

IRON ORE (NIMINGARRA) AGREEMENT.

No. 9 of 1967.

AN ACT to approve an Agreement between the State of Western Australia and Sentinel Mining Company Inc. relating to certain iron ore deposits and for incidental purposes.

[Assented to 20th 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 (Nimngarra) Agreement Act, 1967.* Short title.

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

“the Agreement” means the Agreement a copy of which is set out in the Schedule to this Act, and if that agreement is varied in

accordance with its provisions, includes the Agreement as so varied from time to time;

“the Company” has the same meaning as it has in the Agreement.

Approval of Agreement.

3. The Agreement is approved.

Power of Company to enter certain Crown lands.

4. Notwithstanding any other Act or law, the Company 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.

Provisions of certain Acts not to apply.

5. (1) Section ninety-six of the Public Works Act, 1902, does not apply to any railway constructed by the Company pursuant to the Agreement.

(2) The provisions of subsection (5) of section two hundred and seventy-seven of the Mining Act, 1904, do 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 Company, make, alter and repeal by-laws in accordance with and for the purposes referred to in subclause (3) of clause 9 of the Agreement, and the by-laws—

- (a) shall be published in the *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 *Gazette*.

SCHEDULE.

THIS AGREEMENT made the 13th day of March 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 SENTINEL MINING COMPANY INC. a Company incorporated in the United States of America and registered in the State of Western Australia (hereinafter referred to as "the said State") as a foreign company under the provisions of the Companies Act, 1961 and having its registered office situate at 81 St. George's Terrace, Perth in the said State (hereinafter called "the Company" which expression will include the successors and assigns of the Company including where the context so admits the assignees and appointees of the Company under clause 14 hereof) of the other part.

Section 3.

WHEREAS:

- (a) The Company is a wholly owned subsidiary of National Bulk Carriers Inc. a Delaware Corporation (hereinafter called "the parent Company").
- (b) The Company having made investigations which prior to the date hereof cost over A\$1,500,000 as to the iron ore reserves in the mining area defined in clause 1 hereof (being mining area "A" as defined in clause 1 hereof) and having already carried out certain investigations relating to the mining, transport by rail road or other appropriate form of transport and shipment of iron ore from the mining area "A" desires firstly to complete such investigations secondly to enter into a contract or contracts for the export sale of that ore and thirdly to have certain rights as hereinafter mentioned with respect to the mining area defined as mining area "B" in clause 1 hereof.
- (c) The Company agrees to investigate in due course the feasibility of the beneficiation of ores from the mining area "B" herein mentioned and of establishing within the State of Western Australia a plant for producing metallised products or ferro manganese and to review this matter from time to time with a view to its being in a position to submit to the State proposals for such establishment as are hereinafter provided.
- (d) The State and the Company acknowledge that the Commonwealth (as hereinafter defined) has the authority to issue the necessary licenses to export iron ore manganiferous ore and manganese ore from the mining areas referred to in this Agreement.

NOW THIS AGREEMENT WITNESSETH:—

Inter-
pretation.

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.
 - “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 Company to the Minister which is incorporated in the United Kingdom the United States of America or the Commonwealth of Australia and which—
 - (i) is a subsidiary of the parent Company within the meaning of the term “subsidiary” in section 6 of the Companies Act 1961 or is a subsidiary as so defined of any company whose issued ordinary share capital is owned by a person firm or company which at the time also owns more than fifty per cent of the issued ordinary share capital of the parent Company;
 - (ii) holds directly or indirectly not less than twenty per cent (20%) of the issued ordinary share capital of the Company;
 - (iii) is promoted by the parent Company or by any person firm or company that holds directly or indirectly not less than twenty per cent (20%) of the issued ordinary share capital of the parent Company for all or any of the purposes of this Agreement and in which the parent Company or such other company holds not less than twenty per cent (20%) of the issued ordinary share capital or;
 - (iv) is related within the meaning of that term in the aforesaid section to the parent Company or to any company in which the parent Company holds 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 Company in its 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;

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

“deposits townsite” means the townsite or townsites 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 Company first exports ore hereunder (other than ore shipped solely for testing purposes);

“ferro manganese” means for the purposes of this Agreement a metallic alloy which basically comprises manganese and iron but having a content of not less than 16% manganese;

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

“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 Company 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 Company from the time the ore shall be placed on ship at the Company’s 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 Company's wharf; and
- (7) all import taxes by the country of the port of discharge;

"iron ore contracts" means the contract or contracts referred to in Clause 5 (2) (b) hereof;

"Land Act" means the Land Act, 1933;

"locally used ore" means ore used by the Company or an associated company within the State for the production of processed ore;

"manganiferous ore" means an ore having a naturally combined metal content of iron and manganese, the latter exceeding 2%;

"metallised products" means products resulting from thermal refining of iron ore or concentrates including semi-reduction or other comparable changes in the chemical character of the iron ore or concentrates whereby the original oxygen content of the iron oxide of the iron ore or concentrates is reduced by 50% or more;

"mineral lease" means the mineral lease referred to in clause 8 (1) (a) hereof and includes any renewal thereof and where the context so permits shall extend to and be deemed to include a mineral lease granted under the provisions of clause 11 (6) hereof and any renewal thereof;

"Mining Act" means the Mining Act, 1904;

"mining area 'A'" means the area delineated and coloured red on the plan marked "A" initialled by or on behalf of the parties hereto for the purposes of identification;

"mining area 'B'" means the area delineated and coloured blue on the plan marked "B" 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 Rati-fying Act and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of the Minister;

"month" means calendar month;

"notice" means notice in writing;

"ore" means iron ore, manganiferous ore and manganese ore;

"person" or "persons" includes bodies corporate;

"port" means the port mutually agreed on and serving the Company's wharf;

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

"processed ore" means metallised products, ferro manganese and ore which has been the subject of secondary processing;

"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, pelletization 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;

"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 Company's operations in and near the port and for employees of the Company and in relation to mining area "A" and mining area "B" means such a townsite or townsites which is or are established by the Company for the purposes of its operations and employees on or near mining area "A" and mining area "B" or either or both of them in lieu of a townsite or townsites constituted and defined under Section 10 of the Land Act;

"wharf" includes any jetty structure;

"year 1" means the year next following the export 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 therefore 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.

