

Repeal of
Acts Nos.
49 of 1961,
and 63 of
1962.

2. (1) The Iron Ore (Tallering Peak) Agreement Act, 1961, and the Iron Ore (Tallering Peak) Agreement Act Amendment Act, 1962, are repealed.

(2) The provisions of sections fifteen and sixteen of the Interpretation Act, 1918, apply in respect of the repeals effected by subsection (1) of this section, but this express inclusion of the application of those sections does not exclude the application to this Act of the other provisions of that Act.

Interpre-
tation.

3. In this Act unless the contrary intention appears—

“land” includes any estate or interest in land;

“the Agreement” means the agreement of which a copy is set out in the Schedule to this Act;

“the Company” has the same meaning as that expression has in, and for the purposes of, the Agreement;

“the State” includes its instrumentalities.

Agreement
approved and
provisions
to take effect.

4. (1) The Agreement is approved.

(2) Notwithstanding any other Act or law and without limiting the effect of subsection (1) of this section—

(a) the provisions of subclauses (1), (3) and (5) of clause four, and clauses fourteen and fifteen, of the Agreement have effect as if those provisions were repeated in and enacted by this Act;

(b) the State shall not be prevented by the operation of any Act or by-law or regulation made thereunder, from fulfilling its obligations under and in accordance with the provisions of the Agreement;

(c) the Company shall be permitted to enter upon the lands mentioned in subclause (1) of clause four of the Agreement to the extent, and for the purposes, provided by that subclause; and

(d) the provisions of paragraph (d) of subclause (2) of clause one of the Agreement shall take effect.

(3) 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 subclause (1) of clause four of the Agreement.

5. (1) The State may—

Power to
acquire land.

(a) by agreement with the owner; or

(b) by compulsory process as provided in this section,

acquire any land that is reasonably required by either party to the Agreement as defined therein, for any purpose contemplated by the Agreement.

(2) Any land referred to in subsection (1) of this section may be set apart, taken or resumed as for a public work pursuant to the Public Works Act, 1902, as if the land were required for a public work within the meaning of that Act, and when so set apart, taken or resumed shall be used and disposed of in accordance with and for the purposes of the Agreement.

(3) Subject to subsection (2) of this section, the provisions of the Public Works Act, 1902, apply with such adaptations as are necessary in all respects as if the land were required for a public work authorised pursuant to the provisions of that Act.

Section 3.

THE SCHEDULE.

AN AGREEMENT under seal made the 20th day of November, One thousand nine hundred and sixty-four BETWEEN THE HONOURABLE DAVID BRAND M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the Government of the said State and its instrumentalities (hereinafter referred to as "the State") of the one part and WESTERN MINING CORPORATION LIMITED a company duly incorporated under the Companies Statutes of the State of Victoria and having its principal office in that State at 360 Collins Street Melbourne and having its registered office in the State of Western Australia at 55 Macdonald Street Kalgoorlie (hereinafter referred to as "the Company" which term shall include its successors and permitted assigns) of the other part.

WHEREAS the parties have agreed that subject to the approval of the Parliament of Western Australia the agreement defined in section two of the Iron Ore (Tallering Peak) Agreement Act 1961-1962 (being an agreement made between the parties hereto and approved by Act No. 49 of 1961 as that agreement was varied by an agreement approved by Act No. 68 of 1962) should be further varied and as so further varied should be expressed in a single document being this Agreement.

NOW THIS AGREEMENT WITNESSETH—

1. (1) Except for subclause (2) of this clause and subclause (1) of Clause 4 hereof this Agreement shall have no force or effect unless before the 1st day of April 1965 a Bill to ratify this Agreement shall come into operation as an Act but shall operate and have full force and effect when the ratifying Act comes into operation as an Act.

(2) On the coming into operation of the ratifying Act the following provisions shall operate and take effect—

(a) subclauses (1) (3) and (5) of Clause 4 and clauses 14 and 15 of this Agreement shall take effect as though the same had been repeated in and expressly enacted in the ratifying Act;

(b) The State may acquire by agreement or take and resume compulsorily such land and rights interests and easements including easements relating to the laying and maintenance of pipes and the pumping of water and the installation and operation of the conveyor system referred to in clause 8 hereof as may be reasonably required by either party for any purpose contemplated by this Agreement as if this purpose were a public work within the meaning of the Public Works Act 1902 and the property so acquired may be used or disposed of in accordance with or for the purposes of this Agreement;

- (c) no Act regulation or by-law shall operate so as to prevent the State from fulfilling its obligations under this Agreement in accordance with and subject to the provisions hereof; and
- (d) the said recited Agreement defined in section two of the Iron Ore (Tallering Peak) Agreement Act 1961-1962 is cancelled but without prejudice to any antecedent liability thereunder accrued and undischarged.

(3) If however the Bill referred to in subclause (1) of this clause is not passed or does not come into operation as an Act therein provided the following clauses of this Agreement shall not operate or shall cease to operate and neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing arising out of or done or performed under the provisions mentioned in subclause (1) of this clause.

2. In this Agreement unless the context otherwise requires the following terms have the following meanings:—

“associated company” means—

- (a) any company incorporated in the Commonwealth of Australia in which the Company holds not less than 20 per centum of the issued capital;
- (b) any company of which the Company is a subsidiary company;
- (c) any company which is a subsidiary company of the company referred to in paragraph (a) of this definition; and
- (d) any company which is a related company to the Company.

And of which the Company gives notice to the State;

“direct shipping ore” means iron ore which has an average pure iron content of not less than sixty per cent. (60%) and which will not pass through a one quarter inch mesh screen and for the purposes of clause 4(7)(c) of this Agreement includes fine ore which is not sold at a penalty;

“fine ore” means iron ore which has an average pure iron content of not less than sixty per cent. (60%) and which will pass through a one quarter inch mesh screen;

“mineral leases” means the mineral leases or any mineral lease granted to the Company under subclause (3) of clause 4 hereof;

“Minister” means the Minister of the Crown to whose administration the Mining Act 1904 is for the time being committed and includes the Minister for the Crown for the time being acting as Minister for Mines or discharging the duties of his office;

“month” means calendar month;

“person or persons” includes bodies corporate;

“private land” has the same meaning as in Part VII of the Mining Act 1904;

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

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

“the said State” means the State of Western Australia;

“related company” in relation to the Company means a company which is deemed to be related to the Company for the purposes of Section 6 (5) of the Companies Act 1961;

“subsidiary company” means any company incorporated within the Commonwealth of Australia which is a subsidiary company for the purposes of section 6 of the Companies Act 1961;

“ton” means a ton of 2240 pounds weight;

“year” means calendar year.

