

Western Australia

**Nickel Refinery (Western Mining Corporation
Limited) Agreement Act 1968**

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Western Australia

Nickel Refinery (Western Mining Corporation Limited) Agreement Act 1968

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Nickel Refinery (Western Mining Corporation Limited) Agreement Act 1968

An Act to approve an agreement between the State and Western Mining Corporation Limited relating to Nickel Mining, the production of Nickel and for the establishment of a Nickel Refinery in the State.

1. Short title

This Act may be cited as the *Nickel Refinery (Western Mining Corporation Limited) Agreement Act 1968*.

2. Interpretation

In this Act —

the Agreement means the agreement of which a copy is set forth in the First Schedule to this Act, and if, the Agreement is added to or varied or any of its provisions are cancelled in accordance with the provisions thereof, includes the Agreement as so altered from time to time;

the supplemental agreement means the agreement a copy of which is set forth in the Second Schedule to this Act.

the second supplemental agreement means the agreement a copy of which is set forth in the Third Schedule to this Act.

[Section 2 amended by No. 76 of 1970 s.2; No. 16 of 1974 s.2.]

3. Approval of agreement

The Agreement is approved, and subject to its provisions shall operate and take effect.

s. 3A

3A. Approval of supplemental agreement

The supplemental agreement is approved, and subject to its provisions shall operate and take effect.

[Section 3A inserted by No. 76 of 1970 s.3.]

3B. Approval of second supplemental agreement

The second supplemental agreement is approved, and subject to its provisions shall operate and take effect.

[Section 3B inserted by No. 16 of 1974 s.3.]

[Heading deleted by No. 19 of 2010 s. 42(2).]

First Schedule — Nickel Refinery (Western Mining Corporation Limited) Agreement

[s. 2]

[Heading amended by No. 19 of 2010 s. 4.]

AN AGREEMENT made the Nineteenth day of January one thousand nine hundred and sixty eight between the HONOURABLE DAVID BRAND M.L.A. Premier and Treasurer of the State of Western Australia, acting for and on behalf of the said State and Instrumentalities thereof from time to time (hereinafter called “the State”) of the one part and WESTERN MINING CORPORATION LIMITED of 360 Collins Street Melbourne in the State of Victoria and registered in the State of Western Australia as a foreign company (hereinafter called “the Corporation” in which term shall be included the Corporation and its successors and assigns) of the other part.

WHEREAS:

The Corporation having already spent in excess of seven million dollars (\$7,000,000) on works at Kambalda in the State of Western Australia in relation to its nickel mining and treatment operations proposes to establish a nickel refinery at Kwinana in the said State of Western Australia estimated to cost with associated works not less than forty-five million dollars (\$45,000,000) and is currently investigating the feasibility of establishing a nickel smelter at Kambalda (or Kalgoorlie) in the said State and has requested the State to enter into an agreement on the terms and conditions hereinafter contained in order to enable the Corporation to establish such refinery and to continue its investigations and if economically viable to establish such smelter.

NOW THIS AGREEMENT WITNESSETH:

1. In this Agreement subject to the context —

“apply” “approve” “approval” “consent” “certify” “direct” “notify” or
“request” means apply approve approval consent certify direct notify
or request (as the case may be) in writing;

“associated works” means and includes mine development the installation
of mining plant, mining equipment and plant for the treatment of
nickel ore or any derivative of nickel ore, works for the provision of
water and electricity, and the construction of roads housing and
communal facilities made necessary in consequence of the
construction of either or both of a refinery and smelter;

“commencement date” means the date on which the Bill to ratify this
Agreement commences to operate as an Act;

“Commission” or “Railways Commission” means the Western Australian
Government Railways Commission;

“Crown grant” means a Crown grant under the provisions of the Land Act;

“Land Act” means the Land Act 1933;

“matte” means a smelter product containing principally nickel and sulphur
in varying proportions;

“mineral leases” means the mineral lease or mineral leases referred to in
clause 5 (3) hereof and any renewals thereof and includes any
mineral lease for (*inter alia*) nickel lying within the boundaries of
Temporary Reserve No. 3666H (as originally constituted) and held
by the Corporation on the commencement date and any renewals
thereof;

“Mining Act” means the Mining Act 1904;

“mining areas” means the areas delineated and coloured red on the plan
marked “A” initialled by or on behalf of the parties hereto for the
purposes of identification;

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

“month” means calendar month;

“nickel concentrates” means concentrates obtained by treating nickel ore;

“nickel-containing products” means nickel concentrates matte nickel metal and any other nickel-containing product;

“nickel metal” means the metallic product obtained by refining nickel concentrates or matte;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“Public Works Act” means the Public Works Act 1902;

“Ratifying Act” means the Act to ratify this Agreement and referred to in clause 2 hereof;

“refinery” means a refining plant in which nickel concentrates or matte are or is treated to produce nickel metal;

“refinery residues” or “residues” means waste material of the refinery consisting principally of iron oxides, iron sulphides and silicates in aqueous suspension;

“refinery site” means the land referred to in clause 3 (1) hereof;

“said State” means the State of Western Australia;

“smelter” means a smelter plant or any other plant in which matte or nickel-containing products (other than nickel concentrates) are produced from nickel ore or nickel concentrates;

“smelter site” means the land referred to in clause 3 (13) hereof;

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

“townsite lot” means a lot marked as such on the plan of resubdivision of the Kambalda Townsite carried out pursuant to clause 6 (1) (b) hereof;

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

Marginal notes shall not affect the interpretation or construction hereof.

Operation and Ratification

2. (1) To enable the Corporation to commence construction of the refinery and associated works as soon as possible to the parties hereto agree that this Agreement (save and except the provisions hereof as cannot operate or cannot operate fully unless and until this Agreement is ratified as hereinafter mentioned) shall operate as from the date of execution hereof.

(2) The State undertakes to introduce and sponsor a Bill to ratify this Agreement and to endeavour to have the same passed as an Act before 31st December 1968.

(3) If the Bill referred to in subclause (2) of this clause is not passed as an Act before 31st December 1968 this Agreement shall cease and determine without prejudice however to the right of the Corporation to a refund of any consideration moneys paid by it in respect of the options referred to in clause 3 (6) or 3 (7) hereof and to complete by payment of the purchase price the purchase of any Crown land which pursuant to clause 3 (1) hereof the Corporation has purchased or agreed to purchase from the State but subject to an option for the State to repurchase the same at the same price if before the 30th June 1969 the Corporation has not commenced to construct a refinery thereon but otherwise neither party hereto will have any claim against the other of them with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement.

(4) On the Bill referred to in subclause (2) of this clause commencing to operate as an Act —

- (a) all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of the Land Act, the Mining Act and the Public Works Act which shall for the purposes of this Agreement be deemed modified and amended to the extent necessary to enable full force and effect to be given hereto; and
- (b) the provisions of subsections (3) and (5) of section 277 of the Mining Act shall not apply to the granting of rights of occupancy pursuant to subclause (1) of clause 5 hereof;
- (c) the State and the Minister respectively shall have all the powers discretions and authorities necessary or requisite to perform or exercise the powers discretions authorities and obligations conferred or imposed on them respectively hereunder;
- (d) the State may as and for a public work under the Public Works Act resume any land or any estate and interest in land required for the purposes of this Agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of the same to the Corporation 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.

Land to be made available to Corporation

3. (1) As soon as reasonably possible after the date hereof having regard to the Corporation's obligations hereunder the State will make available and sell and grant to the Corporation and the Corporation will purchase from the State for a refinery site at Kwinana an estate in fee simple (free from encumbrances but subject to the usual reservations in Crown grants) in all that area of land delineated and coloured green and marked Area 1 on the map marked B initialled by the parties hereto for the purposes of identification.

(2) As regards any part of the said Area 1 (and also of Area 2 and Area 3 hereinafter mentioned) which is not Crown land the State will for that purpose acquire the same from the existing owners either by agreement with the consent of the Corporation or by resumption under or pursuant to statutory powers and this Agreement. The State will not make any offer or amended offer of compensation or settle out of court any claim for compensation for any such resumption without the approval of the Corporation.

(3) There shall be excepted and reserved to the State all such parts of the said Areas 1,2 and 3 as are required by the State for road railway and other public purposes and any reference to the said Areas in this clause shall be read as subject to such exception and reservation.

(4) The purchase price for the said Area 1 and if the options hereinafter mentioned are exercised the respective purchase prices for the Area 2 and Area 3 hereinafter mentioned shall be calculated at a price per acre in accordance with the following formula:

$$\frac{A + B + C}{D} = \text{Calculated price per acre.}$$

Where A = the cost of all land (other than land which at the date hereof is Crown land) in the said Areas 1, 2 and 3 which the State resumes or otherwise acquires for the purposes of this Agreement.

B = the value of the land which at the date hereof is Crown land in the said Areas calculated at the average cost per acre of the land referred to in A above which is resumed or otherwise acquired.

C = the total cost of and incidental to the resubdivision and the redevelopment of the said Areas with roads railways water electricity telephone and other services made necessary by the resubdivision and redevelopment and the value (to be agreed or determined by arbitration pursuant to clause 17 hereof) of any improvements on any land within the area bounded by Pioneer Road Office Road Third Avenue and Bay Street resumed or acquired for and incidental to the extension of the existing railway now serving other industries in Pioneer Road.

D = the total acreage to the next highest acre of all the land included in the said Areas less such parts as are taken by the State for road railway or other public purposes.

(5) Unless otherwise approved by the Minister the purchase price for the said Area 1 shall be paid on vacant possession being given by the State to the Corporation but if required by the Corporation vacant possession may be given and taken of any part or parts of the said Area 1 as and when available subject to payment by the Corporation of a sum equal to six thousand dollars (\$6 000) per acre on account of the purchase price but in any event payment of the full purchase price for the said Area 1 or so much thereof as is then outstanding shall be made as soon as vacant possession of the whole of the said Area 1 is given and the purchase price ascertained.

(6) The State will also make available and grant to the Corporation an option of purchase over the area of land delineated and coloured red and marked Area 2 on the said map marked B or so much thereof as the Corporation requires for its purposes for a term of seven years from the date hereof (or until the Corporation gives to the Minister earlier notice that it abandons the option) such option to be exercisable by notice from the Corporation to the Minister and on proof that Area 2 or the part thereof required by the Corporation is reasonably required by the Corporation for immediate expansion of the refinery or for an

industry associated therewith and approved by the Minister. In the event of such option being exercised as to part of the said Area 2 the notice of exercise of the option shall be deemed as also notice of abandonment by the Corporation of the option in respect of the balance of the said Area 2 and of the option in respect of Area 3 hereinafter mentioned.

(7) Subject as hereinafter provided the State will also make available and grant to the Corporation an option of purchase over the area of land delineated and coloured blue and marked Area 3 on the said map marked B for a term of ten years from the date hereof (or until the Corporation gives to the Minister earlier notice that it abandons the option) such option to be exercisable by notice from the Corporation to the Minister at any time after the Corporation has purchased the whole of Area 2 from the State pursuant to the option contained in subclause (6) of this clause and on proof that Area 3 is reasonably required by the Corporation for the further immediate expansion of the refinery or for an industry associated therewith and approved by the Minister. Provided that at any time before such option is exercised the State may give the Corporation twelve months notice that Area 3 is required by the State for another industry and unless within such period of twelve months the option is exercised by the Corporation in accordance with this subclause such option shall cease and determine.

(8) During the continuance of the respective options granted pursuant to subclauses (6) and (7) of this clause the Corporation shall have a lease of the area concerned from the date vacant possession is given by the State at a rental of one peppercorn and subject to the Corporation as it hereby agrees to do paying all rates and taxes assessed or charged in respect thereof during the term of the lease.

(9) The respective purchase prices for Area 2 and Area 3 which shall be payable by the Corporation to the State on exercise of the relevant option shall be the calculated cost per acre.

