



Western Australia

## **Poseidon Nickel Agreement Act 1971**

Compare between:

[11 Sep 2010, 01-c0-05] and [02 Mar 2022, 01-d0-00]



## Poseidon Nickel Agreement Act 1971

**An Act to ratify an agreement between the State and Poseidon Limited relating to the mining of nickel ore at Mount Windarra and matters incidental thereto [and to ratify a further agreement for the termination of that agreement](#).**

*[Long title amended: No. 3 of 2022 s. 4.]*

### 1. Short title

This Act may be cited as the *Poseidon Nickel Agreement Act 1971*<sup>+</sup>.

### 2. Terms used in this Act

In this Act —

*the Agreement* means the agreement of which a copy is set forth in the Schedule 1 to this Act, and if the Agreement is added to or varied or any of its provisions are cancelled, in accordance with the provisions of clause 37 thereof, includes the Agreement as so altered from time to time;

*the Company* has the same meaning as it has in, and for the purposes of, the Agreement;

[the termination agreement](#) means the agreement a copy of which is set out in Schedule 3 to this Act;

*the variation agreement* means the agreement a copy of which is set out in Schedule 2 to this Act.

*[Section-2 amended: No. 17 of 1985 s. 33; No. 3 of 2022 s. 5.]*

**3. Agreement ratified**

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

**3A. Variation agreement approved and ratified**

- (1) The variation agreement is approved and ratified and the implementation of the variation agreement is authorised.
- (2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the variation agreement shall operate and take effect notwithstanding any other Act or law.

*[Section 3A inserted: No. 17 of 1985 s. 4.]*

**3B. Termination agreement ratified**

- (1) The termination agreement is ratified.
- (2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the termination agreement shall operate and take effect notwithstanding any other Act or law.

*[Section 3A inserted: No. 3 of 2022 s. 6.]*

**4. Entry on certain Crown lands by Company**

Notwithstanding any other Act or law, the Company may enter upon the Crown lands referred to in paragraph (b) of clause 3 of the Agreement in accordance with, and for the purposes mentioned in, that paragraph.

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

## **Schedule 1 — Poseidon Nickel Agreement**

[s. 2]

[Heading amended: No. 17 of 1985 s. 5; No. 19 of 2010 s. 4.]

THIS AGREEMENT made this 27th day of July 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 its instrumentalities from time to time (hereinafter called “the State”) of the one part and POSEIDON LIMITED a company incorporated under the Companies Act of the State of South Australia and registered in the State of Western Australia as a foreign company (hereinafter called “the Company” in which term shall be included the Company and its successors and assigns) of the other part.

### WHEREAS

- (a) the Company has established the existence of nickel ore within the mining areas defined in Clause 1 and has carried out certain investigations relating *inter alia* to the mining and treatment of that ore and the sale of nickel containing products;
- (b) the Company now intends to commence mining ore at Mount Windarra and transporting that ore by road and rail to Fimiston for concentration and sale and where appropriate for subsequent transport to Esperance for shipment;
- (c) the Company intends to provide facilities and services necessary for its operations hereunder and for the accommodation, health, education and welfare of its employees;
- (d) the Company intends to further develop its nickel deposits with a view to concentrating ore at or near Mount Windarra and if practicable to increase progressively the scale and scope of its operations; and
- (e) the State requires the Company, subject to economic feasibility, to pursue actively and progressively a policy of increasing the upgrading of ore leading ultimately to the production in Western Australia of nickel metal from that ore.

NOW THIS AGREEMENT WITNESSETH —

1. In this Agreement subject to the context —

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

“associated company” means —

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

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

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

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

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

“associated works” means and includes mine development the installation  
of mining plant mining equipment and plant for the treatment of  
nickel ore or any derivative of nickel ore, works for the provision of  
electricity, and the construction of housing and communal facilities  
for the proper and reasonable accommodation health and recreation  
of workers employed by the Company and of contractors engaged in  
carrying out the Company’s operations under this Agreement;

“Clause” means a clause of this Agreement;

“commencement date” means the date the Bill referred to in subclause (1) of Clause 2 comes into operation as an Act;

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

“Land Act” means the *Land Act 1933*;

“matte” means a smelter product containing principally nickel with other elements in varying proportions;

“mineral leases” means the mineral lease or mineral leases referred to in Clause 12 and any renewals thereof;

“Mining Act” means the *Mining Act 1904*;

“mining areas” means the areas delineated and coloured red on the plan marked “A” initialled by or on behalf of the parties hereto for the purposes of identification together with such of the areas delineated and coloured yellow on the said plan over which mineral claims may at any future time be granted to the Company by the Minister for Mines or transferred to the Company with the approval of that Minister;

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

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

“month” means calendar month;

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

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

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

“notice” means notice in writing;

“ore” means nickel ore;

“person” or “persons” includes bodies corporate;

“private road” means a road (not being a public road) which is either constructed by the Company in accordance with its proposals as approved by the Minister pursuant to Clause 5 or agreed by the parties to be a private road for the purposes of this Agreement;

“public road” means a road as defined by the *Traffic Act 1919*;

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

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

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

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

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

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

“town” means the town to be developed by the Company with the approval of the State;

“townsite” means the site on which the town is to be situated delineated and coloured green on the plan marked “A” referred to in the definition of “mining areas” in this clause subject to such alterations of the area or boundaries thereof as may be contained in the Company’s proposals as approved by the Minister under Clause 5.

Marginal notes shall not affect the interpretation or construction hereof<sup>21</sup>.



Monetary references in this Agreement are to Australian currency.

Power given under any clause of this Agreement other than Clause 39 to extend any period or date shall be without prejudice to the power of the Minister under the said Clause 39.

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

### **Ratification and operation** <sup>21</sup>

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

(2) If before the 31st day of December, 1971 the said Bill is not passed this Agreement will then cease and determine and neither of the parties hereto will have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

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

### **Initial obligations of the State** <sup>21</sup>

3. The State shall —

- (a) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to the 31st day of December, 1971; and
- (b) to the extent reasonably necessary for the purposes of this Agreement allow the Company to enter upon Crown lands (including, if applicable, land the subject of a pastoral lease).

**Company to submit Proposals<sup>21</sup>**

4. (1) On or before the 31st day of December, 1971 (or thereafter within such extended time as the Minister may allow as hereinafter provided) the Company shall submit to the Minister —

- (a) to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister and measures to be taken for the protection of the environment) for stage one comprising a mining and treatment project with a capacity to produce not less than seven hundred thousand (700,000) tons per year of ore from so much of the mining areas as shall be comprised in the mineral leases and the transport and shipment through a port within the State of Western Australia of nickel-containing products and for making provision for the necessary work force and associated population required to enable the Company to mine ore in the mining areas and to process it at the ore treatment plant of Lake View and Star Ltd. at Fimiston or the Company's plant at Mount Windarra or at such other site or sites as the parties hereto may agree, and including the location, area, lay-out, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely —
  - (i) the mining, crushing, milling and concentrating of ore from the mining areas;
  - (ii) roads;
  - (iii) railways including the upgrading of existing railways and the provision of rolling stock;
  - (iv) facilities for the export of nickel-containing products through a port in the State of Western Australia;
  - (v) water supply;
  - (vi) town, including housing, provision of utilities and services and associated facilities;
  - (vii) power generation and distribution;

- (viii) any other works, services or facilities desired by the Company;
- (ix) any leases, licences or other tenures of land required from the State;

**Marketing and finance**<sup>21</sup>

- (b) subject to the provisions of subclause (3) of this Clause reasonable evidence of marketing arrangements demonstrating the Company's ability to sell or use ore or nickel-containing products or a substantial proportion thereof and reasonable evidence of the availability of finance necessary for the fulfilment of the Company's proposals under this Clause.

**Order of submission of Proposals**<sup>21</sup>

(2) The Company shall have the right to submit to the Minister its detailed proposals aforesaid in regard to the matter or matters the subject of any of the subparagraphs numbered (i) to (ix) inclusive of paragraph (a) of subclause (1) of this Clause as and when the detailed proposals become finalised by the Company PROVIDED THAT where any such matter is the subject of a subparagraph which refers to more than one subject matter the detailed proposals shall relate to and cover each of the matters mentioned in the subparagraph.

**Extension of time for financing and marketing**<sup>21</sup>

- (3) (a) If the Company for any reason desires an extension of time beyond the said 31st day of December, 1971 within which to comply with the requirements of paragraph (b) of subclause (1) of this Clause it may make a written request therefor to the Minister not earlier than the 1st day of October, 1971 or later than the 30th day of November, 1971 and with such request shall supply the Minister with details of its endeavours to comply with those requirements then if the Minister is satisfied that such endeavours are reasonable in the circumstances and that the Company has otherwise duly complied with its obligations hereunder the Minister shall grant an extension of such time for a period of six (6) months.
- (b) If after having been granted an extension of time pursuant to a request made under the last preceding paragraph the Company desires any further extensions of time it shall in each case make

a written request therefor to the Minister and with such request supply the Minister with details of its further endeavours to comply with the requirements of paragraph (b) of subclause (1) of this Clause then if the Minister is satisfied that such further endeavours are reasonable in the circumstances and that the Company has otherwise duly complied with its obligations hereunder the Minister shall grant the Company one or more further extensions of time for such period or periods as he may consider the circumstances warrant but such extension shall not be to a date later than the 31st day of December, 1973.

