

IRON ORE (HANWRIGHT) AGREEMENT.

No. 19 of 1967.

AN ACT to approve an Agreement between the State of Western Australia and Hancock Prospecting Pty. Ltd. and Wright Prospecting Pty. Ltd. relating to iron ore and for incidental and other purposes.

[Assented to 23rd October, 1967.]

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

1. This Act may be cited as the *Iron Ore (Hanwright) Agreement Act, 1967.* Short Title.

2. In this Act, unless the contrary intention appears— Interpretation.

“Joint Venturers” has the same meaning as it has in the Agreement;

“the Agreement” means the agreement a copy of which is set out in the Schedule to this Act, and if the Agreement is varied from time to time, in accordance with its provisions, includes the Agreement as so varied.

Approval of
the
Agreement.

3. The Agreement is approved.

Entry of
Joint
Venturers on
certain
Crown land
authorised.

4. Notwithstanding any other Act or law, the Joint Venturers may enter upon the Crown lands referred to in paragraph (c) of clause 2 of the Agreement in accordance with and for the purposes mentioned therein.

S. 96 of Act
No. 47 of 1902
and s. 277 (5)
of Act No. 15
of 1904 not to
apply.

5. (1) Section ninety-six of the Public Works Act, 1902, does not apply to any railway that the Joint Venturers have agreed to construct under the Agreement.

(2) Subsection (5) of section two hundred and seventy-seven of the Mining Act, 1904, does not apply to any renewal of the rights of occupancy granted pursuant to paragraph (a) of clause 2 of the Agreement.

By-laws.

6. The Governor may, on the recommendation of the Joint Venturers, make, alter and repeal by-laws in accordance with and for the purposes of, the Agreement and the by-laws—

- (a) shall be published in the *Government Gazette*;
- (b) shall take effect and have the force of law from the date they are so published, or from a later date fixed by the Order making the by-laws;
- (c) may prescribe penalties not exceeding one hundred dollars for a breach of any of the by-laws; and
- (d) are not subject to section thirty-six of the Interpretation Act, 1918, but shall be laid before each House of Parliament within the six sitting days of such House next following the publication of the by-laws in the *Government Gazette*.

SCHEDULE

Section 2.

THIS AGREEMENT made the 11th day of August One thousand nine hundred and sixtyseven 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 HANCOCK PROSPECTING PTY. LTD. and WRIGHT PROSPECTING PTY. LTD. companies incorporated in the State of Western Australia (hereinafter referred to as "the said State") under the provisions of the Companies Act 1943 and each having its registered office at 88 Thomas Street West Perth in the said State and carrying on business under the style or firm name of HANWRIGHT IRON MINES (hereinafter called "the Joint Venturers" in which term shall be included the Joint Venturers and each of them and their and each of their respective successors and assigns) of the other part.

WHEREAS:

- (a) The Joint Venturers having made investigations which prior to the date hereof cost over A\$200,000 as to the iron ore reserves in the mining areas defined in clause 1 hereof and having already carried out certain investigations relating to the mining, transport by rail pelletisation and shipment of iron ore pellets from the mining areas desire firstly to complete such investigations secondly to enter into a contract or contracts for the export sale of iron ore pellets produced from iron ore from the mining areas.
- (b) The Joint Venturers agree to make investigations with a view to the establishment of a plant for the production of metallised agglomerates or a plant for the production of steel from iron ore from the mining areas with a view to their being in a position to submit to the State proposals for such establishment as are hereinafter provided.

NOW THIS AGREEMENT WITNESSETH:—

1. In this Agreement subject to the context—"approve" "approval" "consent" or "direct" means approve, approval consent or direct in writing as the case may be,

Interpreta-
tion.

"associated company" means—

- (a) any company having a paid up capital of not less than two million dollars (\$2,000,000) notified in writing by the Joint Venturers or any of them to the Minister which is incorporated

in the United Kingdom the United States of America or the Commonwealth of Australia and which—

- (i) is promoted by the Joint Venturers or any of them for all or any of the purposes of this Agreement and in which the Joint Venturers or any of them hold not less than twenty per cent (20%) of the issued ordinary share capital; or
 - (ii) is related within the meaning of the term subsidiary in section 6 of the Companies Act 1961 to any company in which the Joint Venturers or any of them hold not less than twenty per cent (20%) of the issued ordinary share capital, and
- (b) any company approved in writing by the Minister for the purposes of this Agreement which is associated directly or indirectly with the Joint Venturers or any of them in their business or operations hereunder;

“commencement date” means the date referred to as the commencement date in clause 7 (3) hereof;

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

“Joint Venturers’ wharf” means the wharf to be constructed by the Joint Venturers pursuant to this Agreement for the shipment of ore from the mineral lease or (except for the purposes of the definition of “port”) the temporary wharf for the time being approved by the Minister as the Joint Venturers’ wharf for the purposes hereof during the period to which such approval relates;

“deposits townsite” means the townsite to be established on or near the mining areas pursuant to this Agreement;

“direct shipping ore” means iron ore which has an average pure iron content of not less than sixty per cent (60%) which will not pass through a one half ($\frac{1}{2}$) inch mesh screen and which is sold without concentration or other beneficiation other than crushing and screening;

“export date” means the earlier of the following dates namely—

- (a) the date or extended date if any referred to in clause 9 (1) of this Agreement;

(b) the date when the Joint Venturers first export ore or pellets hereunder (other than ore or pellets shipped solely for testing purposes);

“financial year” means a year commencing on and including the 1st day of July;

“fine ore” means iron ore which has an average pure iron content of not less than sixty per cent (60%) which will pass through a one half ($\frac{1}{2}$) inch mesh screen and which is sold without concentration or other beneficiation other than crushing and screening;

“fines” means iron ore (not being direct shipping ore or fine ore) which will pass through a one half ($\frac{1}{2}$) inch mesh screen;

“f.o.b. revenue” means the price for iron ore from the mineral lease the subject of any shipment or sale and payable by the purchaser thereof to the Joint Venturers or an associated company less all export duties and export taxes payable to the Commonwealth on the export of the iron ore and all costs and charges properly incurred and payable by the Joint Venturers from the time the ore shall be placed on ship at the Joint Venturers’ wharf to the time the same is delivered and accepted by the purchaser including—

- (1) ocean freight;
- (2) marine insurance;
- (3) port and handling charges at the port of discharge;
- (4) all costs properly incurred in delivering the ore from port of discharge to the smelter and evidenced by relevant invoices;
- (5) all weighing sampling assaying inspection and representation costs;
- (6) all shipping agency charges after loading on and departure of ship from the Joint Venturers’ wharf; and
- (7) all import taxes by the country of the port of discharge;

“iron ore pellet contracts” means the contract or contracts referred to in clause 5 (2) (b) hereof;

“iron ore pellets” or “pellets” means iron ore in pellet or other form produced by the Joint Venturers from their pelletising plant on the mining areas or the port site by pelletisation or more advanced reduction or other more advanced treatment process from iron ore bearing material mined from the mineral lease;

“Land Act” means the Land Act, 1933;

“mineral lease” means the mineral lease or mineral leases referred to in clause 8 (1) (a) hereof and includes any renewal 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 Joint Venturers and includes the successors in office of the Minister;

“metallised agglomerates” means either—

(a) products resulting from reduction of iron ore or iron ore concentrates by thermal or other means whereby the iron content is increased to not less than ninety per cent (90%) (or if the Joint Venturers elect pursuant to the proviso contained in Clause 11 (1) (a) (i) hereof then not less than eightyfive per cent (85%)) or

(b) products resulting from some equivalent or more advanced form of metallising process approved by the Minister;

“month” means calendar month;

“notice” means notice in writing;

“ore” or “iron ore” means iron ore from the mineral lease;

“person” or “persons” includes bodies corporate;

“plant site” means the site on which the pellet plant is or is to be situated;

“port” means the port or harbour mutually agreed on and serving the Joint Venturers’ wharf;

“port townsite” means the townsite to be established pursuant to this Agreement near the port;

“Ratifying Act” means the Act to ratify this Agreement and referred to in clause 3 hereof;

“said State” means the State of Western Australia;

“secondary processing” means concentration or other beneficiation of ore other than by crushing or screening and includes thermal electrostatic magnetic and gravity processing and agglomeration, pelletisation or comparable changes in the physical character of ore;

“special lease” means a special lease or license to be granted in terms of this Agreement under the Ratifying Act the Land Act or the Jetties Act, 1926 and includes any renewal thereof;

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

“steel” means steel in the form of steel billets or manufactured steel products;

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

“townsite” in relation to the townsite to be established near the port means a townsite (whether or not constituted and defined under section 10 of the Land Act) primarily to facilitate the Joint Venturers’ operations in and near the port and for employees of the Joint Venturers and in relation to the mining areas means such a townsite which is established by the Joint Venturers for the purpose of their operations and employees on or near mining areas in lieu of a townsite constituted and defined under section 10 of the Land Act;

“wharf” includes any jetty structure;

“year 1” means the year next following the commencement date and “year” followed immediately by any other numeral has a corresponding meaning;

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;

power given under any clause of this Agreement other than clause 18 hereof to extend any period or date shall be without prejudice to the power of the Minister under the said clause 18;

marginal notes shall not affect the interpretation or construction hereof;

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

the phases in which it is contemplated that this Agreement will operate are as follows:—

- (a) Phase 1—the period from the execution hereof by the parties hereto until the commencement date;
- (b) Phase 2—the period thereafter.

Obligations
of the State
during
Phase 1.