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 Company 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 mining area "A") cause to be granted to the Company and to the Company 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 area "A" 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 Company 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 grant of a mineral lease to the Company under clause 8 (1) (a) hereof;

(ii) at the expiration of three months 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 Company to the effect that the Company abandons and cancels 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, 5 and 11 hereof allow the Company to enter upon Crown lands (including land the sub-

ject of a pastoral lease) and survey possible sites for a port wharf road rail or other appropriate form of transport townsite (both in or near the port and on or near mining area "A" and mining area "B") stockpiling processing and other areas required for the purposes of this Agreement; and

- (d) at the request and cost of the Company co-operate with the Company in the discharge of its obligations under clause 4 (1) (a) hereof.

3. (1) Clauses 8 and 9 and clause 10 (other than paragraphs (d) and (l) thereof) clause 11 (other than subclause (1) thereof) clauses 12 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 subclause (2) of clause 9, subparagraph (ix) of paragraph (j) of subclause (2) of clause 9, subclause (3) of clause 9, paragraphs (a) (f) (g) (h) (i) (k) and (m) of clause 10, and clauses 11, 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 subclause 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 Company's 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 Company.

Obligations
of Company
during
Phase 1.

4. (1) The Company (having at a total cost in excess of one million five hundred thousand dollars (\$1,500,000) as from November, 1963 been continuously engaged in the matters hereinafter in this subclause mentioned) shall prior to the 30th day of September, 1967 (or such 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 subclause 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 subclause are—

- (a) a thorough geological and (as necessary) geophysical investigation of the iron ore deposits in mining area "A" 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 or road or other appropriate form of transport from the mining area "A" to the port and wharf installation for the export of the iron ore;
- (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 Company but having regard to the proper development use and capacity of the port as a whole by persons and corporations other than the Company;
- (e) an investigation of suitable water supplies for the townsites and port or port services;
- (f) the planning of a suitable townsite 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 Company; and
- (g) metallurgical and market research.

(2) The Company 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 Company's operations under subclause (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 subclause (1) of this clause or any alternative port site the Company 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 subclause.

(4) The Company will employ and retain expert consultant engineers to investigate report upon and make recommendations in regard to the sites for and design of the

Company's wharf (including areas for installations stockpiling and other purposes in the port area) reasonably required by the Company under this Agreement but in such regard the Company 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 Company 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 subclause the Company will so far as reasonably practicable ensure that the detailed proposals—

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

5. (1) As soon as possible after the execution of this Agreement the Company will submit to the Minister its proposals for the location of a site for the port and the Minister will within one month after such submission notify the Company of his approval or otherwise or may submit an alternative proposal.

Company
to submit
proposals.

(2) Subject to agreement (as to which the provisions of clause 19 do not apply) being reached as to the site for the port then by the 30th day of September, 1967 or such extended date if any as the Minister may approve or as may be determined by arbitration as hereinafter mentioned the Company will where not already done submit to the Minister—

- (a) to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect so far as relevant—
 - (A) to the mining area "A" (or so much thereof as shall be comprised within the mineral lease) by the Company 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 its outline proposals with respect to such mining during the next following seven (7) years; and
 - (B) to the transport and shipment of iron ore to be mined by the Company hereunder during the operation of Phase 2 of this Agreement— and including the location area lay-out design num-

ber 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 Company's 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 Company's 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 but at the option of the Company expandable to enable use by vessels having an ore carrying capacity of two hundred and forty thousand (240,000) tons;
 - (ii) the railway or road or other appropriate form of transport between mining area "A" and the Company's wharf and works ancillary to or connected with the railway or road or other appropriate form of transport and its proposed operation including fencing (if any) and as circumstances may reasonably require such crossing places including in the case of a road or other appropriate form of transport either overpasses or underpasses where level crossings are inadequate for reasonable safety or other reasonable requirements;
 - (iii) townsites on mining area "A" 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) any other works services or facilities proposed or desired by the Company which may at the option of the Company include secondary processing of ore; and
- (b) (subject to the provisions of subclause (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 Company hereunder and shipment from the Company's wharf of not less than ten million (10,000,000) tons of iron ore from the mineral lease and or ore from the mineral lease processed by the Company within the

State including not less than two million (2,000,000) tons in the aggregate in the first three (3) 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 Company's proposals under this clause and thirdly of any necessary license to the Company from the Commonwealth to export hereunder iron ore the subject of the iron ore contracts in the quantities at the rate or rates and in the years stated in the contracts.

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

(4) If the Company should in writing and within the time later in this subclause mentioned request the Minister to grant an extension or any further extension of time beyond the 30th day of September, 1967 (or such later date if any previously granted or approved by the Minister) within which to make the iron ore contracts and then demonstrates to the satisfaction of the Minister that the Company has duly complied with its other obligations hereunder has genuinely and actively but unsuccessfully endeavoured to make the iron ore contracts on a competitive basis and reasonably requires an additional period for the purpose of making iron ore 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 September, 1967;
- (b) if an extension is granted under paragraph (a) of this subclause 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 subclause 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 to the Company 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 from the leased land which contracts are comparable with iron ore 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 Company hereunder;

