

IRON ORE (MOUNT GOLDSWORTHY) AGREEMENT.

13° Elizabeth II., No. XCVII.

No. 97 of 1964.

AN ACT in substitution for, and for the repeal of, the Iron Ore (Mount Goldsworthy) Agreement Act, 1962-1963, to approve an agreement relating to iron ore at Mount Goldsworthy iron ore deposits and for incidental and other purposes.

[Assented to 23rd December, 1964.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as the *Iron Ore (Mount Goldsworthy) Agreement Act, 1964.*

(3) The provisions of section ninety-six of the Public Works Act, 1902, do not apply to any railway constructed pursuant to the Agreement.

(4) The provisions of subsection (5) of section two hundred and seventy-seven of the Mining Act, 1904, do not apply to any renewal of the rights of occupancy granted pursuant to paragraph (a) of clause 2 of the Agreement.

By-laws.

5. (1) The Governor may make by-laws, for the purposes of, and in accordance with, the Agreement.

(2) By-laws made pursuant to this section—

- (a) shall be published in the *Government Gazette*;
- (b) take effect and have the force of law from the date they are so published or from such later date as is fixed by the by-laws;
- (c) may prescribe penalties not exceeding fifty pounds; and
- (d) are not subject to the provisions of section thirty-six of the Interpretation Act, 1918, but shall be laid before each House of Parliament within six sitting days of such House next following the publication of the by-laws in the *Government Gazette*.

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- (c) The Joint Venturers agree to investigate in due course the feasibility of the beneficiation of ore from the mining areas hereinafter mentioned and of establishing within the State of Western Australia an industry for additional upgrading of such beneficiated ore and to review this matter from time to time with a view to their being in a position to submit to the State proposals for such establishment as hereinafter provided.

**Interpre-
tation.**

NOW THIS AGREEMENT WITNESSETH:—

1. In this Agreement subject to the context—

“associated company” means—

- (a) any company having a paid-up capital of not less than one million pounds (£1,000,000) notified in writing by the Joint Venturers or any of them to the Minister which is incorporated in the United Kingdom the United States of America or the Commonwealth of Australia 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 hold not less than twenty per cent. (20%) of the issued ordinary share capital; or

(ii) is related within the meaning of the term subsidiary in section 6 of the Companies Act 1961 to any company in which the Joint Venturers or any of them hold not less than twenty per cent. (20%) of the issued ordinary share capital, and

- (b) any company approved in writing by the Minister for the purposes of this Agreement which is associated directly or indirectly with the Joint Venturers or any of them in their business or operations hereunder;

“commencement date” means the date referred to as the commencement date in clause 7 (3) hereof;

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

“deposits townsite” means the townsite to be established on or near the mining areas pursuant to this Agreement;

“direct shipping ore” means iron ore which has an average pure iron content or not less than sixty per cent. (60%) which will not pass through a

one half ($\frac{1}{2}$) inch mesh screen and which is sold without concentration or other beneficiation other than crushing and screening;

"export date" means the earlier of the following dates
namely—

- (a) the date or extended date if any referred to in clause 9 (1) of this Agreement;
- (b) the date when the Joint Venturers first export iron ore hereunder (other than iron ore shipped solely for testing purposes);

"financial year" means a year commencing on and including the 1st day of July;

"fine ore" means iron ore which has an average pure iron content of not less than sixty per cent. (60%) which will pass through a one half ($\frac{1}{2}$) inch mesh screen and which is sold without concentration or other beneficiation other than crushing and screening:

"fines" means iron ore (not being direct shipping ore or fine ore) which will pass through a one half ($\frac{1}{2}$) inch mesh screen;

"f.o.b. revenue" means the price for iron ore from the mineral lease the subject of any shipment or sale and payable by the purchaser thereof to the Joint Venturers or an associated company less all export duties and export taxes payable to the Commonwealth on the export of the iron ore and all costs and charges properly incurred and payable by the Joint Venturers from the time the ore shall be placed on ship at the Joint Venturers' wharf to the time the same is delivered and accepted by the purchaser including—

- (1) ocean freight;
- (2) marine insurance;
- (3) port and handling charges at the port of discharge;
- (4) all costs properly incurred in delivering the ore from port of discharge to the smelter and evidenced by relevant invoices;
- (5) all weighing sampling assaying inspection and representation costs;
- (6) all shipping agency charges after loading on and departure of ship from the Joint Venturers' wharf; and
- (7) all import taxes by the country of the port of discharge;

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"harbour" means the port or harbour at or near Port Hedland or such other port or place mutually agreed on and serving the Joint Venturers' wharf;

"industry for additional upgrading of beneficiated ore" means an industry for the additional refining of beneficiated ore by some form of semi reduction direct reduction or other mutually agreed process;

"iron ore contracts" means the contract or contracts referred to in clause 5 (2) (b) hereof;

"Joint Venturers' wharf" means the wharf to be constructed by the Joint Venturers pursuant to this Agreement for the shipment of iron ore from the mineral lease or (except for the purposes of the definition of "harbour") other the temporary wharf for the time being approved by the Minister as the Joint Venturers' wharf for the purposes hereof during the period to which such approval relates;

"Land Act" means the Land Act, 1933;

"mineral lease" means the mineral lease referred to in clause 8 (1) hereof or 8 (2) (a) hereof and includes any renewal thereof and where the context so permits shall extend to and be deemed to include a mineral lease granted under the provisions of clause 11 (6) hereof and any renewal thereof;

"Mining Act" means the Mining Act, 1904;

"mining area 'A'" means the area delineated and coloured red on the plan marked "A" initialled by or on behalf of the parties hereto for the purposes of identification;

"mining area 'B'" means the area delineated and coloured blue on the plan marked "B" initialled by or on behalf of the parties hereto for the purposes of identification;

"mining area 'C'" means the area delineated and coloured green on the plan marked "C" initialled by or on behalf of the parties hereto for the purposes of identification;

"Minister" means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the administration of the Ratifying Act and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Joint Venturers and includes the successors in office of the Minister;

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power given under any clause of this Agreement other than clause 24 hereof to extend any period or date shall be without prejudice to the power of the Minister under the said clause 24;

marginal notes shall not affect the interpretation or construction hereof.

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

the phases in which it is contemplated that this Agreement will operate are as follows—

- (a) Phase 1—the period from the execution hereof by the parties hereto until the commencement date;
- (b) Phase 2—the period from the commencement date until a plant for secondary processing or an industry for additional upgrading of beneficiated ore is established by the joint venturers hereunder or by another company or party as referred to in clause 12 or clause 13 hereof whichever first occurs;
- (c) Phase 3—(operative if the Joint Venturers commence secondary processing before establishing an industry for additional upgrading of beneficiated ore hereunder)—the period from the commencement of secondary processing by the Joint Venturers hereunder until the Joint Venturers have established an industry for additional upgrading of beneficiated ore hereunder which period shall include a continuation of Phase 2 operations; and
- (d) Phase 4—the period after the Joint Venturers have established an industry for additional upgrading of beneficiated ore hereunder which period shall include a continuation of Phase 2 operations.

2. The State shall—

Obligations
of the State
during
Phase 1.

- (a) upon application by the Joint Venturers at any time prior to the 31st day of March, 1965 (and surrender of the then existing rights of occupancy already granted in respect of any portions of mining area "A") cause to be granted to the Joint Venturers and to the Joint Venturers alone rights of occupancy for the purposes of this Agreement (including the sole right to search and prospect for iron ore) over the whole of mining area "A" under section 276 of the Mining Act at a rental at the rate of four pounds (£4) per square mile per annum payable

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(2) If the Bill to ratify this Agreement is passed as an Act before the date or later date if any referred to in sub-clause (1) of this clause 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 clause 8 the proviso to paragraph (a) of subclause (2) of clause 9 subclause (3) of clause 9 paragraphs (a) (f) (g) (h) (i) (k) and (m) of clause 10 and clauses 21, 23, 24, and 27 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) no future Act of the said State will operate to increase the Joint Venturers' liabilities or obligations hereunder with respect to rents or royalties; and
- (d) the State may as for a public work under the Public Works Act, 1902, resume any land or any estate or interest in land required for the purposes of this Agreement and may lease or otherwise dispose of the same to the Joint Venturers;
- (e) on the coming into operation of the Ratifying Act the said recited agreement approved by the Iron Ore (Mount Goldsworthy) Agreement Act, 1962, is cancelled except as to any antecedent liability accrued thereunder and undischarged.

Obligations
of Joint
Venturers
during
Phase 1.

4. (1) The Joint Venturers (having at a total cost in excess of one million pounds (£1,000,000) as from the 27th day of February 1962 been continuously engaged in the matters hereinafter in this subclause mentioned) shall prior to the 31st day of December 1964 (or such extended date if any the Minister may approve or as may be determined by arbitration in manner hereinafter provided) complete the matters hereinafter in this subclause mentioned and everything necessary to enable them to finalise and to submit to the Minister the detailed proposals and other matters referred to in clause 5 (2) (a) hereof. The matters first referred to in this subclause are—

- (a) a thorough geological and (as necessary) geophysical investigation of the iron ore deposits in mining area "A" and the testing and sampling of such deposits;

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hereof in regard to the matters mentioned in this subclause the Joint Venturers will so far as reasonably practicable ensure that the detailed proposals—

- (a) do not materially depart from the report and recommendations of the consultant engineers;
- (b) provide for the best overall development of the harbour area so far as the same relates to the Joint Venturers' activities; and
- (c) disclose any conditions of user and where alternative proposals are submitted the Joint Venturers' preferences in regard thereto.

Joint
Venturers
to submit
proposals.

5. (1) The Joint Venturers having submitted to the Minister their proposals for the location of a site for the harbour the Minister will within one month after execution of this Agreement notify the Joint Venturers of his approval or otherwise or may submit an alternative proposal.

