

## Schedule

[Section 2.]

AN AGREEMENT under seal made the 27th day of July One thousand nine hundred and sixty-six BETWEEN THE HONOURABLE DAVID BRAND M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the said State and its instrumentalities (hereinafter referred to as “the State”) of the one part AND LESLIE SALT CO. a company incorporated under the provisions of the statutes of the State of Delaware United States of America and having its registered office in the State of Western Australia at Port Hedland (hereinafter called “the Company” which term shall include the successors and assigns of the Company including where the context so admits the assignees and appointees of the Company under clause 21 hereof) of the other part.

WHEREAS the parties hereto desire to enter into this Agreement with the objects of the establishment and carrying on at and in the vicinity of Port Hedland of a solar salt industry and such other allied mining and ancillary industries as may conveniently be carried on in conjunction with a solar salt industry and such other industries as may be approved by the Minister and doing all acts matters and things to attain and to facilitate the abovementioned object.

NOW THIS AGREEMENT WITNESSETH and the parties hereto COVENANT AND AGREE with one another as follows: —

### Definitions

1. In this Agreement subject to the context —

“associated company” means —

- (a) any company notified in writing by the Company to the Minister and which is incorporated in the United Kingdom the United States of America or any State or Territory of the Commonwealth of Australia and which is:
  - (i) a subsidiary of the Company within the meaning of section 6 of the Companies Act 1961; or
  - (ii) a company in which the Company holds not less than thirty per cent. (30%) of the issued ordinary share capital; or
- (b) any company approved in writing by the Minister for the purposes of this Agreement which is associated directly or

indirectly with the Company in its business or operations hereunder;

“Director of Engineering” means the Director of Engineering for the time being in the Public Works Department of the State of Western Australia or the officer for the time being discharging the duties of that office;

“Harbour Authority” means the Department of the Government of the said State or other authority (statutory or otherwise) having the control of the harbour at Port Hedland;

“Minister” means the Minister of the Crown to whose administration the ratifying Act is for the time being committed and otherwise the Minister for Industrial Development;

“loading time” means the period from the time a ship berths at the wharf until the time the ship leaves the wharf face;

“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“production site” means the land at or in the vicinity of Port Hedland in the said State comprising approximately 48,000 acres or thereabouts delineated and edged in blue and shown on the plan marked “A” and initialled by or on behalf of the parties hereto for the purposes of identification other than the public roads shown on such plan and such other land as the parties may agree upon from time to time;

“quarter” means each of the periods of three months expiring on the respective last days of March June September and December in each year;

“ratifying Act” means the Act referred to in subclause (1) of clause 2 hereof;

“said State” means the State of Western Australia;

“shipped” includes removal from the work sites by ship or any other means;

“stockpile area” means the land at Port Hedland in the said State delineated and edged in red and subject to survey shown on the plan marked “B” and initialled by or on behalf of the parties hereto for the purposes of identification and such other land as the parties hereto may agree upon from time to time;

“this Agreement” “hereof “ and “hereunder” include 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;

“wharf” means the wharf to be constructed east of the Government jetty in the port of Port Hedland;

“work sites” includes the production site stockpile area and the land comprised in or the subject of any lease license or easement granted or given hereunder other than any grant or lease under clause 10 hereof;

“year” means a year commencing on the 1st day of July;

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 the construction of this Agreement.

#### Ratifying Act

2. (1) The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement before the 31st day of October, 1966, or such later day (if any) as the parties hereto may agree upon. If the Bill is not so passed as an Act before the 30th day of November, 1966 (or such later day (if any) as the parties hereto may agree upon) this Agreement shall be of no force or effect and neither of the parties hereto shall 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.

(2) If the Bill to ratify this Agreement is passed as an Act before the 30th day of November, 1966 (or such later day as aforesaid) the following

provisions of this clause shall notwithstanding the provisions of any Act or law thereupon operate and take effect namely: —

- (a) the provisions of clauses 3 and 4, subclause (1) of clause 5, clause 6, clauses 10, 11, 12, 13, 15 and 16, subparagraph (i) of paragraph (b) and paragraph (c) of clause 18, subclause (2) of clause 20, and clauses 23 and 24 shall take effect as though the same had been brought into force and had been enacted by the ratifying Act;
- (b) subject to paragraph (a) of this subclause the State and the Minister respectively shall have all the powers discretions and authorities necessary or requisite to enable them to carry out and perform the powers discretions authorities and obligations conferred or imposed upon them respectively hereunder;
- (c) the State may by agreement acquire or compulsorily take or resume as for a public work within the meaning of the Public Works Act 1902, any land or any estate or interest in land which in the opinion of the State is reasonably required for the objects of this Agreement and may thereafter dispose or deal with the same in accordance with or for the purposes of this Agreement apart from the provisions of that Act or any other Act AND when any land is to be so compulsorily taken or resumed under the powers conferred by this paragraph the provisions of subsections (2) to (7) inclusive of section 17 and section 17A of the Public Works Act 1902, shall not apply to or in respect of the land or to the taking or in any other manner whatsoever;
- (d) all land the subject of any lease hereunder shall for the purposes of the Mining Act 1904, be deemed to be “Private Land” as defined by section 136 of that Act;
- (e) with effect from the day the ratifying Act is passed all those portions of the roads as at that day lie within the production site shall be closed and all rights of way over those portions of the roads so closed shall cease and all those portions of the roads so closed shall revert in Her Majesty as of her former estate.

