



Western Australia

Onslow Solar Salt Agreement Act 1992

As at 12 Mar 2004

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Reprinted under the
Reprints Act 1984 as
at 12 March 2004

Western Australia

Onslow Solar Salt Agreement Act 1992

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Onslow Solar Salt Agreement Act 1992

An Act to ratify an agreement between the State and Onslow Salt Pty. Ltd. to establish and operate a solar salt field at Onslow and for incidental and other purposes.

1. Short title

This Act may be cited as the *Onslow Solar Salt Agreement Act 1992*¹.

2. Commencement

This Act shall come into operation on the day on which it receives the Royal Assent¹.

3. Interpretation

In this Act, unless the contrary intention appears —

Agreement means the agreement a copy of which is set out in the Schedule and includes that agreement as varied from time to time in accordance with its provisions.

4. Agreement ratified

- (1) The Agreement is ratified.
- (2) The implementation of the Agreement is authorised.

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- (3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Agreement shall operate and take effect notwithstanding any other Act or law.

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THIS AGREEMENT is made this 2nd day of November 1992

BETWEEN

THE HONOURABLE CARMEN MARY LAWRENCE, B.Psych., Ph.D., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the State and its instrumentalities from time to time (hereinafter called "the State") of the one part and

ONSLow SALT PTY LTD A.C.N. 050 159 558 a company incorporated in the State of Western Australia and having its registered office at Suite 6, 18 Harvest Terrace, West Perth (hereinafter called "the Company" which term shall include its successors and permitted assigns) of the other part

WHEREAS

- (a) the Company is the holder of exploration licences Nos. 08/372 and 08/335 and desires to establish and operate a salt project at Onslow;
- (b) the Company is the holder of exploration licence No. 08/373 which it desires to use for the future expansion of the salt project at Onslow;
- (c) the Company intends to provide such facilities and services as may be necessary for its activities under this Agreement;
- (d) the Company has put forward a project outline for a salt operation which will initially produce approximately 1,000,000 tonnes of salt per annum and have the capacity to produce up to 2,500,000 tonnes of salt per annum for transportation from the mining leases as markets develop; and
- (e) the State for the purpose of promoting resource development within Western Australia has agreed to assist the Company upon and subject to the terms of this Agreement.

NOW THIS AGREEMENT WITNESSES:

Definitions

1. In this Agreement subject to the context —

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“advise”, “apply”, “approve”, “approval”, “consent”, “certify”, “direct”, “notify”, “request”, or “require”, means advise, apply, approve, approval, consent, certify, direct, notify, request, or require in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;

“approved proposal” means a proposal approved or determined under this Agreement;

“base rate” means with respect to rental the rates specified in subclause (3) of Clause 10 and subclause (2) of Clause 13, and with respect to royalty the rate specified in subclause (1) of Clause 11;

“Clause” means a clause of this Agreement;

“commencement date” means the date the Bill referred to in Clause 3 comes into operation as an Act;

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

“Company’s workforce” means the persons connected directly with the Company’s activities under this Agreement, whether or not such persons are employed by the Company (and the dependants of those persons);

“EP Act” means the *Environmental Protection Act 1986*;

“evaporites” means minerals chemicals elements salts and substances which are or have been deposited from aqueous solutions as a result of extensive or total evaporation of the solvent or changes in temperature of the solvent and includes all products derived from the evaporation of sea water sea water concentrates or brine including but not limited to the chlorides sulphates carbonates bromides and iodides of any of sodium potassium magnesium lithium or boron and any double or complex salts that can be obtained therefrom and any substances that develop through metamorphism of other evaporites and any elements gases or organic substances contained in evaporite salts;

“Land Act” means the *Land Act 1933*;

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

“mining leases” means the mining leases granted pursuant to Clause 10 and includes any renewal thereof and according to the requirements of the

context shall describe the area of land demised as well as the instrument by which it is demised;

“Minister” means the Minister of the Government of the State for the time being responsible for the administration of the Act to ratify this Agreement and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of the Minister;

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

“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“private road” means a road (not being a public road) constructed by the Company in accordance with an approved proposal or agreed by the parties hereto to be a private road for the purposes of this Agreement;

“project site” means any land leased or the subject of a licence held by the Company pursuant to this Agreement including land coloured blue or red on the plan marked “A” initialled by or on behalf of the parties hereto for the purpose of identification;

“public road” means a road defined by the *Road Traffic Act 1974*;

“State” means the State of Western Australia;

“salt” means the evaporite sodium chloride;

“State Energy Commission” means The State Energy Commission of Western Australia as described in section 7 of the *State Energy Commission Act 1979*;

“subclause” means subclause of the Clause in which the term is used;

“this Agreement” “herein” “hereof” and “hereunder” refer to this Agreement whether in its original form or as from time to time added to varied or amended;

“transport” means the transport of salt from the project site;

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“wharf” means the private wharf to be constructed by the Company within the Port of Onslow.

Interpretation

2. (1) In this Agreement —
- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
 - (b) power given under any clause other than Clause 31 to extend any period or date shall be without prejudice to the power of the Minister under Clause 31;
 - (c) clause headings do not affect the interpretation or construction;
 - (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context; and
 - (e) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

Ratification and operation

3. (1) The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and shall endeavour to secure its passage as an Act prior to 31 December 1992.
- (2) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation until the Bill referred to in subclause (1) has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (3) If before 31 December 1992 the said Bill has not commenced to operate as an Act then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

- (4) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

Initial obligations of the Company

4. (1) The Company shall continue its field and office engineering, environmental, market and finance studies and other matters necessary to enable it to finalise and to submit to the Minister the detailed proposals referred to in Clause 5.
- (2) The Company shall keep the State fully informed in writing quarterly as to the progress and results of its operations under subclause (1).
- (3) The Company shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclause (1) and any other relevant studies in relation to that subclause that the Minister may wish to undertake.

