

ALUMINA REFINERY (WORSLEY) AGREEMENT.

No. 67 of 1973.

AN ACT to authorize the execution on behalf of the State of an Agreement with Alwest Pty. Limited and Dampier Mining Company Limited relating to the establishment at or near Worsley of a refinery to produce alumina and for incidental and other purposes.

[Assented to 28th November, 1973.]

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 *Alumina Refinery (Worsley) Agreement Act, 1973.* Short title.

2. (1) Subject to subsection (2) of this section, this Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

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(2) Section 5 of this Act shall come into operation on a date to be fixed by proclamation, being a date not earlier than the date on which the Agreement referred to in section 3 of this Act is duly executed by all the parties thereto.

Execution of
Agreement
authorized.

3. The execution by the Premier of the State of Western Australia acting for and on behalf of the State of an Agreement in or substantially in accordance with the form set out in the Schedule to this Act is authorized.

Executed
Agreement to
operate and
take effect.

4. When the Agreement referred to in section 3 of this Act is duly executed by all the parties thereto, the Agreement shall, subject to its provisions, operate and take effect as though those provisions were enacted in this Act.

Repeal.

5. The Alumina Refinery (Bunbury) Agreement Act, 1970, is hereby repealed.

D. The parties hereto have agreed to enter into this Agreement in substitution for the said Agreement and that on the execution hereof the said Agreement shall be terminated.

NOW THIS AGREEMENT WITNESSETH—

Inter-
pretation.

1. In this Agreement subject to the context—

“access channel” means the channel to be dredged to provide access for shipping to the new inner harbour at the port of Bunbury;

“apply” “approve” “approval” “consent” “certify” “direct” “notify” or “request” mean apply, approve, approval, consent, certify, direct, notify or request in writing as the case may be and the same rule shall apply with regard to derivatives, inflexions and variants of the quoted words;

“associated company” means—

(a) any company providing for the purposes of this Agreement capital of not less than Two Million Dollars (\$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 Joint Venturers or any of them for all or any of the purposes of this Agreement and in which the Joint Venturers or any of them or some other company, acceptable to the Minister hold not less than a twenty five per cent (25%) interest or some lesser interest acceptable to the Minister; or

(ii) being a corporation is related within the meaning of that term as used in section 6 of the Companies Act, 1961, to any company in which the Joint

Venturers or any of them or some other company acceptable to the Minister hold not less than twenty five per cent (25%) of the issued ordinary share capital; and

(iii) is notified to the Minister by the Joint Venturers or any of them as being such a company;

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

“bauxite” means ore which either with or without crushing washing and screening is sold as bauxite or is used for processing into alumina;

“Bunbury Port Authority” and “the Authority” means the body corporate established pursuant to the Bunbury Port Authority Act, 1909;

“commencement date” means the date on which the Joint Venturers give to the Minister the notice mentioned in Clause 2 hereof;

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

“Conservator of Forests” and “Conservator” means the Conservator of Forests appointed under the Forests Act, 1918;

“Crown land” means all land of the Crown including—

(a) all land dedicated as a State forest under the Forests Act, 1918, other than land reserved as State Forest No. 51 as it existed on the 14th May, 1973;

(b) all land reserved for the purpose of water conservation;

(c) land reserved under the Land Act and numbered 15410, 18534, 19738, 19739, 19740, 19741, 19958, 20063, 20182, 21287, 24791, 26363, 26666, 30394 and 31890; and

(d) land reserved under the Forests Act as Timber Reserves and numbered 66/25, 69/25, 131/25, 144/25, 145/25, 146/25, 147/25, 148/25, 151/25, 160/25, 171/25, 172/25 and 189/25,

but excluding—

(e) land granted or agreed to be granted in fee simple;

(f) land held or occupied under the Crown by lease or licence for any purpose other than pastoral or timber purposes; and

(g) all other land reserved under the Land Act or the Forests Act unless the Minister, after consultation with the Environmental Protection Authority, established under the Environmental Protection Act, 1971, otherwise determines;

“inner harbour” means the harbour to be dredged at Bunbury;

“Land Act” means the Land Act, 1933;

“mineral lease” means the mineral lease referred to in Clause 7 (1) hereof and includes any renewal thereof;

“Mining Act” means the Mining Act, 1904;

“Minister” means the Minister in the Government of the State for the time being responsible for the administration of this Agreement;

“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;

“person” or “persons” includes bodies corporate;

“production date” means the date on which the regular production of alumina commences at the refinery;

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

“refinery” means a refining plant established pursuant to this Agreement in which bauxite is treated to produce alumina;

“smelter” means an electrolytic reduction plant for the conversion of alumina to aluminium using alumina produced from bauxite;

“special grade bauxite” means ore which is saleable as refractory grade abrasive grade or chemical grade bauxite;

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

“stockpile area” means the land to be made available to the Joint Venturers in the Port of Bunbury, in accordance with the terms of this Agreement, for use as a stockpile area;

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

“ton” means a ton of two thousand two hundred and forty (2,240) lbs net dry weight unless otherwise specified;

“turning basin” means the dredged waters of the inner harbour as developed by the State for the turning and navigation of vessels in the inner harbour;

reference in this Agreement to a company includes any joint venture, partnership or other association of companies;

monetary references in this Agreement are to Australian currency;

power given under any clauses of this Agreement other than Clause 25 hereof to extend or alter any period or date shall be without prejudice to the power of the Minister under the said Clause 25;

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

Marginal notes shall not affect the interpretation or construction hereof;

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

Commence-
ment and
Operation.

2. (1) The provisions of this Agreement other than Clause 3 hereof shall not come into operation until the Joint Venturers have given the Minister notice that they desire to proceed with the objects of this Agreement.

(2) If before the 30th of June 1974 the notice referred to in subclause (1) of this Clause is not given this Agreement will then cease and determine and neither of the parties hereto will have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

Right to
Enter on
Crown
Land.

3. (1) The State shall to the extent reasonably necessary for the purposes of this Agreement allow the Joint Venturers to enter upon Crown land and survey possible sites for their operations under this Agreement.

Creation of
Temporary
Reserve.

(2) The State shall on the execution of this Agreement create a temporary reserve over all the Crown land within the area delineated in blue on the plan marked "X" referred to in Clause 7 (1) hereof.

Rights of
Occupancy.

(3) As soon as the temporary reserve referred to under subclause (2) of this Clause has been created the Joint Venturers shall apply for and the State shall grant to them for a period terminating with the granting of the mineral lease referred to in Clause 7 (1) hereof, or the sooner determination of this Agreement, rights of occupancy for the

of alumina produced at the refinery to make the Joint Venturers' project economically practicable, but they have been unsuccessful in either of these endeavours, the Minister shall grant the Joint Venturers such extensions of time as are appropriate to the situation PROVIDED FURTHER that nothing in this subclause shall limit the effect of Clause 19 or Clause 25 hereof;

Facilities for
Transport
of Bauxite
and Coal.