#### Production Site

3. As soon as conveniently may be after the coming into operation of the ratifying Act the State shall on the written application of the Company cause the production site or so much of it as the Company in that application specifies to be leased to the Company under either the provisions of the Land Act 1933, or the Mining Act 1904, as the Company requests and the relevant Act shall,

notwithstanding any of the provisions thereof, be deemed to be so amended varied and modified as to enable the lease to be granted on the following terms and conditions namely: —

- (a) for a term of thirty-one (31) years commencing from a day to be agreed upon by the parties hereto;
- (b) at a rental computed at the rate of \$4 per one hundred (100) acres per annum;
- (c) subject to the payment by the Company of the royalties hereinafter mentioned and to the due and punctual performance by the Company of its obligations hereunder;
- (d) subject to the condition that the Company shall be entitled (provided the right of re-entry contained in the lease and the renewal thereof (as the case may be) has not been exercised) to the option —
  - (i) to renew the lease for a further term of twenty-one (21) years and on the expiry thereof;
  - (ii) to further renew the lease for a further term of eleven (11) years;

on the same terms and conditions as are contained in paragraphs (b), (c), (e), (g), (h) and (i) of this subclause; and

- (e) subject to the condition that the Company will permit the public access to and from —
  - (i) the tidal inlets between Cooke Point and six (6) miles east thereof for fishing and recreational purposes; and
  - (ii) the high ground at the north end of and partially enclosed by the crystallisers of the Company;

provided that such access does not unduly interfere with the works of the Company or its operations hereunder;

- (f) that the cost of any survey required by the State be paid by the Company;

- (g) that the Company shall provide crossing places for persons vehicles and stock at such places across the channels shown on Plan "A" as may be agreed from time to time between the parties hereto;
- (h) subject to the reservations required in Crown Leases pursuant to the Petroleum Act 1936; and
- (i) otherwise on such terms and conditions as are reasonably required to give effect to the provisions and objects of this Agreement.

#### Stockpile Area

4. (1) As soon as conveniently may be after the coming into operation of the ratifying Act the State shall cause the stockpile area to be reclaimed so that —

- (a) the elevation of the surface thereof is nowhere less than 23 feet above Admiralty Chart datum; and
- (b) the stockpile area has a peripheral levee of not less than 28 feet above Admiralty Chart datum of a design to be mutually agreed upon.

(2) Upon the completion of the reclamation of the stockpile area the State shall cause: —

- (a) a calculation to be made of the actual cost to the State of the reclamation of the stockpile area in accordance with the specifications referred to in paragraphs (a) and (b) of sub-clause (1) of this clause;
- (b) the stockpile area to be leased to the Company on the following terms and conditions: —
  - (i) for a term co-terminous with the term (including renewals) of the lease of the production site;
  - (ii) the annual rental for the period of the lease shall be the greater of: —
    - (A) The annual sum required to amortise the costs and expenses of reclamation calculated in accordance with paragraph (a) of this subclause or at the rate of sixteen thousand dollars (\$16,000) per acre of the area of the

stockpile area (whichever is the lesser) together with interest thereon computed at the rate of 5¼ per centum per annum over the period of the lease apart from the period of any renewal thereof, or

(B) Eight thousand dollars (\$8,000) per annum;

the first payment to be made on the first anniversary of the date of the commencement of the lease.

(iii) The annual rental during the period of any renewal shall be the greater of —

(A) the aggregate sum of one (1) cent per ton of all salt produced at the production site and shipped in the relevant year, or

(B) Eight thousand dollars (\$8,000) per annum;

(iv) the due and punctual performance by the Company of its obligations hereunder;

(v) the maintenance by the Company to the satisfaction of the Minister for the peripheral levee referred to in paragraph (b) of sub-clause (1) of this clause;

(vi) the provision of ingress to and egress from the stockpile area for trucks which are carrying salt to the stockpile area;

(vii) the grant in favour of the Company of an easement or license in respect of so much of the land along the southern boundary of the general storage area (which area is delineated and hatched in blue on the plan marked "B") as is reasonably required by the Company —

(A) to enable the Company to erect a conveyor to convey the salt from the stockpile area to the wharf; and

(B) for the purpose of the servants workmen agents and contractors of the Company entering upon the land the subject of the easement or license to enable them to construct use and maintain that conveyor at all times;

- (viii) that the cost of any survey required by the State be paid by the Company;
- (ix) subject to the reservations required in Crown Leases pursuant to the Petroleum Act 1936; and
- (x) otherwise on such terms and conditions as are reasonably required to give effect to the provisions and objects of this Agreement.

#### State's Obligations

5. (1) The State shall:
- (a) subject to the provisions of clause 29 hereof and notwithstanding the Bill referred to in clause 2 has not been introduced at the request of the Company proceed with the design and specifications of the wharf in such manner as may be mutually agreed upon by the parties hereto;
  - (b) construct or cause to be constructed the wharf to be not less than six hundred (600) feet in length and mooring dolphins in such position as to provide a berth of a total length of not less than nine hundred and fifty (950) feet AND construct or cause to be constructed the wharf sufficiently wide to permit the installation thereon of such travelling bulk loading facilities as will enable ships berthed thereat to be loaded with salt at the rate of three thousand (3,000) tons per hour AND complete the construction of the wharf and dredge the berth and the seabed as provided in paragraph (c) of this subclause to such a stage that both the wharf and the berth are usable for the export of salt from the stockpile area within twentyeight (28) months from the request of the Company to proceed with the design of the wharf as provided in paragraph (a) of this subclause or within twentyfour (24) months of the date the Company requests the State to proceed with the construction of the wharf whichever is the later.
  - (c) dredge the berth at the wharf to a depth of not less than forty (40) feet below Admiralty Chart datum and to a width of two hundred (200) feet and to a length of nine hundred and fifty (950) feet and dredge the seabed between that berth and the periphery of the turning basin (which is dredged or is to be dredged in accordance with the proposals as finally approved pursuant to the Agreement scheduled to Act No. 97 of 1964 of the Parliament of the said State) to —