(10) On demand by the State the Corporation will pay to the State as consideration for each of the options mentioned in subclauses (6) and (7) of this clause a sum equal to the purchase price of the area concerned which sum if the relevant option is exercised shall be accepted by the State in satisfaction of the purchase price but if an option is not exercised or ceases and determines pursuant to subclause (7) of this clause or is abandoned by the Corporation, the State will refund to the Corporation the consideration paid for such option (or so much thereof as relates to the Area or part thereof abandoned) and shall reimburse the

Corporation for the cost of any improvements which the Corporation may have made to the area or part thereof concerned with the approval of the Minister. The sum for which the State is liable to the Corporation under or pursuant to this subclause shall be paid to the Corporation by the State with interest on the amount owing from time to time at the rate of six per centum per annum computed from the date the option concerned expires ceases or determines or is abandoned as the case may be by three equal annual and consecutive instalments commencing on the expiration of one year from such date with the right for the State to pay off the balance owing at any time with interest to date of payment.

(11) Subject to prior payment of the purchase price the State at the cost of the Corporation will do all things necessary to issue Crown Grants or otherwise to place the titles to land purchased pursuant to this clause in the name of the Corporation.

(12) All roads or parts thereof existing within the boundaries of the said Areas 1, 2 and 3 at the commencement date shall be closed and for all purposes be deemed added to and form part of the said Areas and shall vest in Her Majesty as and for an estate in fee simple in possession under the Transfer of Land Act 1893.

(13) As soon as reasonably possible after the date on which the Corporation notifies the State that it intends to establish a smelter the State will make available and sell and grant to the Corporation and the Corporation will purchase from the State for a smelter site such land at Kambalda or Kalgoorlie at such price and on such terms and conditions as are reasonable and as the parties hereto by mutual agreement determine which agreement shall not be subject to arbitration.

Obligation of Corporation to construct refinery

4. (1) By the 30th day of June 1968 or if before that date the Corporation applies to the Minister for an extension of time then before the 30th day of September 1968 or when vacant possession of the refinery site is given to the Corporation whichever is the latest date the Corporation will commence to erect and thereafter will diligently proceed with the construction and establishment of a refinery on the refinery site having a capacity to produce not less than fifteen thousand (15,000) tons of nickel metal per annum and thereafter will continuously

and progressively proceed with such construction and establishment and will within three years of the commencement of construction complete the same at a total cost (together with the cost of associated works and additions at Kambalda and also the cost of the rolling stock to be provided by the Corporation pursuant to Clause 9 hereof) of not less than forty-five million dollars (\$45,000,000) and will produce an annual average of not less than ten thousand (10,000) tons of nickel metal during the first ten year period from the date of completion of the refinery.

(2) The Corporation will continue to investigate the feasibility of establishing a smelter at Kambalda or Kalgoorlie and when and if the Company considers the establishment of such a smelter is economically viable will so notify the State and will as soon as reasonably possible thereafter commence to erect and thereafter will diligently proceed with the construction and establishment of a smelter on the smelter site having such capacity to produce matte or nickel metal as its investigations show to be desirable and thereafter will continuously and progressively proceed with such construction and establishment and will in due course complete the same.

Rights of Occupancy of Mining Areas

5. (1) On the commencement date the State will cause to be granted to the Corporation and to the Corporation alone rights of occupancy for the purposes of this Agreement (including the sole right to search and prospect for nickel copper lead cobalt silver zinc and molybdenum) over the whole of the mining areas under section 276 of the Mining Act as a rental of eight dollars per square mile payable quarterly in advance for a term expiring on the 30th day of September, 1975 or such earlier date on which this Agreement is determined or (as to so much thereof as is the subject of such grant or each grant) on such earlier date as the Corporation applies for and is granted a mineral lease or mineral leases under and subject to the provisions of the Mining Act PROVIDED THAT on 30th September 1972 and on 30th September in each year thereafter the Corporation shall surrender to the State its rights of occupancy of at least one hundred and thirty two square miles of the mining areas or so much thereof as then remains the subject of such rights.

(2) During the continuance of any rights of occupancy referred to in subclause (1) of this clause the State will not grant any goldmining lease in respect of any portion of the mining areas for the time being the subject of such rights unless the Minister for Mines of the said State is satisfied that gold exists in the ground applied for in association with another mineral or other minerals and that the gold is the more or most profitable product of the ore or the ground contains a deposit of gold which can be worked profitably PROVIDED THAT this subclause shall be without prejudice to any application for a mining tenement lodged at the office of the Warden of the Goldfield prior to the date hereof.

(3) At any time during the continuance of the rights of occupancy referred to in subclause (1) of this clause the Corporation shall have the right to apply for and be granted by the State a mineral lease or mineral leases for nickel copper lead cobalt silver zinc and molybdenum under and subject to the provisions of the Mining Act of any part or parts of the mining areas or so much thereof as then remains subject to such rights of occupancy each being subject to the payment of the royalties hereinafter mentioned and subject to the payment of the rents and to the performance and observance by the Corporation of its obligations under the mineral lease and the Mining Act and for a period of twenty-one (21) years commencing from the date of grant with one option of renewal for a further period of twenty-one (21) years under the same terms and conditions (except this option) PROVIDED HOWEVER that the Minister for Mines of the said State may in his discretion and shall have power not more than twelve months nor less than six months before the date of expiry of such renewed terms at the request of the Corporation subject to this Agreement continuing in force up to the date when such renewed term is due to expire to grant a second renewal of any mineral lease for a further term of twenty-one (21) years on and subject to the same terms and conditions as applied to the first renewal.

(4) During the currency of this Agreement and subject to compliance with its obligations hereunder the Corporation shall not be required to comply with the labour conditions imposed by or under the Mining Act in regard to the mineral lease or mineral leases or any renewal thereof.

(5) The Corporation will pay to the State the following royalties in respect of all minerals mined or produced by the Corporation from the mineral leases and sold by it —

- (a) on all nickel-containing products sold during the period of five years from the date hereof a royalty calculated in accordance with the following formula:

$$\frac{P \times U}{100} \times \frac{2}{100} = \$ R \text{ per ton}$$

Where P = the ruling price per ton of nickel metal on the world market which price is for the time being agreed to be the price per ton calculated from the price from time to time quoted by International Nickel Company Limited for four inch square electrolytic nickel cathodes, F.O.B., Fort Colborne, Canada.

U = the number of units per hundred of nickel in the nickel-containing products sold.

R = the royalty.

- (b) If at any time prior to the expiration of five years from the date hereof the Corporation pursuant to clause 4 (2) hereof notifies the State that it intends to establish a smelter and if before the expiration of six years from the date hereof construction is commenced and if before the expiration of seven years from the date hereof the Corporation completes the establishment of and has in operation a smelter having a capacity to produce an annual average of not less than 10,000 tons of matte and nickel-containing products or matte or nickel-containing products other than nickel concentrates then on all nickel-containing products sold during the period of five years next following the expiration of the period of five years from the date hereof the same royalty as is mentioned in paragraph (a) of this subclause;
- (c) on all nickel-containing products sold after the expiration of five years from the date hereof or (if the Corporation gives the notice and establishes the smelter referred to in paragraph (b) of this subclause within the periods therein respectively mentioned) after the

expiration of ten years from the date hereof such royalties as are prescribed from time to time under or pursuant to the provisions of the Mining Act;

- (d) on all other minerals specified in clause 5 (1) hereof such royalties as are prescribed from time to time under or pursuant to the provisions of the Mining Act.
- (6) The Corporation will —
 - (a) within fifteen days of the expiration of each month during which it receives payment for any product or mineral in respect of which royalty is payable under this clause give to the Minister for Mines a return showing the number of tons of product and mineral payment for which is received during the month and all other particulars necessary to enable the calculation of the royalty payable thereon and shall pay to the Minister for Mines the royalty payable on such product and mineral; and
 - (b) permit the Minister or his nominee to inspect at all reasonable times and to take copies of or extracts from all books of account 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 will take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the Minister's reasonable satisfaction as to all relevant weights and analyses and will give due regard to any objection or representation made by the Minister or his nominee as to any particular weight or assay of ore or nickel-containing products which may affect the amount of royalty payable hereunder.

Grants of land and leases

6. (1) For the purposes of the Corporation's works and operations at Kambalda the State will —

- (a) grant to the Corporation for a reasonable consideration the fee simple of townsite lots on which prior to the date hereof the Corporation has erected dwelling houses or communal facilities;

- (b) grant to the Corporation for residential professional business commercial and industrial purposes and the provision of communal facilities at Kambalda a special lease or special leases under the provisions of the Land Act for the area of land the subject of the existing Kambalda Townsite as proclaimed under the Land Act (less such parts thereof as are the subject of the townsite lots referred to in paragraph (a) of this subclause) together with such further adjacent area or areas the Corporation may from time to time hereafter require and the Minister for Lands of the said State approve such lease or each lease as the case may be being for a term expiring twenty-one (21) years from the date hereof at a rental of six dollars (\$6) per annum for any townsite lot of an area of less than one acre and nine dollars (\$9) per acre for any townsite lot having an area of one acre or more with the right for the Corporation at any time during the currency of the lease to purchase for the sum of ten dollars per townsite lot the fee simple of any townsite lot on which buildings or structures have been erected which cost averaged over the lot concerned not less than ten thousand dollars (\$10,000) or in the case of dwelling houses seven thousand dollars (\$7,000) for each quarter acre of such lot and on and subject to such terms and conditions not inconsistent with this Agreement as the Minister for Lands considers applicable in the circumstances and including a right for the State at any time and from time to time to exclude from the lease or resume without compensation any part or parts of such land on which no building or structure has been erected as the State may require for public purposes and including a condition that the area or areas the subject of such lease or leases shall be resubdivided as a townsite to a subdivision design approved by the Surveyor General of the said State and that the subdivision and boundary surveys shall be carried out under the direction of the said Surveyor General and in accordance with the regulations for Lands Department Surveys and shall be drawn and registered on Lands Department plans with a view to the proclaiming of a new townsite in place of the existing townsite and that the actual cost of all surveys shall be paid by the Corporation;

-
- (c) in accordance with the reasonable requirements of the Corporation as first approved by the Minister and for such consideration or rent and on such terms and conditions as shall be reasonable having regard to the overall development of the area and rights of other parties grant to the Corporation:
- (i) a lease for a term of ten years under the Mining Act which shall be deemed to be modified to enable the same to be granted for the purpose of constructing and using a causeway over Lake Lefroy to be constructed and during the term of the said lease to be maintained by the Corporation so as to allow water to flow through at intervals to such extent and in such manner as to preserve a reasonable balance in the water level on both sides of the causeway which shall be open for use by the public on such reasonable terms and conditions as are determined by the Corporation and approved by the Minister;
 - (ii) tailings leases (including leases or licences for the dumping of overburden) or other mining tenements under the Mining Act.
- (2) For the purposes of subclause (1) of this clause the Land Act shall be deemed to be modified by —
- (a) the substitution for subsection (2) of section 45A of the following subsection:
 - (2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold;
 - (b) the deletion of the proviso to section 116;
 - (c) the deletion of section 135; and
 - (d) the inclusion of a power to offer for sale or leasing land within or in the vicinity of any townsite notwithstanding that the townsite has not been constituted a townsite under section 10.

Disposal of Refinery Residues

7. (1) Unless and until otherwise reasonably determined by the Minister the Corporation will dispose of the refinery residues by pumping them through a pipeline and depositing them on land specified from time to time by the Minister within a radius of six miles of the refinery site.

(2) The land referred to in subclause (1) of this clause shall be such land as the State shall from time to time make available for the purpose to the Corporation either on a purchase at cost or other agreed basis or on lease or licence at such rent and on such terms and conditions as shall in all the circumstances be reasonable.

(3) The provision and laying and relaying as may be necessary from time to time of the pipeline referred to in subclause (1) of this clause the maintenance and supervision thereof from time to time and the acquisition of all necessary easements and rights for the same shall be carried out by the State at the expense of the Corporation.

(4) So far as reasonably possible the depositing of the residues shall be carried out as a landfilling project on low lying land and shall be carried out by the Corporation as directed from time to time by the Minister and in such manner as not to cause any nuisance or undue inconvenience to third parties or cause air or underground water pollution and so as to ensure so far as reasonably possible that the land concerned after being so filled is left properly compacted and solid with a flat and level surface and in such condition as to be suitable generally for industrial purposes as applicable to the Kwinana Industrial Area and without prejudice to the generality of the foregoing the Corporation will carry out the directions from time to time of the Minister as to the addition to the deposits of sand and soil and also of chemicals and other substances as the Minister may reasonably require and as to the limit and the direction and the height of the deposits as the Minister may reasonably consider necessary from time to time.