Any reference in this Agreement to an Act means that Act as amended from time to time and includes any Act passed in substitution for that Act and any regulations or by-laws made and for the time being in force under any such Act.

3. Except in the case of contracts *bona fide* entered into for the sale of iron ore or concentrates for the purpose of smelting or processing within the State of Western Australia or of iron ore or concentrates *bona fide* sold for that purpose or except where the State otherwise consents—

(a) every such contract and every subsequent contract or a variation of a previous contract with respect to iron ore or concentrates the subject of this Agreement shall provide for and require delivery at or transport of the ore or concentrates the subject of the contract or variation contract to a port outside the Commonwealth of Australia and any Territory of or under the administration of the Commonwealth; and

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Iron Ore (Tallering Peak) [No. 104.
Agreement.

- (b) the Company in respect of any such iron ore or concentrates smelted or similarly treated in any State of Australia (other than the State of Western Australia) or any Territory of or under the administration of the Commonwealth will in addition to royalty pay to the State on demand as and for liquidated damages a sum equal to the tonnage of ore or concentrates (as the case may be) involved multiplied by ten shillings (10/-).

Nothing in this clause contained shall prevent the Company from or impose any penalty on the Company for smelting or otherwise processing ore or concentrates within the State of Western Australia.

4. (1) The State shall forthwith after the execution hereof grant to the Company a right of occupancy for a period of one (1) year of the Crown land the subject of Temporary Reserve No. 2756H delineated subject to survey and bordered blue on the plan marked "A" initialled by or on behalf of the parties hereto for the purposes of identification for the purpose of prospecting for iron ore and iron pyrites subject to the terms and conditions in Appendix "A" hereto contained and otherwise subject to the provisions of the Mining Act 1904. If the ratifying Act comes into operation as an Act by the 1st day of April 1965 then notwithstanding anything contained in sections 276 and 277 of the Mining Act 1904 the term of the said Temporary Reserve No. 2756H and of the Company's rights of occupancy thereof shall be two years from the date of the creation of such reserve and the terms of the Temporary Reserves Nos. 1972H and 1973H and of the Company's rights of occupancy thereof shall be two years from the expiration in March 1965 of existing rights of occupancy.

(2) The Company shall pay in advance in each year calculated from the respective dates of the granting of the rights of occupancy hereinafter in this subclause mentioned to the Department of Mines on behalf of the State the sum of TWO HUNDRED POUNDS (£200) in respect of each of—

- (a) the rights held at the date hereof of occupancy of the Crown land the subject of Temporary Reserve No. 1972H;
- (b) the rights held at the date hereof of occupancy of the Crown land the subject of Temporary Reserve No. 1973H; and
- (c) the rights to be granted pursuant to subclause (1) of this clause of occupancy of the Crown land the subject of Temporary Reserve No. 2756H

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Agreement.

payment to be made within fourteen (14) days of the anniversary date of the granting of each of such rights of occupancy.

(3) At any time after the date the ratifying Act comes into operation as an Act the Company may apply under the provisions of the Mining Act 1904 for such mineral leases for iron ore and the ores and earths of that metal including iron pyrites situated within Temporary Reserves Numbers 1972H 1973H and 2756H or subject to compliance by the Company with the provisions of Part VII of the Mining Act 1904 situated on private land within the outer boundaries of any of the said reserves as it sees fit and the State shall ensure that the Minister approves such applications upon and subject to the provisions of the said Act and of this Agreement.

(4) The Minister on application by the Company from time to time will grant such machinery tailings or other leases or tenements under the Mining Act 1904 as the Company shall reasonably require and request for the purpose of carrying on its operations contemplated by this Agreement on the mineral leases.

(5) Until the determination of this Agreement and thereafter if this Agreement is determined by the Company pursuant to paragraph (b) of subclause (1) of clause 19 hereof the Company subject to the due compliance by it with its other obligations with respect to the carrying on of mining operations on the mineral leases in accordance with the provisions hereof shall not be required to comply with labour conditions imposed by or under the Mining Act 1904 in regard to mineral leases.

(6) The Company in its operations on the mineral leases shall be subject to the provisions of the Mines Regulation Act 1946 and the Company shall comply with and observe such provisions.

(7) Subject to the provisions of subclause (8) of this clause the Company shall pay to the Department of Mines on behalf of the State royalty as follows:—

- (a) six shillings (6/-) per dry weight ton on the first one million (1,000,000) dry weight tons of iron ore recovered from any mining tenements within the outer boundaries of the said Temporary Reserve 1972H and whether situated on private land or Crown land and sold (whether as ore or concentrates) smelted or similarly processed otherwise than by the Company within the State of Western Australia;
- (b) six shillings (6/-) per dry weight ton on the first one million two hundred thousand (1,200,000) dry weight tons of iron ore recovered from any mining tenements within

the outer boundaries of the said Temporary Reserves 1973H and 2756H or either of them and whether situated on private land or Crown land and sold (whether as ore or concentrates) or smelted or similarly processed otherwise than by the Company within the State of Western Australia;

and subject to the foregoing paragraphs

- (c) six shillings (6/-) per dry weight ton on all direct shipping ore recovered by open cut mining methods and sold;
- (d) six shillings (6/-) per dry weight ton on all direct shipping ore recovered by open cut mining methods and concentrated and sold;
- (e) one shilling and sixpence (1/6d.) per dry weight ton on all other iron ore recovered and sold other than concentrates derived by upgrading iron ore;
- (f) one shilling and sixpence (1/6d) per dry weight ton on all concentrates derived by upgrading iron ore (other than direct shipping ore) and sold;
- (g) at such rate as is from time to time prescribed by regulation under the Mining Act 1904 on all iron pyrites recovered and sold; and
- (h) one shilling and sixpence (1/6d) per dry weight ton on all other—
 - (i) iron ore recovered; and on
 - (ii) concentrates from iron ore recovered—
and in either case smelted or similarly processed by the Company within the State of Western Australia.