subject always and in every case to the condition that the Company duly complies (or complies to the satisfaction of the Minister) with its 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 Company in regard to any of the matters mentioned in clause 5 (2) (a) hereof the Minister shall give to the Company notice either of his approval of the proposals or of alterations desired thereto and in the latter case shall afford to the Company opportunity to consult with and to submit new proposals to the Minister. The Minister may make such reasonable alterations to or impose such reasonable conditions on the proposals or new proposals (as the case may be) as he shall think fit having regard to the circumstances including the overall development and use (subject to the provisions of clause 8 (4) (a) and (b) hereof) by others as well as the Company but the Minister shall in any notice to the Company disclose his reasons for any such alterations or conditions. Within two (2) months of the receipt of the notice the Company may elect by notice to the State to refer to arbitration and within two (2) months thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Company then unless the Company within three (3) months after delivery of the award satisfies and obtains 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 Company 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 Company 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 Company 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 Company 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 Company 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 Company then unless the Company within three (3) months after delivery of the award satisfies and obtains 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 Company 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 Company 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 Company 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, 1967 or by such extended date if any as the Company shall be entitled to or shall be granted pursuant to the provisions hereof then at any time after the said 30th day of November, 1967, 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 Company twelve (12) months notice of intention to determine this Agreement and unless before the expiration of the said twelve (12) months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of clause 10 (d) hereof.

(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 Company shall have been so approved or determined shall be the commencement date for the purposes of this Agreement.

**Commence-
ment date.**

(4) If under any arbitration under clause 6 hereof the dispute is decided against the Company 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 from mining area "A" on terms more favourable on the whole to the other party than those which would have applied to the Company hereunder if the question had been determined in favour of the Company.

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 Company 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 parallelogram or parallelograms) of mining area "A" in conformity with the Company's 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 Company on demand after completion of the survey) and shall cause to be granted to the Company a mineral lease 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 Company of its obligations under the mineral lease 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 Company 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;
- (b) in accordance with the Company's proposals as finally approved or determined under clause 6 hereof and as require the State to accept obligations and on written application by the Company grant to the Company a lease under the Mining Act (notwithstanding any of the provisions of that Act) of such area of land for the Company's railway or road as the case may be as the Company shall require and

the Minister may approve at a peppercorn rental and for such terms or period and on such terms and conditions (including renewal rights) as shall be reasonable having regard to the requirements of the Company 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 to be granted.

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

Under
Company's
Proposals.

- (i) grant to the Company in fee simple or 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 Company hereunder and to the overall development of the port and access to and use by others of lands the subject of any grant to the Company and of services and facilities provided by the Company

Lands.

for nominal consideration—townsite lots; at peppercorn rental—special leases of Crown lands within the port area the townsites and the railways and roads;

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 Company reasonably requires for its 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

- (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 Company bearing and paying the capital cost involved if reasonably attributable to or resulting from the Company's project and operations hereunder and reasonable charges for maintenance and operation except operation charges in respect

Services and
facilities.

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 Company 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 subject to its being payable by the Company to the State may from time to time at the option of the Company be allocated in respect of such one or more of the special leases or other leases granted to the Company 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 Company 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 twenty five (25) cents per ton as aforesaid shall be offset by the Company against any amount payable by it 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

Other
rights.

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

(2) For the purposes of subparagraph (i) of paragraph (c) and paragraph (d) of subclause (1) of this clause and also for the purposes of clause 11 hereof the Land Act shall be deemed to be modified by—

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

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

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

(c) the deletion of section 135;

(d) the deletion of section 143;

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

(f) the inclusion of a power to offer for sale or grant leases or 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 Company in forms consistent as aforesaid in lieu of in the forms referred to in the Act.

(3) The provisions of subclause (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.

Non-interference with Company's rights.

(4) The State further covenants with the Company that the State—

(a) shall not during the currency of this Agreement register any claim or grant any lease or other mining tenement under the Mining Act or otherwise by which any person other than the Company or an associated company will obtain under the laws relating to mining or otherwise any rights to mine or take the natural substances (other than petroleum as defined in the Petroleum Act, 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 Company hereunder assuming the taking by the Company of all reasonable steps to avoid the interference;

(b) subject to the performance by the Company of its obligations under this Agreement shall not during the currency hereof without the consent of the Company resume nor suffer nor permit to be resumed by any State instrumentality or by any local or

No resumption.

other authority of the said State any of the works installations plant equipment or other property for the time being belonging to the Company or an associated company 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 Company 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 Company's operations hereunder;

Labour requirements.

(c) shall if so requested by the Company and so far as its powers and administrative arrangements permit use reasonable endeavours to assist the Company to obtain adequate and suitable labour for the construction and the carrying out of the works and operations referred to in this Agreement including suitable immigrants for that purpose;

No discriminatory rates.

(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 Company in the conduct of the Company's business hereunder nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement.

Rights to other minerals.

(e) shall where and to the extent reasonably practicable on application by the Company from time to time grant or assist in obtaining the grant to the Company of prospecting rights and mining leases with respect to limestone dolomite and other minerals reasonably required by the Company for its purposes under this Agreement; and

Consents to improvements on leases.

(f) shall as and when required by the Company (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 Company making improvements for the purposes of this Agreement on the land comprised in any lease granted by the State to the Company pursuant to

this Agreement PROVIDED THAT the Company shall also obtain any other consents legally required in relation to such improvements.

(5) The Company shall not have any tenant rights in improvements made by the Company on the land comprised in any lease granted by the State to the Company 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 Company shall within three (3) years next following the commencement date (or within such extended period not exceeding a further two years as the Company may satisfy the Minister that the Company reasonably requires and the Minister approves), and at a cost of not less than twenty five million dollars (\$25,000,000) (inclusive of the said recited costs of one million five hundred thousand dollars (\$1,500,000)) construct instal provide and do all things necessary to enable it to mine from the mineral lease to transport by rail or road or other appropriate form of transport to the Company's wharf and to commence shipment of iron ore therefrom in commercial quantities and without lessening the generality of this provision the Company shall within the aforesaid period or extended period as the case may be—

Phase 2
obligations
of the
Company to
construct.