Company to submit proposals

5. (1) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall on or before 31 December 1993 (or by such extended date as the Minister may allow as hereinafter provided) and subject to the provisions of this Agreement submit to the Minister to the fullest extent reasonably practicable its detailed proposals (including plans and specifications where reasonably required by the Minister) with respect to the establishment and operation of a salt field having a nominal capacity of 1,500,000 tonnes of salt per annum for transportation from the land the subject of the mining lease within the area coloured blue on the said plan marked "A", and transportation and shipment of salt produced therefrom, which proposals shall include the location area, lay-out design, quantities, 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 —
- (a) the extraction and production of salt from within the project site;
- (b) roads;

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- (c) workforce accommodation;
- (d) township requirements including provision of utilities and services and social infrastructure;
- (e) water supply;
- (f) electricity supply;
- (g) sewerage and drainage;
- (h) transport storage and ship loading of salt;
- (i) air services and facilities;
- (j) any other works, services or facilities desired by the Company;
- (k) use of local labour professional services manufacturers suppliers contractors and materials and measures to be taken with respect to the recruitment and training by the Company, its agents and contractors;
- (l) port facilities (including dredging and third party use);
- (m) any leases, licences or other tenures of land required from the State; and
- (n) an environmental management programme as to measures to be taken, in respect of the Company's activities under this Agreement, for the rehabilitation, protection and management of the environment.

Order of proposals

- (2) Each of the proposals pursuant to subclause (1) may with the approval of the Minister or shall if so required by the Minister be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (n) of subclause (1).

Additional submissions

- (3) At the time when the Company submits the said proposals it shall —

- (a) submit to the Minister details of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with its reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto;
- (b) furnish to the Minister's satisfaction evidence of —
 - (i) marketing arrangements demonstrating the Company's ability to profitably sell or use salt in accordance with the said proposals;
 - (ii) the availability of finance necessary for the fulfilment of the operations to which the said proposals refer; and
 - (iii) the readiness of the Company to embark upon and proceed to carry out operations referred to in the said proposals.

Consideration of proposals

- 6. (1) Subject to the EP Act, in respect of proposals pursuant to subclause (1) of Clause 5 the Minister shall —
 - (a) approve the said proposals either wholly or in part without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 5 not covered by the said proposals; or
 - (c) require as a condition precedent to the giving of the Minister's approval to the said proposals that the Company make such alteration thereto or comply with such conditions in respect thereof as the Minister (having regard to the circumstances including the overall development of and the use by others as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in

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such a case the Minister shall disclose the Minister's reasons for such conditions,

PROVIDED ALWAYS that where implementation of any proposals hereunder have been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this Clause shall if the case so requires incorporate a requirement that the Company make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

Advice of Minister's decision

- (2) The Minister shall within two months after receipt of the said proposals pursuant to subclause (1) of Clause 5 or where the said proposals are to be assessed under section 40(1)(b) of the EP Act then within two months after service on the Minister of an authority under section 45(7) of the EP Act give notice to the Company of the Minister's decision in respect of the said proposals.

Consultation with Minister

- (3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) the Minister shall afford the Company full opportunity to consult with the Minister and should it so desire to submit new or revised proposals either generally or in respect of some particular matter.

Minister's decision subject to arbitration

- (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) and the Company considers that the decision is unreasonable the Company within two months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder.

Arbitration award

- (5) An award made on an arbitration pursuant to subclause (4) shall have force and effect as follows —

- (a) if by the award the dispute is decided against the Company then unless the Company within 3 months after delivery of the award give notice to the Minister of its acceptance of the award this Agreement shall on the expiration of that period of 3 months cease and determine; or
- (b) if by the award the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that the Minister is so satisfied with and approves the matter or matters the subject of the arbitration.

Effect of non-approval of proposals

- (6) Notwithstanding that under subclause (1) any proposals of the Company are approved by the Minister or determined by arbitration award, unless each and every such proposal and matter is so approved or determined by 31 December 1993 or by such extended date or period if any as the Company shall be granted pursuant to the provisions of this Agreement then the Minister may give to the Company 12 months notice of intention to determine this Agreement and unless before the expiration of the said 12 month 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 33.

Implementation of proposals

- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement the approved proposals in accordance with the terms thereof.

Additional proposals

- 7. (1) If the Company at any time during the continuance of this Agreement desires to significantly expand or modify the Company's operations beyond those specified by the approved proposals or otherwise vary its activities carried on pursuant to this Agreement beyond those activities specified in any approved proposals including development of the area coloured red on the said plan marked "A" referred to in subclause (2)(a) of Clause 10, then it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the

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other matters mentioned in paragraphs (a) to (n) of subclause (1) of Clause 5 as the Minister may require.

- (2) The provisions of Clause 5 and Clause 6 (other than subclauses (5)(a) and (6) of Clause 6) shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause with the proviso that the Company may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same. Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement approved proposals pursuant to this Clause in accordance with the terms thereof.

Protection and Management of the Environment

8. (1) The Company shall, in respect of the matters referred to in paragraph (n) of subclause (1) of Clause 5 and which are the subject of proposals approved or determined under this Clause (hereinafter called “the approved proposals”), carry out a continuous programme of investigation, research and monitoring to ascertain the effectiveness of the measures it is taking both generally and pursuant to such approved proposals for the rehabilitation, protection and management of the environment.
- (2) The Company shall during the currency of this Agreement submit to the Minister at yearly intervals commencing from the date when the Company’s proposals are approved or determined (except those years in which a comprehensive report is required to be submitted) a brief report concerning investigations research and monitoring carried out pursuant to subclause (1) and the implementation by the Company of the elements of the approved proposals relating to the rehabilitation, protection and management of the environment in the year ending two calendar months before the due date for the brief report, and, at three yearly intervals commencing from such date, a comprehensive report on the result of such investigations research and monitoring and the implementation by the Company of the elements of the approved proposals relating to the rehabilitation, protection and management of the environment during the three year period ending two calendar months the due date for the comprehensive report and the programme proposed to

be undertaken by the Company during the following three year period in regard to investigations research and monitoring pursuant to subclause (1) and the implementation by the Company of the elements of the approved proposals relating to the rehabilitation, protection and management of the environment.