(8) With respect to the first five million one hundred thousand (5,100,000) tons (in total) of iron ore (including direct shipping ore) on which royalty at the rate of six shillings (6/-) per dry weight ton is payable under subclause (7) of this clause the State will accept royalty at the rate of four shillings and six pence (4/6d.) per dry weight ton. PROVIDED HOWEVER the royalty of four shillings and sixpence (4/6d.) per dry weight ton has been agreed between the parties on the assumption that the first five million one hundred thousand (5,100,000) tons of iron ore recovered by the Company hereunder and sold will be shipped at a freight rate of United States \$3.80 per ton and if the freight rate payable in respect of and shipment of that iron ore is more or less than United States \$3.80 per ton the royalty payable under this subclause in respect of the ore the subject of such shipment shall where the freight rate is more than United States \$3.80 per ton be reduced

and where the freight rate payable is less than United States \$3.80 be increased by one-half of the difference between United States \$3.80 and the freight rate payable.

Provided that in no case shall the royalty payable by the Company under this Clause exceed six shillings (6/-) per dry weight ton.

The freight rate of United States \$3.80 per ton referred to in this subclause is a freight rate of United States \$3.80 per wet weight ton and for the purpose of determining whether this subsection applies to any shipment the freight rate payable by the Company in respect of the shipment shall where the same is not a freight rate in United States Dollars per wet weight ton be converted to a freight rate so expressed.

(9) In the months of January April July and October of each year the Company shall furnish to the Minister a return of all iron ore and concentrates which have become chargeable with royalty under subclause (7) of this clause during the period of three months ending on the last day of the preceding December March June or September as the case may be and shall within one month of the expiration of each such calendar quarterly period pay to the Under Secretary for Mines on behalf of the State the amount of royalty due for such quarter.

(10) For the purpose of computing the tonnages in respect of which royalties are payable the weight thereof as recorded by the Railways Commission for the purposes of calculating freight charges with such corrections or adjustments thereof as shall be necessary to ensure reasonable exactitude shall after deduction of a proper allowance for the moisture content be taken as correct. The State may carry out such check sampling and testing as it desires and the Company will provide facilities for that purpose.

(11) The Company will concentrate ore not being direct shipping ore where to the extent and as soon as it is economically practicable so to do having regard *inter alia* to available markets and may if it thinks fit subject to prior ascertainment of and agreement with the State as to quantities concentrate direct shipping ore. For the purposes of this subclause the Company will furnish to the State on request therefor particulars of the available markets and any other factors or circumstances which the Company considers to be relevant to the question of such economic practicability.

(12) The Company at all relevant times will use its best endeavours to obtain the lowest possible freight rate for every shipment.

5. (1) Subject to the laws of the Commonwealth of Australia and to any necessary authority under those laws and also to the provisions of this Agreement the Company may

(unless otherwise mutually agreed) at its own risk and expense export ex Geraldton iron ore pyrites and/or concentrates from the mineral leases at the rate and within the limits mentioned in this clause.

(2) Except with the consent of the Minister the maximum export in any year will be one million (1,000,000) tons of which not more than eight hundred thousand (800,000) tons will be direct shipping ore and the minimum export in any year after the expiration of the year in which export commences will be five hundred thousand (500,000) tons of iron ore pyrites and/or concentrates.

(3) The State does not warrant that facilities do or will exist to enable one million (1,000,000) tons or any other tonnage of ore to be shipped through Geraldton in any year. The State will continue to investigate the problems and practicability of and costs involved in improving the harbour and its facilities so as to accommodate ore carriers requiring up to thirty-two (32) feet draught and will confer with the Company thereon.

6. (1) The Company covenants and agrees with the State that it will along a practicable route which subject to and after approval thereof by the Railways Commission shall be surveyed by the Company commence to construct in accordance with such reasonable specifications as may be laid down by the Railways Commission within three months of receipt by the Company from the said Commission of such specifications and will thereafter with due diligence complete and to the extent required by the Railways Commission fence on land to be leased to the Company by the State for the purpose—

- (a) a single line railway with its appurtenances from a point to be determined by the Company within Temporary Reserve No. 1972H to the railhead at Mullewa or to such other point within two (2) miles of the said railhead on the existing railway as the Railways Commission determines; or
- (b) a single line railway with its appurtenances from a point to be determined by the Company within Temporary Reserve No. 1973H to Morawa or such other point within three (3) miles of Morawa as the Railways Commission determines.

If the Company complies with the foregoing provisions of this subclause by constructing the railway referred to in paragraph (b) of this subclause it will in any event at the expiration of the year during which it offers for haulage by such lastmentioned railway less than five hundred thousand (500,000) tons of iron ore pyrites and concentrates commence the construction of the railway referred to in

paragraph (a) of this subclause and will thereafter with due diligence complete the railway as aforesaid with appurtenances and will commence *bona fide* mining operations on the land comprised within Temporary Reserve Number 1972H PROVIDED THAT if the Company complies with the foregoing provisions of this clause by constructing the railway referred to in paragraph (b) of this subclause it shall not be obliged to construct the railway referred to in paragraph (a) of this subclause if it demonstrates to the reasonable satisfaction of the Minister that transport of iron ore from mining tenements within the outer boundaries of Temporary Reserve No. 1972H to the railhead at Mullewa would be more economical by road than rail. If the Company so demonstrates it shall upgrade the existing road from Tallering Peak to Mullewa and in so doing will collaborate with the Shire Council or Shire Councils through whose district or districts as the case may be the road shall pass and shall use such materials and adopt such manner and methods of upgrading as may be reasonably necessary to prevent damage to the lands adjacent to such road. If any dispute arises between the Company and any Shire Council or Shire Councils through whose district or districts the road will pass as to the upgrading of the road the same shall be referred to and settled by arbitration under the provisions of the Arbitration Act 1895.

