

MINERAL SANDS (WESTERN TITANIUM) AGREEMENT.

No. 53 of 1975.

AN ACT to ratify an Agreement between the State of Western Australia and Western Titanium Ltd with respect to the mining and concentrating of mineral sands and the production of heavy minerals at or near Eneabba.

[Assented to 15th October, 1975.]

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

1. This Act may be cited as the *Mineral Sands (Western Titanium) Agreement Act, 1975.* Short title.

Interpreta-
tion.

2. In this Act "the Agreement" means the agreement a copy of which is set out in the Schedule to this Act and, if that agreement is altered in accordance with the provisions thereof, includes that agreement as so altered from time to time.

Ratification
of the
Agreement.

3. The Agreement is hereby ratified.

SCHEDULE.

THIS AGREEMENT made this 27th day of May, 1975 BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A. Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the one part and WESTERN TITANIUM LTD a company incorporated under the Companies Act of the State of Victoria and having its registered office in the State of Western Australia situate at 643 Murray Street West Perth (hereinafter called "the Company" in which term shall be included the Company and its successors and permitted assigns and appointees) of the other part.

WHEREAS:

- (a) the Company is engaged in the mining and processing of heavy mineral sands at Capel including the beneficiation of ilmenite;
- (b) the Company has established the existence of a heavy mineral sands ore body within the mining areas defined in Clause 1 and has carried out certain investigations relating *inter alia* to the mining and treatment of that ore at Eneabba and the sale of heavy minerals;
- (c) the Company intends to commence mining and concentrating ore and the production of heavy minerals at Eneabba and to transport such heavy minerals either to Geraldton for shipment or elsewhere for further treatment in Western Australia;
- (d) the Company intends to provide facilities and services necessary for its operations hereunder and for the accommodation and welfare of its employees;
- (e) the State requires the Company, subject to economic feasibility, to continue to pursue actively and progressively a policy of increasing the beneficiation of heavy minerals to the maximum degree possible in Western Australia.

NOW THIS AGREEMENT WITNESSETH—**1. In this Agreement subject to the context—**

"advise", "apply", "approve", "approval", "consent", "certify", "direct", "notify", "request", or "require", means advise, apply, approve, approval, consent, certify, direct, notify, request, or require in writing as the case may be;

“associated company” means—

(a) any company or corporation providing for the purpose of this Agreement capital of not less than \$2 000 000 which is incorporated or formed within the United Kingdom the United States of America or Australia or such other country as the Minister may approve and which—

(i) is promoted by the Company for all or any of the purposes of this Agreement and in which the Company or some other company or corporation acceptable to the Minister has not less than a 25% interest or some lesser interest acceptable to the Minister; or

(ii) is related within the meaning of that term as used in section 6 of the Companies Act, 1961, to any company or corporation in which the Company or some other company or corporation acceptable to the Minister holds not less than 25% of the issued ordinary share capital; and

(iii) is notified to the Minister by the Company as being such a company;

(b) any company or corporation approved in writing by the Minister;

“Clause” means a clause of this Agreement;

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

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

“common inloading system” means the mineral sands-iron ore handling system extended by the Geraldton Port Authority pursuant to Clause 19 (4) for the purpose of train unloading and conveying heavy minerals and heavy mineral products to the respective stockpile areas not only of the Company and WMC Mineral Sands Limited but also of other companies shipping heavy minerals and heavy mineral products through the port;

“common materials handling system” means the common inloading system extended by the Geraldton Port Authority pursuant to Clause 19 (4) for the purpose of conveying heavy minerals and

heavy mineral products directly to the shiploader from the respective stockpile areas not only of the Company and WMC Mineral Sands Limited but also of other companies shipping heavy minerals and heavy mineral products through the port;

“concentration plant” means the plant to be constructed by the Company near Eneabba for the concentration of ore into heavy mineral concentrates;

“heavy minerals” means titaniferous minerals (including ilmenite rutile and leucoxene) and magnetite zircon monazite kyanite staurolite xenotime and garnet resulting from the separation of heavy mineral concentrates;

“heavy mineral concentrates” means ore concentrated prior to its separation into component heavy minerals;

“heavy mineral products” means the products resulting from secondary processing;

“Land Act” means the Land Act, 1933;

“mineral claim” means a mineral claim granted pursuant to regulations made under the Mining Act or any mining right (other than a mineral lease) granted in substitution therefor under any amendment to the Mining Act or any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;

“mineral lease” means the mineral lease referred to in Clause 15 and any renewal thereof and according to the context shall describe the area of land demised as well as the instrument by which it is demised;

“mineral sands—iron ore handling system” means the handling system at the port of Geraldton constructed for the purposes of the WMC Joint Venturers under the Iron Ore (Tallering Peak) Agreement Act, 1964 and to be modified by the WMC Joint Venturers for the purposes of handling heavy minerals and heavy mineral products for the Company and WMC Mineral Sands Limited through the port;

“Mining Act” means the Mining Act, 1904;

“mining areas” means the areas delineated and coloured red (hereinafter called “the red areas”) on the plan marked “A” (initialled by or on behalf of the parties hereto for the purposes of identification) over which the Company as at the date hereof holds mineral claims, together with such of

the areas delineated and coloured yellow (hereinafter called "the yellow areas") on the said plan over which mineral claims may at any time within 3 years after the date of commencement of the mineral lease, be granted to the Company by the Minister for Mines or transferred to the Company with the approval of that Minister;

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

"Minister for Mines" means the Minister in the Government of the State for the time being responsible for the administration of the Mining Act;

"month" means calendar month;

"notice" means notice in writing;

"ore" means any rock soil or sand bearing heavy minerals mined from the mineral lease;

"person" or "persons" includes bodies corporate;

"port" means the port of Geraldton or with the consent of the Minister any other port that may be established near Geraldton under the control of the Geraldton Port Authority;

"private road" means a road (not being a public road) which is either constructed by the Company in accordance with its proposals as approved by the Minister pursuant to Clause 6 or agreed by the parties to be a private road for the purpose of this Agreement;

"public road" means a road as defined by the Traffic Act, 1919;

"Public Works Act" means the Public Works Act, 1902;

"Railways Commission" means the Western Australian Government Railways Commission established pursuant to the Government Railways Act, 1904;

"ratifying Act" means the Act to ratify this Agreement and referred to in Clause 4;

"said State" means the State of Western Australia;

"secondary processing" means the processing of heavy minerals in the said State to substantially enhance their economic value;

“separation plant” means the plant to be constructed by the Company near Eneabba for the separation of heavy mineral concentrates into component heavy minerals;

“State Electricity Commission” means the State Electricity Commission of Western Australia established pursuant to the State Electricity Commission Act, 1945;

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

“town” means the townsite of Leeman as amended and redescribed from time to time pursuant to section 10 of the Land Act or any other townsite requested by the Company and approved by the Minister pursuant to proposals hereunder;

“WMC Joint Venturers” means and includes Western Mining Corporation Limited, The Hanna Mining Company and Homestake Mining Company and their permitted assigns being the parties bound by an agreement dated 20th November 1964 entered into with the then Premier on behalf of the State of Western Australia and ratified by the Iron Ore (Talling Peak) Agreement Act, 1964.

2. (1) In this Agreement—

Interpreta-
tion.

- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
- (b) power given under any clause other than Clause 31 to extend any period or date shall be without prejudice to the power of the Minister under Clause 31;
- (c) marginal notes do not affect the interpretation or construction; and
- (d) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

Initial
obligations
of the State.

3. The State shall—

- (a) 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 December 1975; and
- (b) to the extent reasonably necessary for the purposes of this Agreement allow the Company to enter upon Crown lands.

Ratification
and
operation.

4. (1) The provisions of this Agreement other than this Clause and Clauses 1 and 3 shall not come into operation until the Bill referred to in Clause 3 has been passed by the Parliament of Western Australia and comes into operation as an Act.

(2) If before 31st December 1975 the said Bill is not passed then unless the parties hereto otherwise agree this Agreement shall then cease and determine and neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

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

Company to
submit
proposals.

