturers will if required supply alumina for a reasonable period to the third party at a reasonable price (which shall have regard to prevailing world prices and shall take into account the cost of any additional capacity that has to be constructed by the Joint Venturers) and in sufficient quantities to meet the requirements of the third party from time to time PROVIDED THAT the Joint Venturers shall not be liable to supply the third party with a greater annual quantity of alumina than 100,000 tons in the first year after the smelter is established and thereafter at a progressively increasing annual tonnage until a maximum of 200,000 tons is reached in the fifth year.

#### **Mineral Lease <sup>2</sup>**

7. (1) The State shall on application made by the Joint Venturers at any time before the expiration of two (2) years from the commencement date cause to be granted to the Joint Venturers a mineral lease of such Crown land as is then held by the Joint Venturers pursuant to Clause 3(3) hereof and privately owned land in respect of which the mineral rights are reserved to the Crown as is applied for within the area delineated in blue on the plan marked "X" and initialled by or on behalf of the parties hereto for identification (notwithstanding that the survey of any of the lands applied for has not been completed but subject to corrections to accord with the survey when completed) for the mining of bauxite; and the lease shall be so granted under and (except to the extent that the provisions of the Mining Act are not inconsistent with this Agreement) subject to that Act but in the form set out in the Second Schedule.

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**Exemption from Labour Conditions <sup>2</sup>**

(2) The Joint Venturers shall not be required during the currency of this Agreement to comply with labour conditions imposed by or under the Mining Act with respect to the mineral lease but this subclause shall not apply to privately owned land within the mineral lease unless the owner and occupier have been advised by the Joint Venturers as to the effect of the terms of this Agreement insofar as they relate to privately owned land within the mineral lease and have expressly agreed in writing to the Joint Venturers exercising with respect to his land the right of noncompliance with those labour conditions.

**Catchment Areas <sup>2</sup>**

(3) If the mineral lease granted pursuant to subclause (1) of this Clause includes all or any part of the land coloured in red on the plan marked "X", such land being part of the Helena River and Collie River catchment areas the Joint Venturers notwithstanding the existence of the mineral lease, shall not mine or make any use whatsoever of such land until the State has notified the Joint Venturers that it approves of the Joint Venturers mining or otherwise making use of the land and then only to the extent and subject to any conditions indicated in that approval.

**Rental <sup>2</sup>**

(4) Rental under the mineral lease shall be paid to the State yearly in advance and for the first seven years of the lease shall be calculated at the rate of five dollars (\$5) per annum for every square mile contained in the leased area.

**Review of Rental <sup>2</sup>**

(5) After the expiration of the first seven years from the granting of the mineral lease and at the expiration of every seven year period of the lease thereafter the rental for the lease shall be reviewed. The rental for each such period after the first seven years shall be calculated separately in accordance with the following formula —

$$B \times \frac{M}{\$525} = R$$

Where      B = the rental mentioned in subclause (4) of this Clause.  
              M = the mean quarterly world selling price per ton of aluminium as defined in Clause 5(10)(a)(i) of this Agreement, but here expressed in dollars and cents;  
              R = the new rental;



PROVIDED THAT in no case shall the adjusted rental be less than five dollars (\$5) per square mile.

**Term of Mineral Lease <sup>2</sup>**

(6) Subject to the performance by the Joint Venturers of their obligations under this Clause and notwithstanding any provision of the Mining Act to the contrary the term of the mineral lease will, subject as hereinafter provided, be for twenty-one (21) years from the date of receipt of the application referred to in subclause (1) of this Clause with rights of renewal for two (2) consecutive further periods of twenty-one (21) years upon the terms and conditions contained in the mineral lease except that: —

- (i) the rental rate may be varied as provided in subclause (5) of this Clause;
- (ii) royalty rates may be varied as provided in subclause (10) of Clause 5 hereof;
- (iii) the right of renewal shall be excluded after the second renewal.

**Further Mineral Lease <sup>2</sup>**

(7) Within the first six (6) months of the twelve (12) months immediately preceding the expiration of the second renewed period of twenty-one (21) years of the mineral lease the Joint Venturers, if the refinery is then being operated pursuant to this Agreement, may give notice to the State that they desire a further mineral lease under the Mining Act for bauxite of the leased area or of a part or parts thereof for a term of twenty-one (21) years and the State shall within six (6) months from its receipt of that notice notify the Joint Venturers of the terms and conditions upon which it is prepared to grant such a further mineral lease of the leased area or of a part or parts thereof (as the case may be) and the Joint Venturers for a period of three (3) months thereafter will have the right to accept such further mineral lease on those terms and conditions and for a period of two (2) years the State shall not offer to grant a mineral lease of the leased area or any part thereof for bauxite to any person other than the Joint Venturers on more favourable terms and conditions than have been offered to the Joint Venturers.

**Surrender of part of Mineral Lease <sup>2</sup>**

(8) The Joint Venturers may from time to time surrender to the State all or any portion or portions (of reasonable size and shape) of the mineral lease

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subject to the Joint Venturers having complied with their obligations under subclauses (10) (11) (12) (13) and (14) of this Clause in respect of that portion or those portions and upon the surrender of any portion or portions of the mineral lease the rental thereunder shall abate in proportion to every square mile or residual part of a square mile of the mineral lease so surrendered, but there shall be no refund of rental covering any part of a yearly rental already paid after becoming due.

**Mining on Privately Owned Land<sup>2</sup>**

(9) The Joint Venturers will not commence any mining or related operations for the purposes of this Agreement on any privately owned land within the mineral lease unless and until —

- (a) they have entered into a written agreement with the owner and occupier of such land for the purpose of providing for adequate restoration of the land after mining and that agreement has been approved by the Minister; and
- (b) they have entered into a written agreement with the owner and occupier of such land for compensation arising out of their operations or proposed operations on the land, and within fourteen (14) days after the date thereof or (in the case of an agreement entered into before the date hereof) after the execution of this Agreement lodge a true copy of the agreement with the Minister for Mines.

(10) The Joint Venturers will by means of contour ploughing, concrete or earth sills, diversion channels, settling ponds and drainage or other approved method as the case may require take all reasonable steps to prevent damage being caused to privately owned land by water runoff and will by every reasonable means prevent soil erosion on such land.

(11) The Joint Venturers will within thirty (30) days after ceasing mining operations on any area of privately owned land commence to restore the mined area and continue to restore it until the restoration is completed to the satisfaction of the Minister who in considering any matter relating to such restoration shall have regard to the reasonable requirements of the relevant local authority.

(12) Notwithstanding any rule of law or provision of any agreement referred to in subclause (9)(a) of this Clause to the contrary a reference to mining or mining operations in any such agreement shall be read and construed

as including the restoration of any mined area and for that purpose and for the purposes of subclause (11) of this Clause the term “restoration” means the battering and smoothing of pit walls, the spreading of previously removed topsoil, the ground ripping and planting of vegetation of or in a mined area and the verb “to restore” has a corresponding meaning.

(13) Notwithstanding the provisions of subclause (11) of this Clause where the owner of the privately owned land satisfies the Minister that the excavation of any mined area is capable (with or without modification) of being used and should be used for the purpose of water storage or other approved purpose the Minister will by notice to the Joint Venturers relieve them of the obligation imposed by that subclause with respect to that particular mined area.

(14) For the purposes of subclauses (10) (11) and (13) of this Clause, a reference to privately owned land shall be construed as including land owned by the Joint Venturers.

### **Construction of Railway <sup>2</sup>**

8. (1) The State shall at the request of the Joint Venturers and with all reasonable expedition but at the Joint Venturers’ expense in all things execute the railway construction and upgradings referred to in Clause 5(2)(b) and (c) of this Agreement but shall not be required to complete such construction or upgradings within a period of less than two years from the date of the Joint Venturers’ particular request.

(2) The construction and upgradings referred to in subclause (1) of this Clause shall be carried out to the specifications of the Railways Commission but in deciding on any such specifications the Commission shall have due regard to the requirements of the Joint Venturers and shall consult them as to those requirements.

(3) The provisions of section 96 of the *Public Works Act 1902*, shall not apply to any railway constructed pursuant to this Agreement.

### **Maintenance of Railway <sup>2</sup>**

(4) The State shall maintain the railway constructed in accordance with Clause 5(2)(b)(i) of this Agreement.

### **Operation of Trains <sup>2</sup>**

(5) During the currency of this Agreement, subject to the Joint Venturers complying with their obligations hereunder in relation to their use of

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rail transport and, in particular, subject to the number of wagons provided by the Joint Venturers being sufficient for the purpose, the State shall operate such trains as is required and shall transport over its railways from time to time existing all bauxite alumina coal fuel oil caustic soda lime limestone and other commodities required by the Joint Venturers.

**Maintenance and Service of Locomotives, Brakevans and Rolling Stock <sup>2</sup>**

(6) The State, at its own expense, shall provide all locomotives and brakevans and maintain and service all locomotives brakevans and wagons necessary for the purposes of this Agreement.

**Construction of Roads <sup>2</sup>**

9. (1) If so required by the Joint Venturers the State shall at the expense of the Joint Venturers acquire or resume such land as may be required and construct or cause to be constructed any road reasonably required by them to gain access to any land in order to carry out their operations under this Agreement and the alignment and general standard of any such road shall be such as is acceptable to the State.

(2) The Joint Venturers may construct and use private roads within the area of the mineral lease but —

- (a) the plans and specifications for any such road shall be approved in advance by the State and shall where required by the State provide for grade separation at all intersections with public roads and railways;
- (b) the Joint Venturers shall —
  - (i) minimise the extent of forest clearing required for road alignments and give to the Conservator of Forests six (6) months prior notice of their intention to build any road;
  - (ii) take full responsibility for and take precautions to prevent the public from using their private roads; and
  - (iii) provide fences and stock barrier wherever necessary.

(3) The Joint Venturers shall in respect of every road constructed pursuant to subclause (2) of this Clause that is open to or used by the public for

passage with vehicle comply with the provisions of the *Road Maintenance (Contribution) Act 1965*.

**Use of Public Roads**<sup>2</sup>

10. (1) Subject to any restriction that the State may reasonably impose by way of limitation of speeds or loads or the use of railway crossings the Joint Venturers may use any public roads that may from time to time exist in the area of their operations under this Agreement for the purpose of transporting goods and materials in connection with those operations, but where the Joint Venturers' operations require the use of a public road that is inadequate for the purpose, or results in excessive damage or deterioration of any public road (other than fair wear and tear) the Joint Venturers shall pay to the State or local authority concerned (except where and to the extent that the Commissioner of Main Roads or local authority agrees to bear the whole or part of the cost involved) the total cost of any upgrading required or of making good the damage or deterioration.

(2) Where the operations of the Joint Venturers bring about an increase in the conflict of trains and road vehicles at level crossings to such an extent that an improvement in the level of protection requiring the provision of either flashing lights, boom gates or grade separation is considered by the Minister to be warranted following all investigation, the Joint Venturers shall pay to the State (except where and to the extent that the Minister agrees to bear the whole or part of the cost involved) the total cost of providing the increased level of protection.

**Transport of Construction Materials by Road**<sup>2</sup>

11. If during the construction of the refinery or any substantial extension thereof the Joint Venturers demonstrate to the satisfaction of the Commissioner of Transport that the services provided by the Railways Commission do not meet the reasonable requirements of the Joint Venturers, the Commissioner of Transport shall, subject to the payment of the appropriate fee, issue a licence to transport goods by road for such construction or extension under the terms of the *Transport Commission Act 1966*.

**State's Obligations**<sup>2</sup>

12. The State covenants with the Joint Venturers that the State shall —

- (1) if so required by the Joint Venturers acquire for them any land required for the refinery; the price at which such land

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will be made available to the Joint Venturers shall be the actual cost of acquisition by the State;

- (2) on application grant, or make arrangements to have the Authority, or other interested instrumentality of the State, grant to the Joint Venturers, or obtain for them at such prices and on such terms as are prescribed by law or are otherwise reasonable any land, lease, easement or any licence or other right (whether statutory or otherwise) which the parties hereto agree are reasonably necessary to enable the Joint Venturers, subject to the terms of this Agreement to construct, install, establish, operate or maintain, as the case may be —
- (a) a pipeline or conveyor for the transport of bauxite from the mineral lease to the refinery site;
  - (b) any pipeline for the transport of fresh water, sea water, fuel oil, liquid caustic, red mud or other effluent, or natural gas as is reasonably required for the purposes of this Agreement;
  - (c) a wharf in the port of Bunbury, an adjacent stockpile area adequate for the purposes of the Joint Venturers together with associated shiploader, conveyors, storage bins, railway sidings and ancillary facilities for the storage handling and shipment of alumina and associated chemicals and by-products and, a ship unloader and other facilities for the discharge and storage of liquid caustic fuel oil soda ash lime and limestone and such other commodities as the Bunbury Port Authority may in its discretion approve from time to time;
  - (d) housing recreational and other facilities, amenities and services required for the employees of the Joint Venturers their contractors and their families;
  - (e) any other facility contemplated by this Agreement or which the Joint Venturers and the

Minister agree is desirable for the purposes of the Agreement;

PROVIDED THAT the State shall be reimbursed by the Joint Venturers for all expenses involved, whether because of resumption or otherwise in its making or causing to be made available to the Joint Venturers any such land lease easement or other right as aforesaid, and that the Joint Venturers shall pay all fees and other charges normally payable in connection with the granting of any statutory right or licence.

AND PROVIDED THAT wherever the grant of any such land, lease, easement, licence or other right is provided for by statute the particular grant shall be made under and the resulting right exercised subject to the terms of the relevant statute except to the extent that this Agreement provides otherwise.