**Consideration of proposals under Clause 4(1)**<sup>-21</sup>

5. (1) Within two (2) months after receipt of the detailed proposals of the Company in regard to any of the matters mentioned in paragraph (a) of subclause (1) of Clause 4 the Minister shall give to the Company notice either of his approval of the proposals or of alterations desired thereto and in the latter case shall afford to the Company opportunity to consult with and to submit new proposals to the Minister. The Minister may make such reasonable alterations to or impose such reasonable conditions on the proposals or new proposals (as the case may be) as he shall think fit having regard to the circumstances including the overall development and use by others as well as the Company of any natural resource or public utility but the Minister shall in any notice to the Company disclose his reasons for any such alterations or conditions PROVIDED THAT the Minister shall not (except on the grounds of conflict with the *Mines Regulation Act 1946*) make any alterations to or impose conditions upon the proposals or new proposals insofar as they relate to the site of the mining operations or the mining methods selected by the Company or to those aspects of the Company's plant for the treatment of ore which do not in the Minister's opinion adversely affect the environment or public safety or the economic use of water resources.

**Arbitration as to Proposals**<sup>21</sup>

(2) Within two (2) months of the receipt of any notice under subclause (1) of Clause 5 the Company may elect by notice to the State to refer to arbitration and within two (2) months thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Company then unless the Company within three (3) months after delivery of the award gives notice to the Minister of its acceptance of the award this Agreement shall on the expiration of that period of three (3) months cease and determine

(save as provided in Clause 32) but if the question is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

**Effect of non-approval of Proposals**<sup>21</sup>

(3) Notwithstanding that under subclause (1) of this Clause any detailed proposals of the Company are approved by the Minister or determined by arbitration award unless each and every such proposal and matter is so approved or determined by the 29th day of February, 1972 or by such extended date if any as the Company shall be entitled to or shall be granted pursuant to the provisions hereof then at any time after the said 29th day of February, 1972, or if any extension or extensions should be granted under subclause (3) of Clause 4 or any other provision of this Agreement then on or after the expiration of the last of such extensions the Minister may give to the Company twelve (12) months notice of intention to determine this Agreement and unless before the expiration of the said twelve (12) months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of Clause 32.

**Further Proposals**<sup>21</sup>

6. Notwithstanding the final approval pursuant to Clause 5 of the Company's stage one proposals (referred to in paragraph (a) of subclause (1) of Clause 4) the Company may from time to time thereafter submit further or additional proposals for the purposes of this Agreement in which case the provisions of Clauses 4 and 5 so far as applicable shall apply thereto *mutatis mutandis*.

**Construction of works**<sup>21</sup>

7. The Company shall in accordance with its proposals as finally approved under Clause 5 within six (6) months next following the date of such approval commence the construction of the works referred to in such proposals and will complete all such works by the 31st day of December, 1972 except as otherwise specified in such proposals.

**Roads**<sup>21</sup>

8. (1) The Company shall —
- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in its operations hereunder;
  - (b) at its own cost make such provision as shall ensure that all persons and vehicles (other than those engaged upon the Company's operations and its invitees and licensees) are excluded from use of any such private roads; and
  - (c) at any place where such private roads are constructed by the Company so as to cross any public roads provide grade separation or such other protection as may be required by the Commissioner of Main Roads or Railways Commission as the case may be.
- (2) The State shall construct or cause to be constructed a public road suitable for the Company's operations hereunder in accordance with the requirements of the Commissioner of Main Roads connecting by the shortest practicable route the Kalgoorlie-Wiluna Road to Malcolm and thence to the townsite and extending to a point within the mining areas to be agreed between the parties. Such road shall be sealed to a width of not less than twenty (20) feet or such greater width as may be agreed. The State shall use its best endeavours to complete the section of the road between Malcolm and the agreed point within the mining areas within twelve (12) months of the approval under Clause 5 of the Company's proposals relevant to the said road and the remaining section within the next succeeding twelve (12) months.
- (3) The Company shall pay to the State at the times and in the manner required by the State one half of the cost of the construction and sealing of the public road referred to under subclause (2) of this Clause.
- (4) The State shall at its own expense construct such further public roads as shall be necessary to connect the townsite with Laverton.
- (5) Subject to the provisions of paragraph (c) of Clause 14 the State shall maintain public roads over which it has control (and which may be used by the Company) to a standard similar to comparable public roads maintained by the State.

(6) In the event that the Company's operations require the use of a public road which is inadequate for the purpose, or result in excessive damage or deterioration of any public road (other than fair wear and tear) the Company shall pay to the State 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.

### **Railways**<sup>21</sup>

9. (1) Subject to the by-laws made under the *Government Railways Act 1904*, (insofar as those by-laws are not inconsistent with this Agreement) and subject to the provisions of this Clause the Company shall consign at its own risk, and the State shall cause the Railways Commission to transport, by rail, all the Company's requirements of —

#### **Products to be transported by rail**<sup>21</sup>

- (a) ore and nickel-containing products from the railhead at Malcolm to the plant site of Lake View and Star Limited at Fimiston or to any other processing plant in the vicinity of Kalgoorlie approved by the Minister; and
- (b) nickel-containing products from Fimiston or Malcolm to Esperance or such other port as may be approved hereunder.

### **Reconstruction**<sup>21</sup>

(2) The Company shall from time to time as required by the Railways Commission pay to the State a sum or sums to be agreed between the parties towards the cost of upgrading or reconstructing the existing railway line between Malcolm and Kalgoorlie in narrow gauge (3 feet 6 inches) in accordance with proposals from time to time approved under Clause 5 (including the cost of providing *inter alia* any deviations, loops, spurs, sidings, crossings, points, bridges, and other works and appurtenances) to achieve a capacity to enable the Railways Commission to transport ore or nickel concentrates at a rate not exceeding seven hundred thousand (700,000) tons per annum and all other rail freight required by the Company for its operations hereunder for a period of five (5) years from the date on which rail haulage of the Company's ore or nickel concentrates commences.

**Notice of further requirements**<sup>21</sup>

(3) Not later than eighteen (18) months after the date of commencement of haulage of ore referred to in subclause (2) of this Clause the Company shall give notice to the State of its estimated future rail transport requirements hereunder (including provisional annual tonnages) of ore and nickel-containing products.

**Preparation of specifications**<sup>21</sup>

(4) On receipt of the notice referred to in subclause (3) of this Clause the State shall cause the Railways Commission in consultation with the Company to prepare a specification (including all necessary plans and bills of quantities) of the works required to further upgrade or reconstruct the existing Malcolm to Kalgoorlie railway line in narrow gauge (3 feet 6 inches) to enable the Railways Commission to transport the Company's rail freight to the extent specified and in accordance with the said notice.

**Calling of tenders**<sup>21</sup>

(5) As soon as practicable after completion of the specification mentioned in subclause (4) of this Clause the State shall cause the Railways Commission to call tenders in accordance with the said specifications. The amount of each tender received by the Railways Commission pursuant to this subclause shall be notified to the Company.

**Company's Contribution**<sup>21</sup>

(6) The Company shall pay to the State a sum or sums to be agreed between the parties as being the Company's fair share of the cost of the works referred to in subclause (4) of this Clause having regard to the proposed use of the works by the Company.

(7) In the event that the State requires all or any part of the works referred to in either or both of subclauses (2) and (4) of this Clause to be completed in standard gauge (4 feet 8½ inches) the State may in its discretion so proceed in which case the Company's contribution will be a sum to be determined by the Railways Commission not exceeding the amount which would have been payable by the Company if the works had been completed in narrow gauge (3 feet 6 inches).



**New Railway**<sup>21</sup>

(8) The Company shall —

- (a) pay to the State a sum or sums to be agreed between the parties towards the cost of providing any new railway required for the purpose of the operations of the Company hereunder (including all necessary land acquisitions, loops, spurs, sidings, crossings, points, bridges and other works and appurtenances) to enable the Railways Commission to transport the Company's rail freight in the course of its operations hereunder;

**Other facilities**<sup>21</sup>

- (b) at its own cost provide and maintain such sidings, shunting loops, spurs and other connections as are required solely for its operations hereunder and provide and maintain loading and unloading facilities sufficient to meet train operating requirements and terminal equipment (including weighing device), together with a staff adequate to ensure the proper operation of all such loading and unloading facilities and terminal equipment;

**Kalgoorlie-Fimiston Railway**<sup>21</sup>

- (c) if required by the State contribute to the cost of reconstructing the railway between Kalgoorlie and an agreed terminal point on the plant site of Lake View and Star Limited at Fimiston or at any other processing plant in the vicinity of Kalgoorlie approved by the Minister.

**Rolling Stock**<sup>21</sup>

(9) The Company shall —

**Wagons**<sup>21</sup>

- (a) If required by the Railways Commission provide sufficient wagons (including spare wagons) and necessary replacements except replacements made necessary by the wilful misconduct of the Railways Commission (to a design and specification approved by the Railways Commission) to carry all the Company's requirements of ore and nickel concentrates in the course of its operations hereunder; and

**Locomotives and brakevans**<sup>21</sup>

- (b) if required by the Railways Commission provide sufficient locomotives and brakevans (to a design and specification approved by the Railways Commission) for the transport of all rail freight offering in the course of its operations hereunder and lease such locomotives and brakevans to the Railways Commission on such terms and conditions as may be agreed by the parties.

**Maintenance**<sup>21</sup>

(10) Subject to the provisions of paragraph (b) of subclause (8) of this Clause the State shall at its own expense maintain and service all railways, locomotives, brakevans and wagons necessary for the purposes of this Agreement.

**Notice of requirements**<sup>21</sup>

(11) In addition to the provisions of subclause (3) of this Clause the Company shall provide to the satisfaction of the Railways Commission adequate notice in advance of its requirements (including anticipated tonnages in each year) as to the use of the railway to enable the Railways Commission to make arrangements to meet those requirements and shall thereafter give adequate notice of any change in those requirements. In particular the Company shall agree with the Railways Commission the pattern of working including weekly and monthly despatches and the hours of working.

**Trimming**<sup>21</sup>

(12) The Company shall ensure that all wagons are properly trimmed and loaded to the tonnages prescribed in the First Schedule hereto.

