

# ALUMINA REFINERY (UPPER SWAN) AGREEMENT.

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No. 53 of 1971.

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AN ACT to authorize the execution on behalf of the State of an Agreement with Hancock Prospecting Pty. Limited, Wright Prospecting Pty. Limited, Metals Miniere Limited and Pacminex Pty. Limited relating to the establishment at Upper Swan of a refining plant to treat bauxite to produce alumina and for other purposes.

[Assented to 15th December, 1971.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and 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 (Upper Swan) Agreement Act, 1971.* Short title.

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Execution of  
Agreement  
authorized

2. 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 when the Environmental Protection Authority proposed by the Bill entitled—

A Bill for an Act to make provision for the establishment of an Environmental Protection Authority, a Department of Environmental Protection and an Environmental Protection Council for the prevention and control of environmental pollution and for the protection and enhancement of the environment, to repeal the Physical Environment Protection Act, 1970, and for incidental and other purposes

has come into being and has considered and reported to the Premier on the project covered by the Agreement and the terms proposed so far as they relate to matters of environmental protection.

Executed  
Agreement  
to operate  
and take  
effect.

3. When the Agreement referred to in section 2 of this Act is 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.

**SCHEDULE.**

S.2.

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_  
One thousand nine hundred and seventy-one  
BETWEEN THE HONOURABLE JOHN TREZISE TONKIN,  
M.L.A., Premier of the State of Western Australia, acting  
for and on behalf of the said State and Instrumentalities  
thereof from time to time (hereinafter called "the State")  
of the one part and HANCOCK PROSPECTING PTY.  
LIMITED a company duly incorporated under the  
Companies Act of the State of Western Australia having  
its principal office at 88 Thomas Street, West Perth in the  
said State and WRIGHT PROSPECTING PTY. LIMITED a  
company duly incorporated under the Companies Act  
aforesaid having its principal office at 88 Thomas Street,  
West Perth aforesaid and METALS MINIERE LIMITED a  
company duly incorporated under the Companies Act  
aforesaid having its principal office at 30 Ord Street, West  
Perth aforesaid and PACMINEX PTY. LIMITED a company  
incorporated in the State of New South Wales and having  
its principal office at 15-19 Bent Street, Sydney in the State  
of New South Wales (hereinafter called "the Joint  
Venturers") of the other part.

WHEREAS:

- (a) the Joint Venturers and their predecessors in title at the cost to the date hereof exceeding two million dollars (\$2,000,000) having established the existence of bauxite reserves within the mining area defined in Clause 1 and having already carried out certain investigations relating to the mining transport and refining of bauxite and the shipment of bauxite and alumina from the mining area wish to develop those bauxite reserves and to establish a bauxite mining operation and an alumina plant all of which is expected to cost an amount exceeding eighty million dollars (\$80,000,000); and
- (b) the Joint Venturers agree in due course to investigate the feasibility of establishing within the said State an industry for smelting alumina produced from bauxite;

NOW THIS AGREEMENT WITNESSETH:

1. In this Agreement subject to the context—

Definitions.

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

"associated company" means—

- (a) any company having a paid up capital  
of not less than two million dollars

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(\$2,000,000) notified by the Joint Venturers to the Minister that is incorporated in the United Kingdom the United States of America or the Commonwealth of Australia or such other country as the Minister may approve and that—

- (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 hold not less than twenty per cent (20%) of the issued ordinary share capital; or
  - (ii) 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 hold not less than twenty per cent (20%) of the issued ordinary share capital; or
- (b) any company that is associated directly or indirectly with the Joint Venturers or any of them in their business or operations hereunder and that is approved by the Minister for the purposes of this Agreement;

“bauxite” means ore mined by the Joint Venturers under this Agreement which either with or without crushing washing and screening is shipped or sold as bauxite or is used for processing into alumina;

“bulk cargo” means a commodity or commodities to be handled and transported without being first packaged or placed in specially constructed containers and in particular the term includes alumina, caustic soda and bauxite for the purposes of this Agreement;

“bulk storage area” means the land at Kwinana delineated in red and subject to survey shown on the plan marked “B” and initialled on behalf of the parties hereto for the purposes of identification or such alternative land as the parties may agree upon, together with such additional land as the parties may agree upon from time to time;

“catchment area” means an area of land within a watershed which contributes to the flow of a stream or watercourse;

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- "Clause" means a clause of this Agreement;
- "Commonwealth" means the Commonwealth of Australia and includes the Government for the time being thereof;
- "Conservator of Forests" and "Conservator" means the Conservator of Forests appointed under the Forests Act, 1918;
- "construction" or "upgrading" in relation to a railway includes the provision of signalling and other railway operating appurtenances;
- "Crown land" means all land of the Crown, except land granted or agreed to be granted in fee simple and except land held or occupied under the Crown by lease or licence for any purpose other than pastoral or timber purposes, and includes all land reserved for State forests or the purpose of water conservation;
- "forest produce" has the same meaning as that expression has in and for the purposes of the Forests Act, 1918;
- "Fremantle Port Authority" means the Fremantle Port Authority of Western Australia established pursuant to the Fremantle Port Authority Act, 1902-1964;
- "Joint Venturers' wharf" means the wharf referred to in Clause 38 hereof;
- "Land Act" means the Land Act, 1933;
- "Metropolitan Water Supply Board" means the Metropolitan Water Supply Sewerage and Drainage Board established pursuant to the Metropolitan Water Supply, Sewerage, and Drainage Act, 1909-1970;
- "mineral lease" means the mineral lease or mineral leases referred to in Clause 8 and includes any renewal thereof;
- "Mining Act" means the Mining Act, 1904;
- "mining area" means the area delineated and coloured blue in the plan marked "C" initialled on behalf of the parties hereto for the purpose of identification;
- "Minister" means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the administration of this Agreement;
- "Minister for Mines" means the Minister in the Government of the said State for the time being responsible for the administration of the Mining Act;

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“Minister for Works” means the Minister in the Government of the said State for the time being responsible for the administration of the Public Works Act, 1902 or the Country Areas Water Supply Act, 1947-1964 or the Fremantle Port Authority Act, 1902 as the case may require;

“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” includes a body corporate or bodies corporate;

“potable water” means water containing less than 1,000 parts per 1,000,000 of totally dissolved solids;

“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;

“red mud” means the waste products and tailings resulting from the refining of bauxite into alumina;

“refinery” means a refining plant established or to be established pursuant to this Agreement at or near Upper Swan in which bauxite is treated to produce alumina and includes any extension thereof;

“refinery site” means the site on which the refinery is to be situated as delineated red on the plan marked “A” (initialled on behalf of the parties hereto for the purposes of identification) and such other land as may be agreed upon between the parties from time to time;

“Schedule” means a schedule to this Agreement;

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

“special grade bauxite” means ore that 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;

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“State forest” means land dedicated as a State forest under the Forests Act, 1918;

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

“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.

2. In this Agreement—

Interpretation.

- (a) monetary references are (subject to the context) references to Australian currency;
- (b) power given under any clause other than Clause 55 to extend any period or date shall be without prejudice to the power of the Minister under Clause 55;
- (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.

3. The State will—

Initial Obligations of the State.

- (a) to the extent reasonably necessary for the purposes of this Agreement allow the Joint Venturers as from the date hereof to enter upon Crown lands and survey possible sites for their operations under this Agreement; and
- (b) allow the Joint Venturers to exercise until the granting of the mineral lease or the sooner determination of this Agreement, in respect of the areas previously constituting the temporary reserves under the Mining Act numbered 3758H and 3936H such rights of occupancy as the Joint Venturers previously held or may have acquired over those reserves according to the tenor of those rights.

4. As from the date hereof all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any other Act or any law to the contrary and for the purposes of this Agreement and notwithstanding the generality of the foregoing—

Other Acts.

- (a) the Mining Act the Land Act the Transfer of Land Act, 1893 and the Public Works Act shall

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be deemed modified and amended to the extent necessary to enable full force and effect to be given to this Agreement;

- (b) the Mining Act shall be deemed modified and amended by the deletion of Sections 277 and 282;
- (c) the Transfer of Land Act, 1893 shall be deemed modified and amended by the deletion of Section 81D;
- (d) the Land Act shall be deemed modified and amended by—
  - (i) 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;
  - (ii) the deletion of the proviso to Section 116;
  - (iii) the deletion of Sections 135 and 143; and
  - (iv) 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 instead of the terms or periods and the terms conditions and forms referred to in the Land Act and upon application by the Joint Venturers in forms so consistent instead of in the forms referred to in the Act;
- (e) the State and the Minister respectively shall have all the powers discretions and authorities necessary or requisite to enable them to carry out and perform the powers discretions authorities and obligations conferred or imposed upon them respectively hereunder;
- (f) the State may close or vary the alignments of or the boundaries of any public road;
- (g) the State may as and for a public work under the Public Works Act, 1902, resume any land or any estate right or interest in land required for the purposes of this Agreement and

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notwithstanding any other provisions of that Act may sell lease or otherwise dispose of any of the foregoing to the Joint Venturers and the provisions of subsections (2) to (7) inclusive of Section 17 and the provisions of Section 17A of that Act shall not apply to or in respect thereof or the resumption thereof;

(h) notwithstanding the provisions of Section 82 of the Mining Act and of regulations 192 and 193 made thereunder and of Section 81D of the Transfer of Land Act, 1893 insofar as the same or any of them may apply no mortgage or charge in a form commonly known as a floating charge made or given pursuant to Clause 50 hereof over any lease licence reserve or tenement granted hereunder or pursuant hereto by the Joint Venturers or any of them or any assignee or appointee who has executed and is for the time being bound by deed of covenant made pursuant to Clause 50 hereof and no transfer or assignment in exercise of any power of sale contained in such mortgage or charge shall require any approval or consent other than such consent as may be necessary under Clause 50 hereof and no such mortgage or charge shall be rendered ineffectual as an equitable charge by the absence of any approval or consent otherwise than as required by Clause 50 hereof or because it is not registered under the provisions of the Mining Act; and

(i) no lease sublease licence or other title or right granted or assigned under or pursuant to this Agreement shall be subject to or capable of partition including partition under the Partition Act, 1878 or under any order of any Court of competent jurisdiction under that Act or otherwise or be subject to the making of an order for sale under that Act.