AND PROVIDED THAT any easement licence or other right required for the purposes specified in paragraphs (a) and (b) of this subclause shall only be granted to the extent that such grant does not unreasonably interfere with public works (such as water supplies, sewerage, drainage, electricity supplies roads or railways) then existing or under immediate contemplation

**Modification of Land Act <sup>2</sup>**

BUT PROVIDED FURTHER THAT in respect of any land sold or leased to the Joint Venturers by the State for any of the purposes of this Agreement the Land Act shall be deemed to be modified by: —

- (a) the substitution for subsection (2) of section 45A of the following subsection: —
  - “(2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased;”
- (b) the deletion of the proviso to section 116;

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- (c) the deletion of section 135;
- (d) the deletion of section 143;
- (e) the inclusion of a power to offer for sale or leasing land within or in the vicinity of any townsite notwithstanding that the townsite has not been constituted a townsite under section 10; and
- (f) the inclusion of a power to offer for sale or grant leases or licences for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, the terms and conditions and the forms referred to in the Act;

The provisions of the last proviso above shall not operate so as to prejudice the rights of the State to determine any lease licence or other right or title in accordance with the other provisions of this Agreement;

- (3) should the Joint Venturers desire to establish a second refinery for the processing of bauxite within the State entertain and sympathetically consider any proposals which the Joint Venturers may make with regard thereto including port, railway and other associated facilities;

**Zoning <sup>2</sup>**

- (4) ensure that no land the subject of any mineral lease or other lease, licence or easement granted under or pursuant to statute or this Agreement and no land of any other tenure (including freehold) used or occupied by the Joint Venturers for any of the purposes contemplated by the Agreement shall be made subject to any restriction as to its use such as would prevent or unreasonably hinder the Joint Venturers carrying out the operations contemplated by this Agreement, whether such restriction be by way of zoning, regulation, by-law or other exercise of statutory power and whether by the State or any local or other authority;



**No Discrimination by Rates or Otherwise <sup>2</sup>**

- (5) except as provided in this Agreement not impose nor permit nor authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Joint Venturers in the conduct of their business hereunder nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Joint Venturers of full enjoyment of the rights granted under this Agreement;

**Rating <sup>2</sup>**

- (6) ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection therewith) shall for rating purposes be the unimproved value thereof and no such lands shall be subject to any discriminatory rate as against the Joint Venturers as a party to this Agreement PROVIDED THAT nothing in this subclause shall prevent the Joint Venturers making the election provided for by section 533B of the *Local Government Act 1960*;

**Resumption of Land <sup>2</sup>**

- (7) having regard to the particular nature of the industry proposed to be established by the Joint Venturers under this Agreement and during the currency hereof not resume or suffer or permit to be resumed by any State instrumentality or by any local or other authority of the said State any estate, right, title or interest in land or improvements thereon held by or acquired by or on behalf of the Joint Venturers for the purpose of their operations under this Agreement the resumption of any of which would unreasonably impede the existing or projected activities of the Joint Venturers nor will the State create or grant or permit or suffer to be created or

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granted by any instrumentality or authority of the said State as aforesaid any road right of way or easement of any nature or kind whatsoever over or in respect thereof without the consent of the Joint Venturers first having been obtained which consent shall not be arbitrarily or unreasonably withheld;

**Water <sup>2</sup>**

13. (1) The Joint Venturers estimate that for a refinery with a designed capacity of 1.2 million tons of alumina per annum they will require up to 3 million gallons of potable water per day and that if the capacity of such refinery is increased to 2 million tons per annum the water requirements will approximate 5 million gallons per day.

The Joint Venturers' initial requirements of up to 3 million gallons a day will be supplied to the Joint Venturers from the Wellington Dam and the State (so far as is then reasonably practicable) will meet the additional requirements of the Joint Venturers from that source.

(2) The Joint Venturers will advance to the State a sum sufficient to enable the State to design and construct a pipeline together with ancillary works of appropriate size to supply 3 million gallons per day to the refinery.

Such water shall be paid for at the following rates —

- (a) During the first ten years from the production date the sum of one hundred and twenty thousand dollars (\$120,000) per annum plus the prices prescribed under the provisions of the *Country Areas Water Supply Act 1947*, less 10 cents per 1,000 gallons; and
- (b) thereafter during the continuance of this Agreement at the said prescribed prices less 10 cents per 1,000 gallons.

In addition to the rates prescribed by paragraphs (a) and (b) of this subclause the Joint Venturers will pay an annual rate in respect of the lot or lots on which the refinery is constructed pursuant to the provisions of the said Act except that the rate shall be based on the unimproved value of the land.

(3) The Joint Venturers will contribute a fair and reasonable proportion of the cost of any works involved in meeting the Joint Venturers' additional requirements of water under subclause (1) of this Clause.

(4) The State as soon as possible after this Agreement comes into operation shall with all reasonable expedition construct the pipeline and ancillary works referred to in subclause (1) of this Clause and may construct such pipeline and ancillary works to a greater capacity than that indicated in subclause (1), but in that event the cost of the enlarged supply system will be shared on a basis to be negotiated between the State and the Joint Venturers.

(5) If at any time the reasonable water requirements of the Joint Venturers either as to quality or quantity cannot be met from the Wellington Dam or other sources then available, the State, in so far as it is reasonably possible will act promptly to meet those requirements. The Joint Venturers will contribute a fair and reasonable proportion of the cost of any works involved.

(6) The State at the request and at the expense of the Joint Venturers will provide water sufficient for the needs of the Joint Venturers' mining operations and of their work force at such point or points as shall be chosen by the Joint Venturers within the mineral lease. Such water shall be paid for by the Joint Venturers at the prices prescribed from time to time for water supplied for mining purposes under the provisions of the *Country Areas Water Supply Act 1947*.

(7) In the event of the Joint Venturers desiring to develop a local source of water for the needs of their mining operations and of their work force within the mineral lease the Joint Venturers will at their expense construct local storage and ancillary works in accordance with proposals approved by the Minister.

### **Coal<sup>2</sup>**

14. The parties acknowledge that it is proposed (subject to coal being available at a price competitive with other available sources of energy) to use coal in the refinery. To this end it is essential that the Joint Venturers be assured of a continuity of supply of coal of sufficient amount to meet the requirements of a refinery with an initial capacity of 1.2 million tons and a maximum capacity of 2 million tons per year for a contemplated period of 63 years.

The Joint Venturers shall confer with the Minister from time to time to establish their annual coal requirements. The Joint Venturers shall use their best endeavours to enter into long term contracts for their requirements of coal having first agreed with the State on an equitable apportionment between open cut coal and deep mined coal to be used both by the State and the Joint Venturer's from available resources.

**First Schedule**

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The State shall, having regard to the coal requirements of the State Electricity Commission for its power stations from time to time, take such reasonable measures as may be practicable (including where appropriate the making of representations to the Commonwealth) to ensure the availability of supplies of coal required for the purposes of the Joint Venturers' operations under this Agreement.

**Electricity <sup>2</sup>**

15. (1) The Joint Venturers are authorised to generate electricity for their own use at the area from time to time being mined within the mineral lease, at the refinery for their own use on the site of the refinery and for ancillary operations beyond that site, PROVIDED THAT the Joint Venturers shall comply in all respects with the reasonable requirements of the State Electricity Commission and shall not take transmission lines beyond the site of the refinery without the prior approval of the Commission which approval shall not be withheld in respect of transmission lines for the purpose of providing power to a conveyor between the area from time to time being mined within the mineral lease and the refinery, and between the refinery and the residue area for the purpose of providing power to pump red mud. Any approval given by the Commission pursuant to this subclause may be subject to conditions requiring that the route and type of line shall meet the reasonable requirements of the Commission.

(2) The State will within twelve (12) months of the receipt of a request from the Joint Venturers supply power to the site of the refinery sufficient for construction purposes and to the area from time to time being mined within the mineral lease sufficient for normal operating requirements.

(3) The supply of power to the Joint Venturers pursuant to this Clause shall be on the State Electricity Commission's usual conditions and practice and at the appropriate tariffs prescribed from time to time.

**Access to Forests <sup>2</sup>**

16. (1) The State acknowledges that the Joint Venturers for the purpose of their operations under this Agreement will need to enter upon and remove overburden from areas of State forests and Crown land within the mineral lease.

(2) The Joint Venturers will subject as is hereinafter provided, from time to time in accordance with their plan submitted pursuant to subclause (10) of this Clause give to the Conservator of Forests on behalf of the State at least six (6) months prior notice of their intention to enter upon any area of State

forest or Crown land to be specified in the notice and to cut and remove from the area forest produce and overburden for the purposes of their operations under this Agreement and the Conservator unless he has good and sufficient reason to the contrary shall grant to the Joint Venturers any permit or licence necessary for those purposes subject to usual or proper conditions. In the case of bauxite to be mined for test purposes, the period of notice required under this subclause shall be reduced to thirty (30) days:

PROVIDED HOWEVER that —

- (a) before the Joint Venturers commence mining operations on the area the Conservator may cut and remove therefrom any merchantable timber or other forest produce; and
- (b) the Joint Venturers in accordance with the directions of the Conservator, will dispose of all forest produce and overburden removed from the area in such places and in such manner as will not threaten or destroy the health or safety of any forest or forest produce on adjoining or other areas of State forest.

(3) As from the commencement of mining operations or from the first day of January, 1975, whichever shall first occur, the Joint Venturers will pay to the Conservator compensation at the rate of two hundred and fifty dollars (\$250) per acre for the area of forest destroyed by or in connection with the Joint Venturers' mining activities. Such payments will be made in advance in the month of January of each year on the area of forest proposed to be destroyed in that year and payments by way of any necessary adjustment shall be made in the month of January next following. The rate of compensation aforesaid has been determined having regard to the current cost to the Conservator of acquiring one acre of suitable land and planting it with trees together with the estimated loss of royalty subsidy or grant and increased costs of management in respect of each acre of growing timber so destroyed and shall accordingly be increased or decreased as from the termination of each period of five (5) years calculated from the date of commencement of mining operations or from the 1st day of January, 1975 whichever shall first occur having regard to any increase or decrease in the Conservator's costs and the loss of royalty subsidy or grant aforesaid which has occurred since the date of this Agreement or the date of the last review as the case may be.

(4) The Forest Officer for the time being in charge of State forest within the area of the mineral lease may on reasonable grounds prohibit the use

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thereon of any roads or tracks and may from time to time give directions regarding the routes by which the ore or produce obtained may be removed or taken through any part of the State forest and the Joint Venturers shall comply with and observe such directions PROVIDED THAT those directions shall not apply to roads built by the Joint Venturers the Commissioner of Main Roads or any other statutory body with the exception of the Forests Department. Subject thereto and provided that the use of any road under the control of the Conservator does not result in undue damage to the forest or forest produce the Joint Venturers may use such road or roads as they desire. Any damage to Forests Department roads or tracks resulting from operations by the Joint Venturers shall be repaired by the Joint Venturers at their expense to the satisfaction of the Forest Officer.

(5) All debris resulting from clearing operations in areas of State forests and Crown land by the Joint Venturers shall be disposed of by the Joint Venturers to the satisfaction of the Conservator.

(6) The Joint Venturers in their operations hereunder will comply with and observe the provisions of the *Bush Fires Act 1954*.

(7) The Joint Venturers will take all such necessary precautions as may be indicated by the Forest Officer to prevent the occurrence or spread of any fire within or adjacent to the area of the mineral lease.

(8) As may reasonably be required by the Conservator, the Joint Venturers shall from time to time and at their expense take adequate measures —

- (i) for the progressive restoration and re-forestation of the forest destroyed;
- (ii) for the prevention of soil erosion;
- (iii) for the prevention of the formation of deep water pools and other dangers to persons who may use the forest areas.

PROVIDED THAT the Joint Venturers shall not be obliged to restore to its original contour land on which forest has been destroyed.

(9) The Joint Venturers shall as soon as practical after the date of this Agreement and at their expense and in consultation with the Conservator establish a trial area or areas not exceeding in the aggregate five acres for the purpose of investigating the most practical and effective methods of re-forestation of mined areas.

(10) The Joint Venturers after consultation with the Conservator of Forests will prepare and submit to the State not later than two years after the commencement date a plan in reasonable detail of their proposed mining operations upon areas of State Forest and Crown land during the succeeding ten years and such plan after like consultation shall be reviewed and resubmitted thereafter at yearly intervals.

**Environmental Protection <sup>2</sup>**

17. Nothing in this Agreement shall be construed to exempt the Joint Venturers from compliance with any requirement in connection with the protection of the environment arising out of or incidental to the operations of the Joint Venturers hereunder that may be made by the State or any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act for the time being in force.

**Right to Grant Mining Tenements for Other Minerals <sup>2</sup>**

18. Notwithstanding anything contained or implied in this Agreement or in the mineral lease the State may grant to or register in favour of persons other than the Joint Venturers leases and other mining tenements in respect of the area subject to the mineral lease for minerals other than those the subject of the mineral lease and for stone sand or gravel unless the Minister for Mines determines that such grant or registration is likely unduly to prejudice or interfere with the operations of the Joint Venturers hereunder assuming the taking by the Joint Venturers of reasonable steps to avoid the prejudice or interference.

**Delays <sup>2</sup>**

19. (1) This Agreement shall be deemed to be made subject to any delays in the performance of obligations under this Agreement and to the temporary suspension of continuing obligations hereunder which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays or any such temporary suspension as aforesaid caused by or arising from Act of God force majeure floods storms tempests washaways fire (unless caused by the actual fault or privity of the Joint Venturers) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and delays due to overall Australian economic conditions or factors which could not reasonably have been foreseen and delays due to overall economic conditions in Australia or any

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other country from which the finance or a substantial portion of the finance required to enable the Joint Venturers to discharge their obligations under this Agreement is to be provided or to which a substantial portion of the products of the Joint Venturers or any subsidiary or associated company of any of them is intended by the Joint Venturers or any of them to be sold inability to sell or otherwise dispose of alumina profitably or to prices for the products of the Joint Venturers or any of them or any subsidiary or associated company of any of them falling below profitable levels, PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall minimise the effect of the said causes as soon as possible after their occurrence.

(2) On the happening of any event specified in this Clause which in the opinion of the Joint Venturers may delay the performance by the Joint Venturers of an obligation which under this Agreement is to be performed by the Joint Venturers within a specified time the Joint Venturers shall promptly give notice to the Minister of such event and likely delay in which case the Minister shall grant such extension of time for the performance of the obligation as shall in all the circumstances be fair and reasonable. In case the Joint Venturers object to the decision of the Minister as to what is a fair and reasonable extension the same shall be referred to arbitration hereunder.

**Assignment <sup>2</sup>**

20. (1) Subject to the provisions of this Clause the Joint Venturers or any of them may at any time —

- (a) assign mortgage charge sublet or dispose of to an associated company as of right and to any other company or person with the consent of the Minister the whole or any part of the rights of the Joint Venturers hereunder (including their rights to or as the holder of any lease licence easement grant or other title) and of the obligations of the Joint Venturers hereunder; and
- (b) appoint as of right an associated company or with the consent of the Minister any other company or person to exercise all or any of the powers functions and authorities which are or may be conferred on the Joint Venturers hereunder;

subject however to the assignee or (as the case may be) the appointee executing in favour of the State a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Joint Venturers to be complied with observed or performed in regard to the matter or matters so assigned or (as the case may be) the subject of the appointment.



(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this Clause but subject to the provisions of subclause (3) of this Clause the Joint Venturers shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on their part contained herein and in any lease licence easement grant or other title the subject of an assignment under the said subclause (1) PROVIDED THAT the Minister may agree to release the Joint Venturers or any of them from such liability where he considers such release will not be contrary to the interests of the State.

(3) When any agreement entered into by the Joint Venturers in accordance with the terms of this Agreement with some other company or person results in that other company or person discharging all or any of the obligations undertaken by the Joint Venturers under this Agreement (including, without prejudice to the generality of this provision, the obligation to construct and operate a refinery as imposed by Clause 5(1) hereof) or renders it unnecessary for the Joint Venturers to discharge any obligation undertaken by them hereunder the Minister will discharge or temporarily relieve the Joint Venturers from such part of their said obligations as is reasonable having regard to the extent of and period for which the other company or person actually effects the discharge of those obligations.

#### **Determination of Agreement <sup>2</sup>**

21. (1) In any of the following events namely if the Joint Venturers make default which the State considers material in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sublease licence or other title or document granted or assigned under this Agreement on their part to be performed or observed or if the Joint Venturers abandon or repudiate their operations under this Agreement and such default is not remedied or such operations resumed within a period of one hundred and eighty (180) days after notice as provided in subclause (2) of this clause is given by the State (or — if the alleged default abandonment or repudiation is contested by the Joint Venturers and within sixty (60) days after such notice is submitted by the Joint Venturers to arbitration — within a reasonable time fixed by the arbitration award but not less than ninety (90) days after the making of the arbitration award where the question is decided against the Joint Venturers the arbitrator finding that there was a *bona fide* dispute and that the Joint Venturers had not been dilatory in pursuing the arbitration) or if the Joint Venturers go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) the State may by notice to the Joint Venturers determine this

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Agreement and the rights of the Joint Venturers hereunder and under any lease licence easement or right granted hereunder or pursuant hereto shall thereupon determine.