**Freight**<sup>21</sup>

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

**Electricity**<sup>21</sup>

10. (1) The Company shall in accordance with its proposals as finally approved and subject to the provisions of the Electricity Act and the approval and requirements of the State Electricity Commission, install and operate without cost to the State, at a convenient location within the mining areas, equipment to generate electricity of sufficient capacity for its operations hereunder.

(2) The Company may transmit power from the mining areas to the townsite or elsewhere subject to the provisions of the Electricity Act and the approval and requirements of the State Electricity Commission.

(3) The Company may subject to the provisions of the Electricity Act and the requirements of the State Electricity Commission sell power transmitted pursuant to subclause (2) of this Clause to third parties within the townsite or elsewhere.

(4) In the event that the Company is unable to procure easements or other rights over land required for the purposes of this Clause on reasonable terms the State shall assist the Company to such extent as may be reasonably necessary to enable it to procure the said easements or other rights over land.

(5) In the event that the State Electricity Commission desires to assume responsibility for the distribution of power within the townsite, the Company shall sell all of its electrical distribution plant and distribution facilities to the State Electricity Commission at a price to be agreed and shall make available to the State Electricity Commission a continuous supply of electricity in bulk at a tariff and for a term to be agreed. If the Company and the State Electricity Commission fail to reach agreement under this subclause the matter in dispute shall be referred to arbitration in accordance with the provisions of Clause 40.

(6) In the event that a local authority with the approval of the State Electricity Commission desires to assume responsibility for the distribution of power within the townsite, the Company may sell all of its electrical distribution plant and distribution facilities to that local authority and make available to it a continuous supply of electricity in bulk on terms to be agreed between the Company and that local authority.

**Water Supply**<sup>21</sup>

11. (1) The Company estimates (on the basis that its ore is to be concentrated at the treatment plant of Lake View and Star Limited at Fimiston)

that its daily requirements of water at the townsite and at Mount Windarra to implement its stage one proposals (referred to in paragraph (a) of subclause (1) of Clause 4 as finally approved under Clause 5 will be as follows —

Potable water — not less than seven hundred and forty thousand (740,000) gallons;

Non-potable water — nil.

The above amount or such other amounts as shall from time to time be agreed between the parties hereto to be reasonable shall hereinafter be called “the Company’s daily water requirements”.

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

(3) If the water sources within the mining areas prove inadequate to supply the Company’s daily water requirements the parties hereto shall agree on a programme which shall be carried out by the State at the cost of the Company to search for water outside the mining areas.

(4) If the investigations referred to in subclause (2) of this Clause establish the availability of suitable subterranean sources, the State shall grant to the Company a licence to develop and draw from such sources the Company’s daily water requirements on such terms and conditions as the Minister may approve.

(5) If during the currency of a licence granted under the provisions of subclause (4) of this Clause the Minister is of the opinion that it would be desirable for water conservation purposes or water management purposes that sources of water licensed to the Company be controlled and operated by the State as part of a district water supply scheme, the Minister may on giving six (6) months prior notice to the Company of his intention, revoke the licence and take over the Company’s water supply facilities in each case without payment of compensation.

(6) In the event of the revocation of the licence pursuant the provisions of subclause (5) of this Clause the State shall subject to the continued availability of water from such source supply sufficient water to meet the Company’s daily water requirements.

(7) If water sources within the mining areas prove inadequate to supply the Company's daily water requirements, other water sources (which are identified by the State's investigations conducted pursuant to subclause (3) of this Clause and from which the State agrees adequate supplies are available to supply the Company's water requirements) shall be developed by the State at the Company's expense including the provision of all necessary bores pipeline fittings equipment and facilities. The State shall supply the Company with sufficient water (subject to continued availability) to meet that portion of the Company's daily water requirements not obtainable from sources developed pursuant to subclause (4) of this Clause.

(8) The State shall with all reasonable expedition construct the works required for the purposes of subclause (7) of this Clause. The State may in its discretion develop any district or regional water supply or construct any works to a greater capacity than that required to supply the Company's water requirements but in that event the cost of the system as so enlarged shall be shared by the parties hereto in such manner as may be agreed to be fair in all the circumstances.

(9) The Company shall pay the State for water supplied by the State and consumed on the mining areas and at the townsite (until the townsite is constituted pursuant to section 10 of the Land Act) a fair price to be negotiated between the parties having regard to the actual cost of operating and maintaining the supply and provision for replacement of the water supply facility. Water supplied by the State to all consumers within the townsite after the townsite is constituted pursuant to section 10 of the Land Act shall be subject to the provisions of the *Country Areas Water Supply Act 1947*.

(10) The Company shall to the extent that it is practical and economical, design, construct and operate its ore treatment plant so as —

- (a) to make use of saline water; and
- (b) to recycle all water.

(11) 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 Company's purpose under this Agreement as though the water sources were in a proclaimed area north of the twenty-sixth parallel of south latitude.

(12) The Company estimates that in the event of it expanding its operations beyond those referred to in subclause (1) of this Clause additional

quantities of water will be required at the townsite and at Mount Windarra as follows: —

(a) For the concentration of ore: —

Potable water for industrial and domestic purposes —  
five hundred and thirty thousand (530,000) gallons per  
day;

Non-potable water — seven hundred thousand (700,000)  
gallons per day.

(b) for the smelting of ore and nickel concentrates into matte or  
nickel metal: —

Potable water for industrial and domestic purposes — fifty  
thousand (50,000) gallons per day;

Non-potable water — fifty thousand (50,000) gallons per  
day.

In the event of such development occurring the Minister shall determine the amount of water that shall be made available to the Company and the conditions of supply. In making such determination the Minister may have regard to work done and expenditure under the provisions of this Clause.

### **Mineral Leases**<sup>21</sup>

12. (1) The State shall as soon as conveniently may be after the commencement date, on application made by the Company which application shall be made at any time or from time to time before the expiration of two (2) years from the commencement date cause to be granted to the Company at rentals specified from time to time in the Mining Act mineral leases of such land within the mining areas so applied for (notwithstanding the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed) such mineral leases to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but in the form of the Second Schedule hereto and in respect of the minerals set out therein or in such other form and in respect of such other minerals as the Minister for Mines may from time to time approve.

(2) Subject to the performance by the Company of its obligations under this Agreement and the Mining Act and notwithstanding any provisions of the Mining Act to the contrary, the term of the mineral leases shall be for a period

of twenty-one (21) years commencing from the date of receipt of application with one option of renewal for a further period of twenty-one (21) years under the same terms and conditions (except as to this option of renewal). The Minister for Mines may in his discretion not more than twelve (12) months nor less than six (6) months before the date of expiry of such renewed term at the request of the Company subject to this Agreement continuing in force up to the date when such renewed term is due to expire, grant a second renewal of any mineral leases for a further term of twenty-one (21) years on and subject to such terms and conditions as the Minister may determine.

### **Lands** <sup>21</sup>

13. (1) For the purposes of the Company's operations and associated works at the townsite the State shall grant to the Company for residential professional business commercial and industrial purposes and the provision of communal facilities at the townsite a special lease or special leases under the provisions of the Land Act for an area or areas of land contained in the townsite in accordance with the Company's proposals as finally approved such lease or each lease as the case may be being for a term expiring twenty-one (21) years from the date hereof at rental of one (1) peppercorn per annum with the right for the Company at any time during the currency of the lease to purchase for a nominal price to be agreed by the parties the fee simple of any townsite lot on which buildings or structures have been erected at a cost (averaged over the lot concerned) in the case of dwelling houses of not less than seven thousand dollars (\$7,000) or in the case of other buildings or structures of not less than ten thousand dollars (\$10,000) for such lot. Such lease or leases may be granted on and subject to such terms and conditions not inconsistent with this Agreement as the Minister considers applicable in the circumstances and including a right for the State at any time and from time to time to exclude from the lease or resume without compensation any part or parts of such land on which no building or structure has been erected as the State may require for public purposes.

(2) The State shall in accordance with the Company's proposals as finally approved grant to the Company or arrange to have the appropriate authority or other interested instrumentality of the State grant for such terms or periods and on such terms and conditions (including renewal rights) as shall be reasonable having regard to the requirements of the Company leases for all or any of the purposes of the Company's operations hereunder including any of the following namely — townsites, private roads, railway sidings and spur lines, tailing areas, water pipelines, pumping installations and reservoirs, airport, power transmission lines and stockpile areas.

**Modification of Land Act**<sup>21</sup>

(3) For the purposes of this Agreement in respect of any land sold or leased to the Company by the State the Land Act shall be deemed to be modified by: —

- (a) the substitution for subsection (2) of section 45A of the following subsection: —
  - “(2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased;”
- (b) the deletion of the proviso to section 116;
- (c) the deletion of section 135;
- (d) the deletion of section 143;
- (e) the inclusion of a power to offer for sale or leasing land within or in the vicinity of the townsite notwithstanding that the townsite has not been constituted a townsite under section 10; and
- (f) the inclusion of a power to offer for sale or grant leases or licences for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, the terms and conditions and the forms referred to in the Land Act;

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

**Townsite Development**<sup>21</sup>

- 14. (a) To enable the Company to do those things necessary to attract and sustain a stable and content workforce and population in the town (including the development and maintenance of an attractive physical environment together with appropriate community, recreation, civic, social and commercial amenities) the Company shall collaborate with the State in the planning, location and development of the town and shall employ a skilled and experienced town planner to prepare a town plan for initial and long term town development which town plan shall be submitted by the Company as



a proposal pursuant to subparagraph (vi) of paragraph (a) of subclause (1) of Clause 4. The parties to this Agreement recognise that the future development of the town shall where practicable be based on the principles of the town plan hereinbefore referred to as approved pursuant to Clause 5.