(i) the same depth to which that turning basin is dredged at the date the wharf is completed,

or

(ii) nineteen (19) feet below Admiralty Chart datum,

whichever is the deeper and thereafter from time to time during the continuance of this Agreement dredge the berth and seabed so as to maintain such original respective depths;

- (d) upon request by the Company cause the Company to be granted a license to use the wharf for the construction of such travelling bulk loading facilities for the Company's exclusive use as are reasonably required by the Company therefor and shall not acquire (unless by purchase) any property in the travelling bulk loading facilities by reason of being affixed to the wharf and the State shall permit the Company to remove the same;
- (e) provided that the company complies strictly with the provisions of paragraph (c) of subclause (2) of this clause and at all times uses methods and facilities reasonably expeditious by world standards for the loading of salt all ships requiring the berth at the wharf for the purpose of loading salt produced from the production site shall be entitled at all times to the use of the wharf in priority to all other ships including ships owned or chartered by the State provided that if in any year the aggregate loading time of ships loading salt at the wharf exceeds two thousand four hundred (2,400) hours then the Company shall not thereafter for that year be entitled to any priority hereunder;
- (f) grant permission for the company to construct a flood protection levee in accordance with plans and specifications first approved by the Minister at or approximately at and across the northern end of the strip of land between the Company's crystallisers;
- (g) at the request of the Company recommend the Governor in Executive Council to make alter and repeal by-laws for the purpose of —
- (i) making any ship liable to pay to the Company any loss sustained or incurred by the Company by reason of the failure of the master charterers or owners of that ship to give the priority provided by paragraph (e) of sub-clause (1) of this clause save and except where that failure was due to Act of God or circumstances beyond the control of the master

charterers or owners of the ship or the exercise of the ordinary and necessary authority of the Port Authority or Harbour Master with respect to the directions and control of that ship;

- (ii) enabling the Company to operate trains for the carriage of salt upon the railway constructed on the land the subject of any lease or license granted under subclause (3) of Clause 11 hereof;
- (iii) suspending the public right of way over that portion of a public road where it crosses the Company's railway whenever any engine wagon or van is approaching and within a distance of a quarter of a mile from that crossing and at all other times limiting the public right of crossing the line of the Company's railway unless done with all convenient speed, and without stopping or continuing thereon.

(2) The Company shall:

- (a) at all reasonable times at the request of the State whilst the wharf is being designed and the specifications being drawn make available on the Company's behalf a person for consultation with the officers servants or agents of the State in respect of the design of the wharf or of the specifications therefor;
- (b) construct the travelling bulk loading facilities referred to in paragraph (b) of subclause (1) of this clause (initially with a capacity of not less than fifteen hundred (1,500) tons per hour) to the satisfaction of the State in accordance with the plans and specifications therefor approved by the State and in particular in such manner that the loading or unloading of cargoes for other persons who may from time to time require the use of the wharf shall not be unduly restricted whilst salt is not being loaded at the wharf AND the Company shall in the event of it removing the whole or any part of the travelling bulk loading facilities restore to the satisfaction of the State that part of the wharf used or occupied by the travelling bulk loading facilities or to which the same was affixed;
- (c) at all times and from time to time —
  - (i) give reasonable notice to the Harbour Authority of the periods respectively required at the wharf by ships engaged in transporting salt produced at the production site;

- (ii) give not less than eight (8) days notice to the Harbour Authority of the respective dates and times a ship is expected to arrive at and depart from the wharf;
  - (iii) give immediate notice to the Harbour Authority of any change in the date or time referred to in paragraph (ii) of this sub-clause.
- (d) pay to the State in respect of the use by ships berthing at the wharf to load salt an annual charge of sixty thousand dollars (\$60,000) for each of the twenty (20) years next following the day of completion of the wharf and which payments will be made on the relevant anniversaries of the day of completion of the wharf the first of which shall be paid by the Company on the first anniversary of the day of completion of the wharf.

(3) It is agreed by and between the parties hereto that the wharf shall be deemed to be completed upon the day stated in the notice given by the Director of Engineering to the Company certifying that the wharf and the dredging referred to in paragraphs (b) and (c) respectively of sub-clause (1) of this clause are completed and the date so stated shall be conclusive evidence between the parties hereto of the completion of the wharf on that day.

The day so stated in that notice is herein referred to as the “day of completion of the wharf”.

#### License to pump salt

6. Upon the written request of the Company for the grant of a license to permit the Company to pump salt in the form of slurry to the stockpile area from the washing and stacking area adjacent to the crystallisers the State will at the cost of the Company cause the route to be surveyed which the State (after consultation with the officers of the Company) considers most practicable and convenient for the purpose of so pumping that salt without prejudicing or interfering with the use of public roads in the area the route traverses and will as soon as practicable after the completion of that survey cause a license over the surveyed route to be granted to the Company on such terms and conditions as are reasonably required to give effect to the objects and provisions of this Agreement.

The license will be enjoyed by the Company for so long as the Company is the lessee of both the production site and stockpile area for the purposes of the Company —

- (a) entering (by its servants agents and contractors) upon the surveyed route —

- (i) to lay all such necessary pipes and construct all such necessary apparatus as will enable the Company to pump the salt in form of slurry from the washing and stacking area to the stockpile area;
  - (ii) to renew from time to time and at all times to maintain those pipes in good order and condition and doing all acts and things incidental to all or any of the said purposes, and
- (b) using those pipes for the passage of salt in the form of slurry.