(2) The notice to be given by the State in terms of subclause (1) of this Clause shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Joint Venturers and all such assignees mortgagees chargees and disponees for the time being of the Joint Venturers' said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 20 whose name and address for service of notice has previously been notified to the State by the Joint Venturers or any such assignee mortgagee chargee or donee.

(3) The abandonment or repudiation by or liquidation of the Joint Venturers referred to in subclause (1) of this Clause means the abandonment or repudiation by or the liquidation of all of them the Joint Venturers and all assignees and appointees who have executed and are for the time being bound by a deed of covenant in favour of the State as provided in Clause 20.

(4) If the default referred to in subclause (1) of this Clause shall not have been remedied after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Joint Venturers and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Joint Venturers to the State on demand.

**Effect of Cessation of Determination of Agreement <sup>2</sup>**

22. On the cessation or determination of this Agreement —

- (i) except as otherwise agreed by the Minister the rights of the Joint Venturers to in or under this Agreement and the rights of the Joint Venturers or of any assignee of the Joint Venturers or any mortgagees to in or under the mineral lease and any other lease licence easement or right granted hereunder or pursuant hereto shall thereupon cease and determine but without prejudice to the liability of either of

the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder;

- (ii) the Joint Venturers shall forthwith pay to the State all moneys which may then have become payable or accrued due;
- (iii) the right title and interest of the Joint Venturers in the railway wagons provided by them pursuant to Clause 5(2)(g) of this Agreement shall cease and determine and the same shall become the property of the State;
- (iv) save as aforesaid and as otherwise provided in this Agreement neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.

**Indemnity <sup>2</sup>**

23. The Joint Venturers will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Joint Venturers pursuant to this Agreement or relating to their operations or arising out of or in connection with the construction maintenance or use by the Joint Venturers or their servants agents contractors or assignees of the Joint Venturers' works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

**Variation <sup>2</sup>**

24. (1) The parties may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of any lease licence easement or right granted hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

(2) Where in the opinion of the Minister an agreement made pursuant to subclause (1) of this Clause constitutes a material or substantial alteration of the rights or obligations of either party, the agreement shall contain a declaration to that effect and the Minister shall cause that agreement to be laid upon the Table of each House of Parliament within the twelve sitting days next following its execution.

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(3) Either House may, within twelve (12) sitting days of that House after the agreement has been laid before it, pass a resolution disallowing the agreement, but if, after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

**Power to Extend Periods <sup>2</sup>**

25. The Minister may at the request of the Joint Venturers from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

**New Processes <sup>2</sup>**

26. Nothing in this Agreement shall in any way prevent or limit the Joint Venturers at their sole discretion from adopting for the discharge of their obligations hereunder new processes or equipment incorporating the latest technical developments from time to time available whether or not used by the Joint Venturers elsewhere in their operations.

**Processing of Bauxite from Other Sources <sup>2</sup>**

27. Subject to the approval of the Minister the Joint Venturers may process at the refinery bauxite obtained otherwise than pursuant to this Agreement.

**Arbitration <sup>2</sup>**

28. Except where otherwise specifically provided in this Agreement any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Agreement or any such amendment variation or addition or as to the rights duties or liabilities of either party thereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the *Arbitration Act 1895*, PROVIDED THAT this Clause shall not apply to any case where the State or the Minister is by this Agreement expressly given a discretionary power.

**Notices <sup>2</sup>**

29. Any notice consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent

by the State if signed by the Minister or by any senior officer of the Civil Service of the said State acting by the direction of the Minister and forwarded by pre-paid post to the Joint Venturers at their respective nominated offices for the time being in the said State and by the Joint Venturers if signed on their behalf by any person or persons authorised by the Joint Venturers or by their solicitors as notified to the State from time to time and forwarded by pre-paid post to the Minister and any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

**Exemption From Stamp Duty <sup>2</sup>**

30. (1) The State shall exempt from any stamp duty which but for the operation of this Clause would or might be chargeable —

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Joint Venturers or any permitted assignee of the Joint Venturers any tenement lease easement licence or other right or interest;
- (c) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment made in conformity with the provisions of subclause (1) of Clause 20 hereof; and
- (d) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment to or in favour of the Joint Venturers or an associated company of any interest right obligation power function or authority which has already been the subject of an assignment sublease disposition or appointment executed pursuant to subclause (1) of Clause 20 hereof;

PROVIDED THAT this Clause shall not apply to any instrument or other document executed or made more than seven years from the date hereof.

(2) If prior to the date on which this Agreement comes into operation stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) of this Clause the State shall on demand after the commencement date refund any stamp duty paid on any such instrument or other document to the person who paid the same.

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**Relevant law <sup>2</sup>**

31. This Agreement shall be interpreted according to the law for the time being in force in the State of Western Australia.

**Determination of Previous Agreement <sup>2</sup>**

32. The Agreement of which a copy is set out in the Schedule to the *Alumina Refinery (Bunbury) Agreement Act 1970* shall on the date of execution of this Agreement be terminated.

**FIRST SCHEDULE.**

1. Rates per ton mile for bauxite carried on trains operating between agreed loading sites and the refinery and coal on trains between the Collie coalfield and the refinery and alumina on trains between the refinery and port of Bunbury back loading with any of caustic soda and fuel oil from Monday to Saturday of each week. Should Sunday working be required the Joint Venturers shall meet the additional costs involved.

**BAUXITE:**

(i) agreed loading sites to the refinery:

	cents per net ton mile
Over .50 and up to 1.00 million tons per annum . . . . .	1.10
Over 1.00 and up to 2.00 million tons per annum . . . . .	1.00
Over 2.00 and up to 3.00 million tons per annum . . . . .	.90
Over 3.00 and up to 4.00 million tons per annum . . . . .	.85
Over 4.00 and up to 5.00 million tons per annum . . . . .	.80
Over 5.00 and up to 6.00 million tons per annum . . . . .	.75

**First Schedule**

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Over 6.00 and up to 7.00 million tons per annum . . . . .	.725
Over 7.00 million tons per annum . . . . .	.70

When bauxite loading sites are more than 52 miles from the refinery the above rates shall be reduced by .025 cents per net ton mile.

**ALUMINA, CAUSTIC SODA, FUEL OIL, LIME AND LIMESTONE:**

(ii) alumina from the refinery to the port of Bunbury and backloading with caustic soda fuel oil lime and limestone:

	cents per net ton mile
Over .50 and up to .75 million tons per annum . . . . .	1.50
Over .75 and up to 1.00 million tons per annum . . . . .	1.40
Over 1.00 and up to 1.25 million tons per annum . . . . .	1.30
Over 1.25 and up to 1.50 million tons per annum . . . . .	1.25
Over 1.50 and up to 1.75 million tons per annum . . . . .	1.20
Over 1.75 and up to 2.00 million tons per annum . . . . .	1.15
Over 2.00 and up to 2.50 million tons per annum . . . . .	1.10
Over 2.50 million tons per annum . . . . .	1.07

**First Schedule**

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COAL:

(iii) from an agreed point on the Collie coalfield to the refinery:

	cents per net ton mile
Over .50 and up to .75 million tons per annum	1.90
Over .75 and up to 1.00 million tons per annum . . . . .	1.80
Over 1.00 and up to 1.25 million tons per annum . . . . .	1.70
Over 1.25 and up to 1.50 million tons per annum . . . . .	1.60
Over 1.50 million tons per annum . . . . .	1.50

2. The rates for freight set out in this schedule have been calculated on the basis of the total turn round time at terminals not exceeding the following: —

Bauxite:

mine site . . . . .	2 hours
refinery . . . . .	2½ hours

Alumina, Caustic Soda, Fuel Oil, Lime and Limestone:

port of Bunbury . . . . .	4 hours
refinery . . . . .	4 hours

Coal:

Collie coalfield . . . . .	1½ hours
refinery . . . . .	1½ hours

If such times are not regularly adhered to by the Joint Venturers the Railways Commission reserves the right to review the freight rates.

3. The rates for freight are based on wagons being loaded to capacity and shall be subject to the minimum load per train being not less than: —

Bauxite . . . . .	63 tons per wagon
Alumina . . . . .	62 tons per wagon
Caustic Soda . . . . .	54½ tons per wagon
Fuel Oil . . . . .	61½ tons per wagon



First Schedule

Coal .....	45 tons per wagon
Lime and Limestone .....	as stipulated by the Railways Commission

4. The rates for freight set out in this schedule are based on costs prevailing at the 19<sup>th</sup> January 1972 and shall be adjusted half yearly on the first days of January and July with the new rates becoming effective on and from those dates in accordance with the following formula: —

$$F1 = F + \left[ .45F \left\{ .80 \left\{ \frac{HR1 - HR}{HR} \right\} + .05 \left\{ \frac{D1 - D}{D} \right\} + .15 \left\{ \frac{SR1 - SR}{SR} \right\} \right\} \right]$$

WHERE:

- (i) F1 = the new freight rate.
- (ii) F = the freight rate which was payable as at 19th January 1972.
- (iii) HR = the average hourly rate payable as at 19th January 1972.
- (iv) HR1 = the average hourly rate payable as at the date of adjustment.
- (v) D = the wholesale price (duty free) of distillate in Perth as at 19th January 1972.
- (vi) D1 = the wholesale price (duty free) of distillate in Perth as at the date of adjustment.
- (vii) SR = the price of heavy steel rails per ton c.i.f. port of Fremantle as ascertained from price schedule covering despatches from the Broken Hill Proprietary Company Limited and Australian Iron and Steel Proprietary Limited as at 19th January 1972.

**First Schedule**

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(viii) SR1 = the price of heavy steel rails per ton c.i.f. Fremantle ascertained as aforementioned as at the date of adjustment.

The rates applicable at the 19th January 1972 are: —

1st class driver . . . . .	\$2.2475 per hour
1st class guard . . . . .	\$1.8338 per hour
trackman . . . . .	\$1.4588 per hour
<hr/>	
Average hourly rate . . . . .	\$1.8467

Price of distillate per gallon — 21.4 cents.

Price of heavy steel rails per ton, c.i.f. port of Fremantle — \$113.00

The escalation formula referred to above shall be subject to review by the Railways Commission after consultation with the Joint Venturers on the 1st January 1977 and thereafter at five yearly intervals.

5. All traffic shall be carried at the risk of the Joint Venturers.

6. Bauxite, alumina, caustic soda, fuel oil, coal, lime and limestone carried on other than unit trains and all other commodities shall, unless otherwise determined by the Railways Commission, be carried at gazetted rates.

SECOND SCHEDULE.

WESTERN AUSTRALIA.

MINING ACT 1904.

Lease No.

Minerals Fields

ELIZABETH THE SECOND by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith: TO ALL TO WHOM THESE PRESENTS shall come GREETINGS: KNOW YE that WHEREAS by Section 48 of the *Mining Act 1904*, power is given to the Governor of our State of Western Australia, in the Commonwealth of Australia, to grant leases of land for the purposes of mining thereon for any mineral other than gold upon the terms and conditions set forth in the said Act AND WHEREAS by an Agreement made between the State of Western Australia of the one part and Alwest Pty. Limited and Dampier Mining Company Limited (hereinafter called





The common seal of ALWEST PTY.  
LIMITED was hereunto affixed with the  
authority of the Directors and in the  
presence of — }

DIRECTOR.

DIRECTOR.

The common Seal of DAMPIER  
MINING COMPANY LIMITED was  
hereunto affixed by authority of the  
Board of Directors }

DIRECTOR.

SECRETARY.

*[First Schedule amended by No. 10 of 1978 s. 5.]*

**Second Schedule**

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**Second Schedule**

THIS AGREEMENT made the 18th day of April 1978 BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A., Premier of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (hereinafter referred to as "the State") of the one part and ALWEST PTY. LIMITED (hereinafter called "Alwest") a Company incorporated under the *Companies Act 1961*, of Western Australia and having its registered office at 44 Stirling Street, Perth, in the said State and DAMPIER MINING COMPANY LIMITED (hereinafter called "Dampier") a Company also incorporated under the said Act and having its registered office at 37 Saint George's Terrace, Perth (hereinafter collectively called "the Joint Venturers" in which term shall be included their respective successors and permitted assigns and appointees) of the other part.

WHEREAS:

- A. The parties are the parties to the agreement between them dated the 22nd day of August, 1974, the execution of which by the State was authorized pursuant to section 3 of the *Alumina Refinery (Worsley) Agreement Act 1973* (which agreement is hereinafter referred to as "the principal agreement").
- B. The Joint Venturers have given notice of their desire to proceed with the objects of the principal agreement in accordance with the provisions of Clause 2 thereof.
- C. The Minister has at the request of the Joint Venturers pursuant to the provisions of Clause 25 of the principal agreement extended the time for performance by the Joint Venturers of their obligations under the principal agreement to the 31st day of October 1978.
- D. The State pursuant to subclause (2) of Clause 3 of the principal agreement created a temporary reserve over all the Crown land referred to therein and granted to the Joint Venturers rights of occupancy over such temporary reserve.
- E. The parties desire to amend the principal agreement.

NOW THIS AGREEMENT WITNESSETH —

- 1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the principal agreement.

2. The provisions of this Agreement shall not come into operation unless and until a Bill to approve and ratify this Agreement is passed by the Legislature of the said State and comes into operation as an Act.
3. The principal agreement is hereby varied as follows:
- (1) as to Clause 1 —
- (a) by adding after the definition “access channel” the following definition —
- “Alcoa” means Alcoa of Australia Limited;
- (b) by adding after the definition “bauxite” the following definitions —
- “Berth A” means the land known as Berth A at Bunbury and the wharf and alumina handling facilities constructed thereon by Alcoa pursuant to paragraph (a) of subclause (2) of Clause 4 of the Agreement set out in the Schedule to the *Alumina Refinery (Pinjarra) Agreement Act 1969*;
- “Berth B” means the land for the wharf and storage area immediately east of Berth A to be leased to the Joint Venturers at Bunbury pursuant to paragraph (c) of subclause (2) of Clause 12 of this Agreement;
- (c) by adding after the definition “Crown Land” the following definition —
- “environmental review and management programme” means any environmental review and management programme and any variation thereof referred to in Clause 5A hereof; and

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- (d) by deleting the definition of “State Electricity Commission” and adding the following definition —
  - “State Energy Commission” means the State Energy Commission of Western Australia established pursuant to the *State Energy Commission Act 1945*; ;
- (2) as to Clause 5 —
  - (a) subclause (1) —
    - (i) by substituting for the words “coming into operation of this Agreement” in lines 1 and 2, the passage “31st of October 1978 or the date of the approval of the environmental review and management programme whichever is the later,”;
    - (ii) by substituting for the words “the commencement date” in line 7; the words “such later date”; and
    - (iii) by substituting for the passage “appropriate)” in line 13, the passage “appropriate to a capacity not exceeding two million (2 000 000) tons per annum subject to the provisions of Clause 5B hereof”;
  - (b) subclause (2) —
    - by substituting for the words “date of this Agreement” in lines 3 and 4 of subparagraph (i) of the proviso to subclause (2) and in lines 5 and 6 of subparagraph (ii) of that proviso, the passage “31st of October 1978”;
  - (c) subclause (3) —
    - (i) by deleting subparagraphs (i) and (ii) of paragraph (a);
    - (ii) by substituting for subparagraph (iv) of paragraph (a) the following subparagraph —
      - (iv) in the event of their electing to construct a wharf and associated facilities at Berth B, construct such



wharf and associated facilities in accordance with plans and specifications approved by the State;

(d) subclause (7) paragraph (d) —

by substituting for the passage “1.2” in line 4, the figure “1”; and

(e) subclause (10) —

(i) paragraph (a) —

by substituting for the passage in lines 32 to 48 inclusive of subparagraph (i), the following passage —

“For the purposes of this formula the mean quarterly world selling price per ton of aluminium for any quarter is deemed to be the average (expressed in cents) of the first four prices in each of the four quarters which immediately precede that quarter as quoted in the London “Metal Bulletin” in respect of one pound of aluminium virgin ingots under the description “Canadian CIF all main ports excl. USA, Canada, UK and Latin America” multiplied by 2,240 and converted to Australian currency.