- (a) construct instal and provide upon the mineral lease or in the vicinity thereof mining 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 Company to meet and discharge its obligations hereunder and under the iron ore 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 six thousand (6,000) tons of iron ore per diem within three (3) years next following the export date;**
- (b) actually commence to mine transport by rail road or other appropriate form of transport and ship from the Company's wharf iron ore from the mineral lease so that the average annual rate during the first three years next following the export date shall not be less than seven hundred thousand (700,000) tons but so that the quantity shipped in the first year shall be not less than two hundred and fifty thousand (250,000) tons and in the second year shall not be less than five hundred thousand (500,000) tons and after the first three (3) years shall be not less than one million (1,000,000) tons per year;
- (c) subject to the State having assured to the Company all necessary rights in or over Crown lands available for the purpose construct in a proper and workmanlike manner and in accordance with recognised

On mining
areas.

To commence
exports.

To construct
railway
or road.

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' 8½") gauge railway (with all necessary signalling switch and other gear and all proper or usual works) from mining area "A" to the Company's 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 per annum to the Company's wharf or as required for the purposes of this Agreement or in lieu thereof in accordance with the Company's proposals as finally approved or determined under clause 6 hereof construct and equip in the manner provided in the next succeeding sub clause a road along such route aforesaid and will provide sufficient road trucks or other appropriate forms of transport to enable the annual tonnage aforesaid to be hauled from mining area "A" to the Company's wharf;

To make roads.

- (d) subject to the State having assured to the Company all necessary rights in or over Crown lands or reserves available for the purpose construct by the said date such new or additional roads as the Company reasonably requires for its purposes hereunder of such widths with such materials gates crossings and passovers for cattle and for sheep and 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 Company may at its own expense and risk except as otherwise so agreed upgrade or realign any existing road;

To construct wharf.

- (e) construct the Company's wharf in accordance with plans and specifications for the construction thereof previously approved or determined under clause 6 hereof on the site previously approved or determined for the purpose; and

To carry out proposals.

- (f) in accordance with the Company's proposals as finally approved or determined under clause 6 hereof and as require the Company to accept obligations—

- (i) dredge the berth at the Company's 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.

(2) Throughout the continuance of this Agreement the Company shall—

Operation of
railway
or road.

(a) operate its railway or its road as the case may be in a safe and proper manner and where and to the extent that it can do so without unduly prejudicing or interfering with its operations hereunder allow crossing places for roads stock and other railways and also in the event the Company constructs the railway 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 Company) PROVIDED THAT in relation to its use of the said railway the Company shall not be deemed to be a common carrier at common law or otherwise;

(b) except to the extent that the Company's 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 Company's 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 Company 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 and other forms of transport (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.

Shipment of
and price
for ore.

- (e) ship from the Company's wharf all ore mined from the mineral lease and sold and use its 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 secondary processing or in a plant for producing metallised products or ferro manganese 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 subclause (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 Company) allow the State and third parties to use the Company's wharf and port installations wharf machinery and equipment and wharf and port services and (subject to subclause (4) of this clause) port facilities PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's 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 Company and provided further that this subclause shall not permit the State or third parties to use the Company's processing plants or its maintenance or stockpiling facilities without the consent of the Company;

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 Company's 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 subclause (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 Company) allow the inhabitants for the time being of the port town-site being employees licensees or agents of the Company or persons engaged in providing a legitimate and normal service to or for the Company or those employees licensees or agents to make use of the water power recreational health and other services or facilities provided or controlled by the Company;

- (i) so far as reasonable 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 Company the Company 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. Use of local labour and materials.
- (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 and fines are not sold 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 Company 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 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 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 manganiferous ore and on manganese ore and 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 ninety (90) 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 shipped or sold 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 fortysix (46) 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 shipped or sold 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) if at the end of the sixth year from the date of this Agreement and in accordance with detailed proposals approved by the Minister pursuant to Clause 11 hereof the Company has not in production a plant for the production of metallised products or a plant for the production of ferro manganese 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 eleven and a quarter per centum (11¼%) with a minimum royalty of ninety (90) cents in the case of the royalty payable under subparagraph (i) of this paragraph and the royalty payable under subparagraph (ii) of this paragraph shall be increased to five and three quarters per centum (5¾%) with a minimum royalty of forty six (46) cents and in addition the Company shall at the end of such sixth year pay to the State a lump sum royalty equivalent to a further one half of the total sum paid or payable as royalty under this Agreement in respect of all iron ore shipped or sold by the Company up to the end of such sixth year.

For the purposes of this paragraph "locally used iron ore" means iron ore used by the Company or an associated company both within the Commonwealth and within the limits referred to in paragraph (o) of this clause for secondary processing or in the production of metallised products of ferro manganese and includes iron ore used by any other person or company north of the twentysixth parallel of latitude in the said State for secondary processing or in the production of metallised products or ferro manganese;

- (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 from the company's 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 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 Company to the purchaser (which invoices the Company 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

Payment of
Royalties.

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 thirtyfive (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 Company commences production in commercial quantities within the said State from a plant for producing metallised products or ferro manganese (whichever is first constructed) 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 Company relative to any shipment or sale of ore hereunder including sale contracts and to take copies or extracts therefrom and for the purpose of determining the f.o.b. revenue payable in respect of any shipment of ore hereunder the Company 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

Export to
places
outside the
Common-
wealth.

- (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 it fails so to ensure the Company 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

Company 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 Company of the provisions hereof. If ore is shipped in a vessel not owned by the Company or an associated company or any other company in which the Company has a controlling interest and such ore is off-loaded in the Commonwealth the Company will not be or be deemed to be in default hereunder if it takes 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 Company 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—

- (i) to ore used in the production of metallised products or ferro manganese or in secondary processing by the Company or an associated company within the said State
- (ii) to ore so used by the Company 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 metallised products and or ferro manganese and or in secondary processing by the Company or an associated company within the State; or
- (iii) to ore so used by the Company 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 metallised products and or ferro manganese and or in secondary processing by the company or an associated company within the said State with the prior approval of the Minister as aforesaid.