(2) Subject to agreement (as to which the provisions of clause 25 do not apply) being reached as to the site for the harbour then by the 31st day of December 1964 or such extended date if any as the Minister may approve or as may be determined by arbitration as aforesaid the Joint Venturers will where not already done submit to the Minister—

- (a) to the fullest extent reasonably practicable their detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect so far as relevant—

- (A) to the mining area "A" (or so much thereof as shall be comprised within the mineral lease) by the Joint Venturers during the three (3) years next following the commencement of such mining with a view to the transport and shipment of the iron ore mined and their outline proposals with respect to such mining during the next following seven (7) years; and

- (B) to the transport and shipment of iron ore to be mined by the Joint Venturers hereunder during the operation of Phase 2 of this Agreement—

and including the location area lay-out design number materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters namely—

- (i) the harbour and harbour development including dredging the depositing of spoil the provision of navigational aids the Joint

Venturers' wharf (the plans and specifications for which wharf shall be submitted to and be subject to the approval of the State) the berth and swinging basin for the Joint Venturers' use and harbour installations facilities and services all of which shall permit of adaptation so as to enable initially the use of the harbour and wharf by vessels having an ore carrying capacity of not less than thirty thousand (30,000) tons and thereafter to progressively develop the harbour installations facilities and services so as to enable within the next three (3) years the use of the harbour and wharf by vessels having an ore-carrying capacity of not less than forty thousand (40,000) tons;

- (ii) the railway between mining area "A" and the Joint Venturers' wharf and works ancillary to or connected with the railway and its proposed operation including fencing (if any) and crossing places;
- (iii) townsites on mining area "A" and near the harbour and development services and facilities in relation thereto;
- (iv) housing;
- (v) water supply;
- (vi) roads (including details of roads in respect of which it is not intended that the provisions of clause 9 (2) (b) shall operate); and
- (vii) any other works services or facilities proposed or desired by the Joint Venturers;

and

- (b) (subject to the provisions of subclause (4) of this clause) satisfactory evidence firstly of the making or likelihood of making a suitable contract or suitable contracts for the sale by the Joint Venturers hereunder and shipment from the Joint Venturers' wharf of not less than ten million (10,000,000) tons of iron ore (and/or processed iron ore) from the mineral lease including not less than two million (2,000,000) tons in the aggregate in the first two (2) years next following the export date and not less than one million (1,000,000) tons per year in each and every year of each succeeding year thereafter secondly of the availability of finance necessary for the fulfilment of the Joint Venturers' proposals hereunder relating to the iron ore export project the subject of Phase 2 of this Agreement and thirdly of any necessary license to the Joint Venturers

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from the Commonwealth to export hereunder iron ore the subject of the iron ore contracts in the quantities at the rate or rates and in the years stated in the contracts.

(3) The Joint Venturers shall have the right to submit to the Minister their detailed proposals aforesaid in regard to a matter or matters the subject of any of the subparagraphs numbered (i) to (vii) inclusive of paragraph (a) of subclause (2) of this clause as and when the detailed proposals become finalised by the Joint Venturers PROVIDED THAT where any such matter is the subject of a subparagraph which refers to more than one subject matter the detailed proposals will relate to and cover each of the matters mentioned in the subparagraph PROVIDED FURTHER that the first detailed proposals submitted to the Minister relate to and cover the matters mentioned in subparagraph (i) of the said paragraph (a) of the said subclause (2) and that the last two detailed proposals submitted to the Minister relate to and cover the iron ore contracts and the finance necessary for the iron ore export project.

(4) If the Joint Venturers should in writing and within the time later in this subclause mentioned request the Minister to grant an extension or any further extension of time beyond the 31st day of December, 1964 (or such later date if any previously granted or approved by the Minister) within which to make the iron ore contracts and then demonstrates to the satisfaction of the Minister that the Joint Venturers have duly complied with their other obligations hereunder have genuinely and actively but unsuccessfully endeavoured to make the iron ore contracts on a competitive basis and reasonably require an additional period for the purpose of making iron ore contracts the Minister will grant such extension as is warranted in the circumstances as follows—

- (a) for up to six (6) months on request made within one month of the 31st day of December, 1964;
- (b) if an extension is granted under paragraph (a) of this subclause then further for up to three (3) years on request made within one month of the expiration of the period of extension granted under the said paragraph (a);
- (c) if an extension is granted under paragraph (b) of this subclause then further for up to two (2) years on request made within one month of the expiration of the period of extension granted under the said paragraph (b) unless the Minister shows to the Joint Venturers satisfactory evidence that some third party is able and willing if made the lessee of the mineral lease to obtain and duly fulfil that

party's obligations under contracts for the sale of iron ore (or processed iron ore) from the leased land which contracts are comparable with iron ore contracts under this Agreement on terms from the State not more favourable on the whole (having regard *inter alia* to initial expenditure) to that party than those applicable to the Joint Venturers hereunder:

subject always and in every case to the condition that the Joint Venturers duly comply (or comply to the satisfaction of the Minister) with their other obligations hereunder.

6. (1) Within two (2) months after receipt of the detailed proposals of the Joint Venturers in regard to any of the matters mentioned in clause 5 (2) (a) hereof the Minister shall give to the Joint Venturers notice either of his approval of the proposals or of alterations desired thereto and in the latter case shall afford to the Joint Venturers opportunity to consult with and to submit new proposals to the Minister. The Minister may make such reasonable alterations to or impose such reasonable conditions on the proposals or new proposals (as the case may be) as he shall think fit having regard to the circumstances including the overall development and use (subject to the provisions of clause 8 (5) (a) and (b) hereof) by others as well as the Joint Venturers but the Minister shall in any notice to the Joint Venturers disclose his reasons for any such alteration or condition. Within two (2) months of the receipt of the notice the Joint Venturers may elect by notice to the State to refer to arbitration and within two (2) months thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period of three (3) months cease and determine (save as provided in clause 10 (d) hereof) but if the question is decided in favour of the Joint Venturers the decision will take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

Consideration of other proposals under clause 5 (2).

(2) Within two (2) months after receipt of evidence from the Joint Venturers with regard to the matters mentioned in clause 5 (2) (b) hereof to the reasonable satisfaction of the Minister the State will give to the Joint Venturers notice either that it is satisfied with such evidence (in which case the proposals in relation to those matters will be deemed approved) or not in which case the State shall afford the

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Joint Venturers an opportunity to consult with and to submit further evidence to the Minister. If within thirty (30) days of receipt of such notice further evidence has not been submitted to the Minister's reasonable satisfaction and his approval obtained thereto the Joint Venturers may within a further period of thirty (30) days elect by notice to the State to refer to arbitration as hereinafter provided and will within two (2) months thereafter refer to arbitration any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the dispute is decided against the Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period cease and determine (save as provided in clause 10 (d) hereof) but if the question is decided in favour of the Joint Venturers the decision will take effect as a notice by the Minister that he is so satisfied with and has approved the matter or matters the subject of the arbitration.

Extension of
time.

7. (1) The arbitrator, arbitrators or umpire (as the case may be) of any submission to arbitration hereunder is hereby empowered upon application by either party hereto to grant any interim extension of time or date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of either or both parties hereunder and an award in favour of the Joint Venturers may in the name of the Minister grant any further extension of time for that purpose.

(2) Notwithstanding that under clause 6 hereof any detailed proposals of the Joint Venturers are approved by the State or the Minister or determined by arbitration award unless each and every such proposal and matter is so approved or determined by the 28th day of February, 1965 or by such extended date if any as the Joint Venturers shall be entitled to or shall be granted pursuant to the provisions hereof then at any time after the said 28th day of February, 1965 or if any extension or extensions should be granted under clause 5 (4) hereof or any other provision of this Agreement then on or after the expiration of the last of such extensions the Minister may give to the Joint Venturers twelve (12) months notice of intention to determine this Agreement and unless before the expiration of the said twelve (12) months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of clause 10 (d) hereof.

Commence-
ment date.

(3) Subject to the approval by the Minister or determination by arbitration as herein provided of each and every of the detailed proposals and matters referred to in clause 5

(2) hereof the date upon which the last of those proposals of the Joint Venturers shall have been so approved or determined shall be the commencement date for the purposes of this Agreement.

(4) If under any arbitration under clause 6 hereof the dispute is decided against the Joint Venturers and subsequently but before the commencement date this Agreement ceases and determines the State will not for a period of three (3) years after such determination enter into a contract with any other party for the mining transport and shipment of iron ore from mining area "A" on terms more favourable on the whole to the other party than those which would have applied to the Joint Venturers hereunder if the question had been determined in favour of the Joint Venturers.

Mineral
lease before
commence-
ment date.

Phase 2
obligations
of State.

Mineral
lease after
commence-
ment date.

the form of the Schedule hereto for a term which subject to the payment of rents and royalties hereinafter mentioned and to the performance and observance by the Joint Venturers of their obligations under the mineral lease and otherwise under this Agreement shall be for a period of twenty-one (21) years commencing from the commencement date with rights to successive renewals of twenty-one (21) years upon the same terms and conditions but subject to earlier determination upon the cessation or determination of this Agreement PROVIDED HOWEVER that the Joint Venturers may from time to time (without abatement of any rent then paid or payable in advance) surrender to the State all or any portion or portions (of reasonable size and shape) of the mineral lease;

Under Joint
 Venturers'
 proposals.

- (b) in accordance with the Joint Venturers' proposals as finally approved or determined under clause 6 hereof and as require the State to accept obligations—

Lands.