- (3) The Minister may within two (2) months of receipt of a report pursuant to subclause (2) notify the Company that the Minister —
 - (a) requires amendment of the report and/or programme; or
 - (b) requires additional detailed proposals to be submitted for the protection and management of the environment.
- (4) The Company shall within two (2) months of receipt of a notice pursuant to paragraph (a) of subclause (3) submit to the Minister an amended report and/or programme as required. The Minister shall afford the Company full opportunity to consult with the Minister on the Minister's requirements during the preparation of any amended report or programme.
- (5) The Minister may within one month of receipt of an amended report or programme pursuant to subclause (4) notify the Company that the Minister requires additional detailed proposals to be submitted for the protection and management of the environment.
- (6) The Company shall within two months of the receipt of a notice given pursuant to paragraph (b) of subclause (3) or subclause (5) submit to the Minister additional detailed proposals as required and the provisions of subclauses (1), (2), (3) and (4) of Clause 6 shall mutatis mutandis apply in respect of such proposals.
- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement the decision of the Minister or any award on arbitration as the case may be in accordance with the terms thereof.

Use of local labour professional services and materials

9. (1) The Company shall, for the purposes of this Agreement —
 - (a) except in those cases where the Company can demonstrate it is impracticable so to do, use labour available within Western Australia (using all reasonable endeavours to ensure

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that as many as possible of the Company's workforce be locally recruited) or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;

- (b) as far as it is reasonable and economically practicable so to do, use the services of engineers surveyors architects and other professional consultants experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within Western Australia or if such services are not available within Western Australia then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;
 - (c) during design and when preparing specifications, calling for tenders and letting contracts for works materials plant equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that suitably qualified Western Australian and Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote;
 - (d) give proper consideration and where possible preference to suppliers manufacturers and contractors located in Western Australia when contracts or placing orders for works, materials, plant, equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and where possible preference to other suppliers manufacturers and contractors located in Australia; and
 - (e) if notwithstanding the foregoing provisions of this subclause a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and where possible preference to tenders arrangements or proposals that include Australian participation.
- (2) Except as otherwise agreed by the Minister the Company shall in every contract entered into with a third party for the supply of

services labour works materials plant equipment or supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) and shall report to the Company concerning such third party's implementation of that condition.

- (3) The Company shall submit a report to the Minister at monthly intervals or such longer period as the Minister determines commencing from the date of this Agreement concerning its implementation of the provisions of this Clause together with a copy of any report received by the Company pursuant to subclause (2) during that month or longer period as the case may be PROVIDED THAT the Minister may agree that any such report need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine.
- (4) The Company shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that it may be proposing to obtain from or has carried out or permit to be obtained from or carried out outside Australia together with its reasons therefor and shall as and when required by the Minister consult with the Minister with respect thereto.

Mining Lease

10. (1) (a) On application made by the Company, not later than 3 months after all proposals submitted pursuant to subclause (1) of Clause 5 have been approved or determined, for a mining lease over so much of the land coloured blue on the said plan marked "A" as is then held by the Company under the exploration licences referred to in recital (a) and over any other areas coloured blue on the said plan marked "A" which are held under an exploration licence or exploration licences at that time by the Company the State shall upon and subject to the surrender by the Company of the exploration licences cause to be granted to the Company a mining lease of such land (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed at the

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Company's expense) for evaporites, such mining lease to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but substantially in the form of the Schedule hereto and subject to such conditions and stipulations consistent with the provisions of the Agreement and approved proposals as the Minister for Mines may determine.

- (b) Upon grant of a mining lease pursuant to paragraph (a) of this subclause, the Company shall provide to the satisfaction of the Minister an unconditional performance bond, guaranteed by a Bank or other financial institution acceptable to the Minister, in favour of the Minister for Mines for the sum of \$170 000. Moneys under the bond may be used by the State should the Company fail to perform its rehabilitation obligations under this Agreement and approved proposals. The amount of the bond may be varied from time to time by the Minister in consultation with the Minister for Mines and the Company to reflect the performance of the Company in meeting its rehabilitation obligations under this Agreement and approved proposals.

Mining Lease for future expansion

- (2) (a) On application made by the Company, not later than 12 months after all proposals submitted pursuant to subclause (1) of Clause 5 have been approved or determined, for a mining lease over so much of the land coloured red on the said plan marked "A" (hereinafter referred to as the "red area"), the State shall upon and subject to the surrender by the Company of the exploration licence referred to in recital (b) of this Agreement cause to be granted to the Company a mining lease of such land (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed at the Company's expense) for evaporites, such mining lease to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but substantially in the form of the Schedule hereto and subject to such conditions and stipulations consistent with the provisions of the Agreement and approved proposals as the Minister for Mines may determine.

- (b) (i) The Company shall not carry out any activities (other than activities for the planning for future development of the red area) on any part of the red area pursuant to paragraph (a) of this subclause until proposals submitted pursuant to subclause (1) of Clause 7 have been approved or determined.
- (ii) If the Company's proposals with respect to the red area referred to in subclause (1) of Clause 7 have not been approved or determined by 31 December 2002, then the mining lease and all rights thereunder referred to in paragraph (a) of this subclause shall be surrendered and forfeited to the State.
- (c) Upon approval or determination of proposals submitted pursuant to subclause (1) of Clause 7 in relation to the mining lease granted pursuant to paragraph (a) of this subclause for the development of the red area, the Company shall provide to the satisfaction of the Minister an unconditional performance bond, guaranteed by a Bank or other financial institution acceptable to the Minister, in favour of the Minister for Mines for a sum to be determined by the Minister in consultation with the Minister for Mines. Moneys under the bond may be used by the State should the Company fail to perform its rehabilitation obligations under this Agreement and approved proposals. The amount of the bond may be varied from time to time by the Minister in consultation with the Minister for Mines and the Company to reflect the performance of the Company in meeting its rehabilitation obligations under this Agreement and approved proposals.