5. (1) The Joint Venturers jointly and severally covenant with the State that they and each of them will perform and observe the respective covenants and obligations falling to be performed and observed by them under the terms hereof as hereinafter provided. Obligations.

(2) The State covenants with the Joint Venturers and each of them that it will perform and observe the respective covenants and obligations falling to be performed and observed by it under the terms hereof as hereinafter provided.

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Joint  
Venturers  
to Submit  
Proposals.

6. (1) The Joint Venturers will on or before the 30th day of September, 1972, or within such extended time after that date as the Minister may as hereinafter provided allow submit to the Minister—

(a) to the fullest extent reasonably practicable their detailed proposals (including where practicable plans and where reasonably required by the Minister specifications) for the development of land in the mining area and of certain privately owned land adjacent to that area, for the mining and transport of bauxite and for the production, transport and shipment of alumina including the location, area, lay-out, design, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following, namely—

- (i) mine development and operation;
- (ii) ore treatment and handling at the mine;
- (iii) transportation of ore, alumina and operating supplies;
- (iv) port site storage, handling and loading facilities;
- (v) construction and operation of the alumina refinery;
- (vi) power, fuel and water supplies;
- (vii) environmental protection, including the disposal of red mud and mine lands restoration;
- (viii) regional development, including any projects likely to make an impact on adjacent communities; and
- (ix) construction of the Joint Venturers' wharf; and

Marketing  
and  
Finance.

(b) subject to the provisions of subclause (4) of this Clause reasonable evidence of marketing arrangements demonstrating the Joint Venturers' ability to sell or use alumina and other products and reasonable evidence of the availability of finance necessary for the fulfilment of the Joint Venturers' proposals under this Clause.

(2) The Joint Venturers will not proceed to give effect to any proposal or plan required to be submitted pursuant to subclause (1) of this Clause and whether supplied

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pursuant to that subclause or not unless or until the proposal or plan has been approved or determined under this Clause.

(3) The Joint Venturers may submit to the Minister their detailed proposals in regard to the matter or matters the subject of any of subparagraphs (i) to (ix) inclusive of paragraph (a) of subclause (1) of this Clause as and when the detailed proposals become finalised by the Joint Venturers but where any such matter is the subject of a subparagraph that refers to more than one matter the detailed proposals will unless otherwise agreed relate to and cover each of the matters mentioned in the subparagraphs.

Order of  
Submission  
of Pro-  
posals.

(4) Where the Joint Venturers—

Extension  
of time for  
Finance  
and  
Marketing.

(a) for any reason require an extension of time beyond the 30th day of September, 1972, within which to comply with the requirements of paragraph (b) of subclause (1) of this Clause and make a request therefor to the Minister not earlier than the first day of July, 1972, or later than the 31st day of August, 1972, and with that request supply to the Minister reasonably full details of their endeavours to raise the necessary finance, the Minister will, if satisfied that those endeavours are reasonable in the circumstances and that the Joint Venturers have otherwise duly complied with their obligations hereunder, grant an extension of time until the 31st day of March, 1973; and

(b) after having been granted an extension of time pursuant to a request made under paragraph (a) of this subclause require a further extension of time and make a request therefor to the Minister and with the request supply to the Minister reasonably full details of their further endeavours to arrange the necessary finance the Minister will, if satisfied that those further endeavours are reasonable in the circumstances and that the Joint Venturers have otherwise duly complied with their obligations hereunder, grant the Joint Venturers a further extension of time for such period as he may consider the circumstances warrant and as may mutually be agreed or fixed by arbitration as hereinafter provided but that extension shall not in any event extend beyond the 30th day of September, 1973.

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Consideration of Proposals.

(5) The Minister will within two (2) months after his receipt of the detailed proposals or new proposals submitted by the Joint Venturers pursuant to this Clause give to the Joint Venturers notice of—

- (a) his approval of the proposals; or
- (b) any alteration to the proposals or new proposals or any conditions that he may properly require or impose;

and in the latter event the Minister will afford the Joint Venturers an opportunity of consulting with and of submitting new proposals to him.

Requirements by Minister.

(6) The Minister may require such reasonable alterations to or impose such reasonable conditions on the Joint Venturers' proposals or (as the case may be) new proposals as he thinks fit having regard to the circumstances including the overall development and the use by others as well as the Joint Venturers of some or other of the facilities to be provided by them but the Minister shall in any notice to the Joint Venturers disclose his reason for any such alterations or conditions and the Minister will not require any alterations to or impose any conditions on the proposals or new proposals insofar as they relate to the technical aspects of the Joint Venturers' plant for the crushing washing and screening of ore or of the refinery.

Reference of Requirements to Arbitration.

(7) The Joint Venturers may within two (2) months after the receipt of a notice given under subclause (5) of this Clause and requiring alterations or imposing conditions by notice to the State elect to refer to arbitration as provided by Clause 56 the question as to the reasonableness of any such alteration or condition and—

- (a) if by the award on arbitration the question is decided against the Joint Venturers then unless the Joint Venturers within three (3) months after the delivery of the award give notice to the Minister of their acceptance of the award this Agreement shall (except to the extent otherwise provided by Clause 51) cease and determine;
- (b) if by the award on arbitration the question is decided in favour of the Joint Venturers that decision shall have effect as though it were a notice of the Minister's approval of the matter or matters that were the subject of the arbitration.

Termination of Agreement where all Proposals not Approved.

(8) Notwithstanding that any of the detailed proposals submitted by the Joint Venturers are approved by the Minister or are determined by arbitration unless each and every proposal so submitted is so approved or determined

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by the 30th day of November, 1972, or within such extended period as may be granted pursuant to this Agreement then at any time after that date or at the conclusion of the extended period the Minister may give to the Joint Venturers twelve (12) months notice of the State's intention to determine this Agreement and unless all the detailed proposals are so approved or determined within that period of twelve (12) months this Agreement shall (except to the extent otherwise provided by Clause 51) at the expiration of that period cease and determine.

(9) The Joint Venturers may at any time prior to the date upon which the last of the proposals referred to in this Clause has been approved or determined give notice to the Minister that they do not wish to proceed with this Agreement and this Agreement shall thereupon cease and determine.

Determina-  
tion of  
Agreement  
by Joint  
Venturers.

7. (1) The Joint Venturers will before the expiration of three (3) years from the date on which the last of their proposals is finally approved or determined under Clause 6 on a site to be approved or determined in accordance with that Clause complete the construction of and bring into operation the first stage of a refinery having a capacity to produce not less than three hundred thousand (300,000) tons of alumina per annum and thereafter progressively extend the refinery to reach a capacity to produce not less than eight hundred thousand (800,000) tons of alumina per annum before the expiration of ten (10) years after the last of their proposals is finally approved or determined.

Construc-  
tion of  
Refinery.

(2) Notwithstanding the provisions of subclause (1) of this Clause if the Joint Venturers by particulars in writing demonstrate to the reasonable satisfaction of the Minister that they have used their best endeavours to negotiate the finance required for the construction of the refinery and to complete the sales contracts necessary for the sale of alumina to be produced at the refinery to make the project economically practicable but that by reason of prevailing finance or market conditions they have been unsuccessful the Minister will grant to the Joint Venturers such extension of any time or times limited by that subclause as is reasonable in all the circumstances of the case.

(3) In the event of the Joint Venturers requiring to establish an additional refinery or refineries on a site or in a location approved by the State then the provisions of this Agreement shall apply with such adaptations as may be necessary to the extent that the parties may at that time agree.

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Mineral  
Lease.

8. (1) The State will on the application of the Joint Venturers made after, but within two (2) years after, the date on which the last of their proposals is finally approved or determined under Clause 6 cause a mineral lease of such of the Crown land and privately owned land in respect of which the mineral rights are reserved to the Crown within the mining area as may be applied for to be granted to the Joint Venturers (in such shares as the Joint Venturers may agree) 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.

(2) The Joint Venturers will pay to the State in advance a rental for the mineral lease calculated subject to subclause (3) of this Clause at the rate of five dollars (\$5) per annum for every square mile or residual part of a square mile contained within the leased area.

(3) At the expiration of seven (7) years after the commencement date of the mineral lease and of every seven (7) years thereafter the rental payable during the next succeeding seven (7) years shall be adjusted proportionately to the increase or decrease of the mean quarterly world selling price of aluminium above or below five hundred and twenty-five dollars (\$525) per ton but in no case shall the adjusted rental be less than five dollars (\$5) per square mile or residual part of a square mile.

(4) For the purposes of subclause (3) of this Clause the mean quarterly world selling price per ton of aluminium for any quarter is the average expressed in Australian dollars of the four prices first quoted in the London "Metal Bulletin" in respect of Canadian primary aluminium of 99.5 per cent purity f.o.b. Toronto in each of the four completed quarters commencing on the first days of January, April, July and October which immediately precede that quarter and for the purpose of this subclause the conversion rate for Canadian dollars to Australian dollars shall be the mean between the buying and selling rate to telegraphic transfers as quoted by a trading bank acceptable to the Minister for Mines.

(5) Subject to the performance by the Joint Venturers of their obligations under this Clause the term of the mineral lease will, except as hereinafter provided, be for a term of twenty-one (21) years after the commencement

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of the lease with rights of renewal for two (2) consecutive further periods of twenty-one (21) years upon the terms and conditions contained in the lease except that—

- (a) the rental may be varied as provided by subclause (3) of this Clause;
- (b) royalty rates may be varied as provided by subclause (2) of Clause 43; and
- (c) the right of renewal shall be excluded from the mineral lease when renewed for the second period of twenty-one (21) years.