- (i) grant to the Joint Venturers as tenants in common in equal shares in fee simple or for such terms or periods and on such terms and conditions (including renewal rights) as subject to the proposals (as finally approved or determined as aforesaid) shall be reasonable having regard to the requirements of the Joint Venturers hereunder and to the overall development of the harbour and access to and use by others of lands the subject of any grant to the Joint Venturers and of services and facilities provided by the Joint Venturers—

- for nominal consideration—townsite lots;
- at peppercorn rental—special leases of Crown lands within the harbour area the townsites and the railways; and
- at rentals as prescribed by law or are otherwise reasonable—leases rights mining tenements easements reserves and licenses in on or under Crown lands

under the Mining Act the Jetties Act, 1926 or under the provisions of the Land Act modified as in subclause (2) of this clause provided (as the case may require) as the Joint Venturers reasonably require for their works and operations hereunder including the construction or provision of the railway wharf roads airstrip water supplies and stone and soil for construction purposes; and

- (ii) provide any services or facilities subject to the Joint Venturers bearing and paying the capital cost involved if reasonably attributable to or resulting from the Joint Venturers' project and operations hereunder and reasonable charges for maintenance and operation except operation charges in respect of education hospital and police services and except where and to the extent that the State otherwise agrees—

Services and
facilities.

subject to such terms and conditions as may be finally approved or determined as aforesaid PROVIDED THAT from and after the fifteenth anniversary of the export date or the twentieth anniversary of the date hereof whichever shall first occur (provided that the said twentieth anniversary shall be extended one (1) year for each year this Agreement has been continued in force and effect under clause 5 (4) hereof) the Joint Venturers will in addition to the rentals already referred to in this paragraph pay to the State during the currency of this Agreement after such anniversary as aforesaid a rental (which subject to its being payable by the Joint Venturers to the State may from time to time at the option of the Joint Venturers be payable in respect of such one or more of the special leases or other leases granted to the Joint Venturers under this paragraph and remaining current) equal to two shillings and sixpence (2s. 6d.) per ton on all iron ore and iron ore concentrates in respect of which royalty is payable under clause 9 (2) (j) hereof in any financial year such additional rental to be paid within three (3) months after shipment sale use or production as the case may be of the iron ore or iron ore concentrates SO NEVERTHELESS that the additional rental to be paid under this proviso shall not be less than seventy-five thousand pounds (£75,000) in respect of any such year and if a mineral lease of mining area "B" and mining area "C" or of any part or parts thereof respectively has been granted to the Joint Venturers under clause 11 (6) hereof the additional rental to be paid as aforesaid shall thereafter be not less than one hundred and fifty thousand pounds (£150,000) in respect of any such year and the Joint Venturers will within three (3) months after expiration of that year pay to the State as further rental the difference between seventy-five thousand pounds (£75,000) or one hundred and fifty thousand pounds (£150,000) (whichever is applicable as aforesaid) and the additional rental actually paid in respect of that year but any amount so paid in respect of

any financial year in excess of the rental payable for that year at the rate of two shillings and sixpence (2s. 6d.) per ton as aforesaid shall be offset by the Joint Venturers against any amount payable by them to the State above the minimum amounts payable to the State under this paragraph in respect of the two (2) financial years immediately following the financial year in respect of which the said minimum sum was paid; and

Other rights.

- (c) on application by the Joint Venturers cause to be granted to them such machinery and tailings leases (including leases for the dumping of overburden) and such other leases licenses reserves and tenements under the Mining Act or under the provisions of the Land Act modified as in subclause (2) of this clause provided as the Joint Venturers may reasonably require and request for their purposes under this Agreement on or near the mineral lease;

(3) For the purposes of subparagraph (i) of paragraph (b) and paragraph (c) of subclause (1) of this clause 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;
- (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 licenses 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 for the terms or periods and upon the terms and conditions and in the forms referred to in the Act and upon application by the Joint Venturers in forms consistent as aforesaid in lieu of in the forms referred to in the Act.

(4) The provisions of subclause (2) of this clause shall not operate so as to prejudice the rights of the State to determine any lease license or other right or title in accordance with the other provisions of this Agreement.

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in the conduct of the Joint Venturers' business hereunder nor will the State take or permit to be taken any such State authority any other discriminatory action which would deprive the Joint Venturers of full enjoyment of the rights granted and intended to be granted under this Agreement.

Rights
to other
minerals.

- (e) shall where and to the extent reasonably practicable on application by the Joint Venturers from time to time grant or assist in obtaining the grant to the Joint Venturers of prospecting rights and mining leases with respect to limestone dolomite and other minerals reasonably required by the Joint Venturers for their purposes under this Agreement; and

Consents to
improvements on
leases.

- (f) shall as and when required by the Joint Venturers (but without prejudice to the foregoing provisions of this Agreement relating to the detailed proposals and matters referred to in clause 5 (2) hereof) consent in writing where and to the extent that the Minister considers to be reasonably justified to the Joint Venturers making improvements for the purposes of this Agreement on the land comprised in any lease granted by the State to the Joint Venturers pursuant to this Agreement PROVIDED THAT the Joint Venturers shall also obtain any other consents legally required in relation to such improvements.

(6) The Joint Venturers shall not have any tenant rights in improvements made by the Joint Venturers on the land comprised in any lease granted by the State to the Joint Venturers pursuant to this Agreement in any case where pursuant to clause 10 (e) hereof such improvements will remain or become the absolute property of the State.

Phase 2
obligations
of the Joint
Venturers
to construct.

9. (1) The Joint Venturers shall within three (3) years next following the commencement date (or within such extended period not exceeding a further two years as the Joint Venturers may satisfy the Minister that the Joint Venturers reasonably require and the Minister approves), and at a cost of not less than twenty million pounds (£20,000,000) (inclusive of the said recited costs of one million pounds (£1,000,000)) construct install provide and do all things necessary to enable them to mine from the mineral lease to transport by rail to the Joint Venturers' wharf and to commence shipment therefrom in commercial quantities at an annual rate of not less than one million (1,000,000)

tons of iron ore and without lessening the generality of this provision the Joint Venturers shall within the aforesaid period or extended period as the case may be—

- (a) construct an install and provide upon the mineral lease or in the vicinity thereof mining plant and equipment crushing screening stockpiling and car loading plant and facilities power house workshop and other things of a design and capacity adequate to enable the Joint Venturers to meet and discharge their obligations hereunder and under the iron ore contracts and to mine handle load and deal with not less than three thousand (3,000) tons of iron ore per diem such capacity to be built up progressively to not less than six thousand (6,000) tons of iron ore per diem within three (3) years next following the export date;
On mining areas.
- (b) actually commence to mine transport by rail and ship from the Joint Venturers' wharf iron ore from the mineral lease so that the average annual rate during the first two years shall not be less than one million (1,000,000) tons;
To commence exports.
- (c) subject to the State having assured to the Joint Venturers all necessary rights in or over Crown lands available for the purpose construct in a proper and workmanlike manner and in accordance with recognised standards of railways of a similar nature operating under similar conditions and along a route approved or determined under clause 6 hereof (but subject to the provisions of the Public Works Act, 1902 to the extent that they are applicable) a four feet eight and one-half inches (4' 8½") gauge railway (with all necessary signalling switch and other gear and all proper or usual works) from mining area "A" to the Joint Venturers' wharf and will provide for crossing places and the running of such railway with sufficient and adequate locomotives freight cars and other railway stock and equipment to haul at least one million (1,000,000) tons of iron ore per annum to the Joint Venturers' wharf or as required for the purposes of this Agreement;
To construct railway.
- (d) subject to the State having assured to the Joint Venturers all necessary rights in or over Crown lands or reserves available for the purpose construct by the said date such new roads as the Joint Venturers reasonably require for their purposes hereunder of such widths with such materials gates crossings and passovers for cattle and for sheep and along such routes as the parties hereto shall mutually agree after discussion with the respective shire councils through whose districts any such
To make roads.

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roads may pass and subject to prior agreement with the appropriate controlling authority (being a shire council or the Commissioner of Main Roads) as to terms and conditions the Joint Venturers may at their own expense and risk except as otherwise so agreed upgrade or realign any existing road;

To construct wharf.

- (e) construct the Joint Venturers' wharf in accordance with plans and specifications for the construction thereof previously approved or determined under clause 6 hereof on the site previously approved or determined for the purpose; and

To carry out proposals.

- (f) in accordance with the Joint Venturers' proposals as finally approved or determined under clause 6 hereof and as require the Joint Venturers to accept obligations—

(i) dredge the berth at the Joint Venturers' wharf and the channel and approaches thereto and any necessary swinging basin;

(ii) lay out and develop the townsites and provide adequate and suitable housing recreational and other facilities and services;

(iii) construct and provide roads housing school water and power supplies and other amenities and services; and

(iv) construct and provide other works (if any) including an airstrip.

(2) Throughout the continuance of this Agreement the Joint Venturers shall—

Operation of railway.

- (a) operate their railway in a safe and proper manner and where and to the extent that they can do so without unduly prejudicing or interfering with their operations hereunder allow crossing places for roads stock and other railways and also transport the passengers and carry the freight of the State and of third parties on the railway subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made altered and repealed as provided in sub-clause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost of the railway to the Joint Venturers) PROVIDED THAT in relation to their use of the said railway the Joint Venturers shall not be deemed to be a common carrier at common law or otherwise;

Use of roads by others.

- (b) except to the extent that the Joint Venturers' proposals as finally approved or determined under clause 6 hereof otherwise provide allow the public

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Protection
for
inhabitants.

- (h) subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made and altered as provided in subclause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Joint Venturers) allow the inhabitants for the time being of the port townsite being employees licensees or agents of the Joint Venturers or persons engaged in providing a legitimate and normal service to or for the Joint Venturers or those employees licensees or agents to make use of the water power recreational health and other services or facilities provided or controlled by the Joint Venturers;

Use of
local labour
and
materials.