5. (1) On or before 30th June 1975 (or thereafter within such extended time as the Minister may allow as hereinafter provided) the Company shall submit to the Minister to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister) for a mining and treatment project with a capacity to produce not less than 240 000 tonnes per year of heavy minerals from the mineral lease, and the transport and shipment through the port of heavy minerals and for making provision for the necessary work force and associated population required to enable the Company to mine ore and to separate heavy mineral concentrates into heavy minerals at the separation plant and including the location, area, lay-out, design, quantities, materials and time programme

for the commencement and completion of construction or the provision (as the case may be) of each of the following matters; namely—

- (a) the mining, and concentrating of ore and the separation of heavy mineral concentrates into heavy minerals;
- (b) roads;
- (c) facilities for the export of heavy minerals and heavy mineral products through the port;
- (d) water supplies for the mining concentrating and separating of ore;
- (e) housing, provision of utilities and services and associated facilities in the town;
- (f) power supply;
- (g) any other works, services or facilities desired by the Company;
- (h) any leases, licences or other tenures of land required from the State; and
- (i) measures to be taken for the protection and management of the environment including rehabilitation and/or restoration of the mined areas, the prevention of the discharge of tailings, slimes, pollutants or overburden into the surrounding country, water courses, lakes or underground water supplies, the prevention of soil erosion and, to the extent that the Company is responsible for implementing the matters referred to in paragraphs (a) to (h) of this subclause, consideration of the environmental effects relating thereto.

(2) The proposals may with the approval of the Minister and shall if so required by the State be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (i) of subclause (1) of this Clause.

Order of
proposals.

(3) The proposals relating to any of the matters mentioned in subclause (1) of this Clause may with the approval of the Minister and that of any third parties concerned instead of providing for the construction of new facilities of the kind therein mentioned provide for the use by the Company upon reasonable terms and conditions of any existing facilities of such kind.

Use of
existing
infra-
structure.

Marketing
and
financial
arrange-
ments.

(4) At the time when the Company submits the said proposals it shall furnish to the State's satisfaction in all respects evidence of—

- (a) marketing arrangements demonstrating the Company's ability to profitably sell or use heavy minerals or a substantial proportion thereof in accordance with the said proposals;
- (b) the availability of finance necessary for the fulfilment of the operations to which the said proposals refer; and
- (c) the readiness of the Company to embark upon and proceed to carry out the operations referred to in the said proposals.

Extensions
of time for
financing
and
marketing.

(5) If the Company for any reason desires an extension of time beyond 30th June 1975 within which to comply with the requirements of subclause (4) of this Clause it may make a request therefor to the Minister not later than 31st May 1975 and with such request shall supply the Minister with details of its endeavours to comply with those requirements. If the Minister is satisfied that such endeavours are reasonable in the circumstances and that the Company has otherwise duly complied with its obligations hereunder the Minister shall grant an extension of such time for a period of 6 months.

Considera-
tion of
proposals.

6. (1) On receipt of the said proposals the Minister shall—

- (a) approve of the said proposals either wholly or in part without qualification or reservation; or
- (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 5 not covered by the said proposals;
or
- (c) require as a condition precedent to the giving of his approval to the said proposals that the Company makes such alteration thereto or complies with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions.

(2) The Minister shall within 2 months after receipt of the said proposals give notice to the Company of his decision in respect to the same.

Advice of
Minister's
decision.

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

Consultation
with
Minister.

(4) If the decision of the Minister is as mentioned in the said paragraph (c) and the Company considers that the condition precedent is unreasonable the Company may within 2 months after receipt of the notice mentioned in subclause (2) of this Clause elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the condition precedent.

Minister's
decision
subject to
arbitration.

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

Arbitration
award.

(a) if by the award the dispute is decided against the Company then unless the Company within 3 months after delivery of the award gives notice to the Minister of its acceptance of the award this Agreement shall on the expiration of that period of 3 months cease and determine; or

(b) if by the award the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

(6) Notwithstanding that under subclause (1) of this Clause any detailed proposals of the Company are approved by the Minister or determined by arbitration award, unless each and every such proposal and matter is so approved or determined by 30th June 1975 or by such extended date if any as the Company shall be granted pursuant to the provisions of this Agreement then the Minister may give to the Company 12 months notice of intention to determine this Agreement and unless before the expiration of the said 12 months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of Clause 32.

Effect of
non-approval
of proposals.

Implementa-
tion of
proposals.

(7) The Company shall implement the approved proposals in accordance with the terms thereof.

Additional
proposals.

7. If the Company at any time during the continuance of this Agreement desires to significantly modify expand or otherwise vary its activities carried on pursuant to this Agreement beyond those specified in any approved proposals it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (i) of subclause (1) of Clause 5 as the Minister may require. The provisions of Clauses 5 and 6 shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause. The Company shall implement the approved proposals in accordance with the terms thereof.

Additional
proposals for
the
protection
and
management
of the
environ-
ment.

8. (1) The Company shall, in respect of the matters referred to in paragraph (i) of subclause (1) of Clause 5 and which are the subject of approved proposals under this Agreement, carry out a continuous programme of investigation and research including monitoring and the study of sample areas to ascertain the effectiveness of the measures it is taking pursuant to its approved proposals for the protection and management of the environment.

(2) The Company shall during the currency of this Agreement at yearly intervals commencing from the date when the Company's proposals are approved submit an interim report to the Minister concerning investigations and research carried out pursuant to subclause (1) of this Clause and at 3 yearly intervals commencing from such date submit a detailed report to the Minister on the result of the investigations and research during the previous 3 years.

(3) The Minister may within 2 months of the receipt of the detailed report pursuant to subclause (2) of this Clause notify the Company that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the detailed report.

(4) The Company shall within 2 months of the receipt of a notice given pursuant to subclause (3) of this Clause submit to the Minister additional detailed proposals as required and the provisions of Clauses 5 and 6 where applicable shall *mutatis mutandis* apply in respect of such proposals.

(5) The Company shall implement the approved proposals in accordance with the terms thereof.

9. The Company shall in accordance with its proposals as finally approved under Clause 6 within 6 months next following the date of such approval commence the construction of the works referred to in such proposals and will complete all such works within 2 years of their commencement except as otherwise specified in such proposals.

Construction
of works.

10. (1) The Company shall for the purposes of this Agreement as far as it is reasonable and economically practicable—

Use of local
professional
services
labour and
materials.

- (a) use the services of engineers, surveyors, architects and other professional consultants resident and available within the said State;
- (b) use labour available within the said State;
- (c) when calling for tenders and letting contracts for works materials plant equipment and supplies ensure that Western Australian suppliers manufacturers and contractors are given reasonable opportunity to tender or quote; and
- (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere.

(2) The Company shall from time to time during the currency of this Agreement when requested by the Minister submit a report concerning its implementation of the provisions of subclause (1) of this Clause.

11. (1) The Company shall—

Roads.

- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in its operations hereunder;
- (b) at its own cost make such provision as shall ensure that all persons and vehicles (other than those engaged upon the Company's

operations and its invitees and licensees) are excluded from use of any such private roads; and

- (c) at any place where such private roads are constructed by the Company so as to cross any railways or public roads provide such reasonable protection as may be required by the Commissioner of Main Roads or the Railways Commission as the case may be.

Public roads.

(2) The State shall maintain or cause to be maintained public roads over which it has control (and which may be used by the Company) to a standard similar to comparable public roads maintained by the State.

(3) In the event that the Company's operations require the use of a public road which is inadequate for the purpose, or result in excessive damage or deterioration of any public road (other than fair wear and tear) the Company shall pay to the State the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads having regard to the use of such road by others PROVIDED THAT nothing in this subclause shall apply to the Eneabba-Geraldton highway.

Liability.