(2) transport all bauxite mined within the mineral lease to the refinery and all alumina produced at the refinery to the port of Bunbury and to facilitate such transport and the transport of coal fuel oil caustic soda lime and limestone required by the Joint Venturers for use within the site of the refinery—

(a) shall at their expense construct along a route approved by the Minister and in accordance with recognised standards an appropriate conveyor or pipeline between the mineral lease and the refinery and a pipeline between the refinery and the Port of Bunbury with all proper ancillary equipment and without unduly interfering with any existing means of communication (including roads and railways), and/or

(b) shall request the Railways Commission, at the expense of and in consultation with the Joint Venturers, to—

(i) construct along a route approved by the Commission an appropriate railway having a gauge of 3' 6" between the mineral lease via the refinery to a point on the Commission's existing railway system (the precise location of such point to be decided by the Commission) together with all necessary signalling switch and other gear, all proper and usual works and all crossing places as the Commission may reasonably require;

- (ii) upgrade the Commission's existing railway as may be necessary from the point of connection with the railway referred to in subparagraph (i) above to the port of Bunbury so as to make it adequate for the Joint Venturers' requirements as to the transport of alumina and other products and goods and materials required for the construction operation repair and maintenance of the refinery and ancillary facilities;

- (c) shall request the Railways Commission at the expense of and in consultation with the Joint Venturers to upgrade the Commission's existing railway so as to make it adequate for the Joint Venturers' requirements as to the transport of coal from the point of connection referred to in paragraph (b) to an agreed point in the Collie coalfield;

PROVIDED THAT—

- (i) in the event of the State or the Railways Commission within five years of the date of this Agreement or within three years of the completion of the upgrading referred to in paragraph (b) (ii) and paragraph (c) of this subclause, whichever period is the longer, receiving contributions towards the cost of those upgradings from other users of the railways involved, then the State or the Commission shall return to the Joint Venturers such part of the moneys advanced by the Joint Venturers for those upgradings as is equitable;

- (ii) in the event of any other person making use of the railway referred to in paragraph (b) (i) of this subclause

within 15 years of the date of this Agreement and moving over that railway in any one year within that period 500,000 tons or more of bulk products the State shall require such other user to make a fair contribution to the cost of the establishment of the railway and from the proceeds of any such contribution or contributions shall return to the Joint Venturers such part of the moneys advanced by the Joint Venturers for the establishment of the railway as shall be equitable;

and, in the event of the Joint Venturers electing to have a railway constructed as aforesaid the Joint Venturers shall—

Joint
Venturers
to Notify
Require-
ments.

- (d) provide to the satisfaction of the Railways Commission not less than twelve months in advance of their first requiring the use of rail transport such details of their requirements (including anticipated or provisional annual tonnages) as to the use of the railways as will enable the Commission to make arrangements to meet those requirements and shall thereafter give adequate notice of any change in those requirements;

Ancillary
Facilities.

- (e) at their cost provide and maintain such sidings, shunting loops, spurs and other connections as they require for their operations under this Agreement and provide and maintain loading and unloading facilities sufficient to meet train operating requirements and terminal equipment (including weighing devices), together with a staff adequate to ensure the proper operation of all such loading and unloading facilities and terminal equipment;
- (f) ensure that all wagons are properly trimmed and loaded to prescribed tonnages;

- (g) provide sufficient wagons (to a design and specification approved by the Railways Commission) to carry all bauxite coal fuel oil caustic soda lime and limestone to the refinery and alumina to the port of Bunbury and necessary replacements therefor except replacements made necessary solely by the negligence of the Commission; Rolling
Stock.
- (h) pay in respect of all commodities carried in trains operated by the Railways Commission the appropriate freight rates set out or referred to in the First Schedule hereto by monthly payments on the basis of the anticipated or provisional annual tonnage indicated in the forward pattern of working referred to in Clause 5 (2) (d) hereof subject to annual adjustment after the expiration of each year with regard to tonnages actually carried and in ascertaining the number of tons actually carried railway weighbridge weights or such alternative method of measuring as is mutually agreed shall be used but in no event shall any allowance be made for moisture contained in the material transported; Freight
Rates.
- (3) (a) (i) advance to the State a sum of one million five hundred thousand dollars (\$1,500,000) towards the cost of the dredging in progress in the port of Bunbury for an access channel and turning basin, and for the dredging of a berth for the Joint Venturers in that port and also for the reclamation of adequate areas of land for the establishment of the stockpile area; Costs of
dredging.
- (ii) advance to the State a sum of four hundred thousand dollars (\$400,000) towards the cost of dredging the access channel and turning basin from 36 feet to 40 feet PROVIDED THAT in the event of the State or the Bunbury Port Authority receiving contributions towards the cost of such dredging from other users of the port (other than Alcoa of Australia (W.A.) N.L.) requiring a greater depth than 36 feet the

State, having regard to the amount of the contributions of such other users as aforesaid and to the State's existing obligations to refund to Alcoa of Australia (W.A.) N.L. part of any contribution that the Joint Venturers may have made to the cost of such dredging, shall return to the Joint Venturers such part of the said sum of four hundred thousand dollars (\$400,000) as is equitable;

Additional
Dredging.

(iii) in the event of the Joint Venturers desiring to use vessels requiring a greater depth of water than forty (40) feet and/or a greater width of access channel than four hundred and fifty (450) feet advance to the State a sum to be agreed towards the additional dredging necessary PROVIDED THAT in the event of any such additional dredging being carried out in accordance with this provision the State will to such extent and for such period as is reasonable having regard to the cost of that dredging charge for the use of the additional depth so provided all persons (including the Joint Venturers) having industrial or trading establishments at Bunbury and who in any one year move cargo of 300,000 tons or more (whether inward or outward) through the port of Bunbury in vessels drawing more than forty (40) feet AND the State shall from the proceeds of any such charges return to the Joint Venturers the agreed sum;

(iv) in the event of their electing to construct a wharf in the port of Bunbury, construct such wharf in accordance with plans and specifications approved by the State;

Use of
Wharf by
Others.