- (i) so far as reasonably and economically practicable use labour materials plant equipment and supplies available within the said State where it is not prejudicial to the interest of the Joint Venturers so to do;

Royalties.

- (j) pay to the State royalty on all iron ore from the mineral lease shipped or sold (other than ore shipped solely for testing purposes) or (in the circumstances mentioned in subparagraph (iv) of this paragraph) on iron ore concentrates produced from iron ore from the mineral lease or on other ore from the mineral lease used as mentioned in subparagraph (iv) of this paragraph as follows—

(i) on direct shipping ore (not being locally used ore) at the rate of seven and one half per centum ($7\frac{1}{2}\%$) of the f.o.b. revenue (computed at the rate of exchange prevailing on date of receipt by the Joint Venturers of the purchase price in respect of ore shipped or sold hereunder) PROVIDED NEVERTHELESS that such royalty shall not be less than six shillings (6/-) per ton (subject to subparagraph (vi) of this paragraph) in respect of ore the subject of any shipment or sale;

(ii) on fine ore (not being locally used ore) at the rate of three and three quarter per centum ($3\frac{3}{4}\%$) of the f.o.b. revenue (computed as aforesaid) PROVIDED NEVERTHELESS that such royalty shall not be less than three shillings (3/-) per ton (subject to subparagraph (vii) of this paragraph) in respect of ore the subject of any shipment or sale;

(iii) on fines (not being locally used ore) at the rate of one shilling and sixpence (1s. 6d.) per ton;

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and within the limits referred to in paragraph (o) of this clause for secondary processing or in an industry for additional upgrading of beneficiated ore and includes iron ore used by any other person or company north of the twenty-sixth parallel of latitude in the said State for secondary processing or in an industry for additional upgrading of beneficiated ore;

**Payment of
royalties.**

- (k) within fourteen days after the quarter days the last days of March June September and December in each year commencing with the quarter day next following the first commercial shipment of iron ore from the Joint Venturers' wharf furnish to the Minister a return showing the quantity of all iron ore or iron ore concentrates the subject of royalty hereunder and shipped sold used or produced (as the case may be) during the quarter immediately preceding the due date of the return and shall not later than two (2) months after such due date pay to the Minister the royalty payable in respect of iron ore concentrates produced or iron ore used and in respect of all iron ore shipped or sold pay to the Minister on account of the royalty payable hereunder a sum calculated on the basis of invoices or provisional invoices (as the case may be) rendered by the Joint Venturers to the purchaser (which invoices the Joint Venturers shall render without delay simultaneously furnishing copies thereof to the Minister) of such iron ore and shall from time to time in the next following appropriate return and payment make (by the return and by cash) all such necessary adjustments (and give to the Minister full details thereof) when the f.o.b. revenue realised in respect of the shipments shall have been ascertained;

**Rent for
mineral
lease.**

- (1) by way of rent for the mineral lease pay to the State annually in advance a sum equal to three shillings and sixpence (3s. 6d.) per acre of the area for the time being the subject of the mineral lease commencing on and accruing from the commencement date PROVIDED THAT after the Joint Venturers commence production in commercial quantities within the said State from a plant for secondary processing or for an industry for additional upgrading of beneficiated ore (whichever is first constructed) if and during the period that the total area for the time being comprised within the mineral lease
- (i) is not more than one hundred (100) square miles the annual rent shall be two shillings (2s.) per acre;

- (ii) is over one hundred (100) square miles but not more than one hundred and fifty (150) square miles the annual rent shall be two shillings and sixpence (2s. 6d.) per acre; and
- (iii) is over one hundred and fifty (150) square miles but not more than two hundred (200) square miles the annual rent shall be three shillings (3s.) per acre;

(m) pay to the State the rental referred to in the proviso to clause 8 (2) (b) hereof if and when such rental shall become payable; Other rentals.

(n) permit the Minister or his nominee to inspect at all reasonable times the books of account and records of the Joint Venturers relative to any shipment or sale of iron ore hereunder and to take copies or extracts therefrom and for the purpose of determining the f.o.b. revenue payable in respect of any shipment of iron ore hereunder the Joint Venturers will take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the Minister's reasonable satisfaction as to all relevant weights and analyses and will give due regard to any objection or representation made by the Minister or his nominee as to any particular weight or assay of iron ore which may affect the amount of royalty payable hereunder; and

(o) ensure that without the prior written approval of the Minister all iron ore shipped pursuant to this Agreement will be off-loaded at a place outside the Commonwealth and if they fail so to ensure the Joint Venturers will subject to the provisions of this paragraph be in default hereunder. Where any such shipment is off-loaded within the Commonwealth without such prior written approval the Joint Venturers shall forthwith on becoming aware thereof give to the State notice of the fact and pay to the State in respect of the iron ore the subject of the shipment such further and additional rental calculated at a rate not exceeding ten shillings (10s.) per ton of the iron ore as the Minister shall demand without prejudice however to any other rights and remedies of the State hereunder arising from the breach by the Joint Venturers of the provisions hereof. If ore is shipped in a vessel not owned by the Joint Venturers or an associated company or any other company in which the Joint Venturers have a controlling interest and such ore is off-loaded in the Commonwealth the Joint Venturers will not be or be deemed to be in default hereunder if they take appropriate action to prevent a recur-

Export to places outside the Commonwealth.

rence of such an off-loading PROVIDED FURTHER that the foregoing provisions of this paragraph shall not apply in any case (including any unforeseeable diversion of the vessel for necessary repairs or arising from *force majeure* or otherwise) where the Joint Venturers could not reasonably have been expected to take steps to prevent that particular off-loading PROVIDED ALSO that the provisions of this paragraph shall not apply—

- (i) to ore the subject of secondary processing or of an industry for the additional upgrading of beneficiated ore by the Joint Venturers or an associated company within the said State
- (ii) to ore processed by the Joint Venturers or an associated company within the Commonwealth but outside the said State to the extent that the tonnage of ore so processed does not in any year exceed fifty per centum (50%) of the total quantity of iron ore the subject of secondary processing and/or of an industry for the additional upgrading of beneficiated ore by the Joint Venturers or an associated Company; or
- (iii) to ore processed by the Joint Venturers or an associated company within the Commonwealth but outside the said State in excess of fifty per centum (50%) of the total quantity of ore the subject of secondary processing and/or of an industry for the additional upgrading of beneficiated ore by the Joint Venturers or an associated company within the said State with the prior approval of the Minister as aforesaid.

By-laws.

(3) The Governor in Executive Council may upon recommendation by the Joint Venturers make alter and repeal by-laws for the purpose of enabling the Joint Venturers to fulfil their obligations under paragraphs (a) (b) and (f) of subclause (2) of this clause and (unless and until the port townsite is declared a townsite pursuant to section 10 of the Land Act) under paragraph (h) of subclause (2) of this clause and under clause 10 (a) hereof upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Joint Venturers) as set out in such by-laws consistent with the provisions hereof. Should the State at any time consider that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Joint Venturers shall recommend such alteration or repeal thereof as the State may reasonably require or (in the event of there being any dispute as to the reasonableness of such requirement) then as may be decided by arbitration hereunder.

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(4) (a) The parties hereto acknowledge that some party other than the Joint Venturers (which party is hereinafter in this subclause referred to as "the other party") may have already agreed or will agree with the State for the mining transport and export of iron ore from within an area or areas of the said State other than Mining Area "A", Mining Area "B", or Mining Area "C" and that it may be further agreed or determined that such export will be from the harbour. In this event and notwithstanding the approval or determination of all or any of the detailed proposals hereunder the parties hereto acknowledge that the State may require that only one channel approach to the harbour shall be dredged to serve the interests of the Joint Venturers and of the other party as well as of other users of the harbour but that it will depend upon circumstances (including the depth and width of the channel approach and the respective time programmes for the dredging as desired by the Joint Venturers and the other party under and for the purposes of their respective agreements with the State) whether that channel approach shall be dredged by the Joint Venturers or by the other party or partly by each or under some other arrangements with a view to the joint user of the whole or part of the channel approach.

Harbour
channel
approach
provisions.

(b) The parties hereto acknowledge the principle that whichever of the Joint Venturers and the other party should incur the whole or the greater capital outlay (as the case may be) for the dredging or should be responsible for the operation and maintenance of the channel approach (in-sofar as it is or is intended to be used by the other of them) should be reimbursed by the other of them such a fair and reasonable proportion of the capital outlay and operation and maintenance costs respectively for the use of the channel approach or otherwise a fair and reasonable charge for such use as may be determined by mutual agreement between the parties concerned or failing agreement by arbitration under the provisions of the Arbitration Act 1895 if those parties agree within a time to be fixed by the Minister to submit to arbitration and failing such agreement then as determined by the Minister.

(c) If in the circumstances referred to in the last preceding paragraph the other party is the party to be reimbursed then the Joint Venturers hereby agree on demand made by the State to pay the amount of such reimbursement (determined as aforesaid) to the State for and on behalf of the other party.

(d) If in the circumstances referred to in paragraph (b) of this subclause the Joint Venturers are the party to be reimbursed then the State agrees not to permit vessels of the other party of which notice is given to the State by the Joint Venturers to enter the harbour through the channel approach and then to load iron ore in bulk unless and until the other party has made arrangements

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reasonably satisfactory to the Joint Venturers (to be determined by agreement arbitration or the Minister as aforesaid) for a fair and reasonable contribution to capital outlay and operation and maintenance costs incurred and/or to be incurred by the Joint Venturers as aforesaid or for the payment of a fair and reasonable charge.