(4) The parties hereto further covenant and agree with each other that—

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

- (i) the Company is liable to any person or body corporate (other than the State); or
- (ii) an action is maintainable by any such person or body corporate in respect of the death or injury of any person or damage to any property arising out of the use of any of the roads for the maintenance of which the Company is responsible hereunder and for no other purpose the Company shall be deemed to be a municipality and the said roads shall be deemed to be streets under the care control and management of the Company; and

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

12. (1) The State shall cause the Railways Commission to transport by rail, and the Company shall so consign— **Railways.**

- (a) all its production of heavy mineral concentrates, heavy minerals and heavy mineral products (in this Clause either separately or collectively called "the bulk minerals") from a loading point or points to be agreed at the separation plant to an unloading point or points to be agreed at—

(i) the port; and

(ii) Capel or elsewhere as the State may agree; and

- (b) in so far as is practicable, all other bulk commodities required for the Company's operations hereunder.

(2) The Company may at its election transport either by road or by rail all commodities other than those referred to in subclause (1) of this Clause required for its operations hereunder PROVIDED THAT the Railways Commission shall not be required to accept rail freight in less than full wagon loads. **Other commodities.**

(3) Where the Company elects to transport commodities by road pursuant to subclause (2) of this Clause or until such time as the Railways Commission commences to transport the bulk minerals by rail from the separation plant the Commissioner of Transport shall upon request by the Company and upon payment of the licence fees prescribed by him under the Transport Commission Act, 1966 issue licences for road carriage to the Company or its nominees provided that such nominees shall be persons whose character qualifications and financial stability are approved by the Commissioner. **Road licences.**

(4) Subject to the provisions of Clause 19 when the Railways Commission commences to transport the bulk minerals by rail from the separation plant, the Company shall if required by the Railways Commission and in accordance with plans and specifications approved by the Railways Commission at its own cost provide and maintain **Rail. Additional facilities.**

loading and unloading facilities sufficient to meet train operating requirements and terminal equipment (including weighing devices, communication systems, sidings, shunting loops, spurs and other connections) together with a staff adequate to ensure the proper operation of all such loading and unloading facilities and terminal equipment.

Maintenance.

(5) Subject to the provisions of subclause (4) of this Clause the Railways Commission shall at its own cost provide maintain and service all railways, locomotives, brakevans and wagons necessary and suitable for the purposes of this Agreement provided that the Company may if it so elects provide wagons to a design and specification approved by the Railways Commission and such wagons shall be maintained and serviced by the Railways Commission. The Railways Commission shall be responsible for the cleaning of all wagons used for the purposes of this Agreement.

Notice of requirements.

(6) The Company shall provide to the satisfaction of the Railways Commission adequate notice in advance of its requirements (including anticipated tonneages in each year) as to the use of the railways to enable the Railways Commission to make arrangements to meet those requirements and shall thereafter give not less than 18 months prior notice of any change in those requirements. In particular the Company shall agree with the Railways Commission the pattern of working including weekly and monthly despatches.

Conditions of carriage.

(7) All commodities transported pursuant to this Clause shall be carried at the Company's risk and shall be subject to the by-laws made under the Government Railways Act, 1904 (in so far as those by-laws are not inconsistent with this Agreement) and to the provisions of this Clause.

Freight rates.

(8) The Company shall pay to the State freight in respect of all commodities specified in the First Schedule hereto carried by the Railways Commission pursuant to this Agreement at the appropriate freight rates and in the manner and subject to the conditions set out in that Schedule.

New railway.

(9) The State shall for the purposes of this Agreement and as authorised by the Dongara-Eneabba Railway Act, 1974 cause the Railways Commission to construct and operate a railway to the mining areas. The route of the railway south of Eneabba shall be aligned by the Railways Commission after consultation with the Company.

(10) The Company shall ensure that mining adjacent to the railway shall be carried out in such manner as not to endanger the railway. The Company shall obtain the prior approval of the Railways Commission before commencing any mining which might be likely to affect the stability of the railway.

Mining.

(11) Notwithstanding the provisions of Clause 11 (1) (c) the Company shall be permitted access over the railway only at crossings approved by the Railways Commission.

Railway crossing.

(12) The Railways Commission shall at its cost remove any section of the railway not required by the Railways Commission for serving the mineral sands mining and processing operations of the Company or other companies so engaged.

Removal of railway.

(13) Should any portion of the railway be within the mineral lease the Company may not earlier than 1st January 1980 request the Railways Commission to divert the railway to allow mining of that portion of the mineral lease. On receipt of such request the Railways Commission shall with reasonable expedition determine an alternative route for the railway satisfactory to the Railways Commission and for this purpose may require the Company to provide land at the Company's expense. The Railways Commission shall subject to the availability of land divert the railway within 12 months of the determination of the alternative route as aforesaid PROVIDED THAT the Railways Commission shall only be required to make one diversion pursuant to this subclause during the currency of this Agreement.

Diversion of railway.

13. (1) The State shall cause the State Electricity Commission to use its best endeavours to complete by not later than 30th June 1978 a 132 kV transmission line to Eneabba and a 33 kV feeder line to a point on or adjacent to the mineral lease with the object of meeting *inter alia* the Company's requirements of electricity for its operations hereunder.

Electricity.

(2) Subject to completion of the said transmission line and feeder line the State Electricity Commission shall supply and the Company shall purchase from the State Electricity Commission all its requirements of electricity

for its operations hereunder on the State Electricity Commission's usual conditions and at the tariffs prescribed from time to time appropriate to the Company's level of use.

(3) Notwithstanding the terms of subclause (2) of this Clause the Company may in accordance with its proposals as finally approved and subject to the provisions of the Electricity Act, 1945 and the approval and requirements of the State Electricity Commission, install and operate at its cost, at a convenient location within the mineral lease, equipment to generate electricity for all or part of its operations hereunder and to continue to operate such equipment in generating all or part of its requirements of electricity after completion of installation by the State Electricity Commission of the transmission line and the feeder line referred to in subclause (1) of this Clause for such period as the parties may agree.

Water
supply
mining
areas.

14. (1) The Company shall give to the State reasonable notice in such form as the Minister may require in respect of its daily requirements of water at the mining areas (which amounts or such other amounts as shall from time to time be agreed between the parties hereto to be reasonable shall hereinafter be called "the Company's daily water requirements").

Search in
mining
areas.

(2) The Company shall at its cost and in collaboration with the State search for underground water within the mining areas. Where appropriate the Company shall employ and retain experienced groundwater consultants. The Company shall furnish to the Minister details of the results of its investigations and copies of the reports of such consultants as they become available.

Search
outside
mining
areas.

(3) If in the opinion of the Minister, the reports of the consultants pursuant to subclause (2) of this Clause indicate that the source of underground water in the mining areas is likely to be inadequate to supply the Company's daily water requirements, the parties hereto shall agree on a programme which shall be carried out by the State at the cost of the Company to search for water inside and outside the mining areas. The State may at its discretion extend such water search to prove a quantity of water greater than that required to supply the Company's daily water requirements, but in that event, the cost of such search shall be shared by the parties hereto in such a manner as may be agreed to be fair in all the circumstances.

(4) If the investigations referred to in subclauses (2) and (3) of this Clause prove to the satisfaction of the Minister the availability of suitable underground water sources which can continue to be drawn on by the Company without seriously affecting the water pressure in the aquifer beneath the mining areas or adjacent areas or the availability of water in the adjacent areas, the State shall grant to the Company a licence to develop and draw from such sources without cost the Company's daily water requirements on such terms and conditions as the Minister may approve and during the continuance of this Agreement grant renewals of such licence on such terms and conditions as the Minister may approve PROVIDED HOWEVER that if at any time the Minister, having regard to the reports of the Company's consultants, considers that such sources are hydrologically inadequate to meet the Company's daily water requirements, the State may after consultation with the Company limit the amount of water which may be taken from such sources at any one time or from time to time to the maximum which such sources are hydrologically capable of meeting.

Grant of
licence.

(5) The Company shall at its own expense provide and construct to standards approved by the State all necessary bores valves pipelines meters tanks pumps equipment and appurtenances necessary to draw transport use and dispose of water drawn from any source licensed to the Company.

Construction
of water
works.