(5) The State after prior consultation from time to time with the Corporation shall decide the routes to be followed by such pipeline which routes may be within the boundaries of any road railway or land belonging to the Crown

or any local authority but subject thereto will follow as direct a route as is reasonably possible.

(6) The Corporation will ensure that the residues discharged through such pipeline will not contain any material which may be or become or cause a nuisance or be or become dangerous or injurious to public health.

(7) In so far as the parties mutually agree that for the purpose of this clause it is necessary for the State to acquire land or any rights or interests to in over or in respect of land the State shall acquire the same either privately or compulsorily as for a public work under the Public Works Act 1902 and the cost and compensation involved shall be paid by the Corporation to the State on demand.

(8) The Corporation shall on request be supplied by the State with details of charges made by the State and shall be consulted from time to time regarding the sizes laying and condition of the pipeline and any major expenditure which the State proposes to incur at the cost of the Corporation under this clause.

Water Supplies

8. (1) Subject to compliance by the Corporation with its obligations hereunder the State will use all reasonable endeavours to supply water to the Corporation in such quantities and on such terms and conditions as may be mutually agreed from time to time but the State shall not be liable for any loss or damage to the Corporation caused by any failure to supply water.

(2) Subject to the Rights in Water and Irrigation Act 1914 the Corporation for its purposes hereunder in relation to its operations at Kambalda may to the extent determined by the Minister bore for water construct catchment areas and dams and take water from Crown lands.

Rail Freights

9. (1) Subject to the Corporation at its own expense providing and paying for the maintenance of its own rolling stock (other than locomotives) in accordance with subclause (2) of this clause the State will haul over its railway system the Corporation's nickel-containing products from Kalgoorlie and its fuel oil requirements to Kalgoorlie in fully loaded wagons at a rate which is ten per cent less than that prescribed from time to time for freight of the same class hauled in the Commission's rolling stock.

(2) The rolling stock to be provided by the Corporation pursuant to this clause shall be of such designs, standards and specifications as are approved from time to time by the Railways Commission and shall be maintained in good order and condition by the Commission at the expense of the Corporation.

(3) The numbers of rolling stock provided by the Corporation shall be mutually agreed from time to time so to enable the Railways Commission to transport the Corporation's freight as aforesaid in a reasonably expeditious manner.

(4) The Corporation shall be responsible for the provision, staffing and maintenance of any equipment used in the loading and or unloading of the Corporation's freight as aforesaid.

Use of local labour and materials

10. The Corporation undertakes and agrees with the State —

- (a) so far as reasonably and economically practicable to use labour available within the said State and give preference to *bona fide* Western Australian manufacturers and contractors in the placement of orders for works materials plant and equipment required for the performance of this Agreement where price quality delivery and service are equal to or better than that obtainable elsewhere.

In calling tenders and or letting contracts for such works materials plant and equipment required by the Corporation the Corporation will ensure that *bona fide* Western Australian manufacturers and

contractors are given reasonable opportunity to tender quote or otherwise be properly considered for such works materials plant and equipment;

- (b) to allow the State and third parties to have access (with or without stock vehicles and rolling stock) over the mineral leases (by separate route road or railway) and facilities for air travel thereover and to allow the State and third parties and the public generally with or without vehicles to have access to the town established by the Corporation at Kambalda and being the land or part of the land the subject of the special lease or special leases referred to in clause 6 (1) (b) hereof and to the residents and businesses therein and to pass and repass over the road system of the said town PROVIDED HOWEVER that such access shall not unduly prejudice or interfere with the Corporation's operations hereunder.

Determination of Agreement

11. It is hereby Agreed and Declared —

- (a) that in any of the following events namely if the Corporation shall make default in the due performance or observance of any of the covenants or obligations to the State herein or in any lease licence or other title or document granted or assigned under this Agreement on its part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to it by the State (or if the alleged default is contested by the Corporation and promptly submitted to arbitration then within a reasonable time fixed by the arbitration award where the question is decided against the Corporation the arbitrator finding that there was a *bona fide* dispute and that the Corporation had not been dilatory in pursuing the arbitration) or if the Corporation shall abandon or repudiate its operations under this Agreement or if the Corporation shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Corporation determine this Agreement and thereupon the rights of the Corporation hereunder shall cease and

determine; PROVIDED HOWEVER that if the Corporation shall fail to remedy any default after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Corporation and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Corporation to the State on demand; and

- (b) that on the cessation or determination of this Agreement —
- (i) any mineral lease or mineral leases or other mining tenements (other than the lease to be granted under clause 6 (1) (c) (i) hereof) then held by the Corporation shall cease to have the benefit of the rights and privileges conferred by this Agreement and shall continue in force only under and subject to the provisions of the Mining Act;
 - (ii) any other lease or leases granted to the Corporation under or pursuant to this Agreement shall cease and determine;
 - (iii) the State shall have an option to purchase from the Corporation any freehold land purchased or acquired by the Corporation under or pursuant to this Agreement such option to be exercised within six months after such cessation or determination and the price to be paid by the State if such cessation or determination occurs within fifteen years from the date hereof shall be the original cost of the unimproved land to the Corporation and otherwise shall be the then market value plus in any case the value of all fixed improvements thereon as may be mutually agreed between the parties or failing agreement as determined by arbitration pursuant to clause 17 hereof.

Indemnity

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

Assignment

13. (1) Subject to the provisions of this clause and the 4 Mining Act but not otherwise the Corporation may at any time —

- (a) assign mortgage charge sublet or dispose of to any other company or person with the approval in writing of the Minister the whole or any part of the rights of the Corporation hereunder (including its rights to or as the holder of any lease grant or other title) and of the obligations of the Corporation hereunder; and
- (b) appoint with the approval in writing of the Minister any other company or person to exercise all or any of the powers functions and authorities which are or may be conferred on the Corporation hereunder;

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

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this clause the Corporation shall at all times during the currency of this Agreement be and remain liable for the due and punctual

performance and observance of all the covenants and agreements on its part contained herein and in any lease grant or other title the subject of an assignment under the said subclause (1).

Variation

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

Delays

15. This Agreement shall be deemed to be made subject to any delays in the performance of obligations under this Agreement and to the temporary suspension of continuing obligations hereunder which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays or any such temporary suspension as aforesaid caused by or arising from Act of God *force majeure* floods storms tempests washaways fire (unless caused by the actual fault or privity of the Corporation) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages or insufficient supply of labour or water or essential materials reasonable failure to secure contractors delays of contractors and inability (common in the nickel export industry) to profitably sell nickel containing products or factors due to overall world economic conditions or factors which could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall minimise the effect of the said causes as soon as possible after their occurrence.

Power to extend periods

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

Arbitration

17. Except where otherwise specifically provided in this Agreement any dispute or difference as to questions of fact between the parties arising out of or in connection with this Agreement or any agreed amendment in variation thereof or agreed addition thereto or as to the construction of this Agreement or any such amendment variation or addition or as to the rights duties or liabilities of either party thereunder or as to any matter to be agreed upon between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the Arbitration Act 1895 PROVIDED THAT this clause shall not apply to any case where the State or the Minister is by this Agreement given either expressly or impliedly a power or discretion to approve consent direct or otherwise act in any particular way.

Notices

18. Any notice consent or other writing authorized by 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 to the Corporation at its registered office for the time being in the said State and by the Corporation if signed on its behalf by a director manager or secretary of the Corporation or by any person or persons authorized by the Corporation in that behalf or by its solicitors as notified to the State from time to time and forwarded by prepaid post to the Minister and any such notice consent or writing

shall be deemed to have been duly given or sent (unless the contrary be shown) on the day on which it would be delivered in the ordinary course of post.

Interpretation

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

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

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

} DAVID BRAND
[L.S.]

ARTHUR GRIFFITH,
Minister for Mines

C. W. COURT,
Minister for Industrial
Development

The Common Seal of WESTERN
MINING CORPORATION LIMITED
Was hereunto affixed in the
Presence of —

} L. BRODIE HALL
[L.S.]

G.D. WRIGHT,
Director.

Authorized Witness

[First Schedule amended by No. 76 of 1970 s.4.]

Second Schedule — Supplemental agreement

[s. 2]

[Heading amended by No. 19 of 2010 s. 4.]

Date of Execution Parties and Principal Agreement

AN AGREEMENT made this 4th day of November One thousand nine hundred and seventy between the HONOURABLE SIR DAVID BRAND, K.C.M.G., M.L.A. Premier and Treasurer of the State of Western Australia acting for on behalf of the Government of the said State and the instrumentalities thereof from time to time (herein referred to as “the State”) of the one part and WESTERN MINING CORPORATION LIMITED a company duly incorporated in 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 191 Great Eastern Highway, Belmont (herein referred to as “the Corporation” which term shall where the context so admits or requires extend to and include the Corporation and also its successors and assigns) of the other part SUPPLEMENTAL to the agreement (herein referred to as “the principal agreement”) between the same parties ratified by the Nickel Refinery (Western Mining Corporation Limited) Agreement Act 1968 (Act No. 24 of 1968) relating to the establishment of a nickel refinery at Kwinana in the State of Western Australia and other matters.

WHEREAS —

(1) By sub-clause (2) of Clause 4 of the principal agreement the Corporation agreed to continue to investigate the feasibility of establishing a smelter at Kambalda or Kalgoorlie and when and if it considered the establishment of such a smelter to be economically viable so to notify the State and as soon as possible thereafter to erect and establish on the smelter site therein referred to a smelter having such capacity to produce matte or nickel metal as its investigations showed to be desirable.

(2) The Corporation has notified the State that it intends to establish a smelter at Kalgoorlie and has requested the State to make available and sell and grant to it pursuant to sub-clause (13) of Clause 3 of the principal agreement the smelter site herein defined for the price and upon the terms and conditions herein set out.

(3) The State is aware that the Corporation needs to develop an adequate reserve of nickel ore so as to maintain the operations of the smelter hereinafter mentioned on a long term basis and that the Corporation also needs to be able to plan a reasonable flow of nickel ore or nickel concentrates to the smelter either from its own production or from other sources and accordingly in order to assist the Corporation in these respects the State has agreed to grant the Corporation the rights to apply for additional mineral leases as hereinafter provided.

(4) The parties mutually desire to add to and amend the principal agreement so as to give the Corporation rights of occupancy over a further area of land and also as to provide for the granting of additional rights to and the undertaking of additional obligations by the Corporation as herein provided.

NOW THIS AGREEMENT WITNESSETH as follows —

Rights under principal agreement unaffected

1. Except as hereinafter provided nothing in this Agreement shall affect the rights or obligations of either party arising under the principal agreement.

Definitions

2. (1) In this Agreement unless inconsistent with the context the following words and phrases have the meanings hereby respectively assigned to them namely —

“ancillary or associated operation” means any enterprise or undertaking (other than the establishment and operation of the smelter) which the Corporation shall carry on in connection, conjunction or association with the smelter and includes the establishment and operation of a processing works for any purpose other than that for which the smelter is established a plant for the manufacture of sulphuric acid or

elemental sulphur and an electric power generating plant and also the construction and erection of all buildings and other structures (excluding living accommodation) to be used or occupied for the purposes of or in connection with the smelter or any of such other enterprises or undertakings;

“commencement date” means the date on which the ratifying Act comes into operation;

“mining area” means all those pieces of land containing two hundred and forty-six (246) square miles or thereabouts situate in what is known to the parties as the “Ora Banda-Siberia Nickel Laterite Area” the subject of the mineral claims applications for mineral claims and Temporary Reserves listed in the First Schedule hereto which are generally delineated and respectively coloured green and orange and red in the plan marked “X” signed by or on behalf of the parties for the purpose of identification;

“ratifying Act” means the Act to ratify this Agreement mentioned in sub-clause (1) of Clause 3 of this Agreement;

“smelter” means the smelter plant mentioned in sub-clause (2) of Clause 6 of this Agreement;

“smelter site” means the land mentioned in subclause (1) of Clause 5 this Agreement;

“the parties” means the parties to this Agreement and to the principal agreement;

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

“this Agreement” “hereto” and “hereunder” means this Agreement in this present form and also as from time to time added to varied or amended.