(v) provided that such use shall not interfere with the Joint Venturers' own requirements in regard thereto, permit any wharf constructed by them to be used by any other person for the handling of inward and outward cargo belonging to that person; the Joint Venturers and the Bunbury Port

Authority shall from time to time mutually agree upon terms and conditions (including charges) for such handling and if required by the Authority the Joint Venturers shall act as its agent for and in relation to the collection of such charges and shall remit to the Authority the portion thereof which shall be payable to the Authority; the Joint Venturers may in addition to allowing any other person to use that part of the wharf as aforesaid, permit, in their sole discretion, such other person to use the Joint Venturers' bulk loading and other facilities at the berth on reasonable terms and conditions;

- (b) (i) whether or not the Joint Venturers construct a wharf as aforesaid, if required by the Authority, at a place within the port of Bunbury and in accordance with plans and specifications first approved by the Authority, construct a shiploader and conveyor system at the Joint Venturers' expense capable of loading alumina into ships at a rate of not less than 1,200 tons per hour;
- (ii) at the sole discretion of the Joint Venturers permit any shiploader and conveyor system constructed at their expense to be used by third parties on reasonable terms and conditions;
- (iii) in the event of the Bunbury Port Authority's electing to construct the shiploader and conveyor system at the Authority's expense, pay such handling charges for the use of the shiploader and conveyor system as the Authority may from time to time determine;
- (c) (i) throughout the continuance of this Agreement pay to the Bunbury Port Authority a wharfage charge for cargo passing over the wharf at the rate of 15 cents per ton or such other rate as may be agreed in respect of alumina

Construction of Ship Loader and Conveyor System.

Wharfage.

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and associated chemicals and by-products loaded through the shiploader and conveyor system and at rates to be negotiated for all other cargoes;

PROVIDED THAT in each calendar year in which the total tonnage of bulk materials passing through the inner harbour exceeds two million (2,000,000) tons the wharfage charge payable by the Joint Venturers on all alumina and associated chemicals and by-products loaded through the shiploader and conveyor system in excess of eight hundred thousand (800,000) tons shipped in that year shall be reduced by three cents per ton;

Handling
Charges.

- (ii) pay to the Bunbury Port Authority standard handling charges on all the Joint Venturers cargo other than alumina and associated chemicals and by-products loaded through the shiploader and conveyor system handled by the Authority but no charge shall be made in respect of liquid caustic and fuel oil if and when a pipeline and related facilities are constructed at the expense of the Joint Venturers to convey these substances from the point of import at Bunbury to the stockpile area or refinery;

PROVIDED THAT the wharfage and handling charges (if any) payable pursuant to this Agreement shall be adjusted from time to time in proportion to any increase or decrease in the scale of wharfage and handling charges of the Bunbury Port Authority in respect of locally manufactured goods AND PROVIDED FURTHER that nothing in this Clause shall be taken to imply any exemption from the payment of tonnage rates, conservancy dues or any other charges that would normally be payable by ships using the port of Bunbury;

- (d) throughout the continuance of this Agreement pay to the Bunbury Port Authority an annual rental to be agreed between the parties for land leased to the Joint Venturers at the port of Bunbury;

- (4) not less than two years prior to the estimated production date have submitted to and have had approved by the Minister proposals for the ponding of the red mud that is to be anticipated from 63 years production of alumina at the refinery and such proposals must provide—
- Red mud.
- (a) for the progressive acquisition or leasing of land suitably situated and sufficient in area for residue storage;
 - (b) for the formation of the ponds by constructing raised earth embankments to standards similar to those of an earth dam;
 - (c) for the location, construction and maintenance of the ponds so as to avoid interference to or pollution of underground water, groundwater or the land drainage system and for the establishment of an adequate system of observation wells for testing for such pollution, for the taking of samples from these wells every three months, the submission of such samples to chemical analysis and for producing to the Minister in writing the results of all such analyses;
 - (d) an alternative and satisfactory method of disposal should the particular ponding prove inadequate to prevent pollution;
 - (e) for the progressive and adequate covering of filled ponds with soil and for the landscaping of such covered areas and the planting of trees and shrubs thereon;

AND PROVIDED THAT—

the Joint Venturers shall not sell or dispose of any land which, pursuant to the requirements of this subclause, has been acquired or leased by the Joint Venturers for the purpose of the disposal of red mud and which has been used for the ponding of red mud and subsequently covered with

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soil in accordance with the requirements of paragraph (e) of this subclause without having first offered to sell it to the State nor (other than to the State) within twenty-eight (28) days of any such offer having been made PROVIDED FURTHER THAT should the State notify the Joint Venturers that it desires to acquire any part of such land the Joint Venturers shall sell to the State at fair market value such part of the land as they do not reasonably require for their own industrial purposes;

Disposal of
Other Waste
Materials.

- (5) dispose of all waste materials other than red mud generated within the refinery site in such manner as to prevent the pollution of rivers, groundwater and underground water and comply with any reasonable direction which the Minister may give with regard to such disposal;

Drainage.

- (6) adequately drain the refinery site and related facilities and dispose of such drainage in accordance with plans and specifications to be submitted by the Joint Venturers and approved by the Minister;

Housing.

- (7) (a) provide (at such prices rentals or charges as are fair and reasonable under the circumstances) such services and facilities including housing assistance as may be necessary for the proper and reasonable accommodation health and recreation of workers employed by the Joint Venturers and of contractors engaged in carrying out the Joint Venturers' operations under this Agreement;
- (b) bear the capital cost involved to the State in the State's establishing on the mineral lease or adjacent areas any education, hospital, police or other services to the extent to which such services have been made necessary by the Joint Venturers' operations under this Agreement;

- (c) share with the State or the appropriate authority on a fair and reasonable basis the capital cost of establishing additional services and works, including sewerage treatment works, water supply works, main drains, education and hospital services to the extent to which such additional services and works have been made necessary in existing towns by the establishment of the refinery;
- (d) in the event of a material expansion of the designed capacity of the refinery which results in the refinery having a designed capacity to produce more than 1.2 million tons of alumina per year share with the State or the appropriate authority on a fair and reasonable basis the capital cost of establishing such further services and works of the kind referred to in paragraph (c) of this subclause as may be necessary in such existing towns by reason of such expansion. In determining the extent of the Joint Venturers' contribution the parties shall have regard *inter alia* to the current and anticipated composition of the town involved and the extent to which the ordinary responsibilities of the State with respect to the provision of the capital cost of such services and works are to be assumed by the State in the light of its then current capital resources;
- (8) as far as it is reasonable and economically practicable—
- (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
- Use of local professional services labour and materials.

(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;

Common-
wealth
Consent.

(9) make all necessary applications from time to time to the Commonwealth or Commonwealth constituted agency, authority or instrumentality which may be concerned for the grant to the Joint Venturers of any licence or consent under Commonwealth law required to permit the Joint Venturers to enter into this Agreement and perform their obligations hereunder;

Royalties on
Alumina
and Bauxite
During First
Seven Year
Period.