#### Company's obligations

7. Provided that the Company has given the notice to c the State referred to in clause 29 hereof —

- (a) the Company will not later than the 30th day of June, 1967 commence to construct and thereafter will diligently proceed with the construction and establishment on the work sites of a solar salt plant at a total estimated cost of \$7,000,000. Such plant shall be designed to produce one million tons of salt per annum and shall initially be capable of producing and loading into the holds of ships at the wharf not less than 475,000 tons of salt per annum. The construction and establishment of the plant on the work sites and the provision of necessary ancillary works, buildings, plant, equipment and services for the production of salt and for the loading of salt into ships at the wharf with a capacity of 475,000 tons per annum shall be completed by the 30th day of June, 1972;
- (b) the Company undertakes that it will progressively increase the capacity of the solar salt plant until the plant shall be capable of producing not less than one million tons of salt per annum and that the construction and establishment of the plant and necessary ancillary works, buildings, plant, equipment and services with a capacity of one million tons of salt per annum shall be completed by the 30th day of June, 1975;
- (c) The Company undertakes initially to install on the wharf bulk loading facilities which will enable ships berthed thereat to be loaded with salt at the rate of not less than One thousand five hundred (1,500) tons per hour.

Royalty

8. (1) Throughout the continuance of this Agreement the Company shall pay to the State a royalty on all salt produced at the work sites and shipped computed as set out hereunder: —

	Rate per ton
On the first 500,000 tons in any year . . . . .	5 cents
On the second 500,000 tons in any year . . .	6.25 cents
On all tonnages in excess of 1,000,000 tons in any year . . . . .	7.5 cents

Tonnages shall be ascertained at Port Hedland in such manner as the parties hereto may from time to time agree upon.

(2) Within the fourteen (14) days next following each quarter (commencing with the quarter next following the first shipment of salt produced at the work sites), the Company shall furnish to the Minister a return showing the quantity of all salt produced at the work sites and shipped in that quarter and shall not later than one month next following that quarter pay to the State the royalty payable in respect of the salt produced and shipped in that quarter.

(3) Throughout the continuance of this Agreement the company shall pay to the State on the salt which is loaded into ships at the wharf the wharfage charges set out hereunder:—

	Rate per ton
On the first 500,000 tons in any year . . . . .	12.5 cents
On the second 500,000 tons in any year . . .	7.5 cents
On all tonnages in excess of 1,000,000 tons in any year . . . . .	5 cents

A fair and reasonable reduction will be made in the above wharfage charges if under any agreement with the State a company has agreed to contribute (either directly or indirectly) to the cost of the wharf or dredging referred to in paragraph (c) of subclause (1) of clause 5 or to make any contribution towards the maintenance thereof or either of such works.

(4) Subject to the provisions of subclause (1) of clause 20 hereof the State may make or cause to be made against vessels using the wharf the usual charges from time to time prevailing in respect of services rendered to vessels by the State or any agency instrumentality or local or other authority of the State and may charge vessels using the wharf such conservancy and pilotage charge or dues as are payable from time to time pursuant to the provisions of any Act and 40 per cent. of any berthage charge payable under any Act.

(5) Throughout the continuance of this Agreement the Company shall permit a nominee of the Minister to inspect at all reasonable times the books of account and records of the Company relative to the production of salt on the work sites and any sale or shipment thereof and to take copies or extracts therefrom so far as is necessary for the purpose of determining the revenue payable in respect of salt shipped or sold hereunder. The Company will take reasonable steps to satisfy the State either by the certificate of a competent independent party acceptable to the State or otherwise to the Minister's reasonable satisfaction as to all relevant weights and will give due regard to any objection or representation made by the Minister or his nominee as to any particular weight of that salt which may affect the amount of royalty payable hereunder.

#### Escalation

9. (1) Notwithstanding anything herein contained it is hereby agreed by and between the parties hereto in order to provide for the equitable performance of this contract in the event of the price of salt (as hereinafter defined) on the 14th, 21st, 28th, 35th, 42nd, 49th and 56th anniversaries of the commencement date (being the day of the commencement of the term of the lease of the production site) exceeding the price of salt on the 7th anniversary day of the commencement date, then the percentage by which the price of salt on the relevant anniversary day exceeds the price of salt on the 7th anniversary day of the commencement date shall be calculated and the several amounts mentioned herein and payable by the Company to the State as —

- (a) rental under paragraph (b) of clause 3;
- (b) rental under subparagraph (iii) of paragraph (b) of subclause (2) of clause 4;
- (c) royalty under subclause (1) of clause 8; and

- (d) wharfage charges under subclause (3) of clause 8;

shall be increased by the percentage so calculated and such increased amounts in respect of those items shall be payable by the Company to the State during the seven (7) years next following the relevant anniversary day.

(2) For the purposes of this clause the price of salt on the 7th anniversary day of the commencement date and on each of the aforesaid anniversary days means the average price of salt shipped from the production site during the previous year payable by the purchaser or purchasers thereof to the Company less all export duties taxes and fees payable to the Commonwealth on the export of salt and the costs and expenses properly incurred and payable by the Company from the time the salt is shipped to the time the salt is delivered to and accepted by the purchaser or purchasers including —

- (a) ocean freight;
- (b) marine insurance;
- (c) port and handling charges at the port of discharge;
- (d) all costs properly incurred in delivering the salt from the port of discharge to the purchaser as evidenced by relevant invoices;
- (e) all weighing, sampling, analysis, inspection and representation costs;
- (f) all shipping agency charges after shipment; and
- (g) all import taxes imposed or levied by the country or the port of discharge.