(6) 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 then operating the refinery pursuant to this Agreement may give notice to the State that they require a further mineral lease for bauxite of the leased area or of part or parts thereof including any area leased pursuant to subclause (7) of this Clause for a term of twenty-one (21) years and the State will within six (6) months after the receipt of the notice determine and notify the Joint Venturers of the terms and conditions upon which it is prepared to grant such a further mineral lease and the Joint Venturers shall for a period of three (3) months thereafter have the right to accept such a further mineral lease on those terms and conditions and the State will not for a period of two (2) years after notifying those terms and conditions grant or offer to grant a mineral lease of the leased area or of any part thereof for bauxite to any person other than the Joint Venturers on more favourable terms and conditions than those offered to the Joint Venturers.

(7) The State will on the application of the Joint Venturers made at any time and from time to time after the granting of the mineral lease pursuant to subclause (1) of this Clause cause a mineral lease or mineral leases of such lands as may be applied for being lands comprised within any mineral claims or mineral leases under the Mining Act for bauxite that are held by or on behalf of the Joint Venturers for the purposes of their operations hereunder to be granted to the Joint Venturers (in such shares as they may agree) on the same conditions (except as herein otherwise provided as to the term thereof) that apply to the mineral lease granted pursuant to subclause (1) of this Clause and the lease or leases shall be so granted under and (to the extent that the Mining Act is not inconsistent with this Agreement) subject to that Act and may be renewed so as to be co-terminous with the mineral lease granted as aforesaid.

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(8) The Joint Venturers may from time to time surrender to the State all or any portion or portions (of reasonable size and shape) of the mineral lease or of any mineral claim or mineral lease held by or on behalf of the Joint Venturers for the purposes of their operations hereunder subject to the Joint Venturers having complied with their obligations under Clauses 18, 20 and 21 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.

(9) 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 or to any mineral claim or mineral lease held by or on behalf of the Joint Venturers for the purposes of their operations hereunder but this subclause shall not apply to a mineral claim or mineral lease of privately owned land unless the owner has been advised by the Joint Venturers as to the effect of the terms of this Agreement insofar as they relate to mineral claims or mineral leases of privately owned land and has expressly agreed in writing to the Joint Venturers exercising with respect to his land the right of non-compliance with those labour conditions.

(10) Where the Joint Venturers enter or have entered into an agreement with the owner of privately owned land for compensation arising out of their operations or proposed operations on the land, the Joint Venturers will within fourteen (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.

Other Ore  
Sources.

9. In the event of the Joint Venturers requiring to secure additional bauxite or bauxite reserves to satisfy their refinery requirements the Joint Venturers may negotiate with persons holding bauxite reserves within the said State and may purchase additional bauxite, bauxite reserves or both and refine bauxite obtained from those persons or those bauxite reserves under terms and conditions approved by the State which approval will not arbitrarily or unreasonably be withheld.

Right to  
Grant  
Mining  
Tenements  
for Other  
Minerals.

10. (1) Notwithstanding anything contained or implied in this Agreement or in the mineral lease or in any other lease or any licence granted hereunder or pursuant hereto but subject to subclause (2) of this Clause the State may grant or register in favour of persons other than the Joint Venturers leases and other mining tenements in respect of minerals other than those the subject of the mineral lease and in respect of clay stone soil or gravel.

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(2) Except to such persons who are the holders of an existing mining tenement or temporary reserve granted at the date hereof the State will not grant to or register in favour of other persons such as are mentioned in sub-clause (1) of this Clause any lease or mining tenement if the Minister for Mines determines that the grant or registration would or would be likely unduly to prejudice or interfere with the operations of the Joint Venturers in circumstances where the Joint Venturers would take all reasonable steps to avoid or minimise the prejudice or interference.

11. (1) Except where the parties hereto, having regard to the requirements of the Fremantle Port Authority and the developments of the area generally, agree that some alternative land be made available to the Joint Venturers on terms to be agreed by the parties, the State will if so required by the Joint Venturers sell to them in fee simple free from encumbrances (other than a proposed pipeline easement ten (10) feet in width in line with the southern alignment of Harbor Road) at a price of eight thousand five hundred dollars (\$8,500) per acre or (at the State's discretion) lease to them at a rental and on terms to be agreed for a period or renewed period coterminous with the period or renewed period of the mineral lease the land owned by the State and shaded blue on the plan marked "B" being part of the bulk storage area.

Bulk  
Storage  
Area Land.

(2) Where the Minister is satisfied that the Joint Venturers require land that is privately owned for the purpose of storage of bulk cargoes or of installing and operating the conveyor system mentioned in Clause 12 and that the Joint Venturers are unable to negotiate the purchase of the land or of rights over the land the State will acquire or resume that land and in that event the Joint Venturers will if required by the State purchase from it the land so acquired or resumed at the actual cost of its acquisition or resumption and where the State retains all or any of the land so acquired or resumed it will make available to the Joint Venturers such land as the Joint Venturers may need for their operations hereunder at a rental to be determined.

(3) Where the Minister is satisfied that nuisance by way of dust, odour or noise is being unduly occasioned to occupiers of land in any area adjacent to the bulk storage area, the State may (as the occasion arises) require the Joint Venturers to, and the Joint Venturers will, acquire the land of any occupier who is so affected or where the Joint Venturers are unable to purchase the land the State may acquire or resume it and in that event the Joint Venturers will if required by the State purchase from it the land so acquired or resumed but the State will not require the Joint Venturers to acquire land pursuant to this sub-clause in excess of an aggregate of twenty (20) acres.

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Easements  
for Conveyor  
Systems or  
Pipeline.

12. The State will grant or cause to be granted to the Joint Venturers such easements or licences under or through Crown land and land owned by the Fremantle Port Authority or any instrumentality of the State or of any municipality as may be necessary to give effect to the proposals approved or determined under Clause 6 and enable the Joint Venturers to install maintain and operate conveyor systems and pipelines but only to the extent that any such easement or licence does not conflict or unreasonably interfere with existing or planned public works such as water supplies, sewerage, drainage, electricity supplies, roads, railways or port works and operations.

Zoning.

13. The State will ensure that land the subject of the mineral or any other lease or of any licence or easement granted under or pursuant to statute or this Agreement and land of any other tenure (including freehold) used or occupied by the Joint Venturers for any purpose contemplated by this Agreement shall during the currency of this Agreement be and remain zoned so that the operations of the Joint Venturers hereunder may be undertaken and carried out thereon and shall not except as provided by this Agreement be made subject to any such restriction as to its use as would prevent or unreasonably hinder the Joint Venturers in carrying out the operations contemplated by this Agreement whether the restriction be by way of zoning regulation by-law or other exercise of statutory power by the State or any local or other authority.

No dis-  
crimination  
as to Rates  
or Other-  
wise.

14. Except as provided by this Agreement the State will not impose nor permit nor authorise any of its agencies or instrumentalities or any local or other authority to impose any discriminatory taxes rates or charges of any nature on or in respect of the titles property or other assets products materials or services used or produced by or through the Joint Venturers in the conduct of their operations under this Agreement and the State will not take or permit any other authority of the State to take any other discriminatory action whether of a like nature to the foregoing or not that would deprive the Joint Venturers of the full enjoyment of the rights conferred by this Agreement.

Rating.

15. (1) Subject to subclause (2) of this Clause the State will ensure that notwithstanding the provisions of any Act of the said State or anything done or purported to be done under any such Act the valuation of all lands (whether of a freehold or leasehold nature) held for the purposes of this Agreement shall for rating purposes be the unimproved value of those lands.

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(2) The provisions of subclause (1) of this Clause do not apply to the land appurtenant to a permanent dwelling house occupied for the purposes of a permanent dwelling house nor land upon which there exist any improvements that are used in connection with a commercial undertaking not directly related to the production of bauxite or alumina all of which lands shall be subject to the Local Government Act, 1960.

(3) Nothing in subclauses (1) and (2) of this Clause affects the Joint Venturers' right of election pursuant to Section 533B of the Local Government Act, 1960.

16. The State agrees that having regard to the particular nature of the industry proposed to be established by the Joint Venturers under this Agreement and subject to the performance by the Joint Venturers of their obligations hereunder the State will not resume or suffer or permit to be resumed by any State instrumentality or by any local or other authority of the said State any 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 Joint Venturers' activities nor will the State create or grant or permit or suffer to be created or granted by an 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  
of Land.

17. The State will—

- (a) on application of the Joint Venturers made at any time and from time to time grant or cause to be granted to the Joint Venturers such machinery and tailings leases and other leases rights mining tenements easements reserves and licences (including those for clay limestone stone gravel soil timber and other minerals or materials) under the provisions of the Mining Act or the Land Act modified and amended as provided by Clause 4 as may be reasonable having regard to the requirements of the Joint Venturers under this Agreement;
- (b) as and when required by the Joint Venturers (but without prejudice to the provisions hereof relating to the proposals referred to in Clause 6) consent where and to the extent that the Minister considers to be reasonably justified to the Joint Venturers making improvements for the purposes of their operations hereunder on the land comprised in any lease granted by the

Other  
Leases and  
Improvement  
of  
Leases.

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State to the Joint Venturers pursuant to this Agreement but the Joint Venturers will except as otherwise provided herein also obtain any other consents legally required in relation to any such improvements.

Conditions  
Relating to  
Crown  
Land.

18. (1) The Joint Venturers will not cut and remove from any Crown land or State forest any forest produce in excess of those or that reasonably necessary to permit them to conduct their operations under this Agreement and will by means of contour ploughing, concrete or earth sills, diversion channels, settling ponds, drainage or other approved method as the case may require take all reasonable steps to prevent damage by water runoff and for the purposes of this subclause any such Crown land shall be deemed State forest and the Conservator shall have jurisdiction over it accordingly.