(6) If during the currency of a licence granted under the provisions of this Clause the Minister is of the opinion that it would be desirable for water conservation purposes or water management purposes that sources of water licensed to the Company be controlled and operated by the State as part of a district or regional water supply scheme, the Minister may on giving 6 months prior notice to the Company of his intention, revoke the licence and acquire the Company's water supply facilities for a monetary consideration to be determined by the Minister.

Surrender of
licence.

Immediately from the revocation of such licence the State shall, subject only to the continued hydrological availability of water from such sources, commence and thereafter continue to supply water to the Company up to the same amount and at the same rate as that which the Company would have been entitled to draw under such surrendered licence and the proviso to subclause (4) of this Clause shall in like manner apply to this subclause.

(7) If at any time after the State has acquired the Company's water supply facilities in terms of subclause (6) of this Clause it is necessary to expand those facilities to

Regional
water
supply.

meet the Company's daily water requirements then the State may in the course of developing any district or regional water supply, construct further works of the kind mentioned in subclause (5) of this Clause and the cost thereof having regard to the utilisation of such further works by the State in meeting the Company's daily water requirements shall be shared by the parties hereto in such a manner as may be agreed to be fair in all the circumstances.

Supply to
third party.

(8) The State may after first having due regard to the Company's daily water requirements and the hydrological adequacy of the sources from which the Company draws water or from which the Company's daily water requirements are supplied, upon not less than 3 months prior notice to the Company specifying the identity of the third party including where applicable the State and the estimated maximum daily and total quantity of water to be drawn by that third party and the period over which such drawing is to occur grant to a third party rights to draw water or itself draw water from such sources

PROVIDED THAT—

- (a) where the Company has paid (in whole or in part) any moneys in respect of the investigation proving development and utilisation of such sources as provided pursuant to this Clause, the State shall require as a condition of such grant that where such third party is or will be a substantial user of water within 5 years of the commencement date that party (but not the State) shall reimburse to the Company a proportion of such moneys as the Minister determines is fair and reasonable having regard *inter alia* to the proportion which that party's actual or potential requirements for water bears to the total capacity of such sources; and
- (b) where the Company draws or is supplied with water from a source developed wholly at its expense pursuant to this Clause, the State shall ensure that it is a condition of such grant to third parties (other than the State) that in the event that the capacity of the source is reduced, such reduction shall be first applied to such third parties and thereafter if further reduction is necessary the State's and the Company's requirements shall be reduced in such proportion as may be agreed.

(9) In the event of water supplies from available underground sources proving insufficient to meet the Company's daily water requirements the Company shall notwithstanding the provisions of subclause (3) of this Clause collaborate with the State in an investigation of surface water catchments and storage dams. The Company shall if it proposes to utilise such surface water, water catchments, and storage dams pay to the State a sum or sums to be agreed towards the cost of such investigation and towards the cost of constructing any water storage dam or dams and reticulation facilities required PROVIDED THAT the State may in its sole discretion elect to construct a water storage dam or dams and reticulation facilities having a capacity in excess of that required to supply the Company's needs and in that event the Company's contribution shall be limited to a fair and reasonable proportion of the total cost of constructing such water storage dam or dams and reticulation facilities.

Investigation
of surface
water.

(10) The Company shall pay the State for water supplied by the State pursuant to the terms of subclause (6) of this Clause a fair price to be negotiated between the parties having regard to the actual cost of operating and maintaining the supply and provision for replacement of the water supply facility. Water supplied by the State pursuant to this Agreement within the town shall be subject to the provisions of the Country Areas Water Supply Act, 1947.

Payment for
water.

(11) The Company shall to the extent that it is practical and economical design, construct and operate its works under this Clause so as—

Design of
works.

- (a) to make use of brackish or saline water,
- (b) to recycle all water, and
- (c) to prevent loss of water by leakage, spillage or evaporation.

(12) Any reference in the foregoing provisions of this Clause to a licence is a reference to a licence under the Rights in Water and Irrigation Act, 1914 and the provisions of that Act relating to water rights and licences shall except where inconsistent with the provisions of this Agreement apply to any water source developed for the Company's purposes under this Agreement.

Rights in
Water and
Irrigation
Act.

(13) Upon the request of the Company the State shall grant to the Company a licence to draw from the sea its requirements of sea water in accordance with the relevant approved proposal hereunder and shall assist the Company in acquiring rights of way for any pipeline involved.

Sea water
licence.

Mineral
lease.

15. (1) On application made by the Company, as soon as practicable after all its proposals hereunder have been approved and the Company has complied with the provisions of subclause (4) of Clause 5, for a mineral lease over so much of the land in the red areas as the Company desires and in respect of which the Company then holds mineral claims, the State shall upon the surrender by the Company of all such mineral claims cause to be granted to the Company at the rental specified from time to time in the Mining Act a mineral lease of such land within the mining areas so applied for (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed) such mineral lease to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but in the form of the Second Schedule hereto and in respect of the minerals set out therein and subject to such other conditions as the Minister for Mines may reasonably require from time to time for the purpose of reducing or making good injury to the surface of the land in the mineral lease or injury to anything on or below the surface of that land.

(2) Subject to the performance by the Company of its obligations under this Agreement and the Mining Act and notwithstanding any provisions of the Mining Act to the contrary, the term of the mineral lease shall be for a period of 21 years commencing from the date of receipt of application with the right during the currency of this Agreement to take successive renewals of the said term each for a period of 21 years upon the same terms and conditions, subject to the sooner determination of the said term upon the cessation or determination of this Agreement, such right to be exercisable by the Company making written application for any such renewal not later than 1 month before the expiration of the current term of the mineral lease.

Labour
conditions.

(3) The State shall ensure that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the labour conditions imposed by or under the Mining Act in regard to the mineral lease.

Other
mining
tenements.

(4) The State shall not during the currency of this Agreement register any claim or grant any lease or other mining tenement under the Mining Act or otherwise by which any person other than the Company or an associated company will obtain under the laws relating to mining or otherwise any rights to mine or take the natural substances

(other than petroleum as defined in the Petroleum Act, 1967) within the mineral lease unless the Minister reasonably determines that it is not likely to unduly prejudice or to interfere with the operations of the Company hereunder assuming the taking by the Company of all reasonable steps to avoid the interference.

(5) The Company shall at all times permit the State and third parties (with or without stock vehicles and rolling stock) to have access to and to pass over the mineral lease (by separate route, road or railway) so long as that access and passage does not materially prejudice or interfere with the operations of the Company under this Agreement PROVIDED THAT the provisions of this subclause shall not apply to privately owned land in the mineral lease.

Access over
mineral
lease.

(6) The Company shall not commence any mining or related operations for the purposes of this Agreement on privately owned land unless and until it has entered into a written agreement with the owner and occupier of such land for the purpose of providing for compensation arising out of its operations or proposed operations on the land, and within 14 days after the date thereof or (in the case of an agreement entered into before the date hereof) after the execution of this Agreement lodge a true copy of the agreement with the Minister for Mines.

Mining on
private
lands.

(7) (a) The Company shall not later than 3 years after the date of commencement of the mineral lease surrender the yellow areas to the State.

Incorporation of
yellow areas
in the
mineral
lease.

(b) The Company shall in respect of the yellow areas surrendered pursuant to paragraph (a) of this subclause have the right at the date of surrender, notwithstanding the provisions of the Mining Act to apply for and have included in the mineral lease upon and subject to the same terms covenants and conditions as apply to the the mineral lease (with such apportionment of rents as is necessary), such of the yellow areas as the Company desires over which the Company at the date of surrender holds mineral claims notwithstanding that the survey of such additional land has not been completed (but subject to correction to accord with the survey when made at the Company's expense).

(8) Subject to the provisions of the mineral lease and such other terms and conditions as the Minister may require pursuant to approved proposals hereunder the Company

Mining on
Reserve No.
31030.

shall have the right to mine such part of the land the subject of Reserve No. 31030 and any other land reserved under the Land Act as is included in the mineral lease.

Land.

16. The State shall in accordance with the Company's approved proposals grant to the Company, or arrange to have the appropriate authority or other interested instrumentality of the State grant for such periods and on such terms and conditions (including renewal rights) as shall be reasonable having regard to the requirements of the Company, leases for any purposes related to the Company's operations under this Agreement.