Rental

- (3) Rental in respect of the mining leases granted pursuant to this Clause shall be computed at a base rate of \$9.84 per 100 hectares per annum and the base rate shall be escalated in the manner prescribed by Clause 12.

Term

- (4) Subject to the performance by the Company of its obligations under this Agreement and the Mining Act and notwithstanding any

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provisions of the Mining Act to the contrary the term of the mining leases shall be for a period of 21 years commencing from the respective dates of receipt of the applications therefor under subclauses (1) or (2) as the case may be with the right during the currency of this Agreement to take two successive renewals of the said term each for a further period of 21 years upon the same terms and conditions, subject to the sooner determination of the said term upon cessation or determination of this Agreement, such right to be exercisable by the Company making written application for any such renewal not later than one month before the expiration of the then current term of the respective mining leases.

Exemption from expenditure conditions

- (5) The State shall ensure that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the expenditure conditions imposed by or under the Mining Act in regard to mining leases or exploration licences held pursuant to this Agreement.

Exemption from surrender

- (6) The State shall ensure that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the provisions of Section 65 of the Mining Act in relation to exploration licences held pursuant to this Agreement.

Additional areas

- (7) Notwithstanding the provisions of the Mining Act the Company may from time to time during the currency of this Agreement apply to the Minister for areas held by the Company under a mining tenement granted under the Mining Act to be included in one of the mining leases. The Minister shall confer with the Minister for Mines in regard to any such application and if they approve the application the Minister for Mines shall upon the surrender of the relevant mining tenement include the area the subject thereof in such one of the mining leases and subject to such conditions and stipulations consistent with the provisions of the Agreement and approved proposals as the Minister for Mines in each case may determine, which may include conditions of the surrendered mining tenement. In respect of any such land —

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

Surrender of part of mining leases

- (8) Notwithstanding the provisions of this Clause and the Mining Act with the approval of the Minister the Company may from time to time surrender to the State all or any portion or portions of the mining leases with abatement of future rent in respect of the area surrendered but without any abatement of rent already paid or rent which has become due and has been paid in advance.

Stone sand clay and gravel

- (9) The Company in accordance with approved proposals may for the construction of works (and maintenance thereof) for the purposes of this Agreement and without payment of royalty, obtain stone sand clay and gravel from the mining leases.

Royalties

- 11. (1) Throughout the continuance of this Agreement the Company shall pay to the State a royalty on all salt produced and transported pursuant to this Agreement. Royalty shall be computed at a base rate as set out hereunder and the base rate shall be escalated in the manner prescribed by Clause 12:

	Rate per tonne
On the first 500,000 tonnes in any year	5.00 cents
On the second 500,000 tonnes in any year	6.25 cents
On all tonnages in excess of 1,000,000 tonnes in any year	7.50 cents

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Tonnages shall be ascertained at the project site in such manner as the parties hereto may from time to time agree.

Returns

- (2) Within twenty-one days after the quarter days being the last days of March, June, September and December in each year commencing with the quarter day next following the commencement date the Company shall furnish to the Minister for Mines a return showing the quantity of all salt the subject of royalty hereunder produced and transported during the quarter or part thereof (as the case may be) ending on the respective quarter day and shall not later than one month after the date on which such return is due pay to the State the royalty in respect of all salt produced and transported during that quarter.

Other minerals

- (3) The Company shall in respect of all evaporites other than salt produced or obtained from the area the subject of the mining leases pay to the State royalties at the rates from time to time prescribed under the Mining Act and comply with the provisions of the Mining Act and regulations made thereunder with respect to the filing of production reports and payment of royalties.

Inspection of records

- (4) The Company shall permit the Minister for Mines or the Minister's nominee to inspect at all reasonable times and to take copies of or extracts from all books of accounts and records of the Company as are relevant for the purpose of determining the amount of royalty payable under this Clause and if required by the State take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the reasonable satisfaction of the Minister for Mines as to all relevant weights and analyses and shall give due regard to any objection or representation made by the Minister for Mines or the Minister's nominee as to any particular weight or assay of minerals mined or produced by the Company from the mining leases and sold by it which may affect the amount of royalty payable hereunder.

Escalation

12. (1) Notwithstanding anything herein contained but subject to subclause (4) of this Clause it is hereby agreed by and between the parties hereto in order to provide for the equitable performance of this Agreement that —
- (a) for the period from the commencement date to the anniversary of the commencement date in the year 2003, the several amounts due and payable by the Company to the State as —
- (i) rentals under subclause (3) of Clause 10 and subclause (2) of Clause 13; and
- (ii) royalty under subclause (1) of Clause 11
- shall be 350% of the base rate;
- (b) in the event of the price of salt (as hereinafter defined) on the anniversary of the commencement date in the years 2003, 2010, 2017, 2024, 2031, 2038 or 2045 exceeding \$5.16 then the percentage by which the price of salt on the relevant date exceeds \$5.16 shall be calculated and the several amounts due and payable by the Company to the State as base rate —
- (i) rentals under subclause (3) of Clause 10 and subclause (2) of Clause 13; and
- (ii) royalty under subclause (1) of Clause 11
- shall be increased by the percentage so calculated and such increased amounts in respect of those items shall be payable by the Company to the State during the seven (7) years next following the relevant date.
- (2) For the purpose of this Clause the price of salt on each of the aforesaid dates means the weighted average price per tonne of salt sold during the previous year pursuant to this Agreement payable by the purchaser or purchasers thereof to the Company, or where the Minister is not satisfied that the price payable in respect of the salt represents a fair and reasonable market value for that salt assessed at an arm's length basis, such amount as is agreed or determined, less all export duties taxes and fees payable to the

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Commonwealth on the export of salt and the costs and expenses properly incurred and payable by the Company in respect of that sale from the time it is transported in the form in which it is to be sold to the time it is delivered to and accepted by the purchaser or purchasers including —

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

For the purposes of this subclause “agreed or determined” means agreed between the Company and the Minister or, failing agreement within three months of the Minister giving notice to the Company that he requires the value of a quantity of salt to be agreed or determined, as determined by the Minister. In agreeing or determining a fair and reasonable market value of such salt assessed at an arm’s length basis the Minister and the Company, or the Minister, as the case may be shall have regard to prevailing markets and prices for salt both outside and within the Commonwealth.