(2) The Joint Venturers will from time to time as the occasion may require give to the Conservator of Forests on behalf of the State at least six (6) months prior notice of their intention to enter upon any area of State forest or Crown land and to cut and remove forest produce to displace overburden or otherwise affect the nature of the terrain and every such notice shall be accompanied by a map of the area setting out particulars and details of the proposed operation and the Conservator, unless he has good and sufficient reason to the contrary shall grant to the Joint Venturers any permit or licence for those purposes subject to the usual conditions but where the entry is for test purposes only the period of the notice required by this subclause is reduced to thirty (30) days.

(3) The Conservator of Forests may—

- (a) before the Joint Venturers commence operations in any area in respect of which notice has been given pursuant to subclause (2) of this Clause cut and remove therefrom any merchantable timber or other forest produce; and
- (b) direct the manner of and places for the disposal of forest produce and storing of overburden removed from or displaced in the area as may be reasonable in the circumstances and the Joint Venturers will give effect to every such direction.

(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 of roads or tracks thereon and may from time to time give directions regarding the routes by which ore or produce may be removed or taken

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through any part of the State forest and the Joint Venturers will give effect to every such direction but those directions shall not be given in respect of roads built by the Joint Venturers the Commissioner of Main Roads or any other statutory body other than the Forests Department.

(5) Subject to any prohibition or direction given pursuant to subclause (4) of this Clause and so long as the use of any road under the control of the Conservator of Forests does not result in undue damage to the forest or forest produce the Joint Venturers may use such roads as they may require and any resulting damage to Forests Department roads and tracks will be made good by the Joint Venturers to the satisfaction of the Conservator of Forests.

(6) The Joint Venturers will in their operations under this Agreement comply with and observe the provisions of the Bush Fires Act, 1954, and will take all such necessary precautions as may be required by the Forest Officer to prevent the occurrence or spread of fire within or adjacent to the area of the mineral lease.

(7) The Joint Venturers will from time to time at their own expense take such adequate measures as may reasonably be required by the Conservator of Forests for—

- (a) the progressive restoration and reforestation of the area disturbed;
- (b) the prevention of soil erosion;
- (c) the prevention of the formation of deep water pools and other hazards on the area that has been disturbed,

and in meeting those obligations the Joint Venturers will comply with the reasonable requirements of any relevant local authority but the Joint Venturers shall not be required to restore any land to its original contour.

(8) The Joint Venturers will as soon as practical after the date hereof and at their own expense and in consultation with the Conservator establish a trial area or areas not exceeding in the aggregate five (5) acres for the purpose of investigating the most practical and effective methods of the revegetation of mined areas.

19. (1) The Joint Venturers will as from the commencement of mining operations or from the first day of January, 1975, whichever first occurs pay to the Conservator of Forests on behalf of the State compensation at the rate (subject to the succeeding provisions of this Clause) of two hundred and fifty dollars (\$250) per acre for the area of Crown land of which the vegetation has been destroyed by or in the course of the Joint Venturers' mining operations.

Compensation to Conservator.

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(2) The Joint Venturers will make payments pursuant to subclause (1) of this Clause in advance in the month of January of each year on the basis of the area of Crown land on which it is proposed to destroy the vegetation during the ensuing year and any necessary adjustments in respect of that payment and the area on which the vegetation was in fact destroyed will be made in the month of January next following.

(3) The rate of compensation mentioned in subclause (1) of this Clause is determined having regard to the cost as at the first day of January, 1971, to the Conservator of Forests of the acquisition of one (1) acre of suitable land and of planting it with trees together with the estimated loss of royalty subsidy or grant and the increased costs of management in respect of each acre of growing timber so destroyed and the rate 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 or from the first day of January, 1975, whichever first occurs having regard to any increase or decrease in the Conservator of Forests' cost and the loss of royalty subsidy or grant aforesaid that has occurred since the date of this Agreement or the date of the immediately previous review as the case may be.

Mining on  
Private  
Lands.

20. (1) The Joint Venturers will not commence any mining or related operations for the purposes of this Agreement on privately owned land unless and until they have entered into a written agreement with the proprietor of the land for the purpose of providing for adequate restoration of the land after mining and that agreement has been approved by the Minister.

(2) The Joint Venturers will by means of contour ploughing, concrete or earth sills, diversion channels, settling ponds and drainage or other approved method as the case may require take all reasonable steps to prevent damage being caused to privately owned lands by water runoff and will by every reasonable means prevent soil erosion on those lands.

(3) The Joint Venturers will within thirty (30) days after ceasing to mine any area of privately owned land commence to restore the mined area in accordance with this Clause and continue to restore it until the restoration is completed to the satisfaction of the Minister who in considering any matter relating to such restoration shall have regard to the reasonable requirements of the relevant local authority.

(4) Notwithstanding any rule of law or provision of any agreement referred to in subclause (1) of this Clause to the contrary a reference to mining or mining operations

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in any such agreement shall be read and construed as including the restoration of any mined area and for that purpose and for the purposes of subclause (3) of this Clause the term "restoration" means the battering and smoothing of pit walls, the spreading of previously removed topsoil, the ground ripping and planting of vegetation of or in a mined area and the verb "to restore" has a corresponding meaning.

(5) Notwithstanding the provisions of subclause (3) of this Clause where the owner of the privately owned land satisfies the Minister that the excavation of any mined area is capable (with or without modification) of being used and should be used for the purpose of water storage or other approved purpose the Minister will by notice to the Joint Venturers relieve them of the obligation imposed by that subclause with respect to that particular mined area.

(6) For the purposes of subclauses (2), (3) and (5) of this Clause, a reference to privately owned land shall be construed as including land owned by the Joint Venturers.

21. (1) The Joint Venturers recognise the necessity of avoiding any deleterious effect on catchment areas and water emanating from catchment areas that are subject to mining or other operations by them and will collaborate with the State in conducting and the State will conduct an experimental programme to study the effect of mining operations and restoration procedures on the quantity and quality of water runoff.

Restrictions  
on the Use  
of Catch-  
ment Areas.

(2) The State will prepare detailed plans for the conduct of the experimental programme mentioned in subclause (1) of this Clause and effect shall not be given to those plans or any of them until they have been mutually agreed upon by the parties.

(3) The experimental programme provided by this Clause shall be commenced after agreement to the plans for its conduct as provided by subclause (2) of this Clause and shall be continued over a period of ten (10) years and the Joint Venturers will pay the cost not exceeding thirty thousand dollars (\$30,000) of establishing the programme and a proportion not exceeding one half of the annual operating costs of the programme to be mutually agreed by the parties and the State may on terms to be then mutually agreed by the parties extend the conduct of the experimental programme for such further period or periods as it considers necessary to complete the study.

(4) The Joint Venturers may prior to the completion of the experimental programme provided by this Clause mine such of the areas outside, but adjacent to, the mining area in respect of which they have secured private mineral rights but not exceeding in any one year of the first ten (10) years of the programme such area in the aggregate as the parties may from time to time mutually agree.

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(5) The State having regard to the results of the experimental programme provided by this Clause or such other relevant information as may from time to time be available to it or both may in its discretion determine reasonable measures to be taken by the Joint Venturers at their expense in the conduct of any mining operations or restoration procedures and the Joint Venturers will give effect to every such determination.

(6) The Joint Venturers will not mine or make any use whatever of any part of the land coloured red in the plan marked "C" referred to in the interpretation "mining area" being part of the land in the Helena River catchment area until such time as the State notifies the Joint Venturers that it approves of their mining or otherwise making use of that land or part of it and then only to the extent and subject to any conditions stipulated in the notice.

Products to  
be Trans-  
ported by  
Rail.

22. Subject to the by-laws made under the Government Railways Act, 1904, insofar as those by-laws are not inconsistent with this Agreement, the Joint Venturers will consign at their own risk, and the State will cause the Railways Commission to transport, by rail—

- (a) all the Joint Venturers' requirements of bauxite to the refinery from sites within the mining area that the Commission is prepared to serve;
- (b) all alumina produced from the refinery to the bulk storage area; and
- (c) all the Joint Venturers' requirements of caustic soda from the bulk storage area to the refinery.

Construc-  
tion of  
Railways.

23. (1) The Joint Venturers will by notice to the State given within two (2) years after the date on which the last of the proposals referred to in Clause 6 is approved or determined require the State to cause the Railways Commission at the expense of the Joint Venturers to—

- (a) convert to dual gauge and upgrade that portion of the Midland Railway extending from and including Millendon Junction to the refinery site and construct suitable standard gauge connections and sidings at the refinery site;
- (b) construct a standard gauge railway from about mileage 20 on the double dual gauge line of the Millendon Junction to Avon yard section of the Western Australian Government Railways to connect to the Midland Railway at about mileage 20; and
- (c) construct a standard gauge railway from about mileage 29 on the double dual gauge railway of the said Millendon Junction to Avon yard

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section to a crushing plant site to be agreed by the parties and to a suitable loading siding or sidings;

and the Joint Venturers may by further notice to the State given at any time after that hereinbefore referred to in this subclause require that the Railways Commission at the expense of the Joint Venturers construct to a site at which the crushing plant is proposed to be relocated an extension or further extension of the railway referred to in paragraph (c) of this subclause or of any previous extension of that railway and a suitable loading siding or sidings.

(2) The State will on receipt of any notice given pursuant to subclause (1) of this Clause and with all reasonable expedition and in any event within two (2) years after the receipt of the notice cause the Railways Commission to execute the railway construction and or upgrading or both required by the notice.

(3) The construction and upgrading required under this Clause shall be carried out to the specifications of the Railways Commission but in deciding on any such specifications the Railways Commission shall have due regard to the requirements of the Joint Venturers and consult them as to those requirements.

(4) The State will maintain any railway upgraded or constructed pursuant to this Clause (other than for sidings) and at its own expense maintain and service all locomotives brakevans and wagons necessary and used for the purposes of this Agreement and the Joint Venturers will at their expense maintain all sidings.

(5) The provisions of Section 96 of the Public Works Act, 1902, do not apply to any railway constructed pursuant to this Agreement.