(3) The Governor in Executive Council may upon recommendations by the Company make alter and repeal by-laws for the purpose of enabling the Company to fulfil its obligations under paragraphs (a) and (f) of subclause (2) of this clause and (unless and until the port townsite is declared a

By-laws.

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 Company) 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 Company 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 Company (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 from within an area or areas of the said State other than mining Area "A" or mining Area "B" 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 Company 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 Company 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 Company 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 Company 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 Company hereby agrees 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 Company is 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 Company to enter the port through the channel approach and then to load iron ore in bulk unless and until the other party has made arrangements reasonably satisfactory to the Company (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 Company as aforesaid or for the payment of a fair and reasonable charge.

(e) The State acknowledges and agrees with the Company that in the event of the Company incurring the whole or the greater capital outlay or operation and maintenance costs as aforesaid then vessels (other than vessels employed for the Company's 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 Company (or the State should be required to pay to the Company 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 Company.

(f) The Company acknowledges and hereby agrees with the State that the Company 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 Company also agrees with the State that notwithstanding any lease granted to it 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 Company deepen or widen the channel approach for which purpose the Company 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 Company will be entitled to reasonable time within which to complete any firm contract for the dredging of

the channel approach actually made by it (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.

Mutual
Covenants.
Water and
power
supplies.

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 Company for its 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 Company 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;

Use of public
roads.

(b) that the Company may use any public roads which may from time to time exist in the area of its operations hereunder for the purpose of transportation of goods and materials in connection with such operations PROVIDED NEVERTHELESS that the Company shall on demand pay to the State or the Shire Council concerned the cost of making good any damage to such roads occasioned by—

(i) such user by the Company prior to the export date; and

(ii) user by the Company for the transportation of ore won from the mineral lease;

Upgrading
of existing
roads.

(c) that the State will at the request and cost of the Company (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;

Effect of
determina-
tion of
agreement.

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

(i) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement and the rights of the Company or of any assignee of the Company or any mortgagee to in or under the mineral 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 AND the Company will without further consideration but otherwise at the request and cost of the State transfer or surrender to the State or the Crown all land the subject of any Crown Grant issued under the Land Act pursuant to this Agreement;

- (ii) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
- (iii) the Company 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;
- (e) that on the cessation or determination of any lease license or easement granted hereunder by the State to the Company or (except as otherwise agreed by the Minister) to an associated company or other assignee of the Company under clause 14 hereof of land for the Company's wharf for any installation within the port for the Company's 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 Company 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 Company immediately prior to such expiration or determination or subsequent thereto deciding to remove its locomotives rolling stock plant equipment and removable buildings or any of them from any land it shall not do so without first notifying the State in writing of its decision and thereby granting to the State the right or option exercisable

Effect of
determina-
tion of
lease.

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 Company at its own expense providing all works buildings dredging and things of a capital nature reasonably required for its 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 Company's wharf whether such cargoes shall be the property of the Company 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 Company's wharf ordinary light conservancy and tonnage dues;

Zoning.

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

Rentals and
evictions.

- (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 Company in any townsite and that in relation to each such house the Company shall have the right to include as a condition of its letting thereof that the Company may take proceedings for eviction of the occupant if the latter shall fail to abide by and observe the terms and conditions of occupancy or if the occupant shall cease to be employed by the Company;

Labour
Conditions.

- (i) that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the labour conditions imposed by or under the Mining Act in regard to the mineral lease.

- (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 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 freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection therewith) shall for rating purposes be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate. Rating.
- (l) that in any of the following events namely if the Company shall make default in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sublease license or other title or document granted or assigned under this Agreement on its part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to it by the State (or if the alleged default is contested by the Company and promptly submitted to arbitration within a reasonable time fixed by the arbitration award where the question is decided against the Company the arbitrator finding that there was a bona fide dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company shall abandon or repudiate its operations under this Agreement or if the Company shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto or if the Company shall surrender the entire mineral lease as permitted under clause 8 (1) (a) this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto shall thereupon determine; PROVIDED HOWEVER THAT if the company shall fail to remedy any default after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make Determination of Agreement.

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

(m) that—

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

(A) the Company is 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 Company is responsible hereunder and for no other purpose the Company shall be deemed to be a municipality and the said roads shall be deemed to be streets under the care control and management of the Company;

(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.

Mining
Area "B".

11. (1) For the purposes of subclause (2) hereof the State shall on application by the Company (and surrender of the then (if any) existing rights of occupancy already granted in respect of any portion of mining area "B") and within one month thereafter cause to be granted to the Company and to the Company alone rights of occupancy (including the sole right to search and prospect for iron ore manganese ore and manganese ore) over the whole of mining area "B" under section 276 of the Mining Act at a rental at the rate of eight dollars (\$8.00) per square mile per annum payable quarterly in advance for the period expiring on the 31st December, 1967 and shall then and thereafter subject to the continuance of this Agreement cause to be granted to the Company 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 grant of a mineral lease to the Company under this clause or

(ii) at the expiration of one month from the date on which the detailed proposals and matters referred to in clause 11 (3) hereof shall have been approved by the Minister or deemed to have been approved by decision of arbitration or

- (iii) at the expiration of the time within which the detailed proposals and matters referred to in clause 11 (3) hereof must be required to be submitted by the Company to the Minister or
- (iv) on the determination of this Agreement pursuant to its terms or
- (v) on the day of the receipt by the State of a notice from the Company to the effect that the Company abandons and cancels this Agreement

whichever shall first happen.