(10) (a) (i) subject to any increase or decrease provided for in the proviso to this paragraph pay to the State a royalty of 26.25 cents per ton on all alumina produced at the refinery from bauxite the property of the Crown during the period expiring at the end of seven years from the production date PROVIDED THAT the royalty payable under this paragraph shall be reviewed quarterly and shall be calculated separately for each of the quarterly periods mentioned in paragraph (d) of this subclause in accordance with the following formula

$$B \times \frac{M}{52,500} = R.$$

Where B = the royalty mentioned in this paragraph (expressed in cents)

M = the mean quarterly world selling price per ton of aluminium as defined below (expressed in cents)

R = the royalty rate per ton
(expressed in cents)
which will become payable
in respect of
alumina as a result of the
application of this
formula;

the mean quarterly world selling price per ton of aluminium for any quarter is deemed to be the average (expressed in cents) of the four prices first quoted in the London Metal Bulletin in respect of one pound of Canadian primary aluminium of 99.5 per cent purity F.O.B. Toronto in each of the four quarters which immediately precede that quarter multiplied by 2,240 and for the purpose of this proviso the conversion rate for Canadian dollars to Australian dollars shall be the mean between the buying and selling rate for telegraphic transfers as quoted by a trading bank acceptable to the Minister for Mines;

- (ii) during the period referred to in sub-paragraph (i) of paragraph (a) of this subclause pay to the State a royalty of 50 cents per ton on all special grade bauxite the property of the Crown mined by the Joint Venturers within the mineral lease;
 - (iii) in the event that the Joint Venturers produce associated chemicals and by-products at the refinery, if the Minister so requires, pay to the State such royalty as may be agreed on between the parties hereto;
- (b) after the expiration of the period referred to in sub-paragraph (i) of paragraph (a) of this subclause pay to the State on all special grade bauxite mined by the Joint Venturers pursuant to this Agreement and on all alumina produced by them at the refinery from bauxite the property of the Crown royalties at the relevant rates specified in the regulations under the Mining Act PROVIDED THAT the amount payable by

Royalty on
Alumina
and Bauxite
After First
Seven Year
Period.

way of royalty on each ton of alumina shall not be greater than that payable by any other producer of alumina in the South West Division of the State of Western Australia as defined in the Land Act AND PROVIDED ALWAYS that subject to the proviso to sub-paragraph (i) of paragraph (a) of this subclause in no case shall the rate of royalty on alumina be less than 26.25 cents per ton;

(c) except with the consent of the Minister not use bauxite (other than special grade bauxite) mined by the Joint Venturers pursuant to this Agreement in any other way than for the production of alumina and associated chemicals and by-products at the refinery;

Return and
Payment of
Royalties.

(d) after the production date, before the fifteenth day in each of the months of January, April, July and October in each year furnish to the Minister for Mines a return of all bauxite and alumina and associated chemicals and by-products produced during the quarterly period ending on the last day of the preceding December, March, June and September as the case may be together with all other particulars necessary to enable the calculation of the royalty payable thereon and within thirty (30) days after the expiration of each such quarterly period pay the State the amount of royalty due and payable in respect of that quarter;

Inspection.

(e) permit the Minister for Mines or his nominee to inspect at all reasonable times the records of the Joint Venturers relative to the quantities of special grade bauxite or alumina and associated chemicals and by-products produced hereunder and to take copies or extracts therefrom for the purpose of determining the royalty payable and take reasonable steps to satisfy the Minister for Mines 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 will give due regard to any objection or representation made by the Minister for Mines

or his nominee as to any particular weight or assay of special grade bauxite or alumina and associated chemicals and by-products which may affect the amount of royalty payable hereunder;

- (11) take reasonable measures to purchase or lease land required by the Joint Venturers for the purposes of this Agreement.

6. (1) The Joint Venturers undertake to investigate the technical and economic feasibility of establishing a smelter in the State of Western Australia and from time to time review the matter and when requested by the Minister but not more than every twelve (12) months to inform the State fully in writing as to the progress and results of such investigations. ^{Smelter.}

The State may if it so desires also undertake studies and for this purpose the Joint Venturers shall provide the State with such information as it may reasonably require but the Joint Venturers shall not be obliged to supply technical information of a confidential nature in respect of processes which have been developed by the Joint Venturers or an associated company or acquired from other sources and which is not generally available to the aluminium industry, or financial and economic information of a confidential nature which, if disclosed, could unduly prejudice the contractual or commercial arrangements between the Joint Venturers or any of them and third parties.

(2) If the studies undertaken under subclause (1) of this Clause show that in the circumstances then applying to the Joint Venturers a smelter is technically and economically viable and competitive on world markets then the Joint Venturers shall establish a smelter and have it operating at a capacity and within a time to be agreed.

(3) If the Joint Venturers are unwilling or fail to establish the smelter as provided in subclause (2) of this Clause the State may negotiate with a third party to establish a smelter on terms and conditions not more favourable

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on the whole to the third party than any terms it has offered to the Joint Venturers. In such circumstances the Joint Venturers will if required supply alumina for a reasonable period to the third party at a reasonable price (which shall have regard to prevailing world prices and shall take into account the cost of any additional capacity that has to be constructed by the Joint Venturers) and in sufficient quantities to meet the requirements of the third party from time to time PROVIDED THAT the Joint Venturers shall not be liable to supply the third party with a greater annual quantity of alumina than 100,000 tons in the first year after the smelter is established and thereafter at a progressively increasing annual tonnage until a maximum of 200,000 tons is reached in the fifth year.

Mineral
Lease.

7. (1) The State shall on application made by the Joint Venturers at any time before the expiration of two (2) years from the commencement date cause to be granted to the Joint Venturers a mineral lease of such Crown land as is then held by the Joint Venturers pursuant to Clause 3 (3) hereof and privately owned land in respect of which the mineral rights are reserved to the Crown as is applied for within the area delineated in blue on the plan marked "X" and initialled by or on behalf of the parties hereto for identification (notwithstanding that the survey of any of the lands applied for has not been completed but subject to corrections to accord with the survey when completed) for the mining of bauxite; and the lease shall be so granted under and (except to the extent that the provisions of the Mining Act are not inconsistent with this Agreement) subject to that Act but in the form set out in the Second Schedule.

Exemption
from Labour
Conditions.

(2) The Joint Venturers shall not be required during the currency of this Agreement to comply with labour conditions imposed by or under the Mining Act with respect to the mineral lease but this subclause shall not apply to privately owned land within the mineral lease unless the owner and occupier have been advised by the Joint Venturers as to the effect of the terms of this Agreement insofar as they relate to privately owned land within the mineral lease and have expressly agreed in writing to the Joint Venturers exercising with respect to his land the right of noncompliance with those labour conditions.

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for twenty-one (21) years from the date of receipt of the application referred to in subclause (1) of this Clause with rights of renewal for two (2) consecutive further periods of twenty-one (21) years upon the terms and conditions contained in the mineral lease except that:—

- (i) the rental rate may be varied as provided in subclause (5) of this Clause;
- (ii) royalty rates may be varied as provided in subclause (10) of Clause 5 hereof;
- (iii) the right of renewal shall be excluded after the second renewal.