- (b) The State shall within three (3) years after the commencement date constitute the townsite pursuant to section 10 of the Land Act provided that in so doing the State shall have regard to the Company's requirements and shall give to the Company not less than six (6) months prior notice of its intention.
- (c) Until such time as the townsite is constituted in accordance with paragraph (b) of this Clause the Company shall at its cost provide and maintain at the townsite and make available —
  - (i) at such prices, rentals or charges and upon such terms and conditions as are fair and reasonable under the circumstances, housing accommodation, services and works including sewerage treatment works, water supply works, main drainage works and social and cultural facilities; and
  - (ii) without charge, public roads and buildings and other works and equipment required for educational, hospital, medical, police or other servicesto the extent to which any of the foregoing are necessary to provide for the needs of persons and the dependents of such persons engaged in connection with the Company's operations hereunder whether or not employed by the Company.
- (d) If during the period referred to in paragraph (c) of this Clause the State requires the Company to provide additional services, works equipment and facilities to a greater extent than specified in paragraph (c) of this Clause, the Company shall so provide and the State shall contribute to the cost of the provision and maintenance of all such additional services, works equipment and facilities as shall be fair and reasonable under the circumstances.
- (e) If at any time after the townsite is constituted pursuant to section 10 of the Land Act the Company desires to expand operations hereunder and a substantial consequential increase in the population of the town is likely to result therefrom the Company shall provide at

its own expense such additional housing accommodation as may be necessary and shall contribute to the provision and maintenance of all additional services works equipment and facilities of the kind mentioned in paragraph (c) of this subclause as shall be reasonable having regard to the requirements of such additional population.

- (f) The Company shall contribute to the provision and maintenance at any location other than the townsite of such housing accommodation, services, works equipment and facilities mentioned in paragraph (c) of this subclause to the extent necessary to provide for the needs of persons and the dependants of such persons engaged in connection with the Company's operations hereunder whether or not employed by the Company.

**Port**<sup>21</sup>

15. (1) The Company shall ship such portion of its nickel-containing products as are destined for overseas users through the port of Esperance or such other port in the State of Western Australia as the State may approve and shall provide at no cost to the State all necessary unloading, storage, reclaiming, and ship loading equipment and all other facilities required at the port of Esperance to carry out its obligations hereunder. The Company shall provide facilities as necessary and carry out its operations at the port in accordance with its proposals as submitted to and approved by the Minister hereunder.

(2) The Company may as an alternative to subclause (1) of this Clause negotiate with third parties already operating at the port of Esperance with a view to sharing at no cost to the State port facilities already provided by others.

(3) The Company shall pay to the Esperance Port Authority created pursuant to the *Esperance Port Authority Act 1968* all charges properly and lawfully levied by that Authority from time to time.

(4) The Company shall design and operate its train unloading, stockpiling, reclaiming and ship loading facilities at the port of Esperance so as to avoid dust nuisance and loss of nickel concentrates during handling and storage operations.

(5) Subject to the provisions of this Clause, the State shall permit the Company to load into ships over the Esperance wharf, nickel-containing products and shall cause the usual services to be provided to such ships at the charges provided under the relevant regulations and by-laws.

**Royalties**<sup>21</sup>

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

(2) Notwithstanding the provisions of subclause (1) of this Clause the royalties payable by the Company in respect of nickel-containing products during a period of three (3) years from the date hereof shall be at rates not exceeding those prescribed pursuant to the provisions of the Mining Act as at the date of execution hereof.

**Return and payment of royalties**<sup>21</sup>

(3) The Company shall within fifteen (15) days of the expiration of each month during which it receives payment for any product or mineral in respect of which royalty is payable under this Clause give to the Minister for Mines a return showing the number of tons of product and mineral payment for which is received during the month and all other particulars necessary to enable the calculation of the royalty payable thereon and shall pay to the Minister for Mines the royalty payable on such product and mineral.

**Inspection**<sup>21</sup>

(4) The Company shall permit the Minister for Mines or his nominee to inspect at all reasonable times and to take copies of or extracts from all books of account and records of the Company as are relevant for the purpose of determining the amount of royalty payable under this Clause and if required by the State will take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the reasonable satisfaction of the Minister for Mines as to all relevant weights and analyses and 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 ore or nickel-containing products which may affect the amount of royalty payable hereunder.

**Smelter**<sup>21</sup>

17. (1) At a time convenient to the Company but in any event not later than ten (10) years after the commencement date the Company shall investigate the technical and economic feasibility of establishing a smelter within Western Australia. Such studies may be on the basis of the establishment of a smelter by

the Company alone or jointly with any other company or companies. The Company shall fully report the progress and results of such investigations to the Minister not later than ninety (90) days after the expiry of the period referred to in this subclause.

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

(3) The Minister may consider the studies undertaken under subclauses (1) and (2) of this Clause and if the Minister is of the opinion that in all the circumstances then applying to the Company a smelter is technically and economically viable and competitive on world markets then the Minister may notify the Company of such decision. If so requested by the Company the Minister shall give to the Company all information obtained during such studies (other than information confidential to third parties).

(4) If the Company disagrees with the result of such studies the Company shall have the right at any time within six (6) months after the receipt of such notice to refer the matter to arbitration hereunder. If the Company shall agree that a smelter is technically and economically viable and competitive on world markets or if it shall be so determined by arbitration as aforesaid then the Company shall submit a proposal with respect to a smelter in accordance with the provisions of Clause 6. Such proposal may be to construct a smelter either alone or jointly with another company or other companies. Any such smelter shall be established and commence to operate not later than fifteen (15) years after the commencement date.

(5) If the Company fails to establish the smelter as provided in subclause (4) of this Clause the failure shall not give rise to any action for breach of contract nor shall the provisions of Clause 31 apply but the State may in such event negotiate with a third party to establish a smelter on terms and conditions not more favourable on the whole to the third party than any terms available to the Company. In the event of the establishment by such third party of a smelter in accordance with the provisions hereof the Company shall (subject to any existing contractual supply obligations entered into by the

Company prior to the expiration of two (2) years from the commencement date) if required by the State sell to such third party nickel concentrates of the nature then being sold by the Company. Such sale shall be for a reasonable period (having regard to such matters as the Company's ore reserves and the capital investment of the third party in the smelter) and at a reasonable price (having regard to the prevailing prices at which the Company is then selling its nickel concentrates and any *bona fide* proposed sale of nickel concentrates between the Company and an independent company dealing at arms length) and in sufficient quantities to meet the requirements of the third party from time to time. The Minister shall not require the Company to supply the third party with a greater annual quantity of nickel concentrates than three-quarters of the previous years production by the Company.

(6) The provisions of subclause (5) of this Clause shall not apply to any ore or nickel concentrates from time to time being smelted or refined in Western Australia by any other company or companies.

#### **Other Mining Tenements**<sup>21</sup>

18. The State —

- (a) shall not during the currency of this Agreement register any claim or grant any lease or other mining tenement under the Mining Act or otherwise by which any person other than the Company or an associated company will obtain under the laws relating to mining or otherwise any rights to mine or take the natural substances (other than petroleum as defined in the *Petroleum Act 1967*) within the mineral leases unless the Minister reasonably determines that it is not likely to unduly prejudice or to interfere with the operations of the Company hereunder assuming the taking by the Company of all reasonable steps to avoid the interference.
- (b) shall if so requested by the Company and so far as its powers and administrative arrangements permit use reasonable endeavours to assist the Company to obtain adequate and suitable labour for the construction and the carrying out of the works and operations referred to in this Agreement.

**Liability of Company**<sup>21</sup>

19. The parties hereto further covenant and agree with each other that —

- (a) for the purposes of determining whether and the extent to which —
  - (i) the Company is liable to any person or body corporate (other than the State); or
  - (ii) an action is maintainable by any such person or body corporate

in respect of the death or injury of any person or damage to any property arising out of the use of any of the roads for the maintenance of which the Company is responsible hereunder and for no other purpose the Company shall be deemed to be a municipality and the said roads shall be deemed to be streets under the care control and management of the Company; and

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

**Zoning**<sup>21</sup>

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

**Rentals and evictions**<sup>21</sup>

21. The State shall ensure that any State legislation for the time being in force in the State relating to the fixation of rentals shall not apply to any houses belonging to the Company in the townsite and that in relation to each such house the Company shall have the right to include as a condition of its letting thereof that the Company may take proceedings for eviction of the occupant if

the latter shall fail to abide by and observe the terms and conditions of occupancy or if the occupant shall cease to be employed by the Company.

**Labour conditions**<sup>21</sup>

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

**Subcontracting**<sup>21</sup>

23. The State shall ensure that without affecting the liabilities of the parties under this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portions of the operations which it is authorised or obliged to carry out hereunder.

**Rating**<sup>21</sup>

24. The State shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection with that residence and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the production of ore or nickel concentrates which excepted parts shall be subject to the provisions of the Local Government Act) shall for rating purposes be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate PROVIDED THAT nothing in this Clause shall prevent the Company making the election provided for by section 533B of the *Local Government Act 1960*.

**No resumption**<sup>21</sup>

25. Subject to the performance by the Company of its obligations under this Agreement the State shall not during the currency hereof without the consent of the Company resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the State any of the works installations plant equipment or other property for the time being belonging to the Company and the subject of or used for the purposes of this Agreement nor any of the works on the lands the subject of any lease or license granted to the Company in terms of this Agreement AND without such consent (which shall not be unreasonably withheld) the State shall not create or grant or permit or

suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road right-of-way water right or easement of any nature or kind whatsoever over or in respect of any such lands which may unduly prejudice or interfere with the Company's operations hereunder.

**No discriminatory rates**<sup>21</sup>

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

**Environmental protection**<sup>21</sup>

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

**Use of local labour and materials**<sup>21</sup>

28. The Company shall for the purposes of this Agreement so far as reasonably and economically practicable use labour available within the State and give preference to *bona fide* Western Australian contractors and manufacturers 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 in calling tenders and letting contracts for works materials plant equipment and supplies required by it will ensure that *bona fide* Western Australian contractors and manufacturers are given reasonable opportunity to tender or quote or otherwise be properly considered for such works materials plant equipment and supplies.