2. The State shall—

(a) upon application by the Joint Venturers at any time prior to the 31st day of December, 1967 (and surrender of the then existing rights of occupancy already granted in respect of any portions of the mining areas) cause to be granted to the Joint Venturers and to the Joint Venturers alone rights of occupancy for the purposes of this Agreement (including the sole right to search and prospect for iron ore) over the whole of mining areas under section 276 of the Mining Act at a rental at the rate of eight dollars (\$8) per square mile per annum payable quarterly in advance for the period expiring on the 31st December, 1968 and shall then and thereafter subject to the continuance of this Agreement cause to be granted to the Joint Venturers as may be necessary successive renewals of such last mentioned rights of occupancy (each renewal for a period of twelve (12) months at the same rental and on the same terms) the last of which renewals notwithstanding its currency shall expire—

- (i) On the date of application for a mineral lease to the Joint Venturers under clause 8 (1) (a) hereof;
- (ii) at the expiration of one month from the commencement date;
- (iii) on the determination of this Agreement pursuant to its terms; or
- (iv) on the day of the receipt by the State of a notice from the Joint Venturers to the effect that the Joint Venturers abandon and cancel this Agreement.

whichever shall first happen;

- (b) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage prior to the 15th day of December, 1967;
- (c) to the extent reasonably necessary for the purposes of clauses 4 and 5 hereof allow the Joint Venturers to enter upon Crown lands (including land the subject of a pastoral lease) and survey possible sites for a port wharf railway pelletisation plant townsite (both in or near the port and on or near the mining areas) stockpiling processing and other areas required for the purposes of this Agreement; and
- (d) at the request and cost of the Joint Venturers co-operate with the Joint Venturers in the discharge of their obligations under clause 4 (1) (a) hereof.

3. (1) Clauses 8 and 9 and clause 10 (other than paragraphs (d) and (l) thereof) clauses 11 to 16 both inclusive and clause 18 of this Agreement shall not operate unless and until the Bill to ratify this Agreement as referred to in clause 2 (b) hereof is passed as an Act before the 31st day of December, 1967 or such later date if any as the parties hereto may mutually agree upon. If the Bill is not so passed before that date or later date (as the case may be) 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 except as hereinafter provided in clause 10 (d) hereof.

Ratification
and
operation

(2) If the Bill to ratify this Agreement is passed as an Act before the date or later date if any referred to in sub-clause (1) of this clause the following provisions of this clause shall notwithstanding the provisions of any Act or law thereupon operate and take effect namely—

- (a) the provisions of clause 8, the proviso to paragraph (a) of sub-clause (2) of clause 9, sub-paragraph (ix) of paragraph (j) of sub-clause (2) of clause 9, sub-clause (3) of clause 9, paragraphs (a) (f) (g) (h) (i) (k) and (m) of clause 10, and clauses 15, 17, 18, 19, 20 and 21 shall take effect as though the same had been brought into force and had been enacted by the Ratifying Act;
- (b) Subject to paragraph (a) of this sub-clause the State and the Minister respectively shall have all the powers discretions and authorities necessary or requisite to enable it to carry out and perform the powers discretions authorities and obligations conferred or imposed upon them respectively hereunder;
- (c) no future Act of the said State will operate to increase the Joint Venturers liabilities or obligations hereunder with respect to rents or royalties; and
- (d) the State may as for a public work under the Public Works Act, 1902, resume any land or any estate or interest in land required for the purposes of this Agreement and may lease or otherwise dispose of the same to the Joint Venturers.

4. (1) The Joint Venturers having prior to the date hereof expended a sum in excess of two hundred thousand dollars (\$200,000) on investigations as mentioned in recital (a) hereof shall continuously engage and expend a further sum in the matters hereinafter in this sub-clause mentioned so that the total sum to be expended in such matters inclusive of the sum spent to the date hereof is not less than seven

Obligations
of Joint
Venturer
during
Phase 1.

hundred and fifty thousand dollars (\$750,000) and shall prior to the 30th day of June, 1968 or if the Joint Venturers so request an extension to the 30th day of September, 1968 then prior to that date (or such further extended date if any the Minister may approve or as may be determined by arbitration in manner hereinafter provided) complete the matters hereinafter in this sub-clause mentioned and everything necessary to enable it to finalise and to submit to the Minister the detailed proposals and other matters referred to in clause 5 (2) (a) hereof. The matters first referred to in this sub-clause are—

- (a) a thorough geological and (as necessary) geo-physical investigation of the iron ore deposits in the mining areas and the testing and sampling of such deposits;
- (b) a general reconnaissance of the various sites of proposed operations pursuant to the Agreement;
- (c) an engineering investigation of the route for a railway from the mining areas to the port and wharf installation for the export of ore and pellets;
- (d) an engineering investigation of a port site at a location to be mutually agreed on and a wharf site therein for the purposes of the Joint Venturers but having regard to the proper development use and capacity of the port as a whole by persons and corporations other than the Joint Venturers;
- (e) an investigation of suitable water supplies for the townsites and port or port services;
- (f) the planning of suitable townsites in consultation with the State but having due regard to the general development of any port townsite and (if and to the extent applicable) the deposits townsite for use by others as well as the Joint Venturers;
- (g) metallurgical and market research; and
- (h) the planning of a pelletisation plant and facilities.

(2) The Joint Venturers shall keep the State fully informed at least quarterly commencing within one (1) quarter after the execution hereof as to the progress and results of the Joint Venturers' operations under sub-clause (1) of this clause.

(3) If the State concurrently carries out its own investigations and reconnaissances in regard to all or any of the matters mentioned in sub-clause (1) of this clause or any alternative port site the Joint Venturers shall co-operate with the State therein and so far as reasonably practicable will consult with the representatives or officers of the State and make full disclosures and expressions of opinion regarding matters referred to in this sub-clause.

(4) The Joint Venturers will employ and retain expert consultant engineers to investigate report upon and make recommendations in regard to the sites for and design of the Joint Venturers' wharf (including areas for installations stockpiling and other purposes in the port area) reasonably required by the Joint Venturers under this Agreement but in such regard the Joint Venturers will require the consultant engineers to have full regard for the general development of the port area and the dredging thereof and of approaches thereto with a view to the reasonable use by others of the port area and approaches and the Joint Venturers will furnish to the State copies of such report and recommendations. When submitting to the Minister detailed proposals as referred to in clause 5 (2) (a) hereof in regard to the matters mentioned in this sub-clause the Joint Venturers will so far as reasonably practicable ensure that the detailed proposals—

- (a) do not materially depart from the report and recommendation of the consultant engineers;
- (b) provide for the best overall development of the port area so far as the same relates to the Joint Venturers' activities; and
- (c) disclose any conditions of user and where alternative proposals are submitted the Joint Venturers' preferences in regard thereto.

5. (1) As soon as possible after the execution of this Agreement the Joint Venturers will submit to the Minister their proposals for the location of a site for the port and the Minister will within one month after such submission notify the Joint Venturers of his approval or otherwise or may submit an alternative proposal PROVIDED THAT if the location submitted by the Joint Venturers is for a port site at or near Cape Preston or at or near Cape Lambert and the submission is made before 30th June, 1968, the Minister will within six months after such submission notify the Joint Venturers of his approval or otherwise or may submit an alternative proposal PROVIDED THAT in dealing with the Joint Venturers' proposals for the location of a port site the Minister shall take into consideration the possible future requirements of others who may or could be concerned in the area and no priority shall be given to the Joint Venturers for the reason that their proposals were first in time.

Joint
Venturers
to submit
proposals.

(2) Subject to agreement (as to which the provisions of clause 19 hereof do not apply) being reached as to the site for the port then by the 30th day of June, 1968, or if the Joint Venturers under clause 4 (1) hereof have requested an extension to the 30th day of September, 1968, then by that date or such further extended date if any as the Minister may approve or as may be determined

by arbitration as hereinafter mentioned the Joint Venturers will where not already done submit to the Minister—

(a) to the fullest extent reasonably practicable their detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect so far as relevant—

(A) to the mining areas (or so much thereof as shall be comprised within the mineral lease) by the Joint Venturers during the three (3) years next following the commencement of such mining with a view to the transport and shipment of the iron ore mined and iron ore pellets produced and their outline proposals with respect to such mining and production during the next following seven (7) years; and

(B) to the transport and shipment of iron ore to be mined and pellets to be produced by the Joint Venturers hereunder during the operation of Phase 2 of this Agreement—

and including the location area lay-out design number 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 port and port development including dredging and depositing of spoil the provision of navigational aids the Joint Venturers' wharf (the plans and specifications for which wharf shall be submitted to and be subject to the approval of the State) the berth and swinging basin for the Joint Venturers' use and port installations facilities and services all of which shall permit of adaptation so as to enable the use of the wharf by vessels having an ore carrying capacity of not less than sixty thousand (60,000) tons;
- (ii) the railway between the mining areas and the Joint Venturers' wharf and works ancillary to or connected with the railway and its proposed operation including fencing (if any) and crossing places;
- (iii) townsites on the mining areas and near the port and development services and facilities in relation thereto;
- (iv) housing;
- (v) water supply;
- (vi) roads (including details of roads in respect of which it is not intended that the provisions of clause 9 (2) (b) shall operate); and

- (vii) the plant for the production of pellets either on the mining areas or at the port site;
 - (viii) any other works services or facilities proposed or desired by the Joint Venturers; and
- (b) (subject to the provisions of sub-clause (4) of this clause) satisfactory evidence firstly of the making or likelihood of making a suitable contract or suitable contracts for the sale by the Joint Venturers hereunder and shipment from the Joint Venturers' wharf of not less than ten million (10,000,000) tons of pellets produced from iron ore from the mineral lease and processed by the Joint Venturers in their pelletisation plant including not less than two million (2,000,000) tons in the aggregate in the first two (2) years next following the export date and not less than one million (1,000,000) tons per year in each and every year of each succeeding year thereafter secondly of the availability of finance necessary for the fulfilment of the Joint Venturers' proposals under this clause and thirdly of any necessary license to the Joint Venturers from the Commonwealth to export hereunder iron ore pellets the subject of the iron ore pellet contracts in the quantities at the rate or rates and in the years stated in the contracts.