Further
Mineral
Lease.

(7) Within the first six (6) months of the twelve (12) months immediately preceding the expiration of the second renewed period of twenty-one (21) years of the mineral lease the Joint Venturers, if the refinery is then being operated pursuant to this Agreement, may give notice to the State that they desire a further mineral lease under the Mining Act for bauxite of the leased area or of a part or parts thereof for a term of twenty-one (21) years and the State shall within six (6) months from its receipt of that notice notify the Joint Venturers of the terms and conditions upon which it is prepared to grant such a further mineral lease of the leased area or of a part or parts thereof (as the case may be) and the Joint Venturers for a period of three (3) months thereafter will have the right to accept such further mineral lease on those terms and conditions and for a period of two (2) years the State shall not offer to grant a mineral lease of the leased area or any part thereof for bauxite to any person other than the Joint Venturers on more favourable terms and conditions than have been offered to the Joint Venturers.

Surrender
of part of
Mineral
Lease.

(8) The Joint Venturers may from time to time surrender to the State all or any part or portions (of reasonable size and shape) of the mineral lease subject to the Joint Venturers having complied with their obligations under subclauses (10) (11) (12) (13) and (14) of this Clause in respect of that portion or those portions and upon the surrender of any portion or portions of the mineral lease the rental thereunder shall abate in proportion to every square mile or residual part of a square mile of the mineral lease so surrendered, but there shall be no refund of rental covering any part of a yearly rental already paid after becoming due.

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(ii) take full responsibility for and take precautions to prevent the public from using their private roads; and

(iii) provide fences and stock barriers wherever necessary.

(3) The Joint Venturers shall in respect of every road constructed pursuant to subclause (2) of this Clause that is open to or used by the public for passage with vehicles comply with the provisions of the Road Maintenance (Contribution) Act, 1965.

Use of
Public
Roads.

10. (1) Subject to any restriction that the State may reasonably impose by way of limitation of speeds or loads or the use of railway crossings the Joint Venturers may use any public roads that may from time to time exist in the area of their operations under this Agreement for the purpose of transporting goods and materials in connection with those operations, but where the Joint Venturers' operations require the use of a public road that is inadequate for the purpose, or results in excessive damage or deterioration of any public road (other than fair wear and tear) the Joint Venturers shall pay to the State or local authority concerned (except where and to the extent that the Commissioner of Main Roads or local authority agrees to bear the whole or part of the cost involved) the total cost of any upgrading required or of making good the damage or deterioration.

(2) Where the operations of the Joint Venturers bring about an increase in the conflict of trains and road vehicles at level crossings to such an extent that an improvement in the level of protection requiring the provision of either flashing lights, boom gates or grade separation is considered by the Minister to be warranted following an investigation, the Joint Venturers shall pay to the State (except where and to the extent that the Minister agrees to bear the whole or part of the cost involved) the total cost of providing the increased level of protection.

- (c) a wharf in the port of Bunbury, an adjacent stockpile area adequate for the purposes of the Joint Venturers together with associated shiploader, conveyors, storage bins, railway sidings and ancillary facilities for the storage handling and shipment of alumina and associated chemicals and by-products and, a ship unloader and other facilities for the discharge and storage of liquid caustic fuel oil soda ash lime and limestone and such other commodities as the Bunbury Port Authority may in its discretion approve from time to time;
- (d) housing recreational and other facilities, amenities and services required for the employees of the Joint Venturers their contractors and their families;
- (e) any other facility contemplated by this Agreement or which the Joint Venturers and the Minister agree is desirable for the purposes of the Agreement;

PROVIDED THAT the State shall be reimbursed by the Joint Venturers for all expenses involved, whether because of resumption or otherwise in its making or causing to be made available to the Joint Venturers any such land lease easement or other right as aforesaid, and that the Joint Venturers shall pay all fees and other charges normally payable in connection with the granting of any statutory right or licence.

AND PROVIDED THAT wherever the grant of any such land, lease, easement, licence or other right is provided for by statute the particular grant shall be made under and the resulting right exercised subject to the terms of the relevant statute except to the extent that this Agreement provides otherwise.

AND PROVIDED THAT any easement licence or other right required for the purposes specified in paragraphs (a) and (b) of this subclause shall only be granted to the extent that such grant does not unreasonably interfere with

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public works (such as water supplies, sewerage, drainage, electricity supplies roads or railways) then existing or under immediate contemplation

BUT PROVIDED FURTHER THAT in respect of any land sold or leased to the Joint Venturers by the State for any of the purposes of this Agreement the Land Act shall be deemed to be modified by:—

Modification
of Land Act.

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

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

- (b) the deletion of the proviso to section 116;
- (c) the deletion of section 135;
- (d) the deletion of section 143;
- (e) the inclusion of a power to offer for sale or leasing land within or in the vicinity of any townsite notwithstanding that the townsite has not been constituted a townsite under section 10; and
- (f) the inclusion of a power to offer for sale or grant leases or 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 Act;

The provisions of the last proviso above 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;

- (3) should the Joint Venturers desire to establish a second refinery for the processing of bauxite within the State entertain and sympathetically consider any proposals which the Joint Venturers may make with regard thereto including port, railway and other associated facilities;

Zoning

- (4) ensure that no land the subject of any mineral lease or other lease, licence or easement granted under or pursuant to statute or this Agreement and no land of any other tenure (including freehold) used or occupied by the Joint Venturers for any of the purposes contemplated by the Agreement shall be made subject to any restriction as to its use such as would prevent or unreasonably hinder the Joint Venturers carrying out the operations contemplated by this Agreement, whether such restriction be by way of zoning, regulation, by-law or other exercise of statutory power and whether by the State or any local or other authority;

No Discrimination by Rates or Otherwise

- (5) except as provided in this Agreement not impose nor permit nor authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Joint Venturers in the conduct of their business hereunder nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Joint Venturers of full enjoyment of the rights granted under this Agreement;

- (6) 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 therewith) shall for rating purposes be the unimproved value thereof and no such lands shall be subject to any discriminatory rate as against the Joint Venturers as a party to this Agreement PROVIDED THAT nothing in this subclause shall prevent the Joint Venturers making the election provided for by section 533B of the Local Government Act, 1960; Rating.

- (7) having regard to the particular nature of the industry proposed to be established by the Joint Venturers under this Agreement and during the currency hereof not resume or suffer or permit to be resumed by any State instrumentality or by any local or other authority of the said State any estate, right, title or interest in land or improvements thereon held by or acquired by or on behalf of the Joint Venturers for the purpose of their operations under this Agreement the resumption of any of which would unreasonably impede the existing or projected activities of the Joint Venturers nor will the State create or grant or permit or suffer to be created or granted by any instrumentality or authority of the said State as aforesaid any road right of way or easement of any nature or kind whatsoever over or in respect thereof without the consent of the Joint Venturers first having been obtained which consent shall not be arbitrarily or unreasonably withheld; Resumption
of Land.