(2) Upon completion of the construction of either of the railways referred to in paragraph (a) or (b) of subclause (1) of this clause the Company will provide and deliver to the Railways Commission two (2) diesel locomotives of a design and specifications to be approved by the Railways Commission and bogey rolling stock of a design and specifications to be so approved having an iron ore carrying capacity over the relevant route—

- (a) if the Company constructs first the railway referred to in the said paragraph (a)—of not less than one thousand two hundred and forty (1,240) tons together with at least six (6) additional appropriate wagon bogeys complete with axles and wheels; or
- (b) if the Company constructs first the railway referred to in the said paragraph (b)—of not less than one thousand seven hundred and sixty (1,760) tons together with at least eight (8) additional appropriate wagon bogeys complete with axles and wheels.

(3) If the Company shall give to the State a notice pursuant to paragraph (b) of subclause (9) of this clause the Company shall prior to the date specified in the notice as the date by which the State is to provide the trains to transport the additional tonnage hereinafter in this subclause mentioned provide such additional locomotives and

rolling stock as may be mutually agreed or determined in default of agreement by arbitration as may be necessary to transport such additional tonnage of iron ore per week above eleven thousand five hundred (11,500) tons as the Company in its notice signifies it proposes to transport.

(4) The Company in relation to each of the railways (including signalling equipment and other appurtenances) and fencing referred to in paragraphs (a) and (b) of subclause (1) of this clause will maintain the same when constructed to the satisfaction of the Railways Commission during the term of the lease referred to in subclause (5) of this clause relating to the relevant railway and also during the period while the State's obligations under subclause (10) of this clause continue.

(5) Before commencing construction of either of the railways referred to in paragraphs (a) and (b) of subclause (1) of this clause the Company shall give notice in writing to the State of its intention to commence and thereafter may at any time give a further notice in writing to the State that it desires to commence construction of the other of such railways in accordance with the provisions of the said subclause (1). Upon the receipt of either such notice the State if the making of the railway the subject of the notice has then already been authorised by an Act and otherwise so soon as authorisation therefore has been given shall so soon as conveniently may be—

- (a) at the expense of the State and the Company equally acquire such land and exercise such other statutory powers as may be necessary to enable the construction of the railway the subject of the notice; and
- (b) grant to the Company a lease of the land so acquired and all other land that may be necessary to enable the construction of the railway the subject of the notice for a term of twelve (12) years at an annual rental of one peppercorn subject however to the provisions of this Agreement and in any event if after five (5) years from the grant of the lease either party shall—within a period of six (6) months after the expiration of any year in which the Company shall offer for transport by rail to Geraldton under this Agreement less than five hundred thousand (500,000) tons of iron ore pyrites and/or concentrates—give to the other notice that the lease is then to determine the lease shall at the expiration of six (6) months from the giving of the notice determine accordingly. Such lease shall contain a covenant by the Company to construct the railway the subject of the relevant notice and

such other covenants and provisoes as the Solicitor General for the said State reasonably considers necessary for the protection of the State as lessor.

(6) The State shall as soon as conveniently may be introduce a Bill in the said Parliament seeking the approval of the said Parliament to the making of either of the said railways to the making of which such approval has not already been given. If and when such Bill is passed as an Act both the said railways shall for all purposes be deemed railways to which Part VI of the Public Works Act, 1902 applies.

(7) Any expense incurred or payable by any Minister of the said State under sections 100, 101, 102, 103, 104, 108, 110, 112 or 113 of the Public Works Act, 1902 in relation to the said railways or either of them by reason of their or its being deemed railways or a railway as provided in subclause (6) of this clause shall be borne and paid by the State and the Company equally.

(8) The said railways and their appurtenances shall not be subject to tenant's rights in the Company and at the expiration or sooner determination of either of the said leases the Company's interest in the railway and appurtenances thereof (whether or not fixtures) shall absolutely cease and shall vest or revert in the State and when both the said leases have expired or sooner determined the said diesel locomotives and the said rolling stock shall become the absolute property (freed from all encumbrances) of the State which shall not be obliged to pay any compensation to the Company in respect of the said railways appurtenances locomotives or rolling stock or in respect of improvements effected on the land the subject of the leases.

(9) The State shall at its own expense—

(a) as from a date to be specified in a notice in writing from the Company being a date upon which the Company proposes to commence offering iron ore pyrites and/or concentrates for transport over either of the said railways and while either of the leases referred to in paragraph (b) of subclause (5) of this clause subsists provide sufficient crews to operate and shall operate sufficient trains to transport up to eleven thousand five hundred (11,500) tons of ore each week from any one or more of the mineral leases specified in the notice to Geraldton with the locomotives and rolling stock provided by the Company under subclause (2) of this clause;

(b) if the Company shall desire to transport from the said mineral leases to Geraldton more than eleven thousand five hundred (11,500) tons of

iron ore each week and of such its desire shall give notice in writing to the State specifying the number of tons of iron ore it desires to transport as aforesaid and the period during which it anticipates it will desire so to do use reasonable endeavours to provide as from a date to be specified in the notice being a date not earlier than three (3) months from the date thereof sufficient crews to operate and to operate sufficient trains to transport as aforesaid the number of tons of iron ore referred to in such notice if and to the extent that it is reasonably economic and practicable for the State so to do;

- (c) while operating trains pursuant to either of the previous paragraphs of this subclause or pursuant to subclause (10) of this clause service and maintain locomotives and rolling stock provided by the Company as in this clause herein mentioned until because of fair wear and tear any locomotive or rolling stock requires replacement whereupon the Company shall at its own cost replace the same.

AND the Company shall be liable to the State in damages if and to the extent that having given a notice under paragraph (b) of this subclause it fails to offer for transport the weekly tonnage of iron ore specified in the notice during the period therein mentioned.

(10) Notwithstanding the expiry of both the leases referred to in paragraph (b) of subclause (5) of this clause the obligations of the State referred to in subclause (9) of this clause shall continue until the Company ceases to offer for transport approximately five hundred thousand (500,000) tons in the aggregate of iron ore pyrites and concentrates or some one or more of them by rail to Geraldton in any year but notwithstanding anything contained in subclause (9) of this clause the State shall not be obliged to operate any train for which a full load is not offered.

(11) The loading and unloading of ore wagons other than shunting on the mineral leases and at Geraldton shall be the responsibility at all times of the Company which shall load and trim all wagons in a manner acceptable to and to the satisfaction of the Railways Commission for proper distribution of load and safe travel. Loading shall not exceed the tonnage capacity shown on the wagon and all wagons shall be loaded to capacity.