(2) From the date of grant of the rights of occupancy referred to in subclause (1) of this clause the Company shall with all reasonable diligence continue its preliminary exploration and investigation preparatory to making a complete and thorough geological and (as necessary) geophysical investigation of mining area "B" and within two years next following the date of this Agreement the Company shall complete its geological and (as necessary) geophysical exploration and investigation with a view to proving iron ore manganese ore and manganese ore deposits in such mining area and testing and sampling such deposits. Such investigations shall include a general reconnaissance of the mining area with a view to the establishment of various sites for the operations pursuant to this Agreement. The Company shall keep the State fully informed at least quarterly commencing within one quarter after the commencement date as to the progress and results of the Company's operations under this subclause.

Company
may submit
proposals in
respect of
Mining
Area "B".

(3) Within three (3) years from the commencement date the Company having complied with all its obligations pursuant to subclause (2) hereof may apply for a mineral lease in respect of any part or parts of mining area "B" and the area the subject of mineral claims for manganese then held by the Company (not exceeding in total area 300 square miles plus an area equivalent to the area of the mineral claims for manganese then held by the Company and in the shape of a parallelogram or parallelograms) and shall with such application 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 products or a plant for the production of ferro manganese with in either case provision for expansion of the plant when economically feasible and including the location area layout design number 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—

- (i) in the case of a plant for the production of metallised products provision for a plant

capable ultimately of processing not less than seven hundred and fifty thousand (750,000) tons of ore per annum and containing provision that the plant will have by the end of year 4 after the Minister shall have approved the Company's proposals under this subclause or be deemed to have approved such proposals a capacity to process annually and will during year 5 after such approval or deemed approval process not less than two hundred and fifty thousand (250,000) tons of ore and that production will progressively increase so that the plant by the end of year 10 after such approval or deemed approval will have a capacity to process annually and will process during year 11 after such approval or deemed approval not less than seven hundred and fifty thousand (750,000) tons of ore and that the capital cost involved including all developmental costs and research expenditure will be not less than fifteen million dollars (\$15,000,000) unless the company utilises a less expensive but at least equally satisfactory method of producing metallised products than any presently known to either party.

- (ii) in the case of a plant for the production of ferro manganese provision for a plant capable ultimately of treating one hundred and fifty thousand (150,000) tons of ore per annum and containing provision that the plant will have by the end of year 6 after such approval or deemed approval a capacity to process annually and will during year 7 after such approval or deemed approval process not less than fifty thousand (50,000) tons of ore and that production will progressively increase so that the plant by the end of year 12 after such approval or deemed approval will have a capacity to process annually and will process during year 13 after such approval or deemed approval not less than one hundred and fifty thousand (150,000) tons of ore and that the capital cost involved including all developmental costs and research expenditure will not be less than eight million dollars (\$8,000,000) unless the Company utilises a less expensive but at least equally satisfactory method of producing ferro manganese than any presently known to either party. The Company agrees that if the plant for the production of metallised products is not constructed and the plant for the production of ferro manganese is constructed, the latter

shall be of such capacity and will provide for such scope of products including ferro alloys as well as ferro manganese that beginning with year 7 after the Minister's approval or deemed approval the sales of products from such plant will result in gross revenue equal to or greater than that which would have resulted from the production and sales of metallised products if a plant for the production of metallised products had been constructed.

- (iii) such additional port development as may be necessary including expansion of the port to enable use by vessels having an ore carrying capacity of not less than one hundred thousand (100,000) tons and including dredging depositing of spoil the provision of navigational aids additions to the Company's wharf (any plans and specifications for additions to the Company's wharf shall be submitted to and be subject to the approval of the State) the berth and swinging basin for the Company's use and port installations facilities and services;
- (iv) the railway or railways between mining area "B" and the Company's then existing railway from mineral lease granted under clause 8 (1) (a) hereof to the Company's wharf and if no such railway shall then be in existence a railway or railways from mining area "A" to the Company's wharf and all works ancillary to or connected with the railway or railways and its or their proposed operation including fencing (if any) and crossing places;
- (v) the townsite on mining area "B" and development services and facilities in relation thereto and provision (if necessary) for the extension of the existing townsite established on mining area "A";
- (vi) housing on mining area "B" and provision (if necessary) for the extension of existing housing accommodation established on mining area "A";
- (vii) roads from those mining areas to the then existing road developed by the Company from mining area "A" to the Company's wharf (including details of roads in respect of which it is not intended that the provisions of clause 9 (2) (b) shall operate) and;
- (viii) any other works services or facilities proposed or desired by the Company and

(b) satisfactory evidence of firstly availability of finance necessary for the fulfilment of the Company's proposals under this clause and secondly if the Minister so requires production of any necessary license to the Company from the Commonwealth to export ore from mining area "B" and from the area the subject of any mineral claims for manganese then held by the Company.

(4) Within two months after receipt of the detailed proposals of the Company in regard to any of the matters mentioned in subclause (3) (a) of this clause the Minister shall give to the Company notice either of his approval of the proposals or of alterations desired thereto and in the latter case shall afford to the Company opportunity to consult with and to submit new proposals to the Minister. The Minister may make such reasonable alterations to or impose such reasonable conditions on the proposals or new proposals (as the case may be) as he shall think fit having regard to the circumstances including the overall development and use by others as well as the Company of the Company's wharf facilities and services but the Minister shall in any notice to the Company disclose his reasons for any such alteration or conditions. Within two (2) months of the receipt of the notice the Company may elect by notice to the State to refer to arbitration and within two (2) months thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Company then unless the Company within three (3) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration the application for a lease of those mining areas or any part or parts thereof respectively 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 Company 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.

(5) Within two (2) months after receipt of evidence from the Company with regard to the matters mentioned in subclause (3) (b) of this clause to the reasonable satisfaction of the Minister the State will give to the Company 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 Company 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 Company 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 Company then unless the Company within three (3) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration the application for a lease of those mining areas or any part or parts thereof respectively 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 Company 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.