(2) Subject as contained in the last preceding subclause and unless the context otherwise admits or requires each word or phrase which is defined in Clause 1 of the principal agreement shall when used in this Agreement have the same meaning as that assigned to it by the said Clause 1 of the principal agreement but where the same word or phrase is defined both in the principal agreement and in this Agreement and the respective definitions conflict such word or phrase when used in the principal agreement shall have the definition given to it by Clause 1 of the principal agreement and when used in this Agreement shall have the definition given to it by the preceding sub-clause.

Ratification

3. (1) This Agreement except for this Clause shall not come into operation unless ratified by an Act of the said Parliament.

(2) If the ratifying Act is passed by the said Parliament the provisions of this Agreement shall take effect as though the same had been enacted by the ratifying Act notwithstanding the provisions of the Land Act the Mining Act and the Public Works Act (which shall for the purpose of this Agreement be deemed to be modified and amended by the ratifying Act to the extent necessary to enable full force and effect to be given to this Agreement). For the purpose of implementing this Agreement the State and the Minister shall have all the powers discretions and authorities conferred on them respectively by this Agreement and also the same powers discretions and authorities as those conferred on them by the principal agreement for the purpose of implementing that agreement and in particular those powers conferred in paragraphs (c) and (d) of sub-clause (4) of Clause 2 of the principal agreement.

Amendment and application of principal agreement

4. (1) The principal agreement shall be and the same is hereby altered and amended as follows —

(a) as to paragraph (b) of sub-clause (4) of Clause 2 thereof —

by inserting after the figures and brackets “(3)” in the first line thereof the figure and brackets “(4)”;

(b) as to sub-clause (4) of Clause 5 thereof — by deleting the whole of the sub-clause and substituting the following new sub-clause —

“(4) Subject to the Corporation complying with its obligations hereunder and with the other conditions imposed by the said mineral lease or mineral leases or by the Mining Act or any subsequent amendment thereof or any other legislation in substitution therefor the Corporation shall be and is hereby during the continuance of this Agreement exempted in respect of the said mineral lease or mineral leases from compliance with —

(a) the labour conditions imposed on the holder of the mineral lease by the said Act or any substituted legislation; and

(b) any other conditions so imposed requiring the holder of a mineral lease to expend money or a specified sum of money on exploration or the development thereof or erecting or operating machinery thereon.”

- (c) as to paragraph (c) to sub-clause (5) of Clause 5 thereof — by adding to the end of that paragraph the following passage —

“provided however that it is expressly agreed that the royalties payable after the expiration of the said period of ten (10) years are not to be discriminatory.”

- (d) as to paragraph (b) of sub-clause (1) of Clause 6 — by adding to the end thereof the following proviso —

“provided always that from and after the commencement date the State will on a resumption of any such land required for public purposes pay to the Corporation as soon as practicable after the date when such land is resumed and by way of and in satisfaction of compensation for such resumption a sum representing the assessed capital cost of installing and connecting to the nearest appropriate main all services (such as electricity, water and sewerage) to the land so resumed and the assessed capital cost (proportionate to the frontage of the resumed land thereto) of all roads, footpaths and curbs thereof to which the resumed land abuts and which in either case were provided and paid for by the Corporation and thereafter the State will pay in respect of such land the appropriate operating charge as from time to time determined.”

- (e) as to sub-clause (2) of Clause 8 — by inserting after the word “Kambalda” the words “and Kalgoorlie”;

- (f) as to Clause 9 thereof — by deleting the whole of the Clause with effect as from the date of commencement of the special freight rate mentioned in Clause 21 hereof.

(2) The State concedes that by establishing and operating the smelter in accordance with the provisions of sub-clause (2) of Clause 6 of this Agreement the Corporation has complied with the condition precedent referred to in paragraphs (b) and (c) of sub-clause (5) of Clause 5 of the principal agreement.

(3) As from the date of commencement of the special freight rate the provisions of Clauses 17 to 22 (both inclusive) of this Agreement shall apply (in lieu of the provisions of Clause 9 of the principal agreement) with respect to the obligations of the Corporation mentioned in those Clauses whether the same had already arisen under the principal agreement by virtue of the said Clause 9 or under this Agreement by virtue of the said clauses.

(4) The following provisions of the principal agreement shall mutatis mutandis be deemed to be incorporated in and form part of this Agreement namely —

- (a) Clause 1 thereof subject however to the provisions of sub-clause (2) of Clause 2 of this Agreement;
- (b) sub-clause (4) of Clause 2 thereof as amended by this Agreement;
- (c) sub-clause (2) of Clause 5 thereof;
- (d) sub-clause (4) of Clause 5 thereof as amended by this Agreement;
- (e) paragraph (a) of sub-clause (5) of Clause 5 thereof in so far as the same refers to the formula therein mentioned;
- (f) sub-clause (6) of Clause 5 thereof;
- (g) Clauses 8 and 10 to 19 (both inclusive) thereof.

Smelter site

5. (1) The State will as soon as practicable acquire and hold so that the same will be readily available for the purpose of a smelter site and the other purposes of this Agreement ALL THAT piece of land containing two thousand eight hundred and thirty-five (2,835) acres or thereabouts situate approximately nine and one-half (9¹/₂) miles from the Kalgoorlie Post Office (more particularly described in the Second Schedule hereto) and which is delineated and coloured

green in the plan marked “Y” reinstalled by the parties for the purpose of identification. The State will not sell or otherwise dispose of (except to the Corporation pursuant to this Clause) any part of the smelter site during a period of ten (10) years from the commencement date without first giving the Corporation notice of its intention so to do.

(2) The State will as soon as practicable after being required by the Corporation so to do sell to it and the Corporation will purchase from the State an estate in fee simple (free from all encumbrances but subject to the usual reservations contained in Crown Grants) in that part of the smelter site (containing one thousand five hundred (1,500) acres or thereabouts and situate at a location within the boundaries of the smelter site as the parties mutually agree) as the Corporation may require whereon to erect and construct the smelter in compliance with the provisions of Clause 6 of this Agreement.

(3) The Corporation will be at liberty from time to time if and when it demonstrates to the State that it has a reasonable need therefor either for the purpose of the smelter and/or that of any ancillary or associated operation to purchase from the State an estate in fee simple (unencumbered but subject as aforesaid) in such other part or parts of the smelter site as the parties shall mutually agree.

(4) If and when the State gives to the Corporation notice of its intention to sell any part of the smelter site as mentioned in sub-clause (1) of this Clause then —

- (a) if the Corporation within fourteen (14) days after the giving of the notice satisfies the State that it has an immediate need for the whole or any part of the land mentioned in the notice the State will sell to the Corporation and the Corporation will purchase from the State an estate in fee simple (unencumbered but subject as aforesaid) in that part of the smelter site of which the State is satisfied the Corporation has an immediate need; or
- (b) if the Corporation within fourteen (14) days after the giving of the notice satisfies the State that it is reasonably likely that the Corporation will have a reasonable need for the whole or any part of the land mentioned in the notice within the period of seven (7) years

next ensuing the State will not within that period sell that part of the smelter site otherwise than to the Corporation and in the meantime will hold the same subject to the provisions of this Clause.

(5) There shall be excepted and reserved to the State such part or parts (if any) of the smelter site as are or may hereafter be required by the State for road, rail or other public purposes or as a tailings site for the Corporation and any reference to the smelter site in this Agreement shall be read as subject to such exception and reservation.

(6) The purchase price of each of those parts of the smelter site which are purchased by the Corporation pursuant to the provisions of this Clause shall be fixed in accordance with the provisions of sub-clause (13) of Clause 3 of the principal agreement and unless otherwise required by the Minister such purchase price shall be paid on vacant possession of the land being given by the State to the Corporation.

Obligation of Corporation to construct smelter

6. (1) In this Clause —

“dry long ton” means two thousand two hundred two and forty (2,240) pounds weight avoirdupois of nickel-bearing ore from which all moisture has been removed.

(2) By the 30th day of June, 1971 or if before that date the Corporation applies to the Minister for an extension of time then before the 31st day of December, 1971 the Corporation will commence to erect and thereafter diligently proceed with the construction and establishment of a smelter on the smelter site having a capacity to treat at least one hundred and twenty-five thousand (125,000) dry long tons of nickel ore and/or nickel concentrates per annum and thereafter will continuously and progressively proceed with such construction and establishment and have it completed and ready for operation not later than the 31st day of December, 1973 or if the said extension is applied for then not later than the 30th day of June, 1974 subject however as provided in Clauses 15 and 16 of the principal agreement.

(3) The smelter will be operated by the Corporation primarily for the purpose of treating ore and/or mineral concentrates mined by the Corporation but the Corporation shall have the right to buy and treat ore and/or mineral concentrates mined or produced by other mining companies. The Corporation will also insofar as in the opinion of the Corporation it is commercially practicable and acceptable so to do treat ore and/or mineral concentrates mined or produced by other mining companies up to the capacity of the smelter from time to time provided such ore and/or mineral concentrates does not contain contaminating elements which could adversely affect the operations of the smelter. In considering whether such treatment is commercially acceptable (and without in any way limiting the generality of its discretion) the Corporation shall be entitled to give absolute priority to or and/or mineral concentrates mined or purchased by it.

Tailings Lease

7. (1) For the purpose of this Clause the words “mining” and “mining operations” appearing in paragraph (1) of Section 48 of the Mining Act shall be construed so as to include the operation involved in establishing and operating the smelter.

(2) Upon application by the Corporation the State will cause to be granted to the Corporation a tailings lease of such area of land (not exceeding three hundred (300) acres) within or outside the smelter site as the parties shall mutually agree for the dumping and disposal of slag or other waste and residues from the smelter or any ancillary or associated operation. Such lease shall be for such term at such rental or for such other consideration and upon and subject to such terms and conditions as the State may reasonably require.

(3) So far as reasonably possible the Corporation will not in dumping or disposing of such slag and other waste and residues cause any nuisance annoyance or undue inconvenience to third parties or cause any air or underground water pollution and will at all times and from time to time carry out promptly all or any directions which the Minister may reasonably give as to the covering of such slag, waste or residues or any part thereof with sand or soil or as

to the adding thereto of chemicals or other substances or as to the limit direction and height of any dump or deposit.

Right of occupancy of Mining Area

8. (1) Subject to the Corporation surrendering all its right title and interest in and to the mineral claims applications for mineral claims and occupancy rights over temporary reserves listed in the said Schedule the State will ensure that the land comprised in the said mineral claims applications and temporary reserves will be temporarily reserved from occupation under Section 276 of the Mining Act and that the Corporation (and only the Corporation) will be authorized under the said Section to temporarily occupy the mining area for the purposes of this Agreement (which shall be deemed to include the searching and prospecting for nickel, copper, lead, cobalt, silver, zinc and molybdenum) upon and subject to the following terms and conditions —

- (a) the right of occupancy shall continue until the 30th day of June, 1978 or until the date of the termination or determination of this Agreement, or as to each part of the mining area that is subsequently made the subject of a mineral lease pursuant to Clause 9 hereof until the date of the commencement of the term of such mineral lease, whichever date is the earliest;
- (b) the right of occupancy shall be granted only upon the condition that the Corporation agrees that it will on the 30th day of June, 1975 and thereafter on the 30th day of June in each succeeding year during such time as such right shall exist in respect of any part of the mining area surrender to the State the right to occupy an area equal to one quarter of the original area of the mining area;
- (c) as from the 1st day of July, 1970 until the commencement date the rentals payable in respect of the areas coloured green and orange and red on the said plan marked “X” shall be at the rates applicable thereto prior to that date. Thereafter the rental payable for the right of occupancy for each square mile of the mining area in respect of which such right for the time being exists shall be —

- (i) as from the commencement date until the 30th day of June, 1975 eight dollars (\$8) per annum for each square mine or other the appropriate rate payable for the time being under the Mining Act in respect of such rights of occupancy;
 - (ii) as from the 30th day of June, 1975 the same rental as would from time to time be payable under the Mining Act if the land for the time being subject to the right of occupancy were held as a mineral lease under the said Act;
- (d) the right of occupancy shall be granted subject to the provisions of the said Act save and except sub-sections (3), (4) and (5) of Section 277 of the said Act which sub-sections shall not apply to any right of occupancy granted pursuant to this Clause.

