

**NICKEL REFINERY (WESTERN  
MINING CORPORATION  
LIMITED) AGREEMENT.**

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No. 24 of 1968.

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

*[Assented to 25th October, 1968.]*

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

**Short title.**

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

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2. In this Act—

Interpre-  
tation.

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

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

Approval of  
Agreement.

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## THE SCHEDULE.

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

inafter called "the Corporation" in which term shall be included the Corporation and its successors and assigns) of the other part.

WHEREAS:

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

NOW THIS AGREEMENT WITNESSETH:

1. In this Agreement subject to the context—

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

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

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

"Commission" or "Railways Commission" means the Western Australian Government Railways Commission;

"Crown grant" means a Crown grant under the provisions of the Land Act;

"Land Act" means the Land Act, 1933;

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

"mineral leases" means the mineral lease or mineral leases referred to in clause 5 (3) hereof and any renewals thereof and includes any mineral lease for

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(*inter alia*) nickel lying within the boundaries of Temporary Reserve No. 3666H (as originally constituted) and held by the Corporation on the commencement date and any renewals thereof;

“Mining Act” means the Mining Act, 1904;

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

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

“month” means calendar month;

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

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

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

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

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

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

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

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

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

“said State” means the State of Western Australia;

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

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

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

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

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

Marginal notes shall not affect the interpretation or construction hereof.

**Operation  
and  
Ratification.**

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

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

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

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

(a) all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of the Land Act, the Mining Act and the Public Works Act which shall for the purposes of this Agreement

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

- (b) the provisions of subsections (3) and (5) of section 277 of the Mining Act shall not apply to the granting of rights of occupancy pursuant to subclause (1) of clause 5 hereof;
- (c) the State and the Minister respectively shall have all the powers discretions and authorities necessary or requisite to perform or exercise the powers discretions authorities and obligations conferred or imposed on them respectively hereunder;
- (d) the State may as and for a public work under the Public Works Act resume any land or any estate and interest in land required for the purposes of this Agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of the same to the Corporation and the provisions of subsections (2) to (7) inclusive of Section 17 and Section 17A of that Act shall not apply to or in respect of that land or the resumption thereof.

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

Land to be  
made  
available to  
Corporation.

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

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

(4) The purchase price for the said Area 1 and if the options hereinafter mentioned are exercised the respective purchase prices for the Area 2 and Area 3 hereinafter men-

tioned shall be calculated at a price per acre in accordance with the following formula:

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

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

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

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

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

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

(6) The State will also make available and grant to the Corporation an option of purchase over the area of land delineated and coloured red and marked Area 2 on the said map marked B or so much thereof as the Corporation requires for its purposes for a term of seven years from the date hereof (or until the Corporation gives to the Minister

earlier notice that it abandons the option) such option to be exercisable by notice from the Corporation to the Minister and on proof that Area 2 or the part thereof required by the Corporation is reasonably required by the Corporation for immediate expansion of the refinery or for an industry associated therewith and approved by the Minister. In the event of such option being exercised as to part of the said Area 2 the notice of exercise of the option shall be deemed as also notice of abandonment by the Corporation of the option in respect of the balance of the said Area 2 and of the option in respect of Area 3 hereinafter mentioned.

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

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

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

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



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

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

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

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

Obligation of Corporation to construct refinery.

4. (1) By the 30th day of June 1968 or if before that date the Corporation applies to the Minister for an extension of time then before the 30th day of September 1968 or when vacant possession of the refinery site is given to the Corporation whichever is the latest date the Corporation will commence to erect and thereafter will diligently proceed with the construction and establishment of a refinery on the refinery site having a capacity to produce not less than fifteen thousand (15,000) tons of nickel metal per annum and thereafter will continuously and progressively proceed with such construction and establishment and will within three years of the commencement of construction complete the same at a total cost (together with the cost of associated works and additions at Kambalda and also the cost of the

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rolling stock to be provided by the Corporation pursuant to Clause 9 hereof) of not less than forty-five million dollars (\$45,000,000) and will produce an annual average of not less than ten thousand (10,000) tons of nickel metal during the first ten year period from the date of completion of the refinery.

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

Obligation of Corporation to construct smelter if economically viable.

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

Rights of Occupancy of Mining Areas.

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

Restriction as to goldmining leases.

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Right to  
Mineral  
Leases.

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

Labour  
Conditions.

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

Royalty.

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

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

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

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

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

R = the royalty.