(12) At any time after the Company has commenced construction of either railway referred to in paragraph (a) or (b) of subclause (1) of this clause the Company may by

notice in writing to the State require the State to recondition the existing railway from Mullewa to Geraldton if the railway specified by the notice is the railway referred to in paragraph (a) of subclause (1) of this clause or the existing railway from Morawa to Geraldton if the railway specified in the notice is the railway referred to in paragraph (b) of the said subclause (1) and in either case where the Company gives such a notice the State will commence to recondition the existing railway from Mullewa to Geraldton or the existing railway from Morawa to Geraldton as the case may be so as to enable it to carry not less than eleven thousand five hundred (11,500) tons of iron ore each week by the locomotives and rolling stock in this clause hereinbefore referred to and will complete such reconditioning with due diligence and will thereafter maintain the railway reconditioned in that order and condition while the relevant lease referred to in paragraph (b) of subclause (5) of this clause subsists and thereafter while the State's obligations under subclause (10) of this clause continue.

(13) (a) Save in accordance with the proviso to subclause (1) of this clause and save as provided in subclause (20) of this clause the Company shall use only the rail facilities referred to in this clause and no other facilities for the transport of iron ore pyrites and concentrates from the mineral leases or any of them to Geraldton and shall pay to the State freight charges as follows—

	Ex Tallering Peak	Ex Koolanooka
(i) For all tonnages between 500,000 and 750,000 tons in a year and up to 500,000 tons where the Company fails to offer for haulage 500,000 tons in a year by reason of a delay referred to in Clause 23 hereof 11/9 per ton	16/- per ton
For all tonnages in excess of 750,000 tons in a year 10/9 per ton	15/- per ton

PROVIDED THAT if the Company pursuant to the proviso to subclause (1) of this clause transports iron ore by road from mining tenements within the outer boundaries of Temporary Reserve 1972H to Mullewa for onward transport by rail to Geraldton the freight rate provided by this subparagraph shall be reduced by such amount as may in all the circumstances be reasonable.

- (ii) Subject to Clause 20 hereof if in any one year the Company fails (other than in consequence of a delay referred to in Clause 23 hereof) to offer for haulage to Geraldton five hundred thousand (500,000) tons of iron ore pyrites and/or concentrates under this Agreement the freight payable for that year shall be calculated in such manner as may be agreed between the Company and the Railways Commission:

PROVIDED THAT notwithstanding the provisions of clause 23 hereof or the happening of any event referred to therein if the State shall carry out reconditioning work pursuant to subclause (12) of this clause between Morawa and Geraldton and shall not itself be in default under this Agreement the Company shall pay to the State a minimum amount of one hundred thousand pounds (£100,000) per annum for a period of three (3) years next following the commencement of such reconditioning.

(b) The Company shall as far as practicable offer for haulage not less than ten thousand (10,000) tons per week of iron ore concentrates and pyrites and shall give seven (7) days' notice if this quantity will not be available.

(14) The freight rates set out in subclause (13) of this clause are based on the costs prevailing at the first day of July, 1962, and shall (unless otherwise mutually agreed) be adjusted to the nearest penny from time to time as hereinafter provided to recognise the amount of any increase or decrease in the cost to the Railways Commission of maintaining the railways and operating the services provided by the State under this clause.

On the tenth day of August, 1967, and thereafter as soon as practicable after the first day of January in each year each freight rate set out in the schedule to subclause (13) of this clause shall be adjusted for the period to the 31st day of December of that year in accordance with the following formula:—

$$F_1 = F \left(.60 \frac{(x_1)}{(x)} + .30 \frac{(y_1)}{(y)} + .10 \frac{(z_1)}{(z)} \right)$$

where F_1 represents the new freight rate to be applied; F represent the freight rate set out in or agreed pursuant to subclause (10) of this clause; X_1 represents the Male Basic Wage applicable at Geraldton as last declared by The Western Australian Industrial Commission established under the Industrial Arbitration Act 1912 prior to the date from which the new freight rates become effective; X represents the said basic wage as at the 1st day of July 1962 (£14 17s. 3d.); Y_1 represents the price of steel rails per ton f.o.w.

Fremantle as ascertained from the price schedule of the Broken Hill Proprietary Company Limited current at the date from which the new freight rates become effective; Y represents the price of steel rails ascertained as aforesaid as at the 1st day of July 1962 (£44 10s. per ton); Z₁ represents the price per gallon to the public of diesel distillate delivered at Geraldton as supplied by the Shell Company of Australia Pty. Ltd. at the date from which the new freight rates become effective; Z represents the price per gallon to the public of diesel distillate delivered at Geraldton as supplied by the Shell Company of Australia Pty. Ltd. at the 1st day of July 1962 (2s. 2½d. per gallon). If at any time the method of adjustment set out in this subclause becomes inappropriate the adjustment shall be made by mutual agreement and in default thereof by arbitration so as best to give effect to the intention of the parties as indicated in this subclause.

(15) (a) Where the Company requires backloading (i.e. transport by a train hauling empty ore wagons) from Geraldton to any of the mineral leases or Mullewa of goods reasonably required by it for carrying on its operations on the mineral leases or any of them and if the Company provides and maintains in good order rolling stock approved by the Railways Commission for the purpose then the Company so long as the State is obliged to provide railway transport under subclause (9) or subclause (10) of this clause will not be charged as freight for such backloading freight charges higher than those set out in subclause (13) as varied from time to time under subclause (14) in respect of the transport of ore. The gross tonnage of any of the above goods transported in any train will be as determined by the Railways Commission.

(b) With respect to any such backloading the Company will be responsible for—

- (i) the loading of same at Geraldton; and
- (ii) the discharging of same at the mineral leases or Mullewa as the case may be;

and shall so discharge at the mineral leases the goods transported in such manner as to avoid undue delay to the ore trains or other traffic on the said railways.

(16) The number of tons transported for the purpose of calculating the amount of freight charges payable by the Company to the Railways Commission shall be calculated on wagon load capacities in the first instance and adjusted to accord with shipping weights at quarterly intervals except in the case of concentrated ore as to which railway weighbridge weights shall be used. The railway weighbridge if used for the purposes of calculating freight charges shall be tested and adjusted at the expense of the State whenever either party requests this to be done.