- (3) Throughout the continuance of this Agreement the Company shall use its best endeavours to obtain for the salt produced hereunder the best price possible having regard to market conditions from time to time prevailing.
- (4) The Minister may from time to time after consultation with the Company vary the dates specified in paragraph (b) of subclause (1) of this Clause or any of them to a later date or dates consistent with the corresponding dates for review of royalty contained in any

other Government agreement (as defined in the *Government Agreements Act 1979*) relating to the production of salt. In the event of any variation of a date pursuant to this subclause any increases to the amounts referred to in subparagraphs (i) and (ii) of paragraphs (a) and (b) of subclause (1) of this Clause then in effect pursuant to that subclause shall continue to apply until the varied date.

Leases, licences, permits and easements

13. (1) The State shall —
- (a) in accordance with the Company's approved proposals and the Mining Act, Land Act, *Jetties Act 1926*, *Marine and Harbours Act 1981*, *Western Australian Marine Act 1982* and any other relevant statute from time to time, grant to the Company, or arrange to have the appropriate authority or other interested instrumentality of the State grant for such periods and on such terms and conditions (including renewal rights where appropriate) as shall be reasonable having regard to the requirements of the Company, leases, licences, permits and easements for any purposes related to the Company's operations under this Agreement;
 - (b) in accordance with the Company's approved proposals grant general purpose leases for the purposes of the transportation of brine and the transportation, stockpiling and loading of salt for the same term as the mining lease referred to in subclause (4) of Clause 10 which general purpose leases may with the prior approval of the Minister for Mines be granted in respect of areas of land greater than the maximum area provided by the Mining Act.

Rental

- (2) Rental in respect of general purpose leases granted pursuant to paragraph (b) of subclause (1) of this Clause shall be computed at a base rate of \$9.84 per 100 hectares per annum and the base rate shall be escalated in the manner prescribed by Clause 12.
- (3) Rental in respect of miscellaneous licences and general purpose leases granted pursuant to paragraph (a) of subclause (1) of this

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Clause shall be at the rental specified from time to time in the Mining Act.

Existing Towns

14. (a) (i) The Company shall as the occasion may require enter into negotiations with the Minister with a view to achieving assimilation into Onslow of the Company's work force or any other workers employed by the Company (including the dependants of such persons).
- (ii) The Company shall pay to the State or the appropriate authority designated by the Minister the capital cost of establishing and providing additional services, works and facilities and associated equipment including sewerage and water supply schemes, main drains, education, police and hospital services to the extent to which those additional services, works and services are made necessary in Onslow or other existing township as a result of the operations of the Company. The additional services, works and associated equipment referred to in this clause shall be provided by the State to a standard normally adopted by the State in providing new services, works and associated equipment in similar cases in comparable towns.
- (b) As and when required by the Minister after consultation with the relevant local authority, the Company shall confer with the Minister with a view to assisting in the cost of providing any appropriate community, recreation, civic or social amenities at Onslow or other existing township required for the Company's workforce and associated population in accordance with its approved proposals.

Private Roads

15. (1) The Company shall —
- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in its operations hereunder; and
- (b) at any place where a private road crosses any public road provide adequate grade separation or such other reasonable

protection as may be required by the Commissioner of Main Roads.

- (2) In the event that the Company for the purposes of its operations under this Agreement desire to exclude the public use of any private road it shall be responsible at its own cost to make such provisions as effectively ensure that all persons and vehicles (other than those engaged upon the Company's operations and its invitees and licencees) are excluded from use of that road.

Maintenance of public roads

- (3) The State shall maintain or cause to be maintained those public roads under the control of the Commissioner of Main Roads or a local authority which may be used by the Company for the purposes of this Agreement to a standard similar to comparable public roads maintained by the Commissioner of Main Roads or a local authority as the case may be.

Upgrading of public roads

- (4) In the event that the Company's operations require the use of a public road which is inadequate for the purpose, or result in excessive damage or deterioration of any public road (other than fair wear and tear) the Company shall pay to the State the whole or an equitable part as determined by the Minister of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads or local authority having regard to the use of such road by others.

Acquisition of private roads

- (5) Where a private road is subsequently required for public use, the State may, after consultation with the Company and so long as resumption thereof shall not unduly prejudice or interfere with the operations of the Company under this Agreement, resume and dedicate such road as a public road. Upon any such resumption the State shall pay to the Company such amount as the State considers to be reasonable.

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Water

16. (1) The Company may enter into negotiations with the State with a view to obtaining its requirements of water excluding seawater, for its operations under this Agreement from the State on terms and conditions to be agreed upon.
- (2) In the event that the Company elects to supply all or part of its water requirements excluding sea water, from a water supply identified by the Company which is acceptable to the State, the State will enter into negotiations regarding terms and conditions.

Design of works

- (3) The Company shall to the extent that it is practical and economical, design, construct and operate its works under this Clause so as to —
- (a) recycle water excluding sea water; and
- (b) prevent loss of water excluding sea water, by leakage, spillage or evaporation.