For the purpose of this formula the conversion rate from another currency to Australian dollars shall be the mean between the buying and selling rate for telegraphic transfers quoted by a trading bank acceptable to the Minister for Mines. The formula referred to in in this subparagraph shall be subject to review by the parties —

(I) as at the last day of the period of 7 years from the production date and thereafter as at the last day of each succeeding period of 7 years; or

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- (II) if the formula becomes inoperative by reason of the London "Metal Bulletin" ceasing to publish the information required to determine factor "M" in the said formula.

In the event of any dispute between the parties arising from any review under this subparagraph the matter shall be referred to arbitration hereunder;"; and

- (ii) paragraph (b) —

by substituting for paragraph (b) the following paragraph —

- (b) (i) upon the expiration of the period referred to in subparagraph (i) of paragraph (a) of this subclause pay to the State on all special grade bauxite the property of the Crown mined by the Joint Venturers pursuant to this Agreement, a royalty at the relevant rate specified in the regulations under the Mining Act;
- (ii) permit the State to review the rate of royalty of 26.25 cents per ton mentioned in subparagraph (i) of paragraph (a) of this subclause seven years after the production date and thereafter as at the last day of each succeeding period of seven years PROVIDED HOWEVER THAT the rate of royalty fixed by the State in any review pursuant to this subparagraph shall be the royalty rate for alumina specified in the regulations under the Mining Act at the date of review and PROVIDED FURTHER THAT such rate shall

not be greater than the assessed rate of the average of the rates of royalty in respect of bauxite (mined within the Commonwealth of Australia) paid to the Commonwealth of Australia and to all States thereof for the 12 months immediately preceding the date of review having regard to such matters as the respective tonnages mined, the degree of processing required, the alumina content and other characteristics of the bauxite and PROVIDED FURTHER THAT in the event of the rate specified in the regulations under the Mining Act being greater than the said assessed rate, then the assessed rate shall apply PROVIDED ALWAYS that subject to the proviso to subparagraph (i) of paragraph (a) of this subclause in no case shall the rate of royalty on alumina be less than 26.25 cents per ton; ;

- (3) by adding after Clause 5 a new Clause 5A as follows —

**Environment, Environmental Review and Management Programme**<sup>2</sup>

5A. (1) The Joint Venturers shall not later than the 31st of October 1978 submit to the Minister for approval by the State a detailed environmental review and management programme as to measures to be taken in respect of the Joint Venturers' undertakings pursuant to Clause 5, and the mining operations associated therewith for the protection and management of the environment including rehabilitation and/or restoration of the mined areas and areas used for the disposal of red mud, the prevention of the discharge of tailings, slimes, pollutants or overburden and the minimization of salt release into the surrounding country, water courses, lakes or underground water supplies and the prevention of soil erosion.

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**Continuous programme of investigation and research <sup>2</sup>**

(2) The Joint Venturers shall implement the environmental review and management programme approved under subclause (1) of this Clause and any variation thereof that the State may approve from time to time and shall carry out continuous investigations and research (including monitoring and the study of sample areas) to ascertain the effectiveness of the measures they are taking pursuant to the approved environmental review and management programme for the protection and management of the environment.

**Reports <sup>2</sup>**

(3) The Joint Venturers shall, during the currency of this Agreement, at yearly intervals commencing twelve months after the environmental review and management programme is approved, submit an interim report to the State concerning investigations and research carried out pursuant to subclause (2) of this Clause and at 3 yearly intervals commencing from such date submit a detailed report to the State on the result of the investigations and research during the previous 3 years.

**Additional Information <sup>2</sup>**

(4) The State may require the Joint Venturers to submit additional information in respect of all or any of the matters the subject of the detailed report.;

(4) by adding after Clause 5A a new Clause 5B as follows —

**Environment, further expansion of refinery <sup>2</sup>**

5B. If the Joint Venturers proposed to expand the refinery beyond a capacity of two million (2 000 000) tons per annum the provisions of Clause 5A shall apply *mutatis mutandis* in respect of the Joint Venturers' proposed expansion and the mining operations associated therewith.;

(5) by adding after Clause 5B a new Clause 5C as follows —

**Joint Venturers' advances <sup>2</sup>**

5C. Notwithstanding anything to the contrary contained in this Agreement, the Joint Venturers shall —

- (a) advance to the State the sum of two million dollars (\$2 000 000) when the Joint Venturers

commence to ship alumina through the Port of Bunbury; and

- (b) in the event of their electing to construct a wharf and associated shipping facilities at Berth B, if required by the State, advance to the State the total cost of any additional harbour works required from time to time to enable the Joint Venturers to use Berth B. ;

(6) as to Clause 6 —

- (a) subclause (2) —

by substituting for subclause (2) a new subclause as follows —

- (2) If as a result of the studies undertaken under subclause (1) of this Clause the Joint Venturers and the State are satisfied that a smelter is technically and economically viable and competitive on world markets then the Joint Venturers shall establish a smelter and have it operating at a capacity and within a time to be agreed.;

- (b) subclause (3) —

by adding after the word “will” in line 7 of subclause (3), the passage “subject to subclause (4) of this Clause”; and

- (c) by adding after subclause (3) a new subclause (4) as follows —

- (4) Where a request is made to the Joint Venturers to supply alumina to a third party pursuant to subclause (3) of this Clause, and the Joint Venturers demonstrate to the satisfaction of the Minister that compliance with this request would require substantial capital outlay by the Joint Venturers or would deplete the proven reserves of

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bauxite available to the Joint Venturers to the extent that such reserves remaining would not be sufficient to permit the continued operation of the refinery to a level consistent with that permitted under the provisions of subclause (1) of Clause 5 hereof and any expansions necessary to meet the requirements of such third party for the remainder of the term of the mineral lease as renewed from time to time, the Minister shall at the request of the Joint Venturers release the Joint Venturers from any obligation to supply alumina pursuant to the said subclause (3).;

(7) as to Clause 7 —

(a) subclause (1) —

by substituting for the words “commencement date” in line 3, the passage “31st October 1978”;

(b) subclause (2) —

by substituting for the passage “lease but this subclause shall not apply to privately owned land within the mineral lease, unless the owner and occupier have been advised by the Joint Venturers as to the effect of the terms of this Agreement insofar as they relate to privately owned land within the mineral lease and have expressly agreed in writing to the Joint Venturers exercising with respect to his land the right of noncompliance with those labour conditions.” in lines 4 to 11 inclusive, the passage “lease.”; and

(c) subclause (9) —

by substituting for subclause (9) the following subclause —

**Mining on Privately Owned Land <sup>2</sup>**

(9) (a) The Joint Venturers shall not commence any mining or related operations

(including prospecting, other than that which would be permitted by a permit to enter by virtue of section 151 of the Mining Act) for the purposes of this Agreement on any privately owned land within the mineral lease unless and until —

**Consent <sup>2</sup>**

- (i) the Joint Venturers have first obtained the consent of the owner and occupier of such land; and

**Compensation Agreement <sup>2</sup>**

- (ii) the Joint Venturers have entered into a written agreement with the owner and occupier of such land for compensation arising out of their operations or proposed operations on the land, and lodged a true copy of the agreement with the Minister for Mines; and

**Restoration Agreement <sup>2</sup>**

- (iii) the Joint Venturers have entered into a written agreement with the owner and occupier of such land for the purpose of providing for adequate restoration of the land after mining and that agreement has been approved by the Minister.

**Procedure for disputes — consent to mine <sup>2</sup>**

- (b) (i) Where an owner and/or occupier unreasonably withholds or refuses consent as provided in subparagraph (i) of paragraph (a) of this subclause, the Joint Venturers may apply to the

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Warden to dispense with such consent.

The Warden shall have jurisdiction to hear such application and his decision shall be binding on the parties.

**Compensation <sup>2</sup>**

- (ii) Where the Joint Venturers and an owner and/or occupier are unable to reach agreement as provided in subparagraph (ii) of paragraph (a) of this subclause, then where a reasonable time has elapsed after the commencement of negotiations either party may apply to the Warden to determine the amount of such compensation and the provisions of sections 169 to 172 inclusive of the Mining Act shall apply. The Joint Venturers shall lodge a copy of the Warden's determination with the Minister for Mines.

**Restoration <sup>2</sup>**

- (iii) Where the Joint Venturers and the owner and/or occupier are unable to reach agreement as provided in subparagraph (iii) of paragraph (a) of this subclause, then where a reasonable time has elapsed after the commencement of negotiations either party may apply to the Minister to determine the restoration to be carried out by the Joint Venturers and the determination of the Minister shall be binding on the parties.



- (c) The Warden shall have power to adjudicate on matters arising pursuant to subparagraphs (i) and (ii) of paragraph (b) of this subclause, concurrently.

**Caveatable Interest <sup>2</sup>**

- (d) If pursuant to this subclause the Joint Venturers become entitled to commence mining or related operations on privately owned land the Joint Venturers shall be deemed under this Agreement to have an estate or interest in such land sufficient to support a caveat under Part V of the *Transfer of Land Act 1893*.
- (e) On the first occasion that the Joint Venturers or their agent enter upon private land in the mineral lease the Joint Venturers shall ensure that a notice to the effect that entry is being made pursuant to this Agreement is handed to the owner and occupier of such land. ;

- (8) as to Clause 8 —

- (a) by substituting for subclause (3) the following subclause —

- (3) The provisions of section 96 of the *Public Works Act 1902*, shall not apply to any railway to be constructed pursuant to this Agreement but any such railway shall, for all purposes, be deemed to be constructed under the authority of a special Act passed on the date of the request of the Joint Venturers under subclause (1) of this Clause and in accordance with section 96(1) of the *Public Works Act*.;

- (9) by adding after Clause 8 a new Clause 8A as follows —

**Liability of Joint Venturers for repayment of moneys to the State <sup>2</sup>**

8A. Where the State and the Joint Venturers enter into any arrangement for the repayment to the State of moneys borrowed by

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the State for the purposes of fulfilling any obligation of the State incurred pursuant to this Agreement, the liability of the Joint Venturers for such repayment shall not be subject to Clause 19 hereof.;

(10) as to Clause 12 —

(a) by substituting for subclause (1) the following subclause —

(1) if so required by the Joint Venturers acquire for them any land other than Crown land as may be reasonably required for the refinery; the price at which such land will be made available to the Joint Venturers to be the actual cost of acquisition by the State.;

(b) by adding after subclause (1) a new subclause (1A) as follows —

(1A) If so required by the Joint Venturers cause to be granted to them notwithstanding the provisions of any Act —

(a) a lease of such Crown land as may be reasonable for the purposes of the construction and operation of the refinery and the water storage therefor together with an adequate buffer zone therefor; and

(b) a lease of such Crown land as may be reasonable having regard to the Joint Venturers' proposals as approved by the Minister under subclause (4) of Clause 5 for the purposes of construction of red mud ponds and red mud disposal,

such leases shall contain such terms and conditions as are reasonable having regard to the Joint Venturers'

requirements hereunder and in particular shall contain the following provisions —

- (i) the term thereof (unless sooner determined) shall expire on the same date as that on which the term of the mineral lease or any renewal thereof terminates or is determined;
- (ii) the rental payable thereunder shall be one peppercorn per annum payable if and when demanded; and
- (iii) the Joint Venturers shall pay to the Conservator compensation in accordance with subclause (3) of Clause 16 hereof; ;

(11) by adding after Clause 12 a new Clause 12A as follows —

**Joint use of Berth B <sup>2</sup>**

12A. Notwithstanding the provisions of subparagraph (v) of paragraph (a) of subclause (3) of Clause 5, and subparagraph (ii) of paragraph (b) of subclause (3) of Clause 5, in the event of Alcoa desiring to have the use of the wharf and alumina shiploading and associated facilities on Berth B jointly with the Joint Venturers, the Joint Venturers will negotiate in good faith with Alcoa with a view to entering into an agreement as to such joint use including the construction or expansion of any such wharf and such facilities which may be necessary. Unless such agreement is entered into before the expiration of 6 months from the date upon which Alcoa shall have given notice in writing of such desire to the Joint Venturers, the Joint Venturers will consent to submit any disputes or differences as to the terms and conditions under which such joint use shall take place to the arbitration of two arbitrators and an umpire in accordance with the *Arbitration Act 1895*. In any such arbitration the arbitrators shall appoint their umpire before proceeding in the reference, or in default of appointment in accordance with the provisions of the said Act.;

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(12) by adding after Clause 12A a new Clause 12B as follows —

**Modifications to Bunbury Port Authority Act <sup>2</sup>**

12B For the purpose of this Agreement in respect of any land leased to the Joint Venturers pursuant to the *Bunbury Port Authority Act 1909* that Act shall be deemed to be modified by —

- (a) the deletion of the proviso to section 25; and
- (b) the inclusion of a power to grant leases or licences for terms or periods (including renewal rights) and for such purposes as are consistent with the provisions of this Agreement, in lieu of the terms or periods and purposes referred to in section 25.;

(13) As to Clause 13 —

(a) subclause (1) —

- (i) by substituting for the passage “1.2” in line 2, the figure “1”; and
- (ii) by substituting for the figure “5” in line 6, the figure “6”;

(b) subclause (2) —

by substituting for subclause (2) the following subclause —

- (2) The Joint Venturers shall if required by the State advance a sum or sums to be agreed between the parties to enable the State to design and construct a pipeline together with ancillary works of appropriate size to supply 3 million gallons of water per day to the refinery;

(c) subclause (6) —

by deleting the last sentence; and

- (d) by adding a new subclause (8) as follows —
- (8) The Joint Venturers shall pay to the State for water supplied by the State pursuant to the provisions of subclauses (2) and (6) of this Clause a fair price to be negotiated between the parties having regard to the actual cost of providing, operating and maintaining such water supply.;
- (14) as to Clause 14 —
- by substituting for the passage “1.2” in line 7, the passage “1”;
- (15) as to Clause 15 —
- (a) subclause (1) —
- by substituting for the word “Electricity” in line 7, the word “Energy”;
- (b) subclause (3) —
- by substituting for the word “Electricity” in line 2, the word “Energy”; and
- (c) by adding a new subclause (4) as follows —
- (4) The Joint Venturers and the State Energy Commission are empowered to enter into arrangements for the sale or exchange of energy by the Joint Venturers to or with the State Energy Commission.;
- (16) by adding after Clause 15 a new Clause 15A as follows —

**Alternative sources of energy**<sup>2</sup>

15A (1) The State acknowledges the importance to the Joint Venturers of an assured source of energy at competitive prices and that at the present time coal is the only such Western Australian source. However, it is contemplated that supplies of natural gas may become available. In addition, the discovery or development of other sources of energy or advances in technology

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may result in other sources of energy becoming available and their use being practicable and economically advantageous to the Joint Venturers.