13. (1) The Joint Venturers estimate that for a refinery with a designed capacity of 1.2 million tons of alumina per annum they will require up to 3 million gallons of potable water per day and that if the capacity of such refinery is increased to 2 million tons per annum the water requirements will approximate 5 million gallons per day. Water.

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The Joint Venturers' initial requirements of up to 3 million gallons a day will be supplied to the Joint Venturers from the Wellington Dam and the State (so far as is then reasonably practicable) will meet the additional requirements of the Joint Venturers from that source.

(2) The Joint Venturers will advance to the State a sum sufficient to enable the State to design and construct a pipeline together with ancillary works of appropriate size to supply 3 million gallons per day to the refinery.

Such water shall be paid for at the following rates—

- (a) During the first ten years from the production date the sum of one hundred and twenty thousand dollars (\$120,000) per annum plus the prices prescribed under the provisions of the Country Areas Water Supply Act, 1947, less 10 cents per 1,000 gallons; and
- (b) thereafter during the continuance of this Agreement at the said prescribed prices less 10 cents per 1,000 gallons.

In addition to the rates prescribed by paragraphs (a) and (b) of this subclause the Joint Venturers will pay an annual rate in respect of the lot or lots on which the refinery is constructed pursuant to the provisions of the said Act except that the rate shall be based on the unimproved value of the land.

(3) The Joint Venturers will contribute a fair and reasonable proportion of the cost of any works involved in meeting the Joint Venturers' additional requirements of water under subclause (1) of this Clause.

(4) The State as soon as possible after this Agreement comes into operation shall with all reasonable expedition construct the pipeline and ancillary works referred to in subclause (1) of this Clause and may construct such pipeline and ancillary works to a greater capacity than that indicated in subclause (1), but in that event the cost of the enlarged supply system will be shared on a basis to be negotiated between the State and the Joint Venturers.

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requirements of coal having first agreed with the State on an equitable apportionment between open cut coal and deep mined coal to be used both by the State and the Joint Venturers from available resources.

The State shall, having regard to the coal requirements of the State Electricity Commission for its power stations from time to time, take such reasonable measures as may be practicable (including where appropriate the making of representations to the Commonwealth) to ensure the availability of supplies of coal required for the purposes of the Joint Venturers' operations under this Agreement.

Electricity.

15. (1) The Joint Venturers are authorised to generate electricity for their own use at the area from time to time being mined within the mineral lease, at the refinery for their own use on the site of the refinery and for ancillary operations beyond that site, PROVIDED THAT the Joint Venturers shall comply in all respects with the reasonable requirements of the State Electricity Commission and shall not take transmission lines beyond the site of the refinery without the prior approval of the Commission which approval shall not be withheld in respect of transmission lines for the purpose of providing power to a conveyor between the area from time to time being mined within the mineral lease and the refinery, and between the refinery and the residue area for the purpose of providing power to pump red mud. Any approval given by the Commission pursuant to this subclause may be subject to conditions requiring that the route and type of line shall meet the reasonable requirements of the Commission.

(2) The State will within twelve (12) months of the receipt of a request from the Joint Venturers supply power to the site of the refinery sufficient for construction purposes and to the area from time to time being mined within the mineral lease sufficient for normal operating requirements.

(3) The supply of power to the Joint Venturers pursuant to this Clause shall be on the State Electricity Commission's usual conditions and practice and at the appropriate tariffs prescribed from time to time.

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Conservator of acquiring one acre of suitable land and planting it with trees together with the estimated loss of royalty subsidy or grant and increased costs of management in respect of each acre of growing timber so destroyed and shall accordingly be increased or decreased as from the termination of each period of five (5) years calculated from the date of commencement of mining operations or from the 1st day of January, 1975 whichever shall first occur having regard to any increase or decrease in the Conservator's costs and the loss of royalty subsidy or grant aforesaid which has occurred since the date of this Agreement or the date of the last review as the case may be.

(4) The Forest Officer for the time being in charge of State forest within the area of the mineral lease may on reasonable grounds prohibit the use thereon of any roads or tracks and may from time to time give directions regarding the routes by which the ore or produce obtained may be removed or taken through any part of the State forest and the Joint Venturers shall comply with and observe such directions PROVIDED THAT those directions shall not apply to roads built by the Joint Venturers the Commissioner of Main Roads or any other statutory body with the exception of the Forests Department. Subject thereto and provided that the use of any road under the control of the Conservator does not result in undue damage to the forest or forest produce the Joint Venturers may use such road or roads as they desire. Any damage to Forests Department roads or tracks resulting from operations by the Joint Venturers shall be repaired by the Joint Venturers at their expense to the satisfaction of the Forest Officer.

(5) All debris resulting from clearing operations in areas of State forests and Crown land by the Joint Venturers shall be disposed of by the Joint Venturers to the satisfaction of the Conservator.

(6) The Joint Venturers in their operations hereunder will comply with and observe the provisions of the Bush Fires Act, 1954.

(7) The Joint Venturers will take all such necessary precautions as may be indicated by the Forest Officer to prevent the occurrence or spread of any fire within or adjacent to the area of the mineral lease.

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Right to
Grant
Mining
Tenements
for Other
Minerals.

18. Notwithstanding anything contained or implied in this Agreement or in the mineral lease the State may grant to or register in favour of persons other than the Joint Venturers leases and other mining tenements in respect of the area subject to the mineral lease for minerals other than those the subject of the mineral lease and for stone sand or gravel unless the Minister for Mines determines that such grant or registration is likely unduly to prejudice or interfere with the operations of the Joint Venturers hereunder assuming the taking by the Joint Venturers of reasonable steps to avoid the prejudice or interference.

Delays.

19. (1) This Agreement shall be deemed to be made subject to any delays in the performance of obligations under this Agreement and to the temporary suspension of continuing obligations hereunder which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays or any such temporary suspension as aforesaid caused by or arising from Act of God force majeure floods storms tempests washaways fire (unless caused by the actual fault or privity of the Joint Venturers) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and delays due to overall Australian economic conditions or factors which could not reasonably have been foreseen and delays due to overall economic conditions in Australia or any other country from which the finance or a substantial portion of the finance required to enable the Joint Venturers to discharge their obligations under this Agreement is to be provided or to which a substantial portion of the products of the Joint Venturers or any subsidiary or associated company of any of them is intended by the Joint Venturers or any of them to be sold inability to sell or otherwise dispose of alumina profitably or to prices for the products of the Joint Venturers or any of them or any subsidiary or associated company of any of them falling below profitable levels, PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall minimise the effect of the said causes as soon as possible after their occurrence.