Sea Water Licence

17. The Company may without charge draw take and use sea water for all or any one or more of its operations in respect of the extraction and production of salt on the project site and the Company may store at such place within the mining leases as may be convenient or discharge at or below high water mark at such points near to the mining leases as are approved by the State residual brines resulting from those operations. If requested by the Company the State shall grant to the Company any easement or licence for these purposes over Crown lands upon such terms and conditions as shall be reasonable having regard to the requirements of the Company and the overall development and use by others of those Crown lands. Subject to the Company's compliance with the Mining Act and all other relevant statutes and regulations for the time being in force the Company shall have the right to the exclusion of any other person to mine and recover any other minerals, substances or chemicals in the said residual brines.

Port facilities

18. (1) The Company shall at its own expense dredge a channel to its wharf and construct, operate and maintain the wharf, ship loading and harbour facilities and any other associated facilities at or in the vicinity of the wharf in accordance with its approved proposals.
- (2) (a) Subject to the Company constructing, operating and maintaining the facilities referred to in subclause (1) of this Clause, 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 for the purposes of this Agreement at the Company's wharf whether such cargoes shall be the property of the Company or of any other persons but the State accepts no obligation to undertake such loading or unloading and may make the usual charges including pilotage fees 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 conservancy dues payable under the *Shipping and Pilotage Act 1967* in respect of any vessel entering the Port of Onslow for the purpose of using the Company's wharf.
- (b) The Company if and when permitted by the relevant State legislation, may provide its own pilotage requirements.

Use of Company's facilities

- (3) (a) Throughout the continuance of this Agreement, the Company shall allow the State and third parties to use the Company's facilities referred to in subclause (1) of this Clause PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations and that the entire control of and all personnel for or in respect of such use shall be provided by or with the approval of the Company.
- (b) The provisions of paragraph (a) of this subclause shall not affect the Harbour Master or appointed pilot in carrying out any of their respective responsibilities for maritime safety within the Port of Onslow in accordance with the provisions of the *Shipping and Pilotage Act 1967*.

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- (4) The State and the Company acknowledge that the Company should be paid a fair and reasonable charge as may be set forth from time to time in schedules provided by the Company and approved by the Minister for the use of the wharf by all vessels and for the use of the channel approach by any vessel whose draught is of such magnitude that it requires to use the channel approach in order to utilise the wharf. In the case of regular use by a shipper of bulk commodities the Company should be reimbursed by such shipper a fair and reasonable proportion of the capital outlay and operation and maintenance costs incurred by the Company for the wharf and channel approach as may be determined by mutual agreement between the parties concerned or failing agreement then as determined by the Minister.

By-Laws

- (5) At the recommendation of the Company upon approval or determination of proposals referred to in subclause (1) of Clause 5, the Minister may make alter and repeal by-laws for the purpose of levying charges pursuant to subclause (4) of this Clause, upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Company) 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 Company shall recommend such alteration or repeal thereof as the State may reasonably require.

Navigation aids and services

- (6) The Company shall provide or relocate such navigation aids as are reasonably required by the State for the operation of the Company's facilities referred to in subclause (1) of this Clause. The State will operate and maintain such navigation aids as are required for the continuing operation of the Company's wharf and channel.

Payment of conservancy dues to the State

- (7) It is acknowledged by the parties hereto that any vessel entering the Port of Onslow for the purpose of using the Company's wharf will be required to pay conservancy dues prescribed by law and the Company covenant with the State that it will if required by the

State so to do, act as the agent of the State for the purpose of collecting from the masters or agents of such vessels and remitting to the State such conservancy dues as may from time to time be payable.

Electricity generation

19. (1) The Company may —
- (a) obtain its requirements of electricity for its operations under this Agreement from the State Energy Commission if terms and conditions can be agreed with the State Energy Commission.
 - (b) subject to the provisions of the *Electricity Act 1945* install and operate without cost to the State, at an appropriate location equipment to generate and transmit electricity of sufficient capacity for its operations under this Agreement.
 - (c) subject to the provisions of the *Electricity Act 1945* and the approval and requirements of the State Energy Commission, sell and transmit electricity generated pursuant to paragraph (b) of this subclause to third parties including the State Energy Commission.
- (2) In the event that the Company is unable to procure easements or other rights over land required for the purposes of subclause (1)(b) of this Clause on reasonable terms the State shall assist the Company to such extent as may be reasonably necessary to enable it to procure the said easements or other rights over land.

Ingress and egress

20. The State shall from time to time on the written application of the Company grant to the Company a licence or licences over Crown lands to permit the Company its servants agents contractors invitees and customers the right of ingress to and egress from all or any one or more parts of the project site on such terms and conditions as shall be reasonable having regard to the requirements of the Company in respect of the construction maintenance operation and inspection of the improvements from time to time constructed or installed on the project site and to the overall development and use by others of those Crown lands.

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Zoning

21. The State shall ensure after consultation with the relevant local authority that the mining leases and any lands the subject of any Crown Grant lease licence or easement granted to the Company under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the activities of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State or by any State agency or instrumentality or by any local or other authority of the State on the ground that such activities are contrary to any zoning by-law regulation or order.

Rating

22. The State shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands the subject of this Agreement (except the accommodation area and any other parts of the lands the subject of this Agreement on which accommodation units or housing for the Company's workforce is erected or which is occupied in connection with such accommodation units or housing and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the production of salt carried out by the Company pursuant to approved proposals) shall for rating purposes under the *Local Government Act 1960*, be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate.

No discriminatory rates

23. Except as provided in this Agreement the State shall not impose, nor shall it permit or authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the activities of the Company in the conduct of its business hereunder nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement.

Salt for use in Australia

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

Resumption for the purposes of this Agreement

25. The State may as and for a public work under the *Public Works Act 1902*, resume any land required for the purposes of this Agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of that land to the Company and the provisions of subsections (2) to (7) inclusive of section 17 and section 17A of that Act shall not apply to or in respect of that land or the resumption thereof. The Company shall pay to the State on demand the costs of and incidental to any land resumed at the request of and on behalf of the Company.