(3) Throughout the continuance of this Agreement the Company shall use its best endeavours to obtain for the salt produced at the production site the best price possible having regard to market conditions from time to time prevailing.

#### Housing

10. (1) Subject to the provisions of this clause the State will on the written application made from time to time by the Company for land for housing purposes grant to the Company in such locality as land is available therefor a

lease of such vacant lots as the Company requests on the following terms and conditions namely: —

- (a) for a term of five years commencing from a day to be agreed upon by the parties hereto;
- (b) at a rental sufficient to reimburse a reasonable proportion of the costs (if any) incurred by the State in the preparation of the land for subdivision;
- (c) that the Company will within eighteen months of the commencement of the term of each lease complete on the land the subject of that lease the erection of living accommodation for occupation by a family or single persons at a cost of not less than \$7,000;
- (d) that on the expiration of the term of the lease and subject to the due and punctual observance and performance of all the covenants agreements and conditions on the Company's part therein contained, on the request of the Company grant to it an estate in fee simple in the land the subject of the lease at a price not exceeding two hundred dollars (\$200) plus Crown Grant and survey fees;
- (e) that the Company will not sell transfer assign sub-let or mortgage charge or encumber any lease without the consent of the State first had and obtained PROVIDED THAT the consent of the State shall not be required to the transfer assignment or sub-lease of a lot to an employee of the Company nor to any mortgage where the Company has complied with paragraph (c) of this clause in relation to that lot;
- (f) that the Company will pay to the relevant local authority (when requested by the local authority so to do) such amount (at the date hereof estimated not to exceed \$420) as the local authority reasonably requires at the time of the grant of the lease to enable it to supply or make available the usual services;
- (g) otherwise on such terms and conditions as are reasonably required to give effect to the provisions and objects of this Agreement.

(2) The State shall not be required to lease to the Company during the currency of this Agreement more than fifty lots nor more than ten lots in any one year. The request for each lot shall be made by the Company at least three months before the Company requires the lease of that lot to be granted to it. In the event of the State consenting under the provisions of paragraph (e) of subclause (1) of this clause to a transfer or an assignment of the lot the State shall not be required to lease another lot in lieu of the lot so transferred or assigned.



## Road and Rail Transport

11. (1) Subject to the provisions of subclause (2) of this clause the State agrees that it shall be lawful for the Company to use for the carriage of salt on any public road between the production site and the stockpile area prime movers and two trailers the combined length of which shall not exceed eighty-five (85) feet in length notwithstanding any provision in any Act to the contrary.

(2) The right conferred by subclause (1) of this clause shall operate until the tenth anniversary of the day of the first shipment of salt and thereafter until determined by not less than three years' notice in writing by the Minister. Such notice may be given to expire on the tenth anniversary of the day of the first shipment of salt or at any time thereafter.

(3) Upon the written request of the Company for the grant of a lease to enable the company to construct a railway from the production site to the stockpile area the State will at the cost of the Company cause a route to be surveyed which the State (after consultation with the officers of the Company) considers most practicable and convenient therefor and will as soon as practicable after the completion of that survey at the cost and expense of the Company in all things (including the acquisition and resumption of the lands over which the route passes) cause a lease (including renewals) of the surveyed route (other than any part thereof declared dedicated or proclaimed as a public road) to be granted to the Company for so long as the Company is the lessee of both the production site and the stockpile area for the sole purpose of the Company constructing and operating a railway on the leased land and on such terms and conditions as are reasonably required to give effect to the objects and provisions of this Agreement. In respect of any part of a public road over which the railway operates the State will cause the Company to be granted a license to operate its railway over that part of the public road on such terms and conditions as are reasonably required to give effect to the provisions and objects of this Agreement.

## Sea Water

12. (1) The Company may without charge draw sea water from the Indian Ocean for all or any one or more of its operations in respect of the production of salt on the work sites and the Company may discharge at high water mark residual brines resulting from those operations into tidal inlet or inlets at points adjacent to the Company's crystallisers and the State shall grant to the Company any necessary easement or license for the purposes over Crown lands upon such terms and conditions as shall be reasonable having regard to the requirements of the Company under this clause and the overall development and use by others of those Crown lands.

(2) Subject to the Company's compliance with the Mining Act 1904, and all other relevant statutes and regulations for the time being in force the Company if and when it becomes economical so to do shall have the right to the exclusion of any other person to recover any chemicals in the brines.

#### Rights of Ingress and Egress

13. The State shall from time to time on the written application of the Company grant to the Company a license or licenses over Crown lands for the purpose of the Company by its servants agents contractors invitees and customers enjoying the right of ingress to and egress from all or any one or more part or parts of the work sites for a term or terms respectively concurrent with the term (including renewals) of the lease of the production site and on such terms and conditions as shall be reasonable having regard to the requirements of the Company in respect of its obligations to construct maintain operate and inspect the improvements from time to time constructed or installed on the work sites and to the overall development and use by others of those Crown lands.

#### Export License

14. If at any time or times under Commonwealth law an export license is required by the Company for the export of salt then on written request by the Company the State shall make representation to the Government of the Commonwealth of Australia for the grant to the Company of a license or licenses under Commonwealth law for the export of salt in such quantities and at such rate or rates as shall be reasonable having regard to the tonnage of salt being produced by the Company at such time or times as a license is so required and to all contracts made or likely to be made by the Company for the export or supply of salt from the work sites.