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lease grant or assign to the Company (with such reservations and qualifications and subject to such licences easements and other rights and obligations as shall be reasonable in the circumstances) such land or such estate interest or right in or with respect to land as the Company may reasonably require for the purposes of such road and or rail as the case may be its construction and maintenance and the Company's operations thereover under this Agreement.

7. The State will lease to the Company—

- (a) as a stockpiling area the area delineated and coloured green on Public Works Department Plan No. PWDWA41208 initialled by or on behalf of the parties hereto for the purposes of identification for the same term as the lease referred to in paragraph (b) of subclause (5) of clause 6 hereof;
- (b) the land delineated and coloured red on the said plan PWDWA41208 for a period expiring on the 31st day of March 1966; and
- (c) the land delineated and coloured blue on the said plan PWDWA41208 for a period expiring on the 31st day of March 1966.

Such lease shall contain a covenant by the Company to construct the conveyor system referred to in subclause (1) of clause 8 to pay for any extension of No. 4 Wharf beyond a length of 594 feet not exceeding an additional fifty (50) feet if agreed to by the State and any additional area at the berth or for swinging basin extension as mentioned in subclause (1) of clause 9 hereof and such other covenants and provisoes as the Solicitor General for the State reasonably considers necessary for the protection of the State as lessor including rights of access at all times for construction purposes. From and after the expiration of the lease of the lands referred to in paragraph (b) and paragraph (c) of this clause the State will grant a licence to the Company to use in common with others the said lands determinable on the expiration or sooner determination of the lease referred to in paragraph (b) of subclause (5) of clause 6 hereof.

8. (1) In consideration of the grant by the State of the leases referred to in clause 7 hereof the Company will construct and during the period of those leases maintain a fixed conveyor system approved by the State capable of transferring five hundred (500) tons of iron ore per hour from the stockpile area to ships holds. Such approval shall not be unreasonably withheld.

(2) The said conveyor system shall not be subject to tenant's rights in the Company and at the expiration or sooner determination of the lease referred to in paragraph

(a) of clause 7 hereof the Company's interest in the said conveyor system shall absolutely cease and determine and the State shall not be obliged to pay any compensation in respect of the said conveyor system which shall become the absolute property of the State and which the Company shall ensure is free of all encumbrances.

(3) If after the expiration or sooner determination of the lease referred to in paragraph (a) of clause 7 hereof the Company shall require to ship iron ore pyrites or concentrates derived from the mineral leases from the Port of Geraldton the State will make available to the Company facilities to be maintained by the State capable of loading up to five hundred (500) tons per hour for a period of ten (10) years from the said expiration or determination or for the period therefrom during which the Company continues to so ship approximately five hundred thousand (500,000) tons in the aggregate of iron ore pyrites and concentrates or some one or more of them every year whichever is the shorter period.

(4) During the shorter period referred to in subclause (3) of this clause the Company will pay to the State on the fifteenth day of each month for the use of the facilities referred to in that subclause the sum of three pence (3d.) for every ton of iron or pyrites or concentrates derived from the mineral leases loaded by means of the facilities and shipped during the preceding month.

(5) The Company will at all times provide and pay for the labour and power necessary to operate the said facilities.

9. (1) As soon as conveniently may be after the ratifying Act comes into operation the State will commence or continue to construct and will use its best endeavours to complete by the 31st day of December 1965 the construction of a new wharf to be known as No. 4 Wharf in the Port of Geraldton having a length of five hundred and ninety-four (594) feet but at the request in writing of the Company at any time during or after such construction and at the Company's cost in all things will extend such wharf for any additional length so requested not exceeding an additional fifty (50) feet as the State considers it can reasonably agree to having regard to overall port development and operation. The agreement of the State to any extension of such wharf as aforesaid shall be given in writing. After the expiration of the lease referred to in paragraph (b) of clause 7 hereof the State will make available to the Company the same or another wharf of equal capacity for such ships as shall be necessary to carry all iron ore pyrites or concentrates derived from the mineral leases which the Company desires to load at the said port. The State will maintain such wharf and will carry out any dredging operations necessary

to provide a safe loaded draught of not less than twenty-eight feet six inches (28ft. 6 in.) both at the berth of 594 feet and for a swinging basin therefor and at the request and cost of the Company will dredge any additional area at the berth or for swinging basin extension as may be appropriate consequent upon a request by the company for wharf extension under this subclause. The acknowledgment of the State of any such request shall be given in writing. In the event of the company requiring the State to extend the wharf beyond the said length of 594 feet the Company will also bear and pay or at the option of the State reimburse the State on demand for all costs and expenses incurred by the State of and incidental to or consequential upon the request including the expense of additional rails and roadway involved in the operation or use or intended operation or use of the extended wharf. Nothing in this clause shall operate to require the State to carry out any dredging to provide a safe-loaded draught of more than twenty eight feet six inches (28' 6") at any place within the said port.

(2) The obligations of the State under the preceding subclause will continue so long as the Company is shipping through the said port approximately 500,000 tons in the aggregate of iron ore pyrites and concentrates or some one or more of them every year.

(3) The Company will take all reasonable steps from time to time to prevent or minimise dust and noise nuisance arising from its operations within the said port under this Agreement and will keep the State informed from time to time of its proposals and experiences in that regard.

(4) The Company will from time to time keep the State informed as to the Company's proposals in regard to installations and operations within the said port and will comply with the reasonable requests of the State for alterations in regard to such proposals having regard to overall port development and operation from time to time.

(5) Generally in regard to matters not specifically mentioned in this clause the State will at its own cost provide on or in connection with the said No. 4 Wharf all improvements and equipment necessary for or ancillary to the working of an ordinary general cargo berth of 594 feet but the Company will bear and pay or at the option of the State will reimburse the State on demand for every additional improvement or equipment constructed or provided to meet the Company's particular needs or requests including rail and road construction upgrading improvement and additions.