24. The Joint Venturers will not less than eighteen (18) months before their first requiring the use of rail transport notify the Railways Commission of their requirements in that regard (including expected or provisional annual tonnages to be hauled) in sufficient detail to the satisfaction of the Railways Commission to enable it to make arrangements to meet those requirements and the Joint Venturers shall give such prior notice of any change in their requirements as is reasonable in the circumstances.

Requirement in Rail Transport to be Notified.

25. Except as otherwise provided in Clause 23 the Joint Venturers will at their own expense provide and maintain all such sidings shunting loops spurs and other connections as may be required solely for their own operations under this Agreement and will provide and maintain loading and unloading facilities sufficient to meet train operating

Ancillary Rail Facilities.

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requirements of the Railways Commission and terminal equipment (including weighing devices) together with personnel sufficient to ensure the proper operation and rate of operation of the loading and unloading facilities and terminal equipment.

Provision  
of Wagons.

26. (1) The Joint Venturers will—

(a) provide sufficient wagons including spare wagons (of a design and to a specification approved by the Railways Commission) to carry their requirements in bauxite and caustic soda to the refinery and alumina to the bulk storage area and will provide the necessary replacements therefor other than such as have been made necessary by the wilful misconduct of the Railways Commission; and

(b) if so required by the Railways Commission provide sufficient locomotives and brake vans (of a design and to a specification approved by the Railways Commission) for the transport of their bauxite caustic soda and alumina and will lease those locomotives and brake vans to the Railways Commission upon such terms and conditions as the parties may mutually agree;

and the Railways Commission shall not (except in the case of emergency and then only to the extent that the Joint Venturers' operations are not thereby affected) use for any purpose other than the foregoing wagons provided pursuant to this subclause and shall clean and render suitable for use by the Joint Venturers any wagons so used.

(2) The Joint Venturers will ensure that all wagons are properly trimmed and are loaded to the prescribed tonnages.

Freight  
Rates.

27. The Joint Venturers will pay freight in respect of all bauxite caustic soda and alumina carried in trains operated by the Railways Commission pursuant to this Agreement at the appropriate freight rate set out in the schedule of rates in the First Schedule by monthly payments in the month next following the month of haulage on the basis of the expected or provisional annual tonnage notified pursuant to Clause 24 subject to annual adjustment after the expiration of each year with regard to the tonnages actually carried and in ascertaining that tonnage railway weighbridge weights or such other method as may be mutually agreed by the parties shall be used but in no event shall allowance be made for moisture in the material carried.

Construc-  
tion of  
Roads.

28. (1) The State will at the expense of the Joint Venturers acquire or resume such land as may be required and construct or cause to be constructed any road reason-

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ably required by them to gain access to any land in order to carry out their operations under this Agreement and the alignment and general standard of any such road shall be such as is acceptable to the State.

(2) The Joint Venturers may construct and use private roads within the area of the mineral lease but—

(a) the plans and specifications for any such road shall be approved in advance by the State and shall where required by the State provide for grade separation at all intersections with public roads and railways;

(b) the Joint Venturers will—

(i) minimise the extent of forest clearing required for road alignments and give to the Conservator of Forests six (6) months prior notice of their intention to build any road;

(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 will 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.

29. (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 result in excessive damage or deterioration of any public road (other than fair wear and tear) the Joint Venturers will 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.

Use of  
Public  
Roads.

(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

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by the Commissioner of Main Roads to be warranted following an investigation, the Joint Venturers will pay to the State (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or part of the cost involved) the total cost of providing the increased level of protection.

Provisions  
for Disposal  
of Red Mud.

30. (1) The Joint Venturers will make adequate provision for the disposal of red mud over the period of the projected life of the refinery and will submit sufficient details pursuant to subclause (1) of Clause 6 of the land secured by them for the purpose of red mud disposal to enable the Minister to be satisfied that the provision so made is in fact adequate.

(2) The Joint Venturers will submit sufficient details pursuant to subclause (1) of Clause 6 of their red mud disposal method and procedures and will provide all necessary information to enable the Minister to be satisfied that—

- (a) all red mud produced at the refinery will be confined to the land mentioned in subclause (1) of this Clause;
- (b) all red mud and associated liquids will be contained in an impermeable barrier of a design to be approved by him; and
- (c) provision is made for the restoration or reclamation of the land so used as provided by subclause (3) of this Clause and by Clause 31.

(3) The Joint Venturers will design each individual red mud disposal area within the refinery site with a view to the progressive establishment of its productive agricultural, light industrial or other use in keeping with its locality and will within two (2) years after the production date submit to the Minister proposals in that regard giving—

- (a) drawings and details of a typical individual red mud disposal area showing the manner in which the Joint Venturers propose to restore or reclaim such an area and the drawings shall include particulars of soil cover, surface drainage, surface contour and vegetation; and
- (b) comprehensive drawings of the refinery site showing—
  - (i) the proposed spatial arrangement of the individual red mud disposal areas within the total red mud disposal area;
  - (ii) the order of development of the several individual areas; and
  - (iii) sufficient details (including contour lines, drainage pattern, soil cover and vegetation of the proposed surface of

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the total disposal area after filling and restoration) to satisfy the Minister that the restored disposal area will have a pleasing contour and appearance, be secure against erosion, be capable of being put to subsequent productive use and be acceptable to the relevant local authority;

and the provisions of Clause 6 relating to the consideration of proposals by the Minister apply with such adaptations as may be necessary to proposals submitted under this sub-clause.

(4) The Joint Venturers will—

- (a) make provision to the satisfaction of the Minister for the monitoring of ground waters beneath and adjacent to each individual red mud disposal area;
- (b) once in every three (3) months (or at such more frequent intervals as the Minister may from time to time require) after commencing to deposit red mud in an area conduct tests for the presence in the waters mentioned in paragraph (a) of this subclause of sodium carbonate, sodium hydroxide and other pollutants that the Minister may reasonably expect to be associated with the disposal of red mud; and
- (c) continue the tests as required by paragraph (b) of this subclause in respect of each area so long as it is being used for the disposal of red mud and thereafter for such period as the Minister may require.

(5) The State may from time to time conduct tests of ground waters and streams beneath and adjacent to red mud disposal areas and where pollutants arising from the areas are found to be present (whether on test by the State or the Joint Venturers) the State may require the Joint Venturers to take and they will forthwith take corrective action at their own expense to prevent further seepage failing which the necessary action may be taken by the State at the expense of the Joint Venturers.

(6) Notwithstanding the foregoing provisions of this Clause the Joint Venturers will from time to time during the operation of this Agreement examine and investigate new techniques for the disposal of red mud and report thereon to the State.

31. The Joint Venturers will in respect of every red mud disposal area that has reached the end of its operational life proceed as soon as it may be practicable and safe to do

Restoration  
of Red Mud  
Disposal  
Areas.

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so to restore or reclaim the area in accordance with their proposals as submitted and approved pursuant to subclause (3) of Clause 30.

Sale of  
Land  
Acquired  
and Used  
for Red  
Mud Dis-  
posal.

32. (1) The Joint Venturers will not sell any land that has been acquired by them for the purpose of, and that has been used for the disposal of, red mud unless it has been restored or reclaimed in accordance with the requirements of Clause 31 and then not without having first offered it for sale to the State nor (other than to the State) within twenty-eight (28) days of any such offer having been made but should the State notify the Joint Venturers that it proposes to acquire any part of the land for the purpose of its planned disposal for industrial purposes the Joint Venturers will sell to the State at fair market value such part of the land as they do not reasonably require for their own industrial purposes which may include the reprocessing of the red mud.

(2) Where the State elects not to acquire the land or a part of the land to which subclause (1) of this Clause applies—

(a) the Minister may notwithstanding any Act of the said State or rule of law to the contrary lodge an absolute caveat against the registration of any dealing in the land or in the part of the land that the State does not acquire and may at any time withdraw a caveat so lodged; and

(b) the Joint Venturers may sell the land that the State elects not to acquire but (unless the caveat is sooner withdrawn) a dealing in land that is subject to a caveat lodged by virtue of paragraph (a) of this subclause shall not be accepted for registration unless—

(i) the dealing is subject to a restrictive covenant which the Joint Venturers are authorised by this subclause to impose limiting the use of the land by the transferee and his successors in title to such purposes as the Minister shall stipulate and subjecting its use by him and them to such conditions as the Minister shall impose and the covenant is expressed in the dealing;

(ii) the Minister's consent to the dealing is noted thereon; and

(iii) the caveat is withdrawn.

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(3) The provisions of Section 129B of the Transfer of Land Act, 1893, do not apply to a restrictive covenant imposed pursuant to subclause (2) of this Clause and such a covenant may be removed with the consent of the Minister and not otherwise.

(4) The Minister shall upon being satisfied that the covenant expressed in a dealing mentioned in subclause (2) of this Clause conforms to paragraph (b) of that subclause note his consent on the dealing and allow the parties or one of the parties to the dealing to receive a withdrawal of the caveat in that subclause mentioned but the withdrawal of the caveat shall have no force or effect unless the dealing to which the Minister has consented is registered.

33. The Joint Venturers will dispose of all waste materials other than red mud generated within the refinery site in such a manner as to prevent the pollution of rivers ground water and underground water and will comply with any reasonable direction that the Minister may give with regard to any such waste materials.

Disposal of  
Other Waste  
Materials.

34. The Joint Venturers will drain the refinery site and related facilities and dispose of the drainage in accordance with plans and specification submitted by them to and approved by the Minister.

Drainage.

35. (1) The State will cause the Metropolitan Water Supply Board to supply to the Joint Venturers potable water for their operations on the refinery site in quantities not exceeding one and one-half million (1,500,000) gallons daily and the Joint Venturers will to that end pay to the State an amount sufficient to enable the State to construct a pipeline and ancillary works of a size appropriate for the supply of such a daily quantity to the refinery site.

Water.