#### Diversion of fresh water

15. (1) To enable the Company to successfully operate it will be necessary to prevent fresh or rain water from entering the concentrating and crystallising areas and accordingly the Company desires the right to divert from time to time the fresh or rain water flowing in the Ridley River and other watercourses from their respective normal courses. The State acknowledges the necessity of such diversions and will so far as practicable having regard to the users of the surrounding land permit the Company to make such diversions subject to and in accordance with the provisions set out in subclause (2) of this clause.

(2) When and as often as the Company anticipates that it desires to make a diversion for the purpose aforesaid and where such diversion may affect lands

outside the work sites it shall before commencing any such diversion immediately submit to the Minister in duplicate its proposals (which shall include all plans and specifications) in respect of the diversion it is desirous of making and shall also give to the Minister such further information and plans in respect of the diversion as the Minister from time to time reasonably requires in respect of the diversion. As soon as reasonably possible after the Minister has been given the Company's proposals and such further information and plans which he may require the Minister shall either inform the Company in writing —

- (i) that he has approved of the Company's proposals as submitted by the Company or as amended by him whereupon the Company shall be at liberty (subject to the provisions of subclause (3) of this clause) to proceed with the making of the diversion in the manner submitted or as amended by the Minister (as the case may be); or
- (ii) that he has disapproved of the Company's proposals or as amended or qualified by any further information and plans (as the case may be). Within the month next following the receipt of this disapproval the Company may elect by notice to the Minister to refer to arbitration the dispute as to the reasonableness of the Minister's disapproval and within the month following such election shall refer such dispute to arbitration. If by the award on arbitration the dispute is decided against the Company then the Company shall not be at liberty to proceed to make such diversion but if the question is decided in favour of the Company the award will take effect as an approval by the Minister and the Company shall be at liberty (subject to the provisions of subclause (3) of this clause) to proceed to make such diversion in accordance with the terms of the award.

(3) Before the Company commences to proceed with the making of the diversion referred to in the immediately preceding subclause the Company shall enter into a Deed of Covenant with the State in such form as the Minister in his absolute discretion determines covenanting to indemnify the Crown in right of the State against all claims costs and expenses which may at any time or times be made against the Crown in the right of the State in respect of that diversion or arising out of or incidental to or in consequence of that diversion.

#### Limitation of Liability

16. Where the Company from time to time constructs a levee or other works on the production site for or incidental to the production of salt and thereafter a third party makes improvements to lands or becomes the owner of improvements so made on lands adjacent to the production site and subsequent to those improvements being made the Company removes (either wholly or partly) or fails to maintain or to repair that levee or other works and in consequence thereof the third party suffers sustains or incurs damage to those improvements or any part

thereof then notwithstanding any Act or any rule of law or equity to the contrary the Company shall not be liable for those damages to any person or persons whatsoever.

## Employees

17. The parties hereto acknowledge the principle that in the operation of a solar salt plant all employees during their respective normal working hours are not continuously or fully engaged in the performance or discharge of their respective duties and hence from time to time there is or could be a surplus in the number of employees required by the Company. To avoid this so happening and to maintain so far as practicable full employment for all its employees at all times the Company proposes to use employees whilst not engaged in the performance or discharge of their respective duties to assist in the loading of ships at wharf with salt produced at the work sites and in the supervision thereof and to perform or discharge such other duties as may be assigned to them from time to time by the Company. To enable the foregoing objectives to be put into practice the State will at the request of the Company made to it from time to time use reasonable endeavours to assist in the implementation and achievement of these objectives.

## Default

18. The parties hereto covenant and agree with each other as follows: —
- (a) that in any of the following events namely if the Company fails in any year after the 30th June, 1975 to ship at least 475,000 tons of salt and furthermore the average of the tonnage shipped in that year and in the previous three years is less than 475,000 tons a year or if the Company makes default in the due and punctual performance of any of the covenants agreements or obligations to the State herein or in any lease sub-lease easement license or other title or document granted or assigned under this Agreement on its part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to it by the State (or if the alleged default is contested by the Company and promptly submitted to arbitration within a reasonable time fixed by the arbitration award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company abandons or repudiates its operations under this Agreement or if the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) or if the Company gives the notice referred to in subclause (2) of clause 29 hereof then and in any of such events the State may by notice given to the Company determine this Agreement and the rights of the

Company hereunder and under any lease license easement or right granted or demised hereunder or pursuant hereto and upon receipt by the Company of that notice this Agreement and the rights of the Company hereunder and under any lease license easement or right granted or demised hereunder or pursuant hereto shall determine PROVIDED HOWEVER that if the Company fails to remedy any default after notice is given to the Company specifying the default or within the time fixed by the arbitration award as aforesaid and the Company has not given notice to the State under subclause (2) of clause 29 hereof 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 its agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant and machinery equipment and installations thereon) and the costs and expenses incurred by the State remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand made by the State:

- (b) that on the cessation or determination of this Agreement:
  - (i) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement and the rights of the Company or any assignee of the Company or any mortgagee to in or under any lease license easement or right granted or demised 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 AND the Company shall without further consideration but otherwise at the request and cost of the State transfer or surrender to the State or the Crown all land the subject of any lease license easement or right granted or demised hereunder or pursuant hereto AND the Company hereby irrevocably constitutes and appoints the Minister or such person as he may from time to time nominate the true and lawful attorney of the Company to execute the transfer or surrenders aforesaid;
  - (ii) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
  - (iii) save as aforesaid and as provided in paragraph (c) of this clause and subclause (2) of clause 29 hereof neither of the parties hereto shall have any claim against the other with respect to any matter or thing in or arising out of this Agreement;