(6) If the Company shall have applied for a mineral lease as provided for in subclause (3) of this clause within three (3) years of the commencement date and shall have complied with its obligations in respect of such application and if the Minister shall have approved the Company's proposals or be deemed to have approved the Company's proposals by decision of arbitration then the Minister shall cause any necessary survey to be made of the land so applied for (the cost of the survey to the State will be recouped or repaid to the State by the Company on demand after completion of the survey) and subject to the surrender by the Company of the mineral claims for manganese then held by the Company within the portions of mining area "B" which are the subject of the proposed mineral lease shall cause to be granted to the Company a mineral lease thereof (hereinafter referred to as "the second mineral lease") for iron ore manganese ore and manganese ore in the form *mutandis* of the lease in the Schedule hereto for a term which subject to the payments of rental and royalties herebefore mentioned and to the performance and observance by the Company of its obligations under the mineral lease shall be for a period commencing from the date of issue of the second mineral lease for a period co-extensive with the residue of the term then unexpired of the original mineral lease granted under clause 8 (1) (a) hereof with rights to successive renewal for 21 years upon the same terms and subject to earlier determination upon the cessation or determination of this Agreement.

Effect of
Company
applying for
mineral
lease in
respect of
Mining
Area "B".

(7) If the Company shall have applied for a mineral lease as provided for in sub clause (3) of this clause within three (3) years of the commencement date and shall have complied with its obligations in respect of such application and the Minister shall have approved the Company's proposals or be deemed to have approved the Company's proposals by decision of arbitration all the provisions of clause 8 hereof (except paragraph (a) of sub clause (1) thereof) and of clause 9 (except paragraphs (a) and (b) of sub clause (1)

thereof) and clause 10 hereof shall apply mutatis mutandis and so far as the context admits in respect of the area the subject of the second mineral lease and the operations relating thereto in the same manner and to the same extent as they apply in respect of mining area "A" and the operations relating to that mining area.

(8) The grant of the second mineral lease shall confer on the Company the right to mine and sell iron ore mangani-ferous ore and manganese ore either con-jointly or separ-ately and/or to produce and sell metallised products ferro manganese and alloys and ore which has been the subject of secondary processing.

(9) In the event of the Company establishing a plant for the production of ferro manganese in accordance with the Company's proposals as approved by the Minister or as deemed to be so approved by decision of arbitration the Company may if it so desires use in such production imported manganese ores (but not more than fifty per centum thereof without the consent of the Minister) in a blend with ore from the mineral lease.

(10) If the Company satisfies the Minister that the Com-pany's mining operations on the second mineral lease are not producing quantities of ore suitable for treatment, in the case of plant for producing metallised products, at a rate of seven hundred and fifty thousand (750,000) tons per annum and, in the case of a plant for producing ferro manganese, at a rate of one hundred and fifty thousand (150,000) tons per annum and in either case on an economic basis then the Minister may approve modified or altered proposals and reduce the figure of seven hundred and fifty thousand (750,000) tons or one hundred and fifty thousand (150,000) tons as the case may be to a figure the Minister considers appropriate having regard to the prevailing cir-cumstances but in the case of a plant for producing metallised products to not less than three hundred and seventy five thousand (375,000) tons per annum with pro-vision for progressive increase to seven hundred and fifty thousand (750,000) tons per annum and in the case of a plant for producing ferro manganese to not less than seventy five thousand (75,000) tons per annum with provision for progressive increase to one hundred and fifty thousand (150,000) tons per annum and in either case on a revised programme and on approving such modified or altered pro-posals the Minister may approve corresponding variations of the provisions of subparagraphs (i) and (ii) of paragraph (a) of subclause (3) of this clause.

(11) The Company will not without the consent of the Minister in any three year period commencing at the expira-tion of three years after the Minister shall have approved or deemed to have approved the Company's proposals under this clause export from the Commonwealth a quantity of ore (other than processed ore) won from the second mineral

lease which is more than four times the quantity of locally used ore won from the second mineral lease during that period.

(12) If the Company does not apply within three (3) years from the commencement date or ceases to be entitled to apply for a mineral lease as provided for in subclause (3) of this clause the Company will cease to have any rights or interest to or in respect of mining area "B" or any part or parts thereof (except to the extent of the Company's rights by virtue of any mineral claims for manganese acquired by it apart from this Agreement and then held by it within mining area "B") and this Agreement with the exception of this clause will continue in force for 21 years from the export date or until the Company has mined all the available iron ore from the mineral lease in respect of mining area "A" (whichever later happens) or until this Agreement is determined but on condition that the Company does not mine or produce from the mineral lease more than three million tons of iron ore (other than locally used ore) in any year without the consent of the Minister provided that if in any financial year after three years from the commencement date the tonnage of iron ore mined from the mineral lease and shipped for export is less than five hundred thousand (500,000) tons then the State may within the period of six months next following the expiration of that financial year give to the Company notice that it intends to invoke this clause and thereupon if in that financial year and the next two succeeding financial years the tonnage of iron ore so shipped is less than one million five hundred thousand (1,500,000) tons then subject to clause 17 hereof the State may by notice to the Company given at any time during the period of twelve (12) months next following the expiration of the third of the three financial years above referred to in this proviso determine this Agreement whereupon the rights of the Company in this Agreement and under any lease license or mining tenement granted hereunder or pursuant hereto shall cease and determine subject however to the provisions of clause 10 (d) hereof but without prejudice to any liability on the part of the Company for any antecedent breach of or liability under any of the provisions in this Agreement.

Effect of
Company not
applying for
mineral
lease in
respect of
Mining
Area "B".

(13) Notwithstanding anything herein contained no failure by the Company to submit to the Minister proposals as aforesaid nor any non approval by the Minister of such proposals shall constitute a breach of this Agreement by the Company and the only consequence arising from such failure or non approval (as the case may be) will be those set out in the last preceding subclause and the operation of clause 9 (2) (j) (ix) hereof and the cessation of the Company's right to apply for a mineral lease for ore in mining area "B" except to the extent of the Company's rights by virtue of the mineral claims for manganese then held by it within mining area "B".