(2) The Joint Venturers will give to the State not less than twelve (12) months notice of their first requiring water supplies and the State will as soon as may be practicable after the receipt of the notice and with all reasonable expedition construct the pipeline and ancillary works mentioned in subclause (1) of this Clause and may contract them or any of them to a greater capacity than that specified by that subclause but in that event the cost of the system as so enlarged will be shared by the parties in such manner as they may mutually agree.

(3) The State will if so required by the Joint Venturers issue a licence for the taking by them of such quantity of underground water as may reasonably be needed for their construction works until such time as the supply by the Metropolitan Water Supply Board is established.

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(4) To meet any requirements of the Joint Venturers in excess of one and one-half million (1,500,000) gallons daily the parties propose that the quantity of water to be supplied from the Metropolitan Water Supply Board will be supplemented by water from an underground source within the refinery site or from such other site, source or sources as may be approved by the State which approval shall not unreasonably be withheld and in order to investigate the availability and suitability of water from any such subterranean source or sources the Joint Venturers will employ experienced ground water consultants and establish such bores as the parties agree are necessary for the purpose and supply to the State a copy of the consultant's report and such other details of the investigations as the State may require or if both parties agree the State will conduct the investigations at the Joint Venturers' cost.

(5) If the investigations mentioned in subclause (4) of this Clause establish the availability of suitable subterranean sources, the State will grant to the Joint Venturers licence to draw water from certain of those sources but may impose a limit on the amount that may be taken and may from time to time stipulate the amount that may be taken, even though the stipulation has the effect of reducing any such limit and the licence may be revoked subject to six (6) months notice at any time without compensation if the State considers it would be desirable for water conservation purposes, water management purposes or both that sources of water licensed to the Joint Venturers be controlled and operated by the State and in the event of the State assuming that control and operation such part of the Joint Venturers' potable water requirements up to three million (3,000,000) gallons per day as exceeds the one and one-half million (1,500,000) gallons daily mentioned in subclause (1) of this Clause (to the extent that such excess part is available) will be supplied by the State at a fair price to be negotiated, having regard to the capital costs already incurred and the operating costs being incurred by the Joint Venturers in obtaining water pursuant to the provisions of this Agreement at the time of the revocation of the licence and to all other relevant matters.

(6) If at any time the Joint Venturers have made diligent efforts to locate suitable sources but their reasonable water requirements cannot be met from sources then available, the State, in so far as it is reasonably practicable, will having due regard for the growing demands from the Perth Metropolitan Area act promptly to meet those requirements and the Joint Venturers will contribute a fair and reasonable proportion of the cost of any works involved.

(7) The price to be paid to the State by the Joint Venturers for water supplied by the State pursuant to subclause (1), and (unless otherwise agreed) subclause (6)

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of this Clause shall be at the rate ruling from time to time for water supplied for industrial purposes by the Metropolitan Water Supply Board pursuant to the provisions of the Metropolitan Water Supply Sewerage and Drainage Act, 1909.

(8) Subject to the conduct of adequate investigations on behalf of the Joint Venturers by an experienced consultant whose report will be submitted by them to the State, the State will issue a licence to the Joint Venturers for the development of a water supply from an agreed source near the crushing and loading sites and the water used from that source—

- (a) will (unless otherwise mutually agreed) be limited to requirements for boring blasting dust suppression and other like minor uses up to a maximum of one hundred and ten thousand (110,000) gallons in any one day; and
- (b) will not be used for sluicing or other hydraulic mining methods.

(9) Any reference in 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 apply to any water source developed for the purpose of the Joint Venturers under this Agreement as though the water sources were in a proclaimed area north of the twenty-sixth parallel of south latitude.

(10) The Joint Venturers will so far as is reasonably practicable recirculate on the refinery site the non-saline water used for cooling and processing purposes there.

36. The State will cause the State Electricity Commission Electricity. within six (6) months of any request in writing from the Joint Venturers to supply fifty (50) cycle electric power in such quantities and under the same terms and conditions as the Commission would be prepared to supply electric power to any other consumer with similar technical and general requirements for electric power in the same areas.

37. (1) The Joint Venturers are authorised to generate Electricity  
Generated  
by Joint  
Venturers. electricity at the refinery site and at the crushing and loading site for their own use there as provided by subsection (3) of Section 7 of the Electricity Act, 1945, but electricity so generated shall not be sold to any other person or be transmitted outside any of those sites unless the State Electricity Commission having determined that supply considerations warrant it approves of the power being so transmitted in which event the power line used for the transmission and its technical details shall be such as are approved by the Commission.

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(2) Electricity generated pursuant to subclause (1) of this Clause may be used for the operation of any plant on the refinery site and the crushing and loading sites as the case may be but the Joint Venturers will not without the prior approval of the Commission use any power so generated at any time during which their system is inter-connected with the State Electricity Commission's power system there and where that approval is given will comply with any operating requirements of the Commission to which its approval may be subject.

Wharf.

38. (1) The Joint Venturers will in accordance with the proposals as finally approved or determined under Clause 6 at their expense but subject to the supervision of the Fremantle Port Authority construct a wharf in the Fremantle Outer Harbour either by way of an extension in a southerly direction of the Fremantle Port Authority's existing bulk cargo jetty in that harbour or in such other suitable alternative location as may be mutually agreed.

(2) The Joint Venturers will at their expense install on the wharf a shiploader and conveyor capable of loading alumina into ships at a rated capacity of not less than three thousand (3,000) tons per hour and a pipeline in accordance with the proposals as finally approved or determined.

(3) Notwithstanding any Act of the said State or rule of law to the contrary the property in the wharf shall be vested in the Joint Venturers and the State will cause the Fremantle Port Authority to grant to the Joint Venturers such licences or easements of support or otherwise or both in respect of the wharf as may be necessary or required for the construction of the wharf and for the purposes of their operations under this Agreement.

(4) The Joint Venturers will grant and the State will cause the Fremantle Port Authority to take a lease of the wharf on such terms and conditions including an option to purchase the wharf as may, having regard to the requirements of the Fremantle Port Authority, be agreed between the State and the Joint Venturers.

(5) The Joint Venturers shall have access to and over the wharf and approach jetty at all reasonable times for the purpose of installing and testing the shiploader and other facilities and thereafter to and over the wharf and approach jetty for the purposes of their operations under this Agreement.

(6) The State will cause the Fremantle Port Authority at the Authority's expense during the currency of this Agreement to maintain the wharf in good order and condition and operate the wharf so as to enable the Joint Venturers to conduct their operations.

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(7) The Joint Venturers may from time to time request, and in that event the State will cause, the Fremantle Port Authority during such period within the currency of this Agreement as the Joint Venturers may request to maintain the shiploader and other facilities in good order and condition or to operate them or both so as to enable the Joint Venturers to conduct their operations; and during any period in which the Fremantle Port Authority is required to maintain the shiploader or other facilities or all of them the cost of any maintenance (including replacements) shall be borne, in the first instance, by the Authority, but all those costs together with all costs of operating the facilities incurred by the Authority shall be recovered by it by way of the handling charges provided by this Agreement.

(8) The Joint Venturers will in relation to their bulk cargoes that are shipped from or discharged upon over or under the wharf, pay to the Fremantle Port Authority wharfage charges on all outward bulk cargoes at the rate prescribed for outward bulk cargoes in the Fremantle Port Authority Regulations from time to time (which at the date of this Agreement is forty (40) cents per ton) and on inward bulk cargoes at the rate prescribed in those Regulations for inward bulk raw materials imported for manufacture (which at the date of this Agreement is thirty(30) cents per ton) and where applicable will further pay to the Fremantle Port Authority such handling charges as are incurred by it in the operation and maintenance of the shiploader and other facilities as provided for by subclause (5) of this Clause but handling charges shall not be payable for inward bulk cargoes discharged through pipelines.

(9) The wharfage charges in respect of inward and outward bulk cargoes shall not be varied unless the appropriate rates prescribed in the Fremantle Port Authority Regulations for like commodities are increased or decreased as the case may be and in such event the wharfage charges will be proportionately increased or as the case may be decreased.

(10) Charges against ships into which the outward bulk cargoes of the Joint Venturers are loaded or from which their inward bulk cargoes are discharged shall be levied at rates not in excess of the rates prescribed generally in the Fremantle Port Authority Regulations from time to time for ships using the Port, for Tonnage Rates and Pilotage and in respect of any other services rendered by the Fremantle Port Authority.

(11) Except as provided by this Clause no charges or dues (except for services actually rendered at the request of the Joint Venturers) shall be levied by the Fremantle Port Authority on outward and inward cargoes belonging to the Joint Venturers or consigned to or by them and shipped from or discharged upon, over or under the wharf.

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(12) If in the opinion of the Minister the tonnage of bulk cargoes passing over the wharf, which at the date of this Agreement is intended to berth and load a vessel of a maximum of approximately fifty thousand (50,000) dead weight tons, justifies the upgrading of the wharf or the berth or both to accommodate larger vessels the State will cause the wharf or berth or both to be so upgraded subject to the Joint Venturers, if so required by the State, contributing a fair and reasonable amount to be mutually agreed to the cost of the upgrading and the Joint Venturers may at any time and from time to time request the State to upgrade the wharf or the berth or both at the Joint Venturers' expense and thereupon the State will cause the wharf or the berth or both to be upgraded accordingly.

(13) The parties recognise that to ensure the continuity of the operation of the Joint Venturers' plant and the adequacy of the bulk storage facilities a regular shipping programme for the Joint Venturers' inward and outward cargoes is vital, and the State will cause the Fremantle Port Authority to reserve to the Joint Venturers preference in the berthing of ships at the wharf to load or discharge the Joint Venturers' outward or inward bulk cargoes within reasonable limits of any predetermined shipping programme but to the extent that the wharf is not so required the Fremantle Port Authority shall be empowered to use the wharf for the berthing of other ships and the handling of other cargoes but only to the extent that such other usage does not unduly or unreasonably affect that preference or unduly interfere with the Joint Venturers' operations.