10. The Company will pay to the State on the 15th day of each month a wharf charge of two shillings and ninepence (2s. 9d.) or such other charge as the parties may

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from time to time agree for every ton of iron ore pyrites or concentrates shipped from the Port of Geraldton during the preceding month so long as the Company continues to ship every year approximately five hundred thousand (500,000) tons in the aggregate of iron ore pyrites and concentrates or some one or more of them derived from the mineral leases.

11. Notwithstanding anything contained in paragraph (b) of subclause (5) and subclause (10) of clause 6 subclause (3) of clause 8 subclause (2) of clause 9 clause 10 and subclause (2) of clause 12 hereof the obligations of the State and the rights of the Company expressed to continue if or so long as the Company continues to transport or ship in every year approximately five hundred thousand (500,000) tons of iron ore pyrites and concentrates shall determine if the Company fails to transport or ship in any period of three consecutive months approximately one hundred and twenty five thousand (125,000) tons in the aggregate of iron ore pyrites and concentrates unless the parties otherwise agree or unless the Company during or within fourteen (14) days of the expiration of the period of three consecutive months produces evidence to the State to prove it has reasonable prospects of transporting or shipping by the expiration of one year from the commencement of the period of three consecutive months five hundred thousand (500,000) tons in the aggregate of iron ore pyrites or concentrates.

12. (1) The Company agrees with the State that the Company will at its own risk and expense and subject to and in accordance with the requirements from time to time of the appropriate authorities of the Government and Local Authorities in the said State dig all wells and bores and provide and construct all works pipes plant equipment and things as may be necessary to fulfil the Company's water requirements on the mineral leases for the purposes contemplated by this Agreement. Water.

(2) The State will so long as the Company continues to ship through the Port of Geraldton every year approximately five hundred thousand (500,000) tons in the aggregate of iron ore pyrites and concentrates or some one or more of them co-operate with the Company to facilitate the supply of water from natural sources for the purposes of the Company's operations contemplated by this Agreement and will at the expense of the State in all things exercise the powers to be granted by the ratifying Act referred to in paragraph (b) of subclause (2) of clause 1 of this Agreement of compulsory acquisition to acquire such rights interests and easements including easements relating to the running and maintenance of pipes and the pumping of water along routes to be mutually agreed and in default of agreement to be determined by arbitration as the Company may reasonably require.

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Assignment. 13. (1) Without affecting the liability of the Company under this Agreement the Company with the consent in writing of the State shall have the right to assign or dispose of all or part of its rights and obligations under this Agreement or any interest therein or acquired thereunder and such consent shall not be arbitrarily or unreasonably withheld subject to the assignee or assignees executing in favour of the State a deed of covenant to comply with and observe the assigned obligations.

(2) When under the provisions of subclause (1) of this clause any interest of the Company is disposed of or assigned to a company being at the date of disposal or assignment an associated or subsidiary company of the assignor the State will not levy or exact any State Stamp Duties in respect of that disposal or assignment if effected for the purpose of construction reconstruction or reorganisation.

No acquisition of works. 14. Having regard to the particular nature of the industry proposed to be established by the Company under this Agreement and subject to the performance by the Company of its obligations hereunder the State will not resume or suffer or permit to be resumed by any State instrumentality or by any local or other authority of the said State any portion of the Company's works on the mineral leases the resumption of which would impede its mining activities without the consent in writing of the Company first had and obtained which consent shall not be arbitrarily or unreasonably withheld.

Preservation of rights. 15. Subject to the due performance by the Company of its obligations under this Agreement the State shall ensure that during the currency of this Agreement the rights of the Company hereunder shall not in any way through any act of the State by way of discrimination in purport of effect against the Company be impaired disturbed or prejudicially affected PROVIDED THAT nothing in this clause shall apply to any law or requirement relating to safety.

Taxes and charges. 16. The State shall not impose nor permit nor authorise any of its agencies or instrumentalities or any local or other authority to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Company or any subsidiary or associated company in the conduct of business incidental to the Company's business hereunder nor will the State take or permit to be taken any other discriminatory action which would deprive the Company or any subsidiary or associated company of full enjoyment of the rights granted and intended to be granted under this Agreement.

17. The State agrees that if so requested by the Company and so far as its powers and administrative arrangements permit it will endeavour to assist the Company to obtain adequate and suitable labour for its operations under this Agreement including assistance towards obtaining suitable immigrants. Labour.

18. The State shall ensure that fees taxes or other charges or levies imposed by the State on the cartage of goods by road or by rail shall not discriminate against the Company. Non-discrimination
against
Company.

19. (1) Subject to clause 23 hereof relating to delays if at any time during the continuance of this Agreement— Termination
of this
Agreement.

(a) the Company fails—

(i) to comply with observe or carry out the provisions of this Agreement on its part to be complied with observed or carried out; or

(ii) abandons or repudiates this Agreement;

the State may by notice in writing to the Company terminate this Agreement specifying in the notice where the State purports to terminate pursuant to sub-paragraph (i) of this paragraph the failure;

(b) the State fails—

(i) to comply with observe or carry out the provisions of this Agreement on its part to be complied with observed or carried out; or

(ii) abandons or repudiates this Agreement;

the Company may by notice in writing to the State terminate this Agreement specifying in the notice where the Company purports to terminate pursuant to sub-paragraph (i) of this paragraph the failure.

(2) The notice of termination shall be deemed to have been received on the day following its postage and shall take effect—

(a) where the notice specifies a failure by the Company to comply with observe or carry out any of the provisions of subclauses (6) (7) and (8) of clause 4 subclauses (1) (2) (9) and (17) of clause 6 subclauses (4) and (5) of clause 8 clause 10 or paragraph (a) subparagraph (ii) of clause 25 at the expiration of one month from that day;

(b) where the notice is given in consequence of abandonment or repudiation by either party on that day; or

(c) in any other case at the expiration of six (6) months from that day.

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(3) Unless this Agreement is terminated by the Company pursuant to subclause (1) of this clause or determines pursuant to subclause (5) hereof (in which event the rights of the Company in and over and with respect to the mineral leases and any other mining tenement or interest granted pursuant to the provisions of this Agreement under the Mining Act 1904 and the right to apply for a renewal thereof shall in no way be affected) the rights interests and obligations of the parties shall cease and determine and all rights and interests of the Company in any temporary reserve the mineral leases or lease granted pursuant to the provisions of this Agreement shall cease and determine on the notice of termination taking effect.