No resumption

26. Subject to the performance by the Company of its obligations under this Agreement the State shall not during the currency of this Agreement without the consent of the Company resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the State any of the works installations plant equipment or other property for the time being belonging to the Company and the subject of or used for the purpose of this Agreement or any of the works on the lands the subject of any lease or licence granted to the Company in terms of this Agreement AND without such consent (which shall not be unreasonably withheld) the State shall not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road right-of-way water right or easement of any nature or kind whatsoever over or in respect of any such lands which may unduly prejudice or interfere with the Company's activities under this Agreement.

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Assignment

27. (1) Subject to the provisions of this Clause the Company may at any time assign mortgage charge sublet or dispose of to any company or persons with the consent of the Minister the whole or any part of the rights of the Company hereunder (including its right to or as the holder of the mining leases or the exploration licences or any other lease licence easement grant or other title) and of the obligations of the Company hereunder subject however in the case of an assignment subletting or disposition to the assignee sublessee or disponent (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting or disposition.
- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained in this Agreement and in the mining leases or any other lease licence easement grant or other title the subject of an assignment mortgage subletting or disposition under subclause (1) PROVIDED THAT the Minister may agree to release the Company from such liability where the Minister considers such release will not be contrary to the interests of the State.
- (3) Notwithstanding the provisions of the Mining Act, the *Transfer of Land Act 1893* and the Land Act, insofar as the same or any of them may apply —
- (a) no assignment mortgage charge sublease or disposition made or given pursuant to this Clause of or over the mining leases or any other lease licence easement grant or other title granted under or pursuant to this Agreement by the Company or any assignee sublessee or disponent who has executed and is for the time being bound by deed of covenant made pursuant to this Clause; and

- (b) no transfer assignment mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge

shall require any approval or consent other than such consent as may be necessary under this Clause and no equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent (otherwise than as required by this Clause) or because the same is not registered under the provisions of the Mining Act.

Variation

28. (1) The parties to this Agreement may from time to time by agreement in writing add to substitute cancel or vary all or any of the provisions of this Agreement or of any lease licence easement grant or other title granted under or pursuant to this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.
- (2) The Minister shall cause any agreement made pursuant to subclause (1) in respect of any addition substitution cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.
- (3) Either House may, within 12 sitting days of that House after the agreement has been laid before it pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

Protection of flow of sea water

29. (1) During the term of this Agreement the State shall not authorise the construction of any works which could reasonably be considered by the Minister in consultation with any other relevant Minister and the Company as having the effect of stopping the flow of seawater into Beadon Creek or diminishing such flow or adversely affecting the suitability of seawater for the production of salt pursuant to approved proposals so as to result in the drawing of seawater by the Company from Beadon Creek being either impractical or only practical with the expenditure by the Company of additional money for capital or operating costs.

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- (2) Notwithstanding the provisions of subclause (1) of this Clause, if the State desires to construct or to authorise construction of works or undertake or authorise any activity that has the effect described in subclause (1) of this Clause, the State shall reach agreement with the Company or make alternative arrangements for the provision of seawater to the Company.

Force majeure

30. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the temporary suspension of continuing obligations under this Agreement that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including without limiting the generality of the foregoing delays or any such temporary suspension as aforesaid caused by or arising from act of God force majeure earthquakes floods storms tempest washaways fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) acts or omissions of the Commonwealth shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability to sell salt profitably or factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

Power to extend periods

31. Notwithstanding any provision of this Agreement the Minister may at the request of the Company from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement or in any approved proposal for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

Determination of Agreement

32. (1) In any of the following events namely if —

- (a) (i) the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations of the Company in this Agreement or in the mining leases or any other lease licence easement grant or other title or document granted or assigned under this Agreement on its part to be performed or observed; or
- (ii) the Company abandons or repudiates this Agreement or its activities under this Agreement,

and such default is not remedied or such activities resumed within a period of 180 days after notice is given by the State as provided in subclause (2) or, if the default or abandonment is referred to arbitration, then within the period mentioned in subclause (3);

or

- (b) the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 6 months from the date of such liquidation the interest of the Company is assigned to an assignee approved by the Minister under Clause 27,

the State may by notice to the Company determine this Agreement.

- (2) The notice to be given by the State in terms of paragraph (a) of subclause (1) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Company and all such assignees mortgagees chargees and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 27 whose name and address for service of notice has previously been notified to the State by the Company or any such assignee mortgagee chargee or disponee.
- (3) (a) If the Company contests the alleged default abandonment or repudiation referred to in paragraph (a) of subclause (1) the

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Company shall within 60 days after notice given by the State as provided in subclause (2) refer the matter in dispute to arbitration.

- (b) If the question is decided against the Company, the Company shall comply with the arbitration award within a reasonable time to be specified by that award PROVIDED THAT if the arbitrator finds that there was a bona fide dispute and that the Company were not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.
- (4) If the default referred to in paragraph (a) of subclause (1) shall not have been remedied within the time specified in the notice referred to in that subclause or within the time specified 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 workers or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

Effect of cessation or determination of Agreement

- 33. (1) On the cessation or determination of this Agreement —
 - (a) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement and the rights of the Company or of any assignee of the Company or any mortgagee to in or under the mining leases and any other lease licence easement grant or other title or right granted hereunder or pursuant hereto (but excluding townsite lots which have been granted to or acquired by the Company and which are no longer owned by it) 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 under this Agreement;

- (b) the Company shall forthwith pay to the State all moneys which are owed to the State at the date of cessation or determination of this Agreement notwithstanding that demand in respect of such moneys has not been made by the State and without prejudice to the State's other remedies pursuant to this Agreement;
 - (c) save as aforesaid and as otherwise provided in this Agreement neither of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.
- (2) Subject to the provisions of subclause (3) upon the cessation or determination of this Agreement except as otherwise determined by the Minister all buildings erections and other improvements erected on any land then occupied by the Company under the mining leases or any other lease licence easement grant or other title made under or pursuant to this Agreement shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Company or any other party and freed and discharged from all mortgages and other encumbrances and the Company shall do and execute all such deeds documents and other acts matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.
- (3) In the event of the Company immediately prior to the cessation or determination of this Agreement or subsequently thereto desiring to remove any of its fixed or movable plant and equipment or any part thereof from any part of the land occupied by it at the date of such cessation or determination it shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within 3 months thereafter to purchase in situ such fixed or moveable plant and equipment at a fair valuation to be agreed between the parties or failing agreement determined by arbitration under this Agreement.