Right to obtain mineral leases

9. (1) At any time during the continuance of the right of occupancy mentioned in Clause 8 hereof the Corporation shall have the right to apply for and to be granted by the State a mineral lease or mineral leases for the mining of nickel, copper, lead, cobalt, silver, zinc and molybdenum in respect of any part or parts of the mining area for the time being subject to such right of occupancy upon and subject to the following terms and conditions —

- (a) the Corporation shall agree to pay the royalties mentioned in sub-clause (4) of this Clause;
- (b) the rental for each mineral lease shall be such sum as is prescribed from time to time by the Mining Act or the Regulations thereunder and the same shall be payable as provided in the said Act and Regulations;
- (c) all relevant provisions of the said Act shall apply to each mineral lease;

- (d) the term of each mineral lease shall be twenty-one (21) years from the date when the State shall grant the same;
- (e) each mineral lease shall grant the Corporation an option (to be exercised by the Corporation giving to the State notice of its intention to exercise the same not later than one (1) month before the expiry of the said term) of taking a renewal of the term thereof for a further period of twenty-one (21) years at the same rental and upon and subject to the same terms and conditions as those upon which the original term was granted (save and except the option of renewal) but subject however as provided in the next succeeding sub-clause.

(2) If the Corporation desires to have the term of a mineral lease granted pursuant to the provisions of the last preceding sub-clause further renewed after the expiration of the period for which it had been renewed consequent upon the exercise by it of the option of renewal therein contained it shall make application therefor to the Minister for Mines in the said State and if this Agreement shall then still be in force the said Minister shall have the power exercisable not more than twelve (12) months or less than six (6) months before the date of the expiry of the period for which the term of the mineral lease had been renewed in his discretion to grant to the Corporation a second renewal of the said term for a further period of twenty-one (21) years upon and subject to the same terms and conditions as applied to the mineral lease after the term thereof was first renewed.

(3) The exemptions granted by sub-clause (4) of Clause 5 of the principal agreement as amended by this Agreement shall also apply to each mineral lease granted pursuant to sub-clause (1) of this Clause provided always that the foregoing provisions of this sub-clause shall cease to apply on the 30th day of June, 1978 (or such later date as the Minister for Mines may in his discretion determine) if the Corporation has not by the 30th day of June, 1978 (or such later date as aforesaid) brought the mining area into production at a rate of not less than one million (1,000,000) tons of laterite ore per year.

(4) The Corporation will pay to the State the following royalties in respect of all minerals mined or produced by the Corporation from the said mineral leases and sold by it —

- (a) on all nickel-containing products sold during the period of ten (10) years from the 19th day of January, 1968 a royalty calculated in accordance with the formula set out in paragraph (a) of sub-clause (5) of Clause 5 of the principal agreement;
- (b) on all nickel-containing products sold after the expiration of the said period of ten (10) years such royalties as are prescribed from time to time under or pursuant to the provisions of the Mining Act provided that it is expressly agreed that royalties payable by the Corporation under this paragraph are not to be discriminatory;
- (c) on all other minerals specified in sub-clause (1) of this Clause such royalties as are prescribed from time to time under or pursuant to the provisions of the Mining Act.

(5) Sub-clauses (2) and (6) of Clause 5 of the principal agreement shall *mutatis mutandis* be deemed to apply to and be included in this Agreement.

Rights to Mineral Leases in other areas

10. (1) In this Clause the expression —

“mining tenement” means a right to occupy any part of the land to which this Clause refers authorized under Section 276 of the *Mining Act* and any lease, mineral claim or other claim applied for, held, occupied, used or enjoyed under the provisions of the Mining Act.

(2) The land to which this Clause refers is land —

- (a) which is situate outside the mining area defined in the principal agreement and also outside the mining area defined in this Agreement; and

- (b) which in the opinion of the Minister for Mines is so located that taking into account accessibility to the smelter, it is logical, economic and desirable that nickel ore mined therefrom which requires processing be so processed at the smelter.

(3) If during the continuance of this Agreement the Corporation holds a mining tenement in respect to any part of the land to which this Clause refers and the Corporation proves to the satisfaction of the Minister for Mines that there is an economic nickel ore deposit thereon the Corporation shall be at liberty at any time before the date of the termination or determination of this Agreement or before the date of the termination or determination of the mining tenement (whichever date is the earlier) to apply for and (provided it satisfies the Minister for Mines as aforesaid) that Minister may in his discretion grant a mineral lease for the mining of nickel, copper, lead, cobalt, silver, zinc and molybdenum of such part or parts of the land to which this Clause refers which is the subject of such mining tenement upon and subject to the same terms and conditions as those which apply to a mineral lease granted under Clause 9 hereof and the provisions of that Clause shall mutatis mutandis apply to a mineral lease granted pursuant to this Clause.

Air Pollution

11. (1) The provisions of the Clean Air Act 1964-1967 and any subsequent amendments thereof shall be deemed to apply to the smelter site and the smelter and any other building or structure for the time being on the smelter site shall be deemed to be scheduled premises within the meaning of that Act. Accordingly the Corporation agrees that it will duly and punctually comply with the provisions of such Act and will not unless it is exempted by the Air Pollution Control Council from the provisions of Section 33 of the said Act conduct or permit to be conducted on the smelter site any trade industry or process or operate any fuel burning equipment or industrial plant in or on the smelter site in such manner as to cause permit or suffer the emission at any prescribed point of air impurities in excess of the appropriate prescribed standard of concentration and rate of emission.

(2) The Corporation will install as part of the smelter or adjacent thereto a chimney stack at least five hundred (500) feet high through which it will direct to the atmosphere all SO₂ and other gases emitted from any operation of the

smelter. In the event of the plans and specifications of the smelter providing for the construction of a smelter of a capacity substantially different from that mentioned in the said sub-clause or in the event of the presently estimated maximum and minimum rates of emission of SO₂ from the operation of the smelter being substantially changed the height of the chimney stack will be renegotiated.

(3) The Corporation will investigate the technical practicability and commercial economics of eliminating in whole or in part the emission of SO₂ from the operation of the smelter by one or more of the following processes —

- (a) the conversion of the SO₂ to sulphuric acid;
- (b) the conversion of the SO₂ to elemental sulphur;
- (c) the use of the SO₂ in any other metallurgical process established by the Corporation.

The Corporation will within five (5) years from the date when the smelter reaches commercial production proceed to establish and operate on or near the smelter site plant necessary to effectually carry out one or more of the said processes unless it shall satisfy the State that the said processes are technically impractical or commercially uneconomic.

(4) If as a result of the Corporation's smelting operations the SO₂ emission from the smelter exceeds the rate notified to the Air Pollution control Council and upon which they approved the location of the smelter and height of the smelter chimney stack and consequently consistently increases the level of SO₂ concentration in the Kalgoorlie Boulder area by more than twenty (20) parts per hundred million the Air Pollution Control Council may by notice require the Corporation to reduce its rates of emission of SO₂ to not more than the rates upon which the smelter site and stack height were approved.

Electricity

12. (1) The Corporation is authorized without cost and expense to the State and subject to it duly complying with the conditions imposed by this Clause if and when it shall desire so to do to install at a convenient location within the smelter site a plant for the generating of electric power.

(2) The electric power so generated may be —

- (a) used by the Corporation in operating the smelter and carrying on any ancillary or associated operation;
- (b) subject as hereinafter contained transmitted to another site or other sites owned leased or held by the Corporation for use in any operation for the time being carried on by the Corporation on such other site or sites; or
- (c) subject as aforesaid sold and transmitted to customers approved by the State being consumers engaged in mining and operating ore processing works or other mining plant in the vicinity of the smelter site.

(3) In order to enable it to carry out all or any of the purposes mentioned in sub-clause (2) of this Clause the Corporation shall be at liberty subject to the due compliance with the provisions of the succeeding sub-clause of this Clause —

- (a) to inter-connect any generating plant installed under sub-clause (1) of this Clause with existing or future generating plants owned by the Corporation at any of its said other sites;
- (b) to erect and maintain all necessary transmission lines between such generating plant and such other site or sites or between such generating plant and the point or points to which any such customer consumer purchasing electric power from the Corporation shall require such power to be transmitted; or
- (c) to augment the capacity of any such generating plant by purchasing or transmitting power in bulk from other generating plants in the Kambalda and Kalgoorlie areas or by leasing or purchasing other

generating plants in such areas and transmitting the power thereby generated to the smelter or to its other site or sites or to any customer consumer.

(4) Before installing any such generating plant or erecting any necessary transmission lines or performing any other works required for any of the purposes aforesaid it will give to the State Electricity Commission notice of its intention so to do wherein it shall set up the engineering details of the proposed works and a plan of the proposed route of the proposed transmission lines and also particulars of any easements or other rights to or over the land over which the transmission lines are proposed to run. None of the proposed works shall be commenced or undertaken unless it has obtained all approvals licenses and concessions that are required to be obtained under the provisions of the Electricity Act 1945-1953 and the Regulations made thereunder.

(5) In constructing maintaining and operating the generating plant and the transmission lines the Corporation will comply with the technical requirements of the Electricity Act and Regulations and the Wiring Rules of the Standards Association of Australia.

(6) It shall be the responsibility of the Corporation to procure at its own expense all necessary easements or other rights over land and to satisfy (and indemnify the State against) all claims for compensation damages or otherwise by third parties in respect of or arising out of or in the course of anything done or omitted by it or its servants and agents in the construction maintenance and operation of any such generating plant and transmission lines and if the Corporation is unable to procure the said easements or other rights over land on reasonable terms the State will assist the Corporation to such extent as may be reasonably necessary to enable the Corporation to procure the said easements or other rights over land and the same shall be deemed to be an estate or interest in land required for the purposes of this Agreement.

(7) Where it shall be necessary for the Corporation to obtain any concession from any local authority to sell power to a customer consumer the State will ensure that the local authority concerned will as and when required by the State Electricity Commission so to do grant such concession under the provisions of the Electricity Act in such form and subject to such conditions as the said Commission shall approve.

(8) Nothing done or omitted to be done in the course of the carrying out of any of the purposes of this Clause shall in any way prejudice or affect or detract from the rights duties powers and obligations of the said Commission.

(9) In the event of any question difference or dispute arising between the Corporation and the said Commission in respect of any of the matters referred to in this Clause the same shall be referred to the Minister whose determination in respect thereof shall be final and binding on the parties to the dispute.

Housing

13. For the purpose of housing employees of the Corporation the State undertakes to use its best endeavours to make suitable land available on reasonable conditions and co-operate to assist the Corporation in its negotiations for the necessary finance either directly or through the agency of the Commonwealth or private housing development institutions.

Rating

14. The State will ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all land the subject of any Crown Grant, mineral lease or other lease, license or easement granted under or in pursuance of the principal agreement or of this Agreement (except any part thereof upon which a permanent residence is erected or which is occupied in connection with a permanent residence) shall for rating purposes be deemed to be the unimproved value thereof and no part of such land shall be subject to any discriminatory rate.

Zoning

15. The State will ensure that all land the subject of any Crown Grant, mineral lease or other lease, license or easement granted under or in pursuance of the

principal agreement or of this Agreement will be and during the continuance of each of the said agreements will remain so classified or zoned by any local government or other authority legally competent so to do that it shall at all times be lawful for the Corporation to use the said land for all or any of the purposes for which it is obliged or may desire to use the same under or in pursuance of either of the said agreements and the State will further ensure that the operations required or desired to be undertaken and carried out by the Corporation as aforesaid will not be interfered with or interrupted by the State or any State agency or instrumentality or any local or other authority on the ground that such operations are or any of them is a nonconforming use within the meaning of any statute relating to town planning schemes or that the same are carried on contrary to any zoning by-law or regulation.