(e) The State acknowledges and agrees with the Joint Venturers that in the event of the Joint Venturers incurring the whole or the greater capital outlay or operation and maintenance costs as aforesaid then vessels (other than vessels employed for the Joint Venturers' or other party's purposes) using the channel approach for the export from the harbour of more than half a million tons a year of bulk commodities should be required to pay to the Joint Venturers (or the State should be required to pay to the Joint Venturers from the moneys received from such vessels) fair and reasonable charges to be agreed by the parties hereto having regard to the circumstances including the aggregate tonnage of the commodities exported or to be exported from the harbour the rate of export and the capital outlay and operation and maintenance costs incurred and/or to be incurred by the Joint Venturers.

(f) The Joint Venturers acknowledge and hereby agree with the State that the Joint Venturers will not be entitled to the payment of any moneys in respect of the use of the channel approach by vessels other than those referred to in the foregoing provisions of this subclause but that in respect of such other vessels the State shall be entitled to retain all charges and other revenue received in respect of such use.

(g) The Joint Venturers also agree with the State that notwithstanding any lease granted to them by the State of the whole or part of the channel approach the State or the other party may at any time after notice to the Joint Venturers deepen or widen the channel approach for which purpose the Joint Venturers will on request by the State surrender without compensation so much of the lease of the channel approach as may be required for the purpose PROVIDED HOWEVER that the Joint Venturers will be entitled to reasonable time within which to complete any firm contract for the dredging of the channel approach actually made by them (pursuant to the consent of the State or the determination by arbitration) but unfulfilled at the time of the giving of such notice in respect of the widening or deepening of the dredging of the channel approach.

(h) A lease of the channel approach by the State to the Joint Venturers will be substantially (unless otherwise mutually agreed) in accordance with the form marked "B" and initialled by or on behalf of the parties hereto for the purposes of identification.

10. The parties hereto covenant and agree with each other as follows—

Mutual covenants.

(a) that subject to and in accordance with proposals approved or determined under clause 6 hereof the Joint Venturers for their purposes hereunder and for domestic and other purposes in relation to a townsite may to the extent determined by the Minister but notwithstanding any Act bore for water construct catchment areas store (by dams or otherwise) take and charge for water from any Crown lands available for the purpose and generate transmit supply and charge for electrical energy and the Joint Venturers shall have all such powers and authorities with respect to water and electrical energy as are determined by the Minister for the purposes hereof which may include the powers of a water board under the Water Boards Act, 1904 and of a supply authority under the Electricity Act, 1945;

Water and power supplies.

(b) that the Joint Venturers may use any public roads which may from time to time exist in the area of their operations hereunder for the purpose of transportation of goods and materials in connection with such operations PROVIDED NEVERTHELESS that the Joint Venturers shall on demand pay to the State or the Shire Council concerned the cost of making good any damage to such roads occasioned by—

Use of
public
roads.

(i) such user by the Joint Venturers prior to the export date; and

(ii) user by the Joint Venturers for the transportation of iron ore won from the mineral lease;

(c) that the State will at the request and cost of the Joint Venturers (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;

Upgrading
of existing
roads.

(d) that on the cessation or determination of this Agreement—

Effect of
determina-
tion of
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 mortgagee to in or under the mineral lease and any other lease license 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 AND the Joint Venturers will 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 Crown Grant issued under the Land Act pursuant to this Agreement;

- (ii) the Joint Venturers shall forthwith pay to the State all moneys which may then have become payable or accrued due;
- (iii) the Joint Venturers shall forthwith furnish to the State complete factual statements of the work research surveys and reconnaissances carried out pursuant to clause 4 (1) hereof if and insofar as the statements may not have been so furnished; and
- (iv) save as aforesaid and as provided in clause 7 (4) hereof and in the next following paragraph neither of the parties hereto shall have any claim against another of them with respect to any matter or thing in or arising out of this Agreement;

Effect of
determina-
tion of
lease.

- (e) that on the cessation or determination of any lease license or easement granted hereunder by the State to the Joint Venturers or (except as otherwise agreed by the Minister) to an associated company or other assignee of the Joint Venturers under clause 20 hereof of land for the Joint Venturers' wharf for any installation within the harbour for the Joint Venturers' railway or for housing at the port or port townsite the improvements and things other than plant equipment and removable buildings erected on the relevant land and provided for in connection therewith shall remain or become the absolute property of the State without compensation and freed and discharged from all mortgages and encumbrances and the Joint Venturers will do and execute such documents and things (including surrenders) as the State may reasonably require to give effect to this provision. In the event of the Joint Venturers immediately prior to such expiration or determination or subsequent thereto deciding to remove their locomotives rolling stock plant equipment and removable buildings or any of them from any land they shall not do so without first notifying the State in writing of their decision and thereby granting to the State the right or option exercisable within three months thereafter to purchase at

valuation *in situ* the said plant equipment and removable buildings or any of them. Such valuation shall be mutually agreed or in default of agreement shall be made by such competent valuer as the parties 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;

- (f) that subject to the Joint Venturers at their own expense providing all works buildings dredging and things of a capital nature reasonably required for their operations hereunder at or in the vicinity of the harbour no charge or levy shall be made by the State or by any State authority in relation to the loading of outward or the unloading of inward cargoes from the Joint Venturers' wharf whether such cargoes shall be the property of the Joint Venturers or of any other person or corporation but the State accepts no obligation to undertake such loading or unloading and may make the usual charges from time to time prevailing in respect of services rendered by the State or by any State agency or instrumentality or other local or other authority of the State and may charge vessels using the Joint Venturers' wharf ordinary light conservancy and tonnage dues; No charge for the handling of cargoes.
- (g) that the mineral lease and the lands the subject of any Crown Grant lease license or easement granted to the Joint Venturers under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Joint Venturers hereunder may be undertaken and carried out thereon without any interference or interruption by the State by any State agency or instrumentality or by any local or other authority of the State on the ground that such operations are contrary to any zoning by-law or regulation; Zoning.
- (h) that any State legislation for the time being in force in the said State relating to the fixation of rentals shall not apply to any houses belonging to the Joint Venturers in any townsite and that in relation to each such house the Joint Venturers shall have the right to include as a condition of their letting thereof that the Joint Venturers may take proceedings for eviction of the occupant if the latter shall fail to abide by and observe the terms and conditions of occupancy or if the occupant shall cease to be employed by the Joint Venturers; Rentals and evictions.

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Labour
conditions.

- (i) that 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 labour conditions imposed by or under the Mining Act in regard to the mineral lease.

Sub-
contracting.

- (j) that without affecting the liabilities of the parties under this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portions of the operations which it is authorised or obliged to carry out hereunder;

Rating.

- (k) 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 deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate;

Determina-
tion of
Agreement.

- (l) that in any of the following events namely if the Joint Venturers shall make default in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sublease license or other title or document granted or assigned under this Agreement on their part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to them by the State (or if the alleged default is contested by the Joint Venturers and promptly submitted to arbitration within a reasonable time fixed by 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 shall abandon or repudiate their operations under this Agreement or if any of the Joint Venturers shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within three months from the date of such liquidation the others of the Joint Venturers acquire absolutely the share estate and interest of the Joint Venturer (in liquidation) in or under this agreement and in or under the mineral lease and any other lease license easement or right granted hereunder or pursuant hereto then and in any of such events the State may by notice to the Joint Venturers determine this Agreement and the rights of the Joint Venturers hereunder and under any lease license easement or

right granted hereunder or pursuant hereto or if the Joint Venturers shall surrender the entire mineral lease as permitted under clause 8 (2) (a) this Agreement and the rights of the Joint Venturers hereunder and under any lease license easement or right granted hereunder or pursuant hereto shall thereupon determine; PROVIDED HOWEVER that if the Joint Venturers shall fail to remedy any default 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; and

(m) that—

(i) for the purposes of determining whether and the extent to which—

(A) the Joint Venturers are liable to any person or body corporate (other than the State): or

(B) an action is maintainable by any such person or body corporate

in respect of the death or injury of any person or damage to any property arising out of the use of any of the roads for the maintenance of which the Joint Venturers are responsible hereunder and for no other purpose the Joint Venturers shall be deemed to be a municipality and the said roads shall be deemed to be streets under the care control and management of the Joint Venturers;

(ii) for the purposes of this paragraph the terms "municipality" "street" and "care control and management" shall have the meanings which they respectively have in the Local Government Act. 1960.

11. (1) From the commencement date the Joint Venturers shall with all reasonable diligence continue their preliminary exploration and investigation preparatory to making a complete and thorough geological and (as necessary) geophysical investigation of firstly mining area "B" and secondly of mining area "C" and within two years next

**Company
may submit
proposals
in respect of
Mining Area
"B" and
Mining Area
"C".**

following the commencement date shall intensify their exploration and investigation and within four years next following the commencement date the Joint Venturers shall complete their geological and (as necessary) geophysical exploration and investigation with a view to proving iron ore deposits in those mining areas and testing and sampling such deposits. Such investigations shall include a general reconnaissance of those mining areas with a view to the establishment of various sites for the operations pursuant to this Agreement. The Joint Venturers shall keep the State fully informed at least quarterly commencing within one quarter after the commencement date as to the progress and results of the Joint Venturers' operations under this subclause.