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this Clause but subject to the provisions of subclause (3) of this Clause the Joint Venturers shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on their part contained herein and in any lease licence easement grant or other title the subject of an assignment under the said subclause (1) PROVIDED THAT the Minister may agree to release the Joint Venturers or any of them from such liability where he considers such release will not be contrary to the interests of the State.

(3) When any agreement entered into by the Joint Venturers in accordance with the terms of this Agreement with some other company or person results in that other company or person discharging all or any of the obligations undertaken by the Joint Venturers under this Agreement (including, without prejudice to the generality of this provision, the obligation to construct and operate a refinery as imposed by Clause 5 (1) hereof) or renders it unnecessary for the Joint Venturers to discharge any obligation undertaken by them hereunder the Minister will discharge or temporarily relieve the Joint Venturers from such part of their said obligations as is reasonable having regard to the extent of and period for which the other company or person actually effects the discharge of those obligations.

Determina-
tion of
Agreement.

21. (1) In any of the following events namely if the Joint Venturers make 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 their part to be performed or observed or if the Joint Venturers abandon or repudiate their operations under this Agreement and such default is not remedied or such operations resumed within a period of one hundred and eighty (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 Joint Venturers and within sixty (60) days after such notice is submitted by the Joint Venturers to arbitration—within a reasonable time fixed by the arbitration award but not less than ninety (90) days after the

making of the arbitration award where the question is decided against the Joint Venturers the arbitrator finding that there was a *bona fide* dispute and that the Joint Venturers had not been dilatory in pursuing the arbitration) or if the Joint Venturers go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) the State may by notice to the Joint Venturers determine this Agreement and the rights of the Joint Venturers 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 Joint Venturers and all such assignees mortgagees chargees and disponees for the time being of the Joint Venturers' said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 20 whose name and address for service of notice has previously been notified to the State by the Joint Venturers or any such assignee mortgagee chargee or disponee.

(3) The abandonment or repudiation by or liquidation of the Joint Venturers referred to in subclause (1) of this Clause means the abandonment or repudiation by or the liquidation of all of them the Joint Venturers 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 20.

(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 Joint Venturers and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Joint Venturers to the State on demand.

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Effect of
Cessation
of Deter-
mination of
Agreement.

22. On the cessation or determination of this Agreement—

- (i) except as otherwise agreed by the Minister the rights of the Joint Venturers to in or under this Agreement and the rights of the Joint Venturers or of any assignee of the Joint Venturers or any mortgagees to in or under the mineral lease and any other lease licence easement or right granted hereunder or pursuant hereto shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder;
- (ii) the Joint Venturers shall forthwith pay to the State all moneys which may then have become payable or accrued due;
- (iii) the right title and interest of the Joint Venturers in the railway wagons provided by them pursuant to Clause 5 (2) (g) of this Agreement shall cease and determine and the same shall become the property of the State;
- (iv) save as aforesaid and as otherwise provided in this Agreement neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.

Indemnity.

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

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nical developments from time to time available whether or not used by the Joint Venturers elsewhere in their operations.

Processing
of Bauxite
from Other
Sources.

27. Subject to the approval of the Minister the Joint Venturers may process at the refinery bauxite obtained otherwise than pursuant to this Agreement.

Arbitration.

28. Except where otherwise specifically provided in this Agreement any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Agreement or any such amendment variation or addition or as to the rights duties or liabilities of either party thereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the Arbitration Act, 1895, PROVIDED THAT this Clause shall not apply to any case where the State or the Minister is by this Agreement expressly given a discretionary power.

Notices.

29. Any notice consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Civil Service of the said State acting by the direction of the Minister and forwarded by pre-paid post to the Joint Venturers at their respective nominated offices for the time being in the said State and by the Joint Venturers if signed on their behalf by any person or persons authorised by the Joint Venturers or by their solicitors as notified to the State from time to time and forwarded by pre-paid post to the Minister and any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

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30. (1) The State shall exempt from any stamp duty which but for the operation of this Clause would or might be chargeable— Exemption
From Stamp
Duty.

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Joint Venturers or any permitted assignee of the Joint Venturers any tenement lease easement licence or other right or interest;
- (c) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment made in conformity with the provisions of subclause (1) of Clause 20 hereof; and
- (d) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment to or in favour of the Joint Venturers or an associated company of any interest right obligation power function or authority which has already been the subject of an assignment sublease disposition or appointment executed pursuant to subclause (1) of Clause 20 hereof;

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

(2) If prior to the date on which this Agreement comes into operation stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) of this Clause the State shall on demand after the commencement date refund any stamp duty paid on any such instrument or other document to the person who paid the same.

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

Deter-
 mination of
 Previous
 Agreement.

32. The agreement of which a copy is set out in the Schedule to the Alumina Refinery (Bunbury) Agreement Act, 1970 shall on the date of execution of this Agreement be terminated.

FIRST SCHEDULE.

1. Rates per ton mile for bauxite carried on trains operating between agreed loading sites and the refinery and coal on trains between the Collie coalfield and the refinery and alumina on trains between the refinery and port of Bunbury back loading with any of caustic soda and fuel oil from Monday to Saturday of each week. Should Sunday working be required the Joint Venturers shall meet the additional costs involved.

BAUXITE:

(i) agreed loading sites to the refinery:

	cents per net ton mile
Over .50 and up to 1.00 million tons per annum	1.10
Over 1.00 and up to 2.00 million tons per annum	1.00
Over 2.00 and up to 3.00 million tons per annum ....	.90
Over 3.00 and up to 4.00 million tons per annum ....	.85
Over 4.00 and up to 5.00 million tons per annum ....	.80
Over 5.00 and up to 6.00 million tons per annum ....	.75
Over 6.00 and up to 7.00 million tons per annum ....	.725
Over 7.00 million tons per annum ....	.70

When bauxite loading sites are more than 52 miles from the refinery the above rates shall be reduced by .025 cents per net ton mile.