Railways servicing smelter and Kambalda

16. (1) In this Clause —

“railway” (including “Railway” in the term “Kalgoorlie — Kambalda Railway”) is to be construed as having the same meaning as that assigned to “railway” by Section 95 of the Public Works Act;

“narrow gauge” means a gauge of 3 feet 6 inches;

“standard gauge” means a gauge of 4 feet 8 1/2 inches;

“Kalgoorlie-Kambalda Railway” means the standard gauge railway mentioned in paragraph (a) of subclause (2) of this Clause;

“the reconstructed railway” means the entire length of the existing narrow gauge railways mentioned in paragraph (c) of sub-clause (2) of this Clause upon the same being reconstructed to standard gauge including the works mentioned in paragraph (d) of that sub-clause;

“spur line” means a railway made pursuant to paragraph (b) of sub-clause (2) of this Clause and is to be construed as if the word “line” read

“railway” and accordingly had the same meaning as is hereby assigned to that term.

(2) As soon as practicable after the commencement date the State will introduce and sponsor in the said Parliament a Bill for an Act to authorize the carrying out of all or any of the following works namely —

- (a) to construct a standard gauge railway commencing from such point as the Railways Commission determines on the standard gauge Kalgoorlie-Perth Railway at or near Kalgoorlie and proceeding thence in a general southerly direction on a course defined on the plan marked “Z” initialled by the parties hereto to the terminus at Lake Lefroy of the narrow gauge Lake Lefroy Spur Railway;
- (b) to construct a spur line from such point or points on the Kalgoorlie-Kambalda Railway as the Corporation reasonably requires and the Railways Commission approves —
 - (i) to the boundary of the smelter site or some agreed point or points within the site;
 - (ii) to the boundary of the Corporation’s production area or mill area at Kambalda or at some agreed point or points within those areas;
- (c) to reconstruct to a standard gauge railway each of the following existing narrow gauge railways namely —
 - (i) the Lake Lefroy Spur Railway; and
 - (ii) the railway commencing from the Lake Lefroy Spur Railway and proceeding thence to the terminus of such railway at Esperance;
- (d) to construct or reconstruct (as the case may require) all loops, crossings, points, sidings, bridges, buildings, structures, workshops,

plant and equipment connected with the works mentioned in the last preceding paragraph.

(3) If and when the said Bill is passed as an Act the works mentioned in sub-clause (2) of this Clause shall be deemed a railway to which Part VI of the Public Works Act applies and the State will ensure that as soon as conveniently may be thereafter the Minister for the time being administering the said Act will exercise as and when required by the State such of the rights powers and authorities conferred on him by the said Part and also Sections 104 to 108 (inclusive), 110, 112 to 115 (inclusive) and 119 of that Act as may be necessary to give effect to the purposes of this Agreement.

(4) As soon as practicable after the said Bill comes into operation as an Act but only if and when the State and the Government of the Commonwealth of Australia shall mutually agree as to the nature and extent to which the said Government agrees to participate in or contribute to the cost of such part of the works authorized by the said Act or if and when the funds required therefor otherwise become available to it the State will commence to carry out the works authorized by such Act and mentioned in paragraphs (a), (c) and (d) of sub-clause (2) of this Clause and as soon as conveniently may be thereafter will complete the same and at all times thereafter during the continuance of this Agreement will maintain the same.

(5) The cost and expense of the works mentioned in the preceding sub-clause and the maintenance thereof will be borne by the State. The Corporation agrees to pay as and by way of its contribution to the cost of such works the sum of nine million dollars (\$9,000,000) and undertakes that it will pay such sum to the State as and when required by the State so to do by progress payments of such amount as the State may require to satisfy the progressive expenditure incurred in the carrying out of such works.

(6) The State shall grant the Corporation a lease of the land over which a spur line or loop runs or on which any siding or other structure is erected and such lease may be at such rental for such period with such (if any) rights of renewal and otherwise upon and subject to such terms and conditions as the parties may mutually agree but it is expressly agreed that any spur line loop siding or other structure and the appurtenances of any of them shall not by virtue of any such lease be subject to any tenant's rights in the Corporation and at the termination or sooner determination of any such lease the Corporation's interest in the spur line

loop siding structure and appurtenances whether fixtures or not shall absolutely cease and such land and everything thereon shall vest or re-vest in the State and the State shall not be required to pay any compensation in respect thereof.

Mineral Products defined

17. (1) In this and the next succeeding six clauses of this Agreement the term “mineral products” means mineral ore and mineral concentrates and matte of any kind which during the continuance of the principal agreement and this Agreement are transported at the instance of the Corporation between the following points of origin and the respective destination namely —

- (a) between Kambalda and Kalgoorlie or between Kambalda and Kwinana or between the smelter and any intermediate point and either of such destinations; or
- (b) between Kambalda and Esperance or between Kalgoorlie and Esperance or between the smelter and any intermediate point and such destination.

(2) Without limiting the generality of the definition contained in the last preceding sub-clause the said term thereby defined includes in particular —

- (a) mineral ore mined and mineral concentrates produced by the Corporation from its own leases wherever situate being the property of the Corporation;
- (b) mineral ore mined and mineral concentrates produced by a mining concern other than the Corporation and purchased by the Corporation;
- (c) mineral ore and mineral concentrates the property of another mining concern which ore is being handled by the Corporation on a toll basis;

- (d) matte being the property of the Corporation and the product of the smelter;
 - (e) fuel oil used for the purpose of generating heat or as a reducing agent in metallurgical processes or as a reducing agent in the production of elemental sulphur;
 - (f) sulphuric acid being a by-product of the smelter.
- (3) The said term does not include —
- (a) matte produced by the smelter from mineral ore or mineral concentrates handled by the Corporation on a toll basis; or
 - (b) fuel oil used in the generation of electric power; or
 - (c) commodities other than mineral ore and mineral concentrates carried over the State's railways for the Corporation.

Rolling Stock

18. (1) In this Clause and in Clause 19 hereof —

“rolling stock” means the locomotive power of a type and capacity adequate and suitable to transport the mineral products and also wagons brake-vans and all other necessary railway vehicles.

- (2) (a) The Corporation will provide to the specifications of the Railways Commission and own all rolling stock necessary for the carriage of the mineral products to and from the required destinations; and
- (b) the State will at all times ensure that the Rail ways Commission will operate and maintain the rolling stock in good order and condition.

- (3) In respect of the rolling stock the following provisions shall apply —
- (a) the number of each class of each item of the rolling stock to be supplied and provided by the Corporation shall be determined by the parties but shall not be a greater number than is reasonably required to ensure the prompt efficient and expeditious haulage and carriage of the mineral products and wagon requirements will include ten per centum (10%) for spares;
 - (b) each item of rolling stock shall be of such design and standard and constructed to such specifications as the Railways Commission shall from time to time reasonably consider necessary for the purpose of this Agreement. Where the railway to any one of the said destinations has been constructed to carry a gross axle load of twenty-three and one-half (23½) tons (that is a gross wagon weight of ninety-four (94) tons) each wagon in each train hauled there over shall be of such design as to permit the net load of the wagon to be not less than seventy (70) tons and where the gross axle load is twenty (20) tons (that is a gross wagon weight of eighty (80) tons) the net load shall be not less than fifty-eight (58) tons;
 - (c) if and when in the opinion of the Railways Commission any rolling stock is no longer capable of being serviced or maintained satisfactorily the Corporation will upon the written request of the Railways Commission at the cost and expense in all things of the Corporation, replace any such rolling stock with a similar item approved by the Railways Commission.

Transport of nickel ore and other goods

19. (1) Each consignment of the mineral products shall be carried at the cost and risk of the Corporation and subject to the provisions of the Government Railways Act 1904-1967 and the regulations and by-laws made thereunder in a block train having a minimum pay-load of one thousand five hundred (1,500) tons (except however in the case of the trains transporting the mineral products mentioned in paragraph (a) of sub-clause (1) of Clause 20 hereof where no

minimum pay-load is specified). For the purpose of this Clause a “block train” means a train composed of rolling stock carrying mainly only mineral products of one or more kinds and operating only between a specified point of origin and a specific destination.

(2) If at any time in order to satisfy the reasonable requirements of the Corporation for the carriage of the mineral products for the time being offering for carriage it is necessary for the Railways Commission to operate between noon on any Saturday and midnight on the following Sunday a train or trains in addition to those ordinarily required for the purpose of carrying the mineral products being part of the minimum tonnage mentioned in sub-clause (1) of Clause 20 hereof and the need to operate such additional train or trains does not arise solely from any refusal neglect or default on its part the Railways Commission will upon the Corporation requesting it so to do and agreeing to reimburse it for all consequential additional costs provide the services necessary to operate such additional train or trains.

(3) The Corporation will at its own cost and expense provide erect and install at the smelter site the production and mill areas at Kambalda the port at Esperance and at any other point where the mineral products are required or likely to be loaded into or unloaded from wagons all necessary plant and equipment for those processes and will at its cost and expense staff operate and maintain all such plant and equipment in accordance with the reasonable requirements of the Railways Commission.

(4) For the purpose of this Clause and Clauses 20 and 21 hereof the weight of the mineral products carried shall be ascertained by weighing the same on the railway weighbridge most conveniently situated unless some other method of weighing the same is agreed between the parties.

(5) All mineral products carried shall be properly and securely packed, stacked or otherwise stowed in the wagons provided and if required by the Railways Commission covered and in the course of transit kept covered in accordance with the reasonable requirements of the Railways Commission. Each wagon shall be loaded as near as practicable to its full capacity but otherwise at least to the capacity for which it was designed.

Minimum tonnage to be carried

20. (1) The Corporation undertakes and guarantees that the following minimum net tonnages of mineral products will be made available for carriage during the periods mentioned —

- (a) for carriage between Kambalda and Esperance — at least fifty thousand (50,000) tons of nickel concentrates each year from and after the date of commencement of the special freight rate until the 31st day of December, 1977 or during the continuance of the Corporation's current contract with Sumitomo Metal Mining Company for the delivery of nickel concentrates to Esperance whichever is the longer period; and
- (b) for carriage between Kambalda and Kwinana or between Kalgoorlie and Kwinana at — least one hundred and fifty thousand (150,000) tons of nickel ore and/or nickel concentrates each year from and after the commencement of the special freight rate during the continuance of this Agreement and the principal agreement until the date of renegotiation mentioned in sub-clause (1) of Clause 23 hereof.

(2) If in any year the net tonnage available for carriage pursuant to paragraph (a) or paragraph (b) of the last preceding sub-clause is short of the respective minimum net tonnage thereby required to be available the Corporation shall at the end of such year pay to the State a sum equal to the freight calculated at seventy-five per centum (75%) of the special freight rate mentioned in the next succeeding Clause as escalated from time to time which would have been payable under this Agreement on the shortage of net tonnage had such shortage been available and carried and upon such payment being made the Corporation shall for the purpose of this Clause and of Clause 11 of the principal agreement be deemed to have remedied any default made under the last preceding sub-clause during the year in question.

Freight Rate

21. (1) In this and the next two succeeding Clauses —

“date of commencement of special freight rate” means —

- (a) the date of the completion of the works mentioned in paragraph (a) of sub-clause (2) of Clause 16 hereof and the same being available for use for the transport of mineral products between Kambalda and Kwinana;
- (b) the date of the completion of the works mentioned in paragraphs (c) and (d) of sub-clause (2) of Clause 16 hereof and the same being available for use as standard gauge railway for the transport of mineral products between Kambalda and Esperance;

“special freight rate” means a freight rate of 1.8 cents per net ton mile.

(2) The Corporation will pay freight for the carriage of all the mineral products transported pursuant to this Agreement at the special freight rate. All freight and other charges will be payable to the Railways Commission monthly on such day during the month following that in which the mineral products were carried by the Railways Commission or as the parties shall mutually agree.

(3) If the Corporation shall in any one year from and after the commencement of the special freight rate make available for carriage between Kalgoorlie and Kwinana or between Kalgoorlie and Esperance not less than twenty thousand (20,000) tons of sulphuric acid being a by-product of the smelter and shall transport the same as required by sub-clause (1) of Clause 19 hereof then the Corporation shall pay for the carriage of such sulphuric acid in that year at the special freight rate but otherwise at a rate which is ten per centum (10%) less than that prescribed from time to time for freight of the same class hauled in the Railways Commission’s rolling stock.

(4) The provisions of this Clause (other than sub-clause (1) hereof) and the four preceding Clauses shall have effect as from the date of commencement of the special freight rate.