(2) If within six (6) years from the commencement date the Joint Venturers having complied with all their obligations pursuant to subclause (1) hereof shall apply for a mineral lease in respect of mining area "B" or any part or parts thereof and of mining area "C" or any part or parts thereof the Joint Venturers shall within six months of any such application submit to the Minister—

(a) to the fullest extent reasonably practicable their detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) and including the location area layout design number materials and time programme for the commencement and completion of construction or provision as the case may be of each of the following matters namely—

(i) such additional harbour development including dredging depositing of spoil the provision of navigational aids additions to the Joint Venturers' wharf (any plans and specifications for additions to the Joint Venturers' wharf shall be submitted to and be subject to the approval of the State) the berth and swinging basin for the Joint Venturers' use and harbour installations facilities and services to enable the use of the harbour and wharf by vessels having an ore carrying capacity of not less than 60,000 tons;

(ii) the railway or railways between those mining areas and the Joint Venturers' then existing railway from mineral lease granted under clause 8 (2) (a) hereof to the Joint Venturers' wharf and all works ancillary to or connected with the railway or railways and its or their proposed operation including fencing (if any) and crossing places;

- (iii) the town site on mining area "C" and development services and facilities in relation thereto;
- (iv) the townsite on mining area "B" and development services and facilities in relation thereto or provision for the extension of the existing townsite established on mining area "A";
- (v) housing on mining area "C";
- (vi) housing on mining area "B" or provision for the extension of existing housing accommodation established on mining area "A";
- (vii) roads from those mining areas to the then existing road developed by the Joint Venturers from mining area "A" to the Joint Venturers' wharf (including details of roads in respect of which it is not intended that the provisions of clause (9) (2) (b) shall operate) and;
- (viii) any other works services or facilities proposed or desired by the Joint Venturers: and

(3) The estimated cost of the works to be proposed under subclause 2 of this clause shall be not less than ten million pounds (£10,000,000) and the works shall be of such design and capacity as shall enable the Joint Venturers to mine and handle load and deal with six thousand (6,000) tons of iron ore per diem in addition to the requirements of clause 9 (1) (a) hereof.

(4) Within two months after receipt of the detailed proposals of the Joint Venturers in regard to any of the matters mentioned in subclause 2 (a) of this clause the Minister shall give to the Joint Venturers notice either of his approval of the proposals or of alterations desired thereto and in the latter case shall afford to the Joint Venturers opportunity to consult with and to submit new proposals to the Minister. The Minister may make such reasonable alterations to or impose such reasonable conditions on the proposals or new proposals (as the case may be) as he shall think fit having regard to the circumstances including the overall development and use by others as well as the Joint Venturers of the Joint Venturers' wharf facilities and services but the Minister shall in any notice to the Joint Venturers disclose his

reasons for any such alteration or condition. Within two (2) months of the receipt of the notice the Joint Venturers may elect by notice to the State to refer to arbitration and within two (2) months thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain the approval of the Minister as to the matter or matters the subject of the arbitration the application for a lease of those mining areas or any part or parts thereof respectively shall on the expiration of that period of three (3) months cease and determine (save as provided in clause 10 (d) hereof) but if the question is decided in favour of the Joint Venturers the decision will take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

(5) Within two (2) months after receipt of evidence from the Joint Venturers with regard to the matters mentioned in subclause (2) (b) of this clause to the reasonable satisfaction of the Minister the State will give to the Joint Venturers notice either that it is satisfied with such evidence (in which case the proposals in relation to those matters will be deemed approved) or not in which case the State shall afford the Joint Venturers an opportunity to consult with and to submit further evidence to the Minister. If within thirty (30) days of receipt of such notice further evidence has not been submitted to the Minister's reasonable satisfaction and his approval obtained thereto the Joint Venturers may within a further period of thirty (30) days elect by notice to the State to refer to arbitration as hereinafter provided and will within two (2) months thereafter refer to arbitration any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the dispute is decided against the Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain the approval of the Minister as to the matter or matters the subject of the arbitration the application for a lease of those mining areas or any part or parts thereof respectively shall on the expiration of that period cease and determine (save as provided in clause 10 (d) hereof) but if the question is decided in favour of the Joint Venturers the decision will take effect as a notice by the Minister that he is so satisfied with and has approved the matter or matters the subject of the arbitration.

Effect of
Joint
Venturers
applying for
mineral lease
in respect of
Mining Area
"B" and
Mining Area
"C".

(6) If the Joint Venturers shall have applied for a mineral lease of mining area "B" and mining area "C" or any part or parts thereof respectively within six (6) years of the commencement date and shall have complied with their obligations in respect of such application and if the Minister shall have approved the Joint Venturers' proposals or be

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deemed to have approved the Joint Venturer's proposals by decision of arbitration then the Minister shall cause any necessary survey to be made of the land so applied for (the cost of the survey to the State will be recouped or repaid to the State by the Joint Venturers on demand after completion of the survey) and shall cause to be granted to the Joint Venturers as tenants in common in equal shares a mineral lease thereof (hereinafter referred to as "the second mineral lease") for iron ore in the form of the lease in the Schedule hereto for a term which subject to the payments of rental and royalties hereinbefore mentioned and to the performance and observance by the Joint Venturers of their obligations under the mineral lease shall be for a period commencing from the date of issue of the second mineral lease for a period co-extensive with the residue of the term then unexpired of the original mineral lease granted under clause 8 (2) (a) hereof with rights to successive renewal for 21 years upon the same terms and subject to earlier determination upon the cessation or determination of this agreement.

(7) If the Joint Venturers do not apply within six (6) years from the commencement date or cease to be entitled to apply for a mineral lease in respect of those mining areas being mining area "B" or mining area "C" or any part or parts thereof respectively the Joint Venturers will cease to have any rights or interests to or in respect of those mining areas or any of them or any part or parts thereof respectively and this agreement with the exception of Clauses 12-17 (inclusive) will continue in force for 21 years from the export date or until the Joint Venturers have mined all the available iron ore on mining area "A" (whichever later happens) or until this agreement is determined provided that if in any financial year after six years from the commencement date the tonnage of iron ore mined from the mineral lease and shipped for export is less than one million (1,000,000) tons then the State may within the period of six months next following the expiration of that financial year give to the Joint Venturers notice that it intends to invoke this clause and thereupon if in that financial year and the next two succeeding financial years the tonnage of iron ore so shipped is less than three million (3,000,000) tons then subject to Clause 23 hereof the State may by notice to the Joint Venturers given at any time during the period of twelve (12) months next following the expiration of the third of the three financial years above referred to in this proviso determine this agreement whereupon the rights of the Joint Venturers in this agreement and under any lease license or mining tenement granted hereunder or pursuant hereto shall cease and determine subject however to the provisions of Clause 10 (d) hereof but without prejudice to any liability on the part of the Joint Venturers for any antecedent breach of or liability under any of the provisions in this agreement PROVIDED FURTHER the Minister upon

Effect of
Joint
Venturers
not applying
for mineral
lease in
respect of
Mining Area
"B" and
Mining Area
"C".

the application of the Joint Venturers may include in the existing mineral lease granted under clause 8 (2) (a) hereof the whole or any part or parts of mining area "B" after survey by the State (the cost of which survey to the State will be recouped or repaid to the State by the Joint Venturers upon demand after completion of the survey). Where the whole of mining area "B" or any part or parts thereof is included in the existing mineral lease the area or areas shall be deemed to be included in the definition of mineral lease given in clause 1 hereof (so far as the same relates to Mining Area "A") and for all purposes of this agreement with the exception of clauses 12 to 17 (inclusive) where the context so permits.

**Secondary
processing.**

12. (1) The Joint Venturers having commenced already to investigate the feasibility of establishing a plant for the secondary processing by the Joint Venturers within the said State of iron ore from the mineral lease will from time to time review this matter with a view to their being in a position before the end of year eight to submit to the Minister detailed proposals for such plant (capable ultimately of treating not less than two million (2,000,000) tons of iron ore per annum) containing provision that—

- (a) the plant will by the end of year 10 have the capacity to process at an annual rate of and will during the year 11 process not less than five hundred thousand (500,000) tons of iron ore;
- (b) production will progressively increase so that the plant will by the end of year 12 have the capacity to process at an annual rate of and will during the year 13 process not less than one million (1,000,000) tons of iron ore and by the end of year 16 will have the capacity to process at an annual rate of not less than and will during the year 17 process not less than two million (2,000,000) tons of iron ore;
- (c) the capital cost involved (exclusive of the cost referred to in clause 9 (1) hereof) will be not less than Eight million pounds (£8,000,000) unless the Joint Venturers utilise a less expensive but at least equally satisfactory method of secondary processing than any at present known to either party.

PROVIDED THAT if the Joint Venturers satisfy the Minister that the Joint Venturers' mining operations are not producing quantities of iron ore suitable for treatment at a rate of two million (2,000,000) tons of iron ore per annum on an economic basis then the Minister may approve modified or altered proposals and reduce the figure of two million (2,000,000) tons to a figure the Minister considers

appropriate having regard to the prevailing circumstances but to not less than one million (1,000,000) tons per annum with provision for progressive increase to two million (2,000,000) tons per annum of a revised programme and on approving such modified or altered proposals the Minister may approve corresponding variations of the provisions of paragraphs (a) (b) and/or (c) of this subclause.

(2) If before the end of the year eight such proposals are submitted by the Joint Venturers to the Minister the State shall within two months of the receipt thereof give to the Joint Venturers notice either of its approval of the proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto and in either of the latter cases shall afford the Joint Venturers an opportunity to consult with and to submit new proposals to the Minister. If within thirty days of receipt of such notice agreement is not reached as to the proposals the Joint Venturers may within a further period of thirty days elect by notice to the State to refer to arbitration as hereinafter provided any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Joint Venturers the Minister shall be deemed to have then approved the proposals of the Joint Venturers.

(3) If such proposals are not submitted by the Joint Venturers to the Minister before the end of year 8 or if the proposals are so submitted but are not approved by the Minister within two months of receipt thereof or if the Joint Venturers shall have had such proposals approved and shall not have complied with their obligations thereunder then (subject to any extension of time granted hereunder).