(3) The Joint Venturers shall have the right to submit to the Minister their detailed proposals aforesaid in regard to a matter or matters the subject of any of the sub-paragraphs numbered (i) to (viii) inclusive of paragraph (a) of sub-clause (2) of this clause as and when the detailed proposals become finalised by the Joint Venturers PROVIDED THAT where any such matter is the subject of a sub-paragraph which refers to more than one subject matter the detailed proposals will relate to and cover each of the matters mentioned in the sub-paragraph PROVIDED FURTHER that the first detailed proposals submitted to the Minister relate to and cover the matters mentioned in sub-paragraph (i) of the said paragraph (a) of the said sub-clause (2) and that the last two detailed proposals submitted to the Minister relate to and cover the iron ore pellet contracts and the finance necessary for the iron ore pellet export project.

(4) If the Joint Venturers should in writing and within the time later in this sub-clause mentioned request the Minister to grant an extension or any further extension of time beyond the 30th day of June, 1968 or 30th day of September, 1968 as the case may be (or such later date if any previously granted or approved by the Minister) within which to make the iron ore pellet contracts and then

demonstrate to the satisfaction of the Minister that the Joint Venturers have duly complied with their other obligations hereunder have genuinely and actively but unsuccessfully endeavoured to make the iron ore pellet contracts on a competitive basis and reasonably require an additional period for the purpose of making iron ore pellet contracts the Minister will grant such extension as is warranted in the circumstances as follows—

- (a) for up to six (6) months on request made within one month of the 30th day of June, 1968 or 30th day of September, 1968 as the case may be;
- (b) if an extension is granted under paragraph (a) of this sub-clause then further for up to three (3) years on request made within one month of the expiration of the period of extension granted under the said paragraph (a);
- (c) if an extension is granted under paragraph (b) of this sub-clause then further for up to two (2) years on request made within one month of the expiration of the period of extension granted under the said paragraph (b) unless the Minister shows that the Joint Venturers satisfactory evidence that some third party is able and willing if made the lessee of the mineral lease to obtain and duly fulfil that party's obligations under contracts for the sale of iron ore pellets from the leased land which contracts are comparable with iron ore pellet contracts under this Agreement on terms from the State not more favourable on the whole (having regard inter alia to initial expenditure) to that party than those applicable to the Joint Venturers hereunder;

subject always and in every case to the condition that the Joint Venturers duly comply (or comply to the satisfaction of the Minister) with their other obligations hereunder.

Consideration of other proposals under Clause 5 (2).

6. (1) Within two (2) months after receipt of the detailed proposals of the Joint Venturers in regard to any of the matters mentioned in clause 5 (2) (a) hereof the Minister shall give to the Joint Venturers notice either of his approval of the proposals or of alterations desired thereto and in the latter case shall afford to the Joint Venturers 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 (subject to the provisions of clause 8 (4) (a) and (b) hereof) by others as well as the Joint Venturers but the Minister shall in any notice to the Joint Venturers disclose his reasons for any such alterations or conditions. Within two (2) months of the receipt of the notice the Joint

Venturers 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 Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period of three (3) months cease and determine (save as provided in clause 10 (d) hereof) but if the question is decided in favour of the Joint Venturers the decision will 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.

(2) Within two (2) months after receipt of evidence from the Joint Venturers with regard to the matters mentioned in clause 5 (2) (b) hereof to the reasonable satisfaction of the Minister the State will give to the Joint Venturers notice either that it is satisfied with such evidence (in which case the proposals in relation to those matters will be deemed approved) or not in which case the State shall afford the Joint Venturers an opportunity to consult with and to submit further evidence to the Minister. If within thirty (30) days of receipt of such notice further evidence has not been submitted to the Minister's reasonable satisfaction and his approval obtained thereto the Joint Venturers may within a further period of thirty (30) days elect by notice to the State to refer to arbitration as hereinafter provided and will within two (2) months thereafter refer to arbitration any dispute as to the reasonableness of the Minister's decision. If by the Award on arbitration the dispute is decided against the Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period cease and determine (save as provided in clause 10 (d) hereof) but if the question is decided in favour of the Joint Venturers the decision will take effect as a notice by the Minister that he is so satisfied with and has approved the matter or matters the subject of the arbitration.

7. (1) The arbitrator, arbitrators or umpire (as the case may be) of any submission to arbitration hereunder is hereby empowered upon application by either party hereto to grant any interim extension of time or date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of either or both parties hereunder and an award in favour of the Joint Venturers may in the name of the Minister grant any further extension of time for that purpose.

Extension
of time.

(2) Notwithstanding that under clause 6 hereof any detailed proposals of the Joint Venturers are approved by the State or the Minister or determined by arbitration award unless each and every such proposal and matter is so approved or determined by the 30th day of November, 1968 or by such extended date if any as the Joint Venturers shall be entitled to or shall be granted pursuant to the provisions hereof then at any time after the said 30th day of November, 1968, or if any extension or extensions should be granted under clause 5 (4) hereof 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 Joint Venturers 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 10 (d) hereof.

Commence-
ment date.

(3) Subject to the approval by the Minister or determination by arbitration as herein provided of each and every of the detailed proposals and matters referred to in clause 5 (2) hereof the date upon which the last of those proposals of the Joint Venturers shall have been so approved or determined shall be the commencement date for the purposes of this Agreement.

(4) If under any arbitration under clause 6 hereof the dispute is decided against the Joint Venturers and subsequently but before the commencement date this Agreement ceases and determines the State will not for a period of three (3) years after such determination enter into a contract with any other party for the mining transport and shipment of iron ore pellets from the mining areas on terms more favourable on the whole to the other party than those which would have applied to the Joint Venturers hereunder if the question had been determined in favour of the Joint Venturers.

Phase 2
Obligations
of State.

8. (1) As soon as conveniently may be after the commencement date the State shall—

Mineral
lease after
commence-
ment date.

(a) after application is made by the Joint Venturers for a mineral lease of any part or parts (not exceeding in total area three hundred (300) square miles and in the shape of a rectangular parallelogram or rectangular parallelograms) of the mining areas in conformity with the Joint Venturers' detailed proposals under clause 5 (2)(a)(A) hereof as finally approved or determined cause any necessary survey to be made of the land so applied for (the cost of which survey to the State will be recouped or repaid to the State by the Joint Venturers on demand after completion of the survey) and shall cause to be granted to the Joint

Venturers a mineral lease or mineral leases of the land 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) for iron ore in the form of the Schedule hereto for a term which subject to the payment of rents and royalties hereinafter mentioned and to the performance and observance by the Joint Venturers of their obligations under the mineral lease or mineral leases and otherwise under this Agreement shall be for a period of twenty-one (21) years commencing from the commencement date with rights to successive renewals of twenty-one (21) years upon the same terms and conditions but subject to earlier determination upon the cessation or determination of this Agreement PROVIDED HOWEVER that the Joint Venturers may from time to time (without abatement of any rent then paid or payable in advance) surrender to the State all or any portion or portions (of reasonable size and shape) of the mineral lease or mineral leases;

- (b) in accordance with the Joint Venturers' proposals as finally approved or determined under clause 6 hereof and as require the State to accept obligations and on written application by the Joint Venturers grant to the Joint Venturers a lease or leases under the Mining Act or if mutually agreed a lease or leases under the Land Act (notwithstanding any of the provisions of those Acts) of such area of land for the Joint Venturers' railway as the Joint Venturers shall require and the Minister may approve at a peppercorn rental and for such term or period and on such terms and conditions (including renewal rights) as shall be reasonable having regard to the requirements of the Joint Venturers hereunder and to the provisions of this Agreement. The Mining Act shall be deemed to be so amended varied and modified as to enable such lease or leases to be granted.

- (c) in accordance with the Joint Venturers' proposals as finally approved or determined under clause 6 hereof and as require the State to accept obligations—

Under Joint
Venturers'
proposals.

- (i) grant to the Joint Venturers for such terms or periods and on such terms and conditions (including renewal rights) as subject to the proposals (as finally approved or determined as aforesaid) shall be reasonable having regard to the requirements of the Joint Venturers hereunder and to the overall development of the port and access

Lands.

to and use by others of lands the subject of any grant to the Joint Venturers and of services and facilities provided by the Joint Venturers at peppercorn rental—special leases of Crown lands within the port area the townsites and the railway; and

at rentals as prescribed by law or are otherwise reasonable—leases rights mining tenements easements reserves and licenses in on or under Crown lands

under the Mining Act the Jetties Act, 1926 or under the provisions of the Land Act modified as in sub-clause (2) of this clause provided (as the case may require) as the Joint Venturers reasonably require for their works and operations hereunder including the construction or provision of the railway wharf roads airstrip water supplies and stone and soil for construction purposes; and

**Services and
facilities.**

- (ii) provide any services or facilities (including any expanded services or facilities which from time to time are considered necessary by the Minister) subject to the Joint Venturers bearing and paying the capital cost involved if reasonably attributable to or resulting from the Joint Venturers' project and operations hereunder and reasonable charges for maintenance and operation except operation charges in respect of education hospital and police services and except where and to the extent that the State otherwise agrees—

subject to such terms and conditions as may be finally approved or determined as aforesaid PROVIDED THAT from and after the fifteenth anniversary of the export date or the twentieth anniversary of the date hereof whichever shall first occur (provided that the said twentieth anniversary shall be extended one (1) year for each year this Agreement has been continued in force and effect under clause 5 (4) hereof) the Joint Venturers will in addition to the rentals already referred to in this paragraph pay to the State during the currency of this Agreement after such anniversary as aforesaid a rental (which if the Joint Venturers so request shall be allocated in respect of such one or more of the special leases or other leases granted to the Joint Venturers hereunder and remaining current) equal to twentyfive (25) cents per ton on all ore in respect of which royalty is payable under clause 9 (2) (j) hereof in any financial year such additional rental to be paid within three (3) months

after shipment sale or use as the case may be of the ore SO NEVERTHELESS that the additional rental to be paid under this proviso shall be not less than three hundred thousand dollars (\$300,000) in respect of any such year and the Joint Venturers will within three (3) months after expiration of that year pay to the State as further rental the difference between three hundred thousand dollars (\$300,000) and the additional rental actually paid in respect of that year but any amount so paid in respect of any financial year in excess of the rental payable for that year at the rate of twentyfive (25) cents per ton as aforesaid shall be offset by the Joint Venturers against any amount payable by them to the State above the minimum amounts payable to the State under this paragraph in respect of the two (2) financial years immediately following the financial year in respect of which the said minimum sum was paid; and

- (d) on application by the Joint Venturers cause to be granted to them such machinery and tailings leases (including leases for the dumping of overburden) and such other leases licences reserves and tenements under the Mining Act or under the provisions of the Land Act modified as in subclause (2) of this clause provided as the Joint Venturers may reasonably require and request for their purposes under this Agreement on or near the mineral lease;

Other rights.