(14) The Joint Venturers may if the use of the ship-loader and other facilities does not unduly interfere with their operations permit the shiploader and other facilities to be used by others for the handling of cargoes not incompatible with the Joint Venturers' bulk cargoes upon such terms and conditions, including charges, as shall from time to time be determined by the Fremantle Port Authority and any charges recovered shall be allocated between the Joint Venturers and the Fremantle Port Authority in such proportions as they may mutually agree.

Environ-  
mental  
Protection.

39. (1) Nothing in this Agreement shall be construed as exempting the Joint Venturers from compliance with any requirement in connection with protection of the environment arising out of or incidental to the operations of the Joint Venturers hereunder that may be made by the State or by 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.

(2) The Joint Venturers will not carry out any operations nor erect any structures nor clear nor construct any roads within the boundaries of the Avon Reserves numbered 30191 or 30192 nor without the consent of the Minister within any

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other reserve created under the Land Act in the mining area and the State may in its discretion prohibit any mining or ore transportation operations that are likely to threaten the natural state of Walyunga National Park.

(3) The Joint Venturers will in respect of Reserves numbered 27620 and 27621—

- (a) sample and test the waters contained therein to the satisfaction of the Minister and for such time as the Minister may require and submit the test results to the Minister;
- (b) join with the State in a programme designed to monitor on a continuing basis the condition and habitat of the flora and fauna thereon and contribute a reasonable share to be mutually agreed between the parties of the cost of the said programme; and
- (c) without limiting the provisions of paragraphs (a) and (b) do all things necessary to ensure that the flora and fauna thereon are not deleteriously affected by the operations of the Joint Venturers hereunder.

40. The Joint Venturers will at all times comply with and observe the provisions of the Metropolitan Water Supply, Sewerage and Drainage Act, 1909, the Country Water Supply Act, 1947, and all other Acts, regulations and by-laws for the time being having application to any water reserve or catchment area within the mining area and upon any land used by them in their operations including the refinery site and red mud disposal areas and nothing in this Agreement shall be construed so as to derogate from the provisions of those Acts, regulations or by-laws or their application as mentioned in this subclause.

Compliance  
with Acts  
Relating  
to Water  
Reserves.

41. The Joint Venturers will—

- (a) as far as reasonably and economically practicable use labour available within the said State and give preference to Western Australian suppliers manufacturers and contractors in the placement of orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere; and
- (b) in calling 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 quote or otherwise be properly considered for such works materials plant equipment or supplies.

Use of Local  
Labour and  
Materials.

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Common-  
wealth  
Consent.

42. The Joint Venturers will from time to time make all necessary applications to the Commonwealth or Commonwealth constituted agency, authority or instrumentality that may be concerned for the grant to the Joint Venturers of any licence required under Commonwealth law for the export of alumina or bauxite.

Royalties  
on Alumina  
during First  
Seven Year  
Period.

43. (1) Subject to any increase or decrease as provided by subclause (2) of this Clause the Joint Venturers will pay to the State a royalty of twenty-six and one-quarter (26.25) cents per ton on all alumina produced at the refinery during the period expiring at the end of seven (7) years from the production date.

(2) The royalty of twenty-six and one-quarter (26.25) cents mentioned in subclause (1) of this Clause shall increase or decrease proportionately to the increase or decrease in the mean quarterly world selling price of aluminium above or below five hundred and twenty-five dollars (\$525) per ton and for the purposes of this subclause the mean quarterly world selling price per ton of aluminium for any quarter is that provided by subclause (4) of Clause 8.

(3) During the period referred to in subclause (1) of this Clause the Joint Venturers will pay to the State a royalty of fifty(50) cents per ton on all special grade bauxite mined by the Joint Venturers within the areas of the mineral lease.

(4) In addition to, and without affecting, the royalties payable pursuant to subclauses (1) and (3) of this Clause the Joint Venturers will pay to the State in respect of the first eight hundred thousand (800,000) tons of alumina produced at the refinery—

(a) during a period commencing on the production date; and

(b) during a period commencing on the fourth anniversary of the production date

a royalty of sixty-five (65) cents per ton payable in each case within thirty (30) days after the date on which that tonnage is attained in the aggregate; but the foregoing provisions of this subclause shall not take effect in respect of either period mentioned in paragraphs (a) and (b) of this subclause if prior to the commencement of the period the Joint Venturers have elected to make and have made a donation of not less than five hundred thousand dollars (\$500,000) to a public hospital in the said State or a hospital in the said State which is carried on by a society or association otherwise than for the purposes of profit or gain to the individual members of that society or association.

(5) Notwithstanding the provisions of subclauses (1) and (3) but without affecting the provisions of subclause (4) of this Clause or any of them if the Joint Venturers

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satisfy the Minister for Mines that any tonnage of alumina produced by them at the refinery was so produced from bauxite mined on and recovered from privately owned land in respect of which the mineral rights are vested in a person other than the Crown and royalty has been paid to that person in respect of the bauxite at a rate not less than that payable to the State then the State will repay to the Joint Venturers the amount of any royalties paid or (as the case may require) will remit the amount of the royalties otherwise payable in respect of that tonnage.

44. After the expiration of the period referred to in subclause (1) of Clause 43 the Joint Venturers will pay to the State on all special grade bauxite mined by the Joint Venturers within the area of the mineral lease and subject to subclause (5) of Clause 43 on all alumina produced by them at the refinery royalties at the relevant rates specified in the regulations under the Mining Act but the amount payable by way of royalty on each ton of alumina will 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 subject to the provisions of subclause (2) of Clause 43 in no case will the rate of royalty on alumina be less than twenty-six and one-quarter (26.25) cents per ton.

Royalty on  
Alumina  
after First  
Seven Year  
Period.

45. After the production date, before the fifteenth day in each of the months of January, April, July and October in each year the Joint Venturers will furnish to the Minister for Mines a return of all bauxite and alumina 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 calculations of the royalty payable thereon and will within thirty (30) days after the expiration of each such quarterly period pay the State the amount of royalty due and payable pursuant to subclauses (1) and (3) of Clause 43 in respect of that quarter.

Returns and  
Payment of  
Royalties.

46. The Joint Venturers will permit the Minister for Mines or his nominee at all reasonable times to inspect their records relative to the quantities of bauxite or alumina produced under this Agreement 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 bauxite or alumina that may affect the amount of royalty payable hereunder.

Inspection.

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Bauxite for  
Alumina  
Only.

47. Except with the consent of the Minister no bauxite mined by the Joint Venturers (other than special grade bauxite) within the area of the mineral lease will be used in any way other than for the production of alumina (or for other secondary processing) within the said State.

Smelter.

48. (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 once in every twelve (12) months to inform the State fully in writing as to the progress and results of such investigations.

(2) The State may if it so requires also undertake the studies mentioned in subclause (1) of this Clause and for that purpose the Joint Venturers will provide the State with such information as it may reasonably require but the Joint Venturers will not be obliged to supply technical information of a confidential nature with respect to processes that have been developed by the Joint Venturers or any associated company or acquired from other sources and that is not generally available to the aluminium industry, or financial and economic information of a confidential nature that, if disclosed, could unduly prejudice the contractual or commercial arrangements between the Joint Venturers and third parties.

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

(4) If the Joint Venturers are unwilling or fail to establish the smelter as provided in subclause (3) of this Clause the State may negotiate with any one third party to establish a smelter on terms and conditions not more favourable on the whole to the third party than the terms it has offered to the Joint Venturers and in that event the Joint Venturers will if so required and if it is practicable to do so having regard to their existing contracts for sale of alumina and subject to subclause (5) of this Clause supply the third party's requirements for alumina from the existing plant for a reasonable period and at a reasonable price which will have regard to the prevailing free world prices from time to time for sales between parties at arms length but not including prices for alumina sold or offered for sale at distressed prices or at prices resulting from dumping or subsidising.

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(5) Where, in order to meet the requirements for alumina of a third party, pursuant to subclause (4) of this Clause, the Joint Venturers are obliged to install additional plant to provide a greater capacity or to hold more reserves of economically extractable bauxite than would otherwise be required for their own needs, or both, the reasonable price of alumina shall, for the purposes of that subclause, be such as will (after meeting depreciation and all operating costs) provide a reasonable return on the capital invested in constructing the additional plant or in providing those reserves; and, in any event, the Joint Venturers shall not be required to supply the third party with an annual quantity of alumina greater than one hundred thousand (100,000) tons during the first year after the establishment of that party's smelter and thereafter more than such progressively increasing annual quantities as will provide two hundred thousand (200,000) tons during the fifth and every succeeding year during the continuance of this Agreement after the establishment of the smelter.

49. (1) This Agreement is deemed to be made subject to Delays. any delays in the performance of obligations under this Agreement and to the temporary suspension of continuing obligations hereunder that may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of those 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 lock-outs 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 inability to profitably sell alumina or factors due to overall world economic conditions or factors that could not reasonably have been foreseen but the party whose performance of obligations is affected by any of those causes will minimise the effect of them as soon as may be practicable after their occurrence.

(2) On the happening of any event specified in this Clause that in the opinion of the Joint Venturers may delay the performance by them of an obligation that under this Agreement is to be performed by them within a specified time the Joint Venturers will promptly give notice to the Minister of the event and likely delay and the Minister will thereupon grant such extension of time for the performance of the obligation as shall in all the circumstances be fair and reasonable and where the Joint Venturers object to the decision of the Minister as to what is a fair and reasonable extension the matter will be referred to arbitration hereunder.

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Assignment. 50. (1) Subject to the provisions of this Clause—

- (a) the Joint Venturers or any of them may at any time assign mortgage charge sublet or dispose of to an associated company as of right and to any other company or person with the consent in writing of the Minister the whole or any part of their or its rights (including their or its rights to or as the holder of any lease licence easement grant or other title) and obligations hereunder; and
- (b) the Joint Venturers may at any time 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 them hereunder;

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

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this Clause but subject to the provisions of subclause (3) of this Clause the Joint Venturers and each of them will 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 subclause (1) aforesaid but the Minister may however agree to release the Joint Venturers or any of them from any such liability where he considers such release will not be contrary to the interests of the State.