Modification
of Land Act.

17. For the purpose of this Agreement in respect of any land sold or leased to the Company by the State the Land Act shall be deemed to be modified by:—

(a) the substitution for subsection (2) of section 45A of the following subsection:—

“(2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased;”

(b) the deletion of the proviso to section 116;

(c) the deletion of section 135;

(d) the deletion of section 143;

(e) the inclusion of a power to offer for sale or leasing land within or in the vicinity of the town; and

(f) the inclusion of a power to offer for sale or grant leases or licences for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, the terms and conditions and the forms referred to in the Land Act.

The provisions of this Clause shall not operate so as to prejudice the rights of the State to determine any lease licence or other right or title in accordance with the other provisions of this Agreement.

18. (1) To enable the Company to do those things necessary to attract and sustain a stable and content workforce and associated population (including the development and maintenance of an attractive physical environment together with appropriate community, recreation, civic, social and commercial amenities) the Company shall collaborate with the State in the development of an area or areas in the town and shall submit proposals relating to such development pursuant to Clause 5 (1) (e). Town
development.

(2) The Company shall at its cost cause to be provided and maintained at the town and made available at such prices, rentals or charges and upon such terms and conditions as are fair and reasonable under the circumstances, housing accommodation to the extent necessary to provide for the needs of persons and the dependants of such persons engaged in connection with the Company's operations hereunder.

(3) For the purposes of subclause (2) of this Clause the State shall in accordance with the Company's approved proposal make available lots of land in the town for purchase by the Company at prices to be agreed between the parties.

(4) The parties recognise that as a consequence in part of the progressive development of the Eneabba region and related facilities the need will progressively develop at the town for additional sewerage treatment works water supply headworks main drainage and community recreation civic social and commercial amenities. The Company accepts the principle of fair and reasonable sharing by it (whether by way of capital contribution or otherwise) of the costs of establishing such works and amenities having regard to the benefits flowing to the State, the Community, the Company and others therefrom.

19. (1) The Company shall ship through the port such Port. portion of its heavy minerals and heavy mineral products which are produced at or near Eneabba as are destined for shipment in bulk overseas (and for that purpose shall have access to the wharf) and shall subject to the provisions of this Clause provide at no cost to the State all necessary storage and reclaiming equipment and all other facilities required at the port to carry out its obligations under this Agreement.

(2) The State shall cause the Geraldton Port Authority to grant to the Company a lease of land at the port for a stockpile Stockpile
area. area for such period and on such terms and conditions (including renewal rights) as shall be reasonable having regard to the purposes of the Company's operations hereunder and the term of the mineral lease.

Use of the mineral sands-iron ore handling system.

(3) The State shall use its best endeavours to arrange for the WMC Joint Venturers to make available to the Company for the purposes of this Agreement the mineral sands-iron ore handling system and to operate and maintain such system for the Company on terms and conditions to be agreed between the WMC Joint Venturers and the Company and approved by the State and the Company shall use such system for its operations hereunder.

Common inloading system and common materials handling system.

(4) In the event that the State, having regard, *inter alia*, to the tonnages of heavy minerals and heavy mineral products being shipped through the port by the Company and others, causes the Geraldton Port Authority after consultation with the Company and other companies shipping heavy minerals and heavy mineral products through the port to construct either the common inloading system or the common materials handling system, or both, and the WMC Joint Venturers to operate such system or systems, the Company shall use such system or systems for its operations hereunder and together with other companies shipping heavy minerals and heavy mineral products through the port shall make such contribution to the State in respect of such system or systems (whether by way of capital contribution or otherwise) as the State considers equitable in the circumstances.

Operation of common inloading system and common materials handling system.

(5) The State shall use its best endeavours to arrange for the WMC Joint Venturers to operate and maintain the common inloading system and/or the common materials handling system as the case may be on terms and conditions to be agreed between the WMC Joint Venturers and the Company and approved by the State.

(6) In the event of the WMC Joint Venturers not operating and maintaining the common inloading system and/or the common materials handling system as the case may be pursuant to subclause (5) of this Clause the State shall cause the Geraldton Port Authority to operate and maintain either or both systems on terms and conditions to be determined by the State after consultation with the Company and the Company shall use such system or systems as the case may be for its operations hereunder.

Avoidance of dust nuisance.

(7) The Company shall design and operate its stock-piling, reclaiming and other equipment and facilities at the port so as to avoid dust nuisance and loss of heavy minerals and heavy mineral products during handling and storage operations.

20. (1) The Company shall pay to the State in respect of all minerals mined or produced by the Company from the mineral lease and sold by it royalties at the rates from time to time prescribed under or pursuant to the provisions of the Mining Act. Royalties.

(2) Notwithstanding the provisions of subclause (1) of this Clause the royalties payable by the Company in respect of all minerals mined or produced by it from the mineral lease during a period of 4 years commencing from 30th June 1976 shall be at rates not exceeding those prescribed pursuant to the provisions of the Mining Act in force at 30th June 1976.

(3) Notwithstanding the provisions of the Mining Act and of subclauses (1) and (2) of this Clause the Company shall pay to the State in addition to the royalty payable under subclause (1) of this Clause an additional royalty during the first 5 years (commencing with the quarter day next following the date when the first commercial shipment or sale is made but otherwise in accordance with the provisions of subclause (4) of this Clause) in respect of all minerals mined or produced by the Company from the mineral lease and sold by it, at such rate or rates as may from time to time be determined by the State and notified to the Company by the Minister PROVIDED ALWAYS that such additional royalty shall not aggregate more than \$800 000. Additional
royalty.

(4) The Company shall during the continuance of this Agreement within 14 days after the following quarter days namely the last days of March June September and December in each year (commencing with the quarter day next following the date when the first commercial shipment or sale is made) furnish to the Minister for Mines a return showing such particulars as the Minister for Mines requires to enable the calculation of the royalty payable under this Clause and shall pay to the Minister for Mines, at the time of furnishing the return the royalty payable hereunder. Return and
payment of
royalties.

(5) The Company shall permit the Minister for Mines 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 take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the reasonable satisfaction of the Minister for Mines as to all relevant weights and analyses and shall give due regard Inspection.

to any objection or representation made by the Minister for Mines or his nominee as to any particular weight or assay of minerals mined or produced by the Company from the mineral lease and sold by it which may affect the amount of royalty payable hereunder.

Further
processing.

21. (1) At a time convenient to the Company but in any event not later than 4 years after the commencement date the Company shall investigate the technical and economic feasibility of either expanding its existing ilmenite upgrading plant at Capel or establishing a new plant for secondary processing to the maximum degree then practicable either by the Company alone or jointly with any other company or companies. The Company shall report in detail the progress and results of such investigations to the Minister not later than 90 days after the expiry of the period referred to in this subclause.

(2) The State may also undertake the studies mentioned in subclause (1) of this Clause and for that purpose the Company shall provide the State on a confidential basis with such information as it may reasonably require but the Company shall not be obliged to supply technical information of a confidential nature with respect to processes that have been developed by the Company alone or with others or acquired from other sources and that is not generally available to the mineral sands industry.

(3) The Minister may consider the studies undertaken under subclauses (1) and (2) of this Clause and if the Minister is of the opinion that in all the circumstances then applying to the Company, either an expansion of the Company's existing ilmenite upgrading plant at Capel or the establishment of a new plant for secondary processing is technically and economically viable and competitive on world markets, then the Minister may notify the Company of such decision. If so requested by the Company the Minister shall give to the Company all information obtained during such studies (other than information confidential to third parties).

(4) If the Company disagrees with the result of such studies and/or the Minister's decision thereon the Company shall have the right at any time within 6 months after the receipt of the Minister's notice to refer the matter to arbitration hereunder. If the Company shall agree that either an expansion of the Company's existing ilmenite upgrading plant at Capel or the establishment of a new plant for secondary processing as the case may be is technically and economically viable and competitive on world markets (in which case it shall so advise the Minister promptly) or if it shall be so determined by arbitration

as aforesaid then the Company shall submit a proposal therefor in accordance with the provisions of Clause 7 of this Agreement, either alone or jointly with another company or other companies. Any such plant shall be in operation not later than 3 years after the date upon which the Company shall advise the Minister as to its agreement aforesaid or the date of the arbitration award.