(2) For the purposes of subparagraph (i) of paragraph (c) and paragraph (d) of subclause (1) of this clause section 81D of the Transfer of Land Act 1893 shall not apply and 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 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 leasing land within or in the vicinity of any townsite notwithstanding that the townsite has not been constituted a townsite under section 10; and
- (f) the inclusion of a power to grant leases or licenses 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 for the terms or periods and upon the terms

and conditions and in the forms referred to in the Act and upon application by the Joint Venturers in forms consistent as aforesaid in lieu of or in the forms referred to in the Act.

(3) The provisions of sub-clause (2) of this clause shall not operate so as to prejudice the rights of the State to determine any lease license or other right or title in accordance with the other provisions of this Agreement.

(4) The State further covenants with the Joint Venturers that the State—

Non-
interference
with Joint
Venturers'
rights.

(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 Joint Venturers 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, 1936) within the mineral lease unless the Minister reasonably determines that it is not likely to unduly prejudice or to interfere with the operations of the Joint Venturers hereunder assuming the taking by the Joint Venturers of all reasonable steps to avoid the interference;

No
resumption.

(b) subject to the performance by the Joint Venturers of their obligations under this Agreement shall not during the currency hereof without the consent of the Joint Venturers resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the said State any of the works installations plant equipment or other property for the time being belonging to the Joint Venturers and the subject of or used for the purposes of this Agreement nor any of the lands the subject of any lease or license granted to the Joint Venturers in terms of this Agreement AND without such consent (which shall not be unreasonably withheld) the State will 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 or easement of any nature or kind whatsoever over or in respect of any such lands, which may unduly prejudice or interfere with the Joint Venturers' operations hereunder.

Labour re-
quirements.

(c) shall if so requested by the Joint Venturers and so far as its powers and administrative arrangements permit use reasonable endeavours to assist the Joint Venturers to obtain adequate and suitable labour for the construction and the carrying

out of the works and operations referred to in this Agreement including suitable immigrants for that purpose;

- (d) except as provided in this Agreement 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 Joint Venturers in the conduct of the Joint Venturers' business hereunder nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Joint Venturers of full enjoyment of the rights granted and intended to be granted under this Agreement; No discrim-
inatory rates.
- (e) shall where and to the extent reasonably practicable on application by the Joint Venturers from time to time grant or assist in obtaining the grant to the Joint Venturers of prospecting rights and mining leases with respect to limestone dolomite and other minerals reasonably required by the Joint Venturers for their purposes under this Agreement; and Rights to
other
minerals.
- (f) shall as and when required by the Joint Venturers (but without prejudice to the foregoing provisions of this Agreement relating to the detailed proposals and matters referred to in clause 5 (2) hereof) consent in writing where and to the extent that the Minister considers to be reasonably justified to the Joint Venturers making improvements for the purposes of this Agreement on the land comprised in any lease granted by the State to the Joint Venturers pursuant to this Agreement PROVIDED THAT the Joint Venturers shall also obtain any other consents legally required in relation to such improvements. Consents to
improve-
ments on
leases.

(5) The Joint Venturers shall not have any tenant rights in improvements made by the Joint Venturers on the land comprised in any lease granted by the State to the Joint Venturers pursuant to this Agreement in any case where pursuant to clause 10 (e) hereof such improvements will remain or become the absolute property of the State.

9. (1) The Joint Venturers shall within a period of five years next following the commencement date (or within such extended period not exceeding a further two years as the Joint Venturers satisfy the Minister that the Joint Venturers reasonably require and the Minister approves) at a total cost of not less than seventy million dollars Phase 2
obligations
of the Joint
Venturers to
construct.

(\$70,000,000) construct (and shall actually commence construction within the first two years next following the commencement date and shall progressively continue the construction in accordance with the reasonable requirements of the Minister having regard to the obligation of the Joint Venturers to complete the construction within the period specified in this sub-clause) instal provide and do all things necessary to enable them to carry out their proposals under clause 5 (2) hereof as approved by the Minister and to enable them to mine ore from the mineral lease to transport the same by rail to the plant site to process the ore into pellets and transport the pellets to the Joint Venturers' wharf and to commence shipment therefrom in commercial quantities at an annual rate of not less than one million (1,000,000) tons of iron ore pellets and will within a period of ten years from the commencement date increase the capacity of such plant to a minimum of three million (3,000,000) tons of pellets per annum and without lessening the generality of this provision the Joint Venturers shall within the aforesaid period or extended period as the case may be—

(a) construct instal and provide upon the mineral lease or plant site or in the vicinity thereof mining plant and equipment pelletising plant and equipment crushing screening stockpiling and car loading plant and facilities power house workshop and other things of a design and capacity adequate to enable the Joint Venturers to meet and discharge their obligations hereunder and under the iron ore pellet contracts and to mine handle load and deal with not less than three thousand (3,000) tons of iron ore per diem such capacity to be built up progressively to not less than ten thousand (10,000) tons of iron ore per diem within five years next following the date on which the Joint Venturers first export iron ore pellets in commercial quantity;

To commence exports.

(b) actually commence to mine transport by rail pelletise and ship from the Joint Venturers' wharf iron ore pellets produced from ore from the mineral lease so that the average annual rate during the first two years next following the date the Joint Venturers first export pellets in commercial quantity shall not be less than one million (1,000,000) tons;

To construct railway.

(c) subject to the State having assured to the Joint Venturers all necessary rights in or over Crown lands available for the purpose construct in a proper and workmanlike manner and in accordance with recognised standards of railways of a similar nature operating under similar conditions and along a route approved or determined under clause 6 hereof (but subject to the provisions of the Public Works Act, 1902 to the extent that they are applicable)

a four feet eight and one half inches (4 ft. 8½ in.) gauge railway (with all necessary signalling switch and other gear and all proper or usual works) from the mineral lease to the Joint Venturers' wharf and will provide for crossing places and the running of such railway with sufficient and adequate locomotives freight cars and other railway stock and equipment to haul at least one million (1,000,000) tons of iron ore or pellets per annum to the Joint Venturers' wharf or as required for the purposes of this Agreement;

- (d) subject to the State having assured to the Joint Venturers all necessary rights in or over Crown lands or reserves available for the purpose construct by the said date such new roads as the Joint Venturers reasonably require for their purposes hereunder of such widths with such materials gates crossings and passovers for cattle and for sheep along such routes as the parties hereto shall mutually agree after discussion with the respective shire councils through whose districts any such roads may pass and subject to prior agreement with the appropriate controlling authority (being a shire council or the Commissioner of Main Roads) as to terms and conditions the Joint Venturers may at their own expense and risk except as otherwise so agreed upgrade or realign any existing road; To make roads.
- (e) construct the Joint Venturers' wharf in accordance with plans and specifications for the construction thereof previously approved or determined under clause 6 hereof on the site previously approved for the purpose; and To construct wharf.
- (f) in accordance with the Joint Venturers' proposals as finally approved or determined under clause 6 hereof and as require the Joint Venturers to accept obligations— To carry out proposals.
- (i) dredge the berth at the Joint Venturers' wharf and the channel and approaches thereto and any necessary swinging basin;
 - (ii) lay out and develop the townsites and provide adequate and suitable housing recreational and other facilities and services;
 - (iii) construct and provide roads housing school water and power supplies and other amenities and services; and
 - (iv) construct and provide other works (if any) including an airstrip.
- (g) subject as hereinafter provided the Joint Venturers may at any time after having constructed the works and facilities (other than the plant for production

Shipment of
ore during
and after
construc-
tion period
of pellet
plant.

of pellets) mentioned in clause 5 (2) hereof in accordance with the Joint Venturers' proposals as approved by the Minister ship or sell unprocessed ore won from the mineral lease provided that if by the end of the first two years next following the commencement date the Joint Venturers have not commenced construction in accordance with subclause (1) of this clause of a plant to process ore into pellets then the Joint Venturers shall not thereafter ship or sell any unprocessed ore won from the mineral lease unless in fulfilment of a contract or contracts entered into with the prior approval of the Minister provided further that if the Joint Venturers within the time aforesaid shall have commenced to construct such plant but shall not have completed the same within five years next following the commencement date then the Joint Venturers shall not thereafter ship or sell any unprocessed ore won from the mineral lease unless in fulfilment of a contract or contracts entered into with the prior approval of the Minister PROVIDED further that without prejudice to the rights of the State in the event of default by the Joint Venturers under this Agreement the Joint Venturers will not without the consent of the Minister in any three year period after completion of such plant export from the Commonwealth a quantity of unprocessed ore won from the mineral lease which is more than two and one half times or from the date the Joint Venturers have in production a plant for the production of metallised agglomerates or steel in accordance with their obligations under clause 11 hereof then four times the quantity of ore won from the mineral lease and used in the Joint Venturers' plant or plants on the mining areas or the port site during that period in the production of pellets metallised agglomerates or steel. For the purposes of this paragraph "unprocessed ore" means iron ore which is produced without concentration or other beneficiation other than crushing or screening.

- (h) Notwithstanding anything hereinbefore contained if the Joint Venturers can demonstrate to the satisfaction of the Minister that they are able to construct the works and facilities (including the plant for the production of pellets) mentioned in clause 5 (2) hereof in accordance with the Joint Venturers' proposals as approved by the Minister for a sum less than seventy million dollars (\$70,000,000) the Minister may in his discretion approve a lesser sum which shall then be substituted for the sum of seventy million dollars (\$70,000,000) first mentioned in this subclause.