(2) The State undertakes that it will have regard to the Joint Venturer's energy requirements in planning future energy supply, and will where practicable keep the Joint Venturers informed of natural gas, oil and other sources of energy which become available in the south west of Western Australia. The State will use its best endeavours to ensure that the Joint Venturers have reasonable access to energy supplies on terms and conditions to be commercially negotiated.;

(17) as to Clause 16 —

(a) subclause (1) —

by substituting for the passage "land within the mineral lease." in line 4, the passage "land.";

(b) subclause (2) —

by adding after the word "mining" in line 17, the words "or other";

(c) subclause (3) —

by substituting for the passage "mining activities." in line 6, the passage "operations hereunder.";

(d) subclause (4) —

by adding after the word "lease" in line 2, the words "and the Joint Venturers' operations hereunder";

(e) subclause (7) —

by substituting for the passage "lease." in line 4, the passage "lease and the Joint Venturers' operations hereunder."; and

(f) subclause (10) —

by substituting for the words "commencement date" in line 3, the passage "31st of October, 1978";

(18) as to Clause 18 —

by adding the following passage to the end of the Clause —

“Upon the grant of any such lease or other mining tenement the land contained therein shall be deemed to be automatically excised from the mineral lease (with abatement of future rent in respect to the area excised).”;

(19) As to Clause 20 —

- (a) by adding after the word “to” in line 3 the words “each other or to”; and
- (b) by adding after the word “however” in line 18 the passage “(except in the case of an assignment to any Joint Venturer)”;

(20) as to Clause 30 —

by substituting for the passage “the date hereof.” in the last line of subclause (1), the passage “the 31st of October 1978.”;

(21) as to the First Schedule —

by substituting for the First Schedule a new schedule as follows —

**FIRST SCHEDULE.**

1. Rates per ton mile for bauxite carried on trains operating between agreed loading sites and the refinery and coal on trains between the Collie coalfield and the refinery and alumina on trains between the refinery and port of Bunbury back loading with any of caustic soda and fuel oil, lime and limestone.

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BAUXITE:

(i) agreed loading sites to the refinery:

Up to 492,104 tons per annum . . . . .	Gazetted By-law Rates less 10 per cent
	Cents per net ton mile
Over 492,104 tons and up to 984,207 tons per annum . . . . .	1.10
Over 984,207 tons and up to 1,968,414 tons per annum . . . . .	1.00
Over 1,968,414 tons and up to 2,952,621 tons per annum . . . . .	.90
Over 2,952,621 tons and up to 3,936,828 tons per annum . . . . .	.85
Over 3,936,828 tons and up to 4,921,035 tons per annum . . . . .	.80
Over 4,921,035 tons and up to 5,905,242 tons per annum . . . . .	.75
Over 5,905,242 tons and up to 6,889,449 tons per annum . . . . .	.725
Over 6,889,449 tons per annum	.70

When bauxite loading sites are more than 52 miles from the refinery the above rates shall be reduced by .025 cents per net ton mile.



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**ALUMINA, CAUSTIC SODA, FUEL OIL, LIME AND LIMESTONE:**

(ii) alumina from the refinery to the port of Bunbury and backloading with caustic soda fuel oil lime and limestone:

Up to 246,052 tons per annum .	Gazetted By-law Rates less 10 per cent  Cents per net ton mile
Over 246,052 tons and up to 492,104 tons per annum . . . . .	1.70
Over 492,104 tons and up to 738,155 tons per annum . . . . .	1.50
Over 738,155 tons and up to 984,207 tons per annum . . . . .	1.40
Over 984,207 tons and up to 1,230,259 tons per annum . . . .	1.30
Over 1,230,259 tons and up to 1,476,311 tons per annum . . . .	1.25
Over 1,476,311 tons and up to 1,722,362 tons per annum . . . .	1.20
Over 1,722,362 tons and up to 1,968,414 tons per annum . . . .	1.15
Over 1,968,414 tons and up to 2,460,518 tons per annum . . . .	1.10
Over 2,460,518 tons per annum	1.07

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COAL:

(iii) from an agreed point on the Collie coalfield to the refinery:

Up to 196,841 tons per annum .	Gazetted By-law Rates less 10 per cent
	Cents per net ton mile
Over 196,841 tons and up to 492,104 tons per annum . . . . .	2.10
Over 492,104 tons and up to 787,365 tons per annum . . . . .	1.90
Over 787,365 tons and up to 984,207 tons per annum . . . . .	1.80
Over 984,207 tons and up to 1,230,259 tons per annum . . . .	1.70
Over 1,230,259 tons and up to 1,476,311 tons per annum . . . .	1.60
Over 1,476,311 tons per annum	1.50

2. The freight rates set out in paragraph 1 of this schedule are subject to the following additional conditions:

- (i) Trains shall operate up to a maximum of 6 days per week, commencing 12.01 a.m. Monday and ceasing 12.00 midnight on Saturday. The Railways Commission shall arrange a train operating pattern between Monday and Saturday consistent with the requirements of the Joint Venturers as advised from time to time under Clause 5(2)(d). The train operating pattern shall be based as far as is practicable on the utilisation of the maximum number of wagons possible per train and the least number

of trains per week required to meet the haulage programme of the Joint Venturers and such trains shall be tabled at times convenient to the operational requirements of the Railways Commission. In particular the Joint Venturers shall agree with the Railways Commission the pattern of working including weekly and monthly despatches. The Railways Commission will not guarantee the departure and arrival of trains at stated times nor shall it be liable to the Joint Venturers for delay however caused or any consequences arising therefrom.

- (ii) Should Sunday working be required and the Railways Commission approves, the Joint Venturers shall meet the additional costs involved. Should industrial conditions preclude regular operations on Saturdays the Railways Commission reserves the right to review the freight rates.
- (iii) The Joint Venturers shall ensure that all wagons are loaded within the authorised axle load capacity and shall be subject to such minimum load per wagon and per train as may be defined by the Railways Commission.
- (iv) The rates for freight set out in this schedule have been calculated on the basis of:
  - (a) The total turnaround time at terminals being —

Bauxite:

mine site	120 minutes
refinery	100 minutes

Alumina, Caustic Soda, Fuel Oil,  
Lime and Limestone:

port of Bunbury	180 minutes
refinery	120 minutes

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Coal:

Collie coalfield	90 minutes
refinery	90 minutes

If such times are not regularly adhered to by the Joint Venturers the Railways Commission reserves the right to review the freight rates.

If the Joint Venturers request a change in the turnaround times the Railways Commission shall advise the Joint Venturers of the effect the requested changes would have on the freight rates. If the Joint Venturers elect to accept the new freight rates the new turnaround times shall thereupon become effective.

- (b) 52 working weeks (each of six days and excluding Sundays) per annum less two weeks for contingencies (including all gazetted public holidays) for bauxite, alumina, caustic soda, fuel oil, lime and limestone, and 45 working weeks (each of 5 days) per annum for coal and if through no fault of the Railways Commission these yearly working programmes cannot be adhered to the Railways Commission reserves the right to review the freight rates.
- (v) The rates for freight are based on wagons being loaded to capacity and shall be subject to the minimum load per wagon being not less than:
  - Bauxite, 72.83 tons per wagon.
  - Alumina, 60.53 tons per wagon.
  - Caustic Soda, 52.66 tons per wagon.
  - Fuel Oil, 55.61 tons per wagon.
  - Coal, 48.72 tons per wagon.
  - Lime and Limestone, as stipulated by the Railways Commission.

and where less is carried in any wagon freight shall be charged as though the minimum load was carried.

3. The rates for freight set out in the schedule are based on costs prevailing at the 19th January, 1972, and shall be adjusted half-yearly on the first days of January and July with the new rates becoming effective on and from those dates in accordance with the following formula:

$$F1 = F + \left[ .9F \left\{ .80 \left\{ \frac{HR1 - HR}{HR} \right\} + .05 \left\{ \frac{D1 - D}{D} \right\} + .15 \left\{ \frac{SR1 - SR}{SR} \right\} \right\} \right]$$

WHERE

- (i) F1 = the new freight rate.
- (ii) F = the freight rate which was payable as at 19th January 1972.
- (iii) HR = the average hourly rate payable as at 19th January 1972.
- (iv) HR1 = the average hourly rate payable as at the date of adjustment.
- (v) D = the wholesale price (duty free) of distillate in Perth as at 19th January 1972.
- (vi) D1 = the wholesale price (duty free) of distillate in Perth as at the date of adjustment.
- (vii) SR = the price of heavy steel rails per ton c.i.f. port of Fremantle as ascertained from price schedule covering despatches from the Broken Hill

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Proprietary Company Limited and  
Australian Iron and Steel Proprietary  
Limited as at 19th January 1972.

(viii) SR1 = the price of heavy steel rails per ton  
c.i.f. Fremantle ascertained as  
aforementioned as at the date of  
adjustment.

The rates applicable at the 19th January 1972 are:

1st class driver	\$2.2475 per hour
1st class guard	\$1.8338 per hour
trackman	\$1.4588 per hour

Average hourly rate	<u>\$1.8467</u>
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Price of distillate per gallon — 21.4 cents

Price of heavy steel rails per ton c.i.f. port of  
Fremantle — \$113.00

PROVIDED ALWAYS that if at any time there is a change  
in —

- (a) the average hourly rate by the operation of any  
award or other wage determination; or
- (b) the list price (duty free) of distillate in Perth; or
- (c) the price of heavy steel rails per ton c.i.f. port of  
Fremantle (as ascertained aforesaid),

and such change is effective from a date prior to the last date  
of adjustment a new freight rate or freight rates as the case  
may be shall be calculated and shall apply from the date of  
adjustment next following the date from which any such  
change as aforesaid is effective and such new freight rate or  
freight rates shall be substituted for the freight rate that  
would have applied but for the application of the provisions  
of this paragraph.

Adjustments made in accordance with this formula shall be  
expressed in a figure of dollars per ton and calculated to 4  
decimal places of a dollar and in doing so the fifth decimal

place shall also be calculated so that if the fifth decimal place is .5 or above, the fourth decimal place shall be increased by 1.

The escalation formula referred to above shall be subject to review by the Railways Commission after consultation with the Joint Venturers on the 1st January 1987 and thereafter at five yearly intervals.

4. All traffic transported by the Railways Commission for the Joint Venturers under this Agreement shall be carried as though accepted by the Railways Commission at Owner's risk pursuant to general condition 2(b) contained in the schedule to By-law 55 as in force at the date hereof and made under the *Government Railways Act 1904* and shall be subject to the other By-laws made under the same Act.

5. Bauxite, alumina, caustic soda, fuel oil, coal, lime and limestone carried on other than unit trains in accordance with this Agreement and all other commodities shall, unless otherwise determined by the Railways Commission, be carried at gazetted rates.

6. If the Joint Venturers do not transport or discontinue the transport by rail of their requirements of bauxite for the purposes of this Agreement, the Railways Commission may in consultation with the Joint Venturers review the freight rates.

In WITNESS whereof the parties hereto have executed this Agreement the day and year first hereinbefore mentioned.

SIGNED by the said THE  
HONOURABLE SIR CHARLES  
WALTER MICHAEL COURT, O.B.E.,  
M.L.A., in the presence of — } CHARLES COURT

ANDREW MENSAROS  
MINISTER FOR INDUSTRIAL DEVELOPMENT

**Second Schedule**

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THE COMMON SEAL of ALWEST  
PTY. LIMITED was hereunto affixed  
with the authority of the Directors and  
in the presence of — } (C.S.)

DIRECTOR  
W. I. KOMMER  
  
SECRETARY  
LINDSAY E. GROOM

Executed by DAMPIER MINING  
COMPANY LIMITED by being signed  
in Western Australia by its Attorney  
Ronald Murray Williams under Power  
of Attorney dated the 18 April, 1978 in  
the presence of — } R. M. WILLIAMS

W. I. KOMMER

*[Second Schedule inserted by No. 10 of 1978 s. 6.]*



### Third Schedule

THIS AGREEMENT made the 21st day of October, 1982 BETWEEN THE HONOURABLE RAYMOND JAMES O'CONNOR, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the Government of the said State and its instrumentalities (hereinafter called "the State") of the one part and BHP MINERALS LIMITED the name whereof was formerly Dampier Mining Company Limited a company incorporated under the *Companies Act 1961* of Western Australia and having its registered office at 37 St. George's Terrace, Perth in the said State, REYNOLDS AUSTRALIA ALUMINA, LTD. a company incorporated under the laws in force in the State of Delaware in the United States of America and having its registered office in the State of Western Australia at 77 St. George's Terrace, Perth, THE SHELL COMPANY OF AUSTRALIA LIMITED a company incorporated in the State of Victoria and having its principal office in the State of Western Australia at 200 St. George's Terrace, Perth and KOBE ALUMINA ASSOCIATES (AUSTRALIA) PTY. LIMITED a company incorporated in the State of Western Australia and having its registered office at 5 Mill Street, Perth (hereinafter collectively called "the Joint Venturers" in which term shall be included their respective successors and permitted assigns and appointees) of the other part.

WHEREAS:

- A. The State and the Joint Venturers (pursuant to a certain deed of assignment dated the 7th day of February, 1980) are now the parties to the agreement dated the 22nd day of August, 1974 (the execution of which by the State was authorised pursuant to section 3 of the *Alumina Refinery (Worsley) Agreement Act 1973*) as varied by agreement dated the 18th day of April, 1978 approved and ratified by the *Alumina Refinery (Worsley) Agreement Act Amendment Act 1978* and as further varied by agreement dated the 28th day of May, 1981 (which agreement as so varied is hereinafter referred to as "the principal agreement").
- B. The parties desire to vary the principal agreement.

NOW THIS AGREEMENT WITNESSETH —

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the principal agreement.

**Third Schedule**

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2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the said State and comes into operation as an Act.