(5) If—

- (a) the Company on completion of its investigations within the period and in the manner outlined in subclause (1) of this Clause is of the opinion that either an expansion of the Company's existing ilmenite upgrading plant at Capel or the establishment of a new plant for secondary processing as the case may be is not technically and economically viable and competitive on world markets and the Minister concurs; or
- (b) the Minister shall disagree with such opinion but on a reference to arbitration in terms of subclause (4) of this Clause the award shall be in favour of the Company

then the provisions of subclauses (1) (2) (3) and (4) of this Clause shall continue to apply *mutatis mutandis* but in relation to the next ensuing 4 years and so on during the term of this Agreement until such time as the Company shall become obligated in terms of subclause (4) to proceed with either an expansion of the Company's existing ilmenite upgrading plant at Capel or the establishment of a new plant for secondary processing.

(6) If the Company having become obligated in terms of subclause (4) of this Clause does not complete and commission either an expansion of the Company's existing ilmenite upgrading plant or a new plant for secondary processing within the time and in the manner prescribed by that subclause, such omission shall not give rise to any action for breach of contract nor shall the provisions of Clause 32 apply but the State may in such event negotiate with any other person (in this Clause called "the third party") to establish a plant capable of meeting the Company's secondary processing commitment in terms of this Clause on terms and conditions not more favourable on the whole to the third party than any terms available to the Company. In the event of the establishment of the third party's plant in accordance with the provisions of this Clause the Company if required by the State shall (subject to any existing contractual supply arrangements or such other supply arrangements approved by the Minister made by the Company for the supply of heavy minerals to buyers

at arms length and entered into by the Company prior to the expiration of 4 years from the commencement date, or, in the event of the Company's commitment in terms of this subclause arising on further review in terms of subclause (5) of this Clause then entered into by the Company prior to such date of commitment), sell to the third party such heavy minerals of the nature then being sold by the Company as may be processed in the third party's plant. Sales to the third party shall be for a reasonable period (having regard to such matters as the Company's ore reserves and the capital investment of the third party in the approved plant), at a reasonable price (having regard to the prevailing prices at which the Company is then selling such heavy minerals and any *bona fide* proposed sale between the Company and an independent company dealing at arms length) and subject to such other terms and conditions as the Company may reasonably impose and in sufficient quantities to meet the production requirements of the third party from time to time PROVIDED ALWAYS that the Company shall not, in any year, be obligated to supply the third party with heavy minerals exceeding a quantity calculated by deducting from the tonnage which represents one half of the previous years production by the Company of the heavy mineral or heavy minerals required by the third party for its plant aforesaid the tonnage of that heavy mineral or those heavy minerals as were produced by the Company in that year and submitted to secondary processing by the Company or similarly processed within the State by any other company or companies.

Zoning.

22. The State shall ensure that the mineral lease and any lands the subject of any Crown grant lease licence or easement granted to the Company under this Agreement and all freehold and leasehold land occupied by the Company in accordance with or the subject of proposals approved hereunder shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State by any State agency or instrumentality or by any local or other authority of the State on the ground that such operations are contrary to any zoning by-law regulation or order.

Rating.

23. The State shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection 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 of ore, the processing of heavy mineral concentrates and the transportation and shipment of heavy minerals and heavy mineral products) shall for rating purposes under the Local Government Act, 1960 be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate, PROVIDED THAT nothing in this Clause shall prevent the Company making the election provided for by section 533B of the Local Government Act, 1960.

24. Except as provided by this Agreement the State shall not impose or permit or suffer any instrumentality of the said State or any local or other authority to impose discriminatory taxes, rates or charges of any nature whatever on or in respect of the titles, property or other assets, products, materials or services used or produced by or through the operations of the Company hereunder and the State shall not take or permit any such instrumentality or any local or other authority to take any other discriminatory action that would deprive the Company of any rights granted or intended to be granted to it under this Agreement.

No
discrimina-
tory rates.

25. The State may as and for a public work under the Public Works Act, 1902, resume any land required for the purposes of this Agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of the land to the Company. The Company shall pay to the State on demand the costs of and incidental to any land resumed at the request of and on behalf of the Company pursuant to this Clause.

Resumption
for the
purposes of
this
Agreement.

26. The State agrees that subject to the performance by the Company of its obligations hereunder the State shall not resume or suffer or permit to be resumed by an instrumentality or by any local or other authority of the said State any portion of the land the subject of any special lease mentioned in Clause 16 the resumption of which would materially impede the Company's works and activities thereon or any portion of the land the subject of the mineral lease whereon any of the Company's works are situate in accordance with proposals approved hereunder the resumption of which would materially impede the Company's mining or other activities thereon nor shall the State create or grant or permit or suffer to be created or granted by an instrumentality or authority of the said State any road right of way or easement of any nature or kind whatsoever over or in respect of the land comprised in the said leases whereon any of the Company's works are situate in accordance with proposals approved hereunder

No
resumption.

without the consent of the Company first had and obtained which consent the Company agrees it shall not arbitrarily or unreasonably withhold.

Assign-
ment.

27. (1) Subject to the provisions of this Clause the Company may at any time—

- (a) assign mortgage charge sublet or dispose of to an associated company as of right or to any other company or person with the consent of the Minister the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of any lease licence easement grant or other title) and of the obligations of the Company hereunder; and
- (b) appoint as of right an associated company or with the consent of the Minister any other company or person to exercise all or any of the powers functions and authorities that are or may be conferred on the Company hereunder;

subject however in the case of an assignment subletting or disposition to the assignee sublessee disponee or the appointee (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting disposition or appointment.

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this Clause the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained herein and in any lease licence easement grant or other title the subject of an assignment mortgage subletting or disposition or appointment under subclause (1) of this Clause PROVIDED THAT the Minister may agree to release the Company from such liability where he considers such release will not be contrary to the interests of the State.

(3) Notwithstanding the provisions of the Mining Act, the Transfer of Land Act, 1893 and the Land Act, insofar as the same or any of them may apply—

- (a) no assignment mortgage charge sublease or disposition made or given pursuant to this Clause of or over the mineral lease or any other lease sublease licence reserve or tenement granted hereunder or pursuant hereto by

the Company or any assignee sublessee disponee or appointee who has executed and is for the time being bound by deed of covenant made pursuant to this Clause; and

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

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

28. Where the Company whether before or after the execution of this Agreement executes and has registered in the Department of Mines a mortgage over a mineral claim in the mining areas, and the land the subject of that mineral claim, on the surrender of such claim, becomes incorporated in the mineral lease, then provided the consent of the mortgagee is first obtained, the mineral lease shall notwithstanding the provisions of the Mining Act be deemed to be the subject of such mortgage as if the mineral lease had been referred to in the mortgage. A memorandum of any such mortgages shall be endorsed on the mineral lease in the order in which they appeared registered against any such mineral claim at the time of its surrender and shall be noted in the appropriate registers of the Department of Mines by the Principal Registrar who shall also endorse on the original and duplicate copies of such mortgages the fact of their having been registered as an encumbrance against the mineral lease.

Substituted
securities.

29. (1) The parties hereto 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.

Variation.

(2) The Minister shall cause any agreement made pursuant to subclause (1) of this Clause in respect of any addition substitution cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.

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

Force
majeure.

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

Power to
extend
periods.

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

Determina-
tion of
Agreement.

32. (1) In any of the following events namely if the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sublease licence or other title or document granted or

assigned under this Agreement on its part to be performed or observed or if the Company abandons or repudiates its operations under this Agreement and such default is not remedied or such operations resumed within a period of 180 days after notice as provided in subclause (2) of this Clause is given by the State (or—if the alleged default abandonment or repudiation is contested by the Company and within 60 days after such notice is submitted by the Company to arbitration—within a reasonable time fixed by the arbitration award but not less than 90 days after the making of the arbitration award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company goes 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 Company determine this Agreement and the rights of the Company hereunder and under any lease licence easement or right granted hereunder or pursuant hereto shall thereupon determine.