- (c) that on the cessation or determination of any lease license easement or right granted or demised here under or pursuant hereto by the State to the Company or (except as otherwise agreed by the Minister) to an associated company or other assignee of the Company under clause 21 hereof the improvements and things other than plant equipment erected on the relevant land and provided for in connection therewith shall remain or become the absolute property of the Crown without compensation and freed and discharged from all mortgages and encumbrances and the Company will do and execute such documents and things (including surrenders) as the State may reasonably require to give effect to this provision AND the Company hereby irrevocably constitutes and appoints the Minister or such person as he may from time to time nominate the true and lawful attorney of the Company to execute those documents and things (including surrenders). In the event of the Company prior to such expiration or determination or subsequent thereto deciding to remove its plant equipment or any of them from any land the Company shall not do so without first notifying the State in writing of its decision and thereby granting to the State the right or option exercisable within three (3) months thereafter to purchase at valuation in situ the said plant equipment or any of them. Such valuation will be mutually agreed or in default of agreement shall be made by such competent valuer as the parties hereto may appoint or failing agreement as to such appointment then by two competent valuers one to be appointed by each party or by an umpire appointed by such valuers should they fail to agree;
- (d) the provisions of this clause shall not apply to any land or the improvements thereon the subject of a grant of an estate in fee simple granted to the Company pursuant to the provisions of paragraph (d) of subclause (1) of clause 10 hereof nor to any land or the improvements thereon the subject of a lease granted under the provisions of such sub-clause to which the Company at the date of cessation or determination of this Agreement is entitled to a grant of an estate in fee simple under the provisions of paragraph (d) of that subclause.

#### Salt for use in Australia

19. The Company acknowledges the desire of the State to have available a constant and reliable source of supply of salt for use in Australia. To attain this object the Company, subject to the fulfilment of its overseas contracts will use its best endeavours to have such quantities of salt available at all times during the currency of this Agreement for sale for use in Australia as will meet reasonable demands therefor made on the Company from time to time at a price which is competitive in the Australian market provided that such price is not less than that

which the Company is receiving or able to receive for similar quantities of salt sold on similar terms and conditions for use outside Australia.

#### Use of Channel Approach

20. (1) During the course of the negotiation of this Agreement the State informed the Company that the State would require the Company to pay to “the Joint Venturers” referred to in the Agreement scheduled to the Iron Ore (Mount Goldsworthy) Agreement Act 1964 (No. 97 of 1964) fair and reasonable charges for the use of the “channel approach” referred to in paragraph (e) of subclause (4) of clause 9 of the said Agreement and as a result thereof certain negotiations took place between the Company and the Joint Venturers and the Company has informed the State that the Company and the Joint Venturers have agreed that the Company shall pay to the Joint Venturers certain charges for the right to use the said “channel approach” by the Company and by ships transporting or about to transport salt from the work sites. The State covenants with the Company that during the continuance of this Agreement the State shall not impose or levy nor permit nor authorize any agency or instrumentality of the State or any local or other authority to impose or levy (either directly or indirectly) on the Company, or on any ship transporting or about to transport salt produced from the work sites, any charge in relation to the use of the said “channel approach” by the Company or by any ship as aforesaid irrespective of the tonnage of salt shipped from the work sites and irrespective of whether or not the Company, under its agreement with the Joint Venturers, remains under any obligation to make or to continue to make any payment to the Joint Venturers PROVIDED THAT subject to paragraph (b) of subclause (2) of this clause where the State has incurred any cost or expense in maintaining the said “channel approach” nothing in this subclause shall operate to prevent the State from imposing a reasonable charge or levy on the Company or on ships transporting or about to transport salt from the work sites.

(2) The State further covenants with the Company that the State: —

(a) having regard to the particular nature of the industry proposed to be established by the Company under this Agreement and subject to the performance by the Company of its obligations hereunder shall 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 portion of the work sites the resumption of which would unreasonably impede the Company’s activities nor shall the State create or permit or suffer to be created or granted by an 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 of the work sites which may unduly prejudice or interfere with the Company’s operations hereunder without the consent in writing of the Company first having been obtained which consent shall not be arbitrarily or unreasonably withheld;

- (b) except as provided in this Agreement shall not impose nor permit nor authorize 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 Company in the conduct of the Company's business hereunder nor shall the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement;
- (c) shall at the request and cost of the Company (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or part of the cost involved) widen upgrade or realign any public road over which the State has control subject to the prior approval of the said Commissioner to the proposed work;
- (d) 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 deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate;
- (e) during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the labour conditions imposed by or under any Act in regard to any lease of any land within the work sites.

#### Assignment

21. (1) Subject to the provisions of this clause and of clause 10 hereof the Company may at any time —
- (a) assign mortgage charge sublet or dispose of to any associated company as of right and to any other company or person with the consent in writing of the Minister the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of any lease license easement grant or other title) and of the obligations of the Company hereunder, and



- (b) appoint as of right an associated company or with the consent in writing 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 Company 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 Company 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 the Company unless the Minister otherwise agrees 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 its part contained herein and in any lease license easement grant or other title the subject of an assignment under the said subclause (1).

#### Arbitration

22. 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 constructions of this Agreement or any such amendment variation or addition as to the rights duties or liabilities of either party hereunder 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.

#### Variation

23. The parties hereto may from time to time by mutual agreement in writing add to, vary or cancel all or any of the provisions of the Agreement or any lease license easement or right granted or demised hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement or for altering the provisions of clause 10 hereof.