3. The principal agreement is hereby varied as follows:

(1) Clause 1 —

(a) by inserting in paragraph (f) of the definition of “Crown land” after “land” the following —

“ (other than Wellington Locations 5336, 5337, 5338 and 5339, Murray Locations 1715, 1716 and 1717 and Williams Locations 15702 and 15703) ” ;

(b) by deleting the definition of “mineral lease”;

(c) by deleting the definition of “Mining Act”;

(d) by inserting after the definition of “Land Act” the following definitions —

“ *“Mining Act 1904”* means the *Mining Act 1904* and the amendments thereto and the regulations made thereunder as in force on 31st December, 1981;

*“Mining Act 1978”* means the *Mining Act 1978*; ” ;

(e) by deleting, in the definition of “Minister for Mines”, “Mining Act” and substituting “*Mining Act 1904* and the *Mining Act 1978*”;

(f) by inserting after the definition of “stockpile area” the following definition —

“ “the Mining Lease” means the mining lease referred to in Clause 7(1) hereof and includes any renewal thereof and according to the requirements of the context shall describe the land leased as well as the instrument by which it is leased; ” ;

- (g) by inserting, in the paragraph commencing “Reference in this Agreement to an Act”, after “Act”, where it first occurs, the following — “other than the *Mining Act 1904*”.
- (2) Clause 3 —
- (a) subclause (4) —
- by deleting “Mining Act” and substituting “*Mining Act 1904*”;
- (b) by inserting the following subclause —
- “ (5) The temporary reserve and the rights of occupancy in respect thereof referred to in this Clause shall, subject to this Agreement, continue in force under the *Mining Act 1904* as though that Act had not been repealed. ” .
- (3) Clause 5 —
- subclause 10 paragraph (b) —
- by deleting “Mining Act” wherever it occurs and substituting “*Mining Act 1978*”.
- (4) Clause 7 —
- (a) subclause (1) —
- by deleting subclause (1) and the marginal note thereto and substituting the following —
- “ **The Mining Lease** <sup>2</sup>
- (1) The Joint Venturers having made application to the State for a mineral lease of certain land within the area delineated in blue on the plan marked “X” and initialled by or on behalf of the parties hereto for identification, the State shall cause to be granted to the Joint Venturers a mining lease of such of the land shown coloured

**Third Schedule**

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yellow on the Department of Mines Original Plan 854 (recorded in the Department of Mines, Perth) as is Crown land and such of the land within the blue boundary shown on the said Original Plan 854 as is left uncoloured and comprises privately owned land in respect of which the mineral rights are reserved to the Crown or Crown land (notwithstanding that the surveys of the said lands have not been completed but subject to corrections to accord with survey when completed) for the mining of bauxite and the Mining Lease shall be so granted under and (except to the extent that the provisions of the *Mining Act 1978* are inconsistent with this Agreement) subject to the *Mining Act 1978* but in the form set out in the Second Schedule hereto. ” ;

(b) subclause (2) —

by deleting subclause (2) and the marginal note thereto and substituting the following —

“ **Expenditure conditions** <sup>2</sup>

(2) During the currency of this Agreement and subject to compliance with their obligations hereunder the Joint Venturers shall not be required to comply with the expenditure conditions imposed by or under the *Mining Act 1978* in regard to the Mining Lease. ” ;

(c) subclause (6) —

(i) by deleting “Mining Act” and substituting “*Mining Act 1978*”;

(ii) by deleting “the date of receipt of the application referred to in subclause (1) of this Clause” and substituting “the date of the grant thereof”;

(d) subclause (7) —

by deleting subclause (7) and the marginal note thereto and substituting the following —

“ **Further mining lease** <sup>2</sup>

(7) Within the first six (6) months of the twelve (12) months immediately preceding the expiration of the second renewed period of twenty-one (21) years of the Mining Lease the Joint Venturers, if the refinery is then being operated pursuant to this Agreement, may give notice to the State that they desire a further mining lease under the *Mining Act 1978* for bauxite of the leased area or of a part or parts thereof for a term of twenty-one (21) years and the State shall within six (6) months from its receipt of that notice notify the Joint Venturers of the terms and conditions upon which it is prepared to grant notwithstanding the provisions of the *Mining Act 1978* such a further mining lease of the leased area or of a part or parts thereof (as the case may be) and the Joint Venturers for a period of three (3) months thereafter will have the right to accept such further mining lease on those terms and conditions and for a period of two (2) years the State shall not offer to grant a mining lease of the leased area or any part thereof to any person other than the Joint Venturers which permits the mining of bauxite on more favourable terms and conditions than have been offered to the Joint Venturers. ” ;

(e) subclause (8) —

by deleting “The” and substituting “Subject to Clause 7D hereof, the”;

**Third Schedule**

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- (f) subclause (9) —
  - (i) paragraph (a) —

by deleting “section 151 of the Mining Act” and substituting “section 32 of the *Mining Act 1978*”;
  - (ii) paragraph (b) subparagraph (ii) —

by deleting “sections 169 to 172 inclusive of the Mining Act” and substituting “subsections (3), (5) and (6) of section 123 and paragraph (b) of subsection (1) of section 124 of the *Mining Act 1978*”.
- (5) By inserting after Clause 7 the following clauses —
  - “ **Minerals contained within bauxite** <sup>2</sup>
    - 7A. (1) Without limiting the provisions of this Agreement with respect to the production of associated chemicals and by-products the Joint Venturers shall, subject to the provisions of this Clause, have the right to extract from bauxite mined hereunder, either prior to or at the same time as it is processed into alumina, minerals (other than alumina) contained within that bauxite.
    - (2) (a) The Joint Venturers shall not extract any minerals pursuant to this Clause otherwise than in accordance with a mode or modes of operations first approved by the Minister.
    - (b) Any approval given by the Minister pursuant to this subclause may be given subject to such conditions as the Minister may reasonably determine.
    - (c) The Minister may before giving any approval pursuant to this subclause require that the Joint Venturers first obtain the approval of the State to a variation of the environmental review and management programme.

(3) The Joint Venturers in respect of minerals extracted pursuant to this Clause, shall pay to the State royalties at the rates from time to time prescribed under the *Mining Act 1978* and shall comply with the provisions of the *Mining Act 1978* and regulations made thereunder with respect to the filing of production reports and payment of royalties.

**Leases for all minerals <sup>2</sup>**

7B. (1) Notwithstanding the existence of the Mining Lease the Joint Venturers may mark out and apply for a mining lease or mining leases in respect of any part of the Mining Lease for all minerals subject to the provisions of the *Mining Act 1978* and, subject to subclause (2) of this Clause, the Minister for Mines may grant such mining lease or mining leases.

(2) No mining lease shall be granted pursuant to this Clause without the prior approval of the Minister.

(3) In the event of the grant of a mining lease pursuant to this Clause the land the subject thereof shall thereupon be deemed to be excised from the Mining Lease.

**Special conditions of mining lease <sup>2</sup>**

(4) A mining lease granted pursuant to this Clause shall in addition to any covenants and conditions that may be prescribed or imposed pursuant to the *Mining Act 1978* be subject to the following special conditions —

- (a) any mining of bauxite must be carried on by or on behalf of the Joint Venturers subject to and in accordance with this Agreement;
- (b) a breach by the Joint Venturers under the mining lease shall be deemed to be a breach of this Agreement;
- (c) the provisions of section 82(1)(d) of the *Mining Act 1978* shall be modified so that in respect of bauxite but not other minerals the mining lease may only be assigned or underlet in accordance with Clause 20 of this Agreement;

**Third Schedule**

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- (d) the provisions of the *Mining Act 1978* shall be modified so that the Joint Venturers shall not be obliged to pay royalties on bauxite mined from the mining lease, where the Joint Venturers are also liable for royalties on alumina produced therefrom pursuant to subclause (10) of Clause 5 of this Agreement.

**Effect of termination of mining lease <sup>2</sup>**

7C. On the expiration or sooner determination of any mining lease granted pursuant to Clause 7B hereof the land the subject of that mining lease shall thereupon be deemed to be part of the land in the Mining Lease and shall be subject to the terms and conditions of the Mining Lease and this Agreement (other than Clause 7B hereof).

**Modification of *Mining Act 1978* <sup>2</sup>**

7D. For the purpose of this Agreement in respect of any land surrendered by the Joint Venturers to the State pursuant to subclause (8) of Clause 7 hereof the *Mining Act 1978* shall be deemed to be modified by the substitution for paragraph (c) of section 111 of the following paragraph —

- “ (c) a mining lease does not authorize the holder thereof to work and mine —
- (i) the land in respect of which the lease was granted for iron; or
  - (ii) any portion of the land in respect of which the lease was granted, which portion has been surrendered to the State pursuant to subclause (8) of Clause 7 of the agreement dated the 22nd day of August, 1974 (the execution of which was authorized pursuant to section 3 of the *Alumina Refinery (Worsley Agreement Act 1973)* as amended from time to time, for bauxite, ” .



(6) Clause 12 —

(a) subclause (2) —

- (i) by inserting after “lease”, where it first occurs, the following —

“ (over Crown land or other land as the case may be) ” ;

- (ii) by inserting after the paragraph commencing “AND PROVIDED THAT any easement licence or other right” the following paragraph —

“ AND PROVIDED THAT any lease of Crown land required for the purpose specified in paragraph (a) of this subclause may be granted, notwithstanding the provisions of any Act, under the Land Act but subject to the rights of the lessee under Mineral Lease 1.SA ” ;

(b) subclause (4) —

by deleting “mineral lease” and substituting “mining lease”;

(c) subclause (6) —

by inserting after “therewith” the following —

“ and except as to any part the subject of a mining lease granted pursuant to Clause 7B hereof ” .

(7) Clause 18 —

(a) by inserting after “implied in” the following —

“ the *Mining Act 1978* or ” ;

(b) by inserting after “hereunder” the following —

“ with respect to bauxite ” .

**Third Schedule**

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- (8) The Second Schedule is deleted and the following Schedule substituted —

“

**SECOND SCHEDULE**

Western Australia

*Mining Act 1978*

*Alumina Refinery (Worsley) Agreement Act 1973*

Mining Lease

Mining Lease No.

The Minister for Mines a corporation sole established by the *Mining Act 1978* with power to grant leases of land for the purposes of mining in consideration of the rents hereinafter reserved and of the covenants on the part of the Lessee described in the First Schedule to this lease and of the conditions hereinafter contained and pursuant to the *Mining Act 1978* (except as otherwise provided by the Agreement (hereinafter called “the Agreement”) described in the Second Schedule to this lease) hereby leases to the Lessee the land more particularly delineated and described in the Third Schedule to this lease for bauxite (including special grade bauxite as defined in the Agreement) subject however to the exceptions and reservations set out in the Fourth Schedule to this lease and to any other exceptions and reservations which subject to the Agreement are by the *Mining Act 1978* and by any Act for the time being in force deemed to be contained herein to hold to the Lessee for a term of 21 years commencing on the date set out in the Fifth Schedule to this lease with rights of renewal for two consecutive further periods of 21 years (subject to sooner determination of the said term upon cessation or determination of the Agreement) upon and subject to such of the provisions of the *Mining Act 1978* except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the terms covenants and conditions set out in the Agreement and to the covenants and conditions herein contained or implied and any further conditions or stipulations set out in the Sixth Schedule to this lease the Lessee paying therefor the rents and royalties as provided in the Agreement PROVIDED

ALWAYS that this lease and any renewal thereof shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this lease —

- “Lessee” includes the respective successors and permitted assigns of each Lessee.
- If the Lessee be more than one the liability of the Lessee hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act and to any Act passed in substitution therefor or in lieu thereof and to the regulations and by-laws for the time being in force thereunder.

FIRST SCHEDULE.

(name address and description of the Lessee)

BHP MINERALS LIMITED a company incorporated under the *Companies Act 1961* of Western Australia and having its registered office at 37 St. George’s Terrace, Perth in the said State, REYNOLDS AUSTRALIA ALUMINA, LTD. a company incorporated under the laws in force in the State of Delaware in the United States of America and having its registered office in the State of Western Australia at 77 St. George’s Terrace, Perth, THE SHELL COMPANY OF AUSTRALIA LIMITED a company incorporated in the State of Victoria and having its principal office in the State of Western Australia at 200 St. George’s Terrace, Perth and KOBE ALUMINA ASSOCIATES (AUSTRALIA) PTY. LIMITED a company incorporated in the State of Western Australia and having its registered office at 5 Mill Street, Perth.

**Third Schedule**

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SECOND SCHEDULE.

(the agreement)

The Agreement dated the 22nd day of August, 1974, (the execution of which by the State was authorised pursuant to section 3 of the *Alumina Refinery (Worsley) Agreement Act 1973*) and any amendments to that Agreement.

THIRD SCHEDULE.

Description of land (subject to the provisions of the Agreement as to survey):

1. So much of the land shown coloured yellow on the Department of Mines Original Plan 854 (recorded in the Department of Mines, Perth) as is Crown land (as defined in the Agreement).
2. So much of the land within the blue boundary shown on the said Original Plan 854 as is left uncoloured and comprises —
  - (a) privately owned land in respect of which the mineral rights are reserved to the Crown; or
  - (b) Crown land (as defined in the Agreement).

Locality:

Mineral Field:

Area, etc.:

FOURTH SCHEDULE.

All petroleum as defined in the *Petroleum Act 1967* on or below the surface of the land the subject of this lease is reserved to the Crown in right of the State of Western Australia with the right of the Crown in right of the State of Western Australia and any person lawfully claiming thereunder or otherwise authorised to do so to have access to the land the subject of this lease for the purpose of searching for and for the operations of obtaining petroleum (as so defined) in any part of the land.



**Third Schedule**

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EXECUTED by REYNOLDS AUSTRALIA ALUMINA, LTD. by its duly appointed Attorney BERNARD FLYNN ARMBRUST in the presence of —	}	REYNOLDS AUSTRALIA ALUMINA, LTD.
M. EL-ANSARY. Project Manager Reynolds Australia Mines.		By its Attorney BERNARD FLYNN ARMBRUST. Countersigned: W. M. SHIELDS.

THE COMMON SEAL of THE SHELL COMPANY OF AUSTRALIA LIMITED was hereto affixed in accordance with its Articles of Association in the presence of —	}	[C.S.]

DOCUMENT No.  
287

DIRECTOR B. L. KELLY.  
AUTHORISED SIGNATORY PHILIP HISLOP.

THE COMMON SEAL of KOBE ALUMINA ASSOCIATES (AUSTRALIA) PTY. LIMITED was hereto affixed by authority of the Directors in the presence of —	}	[C.S.]

DIRECTOR SHINTARO KAHARU.  
SECRETARY T. UJI-IE.

*[Third Schedule inserted by No. 95 of 1982 s. 6.]*

**Fourth Schedule**

[Section 6B]

THIS AGREEMENT is made the 24th day of September 1992

B E T W E E N :

**THE HONOURABLE CARMEN MARY LAWRENCE, B.Psych., Ph.D., M.L.A.**, Premier of the State of Western Australia, acting for and on behalf of the Government of the said State and its instrumentalities (hereinafter called “the State”) of the one part

AND

**REYNOLDS AUSTRALIA ALUMINA, LTD.** A.R.B.N. 009 473 492 a corporation incorporated under the laws in force in the State of Delaware in the United States of America and having its registered office in the State of Western Australia at 30th Floor, 77 St George’s Terrace, Perth, **THE SHELL COMPANY OF AUSTRALIA LIMITED** A.C.N. 004 610 459 a company incorporated in the State of Victoria and having its registered office at Level 18, 1 Spring Street, Melbourne, **KOBE ALUMINA ASSOCIATES (AUSTRALIA) PTY. LIMITED** A.C.N. 008 907 524 a company incorporated in the State of Western Australia and having its registered office at 7th Floor, 26 St. George’s Terrace, Perth and **NISSHO IWAI ALUMINA PTY. LIMITED** A.C.N. 009 309 344 a company incorporated in the State of Western Australia and having its registered office at Level 5, Capita Building, 5 Mill Street, Perth (hereinafter collectively called “the Joint Venturers” in which term shall be included their respective successors and permitted assigns and appointees) of the other part.