**Right to remove sand etc.** <sup>21</sup>

29. Subject to compliance with the requirements of any Act Regulation or By-Law from time to time in force the Company may for its own purposes remove stone sand clay or gravel from the mineral leases.

**Licences and Consents** <sup>21</sup>

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

**Determination of Agreement** <sup>21</sup>

31. In any of the following events namely if the Company shall make default in the due performance or observance of any of the covenants or obligations to the State herein or in any lease licence or other title or document granted or assigned under this Agreement on its part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to it by the State (or if the alleged default is contested by the Company and promptly submitted to arbitration then within a reasonable time fixed by the arbitration award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company shall abandon or repudiate its operations under this Agreement or if the Company shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and thereupon the rights of the Company hereunder shall cease and determine; PROVIDED HOWEVER that if the Company shall fail to remedy any default after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

**Effect of cessation or determination of Agreement <sup>21</sup>**

32. On the cessation or determination of this Agreement —

- (a) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement and the rights of the Company or of any assignee of the Company or any mortgagee to in or under the mineral leases and any other lease license easement or right granted hereunder or pursuant hereto shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder;
- (b) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
- (c) save as aforesaid and as otherwise provided in this Agreement neither of the parties hereto shall have any claim against another of them with respect to any matter or thing in or arising out of this Agreement;
- (d) all railway works constructed by the State to meet the requirements of the Company pursuant to this Agreement shall revert to the State without compensation to the Company for any contribution by it to the cost of such railway works.

**Resumptions <sup>21</sup>**

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

**Stamp duty exemption <sup>21</sup>**

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

- (a) this Agreement;

- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee of the Company any lease licence easement or right granted or demised hereunder or pursuant hereto.

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

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

### **Indemnity**<sup>21</sup>

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

### **Assignment**<sup>21</sup>

36. (1) Subject to the provisions of this Clause the Company may at any time —
- (a) assign mortgage charge sublet or dispose of to an associated company as of right and any other company or person with the consent of the Minister the whole or any part of its rights hereunder (including its rights to or as the holder of any lease licence easement grant or other title) and of the obligations of the Company hereunder; and
  - (b) appoint as of right an associated company or with the consent of the Minister any other company or person to exercise all or any

of the powers functions and authorities which are or may be conferred on the Company hereunder;

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

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this Clause the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained herein and in any lease licence easement grant or other title the subject of an assignment under the said subclause (1).

(3) 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* in so far as the same or any of them may apply —

- (a) no mortgage or charge in a form commonly known as a floating charge made or given pursuant to this Clause over any lease, licence, reserve or tenement granted hereunder or pursuant hereto by the Company or any assignee or appointee who has executed, and is for the time being bound by deed of covenant made pursuant to this Clause;
- (b) no transfer or assignment made or given at any time in exercise of any power of sale contained in any such mortgage or charge;

shall require any approval or consent (other than such consent as may be necessary under this Clause) and no 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 this Clause) or because the same is not registered under the provisions of the Mining Act.

#### **Variation**<sup>21</sup>

37. (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.

(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 shall cause that agreement to be laid on the table of each House of Parliament within twelve (12) sitting days of the date of 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.

### **Delays<sup>21</sup>**

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

### **Power to extend periods<sup>21</sup>**

39. 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 Company from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such later date as the Minister thinks fit.

**Arbitration** <sup>21</sup>

40. 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.

**Notices** <sup>21</sup>

41. Any notice consent or other writing authorised by or required by this agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Public Service of the State acting by the direction of the Minister and forwarded by prepaid post to the Company at its registered office for the time being in the State and by the Company if signed on its behalf by a director manager or secretary of the Company or by any person or persons authorised by the Company in that behalf or by its solicitors (which solicitors have been notified to the State from time to time) and forwarded by prepaid post to the Minister and any such notice consent or writing shall be deemed to have been duly given or sent (unless the contrary be shown) on the day on which it would be delivered in the ordinary course of post.

**Interpretation** <sup>21</sup>

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

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THE FIRST SCHEDULE

1. ORE

Rates per ton mile for ore transported between Malcolm and Fimiston —

	Cents per ton mile	
	Aluminium Wagons	Steel Wagons
Up to 250,000 net tons per annum .....	2.00	2.05
250,000 to 500,000 net tons per annum .....	1.80	1.85
500,000 to 750,000 net tons per annum .....	1.65	1.70
750,000 to 1,000,000 net tons per annum ...	1.50	1.55
In excess of 1,000,000 net tons per annum ..	1.40	1.45

2. NICKEL CONCENTRATES

Rates per ton mile —

(a) between Malcolm and Esperance

(Note: For the purposes of this subparagraph (a) the rail mileage between Malcolm and Esperance shall be deemed to be four hundred and eight (408) miles irrespective of the actual rail distance between those places at any time); and

(b) between Malcolm and the proposed Western Mining Corporation smelter at South Kalgoorlie (based on the actual rail mileage) —

	Cents per ton mile	
	Aluminium Wagons	Steel Wagons
until the Company shall have consigned not less than 3.5 million tons of ore by rail from Malcolm to Fimiston .....	2.35	2.40
thereafter .....	2.00	2.05

3. The rates set out in paragraphs 1 and 2 above are subject to the following conditions: —

(a) Trains shall be operated Monday to Saturday inclusive. If the Company requires the Railways Commission to operate trains on Sunday the Company shall meet the additional cost involved.

- (b) The rates shall apply only so long as the railway is operated on narrow gauge tracks.
- (c) The rates shall only apply so long as the Company provides wagons with a load tare ratio of —
  - 49/15 tons for aluminium wagons or
  - 45/19 tons for steel wagonsof a type and to a standard approved by the Railways Commission.
- (d) Wagons shall be loaded to capacity and shall be subject to a minimum load per train of not less than 49 tons for aluminium wagons or 45 tons for steel wagons.
- (e) The total turn round time at terminals for ore shall not exceed two (2) hours at the loading point and three (3) hours at the unloading point and for nickel concentrates two (2) hours at the loading point and two (2) hours at the unloading point. If such times are not regularly adhered to the Railways Commission reserves the right to review the rates.
- (f) The movement of wagons for unloading purposes shall be the responsibility of the Company. The method of movement of wagons shall be to the satisfaction of the Railways Commission.
- (g) The method of loading and unloading wagons shall be approved by the Railways Commission.
- (h) Freight charges shall be paid by monthly payments in the month next following the month of haulage on the basis of the anticipated tonnage in each year indicated by the Company in accordance with subclause (11) of Clause 9 subject to annual adjustment after the expiration of each year with regard to tonnages actually carried at the rate applicable thereto. In ascertaining the number of tons actually carried railway weighbridge weights or such alternative method of measuring as is mutually agreed shall be used but in no event shall any allowance be made for moisture contained in the material transported.
- (i) If in any year the tonnage of ore actually available for carriage by rail is less than the anticipated tonnage (indicated by the Company in accordance with subclause (11) of Clause 9 to be available in



that year) by more than ten per cent (10%), the Company shall pay a sum equal to seventy-five per cent (75%) of the freight charge at the rate applicable to the actual tonnage carried as escalated from time to time) which would have been payable on the difference between the anticipated tonnage and the actual tonnage had the said anticipated tonnage been available and carried.

- (j) The rates are based on costs prevailing at the 30th April 1971 and shall be adjusted half-yearly on 1st January and 1st July of each year in proportion to variation in the average hourly wage rate of a first class 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: —

$$\text{FI} = F + .55F \left\{ .80 \left\{ \frac{\text{HRI} - \text{HR}}{\text{HR}} \right\} + .05 \left\{ \frac{\text{DI} - \text{D}}{\text{D}} \right\} + .15 \left\{ \frac{\text{SRI} - \text{SR}}{\text{SR}} \right\} \right\}$$

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$$\text{FI} = F + .55F \left\{ .80 \left\{ \frac{\text{HRI} - \text{HR}}{\text{HR}} \right\} + .05 \left\{ \frac{\text{DI} - \text{D}}{\text{D}} \right\} + .15 \left\{ \frac{\text{SRI} - \text{SR}}{\text{SR}} \right\} \right\}$$

**WHERE**

- (i) F1 = New freight rate.
- (ii) F = Agreement freight rate.
- (iii) HR = Average hourly rate as at 30th April, 1971.
- (iv) HRI = New average hourly rate.
- (v) D = Price of distillate per gallon delivered to the public at North Fremantle as at 30th April, 1971.
- (vi) DI = 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 30th April, 1971.
- (viii) SRI = New price steel rail.

The rates applicable at the 30th April, 1971 are: —

	per hour \$
1st class driver .....	2.0725
1st class guard .....	1.6963
Track repairer .....	1.3400
	<u>\$5.1088</u>

Average hourly rate — \$1.7029

Price of distillate per gallon — 21.4 cents.

Price of steel rails per ton f.o.w. Fremantle — \$104.50.

- (k) Subject to compliance by the Company with the conditions set out in this part of this schedule, the rates shall apply either until the expiration of the period of five (5) years referred to in subclause (2) of Clause 9, or until the date of completion of the reconstruction or up-grading referred to in subclause (4) of Clause 9, whichever date is the earlier. Thereafter freight rates and conditions applicable thereto shall be fixed by the Railways Commission after consultation with the Company.

4.      **COMMODITIES OTHER THAN ORE OR NICKEL CONCENTRATES**

All commodities other than ore or nickel concentrates shall until otherwise determined by the Railways Commission be carried at gazetted rates.