- (a) the Joint Venturers shall not after the end of the year 10 export iron ore hereunder at an annual rate in excess of three million (3,000,000) tons of direct shipping ore per annum unless prior to year 8 the Minister shall have approved the Joint Venturers entering into a contract or contracts for export of ore after year 10 at an annual rate in excess of three million (3,000,000) tons of direct shipping ore; and
- (b) if by the end of the year 11 (or extended date if any) the State gives to the Joint Venturers notice that some other Company or party (hereinafter referred to as "the third party") has agreed to establish a plant for secondary processing within the said State of iron ore from the mineral lease on terms not more favourable on the whole to the third party than those proposed by or available to

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the Joint Venturers hereunder this agreement will (subject to the provisions of subclauses (d) and (e) of clause 10 and of clause 15 hereof) cease and determine at the end of year 21 or at the date by which the third party has substantially established the plant referred to in this subclause in accordance with the terms agreed upon by the State and the third party whichever is the later

PROVIDED THAT if by the end of the year 11 (or extended date if any) the State has not given to the Joint Venturers the notice referred to in this subclause paragraph (a) of this subclause shall cease to have any effect and PROVIDED FURTHER that the Joint Venturers may at any time after the end of year 8 submit proposals as aforesaid if at that time they had not received the notice aforesaid and the provisions of subclause (2) of this clause shall apply to such proposals but (subject to any extension of time as aforesaid) the Joint Venturers may not submit proposals as aforesaid after the end of year 8 and before the end of year 11 if the Joint Venturers have received a notice from the Minister that he is negotiating with the third party and such notice has not been withdrawn.

(4) Subject to the provisions of clause 13 hereof and except as provided in paragraph (b) of subclause (3) of this clause this Agreement will continue in operation subject to compliance by the Joint Venturers with their obligations hereunder and with such proposals by the Joint Venturers as are approved by the Minister.

(5) Notwithstanding anything contained herein no failure by the Joint Venturers to submit to the Minister proposals as aforesaid nor any non-approval by the Minister of such proposals shall constitute a breach of this Agreement by the Joint Venturers and subject to the provisions of clause 13 hereof the only consequence arising from such failure or non-approval (as the case may be) will be those set out in subclause (3) of this clause.

Industry for
additional
upgrading of
beneficiated
ore.

13. (1) The Joint Venturers will in due course investigate the feasibility of establishing within the said State an industry for additional upgrading of beneficiated ore from the mineral lease by some form of semi-reduction direct reduction or other mutually agreed process (the product of such industry being hereinafter referred to as "upgraded ore") and will from time to time review this matter with a view to their being in a position before the end of year 17 to

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(2) If before the end of year 17 such proposals are submitted by the Joint Venturers to the Minister the State shall within two months of the receipt thereof give to the Joint Venturers notice either of its approval of the proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto and in the latter case shall afford the Joint Venturers an opportunity to consult with and to submit new proposals to the Minister. If within thirty days of receipt of such notice agreement is not reached as to the proposals the Joint Venturers may within a further period of thirty days elect by notice to the State to refer to arbitration as hereinafter provided any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the question is decided in favour of the Joint Venturers the Minister shall be deemed to have then approved the proposals of the Joint Venturers.

(3) If such proposals are not submitted by the Joint Venturers to the Minister before the end of year 17 or if such proposals are so submitted but are not approved by the Minister within two months after receipt thereof or if the Joint Venturers shall have had such proposals approved and shall not have complied with their obligations thereunder then (subject to any extension of time granted hereunder) and subject to the next following subclause—

- (a) the Joint Venturers shall not after the end of the year 18 export iron ore hereunder at an annual rate in excess of five million (5,000,000) tons of direct shipping ore per annum unless prior to year 17 the Minister shall have approved the Joint Venturers entering into a contract or contracts for export of iron ore after year 18 at an annual rate in excess of five million (5,000,000) tons of direct shipping ore; and
- (b) the Joint Venturers shall not after the end of the year 21 export iron ore hereunder at an annual rate in excess of three million (3,000,000) tons of direct shipping ore per annum unless prior to year 18 the Minister shall have approved the Joint Venturers entering into a contract or contracts for export of direct shipping ore after year 21 at an annual rate in excess of three million (3,000,000) tons.

(4) If such proposals are not submitted by the Joint Venturers to the Minister before the end of year 17 or if such proposals are so submitted but are not approved by the Minister within two months after receipt thereof then (subject to any extension of time granted hereunder) if by

the end of year 20 (or extended date if any) the State gives to the Joint Venturers notice that some other Company or party (hereinafter referred to as "the Fourth Party") has agreed to establish either—

- (a) a plant for secondary processing within the said State of iron ore from the mineral lease (if proposals by the Joint Venturers for the establishment of such a plant have not previously been submitted to and approved by the Minister) on terms not more favourable on the whole to the Fourth Party than those proposed by or available to the Joint Venturers hereunder; or
- (b) an industry for additional upgrading of beneficiated ore aforesaid within the said State (using iron ore from the mineral lease) on terms not more favourable on the whole to the Fourth Party than those proposed by or available to the Joint Venturers hereunder—

then and in either case this Agreement will (subject to the provisions of subclauses (d) and (e) of clause 10 hereof and clause 16 hereof) cease and determine—

- (i) in the case of the Fourth Party proceeding with secondary processing then when the Fourth Party has substantially established the plant referred to in paragraph (a) of this subclause;
- (ii) in the case of the Fourth Party proceeding with an industry for additional upgrading of beneficiated iron ore aforesaid then (if proposals by the Joint Venturers for a plant for secondary processing have previously been submitted to and approved by the Minister) at the end of year 24 or at the date by which the Fourth Party has substantially established that industry whichever is the later; and
- (iii) in the case of the Fourth Party proceeding with an industry for additional upgrading of beneficiated iron ore aforesaid (if proposals by the Joint Venturers for a plant for secondary processing have not previously been submitted to and approved by the Minister) at the date by which the Fourth Party has substantially established that industry.

(5) If by the end of year 20 (or extended date if any) the State has not given to the Joint Venturers any such notice as is referred to in subclause (4) of this clause that subclause shall thereupon cease to have effect except that (to the extent they can from time to time operate) the provisions of subclause (4) of this clause shall revive (for a period of three years) at the end of year 24 and at the end of each successive period of thirteen years thereafter

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in such a way that each year referred to in that subclause shall be read as the year thirteen years or (as the case may require) a multiple of thirteen years thereafter (subject to extensions of dates if any as aforesaid).

(6) The Joint Venturers may at any time after the end of year 17 submit proposals for an industry for additional upgrading of beneficiated iron ore aforesaid if at that time they have not received any notice under subclause (4) of this clause and the provisions of subclauses (1) and (2) of this clause shall apply to such proposals.

(7) Except as provided in subclause (4) of this clause this Agreement will continue in operation subject to compliance by the Joint Venturers with their obligations hereunder and with such proposals by the Joint Venturers as are approved by the Minister.

(8) Notwithstanding anything contained herein no failure by the Joint Venturers to submit to the Minister proposals as aforesaid nor any non-approval by the Minister of such proposals shall constitute a breach of this Agreement by the Joint Venturers and the only consequences arising from such failure or non-approval (as the case may be) will be those set out in subclause (4) of this clause.

Substantial
establish-
ment.

14. The Third Party or the Fourth Party shall have substantially established a plant for secondary processing or an industry for additional upgrading of beneficiated ore when and not before the party's secondary processing plant has a capacity to treat not less than two million (2,000,000) tons of iron ore per annum or (as the case may be) that party's industry for upgrading of beneficiated ore has the capacity to produce one million (1,000,000) tons of upgraded ore per annum and in either case the Minister has notified the Joint Venturers that he is satisfied that that party will proceed *bona fide* to operate its plant or industry.

Terms
not more
favourable.

15. In deciding whether for the purposes of clause 12 or clause 13 hereof the terms granted by the State to some company or party are not more favourable on the whole than those proposed by or available to the Joint Venturers regard shall be had *inter alia* to all the obligations which would have continued to devolve on the Joint Venturers had they proceeded with secondary processing or (as the case may be) an industry for the additional upgrading of

beneficiated ore including their obligations to mine transport by rail and ship iron ore and restrictions relating thereto to pay rent additional rental and royalty and (in case of secondary processing by a third party pursuant to clause 12 hereof) to termination of rights as provided in clause 13 hereof if proposals for the upgrading of beneficiated ore are not brought to fruition and also to the need for the other company or party to pay on a fair and reasonable basis for or for the use of property accruing to the State under paragraph (e) of clause 10 hereof and made available by the State to that company or party but also to any additional or equivalent obligations to the State assumed by that company or party PROVIDED HOWEVER that if after the end of year 24 the Minister gives notice to the Joint Venturers under clause 13 hereof that another company or party has agreed to establish either secondary processing or an industry for additional upgrading of beneficiated ore but not both then the latter company or party need not have any obligation to establish both.

Supply of
iron ore by
others.

Supply of
iron ore to
others.

- (i) at such rates and grades (as may reasonably be available and be required);

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- (ii) at such points on the Joint Venturers' railway;
- (iii) at such price; and
- (iv) on such other terms and conditions

as may mutually be agreed between the Joint Venturers and the State or failing agreement decided by arbitration between them PROVIDED ALWAYS that the price shall unless otherwise agreed between them be equivalent to the total cost of production and transport incurred by the Joint Venturers (including reasonable allowance for depreciation and all overhead expenses) plus ten per centum of such total cost.

Alteration
of works.

18. If at any time the State finds it necessary to request the Joint Venturers to alter the situation of any of the installations or other works (other than the Joint Venturers' wharf) erected constructed or provided hereunder and gives to the Joint Venturers notice of the request the Joint Venturers shall within a reasonable time after their receipt of the notice but at the expense in all things (including increased running costs) of the State (unless the alteration is rendered necessary by reason of a breach by the Joint Venturers of any of their obligations hereunder) alter the situation thereof accordingly.

Indemnity.

19. 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 the construction maintenance or use by the Joint Venturers or their servants agents contractors or assignees of the Joint Venturers' wharf railway or other works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

Assignment.