#### Force Majeure

24. 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 Company) 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 inability (common in the salt export industry) to profitably sell salt or factors due to overall world economic conditions or factors which could not reasonably have been foreseen 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.

#### Continuance of Agreement

25. (1) If the Company is desirous of a further continuance of this Agreement (whether in the same or any varied or modified form) and if the parties hereto have not at least fifteen (15) months prior to the expiration of the second term of renewal of the leases easements and licenses of the lands comprised in the work sites and of the lands (if any) whereon the residences of the Company's employees are constructed (hereinafter referred to as "the expiration of the second renewal") agreed upon the terms and conditions in respect of a further agreement for the production at and shipment of salt from the work sites then the State shall at least fourteen (14) months prior to the expiration of the second renewal make the Company such written offer (hereinafter called "the offer") of the terms and conditions of the further agreement as it deem, reasonable and unless the Company has —

- (i) within the month next following the receipt of the offer accepted it (either in the form so offered or as modified or varied by negotiation between the parties hereto), or
- (ii) within the fourteen days next following the receipt of the offer referred that offer or the part or parts thereof which the Company considers unreasonable to arbitration (as provided in subclause (2) hereof)

the State may at the expiration of that month proceed as in manner set out in subclause 3 of this clause.

(2) Within the fourteen (14) days next following the receipt of the offer the Company may elect by notice to the State to refer to arbitration any dispute concerning the reasonableness of the State's offer or any part or parts thereof and will within fourteen (14) days next following such election refer to arbitration that

dispute. Unless the Company within the fourteen (14) days next following the receipt by it of the award on arbitration by notice to the State accepts the offer as varied or modified by the award on arbitration the State may proceed as in manner set out in subclause (3) of this clause.

(3) If the Company has not accepted the offer or the offer as varied or modified by the award on arbitration subject to and in accordance with the provisions set out in subclause (1) or (2) respectively of this clause then the State may enter into an agreement for the production and shipment of salt from the work sites with any other person on terms and conditions more favourable on the whole than the offer made by the State or in the event of the offer having been submitted to arbitration the offer as varied or modified by the award on arbitration provided the State has first offered to the Company the right of first refusal of such terms and conditions and such offer is not accepted by the Company within a reasonable time.

#### Notices

26. Any notice consent request or other writing authorized 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 registered post to the Company at its registered office for the time being in the said State and by the Company if signed on its behalf by an officer of the Company or by any person or persons authorized by the Company in that behalf or by its solicitors as notified to the State from time to time and forwarded by pre-paid registered 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.

#### Relevant Law

27. (1) This Agreement shall be interpreted according to the law for the time being in force in the said State.

(2) All payments made or to be made under this Agreement shall be made in the State of Western Australia in Australian currency unless otherwise agreed. All sums mentioned herein are in Australian currency.

#### Expiration of Agreement

28. This Agreement shall expire on the expiration or sooner determination of the leases easements and licenses (including the respective renewals thereof) of the lands comprised in the work sites but without prejudice to the right of action of either party hereto in respect of any breach of the covenants agreements and conditions herein contained.

#### Conditions

29. (1) This Agreement is conditional upon the Company at any time prior to the 31st day of December, 1966 giving notice to the Minister that: —

- (a) the Company has entered into or intends to enter into contracts or arrangements satisfactory to the Company for the sale by the Company of salt; and
- (b) The Company has made or is about to make arrangements satisfactory to the Company for financing by any means the works referred to in clause 7 hereof and that the Company proposes to proceed with such works.

(2) Notwithstanding anything herein contained the Company may at any time give notice to the State that matters have arisen which make the completion or continuance of the works impracticable or uneconomic and desires to determine this Agreement whereupon this Agreement will then cease and determine and the State may enforce all or any one or more of its rights remedies or powers set out in paragraphs (b) and (c) of clause 18 hereof PROVIDED THAT —

- (a) if the State has completed the construction of the wharf the Company shall remain liable to pay to the State the annual charge of sixty thousand dollars (\$60,000) for each of the twenty (20) years following the day of completion of the wharf as provided by paragraph (d) of subclause (2) of clause 5 hereof; and
- (b) if the construction of the wharf has been commenced but is not completed when the Company gives the State the notice aforesaid then the State at the request of the Company will use reasonable endeavours to cancel the contract for the construction of the wharf and the Company will if the contract be cancelled indemnify the State against all demands claims costs and expenses so incurred in respect of or incidental to —
  - (i) the construction of the wharf to the date the contract is cancelled; and

- (ii) the cancellation of the contract for the construction of the wharf

limited however to so many of the payments (including part of any if necessary) as are payable under and in accordance with the provisions of paragraph (d) of subclause (2) of clause 5 hereof as will be sufficient to so indemnify the State. If the State after using reasonable endeavours to cancel the contract fails so to do the Company will remain liable to pay to the State the annual charge of Sixty Thousand Dollars (\$60,000) as provided under and in accordance with the provisions of paragraph (d) of subclause (2) of clause 5 hereof.

30. The State shall exempt from any stamp duty which but for the operation of this clause would or might be chargeable on —

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee of the Company any lease license easement or right granted or demised hereunder or pursuant hereto;

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

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

SIGNED SEALED AND  
DELIVERED by THE  
HONOURABLE DAVID  
BRAND, M.L.A., in the  
Presence of —

}

DAVID BRAND  
[L.S.]

C.W. Court  
Minister for Industrial Development

SIGNED SEALED AND  
DELIVERED for and on  
Behalf of LESLIE SALT  
CO. by its duly authorized  
Officer in the presence of —

}

Harry E. Kellogg  
[L.S] Secretary

SHELDON ALLEN  
President.