THE SECOND SCHEDULE

WESTERN AUSTRALIA

*MINING ACT 1904*

*POSEIDON NICKEL AGREEMENT ACT 1971*

MINERAL LEASE

Lease No. .... Mineral Fields

ELIZABETH THE SECOND by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender 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 POSEIDON LIMITED (hereinafter called "the Company" which expression includes its successors and permitted assigns) which Agreement (hereinafter referred to as "the Agreement") was ratified by the *Poseidon Nickel Agreement Act 1971* the State agreed to grant to the Company on application made by the Company a mineral lease under and, except as otherwise provided by the Agreement, subject to the *Mining Act 1904* AND WHEREAS the Company has now made application for a lease of the land hereinafter described for the purpose of mining thereon for nickel, copper, silver, lead, zinc, cobalt, platinum, palladium and such other minerals as the Minister for Mines may from time to time approve NOW WE in consideration of the rents and royalties reserved by the Agreement and in consideration of the other covenants in this lease and in the Agreement to be observed by the Company DO BY THESE PRESENTS GRANT AND DEMISE UNTO THE COMPANY but subject to the provisions of the Agreement all that Crown land situated within the area delineated in the plan in the schedule hereto and all those mines, veins, seams, lodes, or deposits of nickel, copper, silver, lead, zinc, cobalt, platinum, palladium and such other minerals as the Minister for Mines may from time to time approve in, on, or under the said land (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 Company is entitled under the Agreement, excepting and reserving out of this demise all such portions of the said land as are now lawfully occupied (other than for pastoral or timber purposes) by persons other than the lessee, or any portion thereof which is now used for any public works or building whatsoever TO HOLD the said land and the said mine and all and singular the premises hereby demised for the term of twenty-one (21) years from the        day of        19        with a right of renewal for one further period of twenty-one (21) years but upon and subject to the terms covenants and conditions set out in the Agreement YIELDING and paying therefor the rents and royalties as provided for in the Agreement AND WE do hereby declare that this lease is subject to the condition that the Company shall observe perform and carry out the provisions of the *Mines Regulation Act 1946*, and all amendments thereof for the time being in force and the regulations for the time being in force made thereunder and the provisions of the Mining Act (as modified by the Agreement) in so far as the same affect or have application to this lease or any renewal thereof.

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

AND PROVIDED FURTHER that all mineral oil and other minerals (apart from nickel, copper, silver, lead, zinc, cobalt, platinum, palladium and such other minerals as the Minister for Mines may from time to time approve) on or below the surface of the demised land 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 land for the purpose of searching for and obtaining mineral oil or other minerals in any part of the land under the provisions of the Mining Act or the *Petroleum Act 1967*.

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

THE SCHEDULE ABOVE REFERRED TO (plan of lease)

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

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

H. E. GRAHAM,  
Minister for Industrial  
Development and  
Decentralization.

D. G. MAY,  
Minister for Mines.

THE Common Seal of POSEIDON  
LIMITED was hereunto affixed by authority  
of the Directors and in the presence of — } [C.S.]

T. A. HUTTON,  
Director.

E. O. Myers,  
Director.

*[Schedule 1 amended: No. 17 of 1985 s. 5.]*

## **Schedule 2 — Variation agreement**

[s. 2]

[Heading inserted: No. 17 of 1985 s. 6; amended: No. 19 of 2010 s. 4.]

THIS AGREEMENT made the 8th day of March, 1985 BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part and WESTERN MINING CORPORATION LIMITED a company incorporated in the State of Victoria and having its registered office in such State at 360 Collins Street, Melbourne (hereinafter with its successors permitted assigns and appointees called “the Company”) of the other part.

WHEREAS:

- (a) Poseidon Limited a company incorporated under the Companies Act of the State of South Australia and registered in the State of Western Australia as a foreign company (hereinafter called “Poseidon”) was a party to the Agreement defined in section 2 of the *Poseidon Nickel Agreement Act 1971*;
- (b) the said Agreement was varied by agreement dated the 9th day of April, 1973 (the said Agreement as varied being hereinafter referred to as “the principal Agreement”);
- (c) Poseidon Limited by deed of assignment dated the 9th day of April, 1973 assigned a one half share of its right title interest claim and demand in the principal Agreement to the Company;
- (d) Poseidon Limited by deed of assignment dated the 4th day of February, 1974 assigned its remaining one half share of its right title interest claim and demand in the principal Agreement to Windarra Nickel Mines Pty. Ltd.;
- (e) Windarra Nickel Mines Pty. Ltd. by deed of assignment dated the 13th day of July, 1978 assigned all its right title interest claim and demand in the principal Agreement to the Shell Company of Australia Limited;
- (f) The Shell Company of Australia Limited by deed of assignment dated the 3rd day of April, 1984 assigned all its right title interest claim and demand in the principal Agreement to the Company;

(g) the Company and the State are now the parties to the principal Agreement; and

(h) the parties desire to vary the provisions of the principal Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the principal Agreement.

2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the said State and comes into operation as an Act.

3. The principal Agreement is hereby varied as follows —

(1) Clause 1 —

(a) by deleting the definition of “Mining Act” and inserting the following definitions —

“ *Mining Act 1904*” means the *Mining Act 1904* and the amendments thereto and the regulations made thereunder as in force on the 31st day of December, 1981;

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

(b) by inserting after the definition of “Mining areas” the following definition —

“ “Mining Lease” means the mining lease referred to in subclause (1) of Clause 12A and includes any renewal thereof and according to the requirements of the context shall describe the land leased as well as the instrument by which it is leased; ”;

(c) by deleting the definition of “Minister for Mines” and inserting the following definition —

“ “Minister for Minerals and Energy” means the Minister in the Government of the State for the time being responsible (under whatsoever title) for the

administration of the *Mining Act 1904* and the *Mining Act 1978*; ”;

- (d) by inserting, in the paragraph commencing “Reference in this Agreement to an Act”, after “Act”, where it first occurs, the following —

“ other than the *Mining Act 1904* ”.

- (2) Clause 6 —

- (a) by inserting after “the said proposals” the following —

“ or should the Company desire to mine minerals other than ore ”;

- (b) by deleting “*mutatis mutandis*.” and substituting the following —

“ *mutatis mutandis* PROVIDED that in the event of arbitration the award on arbitration shall be final and shall be accepted and given effect to by the parties and the provisions of Clause 5 dealing with cessation and determination of this Agreement shall not apply. The Company shall implement the decision of the Minister or an award on arbitration as the case may be in accordance with the terms thereof. ”.

- (3) Clause 11 —

- (a) in subclause (5) — by inserting after “subclause (4)” the following —

“ or subclause (7) ”;

- (b) in subclause (6) — by deleting “the licence” and substituting the following —

“ a licence ”;

- (c) in subclause (7) —

- (i) by deleting “the State”, where it last occurs in the first sentence, and substituting the following —

“ the parties hereto ”;



(ii) by deleting the last sentence and substituting the following —

“ The State shall grant to the Company a licence to develop and draw from such sources sufficient water (subject to continued availability) to meet that portion of the Company’s daily water requirements not obtainable from sources developed pursuant to subclause (4) of this Clause on such terms and conditions as the Minister may approve. ”;

(d) by deleting subclause (8).

(4) By inserting after Clause 12 the following clause —

“ **Mining Lease**<sup>21</sup>

12A. (1) The State shall upon the surrender by the Company of its right title and interest in mineral leases numbered 38/27 to 38/89 (both inclusive) granted pursuant to the provisions of Clause 12 (in this clause called “the surrendered mineral leases”) cause to be granted to the Company at rentals specified from time to time in the *Mining Act 1978* a Mining Lease of the land comprised in the surrendered mineral leases (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed) such Mining Lease to be granted under and, except as otherwise provided in this Agreement, subject to the *Mining Act 1978* but in the form of the Third Schedule hereto and in respect of all minerals and subject to such of the conditions of the surrendered mineral leases as the Minister for Minerals and Energy determines.

**Term**<sup>21</sup>

(2) Subject to the performance by the Company of its obligations under this Agreement and the *Mining Act 1978* and notwithstanding any provisions of the *Mining Act 1978* to the contrary, the term of the Mining Lease shall be for a period of 21 years commencing from the date of the grant thereof with the right during the currency of this Agreement to take successive renewals of the said term each for a period of

21 years upon the same terms and conditions subject to the sooner determination of the said term upon the cessation or determination of this Agreement such right to be exercisable by the Company making written application for any such renewal not later than 1 month before the expiration of the current term of the Mining Lease.

**Apportionment of rent**<sup>21</sup>

(3) The Minister for Minerals and Energy shall make such apportionment of rents as may be necessary in respect of the surrendered mineral leases.

**Expenditure**<sup>21</sup>

(4) The State shall ensure that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the expenditure conditions imposed by or under the *Mining Act 1978* in regard to the Mining Lease. ”.

(5) Clause 16 —

(a) subclause (1) —

(i) by inserting after “mineral leases” the following —

“ or the Mining Lease ”;

(ii) by deleting “Mining Act.” and substituting the following —

“ *Mining Act 1904* or the *Mining Act 1978* as the case may be. ”;

(b) subclause (2) — by deleting “Mining Act” and substituting the following —

“ *Mining Act 1904* ”.

(6) Clause 18 — by deleting paragraph (a) and the marginal note thereto.

(7) Clause 20 — by inserting after “mineral leases” the following —

“ or the Mining Lease ”.

- (8) By deleting Clause 22 and the marginal note thereto.
- (9) Clause 32 — by inserting after “mineral leases” the following —  
“ or the Mining Lease ”.
- (10) Clause 36 subclause (3) —
- (a) by deleting “section 82 of the Mining Act and of regulations 192 and 193 made thereunder and of” and substituting the following —  
“ section 82 of the *Mining Act 1904* and regulations 192 and 193 made thereunder, regulations 77 and 110 made under the *Mining Act 1978* and ”;
- (b) by deleting “the Mining Act.” and substituting the following —  
“ the *Mining Act 1904* or the *Mining Act 1978*. ”.
- (11) By inserting after the Second Schedule the following Schedule —  
“
- THE THIRD SCHEDULE  
WESTERN AUSTRALIA  
*MINING ACT 1978*  
*POSEIDON NICKEL AGREEMENT ACT 1971*  
MINING LEASE

Mining Lease No.