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 in writing 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 license easement grant or other title) and of the obligations of the Joint Venturers hereunder; and

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- (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 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 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 license easement grant or other title the subject of an assignment under the said subclause (1).

21. (1) The parties hereto may from time to time by mutual agreement in writing add to cancel or vary all or any of the provisions of this Agreement or of any lease license easement or right granted hereunder or pursuant hereto for the purpose of implementing or facilitating the carrying out of such provisions or for the purpose of facilitating the carrying out of some separate part or parts of the Joint Venturers' operations hereunder by an associated company as a separate and distinct operation or for the establishment or development of any industry making use of the minerals within the mineral lease or such of the Joint Venturers' works installations services or facilities the subject of this Agreement as shall have been provided by the Joint Venturers in the course of work done hereunder. Variation.

(2) Notwithstanding the provisions of subclause (1) of this clause the Minister may with the consent of the Joint Venturers from time to time add to cancel or vary any right or obligation relating to works for the transport and/or export of iron ore to the extent that the addition cancellation or variation implements or facilitates the method of achieving any of the purposes of iron ore export secondary processing or for an industry for additional upgrading of beneficiated ore based on ore from the mineral lease.

(3) Notwithstanding the foregoing provisions of this clause the Minister may from time to time approve variations or require reasonable variations in the detailed proposals relating to any railway or harbour site and/or port facilities

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or dredging programme or townsite or town planning or any other facilities or services or other plans specifications or proposals which may have been approved pursuant to this Agreement and in considering such variations shall have regard to any changes consequent upon joint user proposals of any such works facilities or services and other relevant factors arising after the date hereof.

**Export
License.**

22. (1) On request by the Joint Venturers the State shall make representations to the Commonwealth for the grant to the Joint Venturers of a license or licenses under Commonwealth law for the export of iron ore in such quantities and at such rate or rates as shall be reasonable having regard to the terms of this Agreement the capabilities of the Joint Venturers and to maximum tonnages of iron ore for the time being permitted by the Commonwealth for export from the said State and in a manner or terms not less favourable to the Joint Venturers (except as to rate or quantity) than the State has given or intends to give in relation to such a license or licenses to any other exporter of iron ore from the said State.

(2) If at any time the Commonwealth limits by export license the total permissible tonnage of iron ore for export from the said State then the Joint Venturers will at the request of the State and within three (3) months of such request inform the State whether or not they intend to export to the limit of the tonnage permitted to them under Commonwealth licenses in respect of the financial year next following and if they do not so intend will co-operate with the State in making representation to the Commonwealth with a view to some other producer in the said State being licensed by the Commonwealth to export such of the tonnage permitted by the Commonwealth in respect of that year as the Joint Venturers do not require and such other producer may require. Such procedure shall continue to be followed year by year during such time as the Commonwealth limits by export license the total permissible tonnage of iron ore for export from the said State.

(3) The Joint Venturers shall be in default hereunder if at any time they fail to obtain any license or licenses under Commonwealth law for the export of iron ore as may be necessary for the purpose of enabling the Joint Venturers to fulfil their obligations hereunder or if any such license is withdrawn or suspended by the Commonwealth and such failure to obtain or such withdrawal or suspension (as the case may be) is due to some act or default by the Joint Venturers or to the Joint Venturers not being *bona fide* in application to the Commonwealth or otherwise having failed to use their best endeavours to have the license granted or

restored (as the case may be) but save as aforesaid if at any time any necessary license is not granted or any license granted to the Joint Venturers shall be withdrawn or suspended by the Commonwealth and so that as a result thereof the Joint Venturers are not for the time being permitted to export at least the tonnage they have undertaken with the State they will export then the Joint Venturers shall not be obliged to export the tonnage not so permitted until such time as they are so permitted and thereafter they will export the tonnage they have undertaken with the State they will export. The State shall at all times be entitled to apply on behalf of the Joint Venturers (and is hereby authorised by the Joint Venturers so to do) for any license or licenses under Commonwealth law for the export of iron ore as may from time to time be necessary for the purposes of this Agreement.

23. 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 inability (common in the iron ore export industry) to profitably sell ore 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.

24. Notwithstanding any provision hereof the Minister may at the request of the Joint Venturers from time to time extend any period or date referred to in this Agreement for such period or to such later date as the Minister thinks fit and the extended period or later date when advised to the Joint Venturers by notice from the Minister shall be deemed for all purposes hereof substituted for the period or date so extended.

Power to extend periods.

25. 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

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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.

Notices.

26. 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 prepaid post to the Joint Venturers at their registered office for the time being in the said State and by the Joint Venturers if signed on their behalf by a director manager or secretary of the Joint Venturers or by any person or persons authorised by the Joint Venturers in that behalf or by their solicitors as notified to the State from time to time and forwarded by prepaid 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.

27. (1) 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 Joint Venturers or any permitted assignee of the Joint Venturers any tenement lease easement license 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) or 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 the Bill referred to in clause 2 (b) hereof to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) of this clause the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document to the person who paid the same.

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

SCHEDULE

Western Australia.

IRON ORE (MOUNT GOLDSWORTHY) IRON ORE
DEPOSIT AGREEMENT ACT, 1964 MINERAL LEASE

Lease No. Mineral Field
ELIZABETH THE SECOND by the Grace of God of the
 United Kingdom Australia and Her other Realms and Ter-
 ritories Queen, Head of the Commonwealth, Defender of
 the Faith:

TO ALL WHOM THESE PRESENTS shall come GREETINGS:

KNOW YE that WHEREAS by an Agreement made the day of 1964 between the State of Western Australia of the one part and CONSOLIDATED GOLD FIELDS (AUSTRALIA) PTY. LIMITED CYPRUS MINES CORPORATION and UTAH CONSTRUCTION & MINING CO. hereinafter called "the Joint Venturers" in which term shall be included the Joint Venturers and each of them and their and each of their respective successors and assigns and including where the context so admits the assignees of the Joint Venturers under clause 20 of the said agreement) of the other part the said State agreed to grant to the Joint Venturers a mineral lease of portion or portions of the lands referred to in the said Agreement as Mining Area "A" Mining Area "B" and Mining Area "C" AND WHEREAS the said Agreement was ratified by the Iron Ore (Mount Goldsworthy) Iron Ore Deposit Agreement Act 1964 which said Act (inter alia) authorised the grant of a mineral lease or leases to the Joint Venturers NOW WE in consideration of the rents and royalties reserved by and of the provisions of the said

Agreement and in pursuance of the said Act DO BY THESE PRESENTS GRANT AND DEMISE unto the Joint Venturers as tenants in common in equal shares subject to the said provisions ALL THOSE pieces and parcels of land situated in the

Goldfield(s) containing by admeasurement

be the same more or less and particularly described and delineated on the plan in the Schedule hereto and all those mines, veins, seams, lodes and deposits of iron ore in on or under the said land (hereinafter called "the said mine") together with all rights, liberties, easements, advantages and appurtenances thereto belonging or appertaining to a lessee of a mineral lease under the Mining Act, 1904 including all amendments thereof for the time being in force and all regulations made thereunder for the time being in force (which Act and regulations are hereinafter referred to as "the Mining Act") or to which the Joint Venturers are entitled under the said Agreement TO HOLD the said land and mine and all and singular the premises hereby demised for the full term of twenty-one years from the day of 19 with the right to renew the same from time to time for further periods each of twenty-one years as provided in but subject to the said Agreement for the purposes but upon and subject to the terms covenants and conditions set out in the said Agreement and to the Mining Act (as modified by the said Agreement) YIELDING and paying therefor the rent and royalties as set out in the said Agreement. AND WE do hereby declare that this lease is subject to the observance and performance by the Joint Venturers of the following covenants and conditions, that is to say:—

1. The Joint Venturers shall and will use the land bona fide exclusively for the purposes of the said Agreement.
2. Subject to the provisions of the said Agreement the Joint Venturers shall and will observe, perform, and carry out the provisions of the Mines Regulation Act, 1946, and all amendments thereof for the time being in force and the regulations for the time being in force made thereunder and subject to and also as modified by the said Agreement the Mining Act so far as the same affect or have reference to this lease.

PROVIDED THAT this lease and any renewal thereof shall not be determined or forfeited otherwise than under and in accordance with the provisions of the said Agreement.

PROVIDED FURTHER that all mineral oil on or below the surface of the demised land is reserved to Her Majesty with the right to Her Majesty or any person claiming under her or lawfully authorised in that behalf to have access to the demised land for the purpose of searching for and for the operations of obtaining mineral oil in any part of the land under the provisions of the Petroleum Act, 1936.

IN WITNESS whereof we have caused our Minister for Mines to affix his seal and set his hand hereto at Perth in our said State of Western Australia and the common seal of the Company has been affixed hereto this

day of

19 .

THE SCHEDULE ABOVE REFERRED TO:

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 said The HONOURABLE } DAVID BRAND
DAVID BRAND, M.L.A. in the } [L.S.]
presence of— }

C. W. Court

Minister for Industrial Development

Arthur Griffith

Minister for Mines

SIGNED SEALED AND DELIVERED
for and on behalf of CON-
SOLIDATED GOLDFIELDS (AUS-
TRALIA) PTY. LIMITED by its
duly authorised agent Gerald James
Mortimer in the presence of—

G. J. MORTIMER
[L.S.]

Q. R. Stow

Solicitor

Perth

SIGNED SEALED AND DELIVERED }
for and on behalf of CYPRUS }
MINES CORPORATION by its } G. J. MORTIMER
duly authorised agent Gerald James } [L.S.]
Mortimer in the presence of— }

Q. R. Stow

SIGNED SEALED AND DELIVERED
for and on behalf of UTAH CON-
STRUCTION & MINING CO. by its
duly authorised agent Gerald James
Mortimer in the presence of—

G. J. MORTIMER.
[L.S.]

Q. R. Stow