WHEREAS:

- A. The State and the Joint Venturers (pursuant to certain deeds of assignment dated the 7th day of February, 1980 and the 31st day of May, 1988) are now the parties to the agreement dated the 22nd day of August, 1974 (the execution of which by the State was authorised pursuant to section 3 of the *Alumina Refinery (Worsley) Agreement Act 1973*) as varied by an agreement dated the 18th day of April, 1978 approved and ratified by the *Alumina Refinery (Worsley) Agreement Act Amendment Act 1978* and as further varied by an agreement dated the 28th day of May, 1981 and as further varied by an agreement dated the 21st day of October, 1982 approved and ratified by the *Alumina Refinery (Worsley)*

**Fourth Schedule**

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*Agreement Amendment Act 1982* and as further varied by an agreement dated the 25th day of July, 1983 (which agreement as so varied is hereinafter referred to as “the Principal Agreement”).

B. The parties desire to vary the Principal Agreement.

NOW THIS AGREEMENT WITNESSES —

1. Unless the context otherwise requires the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the State of Western Australia and comes into operation as an Act.
3. The Principal Agreement is hereby varied as follows :
  - (1) Clause 5(2) —

by inserting after “refinery”, in the second place where it occurs, the following —

“ and to be exported from the State of Western Australia ”.
  - (2) Clause 5(3)(c) —

by deleting paragraph (c) and substituting the following paragraph —

“ (c) from and including 1 July 1991 pay to the Bunbury Port Authority for or in connection with the Joint Venturers’ use of the port of Bunbury such port charges fees dues levies and other imposts as are payable pursuant to legislation applicable to the port or regulations made thereunder PROVIDED THAT —

    - (i) except as specified in subparagraph (ii) of this paragraph, no charges other than Port Infrastructure Charges as set out in Table 3 in Part 1 of Schedule 2 to the *Bunbury Port Authority Regulations 1962* as



amended from time to time or other charges payable pursuant to the said regulations in lieu of or in substitution for such Port Infrastructure Charges shall be payable in respect of cargoes passing over the wharf at Berth A or, if the Joint Venturers construct a wharf at Berth B, over that wharf; and

- (ii) nothing herein shall be taken to imply any exemption from the payment of any port charges fees dues levies or other imposts that would normally be payable by ships using the port of Bunbury; ”.

(3) Clause 5(10)(a) —

- (a) by deleting the marginal note thereto and substituting the following —

“ Royalties on Alumina and Bauxite after 1 January 1989 ”;

- (b) by deleting subparagraph (i) and substituting the following —

“ (i) pay to the State a royalty on all alumina produced at the refinery from bauxite the property of the Crown during each quarterly period ending on the last day of March June September and December in each year commencing from and including the quarter beginning 1 January 1989 calculated in accordance with the following formula —

$$R = RF \times AP \times TS$$

Where:

R = amount of royalty payable to the State for the quarter;

**Fourth Schedule**

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RF =  $1.06/100$  for the period commencing on 1 January 1989 and ending on 31 July 1991, and  $1.65/100$  thereafter;

AP = the average alumina export price per tonne from Australia for the preceding four quarters as released by the Australian Bureau of Statistics in Harmonised Trade Access System Reports (HTRACCS Reports) under Australian Harmonised Export Commodity Classification Number 28182000 (or future equivalent);

TS = the number of tonnes of alumina shipped sold or otherwise disposed of by the Joint Venturers during the quarter.

The above formula shall be subject to review by the parties if the Australian Bureau of Statistics ceases to release the export alumina price required to determine the factor "AP" or makes a material change in the method of calculating the said export alumina price from the method used in respect of the month of March 1990. The purpose of any such review will be to produce as far as possible a royalty level similar to that that would have applied if an export alumina price had continued to be released using the method of calculation used by the Australian Bureau of Statistics in respect of the month of March 1990.

In the event of any dispute between the parties arising from any review under this subparagraph the matter shall be referred to arbitration hereunder; ”;

- (c) in subparagraph (ii) by deleting “referred to in subparagraph (i) of paragraph (a) of this subclause” and substituting the following —

“ ending on 31 July 1991 ”.

- (4) Clause 5(10)(b) —

by deleting paragraph (b) and the marginal note thereto and substituting the following —

“ (b) from and including 1 August 1991 pay to the State on all special grade bauxite the property of the Crown mined by the Joint Venturers pursuant to this Agreement, a royalty at the relevant rate specified in the regulations under the *Mining Act 1978*; ”.

- (5) By inserting after Clause 5C the following clause —

“ 5D. The royalty payable under this Agreement in respect of alumina shall be subject to review by the parties hereto as at 31 July 1998 and thereafter as at the last day of each succeeding period of seven years PROVIDED THAT in any review the parties shall have regard to the average of the rates of royalty in respect of bauxite and alumina paid in Australia for the preceding twelve months having regard also to such matters as the respective tonnages mined, the degree of processing required, the alumina content and other characteristics of the bauxite. ”.

**Fourth Schedule**

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(6) Clause 7 —

(a) by deleting subclauses (4) and (5) and substituting the following —

- “
- (4) Rental under the Mining Lease shall be paid to the State yearly in advance and for the first seven years of the lease shall be calculated at the rate of one dollar ninety-three cents (\$1.93) per annum for every square kilometre contained in the leased area.
- (5) After the expiration of the first seven years from the granting of the Mining Lease and at the expiration of every seven year period of the lease thereafter the rental for the lease shall be reviewed. The rental for each such period after the first seven years shall be calculated separately in accordance with the following formula —

$$B \times AP / \$61 = R$$

Where:

B = the rental mentioned in subclause (4) of this Clause;

AP = the average alumina export price per tonne from Australia for the four quarters in the year to and including the 31st day of March immediately preceding the date of review as released by the Australian Bureau of Statistics in Harmonised Trade Access System Reports (HTRACCS Reports) under Australian Harmonised Export Commodity Classification Number 28182000 (or future equivalent);

R = the new rental;

PROVIDED THAT —

- (i) the provisions of clause 5(10)(a)(i) of this Agreement relating to review of the formula therein contained shall apply *mutatis mutandis* to the above formula;
  - (ii) in no case shall the adjusted rental be less than one dollar ninety-three cents (\$1.93) per square kilometre. ”;
- (b) in subclause (8), by deleting “mile or residual part of a square mile” and substituting the following —
- “ kilometre or residual part of a square kilometre ”;
- (c) by inserting after subclause (14) the following subclause —
- “ (15) Notwithstanding the provisions of the *Mining Act 1978* the Joint Venturers may from time to time during the currency of this Agreement apply to the Minister for areas held by the Joint Venturers under an exploration licence or mining lease granted under the *Mining Act 1978* to be included in the Mining Lease. The Minister shall confer with the Minister for Mines in regard to any such application and if they approve the application the Minister for Mines shall upon the surrender of the relevant mining tenement include the area the subject thereof in the Mining Lease subject to such of the conditions of the surrendered mining tenement as

**Fourth Schedule**

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the Minister for Mines determines. In respect of any such land:

- (a) the land shall in addition to any conditions so determined by the Minister for Mines be subject to the same terms covenants and conditions as apply to the Mining Lease;
- (b) the Minister for Mines may make such apportionment of rents as may be necessary in connection therewith;
- (c) the land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Joint Venturers' expense. ”.

(7) Clause 7B —

by inserting after subclause (1a) the following subclause —

- “
- (1b) (a) If any of the Joint Venturers assigns the whole or any part of its rights under this Agreement in accordance with Clause 20 hereof and such assignment takes effect before the date of grant of a mining lease or mining leases applied for pursuant to this Clause then the interest of the assigning Joint Venturer in any application for such mining lease shall be held on trust for the assignee pending the grant of such mining lease.
  - (b) Upon a grant of a mining lease referred to in paragraph (a) of this subclause the

assigning Joint Venturer shall forthwith transfer its title to and interest in the mining lease to the assignee and such mining lease shall be deemed to be granted pursuant to this Clause. ”.

(8) Clause 7C —

by deleting “hereof)” and substituting the following —

“ hereof unless the Minister otherwise agrees) ”.

(9) Clause 7D —

by deleting Clause 7D and substituting the following clause —

“ 7D. (1) Nothing in this Agreement shall prohibit the Joint Venturers from marking out and applying for a mining lease or mining leases for all minerals including bauxite subject to the provisions of the *Mining Act 1978* in respect of:

- (a) land surrendered by the Joint Venturers to the State pursuant to subclause (8) of Clause 7 hereof; and
- (b) land which has been excised from the Mining Lease pursuant to Clause 18 hereof

and subject to subclause (2) of this Clause the Minister for Mines may grant such mining leases.

- (2) No mining lease shall be granted pursuant to this Clause without the prior approval of the Minister.
- (3) A mining lease granted pursuant to this Clause shall, in addition to any covenants or conditions that may be prescribed or imposed pursuant to the

**Fourth Schedule**

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*Mining Act 1978*, be subject to the following special conditions:

- (a) any mining of bauxite must be carried on by or on behalf of the Joint Venturers subject to and in accordance with this Agreement;
- (b) the provisions of section 82(1)(d) of the *Mining Act 1978* shall be modified so that in respect of bauxite but not other minerals the mining lease may only be assigned or underlet in accordance with Clause 20 hereof; and
- (c) the Joint Venturers shall be liable to pay royalties to the State in accordance with subclause (10) of Clause 5 hereof on alumina produced from bauxite mined from the mining lease and the provisions of the *Mining Act 1978* shall be modified accordingly so that the Joint Venturers shall not be obliged to pay royalties on bauxite mined from the mining lease where that bauxite is so processed into alumina at the refinery. ”.

(10) Clause 9(2) —

(a) paragraph (a) —

(i) by inserting after “such road” the following —

“ intersecting with roads used or capable of use by the public or which the public are authorised or permitted to use by law or intersecting with railways ”;



- (ii) by deleting the following —
- “ at all intersections with public roads  
and railways ”;
- (b) paragraph (b) —
- by inserting after “alignments” and also after “any road” the following —
- “ on Crown land ”.
- (11) Clause 12A —
- by deleting “*Arbitration Act 1895*” and substituting the following —
- “ *Commercial Arbitration Act 1985* and notwithstanding section 20(1) of that Act each party may be represented before the arbitrators by a duly qualified legal practitioner or other representative ”.
- (12) Clause 12B —
- by deleting paragraph (a) and substituting the following —
- “ (a) the deletion of subsections (2), (3) and (4) of section 25; and ”.
- (13) By deleting Clause 18 and substituting the clause set forth in the Schedule to this Agreement.
- (14) Clause 28 —
- by deleting “*Arbitration Act 1895*” and substituting the following —
- “ *Commercial Arbitration Act 1985* and notwithstanding section 20(1) of that Act each party may be represented before the arbitrators by a duly qualified legal practitioner or other representative ”.

**Fourth Schedule**

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**THE SCHEDULE**

18. (1) Notwithstanding anything contained or implied in this Agreement or in the Mining Lease or the *Mining Act 1978* mining tenements may subject to the provisions of this Clause be granted to or registered in favour of persons other than the Joint Venturers under the *Mining Act 1978* or pursuant to the Second Schedule to that Act in respect of the area subject to the Mining Lease (including lands deemed to be part of the land in the Mining Lease pursuant to Clause 7C or subclause (5) or (6) of this Clause) except that part shown coloured red on the plan marked "Y" initialled by or on behalf of the parties hereto for the purposes of identification and except any part of the land shown coloured yellow on that plan which becomes deemed to be part of the land in the Mining Lease, unless the Minister for Mines determines that such grant or registration is likely unduly to prejudice or interfere with the current or prospective operations of the Joint Venturers hereunder with respect to bauxite assuming the taking by the Joint Venturers of reasonable steps to avoid the prejudice or interference or that there is a reasonable probability that such a grant or registration would materially reduce the quantity of economically extractable bauxite available to the Joint Venturers.
- (2) A mining tenement granted or registered pursuant to this Clause shall not confer any right to mine or otherwise obtain rights to bauxite on the tenement.
- (3) (a) In respect of any application for a mining tenement whether made under the *Mining Act 1904* or the *Mining Act 1978* in respect of an area the subject of the Mining Lease the Minister for Mines shall consult with the Minister and the Joint Venturers with respect to the significance of bauxite deposits in, on or under the land the subject of the application and any effect the grant of a mining tenement pursuant to such application might have on the current or prospective bauxite operations of the Joint Venturers under this Agreement.
- (b) Where the Minister for Mines, after taking into account any matters raised by the Minister or the Joint Venturers determines that the grant or registration of the application is likely to have the effect on the operations of the Joint

Venturers or the bauxite referred to in subclause (1) of this Clause, he shall, by notice served on the Warden to whom the application was made, refuse the application.

- (c) Before making a determination pursuant to paragraph (b) of this subclause the Minister for Mines may request the Warden to hear the application and any objections thereto and as soon as practicable after the hearing of the application to report to the Minister for Mines on the application and the objections and the effect on the current or prospective operations of the Joint Venturers or the quantity of economically extractable bauxite that a grant of the application might have.
- (4)
- (a) Except as provided in subclause (3) of this Clause a Warden shall not hear or otherwise deal with an application for a mining tenement in respect of an area the subject of the Mining Lease unless and until the Minister for Mines has notified him that it is not intended to refuse the application pursuant to subclause (3) of this Clause. Following such advice to the Warden the application shall be disposed of under and in accordance with the *Mining Act 1978* or pursuant to the Second Schedule to that Act as the case may require save that where the Warden has heard the application and objections thereto pursuant to subclause (3) of this Clause, the application may be dealt with by the Warden without further hearing.
  - (b) The Joint Venturers may exercise in respect of any application heard by the Warden any right that they may have under the *Mining Act 1978* to object to the granting of the application.
  - (c) Any mining tenement granted pursuant to such application shall, in addition to any covenants and conditions that may be prescribed or imposed, be granted subject to such conditions as the Minister for Mines may determine having regard to the matters the subject of the consultations with the Minister and the Joint Venturers pursuant to subclause (3)(a) of this Clause and any matters raised by the Joint Venturers before the Warden.