Environmental protection

34. Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection

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of the environment arising out of or incidental to its activities under this Agreement that may be made under the EP Act.

Indemnity

35. The Company shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Company pursuant to this Agreement or relating to its activities hereunder or arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith PROVIDED THAT where the State, its servants, agents, or contractors are negligent in carrying out work for the Company pursuant to this Agreement, then subject to the provisions of any other relevant Act, such indemnity shall not apply to the extent of the negligence.

Commonwealth licences and consents

36. (1) The Company shall from time to time make application to the Commonwealth or to the Commonwealth constituted agency authority or instrumentality concerned for the grant to it of any licence or consent under the laws of the Commonwealth necessary to enable or permit the Company to enter into this Agreement and to perform any of its obligations hereunder.
- (2) On request by the Company the State shall make representations to the Commonwealth or to the Commonwealth constituted agency authority or instrumentality concerned for the grant to the Company of any licence or consent mentioned in subclause (1).

Subcontracting

37. The State shall ensure 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 portion of the activities which it is authorised or obliged to carry out hereunder.

Stamp duty exemption

38. (1) The State shall exempt from any stamp duty which but for the operation of this Clause would or might be assessed and chargeable on —
- (a) this Agreement;
 - (b) instruments of transfer dated 9 October 1992 under the Mining Act by Gulf Holdings Pty Limited to the Company of Exploration Licence Nos. 08/372, 08/335 and 08/373;
 - (c) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee any tenement lease licence easement or other right or rights; and
 - (d) assignments made by the Company in conformity with the provisions of subclause 1 of Clause 27,

PROVIDED THAT this subclause shall not apply to any instrument or other document executed or made more than 2 years from 31 December 1992.

- (2) If prior to 31 December 1994 stamp duty has been assessed and paid on any instrument or other document or transaction referred to in subclause (1) 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 or transaction to the person who paid the same.

Arbitration

39. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights duties or liabilities of either party under this Agreement 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 *Commercial Arbitration Act 1985* and notwithstanding section 20(1) of that Act each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.

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- (2) Except where otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State the Minister or any other Minister in the Government of the State is by this Agreement given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of either of the parties to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties under this Agreement and an award may in the name of the Minister grant any further extension or variation for that purpose.

Consultation

- 40. The Company shall during the currency of this Agreement consult with and keep the State fully informed on a confidential basis concerning any action that the Company proposes to take with any third party (including the Commonwealth or any Commonwealth constituted agency authority instrumentality or other body) which might significantly affect the overall interest of the State under this Agreement.

Notices

- 41. 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 Public Service of the said State acting by the direction of the Minister and forwarded by prepaid post or handed to the Company at its address hereinbefore set forth or other address in the said State nominated by the Company to the Minister and by the Company if signed on its behalf by any person or persons authorised by the Company or by its solicitors as notified to the State from time to time and forwarded by prepaid post or handed to the Minister and except in the case of personal service 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.

Term of Agreement

42. Subject to the provisions of subclause (6) of Clause 6 and Clauses 32 and 33, this Agreement shall expire on the expiration or sooner determination or surrender of the mining leases.

Applicable law

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

THE SCHEDULE
WESTERN AUSTRALIA
MINING ACT 1978
ONSLow SALT AGREEMENT 1992
MINING LEASE

MINING LEASE NO.

S.A.

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

Schedule

with the right during the currency of the Agreement and in accordance with the provisions of the Agreement to take two successive renewals of the term each for a further period of twenty one years upon the same terms and conditions subject to the sooner determination of the said term upon cessation or determination of the Agreement PROVIDED ALWAYS that this lease and any renewal thereof shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this Lease —

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

FIRST SCHEDULE

ONSLOW SALT PTY LTD A.C.N. 050 159 558 a company incorporated in the State of Western Australia and having its registered office at Suite 6, 18 Harvest Terrace, West Perth

SECOND SCHEDULE

The Agreement made between the STATE OF WESTERN AUSTRALIA and ONSLOW SALT PTY LTD and ratified by the *Onslow Salt Agreement Act 1992*.

THIRD SCHEDULE

(Description of Land:)

Locality:

Mineral Field: Area, etc:

Being the land delineated on Survey Diagram No.
and recorded in the Department of Minerals and Energy, Perth.

FOURTH SCHEDULE

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

FIFTH SCHEDULE

(Date of Commencement of the Mining Lease)

SIXTH SCHEDULE

(Any further conditions or stipulations)

IN witness whereof the Minister for Mines has affixed his seal and set this hand hereto this 2nd day of November 1992

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

MINISTER FOR STATE DEVELOPMENT

Ian TAYLOR

THE COMMON SEAL of
ONSLOW SALT PTY LTD was
hereunto affixed by authority
of the Directors in the
presence of:

ONSLOW SALT PTY LTD
A.C.N. 050 159 558
[C.S.]

Director

(George Neville Lewis HAMMOND)

Director/Secretary

(Russell Leon HALPERN)

Notes

- ¹ This is a reprint as at 12 March 2004 of the *Onslow Solar Salt Agreement Act 1992*. The following table contains information about that Act and any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Onslow Solar Salt Agreement Act 1992</i>	50 of 1992	10 Dec 1992	10 Dec 1992 (see s. 2)
Reprint 1: The <i>Onslow Solar Salt Agreement Act 1992</i> as at 12 Mar 2004			