(2) Throughout the continuance of this Agreement the Joint Venturers shall—

- (a) operate their railway in a safe and proper manner and where and to the extent that they can do so without unduly prejudicing or interfering with their operations hereunder allow crossing places for roads stock and other railways and also transport the passengers and carry the freight of the State and of third parties on the railway subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made altered and repealed as provided in sub-clause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost of the railway to the Joint Venturers) PROVIDED THAT in relation to their use of the said railway the Joint Venturers shall not be deemed to be a common carrier at common law or otherwise;
- Operation of
railway.
- (b) except to the extent that the Joint Venturers' proposals as finally approved or determined under clause 6 hereof otherwise provide allow the public to use free of charge any roads (to the extent that it is reasonable and practicable so to do) constructed or upgraded under this clause PROVIDED THAT such use shall not unduly prejudice or interfere with the Joint Venturers' operations hereunder;
- Use of roads
by others.
- (c) in the construction operation maintenance and use of any work installation plant machinery equipment service or facility provided or controlled by the Joint Venturers comply with and observe the provisions hereof and subject thereto the laws for the time being in force in the said State;
- Compliance
with laws.
- (d) at all times keep and maintain in good repair and working order and condition and where necessary replace all such works installations plant machinery and equipment and the railway wharf roads (other than the public roads referred to in clause 10 (b) hereof) dredging and water and power supplies for the time being the subject of this Agreement;
- Maintenance.
- (e) subject to the provisions of this Agreement ship from the Joint Venturers' wharf all ore mined from the mineral lease and sold and use their best endeavours to obtain therefor the best price possible having regard to market conditions from time to time prevailing and will not sell any direct shipping ore as fine ore or fines PROVIDED THAT this paragraph shall not apply to ore used for the production of pellets or in a plant for the production of metal-
- Shipment of
and price
for ore.

lised agglomerates or steel in any part of the said State lying north of the twenty-sixth parallel of latitude;

Use of
wharf and
facilities.

- (f) subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made and altered as provided in sub-clause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Joint Venturers) allow the State and third parties to use the Joint Venturers' wharf and port installations wharf machinery and equipment and wharf and port services and (subject to sub-clause (4) of this clause) port facilities PROVIDED THAT such use shall not unduly prejudice or interfere with the Joint Venturers' operations hereunder and that the entire control and all personnel for or in respect of such use shall be provided by or with the approval of the Joint Venturers;

Access
through
mining
areas.

- (g) allow the State and third parties to have access (with or without stock vehicles and rolling stock) over the mineral lease (by separate route road or railway) PROVIDED THAT such access over shall not unduly prejudice or interfere with the Joint Venturers' operations hereunder;

Protection
for
inhabitants.

- (h) subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made and altered as provided in sub-clause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Joint Venturers) allow the inhabitants for the time being of the port townsite being employees licensees or agents of the Joint Venturers or persons engaged in providing a legitimate and normal service to or for the Joint Venturers or their employees licensees or agents to make use of the water power recreational health and other services or facilities provided or controlled by the Joint Venturers;

Use of local
labour and
materials.

- (i) so far as reasonably and economically practicable 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 equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere. In calling tenders and or letting contracts for works materials plant equipment and supplies required by the Joint Venturers the Joint Venturers will so call

tenders quotations or by other methods of procurement make provision 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 equipment and supplies;

- (j) pay to the State royalty on all ore from the mineral lease shipped sold or used (other than ore shipped solely for testing purposes) as follows— Royalties.
- (i) subject to subparagraph (ix) of this paragraph on direct shipping ore and on fine ore and fines where such fine ore or fines are not sold and shipped separately as such (not being locally used direct shipping ore fine ore or fines) at the rate of seven and one half per centum ($7\frac{1}{2}\%$) of the f.o.b. revenue (computed at the rate of exchange prevailing on date of receipt by the Joint Venturers of the purchase price in respect of iron ore shipped or sold hereunder) PROVIDED NEVERTHELESS that such royalty shall not be less than sixty (60) cents per ton (subject to subparagraph (vi) of this paragraph) in respect of iron ore the subject of any shipment or sale;
 - (ii) subject to subparagraph (ix) of this paragraph on fine ore sold and shipped separately as such (not being locally used fine ore) at the rate of three and three quarters per centum ($3\frac{3}{4}\%$) of the f.o.b. revenue (computed as aforesaid) PROVIDED NEVERTHELESS that such royalty shall not be less than thirty (30) cents per ton (subject to subparagraph (vii) of this paragraph) in respect of iron ore the subject of any shipment or sale;
 - (iii) on fines sold and shipped separately as such (not being locally used fines) at the rate of fifteen (15) cents per ton;
 - (iv) subject to subparagraph (ix) of this paragraph on all other iron ore (not being locally used iron ore) at the rate of seven and one half per centum ($7\frac{1}{2}\%$) of the f.o.b. revenue (computed as aforesaid) without any minimum royalty;
 - (v) on all locally used iron ore at the rate of fifteen (15) cents per ton;
 - (vi) (for averaging purposes) if the amount ascertained by multiplying the total tonnage of ore shipped or sold and which is liable to royalty under subparagraph (i) of

this paragraph in any financial year by sixty (60) cents (or if subparagraph (ix) of this paragraph comes into operation by one hundred and twenty (120) cents) is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that subparagraph then that proviso shall not apply in respect of that ore shipped or sold in that year and at the expiration of that year any necessary adjustments shall be made accordingly;

- (vii) (for averaging purposes) if the amount ascertained by multiplying the total tonnage of fine ore sold and shipped separately as such and which is liable to royalty under subparagraph (ii) of this paragraph in any financial year by thirty (30) cents (or if subparagraph (ix) of this paragraph comes into operation by sixty (60) cents) is less than the total royalty which would be payable in respect of that ore but for the operation of the proviso to that subparagraph then that proviso shall not apply in respect of fine ore sold and shipped separately as such in that year and at the expiration of that year any necessary adjustments shall be made accordingly;
- (viii) the royalty at the rate of fifteen (15) cents per ton referred to in subparagraph (iii) of this paragraph and the royalty on locally used iron ore shall be adjusted up or down (as the case may be) as at the first day of January, 1969, and as at the beginning of every fifth year thereafter proportionately to the variation of the average of the prices payable for foundry pig iron f.o.b. Adelaide during the last full calendar year preceding the date at which the adjustment is to be made as compared with the average of those prices during the calendar year 1963; and
- (ix) without prejudice to the rights of the State under clause 10 (1) of this Agreement if at the end of the fifth year from the commencement date or the end of such extended date as approved by the Minister under clause 9 (1) hereof as the case may be and in accordance with detailed proposals approved by the Minister pursuant to clause 5 hereof the Joint Venturers have not in production in accordance with

clause 9 (1) hereof a plant for the production of iron ore pellets from ore from the mineral lease then in respect of all iron ore (not being locally used iron ore) shipped or sold thereafter the royalty payable under subparagraphs (i) and (iv) of this paragraph shall be increased to fifteen per centum (15%) with a minimum royalty of one hundred and twenty (120) cents in the case of the royalty payable under sub-paragraph (i) of this paragraph and the royalty payable under subparagraph (ii) of this paragraph shall be increased to seven and one half per centum (7½%) with a minimum royalty of sixty (60) cents and in addition the Joint Venturers shall at the end of such fifth year or the end of such extended date as approved by the Minister under Clause 9 (1) hereof as the case may be pay to the State a lump sum royalty equivalent to a further one hundred per centum of the total sum paid or payable as royalty under this Agreement in respect of all iron ore shipped or sold by the Joint Venturers up to the end of such fifth year or the end of such extended date as the case may be.

For the purposes of this paragraph "locally used iron ore" means iron ore used by the Joint Venturers or an associated company both within the Commonwealth and within the limits referred to in paragraph (o) of this clause for the production of pellets or for secondary processing or in a plant for the production of metallised agglomerates or steel and includes iron ore used by any other person or company north of the twenty-sixth parallel of latitude in the said State for the production of pellets or for secondary processing or in a plant for the production of metallised agglomerates or steel.

- (k) within fourteen days after the quarter days the last days of March June September and December in each year commencing with the quarter day next following the first commercial shipment of ore or pellets from the Joint Venturers' wharf furnish to the Minister a return showing the quantity of all ore the subject of royalty hereunder and shipped sold or used (as the case may be) during the quarter immediately preceding the due date of the return and shall not later than two (2) months after such due date pay to the Minister the royalty payable in respect of ore used and in

Payment of
Royalties.

respect of all ore shipped or sold pay to the Minister on account of the royalty payable hereunder a sum calculated on the basis of invoices or provisional invoices (as the case may be) rendered by the Joint Venturers to the purchaser (which invoices the Joint Venturers shall render without delay simultaneously furnishing copies thereof to the Minister) of such ore and shall from time to time in the next following appropriate return and payment make (by the return and by cash) all such necessary adjustments (and give to the Minister full details thereof) when the f.o.b. revenue realised in respect of the shipments shall have been ascertained;

Rent for
mineral
lease.

- (l) by way of rent for the mineral lease pay to the State annually in advance a sum equal to thirty-five (35) cents per acre of the area for the time being the subject of the mineral lease commencing on and accruing from the commencement date PROVIDED THAT after the Joint Venturers commence production of pellets in commercial quantities within the said State if and during the period that the total area for the time being comprised within the mineral lease

(i) is not more than one hundred (100) square miles the annual rent shall be twenty (20) cents per acre;

(ii) is over one hundred (100) square miles but not more than one hundred and fifty (150) square miles the annual rent shall be twenty five (25) cents per acre; and

(iii) is over one hundred and fifty (150) square miles but not more than two hundred (200) square miles the annual rent shall be thirty (30) cents per acre;

Other
rentals.

- (m) pay to the State the rental referred to in the proviso to clause 8 (1)(c) hereof if and when such rental shall become payable;

Inspection.