**Alteration
of Works.**

12. If at any time the State finds it necessary to request the Company to alter the situation of any of the installations or other works (other than the Company's wharf) erected constructed or provided hereunder and gives to the Company notice of the request the Company shall within a reasonable time after its 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 Company of any of its obligations hereunder) alter the situation thereof accordingly.

Indemnity.

13. The Company 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 the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's wharf railway or other works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

Assignment.

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

(a) assign mortgage charge sublet or dispose of to an associated company as of right and to any other company or person with the consent in writing of the Minister the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of any lease license easement grant or other title) and of the obligations of the Company hereunder; and

(b) appoint as of right an associated company or with the consent 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 Company hereunder;

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

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

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 Company's operations hereunder by an associated company as a separate and distinct operation or for the establishment or development of any industry making use of the minerals within the mineral lease or such of the Company's works installations services or facilities the subject of this Agreement as shall have been provided by the Company in the course of work done hereunder. Variation.

(2) Notwithstanding the provisions of subclause (1) of this clause the Minister may with the consent of the Company from time to time add to cancel or vary any right or obligation relating to works for the transport and/or export of ore to the extent that the addition cancellation or variation implements or facilitates the method of achieving any of the purposes of ore export or for the production of metallised products or ferro manganese based on 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 townplanning 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 variation 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 Company 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 Company 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 Company shall for the purpose of the calculation of the sum agreed to be expended on that work by the Company 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 Company or the said third party or by them jointly) in the construction of such work.

(5) When any agreement entered into by the Company with some other company or person results in that other

company or person discharging all or any of the obligations undertaken by the Company under this Agreement or renders it unnecessary for the Company to discharge any obligation undertaken by it hereunder the Minister will discharge or temporarily relieve the Company from such part of its said obligations as is reasonable having regard to the extent of and period for which the other company or person actually effects the discharge of those obligations.

Export
license.

16. (1) On request by the Company the State shall make representations to the Commonwealth for the grant to the Company of a license or licenses under Commonwealth law for the export of ore 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 Company and to maximum tonnages of ore 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 Company (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 from the said State.

(2) If at any time the Commonwealth limits by export license the total permissible tonnage of ore for export from the said State then the Company will at the request of the State and within three (3) months of such request inform the State whether or not it intends to export to the limit of the tonnage permitted to it under Commonwealth licenses in respect of the financial year next following and if it does 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 Company does 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 for export from the said State.

(3) The Company shall be in default hereunder if at any time it fails to obtain any license or licenses under Commonwealth law for the export of ore as may be necessary for the purpose of enabling the Company to fulfil its 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 Company or to the Company not being bona fide in application to the Commonwealth or otherwise having failed to use its 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 Company shall be withdrawn or suspended by the Commonwealth

and so that as a result thereof the Company is not for the time being permitted to export at least the tonnage it has undertaken with the State it will export then the Company 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 Company (and is hereby authorised by the Company so to do) for any license or licenses under Commonwealth law for the export of ore as may from time to time be necessary for the purposes of this Agreement.

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 Company) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability (common in the ore export industry) to profitably sell ore or processed ore or factors due to overall world economic conditions or factors which could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall minimise the effect of the said causes as soon as possible after their occurrence.

Delays.

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

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.

Arbitration.

Notices.

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 Company at its registered office for the time being in the said State and by the Company if signed on its behalf by a director manager or secretary of the Company or by any person or persons authorised by the Company in that behalf or by its solicitors 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.

**Exemption
from
Stamp Duty.**

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

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee of the Company any 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 Company 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 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.

1967.]

*Iron Ore (Nimिंगarra)
Agreement.*

[No. 9.

SCHEDULE.

WESTERN AUSTRALIA.

THE MINING ACT, 1904.

IRON ORE (NIMINGARRA) AGREEMENT ACT, 1967
MINERAL LEASE.

Lease No.

Mineral Field

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

TO ALL 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 SENTINEL MINING COMPANY INC. (hereinafter called "the Company" in which term shall be included the Company and its successors and assigns and including where the context so admits the assignees of the Company under clause 14 of the said Agreement) of the other part the said State agreed to grant to the Company a mineral lease of portion or portions of the lands referred to in the said Agreement as Mining Area "A" AND WHEREAS the said Agreement was ratified by the Iron Ore (Nimिंगarra) Agreement Act, 1967 which said Act (*inter alia*) authorised the grant of a mineral lease or leases to the Company 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 Company subject to the said provisions ALL THOSE pieces and parcels of land situated in the Gold-field(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 Company is 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 Company of the following covenants and conditions, that is to say:—

1. The Company 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 Company 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.

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

PROVIDED FURTHER that all petroleum on or below the surface of the demised land is reserved to Her Majesty with the right to Her Majesty or any person claiming under her or lawfully authorised in that behalf to have access to the demised land for the purpose of searching for and for the operations of obtaining petroleum in any part of the land under the provisions of the Petroleum Act, 1936.

IN WITNESS whereof we have caused our Minister for Mines to affix his seal and set his hand hereto at Perth in our said State of Western Australia and the common seal of the Company has been affixed hereto this

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THE SCHEDULE ABOVE REFERRED TO:

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

SIGNED SEALED AND DELIVERED by the said THE HONOURABLE DAVID BRAND, M.L.A. in the pre- sence of—	}	DAVID BRAND [L.S.]
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C. W. COURT,
Minister for Industrial Development.
ARTHUR GRIFFITH,
Minister for Mines.

SIGNED SEALED AND DELIVERED for and on behalf of SENTINEL MINING COMPANY INC. by its duly authorised agent in the presence of—	}	Sentinel Mining Company Inc. By Its Attorney, R. E. BLANCKENSEE [L.S.]
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P. R. STORK,
Perth, W.A.