The Minister for Minerals and Energy a corporation sole established by the *Mining Act 1978* with power to grant leases of land for the purposes of mining in consideration of the rents hereinafter reserved and of the covenants on the part of the Lessee described in the First Schedule to this lease and of the conditions hereinafter contained and pursuant to the *Mining Act 1978* (except as otherwise provided by the Agreement (hereinafter called “the Agreement”) described in the Second Schedule to this lease) hereby leases to the Lessee the land more particularly delineated and described in the Third Schedule to this lease for all minerals subject however to the exceptions and reservations set out in the Fourth Schedule to this lease and to any other exceptions and reservations which subject to the Agreement are

by the *Mining Act 1978* and by any Act for the time being in force deemed to be contained herein to hold to the Lessee this lease for a term of twenty-one years commencing on the date set out in the Fifth Schedule to this lease upon and subject to such of the provisions of the *Mining Act 1978* except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the covenants and conditions herein contained or implied and any further conditions or stipulations set out in the Sixth Schedule to this lease the Lessee paying therefor the rents and royalties as provided in the Agreement with the right during the currency of the Agreement and in accordance with the provisions of the Agreement to take successive renewals of the term each for a further period of twenty-one years upon the same terms and conditions subject to the sooner determination of the said term upon cessation or determination of the Agreement PROVIDED ALWAYS that this lease and any renewal thereof shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this lease —

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

#### FIRST SCHEDULE

WESTERN MINING CORPORATION LIMITED a company incorporated in the State of Victoria and having its registered office in such State at 360 Collins Street, Melbourne.

#### SECOND SCHEDULE

The Agreement ratified by the *Poseidon Nickel Agreement Act 1971* including any amendments to that Agreement.



SIGNED BY THE HONOURABLE BRIAN  
THOMAS BURKE, M.L.A., in the presence  
of —

}

BRIAN BURKE.

DAVID PARKER.

MINISTER FOR MINERALS AND ENERGY

THE COMMON SEAL of WESTERN  
MINING CORPORATION LIMITED was  
hereto affixed in the presence of —

}

[C.S.]

DIRECTOR H. S. AMOS

J. W. WINTERBOTTOM,  
ASST. SECRETARY

*[Schedule 2 inserted: No. 17 of 1985 s. 6.]*

**Schedule 3 — Termination agreement**

[s. 2]

[Heading inserted: No. 3 of 2022 s. 7.]

**2021**

**THE HONOURABLE MARK McGOWAN**  
**PREMIER OF THE STATE OF WESTERN AUSTRALIA**

**AND**

**POSEIDON NICKEL LIMITED**  
**ACN 060 525 206**

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**POSEIDON NICKEL AGREEMENT 1971**  
**TERMINATION AGREEMENT**

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[Solicitor's details]

**THIS AGREEMENT** is made this 4<sup>th</sup> day of August 2021

**BETWEEN**

**THE HONOURABLE MARK McGOWAN, BA LLB, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (State) of the one part,**

**AND**

**POSEIDON NICKEL LIMITED ACN 060 525 206 of Level 1, 3 Ord Street, West Perth, Western Australia (Company in which term shall be included its successors and permitted assigns) of the other part.**

**WHEREAS:**

- A.** The State and the Company are now the parties to the agreement dated 27 July 1971 which agreement was ratified by the *Poseidon Nickel Agreement Limited Act 1971* (WA) and as varied by agreements dated 9 April 1973, 8 March 1985, 15 September 2005 and 22 January 2007 is referred to in this Agreement as the **Principal Agreement**.
- B.** The State and the Company wish to terminate the Principal Agreement in the manner and on the terms set out in this Agreement.

**NOW THIS AGREEMENT WITNESSES:**



## **1. Definitions**

In this Agreement subject to the context:

**Bank Guarantee** means the bank guarantee dated 2 November 2006 given by the Commonwealth Bank of Australia, at the request of the Company, to the State as security for the performance by the Company of its obligations under the Deed of Covenant.

**decommission** in relation to a mine means the process of ceasing the production of minerals and the removal of infrastructure, plant, equipment and services comprising and associated with the mine.

**Deed of Covenant** means the Deed of Covenant made on 3 October 2006 between The Honourable Alan John Carpenter the then Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, The Honourable John Bowler the then Principal Agreement Minister and the Company (then called Niagara Mining Limited) in relation to the assignment to the Company of all rights (including as holder of the Mining Lease) and obligations of BHP Billiton Nickel West Pty Ltd ACN 004 184 598 (then called WMC Resources Ltd) under the Principal Agreement and the decommissioning of mines within the area of, and the rehabilitation of, the Mine Rehabilitation Sites.

**Mine Rehabilitation Sites** means the mine sites at Mount Windarra and South Windarra being, at the date of this Agreement, the subject of the plan entitled "WMC Windarra Nickel Project – Closure Finalisation Plan – Final Version 2005" initialled by or on behalf of the parties to this Agreement for the purpose of identification.

**Mining Act** means the *Mining Act 1978 (WA)*.

**Mining Act Minister** means the Minister in the Government of the State of Western Australia for the time being responsible for the administration of the Mining Act.

**Mining Lease** means Mining Lease No. 261SA and if renewed includes such renewal thereof and according to the requirements of the context describes the area of land from time to time the subject of that lease.

**Mining Lease Instrument** means the instrument of lease issued for the Mining Lease.

**Mining Proposal** means the mining proposal (including mine closure plan) of the Company in respect of its proposed activities upon the Mining Lease on and after the Operative Date as contained in the document marked "A" initialled by or on behalf of the parties to this Agreement for the purpose of identification.

**Operative Date** has the meaning given in clause 3(2).

**Principal Agreement Minister** means the Minister as defined in the Principal Agreement.

**Ratifying Act** means the Act of the Parliament of Western Australia to ratify this Agreement referred to in clause 3.

**this Agreement, hereof** and **hereunder** refer to this Agreement, whether in its original form or as from time to time added to, varied or amended.

## **2. Interpretation**

In this Agreement:

- (a) clause headings do not affect interpretation or construction;
- (b) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
- (c) a reference to one gender includes the other genders;
- (d) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (e) a reference to a "person" includes a body corporate;
- (f) a 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;
- (g) a reference to any document includes that document as from time to time added to, varied or amended and notwithstanding any change in the identity of the parties;
- (h) a reference to a clause or schedule is a reference to a clause in or schedule to this Agreement, and a reference to a subclause or paragraph is a reference to the subclause of the clause or

paragraph of the clause or subclause as the case may be in, or in relation to, which the reference is made;

- (i) a reference to this Agreement includes all recitals, schedules and annexures; and
- (j) "including" means "including, but not limited to".

### **3. Ratification and operation**

- (1) This Agreement, other than this clause and clauses 1, 2 and 5(2), does not come into operation except in accordance with subclause (2).
- (2) This Agreement, other than this clause and clauses 1, 2 and 5(2), comes into operation on the day after the date on which it is ratified by an Act of the Parliament of Western Australia (**Operative Date**) unless, before that day, it terminates under subclauses (4), (5) or (6).
- (3) The State must introduce in the Parliament of Western Australia before 31 December 2021, or a later date agreed between the parties to this Agreement, a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.
- (4) If by 30 April 2022 or such later date agreed between the parties to this Agreement, this Agreement has not been ratified by an Act of the Parliament of Western Australia then, unless the parties to this Agreement otherwise agree, this Agreement terminates on that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (5) The parties agree that if the Principal Agreement is otherwise determined in accordance with its provisions on a day prior to the Operative Date, then this Agreement shall also terminate on and from that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (6) The parties agrees that if after the date of this Agreement the Company submits pursuant to the Principal Agreement, while it remains in force, any proposal or proposals for approval by the Principal Agreement Minister, then this Agreement terminates on and from that date of submission and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

#### **4. Termination of Principal Agreement**

- (1) Subject to subclauses (3) and (4)(a), the Principal Agreement is hereby terminated with effect on and from the Operative Date and, except as otherwise provided in this Agreement, neither the State nor the Company shall have any claim against the other with respect to any matter or thing in or arising out of the Principal Agreement.
- (2) With effect on and from the Operative Date the Company is released from its obligations under clauses 3.2(a) and 3.2(b) of the Deed of Covenant and, except as otherwise provided in this Agreement, the State shall not have any claim against the Company in respect of the performance of those obligations by the Company under the Deed of Covenant.
- (3) Notwithstanding subclauses (1) and (2) the Company shall remain liable for any antecedent breach or default under the Principal Agreement or under the Deed of Covenant and in respect of any indemnity given under the Principal Agreement.
- (4) On and from the Operative Date:
- (a) the Mining Lease shall continue in force only under and, except as provided in this Agreement, subject to the provisions of the Mining Act and, for the avoidance of doubt, shall cease to have the benefit of the rights and privileges conferred by the Principal Agreement;
- (b) the Mining Lease may only be renewed under section 78(2) of the Mining Act for one further term of 21 years;
- (c) the Mining Proposal shall be deemed to be:
- (i) a mining proposal within the meaning given to that term in section 70O(1) of the Mining Act;
- (ii) a mining proposal lodged and approved, and in respect of which any prescribed assessment fee has been paid, in accordance with section 82A(2) of the Mining Act; and
- (iii) for the avoidance of doubt, a relevant mining proposal within the meaning given to that term in section 70O of the Mining Act;