- (n) permit the Minister or his nominee to inspect at all reasonable times the books of account and records of the Joint Venturers relative to any shipment sale or use of ore hereunder including sale contracts and to take copies or extracts therefrom and for the purposes of determining the f.o.b. revenue payable in respect of any shipment of ore hereunder the Joint Venturers 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 which may affect the amount of royalty payable hereunder; and

- (o) ensure that unless with the prior written approval of the Minister to do otherwise all ore shipped pursuant to this Agreement will be off-loaded at a place outside the Commonwealth and if they fail so to ensure the Joint Venturers will subject to the provisions of this paragraph be in default hereunder. Where any such shipment is off-loaded within the Commonwealth without such prior written approval the Joint Venturers shall forthwith on becoming aware thereof give to the State notice of the fact and pay to the State in respect of the ore the subject of the shipment such further and additional rental calculated at a rate not exceeding one dollar per ton of the ore as the Minister shall demand without prejudice however to any other rights and remedies of the State hereunder arising from the breach by the Joint Venturers of the provisions hereof. If ore is shipped in a vessel not owned by the Joint Venturers or an associated company or any other company in which the Joint Venturers have a controlling interest and such ore is off-loaded in the Commonwealth the Joint Venturers will not be deemed to be in default hereunder if they take appropriate action to prevent a recurrence of such an off-loading PROVIDED FURTHER that the foregoing provisions of this paragraph shall not apply in any case (including any unforeseeable diversion of the vessel for necessary repairs or arising from force majeure or otherwise) where the Joint Venturers could not reasonably have been expected to take steps to prevent that particular off-loading PROVIDED ALSO that the provisions of this paragraph shall not apply—

Export to
places
outside the
Common-
wealth.

- (i) to ore used in the production of pellets or in secondary processing or in a plant for the production of metallised agglomerates or steel by the Joint Venturers or an associated company within the said State
- (ii) to ore so used by the Joint Venturers or an associated company within the Commonwealth but outside the said State to the extent that the tonnage of ore so used does not in any year exceed fifty per centum (50%) of the total quantity of ore used in the production of pellets or in secondary processing or in a plant for the production of metallised agglomerates or steel by the Joint Venturers or an associated company within the State; or

- (iii) to ore so used by the Joint Venturers or an associated company within the Commonwealth but outside the said State in excess of fifty per centum (50%) of the total quantity of ore used in the production of pellets or in secondary processing or in a plant for the production of metallised agglomerates or steel by the Joint Venturers or an associated company within the said State with the prior approval of the Minister as aforesaid.

By-laws.

(3) The Governor in Executive Council may upon recommendations by the Joint Venturers make alter and repeal by-laws for the purpose of enabling the Joint Venturers to fulfil their obligations under paragraphs (a) (b) and (f) of subclause (2) of this clause and (unless and until the port townsite is declared a townsite pursuant to section 10 of the Land Act) under paragraph (h) of subclause (2) of this clause and under clause 10 (a) hereof upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Joint Venturers) as set out in such by-laws consistent with the provisions hereof. Should the State at any time consider that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Joint Venturers shall recommend such alteration or repeal thereof as the State may reasonably require or (in the event of there being any dispute as to the reasonableness of such requirement) then as may be decided by arbitration hereunder.

**Harbour
channel
approach
provisions.**

- (4) (a) The parties hereto acknowledge that some party other than the Joint Venturers (which party is hereinafter in this subclause referred to as "the other party") may have already agreed or will agree with the State for the mining transport and export of iron ore or pellets from within an area or areas of the said State other than the mining areas and that it may be further agreed or determined that such export will be from the port. In this event and notwithstanding the approval or determination of all or any of the detailed proposals hereunder the parties hereto acknowledge that the State may require that only one channel approach to the port shall be dredged to serve the interests of the Joint Venturers and of the other party as well as of other users of the port but that it will depend upon circumstances (including the depth and width of the channel approach and the respective time programmes for the dredging as desired by the Joint Venturers and the other party under and for the purposes of their respective agreements with the State)

whether that channel approach shall be dredged by the Joint Venturers or by the other party or partly by each or under some other arrangements with a view to the joint user of the whole or part of the channel approach.

- (b) The parties hereto acknowledge the principle that whichever of the Joint Venturers and the other party should incur the whole or the greater capital outlay (as the case may be) for the dredging or should be responsible for the operation and maintenance of the channel approach (insofar as it is or is intended to be used by the other of them) should be reimbursed by the other of them such a fair and reasonable proportion of the capital outlay and operation and maintenance costs respectively for the use of the channel approach or otherwise a fair and reasonable charge for such use as may be determined by mutual agreement between the parties concerned or failing agreement by arbitration under the provisions of the Arbitration Act 1895 if those parties agree within a time to be fixed by the Minister to submit to arbitration and failing such agreement then as determined by the Minister.
- (c) If in the circumstances referred to in the last preceding paragraph the other party is the party to be reimbursed then the Joint Venturers hereby agree on demand made by the State to pay the amount of such reimbursement (determined as aforesaid) to the State for and on behalf of the other party.
- (d) If in the circumstances referred to in paragraph (b) of this subclause the Joint Venturers are the party to be reimbursed then the State agrees not to permit vessels of the other party of which notice is given to the State by the Joint Venturers to enter the port through the channel approach and then to load iron ore or pellets in bulk unless and until the other party has made arrangements reasonably satisfactory to the Joint Venturers (to be determined by agreement arbitration or the Minister as aforesaid) for a fair and reasonable contribution to capital outlay and operation and maintenance costs incurred and/or to be incurred by the Joint Venturers as aforesaid or for the payment of a fair and reasonable charge.
- (e) The State acknowledges and agrees with the Joint Venturers that in the event of the Joint Venturers incurring the whole or the greater capital outlay or operation and maintenance costs as aforesaid then vessels (other than vessels

employed for the Joint Venturers or other party's purposes) using the channel approach for the export from the port of more than half a million tons a year of bulk commodities (or such lesser tonnages as the Minister may direct from time to time either generally or in any particular case) should be required to pay to the Joint Venturers (or the State should be required to pay to the Joint Venturers from the moneys received from such vessels) fair and reasonable charges to be agreed by the parties hereto having regard to the circumstances including the aggregate tonnage of the commodities exported or to be exported from the port the rate of export and the capital outlay and operation and maintenance costs incurred and/or to be incurred by the Joint Venturers.

- (f) The Joint Venturers acknowledge and hereby agree with the State that the Joint Venturers will not be entitled to the payment of any moneys in respect of the use of the channel approach by vessels other than those referred to in the foregoing provisions of this subclause but that in respect of such other vessels the State shall be entitled to retain all charges and other revenue received in respect of such use.
- (g) The Joint Venturers also agree with the State that notwithstanding any lease granted to them by the State of the whole or part of the channel approach the State or the other party may at any time after notice to the Joint Venturers deepen or widen the channel approach for which purpose the Joint Venturers will on request by the State surrender without compensation so much of the lease of the channel approach as may be required for the purpose PROVIDED HOWEVER that the Joint Venturers will be entitled to a reasonable time within which to complete any firm contract for the dredging of the channel approach actually made by them (pursuant to the consent of the State or the determination by arbitration) but unfulfilled at the time of the giving of such notice in respect of the widening or deepening of the dredging of the channel approach.

10. The parties hereto covenant and agree with each other as follows—

- (a) that subject to and in accordance with proposals approved or determined under clause 6 hereof the Joint Venturers for their purposes hereunder and for domestic and other purposes in relation to a townsite may to the extent determined by the

Minister but notwithstanding any Act bore for water construct catchment areas store (by dams or otherwise) take and charge for water from any Crown Lands available for the purpose and generate transmit supply and charge for electrical energy and the Joint Venturers shall have all such powers and authorities with respect to water and electrical energy as are determined by the Minister for the purposes hereof which may include the powers of a water board under the Water Boards Act, 1904 and of a supply authority under the Electricity Act, 1945;

- (b) that the Joint Venturers may use any public roads which may from time to time exist in the area of their operations hereunder for the purpose of transportation of goods and materials in connection with such operations PROVIDED NEVERTHELESS that the Joint Venturers shall on demand pay to the State or the Shire Council concerned the cost of making good any damage to such roads occasioned by—
- Use of public roads.
- (i) such user by the Joint Venturers prior to the export date; and
 - (ii) user by the Joint Venturers for the transportation of ore won from the mineral lease or pellets;
- (c) that the State will at the request and cost of the Joint Venturers (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or part of the cost involved) widen upgrade or realign any public road over which the State has control subject to the prior approval of the said Commissioner to the proposed work;
- Upgrading of existing roads.
- (d) that on the cessation or determination of this Agreement—
- Effect of determination of agreement.
- (i) except as otherwise agreed by the Minister the rights of the Joint Venturers to in or under this Agreement and the rights of the Joint Venturers or of any assignee of the Joint Venturers or any mortgagee to in or under the mineral lease 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;
 - (ii) the Joint Venturers shall forthwith pay to the State all moneys which may then have become payable or accrued due;

- (iii) the Joint Venturers shall forthwith furnish to the State complete factual statements of the work research surveys and reconnaissances carried out pursuant to clause 4 (1) hereof if and insofar as the statements may not have been so furnished; and
- (iv) save as aforesaid and as provided in clause 7 (4) hereof and in the next following paragraph neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement;

Effect of
determina-
tion of lease.