(3) Where any agreement entered into by the Joint Venturers that is not inconsistent 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 subclause (1) of Clause 7) or renders it unnecessary for the Joint Venturers to discharge any obligations undertaken by them hereunder the

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Minister will discharge or temporarily relieve the Joint Venturers from such part of their obligations as is reasonable having regard to the extent of and the period during which the other company or person actually effects the discharge of those obligations.

51. (1) In any of the following events namely if the Joint Venturers make default 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 abandon or repudiate their operations under this Agreement and the default has not been remedied or the operations resumed within a period of one hundred and eighty (180) days after notice as provided in subclause (2) of this Clause has been 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 a notice is submitted by the Joint Venturers to arbitration then 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) then and in any of such events the State may by notice to the Joint Venturers determine this Agreement and the rights of the Joint Venturers hereunder and under any lease mining tenement licence easement or right granted hereunder or pursuant hereto or if the Joint Venturers surrender the entire mineral lease as permitted under Clause 8 then this Agreement and the rights of the Joint Venturers hereunder and under any lease mining tenement licence easement or right granted hereunder or pursuant hereto shall thereupon determine but if the default has not 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 the default or causing it to be remedied shall be a debt payable by the Joint Venturers to the State on demand.

Determina-  
tion of  
Agreement.

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(2) The notice to be given by the State in terms of and first mentioned in subclause (1) of this Clause shall specify—

- (a) the nature of the default or other ground so entitling the State to exercise the right of determination; and
- (b) where appropriate or known to the State the party or parties responsible therefor;

and shall be given to the Joint Venturers and to all assignees, mortgagees, chargees and disponees for the time being of the rights of the Joint Venturers or any of them to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of subclause (1) of Clause 50 and whose name and address for service of notice has previously been notified to the State by the Joint Venturers or by any such assignee, mortgagee, chargee, or donee.

(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 50.

Effect of  
Cessation  
or Deter-  
mination of  
Agreement.

52. On the cessation or determination of this Agreement—

- (a) the rights of the Joint Venturers to in or under this Agreement and the rights of the Joint Venturers or of any assignee of them or any mortgagees to in or under the mineral lease licence easement or right granted hereunder or pursuant hereto will except as otherwise agreed by the Minister 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;
- (b) the Joint Venturers will forthwith pay to the State all moneys that may then have become payable or accrued due;
- (c) except as provided by this Clause 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;

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- (d) all railways constructed by the State to meet the requirements of the Joint Venturers pursuant to this Agreement shall revert to the State without compensation to the Joint Venturers for any contribution by them to the cost of those railways; and
- (e) the Joint Venturers shall remove all loading unloading or conveying equipment installed by them on the Joint Venturers' wharf and make good the wharf to the satisfaction of the Minister but where the Fremantle Port Authority desires to purchase that equipment the Joint Venturers will sell it to the Fremantle Port Authority at a fair valuation to be agreed between the parties.

53. 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 them 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.

Indemnity.

54. (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) Where in the opinion of the Minister an agreement made pursuant to subclause (1) of this Clause would constitute a material or substantial alteration of the rights or obligations of either party hereto, the agreement shall contain a provision to that effect and the Minister will cause that agreement to be laid before each House of Parliament within the twelve (12) sitting days next following its execution.

(3) If either House does not pass a resolution disallowing the agreement, within twelve (12) sitting days of that House after the agreement has been laid before it, the agreement shall have effect, from and after the last day on which the agreement might have been disallowed.

55. The Minister may whether or not the period to be extended has expired or the date to be varied has passed at the request of the Joint Venturers from time to time extend

Power to  
Extend  
Periods.

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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.

Arbitration.

56. (1) 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 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, but this Clause does not apply to any case where the State the Minister or any Minister is by this Agreement given either expressly or impliedly a discretionary power.

(2) The arbitrator, arbitrators or umpire (as the case may be) of any submission to arbitration hereunder is hereby empowered upon the application of either of the parties hereto to grant 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 in favour of the Joint Venturers may in the name of the Minister grant any further extension or variation for that purpose.

Notices.

57. 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 nominated office for the time being in the said State and by the Joint Venturers if signed on their behalf by a director, manager, or secretary of one of them or by any person or persons authorised by them in that behalf or by their solicitors (which solicitors have been notified to the State from time to time) and forwarded by pre-paid post to the Minister and every 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.

Exemption  
from Stamp  
Duty.

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

(a) this Agreement;

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- (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 them 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 50 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 that has already been the subject of an assignment sublease disposition or appointment executed pursuant to subclause (1) of Clause 50 hereof.

(2) This Clause does not apply to any instrument or other document executed or made more than seven (7) years from the date hereof.

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

FIRST SCHEDULE

1. Rates per ton mile for bauxite carried on trains operating between agreed sites and the refinery and alumina on trains operating between the refinery and Kwinana back-loading with caustic from Kwinana to the refinery, from Monday to Saturday of each week. Should Sunday working be required the Joint Venturers shall meet the additional costs involved.

BAUXITE:

(i) Agreed Site to Refinery:

In tons per year (millions)	Cents per ton mile
Up to 1 ....	1.4
1 and up to 2 ....	1.3
2 and up to 3 ....	1.2
3 and up to 4 ....	1.1
4 and up to 5 ....	1.05
5 and up to 6 ....	1.00

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ALUMINA AND CAUSTIC:

(ii) Alumina from Refinery to Bulk Storage Area at Kwinana and backloading with Caustic:

In tons per year (millions)	Cents per ton mile
Up to .5	2.45
.5 and up to 1.0	1.95
1.0 and up to 1.5	1.70
1.5 and up to 2.0	1.60
2.0 and up to 2.5	1.45
2.5 and up to 3.0	1.35

The rates for freight set out in this Schedule have been calculated on the basis of the total train time not exceeding one hour at the loading terminal and one hour at the unloading terminal for bauxite trains and three hours at the loading terminal and three hours at the unloading terminal for alumina/caustic trains. Haulage of bauxite at a rate exceeding three and one-half million tons per annum will require amendment of these times. If such times are not regularly adhered to by the Joint Venturers the Railways Commission reserves the right to review the freight rates. At the refinery and at Kwinana the movement of wagons for loading and unloading purposes shall be the responsibility of the Joint Venturers. Such methods of movement of wagons shall be to the satisfaction of the Railways Commission. 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	75 tons per wagon
Alumina	74 tons per wagon
Caustic	69 tons per wagon

2. The rates for freight set out in this Schedule are based on costs prevailing at the 15th January, 1971, 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 proportion to variation in the average hourly wage rate of a first class locomotive driver, first class guard and a track repairer; the price of distillate per gallon as delivered to the public at North Fremantle and the price of steel rails per ton f.o.w. Fremantle as ascertained from the price schedule of Australian Iron & Steel Pty. Ltd., in accordance with the following formula:—

$$F1 = F + .45F \left\{ 0.80 \left\{ \frac{HR1-HR}{HR} \right\} + 0.05 \left\{ \frac{D1-D}{D} \right\} + 0.15 \left\{ \frac{SR1-SR}{SR} \right\} \right\}$$

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WHERE:

- (i) F1 = New freight rate.
- (ii) F = Agreement freight rate.
- (iii) HR = Average hourly rate as at 15-1-1971.
- (iv) HR1 = New average hourly rate.
- (v) D = Price of distillate per gallon delivered to the public at North Fremantle as at 15-1-1971.
- (vi) D1 = New price distillate.
- (vii) SR = Price of steel rails per ton f.o.w. Fremantle as ascertained from price schedule of Australian Iron & Steel Pty. Ltd. as at 15-1-1971.
- (viii) SR1 = New price steel rail.

The rates applicable at the 15th January, 1971, are:—

	per hour \$
1st class driver ....	2.0725
1st class guard ....	1.6962
Track repairer ....	1.3400
Average rate ....	1.7029

Price of distillate per gallon—20.4 cents.

Price of steel rail per ton—\$104.50.

The escalation formula shall be subject to review on the 1st January, 1976, and thereafter at five yearly intervals.

3. Bauxite, alumina and caustic shall be carried at the risk of the Joint Venturers.

SECOND SCHEDULE.  
 WESTERN AUSTRALIA.  
 MINING ACT, 1904.

Lease No. South West Mineral Field.

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 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 and Hancock Prospecting Pty. Limited, Wright Prospecting Pty. Limited, Metals Miniere Limited and Pacminex Pty. Limited (hereinafter called "the Joint Venturers" which expression includes the successors and permitted assigns of each of them) which Agreement (hereinafter referred to as "the Agreement") was executed pursuant to the Alumina Refinery (Upper Swan) Agreement Act, 1971,

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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 works or building whatsoever TO HOLD the said lands and mine and 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 in 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

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AND PROVIDED FURTHER that all mineral oil 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 mineral oil or other minerals in any part of the lands 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 seals of the Joint Venturers were hereunto affixed this day of

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THE SCHEDULE ABOVE REFERRRD 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 JOHN TRE-  
ZISE TONKIN, M.L.A., in the  
presence of—

The Common Seal of HAN-  
COCK PROSPECTING PTY.  
LIMITED was hereto affixed  
by the Governing Director  
LANGLEY GEORGE HAN-  
COCK in accordance with the  
Articles of Association—

The Common Seal of  
WRIGHT PROSPECTING  
PTY. LIMITED was hereto  
affixed by the Governing  
Director ERNEST ARCHI-  
BALD MAYNARD WRIGHT  
in accordance with the  
Articles of Association—

The Common Seal of METALS  
MINIERE LIMITED was here-  
unto affixed by the Authority  
of the Directors in the pre-  
sence of—

The Common Seal of PAC-  
MINEX PTY. LIMITED was  
hereunto affixed in the pre-  
sence of—