- (d) the mine closure plan contained in the Mining Proposal shall be deemed to be a mine closure plan within the meaning given to that term in section 70O(1) of the Mining Act;
- (e) for the avoidance of doubt, condition 2 as set out in the Sixth Schedule of the Mining Lease Instrument (amended as set out in paragraph (g) of this subclause (4)) shall be deemed to be a reasonable condition imposed by the Minister for Mines under section 84 of the Mining Act;
- (f) for the purposes only of this Agreement the application of the Mining Act is specifically modified as follows:

  - (i) in section 82 (Covenants and conditions of lease) by deleting subsection (1b) and substituting the following new subsection:  
"(1b) Paragraph (ca) of subsection (1) shall apply to Mining Lease No. 261SA."; and
  - (ii) in section 82A (Condition to be included in certain mining leases) by:
    - (A) inserting after subsection (1) the following new subsection:  
"(1a) This section applies to Mining Lease No. 261SA.";

and

    - (B) in subsection (2) by deleting "to be granted" and substituting ", upon this section commencing to apply to it, to be";
  - (iii) in section 95 (Surrender of mining tenement) by inserting after subsection (1) the following new subsection:  
"(1a) The holder from time to time of Mining Lease No. 261SA may not surrender that mining tenement in whole or in part without the prior consent of the Minister.";
- (g) the provisions of the Mining Lease Instrument shall be deemed amended as set out in the Schedule;
- (h) for the avoidance of doubt, the Mining Lease shall be deemed to be a mining authorisation for the purposes of the *Mining*

Rehabilitation Fund Act 2012 (WA) and regulations made under that Act; and

(i) operations and other activities upon or at the Mining Lease shall cease to have the benefit of the rights and privileges conferred by the Principal Agreement and shall, subject to this subclause (4), be governed by the laws from time to time in force in Western Australia.

(5) The Mining Act Minister is hereby authorised to endorse on the Mining Lease Instrument (including any duplicate) notice of the amendments referred to in paragraph (g) of subclause (4) above.

(6) On and from the Operative Date the Company will indemnify and keep indemnified the State and the State's employees, agents and contractors in respect of all actions, suits, claims, demands or costs of third parties arising out of or in connection with any work carried out by the Company pursuant to the Principal Agreement or relating to its operations under the Principal Agreement (including de-watering operations and the decommissioning of mines within the area of, and the rehabilitation of, the Mine Rehabilitation Sites) or arising out of or in connection with the construction, maintenance or use by the Company or its employees, agents, contractors, assignees or sublessees of the Company's works or services the subject of the Principal Agreement or the plant, apparatus or equipment installed in connection with the Principal Agreement.

This indemnity shall remain in force for a period ending on the date which is 20 years after:

(a) the date agreed between the State and the Company; or

(b) if the parties fail to agree a date under paragraph (a), the date determined by the State as being the date of cessation of all operations (including as expanded or otherwise modified) originally established under and pursuant to the Principal Agreement.

(7) The Company will indemnify and keep indemnified the State and the State's employees, agents and contractors in respect of all actions, suits, claims, demands or costs of third parties arising out of or in connection with any works or activities of the Company or its employees, agents, contractors, assignees or sublessees on and subsequent to the Operative Date relating to operations (including as expanded or otherwise

modified) that were originally established under or pursuant to the Principal Agreement (including de-watering operations and the decommissioning of mines within the area of, and the rehabilitation of, the Mine Rehabilitation Sites). This indemnity remains in force for a period ending on the same date as the indemnity in subclause (6).

**5. Cessation of Bank Guarantee and provision of Security under Mining Act**

- (1) Subject to subclauses (2) and (3), the Bank Guarantee shall cease to have effect on the Operative Date.
- (2) Upon execution of this Agreement the Company shall deliver to the department of the State responsible for the administration of the Mining Act an executed security in a form according with section 84A(2) and section 126 of the Mining Act and in the amount of \$3.5 million for compliance with conditions imposed from time to time in relation to the Mining Lease under section 84 of the Mining Act and the department shall hold such bond in escrow pending the Operative Date.
- (3) From and including the Operative Date the security referred to in subclause (2) shall be deemed to be lodged under section 84A(2) and in accordance with section 126 of the Mining Act and, for the avoidance of doubt, shall also operate as security for the Company's compliance with condition 2 as set out in the Sixth Schedule of the Mining Lease Instrument (amended as set out in paragraph (g) of clause 4(4)).

**6. Applicable law**

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

## SCHEDULE

### Variation of the Mining Lease Instrument

The variations of the Mining Lease Instrument referred to in clause 4(4)(g) are as follows:

(a) in the heading to the Mining Lease the deletion of "POSEIDON NICKEL AGREEMENT ACT 1971";

(b) the deletion of all of the words after "Sixth Schedule to this lease" and before "In this lease –" and the substitution of the words:

"or otherwise from time to time imposed on the Lessee by the Mining Act 1978 the Lessee paying the rents and the royalties for the time being and from time to time respectively prescribed pursuant to the provisions of the Mining Act 1978 at the times and in the manner so prescribed with the right to renew the term of this lease pursuant to the provisions of the Mining Act 1978 as modified by the Agreement AND it is hereby agreed and declared that unless the Lessee shall at all times duly and punctually perform and observe the covenants and conditions hereinafter contained or implied herein this lease shall be liable to forfeiture and may be forfeited by the Minister pursuant to the powers in that behalf conferred by the Mining Act 1978 provided that the Minister may as he thinks fit impose on the Lessee a penalty as an alternative to forfeiture of this lease.";

(c) the insertion before the definition of "Lessee" of the following new definition:

- "decommission" in relation to a mine means the process of ceasing the production of minerals and the removal of infrastructure, plant, equipment and services comprising and associated with the mine.

(d) the insertion after the definition of "Lessee" of the following new definitions:

- "Mine Rehabilitation Sites" means the mine sites at Mount Windarra and South Windarra being, at the date of the Termination Agreement, the subject of the plan entitled "WMC Windarra Nickel Project – Closure Finalisation Plan – Final



Version 2005" initialled by or on behalf of the parties to the Termination Agreement for the purpose of identification.

- "Operative Date" means the day after the date on which the Termination Agreement is ratified by an Act of the Parliament of Western Australia.

- "Relevant Mine Closure Plan" means at any time, the then current mine closure plan or plans approved under the Mining Act 1978 for the decommissioning of mines from time to time (including mines established after the Operative Date) within the area of, and the rehabilitation of, the Mine Rehabilitation Sites. At the Operative Date the mine closure plan contained in the Mining Proposal (as defined in the Termination Agreement) is the Relevant Mine Closure Plan.

- "Termination Agreement" means the agreement, to terminate the agreement described in paragraph (a) of the Second Schedule to this lease, made on or about 4 August 2021 between The Honourable Mark McGowan, Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time and Poseidon Nickel Limited ACN 060 525 206.

(e) the deletion of the provisions of the Second Schedule and the substitution of the following provisions:

"(a) From and including the date set out in the Fifth Schedule to this lease up to and including the date occurring immediately before the Operative Date, the agreement dated 27 July 1971 ratified by the *Poseidon Nickel Agreement Act 1971* (WA) as that agreement has from time to time been added to, varied or amended.

(b) From and including the Operative Date, the Termination Agreement as that agreement may from time to time be added to, varied or amended.";

(f) the deletion of condition 2 of the Sixth Schedule and the substitution of the following new condition:

"2. The Lessee must, without prejudice to its other obligations under the Mining Act 1978, decommission all mines from time to time (including mines established

after the Operative Date) within the area of, and rehabilitate, the Mine Rehabilitation Sites in accordance with the Relevant Mine Closure Plan."; and

(g) the insertion of the following note immediately after the Sixth Schedule:

"NOTE

In addition to any specific conditions that are endorsed on this instrument, the holder in exercising the rights granted herein must first ensure that the necessary consents and permission have been obtained and compensation has been agreed to or determined in respect to certain Crown Land, Public Reserves, etc. private land and where the lawful rights of other land users are concerned."

**EXECUTED** as a deed.

**SIGNED** by **THE HONOURABLE** )  
**MARK McGOWAN** ) \_\_\_\_\_ [Signature]  
in the presence of: )

[Signature]

\_\_\_\_\_  
Signature of witness

NADEEN LYN ROBERTS

\_\_\_\_\_  
Name of witness

EXECUTED by POSEIDON )  
NICKEL LIMITED )  
ACN 060 525 206 in accordance with )  
section 127(1) of the Corporations )  
Act 2001 (Cth) )

[Signature]

[Signature]

Signature of Director

Signature of Secretary

PETER J. HAROLD

BRENDAN E. SHALDERS

Full name

Full name

*[Schedule 3 inserted: No. 3 of 2022 s. 7.]*

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## Notes

<sup>1</sup>—This is a compilation of the *Poseidon Nickel Agreement Act 1971* and includes ~~the~~ amendments made by ~~the~~ other written laws ~~referred to in the following table.~~ ~~The table also contains.~~ [For provisions that have come into operation, and for](#) information about any ~~reprint~~[reprints, see the compilation table.](#)

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Poseidon Nickel Agreement Act 1971</i>	59 of 1971	15 Dec 1971	15 Dec 1971
<i>Poseidon Nickel Agreement Amendment Act 1985</i>	17 of 1985	12 Apr 1985	12 Apr 1985 (see s. 2)
<b>Reprint 1: The <i>Poseidon Nickel Agreement Act 1971</i> as at 7 Nov 2008</b> (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010</i> s. 4 and 42(2)	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<sup>2</sup> <a href="#">Poseidon Nickel Agreement Amendment (Termination) Act 2022</a>	<a href="#">3 of 2022</a>	<a href="#">1 Mar 2022</a>	<a href="#">s. 1 and 2: 1 Mar 2022 (see s. 2(a));</a> <a href="#">Act other than s. 1 and 2: 2 Mar 2022 (see s. 2(b))</a>

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### Other notes

<sup>1</sup> Marginal notes in the agreements have been represented as bold headnotes in this ~~reprint~~[compilation](#) but that does not change their status as marginal notes.