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

(3) The abandonment or repudiation by or liquidation of the Company referred to in subclause (1) of this Clause means the abandonment or repudiation by or the liquidation of all of them the Company and all assignees and appointees who have executed and are for the time being bound by a deed of covenant in favour of the State as provided in Clause 27.

(4) If the default referred to in subclause (1) of this Clause shall not have been remedied 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 Company 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 Company to the State on demand.

Effect of
cessation
and
determina-
tion of
Agreement.

33. (1) Upon the cessation or determination of this Agreement—

- (a) except as otherwise agreed by the Minister the rights of the Company and those of any assignee or mortgagee of the Company under this Agreement or under the mineral lease or any other lease, licence, easement or right granted hereunder or pursuant hereto and all the right title and interest of the Company and of any such assignee or mortgagee in and to any land wherever situated granted to the Company or to such assignee for any other of the purposes of this Agreement shall thereupon cease and determine, but without prejudice to the liability of either of the parties in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder; and
- (b) the Company shall forthwith pay to the State all monies that may then have been payable or accrued due hereunder; and
- (c) except as provided in this Clause or otherwise provided in this Agreement neither of the parties shall have any claim against the other of them in respect to any matter or thing contained in or arising out of this Agreement.

(2) Subject to the provisions of subclause (3) of this Clause upon the cessation or determination of this Agreement all buildings erections and other improvements erected on any land then occupied by the Company or any associated company or assignee of the Company under the mineral lease or any other lease, licence, easement, right or grant made hereunder for the purpose hereof shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Company or any other party and freed and discharged from all mortgages and other encumbrances and the Company

shall do and execute all such deeds documents and other acts matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

(3) In the event of the Company immediately prior to the cessation or determination of this Agreement or subsequently thereto desiring to remove any of its electricity generating plant and transmission system or any of its other fixed or movable plant and equipment from any part of the land occupied by it at the date of such cessation or determination the Company shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within 3 months thereafter to purchase *in situ* the said electricity generating plant transmission system and other fixed or movable plant and equipment or any part thereof at a fair valuation to be agreed between the parties or failing agreement determined by arbitration hereunder.

34. Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to the operations of the Company 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.

Environmental
protection.

35. The Company shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by the Company 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 Company or its servants agents contractors or assignees of the Company's works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

Indemnity.

36. The Company shall make all necessary applications from time to time to the proper authorities and the Commonwealth and the State for the grant to it of any licences or consents required under Commonwealth or State law to permit it to enter this Agreement and perform its obligations hereunder.

Licences and
consents.

**Stamp duty
exemption.**

37. (1) The State shall exempt from any stamp duty which but for the operation of this Clause would or might be chargeable on—

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee of the Company any lease licence easement or right granted or demised hereunder or pursuant hereto; and
- (c) any assignment sublease or disposition (other than by way of mortgage or charge) and any appointment to or in favour of the Company or an associated company of any interest right obligation power function or authority made pursuant to the provisions of this Agreement.

PROVIDED THAT this Clause shall not apply to any instrument or other document executed or made more than 7 years from the date hereof.

(2) If prior to the date on which the Bill referred to in Clause 3 to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) of this Clause the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document to the person who paid the same.

Arbitration.

38. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights duties or liabilities of either party hereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to the arbitration of two arbitrators one to be appointed by each party the arbitrators to appoint their umpire before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the Arbitration Act, 1895.

(2) Except where proposals are pursuant to the provisions of this Agreement referred to arbitration, the provisions of this Clause shall not apply to any case where the State the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.

(3) The arbitrators or umpire (as the case may be) of any submission to arbitration hereunder are hereby empowered upon the application of either of the parties to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties hereunder and an award may in the name of the Minister grant any further extension or variation for that purpose.

39. Any notice consent or other writing authorised 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 State acting by the direction of the Minister and forwarded by prepaid post to the Company at its registered office for the time being in the State and by the Company if signed on its behalf by a director manager or secretary of the Company or by any person or persons authorised by the Company in that behalf or by its solicitors (which solicitors have been 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. Notices.

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

THE FIRST SCHEDULE

HEAVY MINERALS BY RAIL

1. (i) The freight rate/s for the haulage of heavy minerals by rail from the separation plant to the Company's rail siding at Capel shall at the Company's election be

RATE PER TONNE

	EITHER IN WAGR WAGONS	IN COMPANY WAGONS
	\$9.17	\$8.38

OR the freight rate gazetted from time to time under the Railway Commission's By-law 55 PROVIDED THAT the Company shall give notice of its election not less than 3 months prior to commencement of rail haulage.

The minimum freight payable under this subparagraph in respect of any year commencing from the date that heavy minerals are first railed from the separation plant, whether to the existing Geraldton wharf or to the Company's rail siding at Capel, shall, subject to adjustment in accordance with the provisions of paragraph 2 (xi) of this Schedule be \$9.17 x 50 000 if the Company elects for the first alternative, or the gazetted freight rate prevailing at the end of the year under review multiplied by 50 000 if the Company elects for the second alternative.

(ii) The freight rate/s for the haulage of heavy minerals by rail from the separation plant to the existing Geraldton Wharf but not elsewhere shall be as shown hereunder.

TONNES PER ANNUM	RATE PER TONNE	
	IN WAGR WAGONS \$	IN COMPANY WAGONS \$
	Freight rate gazetted under By-law 55	Freight rate gazetted under By-law 55
Up to and including 100 000		
Over 100 000 and up to 200 000	3.20	2.95
Over 200 000 and up to 300 000	2.90	2.70
Over 300 000 and up to 400 000	2.70	2.53
Over 400 000 and up to 500 000	2.60	2.47
Over 500 000 and up to 600 000	2.50	2.40
Over 600 000	2.46	2.37

The minimum freight payable under this subparagraph in respect of any year commencing from the date that heavy minerals are first railed from the separation plant whether to the existing Geraldton wharf or to the Company's rail siding at Capel shall, subject to adjustment in accordance with the provisions of paragraph 2 (x) of this Schedule be \$3.20 x 50 000 PROVIDED THAT if in the year under review the Company has shipped more than 50 000 tonnes of heavy minerals from the separation plant to the Company's rail siding at Capel the Company may credit the amount of freight paid in respect of such excess towards the minimum annual freight payable under this subparagraph.

2. The freight rates set out in paragraph 1 of this Schedule are subject to the following additional conditions—

- (i) Trains shall operate up to a maximum of 6 days per week, commencing 12.01 a.m. Monday and ceasing 12.00 midnight on Saturday. The Railways Commission shall arrange a train operating pattern

between Monday and Saturday consistent with the requirements of the Company as advised from time to time under Clause 12 (6) of this Agreement. The train operating pattern shall be based as far as is practicable on the utilisation of the maximum number of wagons possible per train and the least number of trains per week required to meet the haulage programme of the Company and such trains shall be tabled at the times most convenient to the operational requirements of the Railways Commission.

- (ii) If the needs of the Company reasonably require operation on Sunday and such needs do not arise solely from any failure or inability of the Railways Commission, the Company shall reimburse the Railways Commission for any additional expenses which are payable as a consequence.
- (iii) The Company shall ensure that all wagons are loaded within the authorised axle load capacity and shall be subject to such minimum load per wagon and per train as may be defined by the Railways Commission.
- (iv) The Company shall ensure that all wagons are properly trimmed and secured to permit safe transport at all times.
- (v) Unless otherwise determined by the Railways Commission the Company shall be responsible for the movement of wagons at the loading and unloading points. The Company shall ensure that the loading and unloading rates are not less than 1 000 tonnes per hour respectively. If such rates are not regularly adhered to the Railways Commission reserves the right to review the freight rates.
- (vi) Freight charges shall be paid by monthly payments in the month next following the month of haulage on the basis of the tonneages hauled charged at the rate or rates applicable to the anticipated annual tonnage and subject to annual adjustment after the expiration of each year with regard to the tonnage actually carried at the rate or rates applicable thereto.
- (vii) In ascertaining the actual number of tonnes carried the method of measurement shall be agreed between the parties.