Escalation of special freight rate

22. (1) The escalation of the special freight rate defined in sub-clause (1) of Clause 21 of this Agreement shall be based on the average hourly rate of wages payable to a first class locomotive driver, a first class guard and a track repairer as at 16th day of June, 1970, the price per gallon of distillate delivered to the public at North Fremantle prevailing on the 16th day of June, 1970 and the price per ton of steel rails f.o.w. Fremantle as ascertained from the price schedule of Australian Iron and Steel Pty. Ltd. as at the 16th day of June, 1970 and that the following values have been adopted —

- (a) average hourly rate of wages: \$1.4917 (being the average of the following hourly rates of wages — first class locomotive driver \$1.8088; first class guard \$1.4837; track repairer \$1.1825);
- (b) the price of distillate: 19.9 cents per gallon;
- (c) the price of steel rails: \$104.50 per ton.

(2) The special freight rate shall be adjusted up or down as the case may be annually on the 1st day of January in each and every year during the continuance of this Agreement in accordance with the following formula —

$$F_1 = F + 0.45 F \left(0.80 \frac{(L_1 - L)}{(L)} + 0.05 \frac{(D_1 - D)}{(D)} + 0.15 \frac{(S_1 - S)}{(S)} \right)$$

WHERE

- (i) F_1 = the new special freight rate in cents per net ton mile;
- (ii) F = the special freight rate of 1.8 cents per net ton mile;
- (iii) L = the average hourly rate of \$1.4917;

- (iv) L1 = the average hourly rate of wages as at date of adjustment;
- (v) D = the price of distillate at 19.9 cents per gallon;
- (vi) D1 = the price of distillate per gallon delivered to the public at North Fremantle as at date of adjustment;
- (vii) S = the price of steel rails at \$104.50 per ton;
- (viii) S1 = the price of steel rails per ton f.o.w. Fremantle as ascertained from the price schedule of Australian Iron & Steel Pty. Ltd. as at the date of adjustment.

Renegotiation of Special Freight Rate

23. (1) The parties agree that the special freight rate will be renegotiated by mutual agreement (or in default of agreement by arbitration as provided in the principal agreement) on the 30th day of June next following the expiration of a period of fifteen (15) years from the earlier date of commencement of the special freight rate.

(2) In renegotiating the special freight rate the parties agree that regard will be had to the following matters namely -

- (a) whether the escalation of the special freight rate in the manner set out in Clause 22 of this Agreement has acted fairly to both parties in the light of costs and other trends;
- (b) whether the operations governed by the principal agreement and this Agreement are profitable to the Railways Commission (on the assumption that the operations should be profitable) and whether the profit rate as at the date when the special freight rate was first negotiated has been maintained;

- (c) whether the percentage ratio of the escalated special freight rate to the appropriate book rate is being reasonably maintained;
- (d) whether there exist other costs and industry trends which reasonably could be regarded as matters to be taken into consideration when arriving at a fair and equitable renegotiated special freight rate;
- (e) the tonnages of goods available for carriage.

Proposed railway to mineral districts

24. (1) Subject as provided in the next succeeding sub-clause the Corporation is at liberty at any time within a period of five (5) years from the commencement date to submit to the State for consideration a proposal that the Corporation either by itself or in conjunction with one or more mining companies or concerns of a standing acceptable to the State without cost to the State constructs and operates a standard gauge railway or railways from Kalgoorlie northwards designed to provide a reasonable adequate and efficient service for the carriage of mineral ores and concentrates and other goods to and from one or more of the areas within the mineral districts and in particular the mining area defined in sub-clause (1) of Clause 2 of this Agreement.

(2) The State may at any time during the continuance of this Agreement require the Railways Commission to submit a proposal similar to that mentioned in the last preceding sub-clause and the State shall be at liberty to adopt and proceed with the Railways Commission's proposal notwithstanding that at the date of such adoption the said period of five (5) years may not have expired in which case the Corporation's right to submit a proposal ceases.

- (3) A proposal submitted by the Corporation shall *inter alia* provide —
 - (a) that the route design, construction and equipment of the proposed railway will be to standards acceptable to the Railways Commission;

- (b) that where required mineral ore and concentrates produced by other mining or other companies or concerns will be transported by the Corporation over the proposed railway on terms approved by the State;
- (c) that where for some sufficient reason it appears preferable that the proposed or required services for certain purposes or to certain centres of population adjacent to the proposed railway be provided otherwise than by rail provision will be made in the proposal for such services to be provided by road.

(4) Should the State at any time wish to acquire the said railway or railways it may do so on terms mutually agreeable which terms will be based on a valuation arrived at by normal accounting depreciation procedures as distinct from any special depreciation allowances provided under the Commonwealth Income Tax legislation and will transport the mineral products of the owner company or companies at the operating cost established by that company or companies (as escalated from time to time to allow for reasonable cost increases) plus a reasonable margin of profit taking into account the capital cost interest and depreciation of the asset acquired.

FIRST SCHEDULE

Mineral Claims

Suffixed "S" — Nos.	130-131, 134-135, 138-139, 152-153, 160-165, 171-175, 181-185, 191-194.
Suffixed "W" — Nos.	31-32, 34, 108, 172-176, 180-186, 247, 254-255, 260-263, 266-276, 300, 339-341, 344, 363-364, 387-391, 564-601, 603-605, 607-621, 676, 710-712, 726-730, 733-734, 756-811, 815-816, 820-821, 824-835, 837-979, 1019-1023, 1066.

Suffixed "Z" — Nos. 7-13, 78-86, 312-315, 338-341.

Temporary Reserves

Nos. 3560H, 3667H, 3752H, 5215H.

SECOND SCHEDULE

All that portion of land containing about 2,835 acres bounded by lines starting at a point situate 179 degrees 57 minutes, 58 chains 58 and three tenths links; 162 degrees 26 minutes, 54 chains 69 and five tenths links; 164 degrees 6 minutes, 4 chains 95 and two tenths links; 166 degrees 40 minutes, 71 chains 97 and seven tenths links; 177 degrees 9 minutes, 35 chains and nine tenths links; 165 degrees 52 minutes, 35 chains 74 and six tenths links; 156 degrees 56 minutes, 6 chains 95 and three tenths links; 148 degrees 1 minute, 96 chains 13 and six tenths and 152 degrees 30 minutes, 4 chains 87 and three tenths links as shown on Lands and Surveys² Original Plans 11329 and 11330; thence west approximately 98 chains; thence north approximately 58 chains to a point on the southern boundary of Reserve 8168, from the intersection of the southern side of Lynch Street with the proposed western side of Celebration Road and extending 159 degrees 57 minutes, 210 chains; west 143 chains 71 links; 339 degrees 57 minutes, 210 chains; east 143 chains 71 links to the starting point.

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

SIGNED SEALED AND DELIVERED
by the said THE HONOURABLE
SIR DAVID BRAND, K.C.M.G.,
M.L.A., in the presence of —

}

DAVID BRAND

C.W. COURT
MINISTER FOR INDUSTRIAL
DEVELOPMENT

ARTHUR GRIFFITH
MINISTER FOR MINES

The Common Seal of WESTERN
MINING CORPORATION LIMITED
Was hereunto affixed in the
Presence of —

}

L. BRODIE HALL
[C.S.]

R.M. REYNOLDS

[Second Schedule inserted by No. 76 of 1970 s.5.]

Third Schedule — Second supplemental agreement

[s. 2]

[Heading amended by No. 19 of 2010 s. 4.]

AN AGREEMENT made this 29th day of March 1974 between the HONOURABLE JOHN TREZISE TONKIN M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the Government of the said State and the instrumentalities thereof from time to time (hereinafter referred to as “the State”) of the one part and WESTERN MINING CORPORATION LIMITED a company duly incorporated in 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 191 Great Eastern Highway, Belmont (hereinafter referred to as “the Corporation” which term shall where the context so admits or requires extend to and include the Corporation and also its successors and assigns) of the other part.

WHEREAS:

- (a) The parties are the parties to the agreement between them ratified by the Nickel Refinery (Western Mining Corporation Limited) Agreement Act, 1968 (which agreement in the form printed in that Act is hereinafter referred to as “the principal agreement”).
- (b) The parties are the parties to the agreement between them ratified by the Nickel Refinery (Western Mining Corporation Limited) Agreement Act Amendment Act 1970 (which agreement in the form printed in that Act is hereinafter referred to as “the supplemental agreement”).
- (c) The supplemental agreement, *inter alia*, amended the provisions of the principal agreement.
- (d) The parties desire to amend the principal agreement and the supplemental agreement.

NOW THIS AGREEMENT WITNESSETH —

1. (1) The provisions of this Agreement shall not come into operation unless and until a Bill to approve and ratify this Agreement is passed by the legislature of the said State and comes into operation as an Act whereupon such provisions shall be deemed to have been in operation and effective as from the date hereof.

(2) The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to the 31st day of December 1974.

(3) If the Act ratifying this Agreement is passed by the said Parliament the provisions of this Agreement shall take effect as though the same had been enacted by the ratifying Act notwithstanding the provisions of the Public Works Act 1902, the Water Boards Act 1904, the Health Act 1911, the Land Act 1933, the Local Government Act 1960 and the Mining Act 1904 (which shall for the purposes of this Agreement be deemed to be modified and amended by the ratifying Act to the extent necessary to enable full force and effect to be given to this Agreement).

2. References in this Agreement to particular provisions of the principal agreement are to such provisions as amended by the supplemental agreement.

References in the principal agreement, in the supplemental agreement and in this Agreement to “Kambalda Townsite”, “existing Kambalda Townsite” and “townsite”, subject to the context, refer to the Kambalda Townsite as amended and redescribed from time to time pursuant to section 10 of the Land Act.

3. The principal agreement is hereby varied as follows —

- (1) clause 1 is amended by adding after the definition of “smelter site” the following definition —

“Special Mineral Lease” means notwithstanding any contrary provision in this Agreement any of the following mineral leases in the Coolgardie Goldfield held by the Corporation —

Numbers 122-152 both inclusive

”	155-161	”	”
”	164-175	”	”
”	181-214	”	”
”	252-267	”	”
”	286-327	”	”

- (2) clause 5 is amended —

- (a) as to subclause (1) by substituting for the passage “rights” in line nineteen, the passage

“rights less the areas of any mineral lease or mineral leases applied for in respect of the mining areas or any part thereof during the preceding twelve (12) months so that the areas of any mineral lease or mineral leases so applied for shall be deemed to be or comprise part of areas the subject of such rights of occupancy so surrendered.”;

- (b) as to subclause (3) —

- (i) by adding after the word “molybdenum” in line five, the words “pursuant to this Agreement but otherwise”; and

- (ii) by adding after the word “rents” in line ten, the words “from time to time prevailing by or under the Mining Act”;
- (c) as to subclause (4) —
 - (i) by deleting the word “said” where first appearing; and
 - (ii) by adding after the word “leases” where first appearing, the passage “granted pursuant to subclause (3) of this clause”;
- (3) by adding after clause 5 a new clause 5A as follows —

Special Mineral leases

5A. (1) Subject to the Corporation complying with its obligations under this Agreement and with the other conditions imposed by or pursuant to the Mining Act —

- (a) Each Special Mineral Lease shall be deemed to grant the Corporation an option (to be exercised by the Corporation giving to the State notice of its intention to exercise the same not later than one (1) month before the expiry of the term thereof) of taking a renewal of such term for a further period of twenty-one (21) years at the rental from time to time prevailing by or under the Mining Act and upon and subject to the same terms and conditions as those upon which the original term was granted (save and except the option of renewal).
- (b) If the Corporation desires to have the term of any Special Mineral Lease referred to in paragraph (a) of this clause further renewed after the expiration of the period for which it had been renewed the Corporation shall make application therefor to the Minister for Mines in the said State and if this Agreement shall then still be in force the said Minister shall have the power exercisable not more than twelve (12) months or less than six (6) months before the date of the expiry of the

period for which the term of that Special Mineral Lease had been renewed, in his discretion to grant to the Corporation a second renewal of the said term for a further period of twenty-one (21) years upon and subject to the same terms and conditions as applied to that Special Mineral Lease after the term thereof was first renewed.