**Fourth Schedule**

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- (5) (a) On the grant of any mining tenement over land the subject of the Mining Lease on or after the date of the agreement ratified by the *Alumina Refinery (Worsley) Agreement Amendment Act 1992* (whether the application for the mining tenement was made before or after that date) the land the subject of the mining tenement shall thereupon be deemed excised from the Mining Lease (with abatement of future rent in respect of the area excised but without any abatement of rent already paid or of rent which has become due and has not been paid in advance).
- (b) If the Joint Venturers apply —
- (i) during the period of application for or during the term of any mining tenement referred to in paragraph (a) of this subclause; or
- (ii) if that tenement is —
- (A) a prospecting licence or exploration licence and a substitute tenement is granted in respect thereof pursuant to an application made under section 49 or section 67 of the *Mining Act 1978*; or
- (B) a mining tenement granted pursuant to the Second Schedule to the *Mining Act 1978* and a substitute title is granted pursuant to that Schedule,
- during the term of the substitute title
- to the Minister to have the land the subject of such mining tenement or substitute title as the case may be revert to the Mining Lease on the termination of the mining lease or substitute title then notwithstanding anything contained in the *Mining Act 1978* on such termination the land the subject of such lease or title shall thereupon be deemed to be part of the land in the Mining Lease (with appropriate adjustment of rental) and shall be subject to the terms and conditions of the Mining Lease and this Agreement.
- (6) If a mining lease granted over land that was at any time subject to the Mining Lease is transferred to the Joint

Fourth Schedule

Venturers pursuant to the provisions of the *Mining Act 1978* and the Minister approves that the provisions of this subclause shall apply to that mining lease then, from the date of such approval, that mining lease shall be deemed to be a mining lease granted pursuant to Clause 7B hereof in respect of all minerals including bauxite and, without limitation, Clause 7C hereof shall apply to such mining lease upon the expiration or sooner determination thereof.

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

SIGNED by the said **THE HONOURABLE CARMEN MARY LAWRENCE** in the presence of: ) ) ) ) Carmen Lawrence

MINISTER FOR STATE DEVELOPMENT Ian Taylor

EXECUTED by **REYNOLDS AUSTRALIA ALUMINA, LTD.** by its duly appointed attorney John David Cooper McLean and countersigned by Richard Dennis Gee, both in the presence of: ) ) ) ) **REYNOLDS AUSTRALIA ALUMINA, LTD.** By its attorney J McLean

J Fornero Signature of Witness ..... R Gee Countersigned .....

Name of Witness Judith Fornero Address of Witness Lot 82 Goslin Street Sawyers Valley

**Fourth Schedule**

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THE COMMON SEAL of **THE SHELL** )  
**COMPANY OF AUSTRALIA LIMITED** )  
was hereunto affixed by authority of the ) [C.S.]  
Directors in the presence of: )

Director B Kelly

Secretary B Pascoe

THE COMMON SEAL of **KOBE** )  
**ALUMINA ASSOCIATES** )  
**(AUSTRALIA) PTY. LIMITED** was ) [C.S.]  
hereunto affixed by authority of the )  
Directors in the presence of: )

Director P Fromson

Secretary T Ueno

EXECUTED by **NISSHO IWAI** )  
**ALUMINA PTY. LIMITED** by )  
its duly appointed attorney )  
**KOBE ALUMINA ASSOCIATES** )  
**(AUSTRALIA) PTY. LIMITED** ) [C.S.]  
which affixed its common )  
seal by the authority of the )  
Directors in the presence of: )

**NISSHO IWAI**  
**ALUMINA LIMITED**  
By its attorney

Director P Fromson

Secretary T Ueno

*[Fourth Schedule inserted by No. 63 of 1992 s. 6.]*

## Fifth Schedule

[section 6C]

**THIS AGREEMENT** is made the 26 day of February 1994

**B E T W E E N :**

**THE HONOURABLE RICHARD FAIRFAX COURT**, B.Com., M.L.A.,  
Premier of the State of Western Australia, acting for and on behalf of the  
Government of the said State and its instrumentalities (hereinafter called “the  
State”) of the one part

**AND**

**REYNOLDS AUSTRALIA ALUMINA, LTD.** A.R.B.N. 009 473 492 a  
corporation incorporated under the laws in force in the State of Delaware in the  
United States of America and having its registered office in the State of Western  
Australia at 8th Floor, Griffin Centre, 28 The Esplanade, Perth, **THE SHELL  
COMPANY OF AUSTRALIA LIMITED** A.C.N. 004 610 459 a company  
incorporated in the State of Victoria and having its registered office at  
Level 18, 1 Spring Street, Melbourne, **KOBE ALUMINA ASSOCIATES  
(AUSTRALIA) PTY. LIMITED** A.C.N. 008 907 524 a company incorporated  
in the State of Western Australia and having its registered office at 7th Floor,  
26 St. George’s Terrace, Perth and **NISSHO IWAI ALUMINA PTY.  
LIMITED** A.C.N. 009 309 344 a company incorporated in the State of Western  
Australia and having its registered office at Level 5, Capita Centre, 5 Mill  
Street, Perth (hereinafter collectively called “the Joint Venturers” in which term  
shall be included their respective successors and permitted assigns and  
appointees) of the other part.

**WHEREAS:**

- A. The State and the Joint Venturers (pursuant to certain deeds of  
assignment dated the 7th day of February, 1980 and the 31st day of May,  
1988) are now the parties to the agreement dated the 22nd day of August,  
1974 (the execution of which by the State was authorised pursuant to  
section 3 of the *Alumina Refinery (Worsley) Agreement Act 1973*) as  
varied by an agreement dated the 18th day of April, 1978 approved and  
ratified by the *Alumina Refinery (Worsley) Agreement Act Amendment  
Act 1978* and as further varied by an agreement dated the 28th day of  
May, 1981 and as further varied by an agreement dated the 21st day of  
October, 1982 approved and ratified by the *Alumina Refinery (Worsley)*

**Fifth Schedule**

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*Agreement Amendment Act 1982* and as further varied by an agreement dated the 25th day of July, 1983 and as further varied by an agreement dated the 24th day of September, 1992 approved and ratified by the *Alumina Refinery (Worsley) Agreement Amendment Act 1992* (which agreement as so varied is hereinafter referred to as “the Principal Agreement”).

B. The parties desire to vary the Principal Agreement.

NOW THIS AGREEMENT WITNESSES —

1. Unless the context otherwise requires the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the State of Western Australia and comes into operation as an Act.
3. The Principal Agreement is hereby varied by inserting after Clause 12B the following clause —

“12C. (1) The Joint Venturers may in accordance with the provisions of this Clause operate the conveyor constructed by them pursuant to Clause 5(2)(a) hereof for the transport of bauxite to the refinery between the points marked A and B on the plan marked Z (“Plan Z”), initialled by or on behalf of the parties hereto for the purposes of identification, at all times notwithstanding any provisions of the *Environmental Protection Act 1986* or any other Act or law or any regulation, by-law or other exercise of statutory power (whether by the State or any local or other authority) relating to noise.

- (2) The Joint Venturers shall operate the said conveyor so as to ensure that the level of noise received at each of the measurement points marked R, S, T and U on Plan Z as a result of operation of the said conveyor for more than 90% of any 15 minute period of operation is less than 60 dB LA Slow (or such other level and/or measurement points and/or measurement method as may be agreed between the Minister and the Joint Venturers from time to time).



- (3) The Joint Venturers shall provide for the purposes of this Clause appropriate measuring equipment approved by the Minister and shall operate this equipment in accordance with arrangements to be agreed between the Minister and the Joint Venturers from time to time and shall report the results thereof to the Minister at such times and in such format as may be required by the Minister.
- (4) If and whenever the level of noise received from the said conveyor measured in accordance with subclause (2) of this Clause exceeds or has exceeded the level referred to in that subclause, the Minister may require the Joint Venturers to take, or may take at the expense of the Joint Venturers such steps as are appropriate to reduce the level of noise from the said conveyor to the said level and/or to prevent any further such occurrences (which may, in appropriate circumstances, include the temporary suspension of operation of the said conveyor).
- (5) Notwithstanding the foregoing provisions of this Clause, the Joint Venturers shall at all times take such steps as may be reasonable to maintain and service the said conveyor or any extension thereof so as to limit the noise caused by the operation of the said conveyor and any extension thereof.
- (6) Notwithstanding any right or cause of action vested in or available to or which might otherwise be vested in or available to any person, no right or claim (including, without limitation, any right of abatement or any claim for damages or an injunction) shall lie against the Joint Venturers or their agents employees officers or contractors by reason of any loss of enjoyment or amenity value, or by reason of any change in the aesthetic environment, alleged to be occasioned by noise caused by the operation of the said conveyor entering any land nor shall the Joint Venturers be liable to pay compensation for, or in respect of any damage attributable to, such noise.
- (7) (a) If the Joint Venturers at any time during the currency of this Agreement desire to extend the conveyor beyond the point marked B on Plan Z and to have the foregoing provisions of this Clause apply to the

**Fifth Schedule**

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extension, they shall submit their proposals for the extension to the Minister and provide the Minister with such information as to the nature and operation of the proposed extension to the conveyor as the Minister may reasonably require.

- (b) Within two months of the Minister receiving all information reasonably required by him or her under paragraph (a) of this subclause, subject to:
  - (i) the implementation of the proposals being approved under Part IV of the *Environmental Protection Act 1986* by the Minister responsible for the administration of that Act in accordance with paragraph (d) of this subclause; and
  - (ii) the equipment to be used in the proposed extension to the conveyor being of a standard which will emit noise at a level less than or equal to the existing conveyor,

the Minister shall approve amendments to Plan Z in accordance with the proposals to show the route of the extension to the conveyor, subject to such conditions as the Minister may reasonably require, provided that the Minister may not impose any conditions which are unrelated to the mitigation of noise from the proposed extension to the conveyor or which are more onerous than the conditions applying to the existing conveyor.

- (c) Where the Minister approves an amendment of Plan Z pursuant to paragraph (b) of this subclause, the provisions of subclauses (1) to (6) of this Clause shall thenceforth apply to the conveyor as shown on the amended Plan Z.
- (d) In relation to any proposals referred to in paragraph (b)(i) of this subclause the Minister responsible for the administration of the *Environmental Protection Act 1986* shall not refuse approval for the implementation of the said proposals based in whole or in part on any ground which relates to noise emissions from the proposed extension to the

conveyor or grant that approval subject to any condition which relates to such noise emissions.”.

- 4. Clause 17 of the Principal Agreement is hereby varied by deleting “Nothing” and substituting the following —  
 “Subject to Clause 12C hereof, nothing”.

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

SIGNED by the said **THE** )  
**HONOURABLE RICHARD** ) R F Court  
**FAIRFAX COURT** in the presence of: )

MINISTER FOR RESOURCES DEVELOPMENT  
Colin Barnett

EXECUTED by **REYNOLDS** ) **REYNOLDS AUSTRALIA**  
**AUSTRALIA ALUMINA, LTD.** by ) **ALUMINA, LTD.**  
its duly appointed attorney John David ) **By its attorney**  
Cooper McLean and countersigned by )  
Richard Dennis Gee, both in the ) **J McLean**  
presence of: )

G Faliti

\_\_\_\_\_  
Signature  
R Gee

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Countersigned

Name of Witness  
GIUSEPPINA FALITI

Address of Witness  
3/9 THE ESPLANADE  
S. PERTH WA 6151

**Fifth Schedule**

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THE COMMON SEAL of **THE** )  
**SHELL COMPANY OF** )  
**AUSTRALIA LIMITED** was hereunto ) [C.S.]  
affixed by authority of the Directors in )  
the presence of: )

Director I R Freer

Secretary B H Pascoe

THE COMMON SEAL of **KOBE** )  
**ALUMINA ASSOCIATES** )  
**(AUSTRALIA) PTY. LIMITED** was )  
hereunto affixed by authority of the )  
Directors in the presence of: )

Director T Ueno

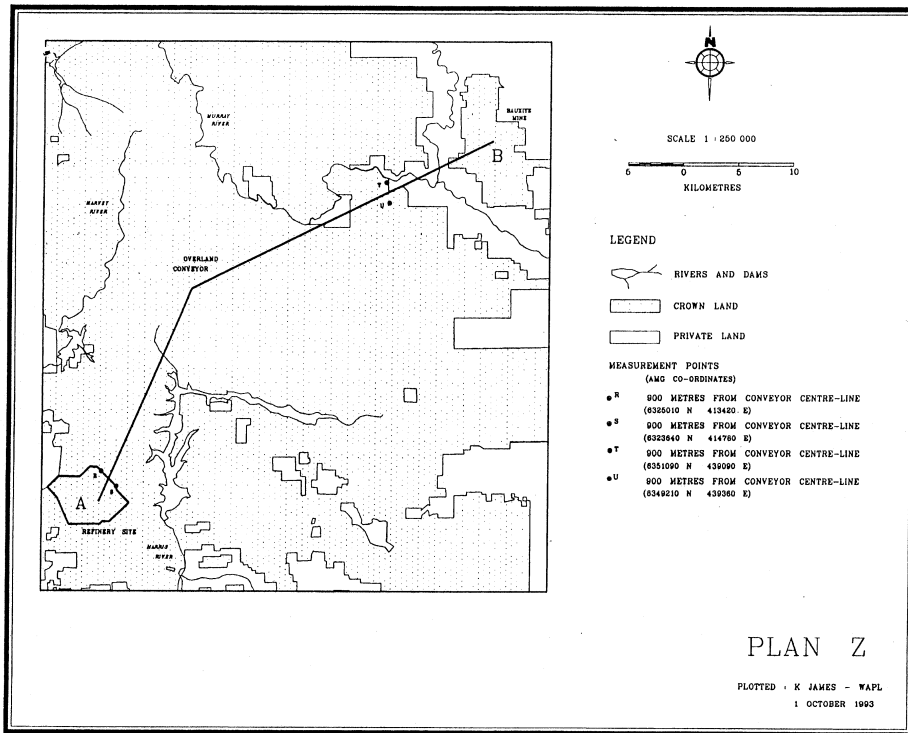
Secretary J A Jansen

EXECUTED by **NISSHO IWAI**  
**ALUMINA PTY. LIMITED** by its  
duly appointed attorney **KOBE**  
**ALUMINA ASSOCIATES**  
**(AUSTRALIA) PTY. LIMITED** which  
affixed its common seal by the  
authority of the Directors in  
the presence of:

**NISSHO IWAI**  
**ALUMINA LIMITED**  
By its attorney

Director T Ueno [C.S.]

Secretary J A Jansen



[Fifth Schedule inserted by No. 15 of 1995 s. 7.]

## **Alumina Refinery (Worsley) Agreement Act 1973**

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### **Notes**

- <sup>1</sup> This is a compilation of the *Alumina Refinery (Worsley) Agreement Act 1973* and includes the amendments made by the other written laws referred to in the following table.

#### **Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Alumina Refinery (Worsley) Agreement Act 1973</i>	67 of 1973	28 Nov 1973	s. 5: 16 May 1975 (see s. 2(2) and <i>Gazette</i> 16 May 1975 p. 1345); balance: 28 Nov 1973 (see s. 2(1))
<i>Alumina Refinery (Worsley) Agreement Act Amendment Act 1978</i>	10 of 1978	15 May 1978	15 May 1978
<i>Alumina Refinery (Worsley) Agreement Amendment Act 1982</i>	95 of 1982	1 Dec 1982	1 Dec 1982
<i>Alumina Refinery (Worsley) Agreement Amendment Act 1992</i>	63 of 1992	11 Dec 1992	11 Dec 1992 (see s. 2)
<i>Alumina Refinery (Worsley) Agreement Amendment Act 1995</i>	15 of 1995	4 Jul 1995	4 Jul 1995 (see s. 2)

**Reprint of the Alumina Refinery (Worsley) Agreement Act 1973 as at 1 Feb 2002**  
(includes amendments listed above)

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- <sup>2</sup> Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.