- (e) that on the cessation or determination of any lease license or easement granted hereunder by the State to the Joint Venturers or (except as otherwise agreed by the Minister) to an associated company or other assignee of the Joint Venturers under clause 14 hereof of land for the Joint Venturers' wharf for any installation within the port for the Joint Venturers' railway or for housing at the port or port townsite the improvements and things other than plant equipment and removable buildings erected on the relevant land and provided for in connection therewith shall remain or become the absolute property of the State without compensation and freed and discharged from all mortgages and encumbrances and the Joint Venturers will do and execute such documents and things (including surrenders) as the State may reasonably require to give effect to this provision. In the event of the Joint Venturers immediately prior to such expiration or determination or subsequent thereto deciding to remove their locomotives rolling stock plant equipment and removable buildings or any of them from any land they shall not do so without first notifying the State in writing of their decision and thereby granting to the State the right or option exercisable within three months thereafter to purchase at valuation in situ the said plant equipment and removable buildings or any of them. Such valuation shall be mutually agreed or in default of agreement shall be made by such competent valuer as the parties may appoint or failing agreement as to such appointment then by two competent valuers one to be appointed by each party or by an umpire appointed by such valuers should they fail to agree;

No charge
for the
handling of
cargoes.

- (f) that subject to the Joint Venturers at their own expense providing all works buildings dredging and things of a capital nature reasonably required for their operations hereunder at or in the vicinity of the port no charge or levy shall be made by the

State or by any State authority in relation to the loading of outward or the unloading of inward cargoes from the joint Venturers' wharf whether such cargoes shall be the property of the Joint Venturers or of any other person or corporation but the State accepts no obligation to undertake such loading or unloading and may make the usual charges from time to time prevailing in respect of services rendered by the State or by any State agency or instrumentality or other local or other authority of the State and may charge vessels using the Joint Venturers' wharf ordinary light conservancy and tonnage dues;

- (g) that the mineral lease and the lands the subject of any lease license or easement granted to the Joint Venturers 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 Joint Venturers 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; Zoning.
- (h) that any State legislation for the time being in force in the said State relating to the fixation of rentals shall not apply to any houses belonging to the Joint Venturers in any townsite and that in relation to each such house the Joint Venturers shall have the right to include as a condition of their letting thereof that the Joint Venturers 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 Joint Venturers; Rentals and evictions.
- (i) that during the currency of this Agreement and subject to compliance with their obligations hereunder the Joint Venturers shall not be required to comply with the labour conditions imposed by or under the Mining Act in regard to the mineral lease; Labour conditions.
- (j) 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 or they are authorised or obliged to carry out hereunder; Sub-contracting.
- (k) 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 free- Rating.

hold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection therewith) shall for rating purposes be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate;

Determina-
tion of
Agreement.

- (1) that in any of the following events namely if the Joint Venturers shall make default in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sub-lease license or other title or document granted or assigned under this Agreement on their part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to them by the State (or if the alleged default is contested by the Joint Venturers and promptly submitted to arbitration within a reasonable time fixed by the arbitration award where the question is decided against the Joint Venturers the arbitrator finding that there was a *bona fide* dispute and that the Joint Venturers had not been dilatory in pursuing the arbitration) or if the Joint Venturers shall abandon or repudiate their operations under this Agreement or if either of the Joint Venturers shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within three months from the date of such liquidation the other Joint Venturer acquires absolutely the share estate and interest of the Joint Venturer (in liquidation) in or under this Agreement and in or under the mineral lease and any other lease license easement or right granted hereunder or pursuant hereto then and in any of such events the State may by notice to the Joint Venturers determine this Agreement and the rights of the Joint Venturers hereunder and under any lease license easement or right granted hereunder or pursuant hereto or if the Joint Venturers shall surrender the entire mineral lease as permitted under clause 8 (1) (a) this Agreement and the rights of the Joint Venturers hereunder and under any lease license easement or right granted hereunder or pursuant hereto shall thereupon determine; PROVIDED HOWEVER that if the Joint Venturers 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 work men or otherwise

shall have full power to enter upon lands occupied by the Joint Venturers and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Joint Venturers to the State on demand; and

(m) that—

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

(A) the Joint Venturers are liable to any person or body corporate (other than the State); or

(B) 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 Joint Venturers are responsible hereunder and for no other purpose the Joint Venturers 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 Joint Venturers;

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

11. (1) Before the end of the year 14 the Joint Venturers shall submit to the Minister—

(a) to the fullest extent reasonably practicable detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) for the establishment of a plant for the production of metallised agglomerates or a plant for the production of steel with in either case provision for expansion of the plant when economically feasible and including the location area layout design materials and time programme for the commencement and completion of construction or provision as the case may be of each of the following matters namely—

Metallised
agglomerates
plant or
steel plant.

(i) in the case of a plant for the production of metallised agglomerates provision for a plant capable ultimately of producing not less than three million (3,000,000) tons of metallised agglomerates per annum and

containing provision that the plant will have by the end of year 20 capacity to produce annually and will during year 20 produce not less than one million (1,000,000) tons of metallised agglomerates and will have by the end of year 24 capacity to produce annually and will during year 24 produce not less than two million (2,000,000) tons of metallised agglomerates and that production will progressively increase so that the plant by the end of year 27 will have a capacity to produce annually and will produce during year 27 not less than three million (3,000,000) tons of metallised agglomerates and that the capital cost involved including all developmental costs and research expenditure will be not less than eighty million dollars (\$80,000,000) unless with the approval of the Minister the Joint Venturers utilise a less expensive but at least equally satisfactory method of producing metallised agglomerates than any presently known to either party PROVIDED THAT the Joint Venturers may elect to produce metallised agglomerates having an iron content of less than ninety per cent (90%) but not less than eighty five per cent (85%) but in such case each of the tonnages mentioned in this subparagraph shall be increased by twenty five per cent (25%).

- (ii) in the case of a plant for the production of steel provision for a plant capable ultimately of producing one million (1,000,000) tons of steel per annum and containing provision that the plant will have by the end of year 20 a capacity to produce annually and will during year 20 produce not less than five hundred thousand (500,000) tons of steel and that production will progressively increase so that the plant by the end of year 25 will have a capacity to produce annually and will produce during year 25 not less than one million (1,000,000) tons of steel and that the capital cost involved including all developmental costs and research expenditure will not be less than eighty million dollars (\$80,000,000) unless with the approval of the Minister the Joint Venturers utilise a less expensive but at least equally satisfactory method of producing steel than any presently known to either party.

- (iii) such additional port development as may be necessary including dredging depositing of spoil the provision of navigational aids additions to the Joint Venturers' wharf (any plans and specifications for additions to the Joint Venturers' wharf shall be submitted to and be subject to the approval of the State) the berth and swinging basin for the Joint Venturers' use and port installations facilities and services;
 - (iv) services and facilities or expanded services and facilities in relation to the towns on the mining areas or near the port or any other towns or area the development of which may be affected by the establishment and operation of the plant for the production of metallised agglomerates or the plant for the production of steel.
 - (v) any other works services or facilities proposed or desired by the Joint Venturers and
- (b) satisfactory evidence of firstly availability of finance necessary for the fulfilment of the Joint Venturers' proposals under this clause and secondly if the Minister so requires production of any necessary export license to the Joint Venturers from the Commonwealth.

(2) Within two months after receipt of the detailed proposals of the Joint Venturers in regard to any of the matters mentioned in subclause (1) (a) of this clause the Minister shall give to the Joint Venturers notice either of his approval of the proposals or of alterations desired thereto and in the latter case shall afford to the Joint Venturers 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 Joint Venturers of the Joint Venturers' wharf facilities and services but the Minister shall in any notice to the Joint Venturers disclose his reasons for any such alteration or conditions. Within two (2) months of the receipt of the notice the Joint Venturers 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 Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain the approval of the Minister as to the matter or

matters the subject of the arbitration this Agreement shall on the expiration of that period of three (3) months cease and determine (save as provided in clause 10 (d) hereof) but if the question is decided in favour of the Joint Venturers the decision will 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.

(3) Within two (2) months after receipt of evidence from the Joint Venturers with regard to the matters mentioned in subclause (1)(b) of this clause to the reasonable satisfaction of the Minister the State will give to the Joint Venturers notice either that it is satisfied with such evidence (in which case the proposals in relation to those matters will be deemed approved) or not in which case the State shall afford the Joint Venturers an opportunity to consult with and to submit further evidence to the Minister. If within thirty (30) days of receipt of such notice further evidence has not been submitted to the Minister's reasonable satisfaction and his approval obtained thereto the Joint Venturers may within a further period of thirty (30) days elect by notice to the State to refer to arbitration as hereinafter provided and will within two (2) months thereafter refer to arbitration any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the dispute is decided against the Joint Venturers then unless the Joint Venturers within three (3) months after delivery of the award satisfy and obtain the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period cease and determine (save as provided in clause 10 (d) hereof) but if the question is decided in favour of the Joint Venturers the decision will take effect as a notice by the Minister that he is so satisfied with and has approved the matter or matters the subject of the arbitration.

(4) In accordance with the Joint Venturers' detailed proposals referred to in subclause (1) of this clause and as approved by the Minister the Joint Venturers will before the end of year 15 commence to construct (and thereafter progressively continue construction in accordance with the reasonable requirements of the Minister having regard to the obligation of the Joint Venturers to complete the construction within the period specified in this subclause) and before the end of year 20 complete the construction of the plant for the production of metallised agglomerates or for the production of steel as the case may be and thereafter at or during the requisite times or periods the Joint Venturers will produce in such plant the quantities of metallised agglomerates or steel as the case may be which they are required to produce as set out in paragraph (a) of subclause (1) hereof.

12. If at any time the State finds it necessary to request the Joint Venturers to alter the situation of any of the installations or other works (other than the Joint Venturers' wharf) erected constructed or provided hereunder and gives to the Joint Venturers notice of the request the Joint Venturers shall within a reasonable time after receipt of the notice but at the expense in all things (including increased running costs) of the State (unless the alteration is rendered necessary by reason of a breach by the Joint Venturers of any of their obligations hereunder) alter the situation thereof accordingly.

Alteration
of Works.

13. The Joint Venturers will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by the Joint Venturers pursuant to this Agreement or relating to their operations hereunder or arising out of or in connection with the construction maintenance or use by the Joint Venturers or their servants agents contractors or assignees of the Joint Venturers' Wharf railway or other works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith and will also indemnify and keep indemnified the State against all actions suits compensation claims demands or costs by third parties under the Ratifying Act the Public Works Act 1902 the Land Act or any other Act in respect of or as a consequence of the resumption or deprivation of the use of any land where such resumption or deprivation of use is made or done by the State for the purpose of granting to the Joint Venturers a lease right mining tenement easement reserve or license pursuant to clause 8 (1) hereof.