- (c) The exemptions granted by subclause (4) of clause 5 of this Agreement shall also apply to each Special Mineral Lease;

- (2) Subject to the provisions of this clause a Special Mineral Lease shall be deemed to be held under this Agreement.;

- (4) clause 6 is amended —
 - (a) as to subclause (1) by substituting for paragraph (b) the following paragraph —
 - (b) grant to the Corporation for residential professional business commercial and industrial purposes and the provision of communal facilities at Kambalda a special lease or special leases under the provisions of the Land Act or occupancy rights on terms and conditions to be determined by the Minister for Lands of the said State for such part or parts of the area of land the subject of the existing Kambalda Townsite (less such parts thereof as are the subject of the townsite lots referred to in paragraph (a) of this sub-clause) and such further area or areas as the Corporation may from time to time require and the Minister for Lands may approve, such lease or leases or occupancy rights as the case may be being for a term expiring twenty-one (21) years from the date of such grant at a rental of six dollars (\$6) per annum for any townsite lot of an area of less than one acre and nine dollars (\$9) per annum per acre for any townsite lot having an area of one acre or more with the right for the Corporation at any time during the currency of such lease or leases or occupancy rights to

purchase for, the sum of ten dollars (\$10) per lot the fee simple of any townsite lot on which buildings or structures have been erected the cost of which is not less than ten thousand dollars (\$10,000) for each such lot or in the case of dwelling houses when averaged over the lot being purchased not less than seven thousand dollars (\$7,000) for each quarter acre of such lot and on and subject to such terms and conditions not inconsistent with this Agreement as the Minister for lands considers applicable in the circumstances and including a right for the State at any time and from time to time to exclude from such lease or leases or occupancy rights or resume without compensation any part or parts of such land on which no building or structure has been erected as the State may require for public purposes provided always that from and after the commencement date the State will on a resumption of any such land required for public purposes pay to the Corporation as soon as practicable after the date when such land is resumed and by way of and in satisfaction of compensation for such resumption a sum representing the assessed capital cost of installing and connecting to the nearest appropriate main all services (such as electricity, water and sewerage) to the land so resumed and the assessed capital cost (proportionate to the frontage of the resumed land thereto) of all roads footpaths and curbs thereof to which the resumed land abuts and which in either case were provided and paid for by the Corporation and thereafter the State will pay in respect of such land the appropriate operating charge as from time to time determined;;

(b) as to subclause (2) —

(i) by substituting for the passage “10.” in the last line of paragraph (d), the passage “10; and”;

and

(ii) by adding after paragraph (d) a new paragraph (e) as follows —

(e) the inclusion of a power to grant occupancy rights over land on such terms and conditions as the Minister for Lands may determine. ;

and

(c) by adding after subclause (2) two new subclauses (3) and (4) as follows —

(3) Notwithstanding the provisions of the Sale of Land Act 1970 the Corporation shall have the right during the currency of any lease or leases or occupancy rights granted to it under paragraph (b) of subclause (1) of this clause to enter into an agreement to sell any lot the subject of such lease or leases or occupancy rights on condition that the purchaser erects on such lot within two (2) years from the date of such agreement, buildings or structures the cost of which is not less than ten thousand dollars (\$10,000) for each such lot, or in the case of dwelling houses when averaged over the lot being purchased not less than seven thousand dollars (\$7,000) for each quarter acre of such lot.

(4) During such time as the Corporation is the lessee or holder of occupancy rights of land pursuant to paragraph (b) of subclause (1) of this clause the Corporation shall be deemed to be an “owner” of such land for the purposes of the Local Government Act 1960. ;

(5) clause 8 is amended by adding seven new subclauses (3), (4), (5), (6), (7), (8) and (9) as follows —

(3) The Corporation may, in respect of water provided to it by the State and in respect of water taken from Crown lands pursuant to subclause (2) of this clause, supply such water to third parties at a charge to be approved by the Minister after consultation with the Corporation and the Corporation shall have all such powers and authorities with respect to such water as are determined by the Minister which may include all or any of the powers of a water board under the Water Boards Act 1904 and, with the consent of the Minister for Local Government, a local authority under the local Government Act 1960.

(4) If at any time the Minister is of the opinion that it would be desirable for such purposes as *inter alia*, water conservation or water management generally or the equitable supply of water to third parties within the Kambalda Townsite, that the supply of water referred to in subclause (3) of this clause together with local run off and treated sewage effluent be controlled and operated by the State, the Minister shall (after first affording the Corporation a reasonable opportunity to consult with him) so notify the Corporation and the Corporation shall after the expiration of six (6) months from the date of such notice relinquish to the State the ownership control and operation of the Corporation's water supply facilities including all headworks, but excluding the reticulation pipes, meters and other facilities which the parties hereto agree directly relate to the distribution of water to the Corporation's industrial and mining facilities, and surrender any licence or licences granted to the Corporation pursuant to this clause, together with any permit or permits or other rights in respect of local run off issued to the Corporation by the State or a local authority and all other rights in respect of treated sewage effluent granted to the Corporation by the State or a local authority. The State shall not be liable to pay to the Corporation compensation in respect of such works relinquished or any licence or licences permit or permits or other rights so surrendered.

(5) Immediately after the surrender of the licence or licences, permit or permits or any other rights referred to in subclause (4) of this clause the State shall (subject only to the continued hydrological availability of water from such sources previously licensed or under permit to the Corporation) commence and thereafter continue to supply water to the Corporation up to the same amount and at the same rate of supply as that which the Corporation would have been entitled to draw or utilise

under such surrendered licence or licences, permit or permits or other rights.

(6) The Corporation shall pay to the State for all water supplied by it for mining and industrial purposes from sources surrendered by the Corporation pursuant to subclause (4) of this clause a fair price to be negotiated between the parties which shall be equal to the actual cost incurred by the State in supplying water to the Corporation including maintenance and overhead costs and a provision for replacement of the facilities.

(7) The Corporation shall pay to the State in respect of water supplied from facilities operated by the State pursuant to subclause (4) of this clause, for townsite purposes, such charges as are levied from time to time pursuant to the provisions of the Country Areas Water Supply Act 1947.

(8) In the event that the water supply facilities operated by the State pursuant to subclause (4) of this clause are inadequate to meet the Corporation's requirements or are inadequate to meet increased demand in the Townsite of Kambalda which the parties hereto agree result substantially from the operations of the Corporation, from time to time, the Corporation shall pay to the State the capital cost of necessary additional water facilities including any necessary augmentation of the State's water supply system from its source, that are agreed to by the parties hereto and are provided by the State.

(9) Nothing contained in subclauses (5) and (6) of this clause shall affect any agreement entered into by the parties hereto from time to time pursuant to subclause (1) of this clause. ;

(6) by adding after clause 8 a new clause 8A as follows —

Sewerage Facilities

8A. (1) The Corporation may subject to such conditions as the State may from time to time approve construct and operate sewerage

facilities at Kambalda and charge for such services and the Corporation shall have all such powers and authorities with respect to such facilities as are determined by the Minister which may include, with the consent of the Minister for local Government, all or any of the powers of a local authority under the Local Government Act 1960.

(2) If at any time the Minister is of the opinion that it would be desirable that the sewerage facilities operated by the Corporation under subclause (1) of this clause be controlled and operated by the State, the Minister shall (after first affording the Corporation a reasonable opportunity to consult with him) so notify the Corporation and the Corporation shall after the expiration of six (6) months from the date of such notice relinquish to the State the ownership control and operations of the Corporation's sewerage facilities. The State shall not be liable to pay to the Corporation compensation in respect of the facilities relinquished. Thereafter in respect of sewerage facilities operated by or on behalf of the State within the Kambalda Townsite, rates and charges as levied from time to time pursuant to the provisions of the Country Towns Sewerage Act 1948 shall apply.

(7) by substituting for clause 14 the following clause —

Variation

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

(2) Where in the opinion of the Minister an agreement made pursuant to subclause (1) of this clause constitutes a material or substantial alteration of the rights or obligations of either party, the agreement shall contain a declaration to that effect and the Minister shall cause that agreement to be laid upon the table of each House of Parliament within the twelve (12) sitting days next following its execution.

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

(8) clause 15 is amended by adding after the word “shall” in line twenty-one the words “promptly give notice to the other party of the event or events and shall”;

and

(9) by adding after clause 16 a new clause 16A as follows —

Environmental Protection

16A. Nothing in this Agreement shall be construed to exempt the Corporation from compliance with any requirement in connection with the protection of the environment arising out of or incidental to the operations of the Corporation hereunder that may be made by the State or any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act for the time being in force..

4. All lots purchased by the Corporation from the State in the Kambalda Townsite prior to the date of this Agreement shall be deemed to have been purchased pursuant to the provisions of clause 6 (1) (b) of the principal agreement as substituted by this Agreement.

5. The supplemental agreement is hereby varied as follows —

(1) clause 4 as to subclause (4) is amended by substituting for paragraph (g) the following paragraph —

- (g) clauses 8, 10 to 19 (both inclusive), 5A and 16A thereof. ;

- (2) clause 7 as to subclause (2) is amended —
 - (a) by substituting for the passage “lease of such area of land (not exceeding three hundred (300) acres)” in lines two three and four, the passage “lease or leases of such areas of land not exceeding in total three hundred (300) acres”;

 - and

 - (b) by substituting for the last sentence the following sentence —

“Such lease or leases shall be at a rental of two dollars (\$2) per acre per annum and for such period or periods and upon and subject to such other terms and conditions as the State may reasonably require.” ;

- (3) Clause 8 is amended as to paragraph (b) of subclause (1) by adding after the passage “area;” in line nine, the passage “less the areas of any mineral lease or mineral leases applied for in respect of the mining area or any part thereof during the preceding twelve (12) months so that the areas of any mineral lease or mineral leases so applied for shall be deemed to be or comprise part of areas the subject of such rights of occupancy so surrendered;”;

- (4) Clause 9 is amended as to paragraph (e) of subclause (1) by deleting after the word “years” in line seven, the words “at the same rental and”;

- (5) clause 14 is deleted and the following clause substituted —

Rating

14. (1) The State will ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act, the valuation of all land the subject of any Crown Grant, Special Mineral lease, mineral lease, or other lease, licence, or easement held or granted or deemed to be held or granted under or pursuant to or otherwise the subject of the principal agreement or of this Agreement (except as to any part upon which a permanent residence shall be erected, or which is occupied in connection with that residence 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 mining production transportation processing and shipment of nickel-bearing ore, nickel-containing products and nickel metal) shall, for rating purposes under the Local Government Act 1960 be deemed to be on the unimproved value thereof and no such land shall be subject to any discriminatory rate.

(2) For the purposes of this clause and section 533B of the Local Government Act 1960 a Special Mineral Lease shall be deemed to be held under the principal agreement.

(3) Nothing in this clause shall prevent the Corporation making the election provided for by section 533B of the Local Government Act 1960.

6. To the extent that any of the provisions of the principal agreement (which are deemed by the supplemental agreement to be incorporated in the supplemental agreement) are amended by this Agreement, such amendments shall, *mutatis mutandis*, be deemed to be incorporated in the supplemental agreement.

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

SIGNED BY THE HONOURABLE
JOHN TREZISE TONKIN M.L.A.

in the presence of —

DON MAY
Minister for Mines

}

JOHN T TONKIN

THE COMMON SEAL OF WESTERN
MINING CORPORATION LIMITED

was hereunto affixed in
the presence of —

}

[C.S.]

L. BRODIE-HALL

Director

S. J. C. WISE

Witness

[Third Schedule amended by No. 16 of 1974 s.4.]

Notes

- ¹ This is a compilation of the *Nickel Refinery (Western Mining Corporation Limited) Agreement Act 1968* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Nickel Refinery (Western Mining Corporation Limited) Agreement Act 1968</i>	24 of 1968	25 Oct 1968	25 Oct 1968
<i>Nickel Refinery (Western Mining Corporation Limited) Agreement Act Amendment Act 1970</i>	76 of 1970	18 Nov 1970	18 Nov 1970
<i>Nickel Refinery (Western Mining Corporation Limited) Agreement Act Amendment Act 1974</i>	16 of 1974	16 Oct 1974	16 Oct 1974
<i>Standardisation of Formatting Act 2010</i> s. 4 and 42(2)	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)

- ² Lands and Surveys plans are now being held by the Western Australian Land Information Authority (see the *Land Information Authority Act 2006* s. 100).