- (viii) If in any year the Railways Commission transports a total of more than 600 000 tonnes of heavy mineral concentrates and heavy minerals by rail from Eneabba for the Company and other operators in the mineral sands industry the Railways Commission in its sole discretion may review the level of the annual minimum tonnage provisions in this Schedule.
- (ix) The Railways Commission shall if required by the Company provide wagons for heavy minerals haulage to meet the anticipated requirements of the Company given to the Railways Commission pursuant to the provisions of Clause 12 (6). If wagons so provided by the Railways Commission are not fully utilised for the Company's operations the Company shall compensate the Railways Commission for loss of wagon usage to an amount to be agreed between the parties.
- (x) The freight rates set out in paragraph 1 (ii) of this Schedule are based on costs prevailing on the 1st July 1973 and shall be adjusted on the 1st January and 1st July of each year with the changes becoming effective on and from these dates, in accordance with the following formula—

$$F1 = F + \left[.65F \left\{ .80 \left\{ \frac{HR1 - HR}{HR} \right\} + .05 \left\{ \frac{D1 - D}{D} \right\} + .15 \left\{ \frac{SR1 - SR}{SR} \right\} \right\} \right]$$

WHERE

F1 = New freight rate.

F = The existing freight rate.

HR = The average hourly rate payable as at 1st July 1973.

HR1 = The average hourly rate payable as at the date of adjustment.

D = The wholesale price (duty free) of distillate in Perth as at 1st July 1973.

D1 = The wholesale price (duty free) of distillate in Perth as at the date of adjustment.

SR = Price of heavy steel rails per tonne c.i.f. Port of Fremantle as ascertained from price schedule covering despatches from Broken Hill Proprietary Company Limited and Australian Iron and Steel Proprietary Limited as at 1st July 1973.

SR1 = The price of heavy steel rails per tonne c.i.f. Port of Fremantle ascertained as aforementioned as at the date of adjustment.

The rates applicable at the 1st July 1973 are—

	per hour \$
1st class driver 	2.6700
1st class guard 	2.3700
Trackman 	1.8725
	<hr/> \$6.9125 <hr/>

Average hourly rate—\$2.3042

Price of distillate per litre—4.707 cents.

Price of heavy steel rails per tonne c.i.f. Port of Fremantle—\$121.05.

Adjustments made in accordance with this formula shall be expressed in a figure of dollars per tonne and calculated to four decimal places of a dollar and in doing so the fifth decimal place shall also be calculated so that if the fifth decimal place is .5 or above, the fourth decimal place shall be increased by 1.

This formula shall be subject to review by the Railways Commission after consultation with the Company on the 1st July 1978 and thereafter at intervals of 5 years.

- (xi) The freight rates set out in paragraph 1 (i) of this Schedule are based on costs prevailing at the 1st July 1973 and shall be adjusted on the 1st January and 1st July of each year with the changes becoming effective on and from these dates in accordance with the formula set out in subparagraph (x) of this paragraph, except that there shall be substituted for the reference “.65F” in that formula the reference “.75F”.

OTHER COMMODITIES

3. All commodities other than those referred to in this Schedule shall unless otherwise determined by the Railways Commission be carried subject to By-Law 55 made under the Government Railways Act, 1904.

THE SECOND SCHEDULE

WESTERN AUSTRALIA
MINING ACT, 1904MINERAL SANDS (WESTERN TITANIUM)
AGREEMENT ACT, 1975

MINERAL LEASE

Lease No..... Mineral Field

ELIZABETH THE SECOND by the Grace of God Queen of Australia and Her other Realms and Territories Head of the Commonwealth:

TO ALL TO WHOM THESE PRESENTS shall come GREETINGS:

KNOW YE that WHEREAS by section 48 of the Mining Act, 1904, power is given to the Governor of our State of Western Australia, in the Commonwealth of Australia, to grant leases of land for the purposes of mining thereon for any mineral other than gold upon the terms and conditions set forth in the said Act AND WHEREAS by an Agreement made between the State of Western Australia and WESTERN TITANIUM LTD a company incorporated under the Companies Act of the State of Victoria and having its registered office in Western Australia situate at 643 Murray Street West Perth (hereinafter called "the Company" which expression includes its successors and permitted assigns) which Agreement (hereinafter referred to as "the Agreement") was ratified by the Mineral Sands (Western Titanium) Agreement Act, 1975—the State agreed to grant to the Company on application made by the Company a mineral lease under and, except as otherwise provided by the Agreement, subject to the Mining Act, 1904 and WHEREAS the Company has now made application for a mineral lease of the land hereinafter described for the purpose of mining thereon for titaniferous minerals (including ilmenite rutile and leucoxene) and magnetite zircon monazite kyanite staurolite xenotime and garnet NOW WE in consideration of the rents and royalties reserved by the Agreement and in consideration of the other covenants and

conditions in this lease and in the Agreement to be observed by the Company DO BY THESE PRESENTS GRANT AND DEMISE UNTO THE COMPANY but subject to the provisions of the Agreement all those pieces and parcels of land situated in the Mineral Field containing approximately hectares (subject to such corrections as may be necessary to accord with the survey when made) and particularly described and delineated on the plan in the schedule hereto and all those mines, veins, seams, lodes, or deposits of titaniferous minerals (including ilmenite rutile and leucosene) and magnetite zircon monazite kyanite staurolite xenotime and garnet in, on, or under the said land (hereinafter called "the said mines") together with the rights, liberties, easements, advantages and appurtenances thereto belonging or appertaining to a lessee of a mineral lease under the Mining Act, 1904, including all amendments thereof for the time being in force and all regulations made thereunder for the time being in force (which Act and regulations are hereinafter referred to as "the Mining Act") or to which the Company is entitled under the Agreement, excepting and reserving out of this demise any portion of the said land which is now used for any public works or building whatsoever TO HOLD the said land and the said mines and all and singular the premises hereby demised for the term of twenty-one (21) years from the day of 19..... with the right to renew the same from time to time for further periods each of twenty-one (21) years as provided in but subject to the terms covenants and conditions set out in the Agreement and to the Mining Act (as modified by the Agreement) YIELDING and paying therefor the rents and royalties as provided for in the Agreement AND WE do hereby declare that this lease is subject to the condition that the Company shall observe perform and carry out the provisions of the Mines Regulation Act, 1946, and all amendments thereof for the time being in force and the regulations for the time being in force made thereunder and the provisions of the Mining Act (as modified by the Agreement) in so far as the same affect or have application to this lease or any renewal thereof.

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

AND PROVIDED FURTHER that all petroleum and other minerals (apart from titaniferous minerals (including ilmenite rutile and leucosene) and magnetite zircon monazite kyanite staurolite xenotime and garnet) on or below the surface of the demised land are reserved to Her Majesty or any person claiming under her and that any person lawfully authorised in that behalf may have access to the demised

land for the purpose of searching for and obtaining petroleum or, subject to the terms of the Agreement other minerals (other than those aforesaid) in any part of the land under the provisions of the Mining Act or the Petroleum Act, 1967.

IN WITNESS WHEREOF we have caused our Minister for Mines to affix his seal and set his hand hereto at Perth in our said State of Western Australia and the common seal of the Company was hereunto affixed by authority of the Board of Directors this day of 19

THE SCHEDULE ABOVE REFERRED TO (plan of lease).

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 said THE }
HONOURABLE SIR CHARLES }
WALTER MICHAEL COURT, } CHARLES COURT
O.B.E., M.L.A., in the presence of— }

ANDREW MENSAROS,
Minister for Industrial
Development.

The Common Seal of WESTERN }
TITANIUM LTD was hereunto } [C.S.]
affixed by authority of the }
Directors and in the presence of— }

P. R. NAIRN,
Director.

E. H. THOMAS,
Secretary.