- (b) If at any time prior to the expiration of five years from the date hereof the Corporation pursuant to clause 4 (2) hereof notifies the State that it intends to establish a smelter and if before the expiration of six years from the date hereof construction is commenced and if before the expiration of seven years from the date hereof the Corporation completes the establishment of and has in operation a smelter having a capacity to produce an annual average of not less than 10,000 tons of matte and nickel-containing products or matte or nickel-containing products other than nickel concentrates then on all nickel-containing products sold during the period of five years next following the expiration of the period of five years from the date hereof the same royalty as is mentioned in paragraph (a) of this subclause;
  - (c) on all nickel-containing products sold after the expiration of five years from the date hereof or (if the Corporation gives the notice and establishes the smelter referred to in paragraph (b) of this subclause within the periods therein respectively mentioned) after the expiration of ten years from the date hereof such royalties as are prescribed from time to time under or pursuant to the provisions of the Mining Act;
  - (d) on all other minerals specified in clause 5 (1) hereof such royalties as are prescribed from time to time under or pursuant to the provisions of the Mining Act.
- (6) The Corporation will—
- Inspection.
- (a) within fifteen days of the expiration of each month during which it receives payment for any product or mineral in respect of which royalty is payable under this clause give to the Minister for Mines a return showing the number of tons of product and mineral payment for which is received during the month and all other particulars necessary to enable the calculation of the royalty payable thereon and shall pay to the Minister for Mines the royalty payable on such product and mineral; and
  - (b) permit the Minister or his nominee to inspect at all reasonable times and to take copies of or extracts from all books of account and records of the Company as are relevant for the purpose of determining the amount of royalty payable under this clause and if required by the State will take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State

or otherwise to the Minister's reasonable satisfaction as to all relevant weights and analyses and will give due regard to any objection or representation made by the Minister or his nominee as to any particular weight or assay of ore or nickel-containing products which may affect the amount of royalty payable hereunder.

Grants of  
land and  
leases.

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

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

subdivision and boundary surveys shall be carried out under the direction of the said Surveyor General and in accordance with the regulations for Lands Department Surveys and shall be drawn and registered on Lands Department plans with a view to the proclaiming of a new townsite in place of the existing townsite and that the actual cost of all surveys shall be paid by the Corporation;

- (c) in accordance with the reasonable requirements of the Corporation as first approved by the Minister and for such consideration or rent and on such terms and conditions as shall be reasonable having regard to the overall development of the area and rights of other parties grant to the Corporation:

(i) a lease for a term of ten years under the Mining Act which shall be deemed to be modified to enable the same to be granted for the purpose of constructing and using a causeway over Lake Lefroy to be constructed and during the term of the said lease to be maintained by the Corporation so as to allow water to flow through at intervals to such extent and in such manner as to preserve a reasonable balance in the water level on both sides of the causeway which shall be open for use by the public on such reasonable terms and conditions as are determined by the Corporation and approved by the Minister;

(ii) tailings leases (including leases or licences for the dumping of overburden) or other mining tenements under the Mining Act.

(2) For the purposes of subclause (1) of this clause the Land Act shall be deemed to be modified by—

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

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

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

(c) the deletion of section 135; and

(d) the inclusion of a power to offer for sale or leasing land within or in the vicinity of any townsite notwithstanding that the townsite has not been constituted a townsite under section 10.

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Disposal of  
Refinery  
Residues.

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

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

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

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

(5) The State after prior consultation from time to time with the Corporation shall decide the routes to be followed by such pipeline which routes may be within the boundaries of any road railway or land belonging to the Crown or any local authority but subject thereto will follow as direct a route as is reasonably possible.

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

(7) In so far as the parties mutually agree that for the purpose of this clause it is necessary for the State to acquire land or any rights or interests to in over or in respect of land the State shall acquire the same either privately or compulsorily as for a public work under the

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Public Works Act, 1902 and the cost and compensation involved shall be paid by the Corporation to the State on demand.

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

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

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

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

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

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

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



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Use of  
local labour  
and  
materials.

10. The Corporation undertakes and agrees with the State—

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

In calling tenders and or letting contracts for such works materials plant and equipment required by the Corporation the Corporation will ensure that *bona fide* Western Australian manufacturers and contractors are given reasonable opportunity to tender quote or otherwise be properly considered for such works materials plant and equipment;

Access to  
town and  
through  
mining  
areas.

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

Determina-  
tion of  
Agreement.

11. It is hereby Agreed and Declared—

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

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

(b) that on the cessation or determination of this Agreement—

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

Effect on  
land and  
leases on  
determina-  
tion of  
Agreement.

12. The Corporation will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties

Indemnity.

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arising out of or in connection with any work carried out by the Corporation pursuant to this Agreement or relating to its operations hereunder or arising out of or in connection with the construction maintenance or use by the Corporation or its servants agents contractors or assignees of the Corporation's works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

**Assignment.**

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

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

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

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

**Variation.**

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

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Corporation Limited) Agreement.*

the Corporation's works installations services or facilities the subject of this Agreement as shall have been provided by the Corporation in the course of work done hereunder.

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

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

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

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Notices.

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

Interpretation.

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

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

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

DAVID BRAND  
[L.S.]

ARTHUR GRIFFITH,  
Minister for Mines.

C. W. COURT,  
Minister for Industrial  
Development.

The Common Seal of  
WESTERN MINING  
CORPORATION LIMITED  
was hereunto affixed in the  
presence of—

L. BRODIE HALL  
[L.S.]

G. D. WRIGHT,  
Director.

Authorised Witness.