(4) The termination of this Agreement by either party shall in no way affect:—

- (a) the right of either party to sue for or receive any monies payment whereof shall have accrued due and become payable under the provisions of this Agreement prior to termination thereof or to sue in respect of any breach or non-observance of any provision hereof committed or occurring prior to termination of this Agreement; or
- (b) the right of either party to indemnity pursuant to clause 27 hereof in respect of acts matters or things occurring prior to termination of this Agreement.

(5) Unless earlier determined pursuant to any other provision of this Agreement this Agreement shall cease and determine without prejudice to the rights of either party to sue in respect of any breach or non-observance of any provision hereof committed or occurring prior to the date of determination if the Company ceases after the expiration or prior determination of the leases referred to in clause 7 hereof to produce from the mineral leases approximately five hundred thousand (500,000) tons in the aggregate of iron ore pyrites and concentrates in any period of twelve (12) consecutive months.

First and
last years
of operation.

20. In relation to any of the Company's operations hereunder which are required to be done annually reasonable adjustments shall be made in the year of commencement and in the final year thereof based upon the proportion which the period thereof in the relevant year bears to a year.

Delegation
to third
parties.

21. Without affecting the liability of the parties under the provisions of this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portion of the operations which it is authorised or obliged to carry out under this Agreement.

22. Any obligation or right under the provisions of or any plan referred to in this Agreement may from time to time be cancelled added to varied or substituted by Agreement in writing between the parties so long as such cancellation addition variation or substitution shall not constitute a material or substantial alteration of the obligations or rights of either party under this Agreement. Variation.

PROVIDED that before this Agreement is terminated the Minister may at the request or with the concurrence of the Company extend the time or period by or within which anything hereunder is to be done or commenced.

23. (1) This Agreement shall be deemed to be made subject to any delays in the performance of obligations under this Agreement 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 caused by or arising from act of God act of war *force majeure* act of public enemies floods and washaways strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials failure on reasonable grounds to secure contractors delays of contractors riots and civil commotion and delays due to factors which could not reasonably have been foreseen and delays due to overall economic conditions in Australia or any other country nominated by notice to the Minister before the notice date from which the finance or a substantial proportion of the finance required to enable the Company to discharge its obligations under this Agreement is to be provided or to which a substantial portion of the Company's or subsidiary or associated companies' products derived from the mineral leases is intended by the Company its subsidiary or associated company as the case may be to be sold inability to sell or otherwise dispose of such products or to prices for such products falling below profitable levels. Delays.

(2) This clause shall apply only to delays of which and of the cause of which notice in writing is given by the party subject to the delay to the other party hereto within one (1) month of the commencement of the delay.

24. The State shall take all steps reasonably requested by the Company to assist the Company in obtaining from the Commonwealth of Australia any licences or permits required to enable the Company to export all iron products recovered from the mineral leases. Export
licences.

25. (a) The Company shall during the continuance of this Agreement indemnify and keep indemnified the State against all demands claims actions or suits except those arising by or out of the negligent acts or omissions of the State Indemnity

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its servants agents or contractors (other than the Company) or any nuisance committed by the State its servants agents or contractors (other than the Company) arising by or out of—

- (i) the occupancy use or operation by the Company of the railways to be constructed by the Company under clause 6 hereof;
- (ii) the construction of the said railways or either of them;
- (iii) the occupancy use or operation by the Company of the land the subject of the leases referred to in clause 7 hereof.

(b) The State during the continuance of this Agreement shall indemnify the Company against all demands claims actions or suits arising by or out of the negligent acts or omissions of the State or of its servants agents or contractors or by or out of any nuisance committed by it or them if in the case of servants agents or contractors their acts omissions or the nuisances committed by them arise out of or in connection with the performance of their respective contracts of or for services with the State.

**State law
to apply.**

26. This Agreement shall be interpreted according to the laws for the time being in force in the said State.

Arbitration.

27. Any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed variation thereof or as to the construction of this Agreement or any such variation or as to the rights duties or liabilities of either party thereunder, or as to any matter to be agreed upon between the parties in terms of 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

28. 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 direction of the Minister and forwarded by prepaid post to the Company at its registered office in the said State and by the Company if signed on behalf of the Company by the managing director or a general manager secretary or attorney of the Company and forwarded by prepaid post to "The Minister for Mines the Department of Mines Perth" 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.

APPENDIX "A"

- (1) That the occupant shall within 60 days of approval of the right of occupancy appearing in the *Government Gazette*, mark at a corner of the boundary of the Temporary Reserve a landmark consisting of a post or cairn to serve as a commencing or datum point and shall advise the Minister for Mines in writing the position of such point.
- (2) That the occupant shall not use the land comprised in this Reserve for any other purpose than that of prospecting for Iron Ore.
- (3) That the rights of occupancy will not give any rights to the occupant to prospect for any mineral other than Iron Ore and in the event of the discovery by the occupant of payable mineral other than Iron Ore the Minister for Mines, may by notice, require the occupant to apply for mining tenements for such mineral.
- (4) That the existing rights of any prospecting area, claim, lease or authorised holding, shall be preserved to the holder thereof and shall not be encroached on or interfered with by the occupant of this Reserve.
- (5) That the rights granted under this authority shall be no bar to any person desiring to acquire mining tenements for any mineral other than Iron Ore in the said Reserve or to any person desiring to acquire a holding under the Land Act, 1933, provided the land applied for does not include any of the occupants' workings which may in the discretion of the Minister for Mines be secured to the occupant of this Reserve.
- (6) Any land alienated or in the course of alienation, and any land reserved (not being Crown Land within the meaning of the Mining Act, 1904), and any land registered or to be acquired and held under the Mining Act, 1904 is excluded from this Reserve.
- (7) No transfer of this authority to occupy will be permitted without the approval of the Minister for Mines first obtained.
- (8) That the occupant of this Reserve shall and except to the extent that the Agreement otherwise provides shall furnish the Minister for Mines with a QUARTERLY SUMMARY REPORT applicable to operations being carried on within the said Reserve.
- (9) That at the end of each calendar year or upon surrender, expiry, cancellation or abandonment, the occupant shall furnish the Minister for Mines with a complete report of all operations carried out on this