Indemnity.

14. (1) Subject to the provisions of this clause the Joint Venturers may at any time—

Assignment.

- (a) assign mortgage charge sublet or dispose of to an associated company as of right and to any other company or person with the consent in writing of the Minister the whole or any part of the rights of the Joint Venturers hereunder (including their rights to or as the holder of any lease license easement grant or other title) and of the obligations of the Joint Venturers hereunder; and
- (b) appoint as of right an associated company or with the consent 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 Joint Venturers 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 Joint Venturers 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 Joint Venturers shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on their part contained herein and in any lease license easement grant or other title the subject of an assignment under the said subclause (1).

Variation.

15. (1) 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 license easement 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 Joint Venturers' 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 such of the Joint Venturers' works installations services or facilities the subject of this Agreement as shall have been provided by the Joint Venturers in the course of work done hereunder.

(2) Notwithstanding the provisions of subclause (1) of this clause the Minister may with the consent of the Joint Venturers from time to time add to cancel or vary any right or obligation relating to works for the transport and/or export of ore or pellets or the production or transport or export of metallised agglomerates or steel to the extent that the addition cancellation or variation implements or facilitates the method of achieving any of the purposes of production or transport or export of ore or pellets or metallised agglomerates or steel produced from ore from the mineral lease.

(3) Notwithstanding the foregoing provisions of this clause the Minister may from time to time approve variations or require reasonable variations in the detailed proposals relating to any railway or port site and/or port facilities or dredging programme or townsite or town planning or any other facilities or services or other plans specifications or proposals which may have been approved pursuant to this Agreement and in considering such variations shall have regard to any changes consequent upon joint user proposals of any such works facilities or services and other relevant factors arising after the date hereof.

(4) The Joint Venturers shall be entitled at any time and from time to time with the prior approval in writing of the Minister to enter into an agreement with any third party for the joint construction maintenance and user or for the joint user only of any work constructed or agreed to be constructed by the Joint Venturers pursuant to the terms of this Agreement or by such other party pursuant to any agreement entered into by it with the State and in any such event any amount expended in or contributed to the cost of such construction by the Joint Venturers shall for the purpose of the calculation of the sum agreed to be expended on that work by the Joint Venturers under this Agreement and if so approved by the Minister be taken and accepted as an amount equal to the total amount expended (whether by the Joint Venturers or the said third party or by them jointly) in the construction of such work.

(5) When any agreement entered into by the Joint Venturers with some other company or person results in that other company or person discharging all or any of the obligations undertaken by the Joint Venturers under this Agreement or renders it unnecessary for the Joint Venturers to discharge any obligation undertaken by them hereunder the Minister will discharge or temporarily relieve the Joint Venturers from such part of their said obligations as is reasonable having regard to the extent of any period for which the other company or person actually effects the discharge of those obligations.

16. (1) On request by the Joint Venturers the State shall make representations to the Commonwealth for the grant to the Joint Venturers of a license or licenses under Commonwealth law for the export of ore or pellets in such quantities and at such rate or rates as shall be reasonable having regard to the terms of this Agreement the capabilities of the Joint Venturers and to maximum tonnages of ore or pellets for the time being permitted by the Commonwealth for export from the said State and in a manner or terms not less favourable to the Joint Venturers (except as to rate or quantity) than the State has given or intends to give in relation to such a license or licenses to any other exporter of ore or pellets from the said State.

Export
License.

(2) If at any time the Commonwealth limits by export license the total permissible tonnage of ore or pellets (as the case may be) for export from the said State then the Joint Venturers will at the request of the State and within three (3) months of such request inform the State whether or not they intend to export to the limit of the tonnage permitted to them under Commonwealth licenses in respect of the financial year next following and if they do not so intend will co-operate with the State in making representations to the Commonwealth with a view to some other producer in the said State being licensed by the Commonwealth

to export such of the tonnage permitted by the Commonwealth in respect of that year as the Joint Venturers do not require and such other producer may require. Such procedure shall continue to be followed year by year during such time as the Commonwealth limits by export license the total permissible tonnage of ore or pellets (as the case may be) for export from the said State.

(3) The Joint Venturers shall be in default hereunder if at any time they fail to obtain any license or licenses under Commonwealth law for the export of pellets as may be necessary for the purpose of enabling the Joint Venturers to fulfil their obligations hereunder or if any such license is withdrawn or suspended by the Commonwealth and such failure to obtain or such withdrawal or suspension (as the case may be) is due to some act or default by the Joint Venturers or to the Joint Venturers not being *bona fide* in their application to the Commonwealth or otherwise having failed to use their best endeavours to have the license granted or restored (as the case may be) but save as aforesaid if at any time any necessary license is not granted or any license granted to the Joint Venturers shall be withdrawn or suspended by the Commonwealth and so that as a result thereof the Joint Venturers are not for the time being permitted to export at least the tonnage they have undertaken with the State they will export then the Joint Venturers shall be relieved from the obligation to export that tonnage during the period such license is not granted or is withdrawn or suspended. The State shall at all times be entitled to apply on behalf of the Joint Venturers (and is hereby authorised by the Joint Venturers so to do) for any license or licenses under Commonwealth law for the export of pellets as may from time to time be necessary for the purposes of this Agreement.

Delays.

17. This Agreement shall be deemed to be made subject to any delays in the performance of obligations under this Agreement and to the temporary suspension of continuing obligations hereunder which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays or any such temporary suspension as aforesaid caused by or arising from Act of God force majeure floods storms tempests washaways fire (unless caused by the actual fault or privity of the Joint Venturers) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability (common in the pellet export industry) to profitably sell pellets 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.

18. Notwithstanding any provision hereof the Minister may at the request of the Joint Venturers 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 Joint Venturers by notice from the Minister shall be deemed for all purposes hereof substituted for the period or date so intended.

Power to
extend
periods.

19. Any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Agreement or any such amendment variation or addition or as to the rights duties or liabilities of either party thereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the Arbitration Act 1895 PROVIDED THAT except where this Agreement makes express provision for arbitration hereunder this clause shall not apply to any case where 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.

20. Any notice consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Civil Service of the said State acting by the direction of the Minister and forwarded by prepaid post to the Joint Venturers at their registered offices for the time being in the said State and by the Joint Venturers if signed on their behalf by a director manager or secretary of the Joint Venturers or by any person or persons authorised by the Joint Venturers in that behalf or by their 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 on the day on which it would be delivered in the ordinary course of post.

Notices

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

Exemption
from stamp
duty.

(a) this Agreement;

(b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the

Joint Venturers or any permitted assignee of the Joint Venturers any tenement lease easement license or other right or interest;

- (c) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment made in conformity with the provisions of subclause (1) of clause 14 hereof; and.
- (d) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment to or in favour of the Joint Venturers or an associated company of any interest right obligation power function or authority which has already been the subject of an assignment sublease disposition or appointment executed pursuant to subclause (1) of clause 14 hereof;

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

(2) If prior to the date on which the Bill referred to in clause 2 (b) hereof 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.

Interpreta-
tion.

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

SCHEDULE.

WESTERN AUSTRALIA.

IRON ORE (HANWRIGHT) AGREEMENT ACT, 1967.

MINERAL LEASE.

Lease No.

Goldfield

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 WHOM THESE PRESENTS shall come
GREETINGS:

KNOW YE that WHEREAS by an Agreement made the day of 1967 BETWEEN the State of Western Australia of the one part and Hancock Prospecting Pty. Ltd. and Wright Prospecting Pty. Ltd. (hereinafter called "the Joint Venturers" in which term shall be included the Joint Venturers and each of them jointly and severally and their and each of their successors and assigns

and including where the context so admits the assignees of the Joint Venturers under clause 14 of the said Agreement) of the other part the said State agreed to grant to the Joint Venturers a mineral lease or leases of portion or portions of the lands referred to in the said Agreement as the mining areas AND WHEREAS the said Agreement was ratified by the Iron Ore (Hanwright) Agreement Act, 1967 which said Act (inter alia) authorised the grant of a mineral lease or leases to the Joint Venturers NOW WE in consideration of the rents and royalties reserved by and of the provisions of the said Agreement and in pursuance of the said Act DO BY THESE PRESENTS GRANT AND DEMISE unto the Joint Venturers as tenants in common in equal shares subject to the said provisions ALL THAT piece or parcel of land situated in the Goldfield(s) containing approximately acres and (subject to such corrections as may be necessary to accord with the survey when made) being the land shaded pink on the plan in the Schedule hereto and all those mines, veins, seams, lodes and deposits of iron ore in on or under the said land (hereinafter called "the said mine") together with all rights, liberties, easements, advantages and appurtenances thereto belonging or appertaining to a lessee of a mineral lease under the Mining Act 1904 including all amendments thereof for the time being in force and all regulations made thereunder for the time being in force (which Act and regulations are hereinafter referred to as "the Mining Act") or to which the Joint Venturers are entitled under the said Agreement TO HOLD the said land and mine and all and singular the premises hereby demised for the full term of twenty-one years from the day of 196 with the right to renew the same from time to time for further periods, each of twenty-one years as provided in but subject to the said Agreement for the purposes but upon and subject to the terms covenants and conditions set out in the said Agreement and to the Mining Act (as modified by the said Agreement) YIELDING and paying therefor the rent and royalties as set out in the said Agreement. AND WE do hereby declare that this lease is subject to the observance and performance by the Joint Venturers of the following covenants and conditions, that is to say:—

1. The Joint Venturers shall and will use the land *bona fide* exclusively for the purposes of the said Agreement.
2. Subject to the provisions of the said Agreement the Joint Venturers shall and will 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 subject to and also as modified by the said Agreement the Mining Act so far as the same affect or have reference to this lease.