ALUMINA, CAUSTIC SODA, FUEL OIL, LIME AND LIMESTONE:

(ii) alumina from the refinery to the port of Bunbury and backloading with caustic soda fuel oil lime and limestone:

	cents per net ton mile
Over .50 and up to .75 million tons per annum	1.50
Over .75 and up to 1.00 million tons per annum	1.40
Over 1.00 and up to 1.25 million tons per annum	1.30
Over 1.25 and up to 1.50 million tons per annum	1.25
Over 1.50 and up to 1.75 million tons per annum	1.20
Over 1.75 and up to 2.00 million tons per annum	1.15
Over 2.00 and up to 2.50 million tons per annum	1.10
Over 2.50 million tons per annum	1.07

COAL:

(iii) from an agreed point on the Collie coalfield to the refinery:

	cents per net ton mile
Over .50 and up to .75 million tons per annum	1.90
Over .75 and up to 1.00 million tons per annum	1.80
Over 1.00 and up to 1.25 million tons per annum	1.70
Over 1.25 and up to 1.50 million tons per annum	1.60
Over 1.50 million tons per annum	1.50

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2. The rates for freight set out in this schedule have been calculated on the basis of the total turn round time at terminals not exceeding the following:—

Bauxite:

mine site	....	....	....	....	2 hours
refinery	....	....	....	....	2½ hours

Alumina, Caustic Soda, Fuel Oil, Lime and Limestone:

port of Bunbury	....	....	....	....	4 hours
refinery	....	....	....	....	4 hours

Coal:

Collie coalfield	....	....	....	....	1½ hours
refinery	....	....	....	....	1½ hours

If such times are not regularly adhered to by the Joint Venturers the Railways Commission reserves the right to review the freight rates.

3. The rates for freight are based on wagons being loaded to capacity and shall be subject to the minimum load per train being not less than:—

Bauxite	....	....	....	63 tons per wagon
Alumina	....	....	....	62 tons per wagon
Caustic Soda	....	....	....	54½ tons per wagon
Fuel Oil	....	....	....	61½ tons per wagon
Coal	....	....	....	45 tons per wagon
Lime and Limestone	....	....	....	as stipulated by the Railways Commission

4. The rates for freight set out in this schedule are based on costs prevailing at the 19th January 1972 and shall be adjusted half yearly on the first days of January and July with the new rates becoming effective on and from those dates in accordance with the following formula:—

$$F1 = F + \left[.45F \left\{ .80 \left\{ \frac{HR1 - HR}{HR} \right\} + .05 \left\{ \frac{D1 - D}{D} \right\} + .15 \left\{ \frac{SR1 - SR}{SR} \right\} \right\} \right]$$

WHERE:

- (i) F1 = the new freight rate.
- (ii) F = the freight rate which was payable as at 19th January 1972.
- (iii) HR = the average hourly rate payable as at 19th January 1972.
- (iv) HR1 = the average hourly rate payable as at the date of adjustment.

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- (v) D = the wholesale price (duty free) of distillate in Perth as at 19th January 1972.
- (vi) D1 = the wholesale price (duty free) of distillate in Perth as at the date of adjustment.
- (vii) SR = the price of heavy steel rails per ton c.i.f. port of Fremantle as ascertained from price schedule covering despatches from the Broken Hill Proprietary Company Limited and Australian Iron and Steel Proprietary Limited as at 19th January 1972.
- (viii) SR1 = the price of heavy steel rails per ton c.i.f. Fremantle ascertained as aforementioned as at the date of adjustment.

The rates applicable at the 19th January 1972 are:—

1st class driver ....	....	....	\$2.2475 per hour
1st class guard	\$1.8338 per hour
trackman	\$1.4588 per hour

Average hourly rate	\$1.8467
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Price of distillate per gallon—21.4 cents.

Price of heavy steel rails per ton c.i.f. port of Fremantle—\$113.00

The escalation formula referred to above shall be subject to review by the Railways Commission after consultation with the Joint Venturers on the 1st January 1977 and thereafter at five yearly intervals.

5. All traffic shall be carried at the risk of the Joint Venturers.

6. Bauxite, alumina, caustic soda, fuel oil, coal, lime and limestone carried on other than unit trains and all other commodities shall, unless otherwise determined by the Railways Commission, be carried at gazetted rates.

SECOND SCHEDULE.
WESTERN AUSTRALIA.
MINING ACT, 1904.

Lease No.

Mineral Fields

ELIZABETH THE SECOND by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender

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of the Faith: 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 of the one part and Alwest Pty. Limited and Dampier Mining Company Limited (hereinafter called "the Joint Venturers" which expression includes the successors and permitted assigns of each of them) of the other part which Agreement (hereinafter referred to as "the Agreement") was executed pursuant to the Alumina Refinery (Worsley) Agreement Act, 1973 the State agreed to grant to the Joint Venturers on application made by the Joint Venturers a mineral lease under and, except as otherwise provided by the Agreement, subject to the Mining Act, 1904, AND WHEREAS the Joint Venturers have now made application for a lease of the land hereinafter described for the purpose of mining thereon for bauxite (including "special grade bauxite" as defined in the Agreement) NOW WE in consideration of the rents and royalties reserved by the Agreement and in consideration of the covenants in this lease and in the Agreement to be observed by the Joint Venturers DO BY THESE PRESENTS GRANT AND DEMISE UNTO THE JOINT VENTURERS but subject to the provisions of the Agreement all that Crown land comprising the areas coloured yellow in the plan in the Schedule hereto together with all those privately owned lands coloured green in the said plan and all those mines, veins, seams, lodes, or deposits of bauxite within the weathered profile of the said lands (and for the purposes hereof "weathered profile" means the zone within which any or all of the original chemical elements of the rocks have been distributed or concentrated by atmospheric or ground agencies) in, on, or under the said lands (hereinafter called "the said mine") 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 Joint Venturers are entitled under the Agreement and for all purposes necessary effectually to carry on the Joint Venturers' mining operations under the Agreement excepting and reserving out of this demise all such portions of the said lands as are now used for any public buildings works or other improvements whatsoever TO HOLD the said lands and mine and

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all and singular the premises hereby demised for the term
of twenty-one (21) years from the _____ day
of _____ 19 _____ with rights of renewal
for two (2) consecutive further periods of twenty-one (21)
years but upon and subject to the terms, covenants and
conditions set out in the Agreement and 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 Joint Venturers 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.

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 bauxite) on or below the surface of
the demised lands are reserved to Her Majesty or any person
claiming under her and that subject to the terms of the
Agreement any person lawfully authorised in that behalf
may have access to the demised lands for the purpose of
searching for and obtaining petroleum or other minerals
in any part of the lands under the provisions of the
Petroleum Act, 1967, or the Mining Act.

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 seals
of the Joint Venturers were hereunto affixed this

day of

19 .

THE SCHEDULE ABOVE REFERRED TO (plan of lease)

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In WITNESS whereof the parties hereto have executed this Agreement the day and year first hereinbefore mentioned.

SIGNED by the said THE
HONOURABLE JOHN TREZISE
TONKIN, M.L.A., in the presence
of—

MINISTER FOR DEVELOPMENT
AND DECENTRALISATION.

MINISTER FOR MINES.

The common seal of ALWEST
PTY. LIMITED was hereunto
affixed with the authority of
the Directors and in the
presence of—

DIRECTOR.

DIRECTOR.

The common Seal of DAMPIER
MINING COMPANY LIMITED
was hereunto affixed
by authority of the Board of
Directors

DIRECTOR.

SECRETARY.