

Western Australia

**Shark Bay Solar Salt Industry Agreement Act  
1983**



Reprinted under the  
*Reprints Act 1984* as at  
4 July 2003

Western Australia

## **Shark Bay Solar Salt Industry Agreement Act 1983**

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## Shark Bay Solar Salt Industry Agreement Act 1983

An Act to ratify an agreement between the State of Western Australia and Agnew Clough Limited, Mitsui Salt Pty. Ltd., and Australian Mutual Provident Society with respect to the establishment and carrying on of a solar salt industry and other allied mining and ancillary industries.

### 1. Short title

This Act may be cited as the *Shark Bay Solar Salt Industry Agreement Act 1983*<sup>1</sup>.

### 2. Interpretation

In this Act —

*the Agreement* means the agreement a copy of which is set forth in the Schedule, and that agreement as altered from time to time in accordance with its provisions.

### 3. Ratification of the Agreement

- (1) The Agreement is hereby ratified.
- (2) The implementation of the Agreement is authorised.

**s. 4**

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- (3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Agreement shall operate and take effect notwithstanding any other Act or law.

**4. By-laws**

By-laws may be made for the purpose of and in accordance with clause 12(5) of the Agreement and the by-laws —

- (a) shall be published in the *Government Gazette*;
- (b) shall take effect and have the force of law from the date they are so published, or from a later date fixed by the by-laws;
- (c) may prescribe penalties not exceeding \$100 for a breach of any of the by-laws;
- (d) are not subject to section 36 of the *Interpretation Act 1918*<sup>2</sup>, but shall be laid before each House of Parliament within 6 sitting days of such House next following the publication of the by-laws in the *Government Gazette*;
- (e) may be altered or repealed in accordance with that clause.

**Schedule**

[S. 2.]

THIS AGREEMENT made the 16th day of November, 1983, BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the one part and AGNEW CLOUGH LIMITED a company incorporated in Western Australia and having its registered office in the said State at 22 Mount Street, Perth, MITSUI SALT PTY. LTD. a company incorporated in Western Australia and having its registered office in the said State at 44 Saint George's Terrace, Perth and AUSTRALIAN MUTUAL PROVIDENT SOCIETY a body corporate duly incorporated by Act of Parliament of New South Wales and having its principal place of business in Western Australia at 140 Saint George's Terrace, Perth (hereinafter collectively called "the Joint Venturers" in which term shall be included their respective successors and permitted assigns and appointees) of the other part.

**WHEREAS:**

- (a) the Joint Venturers maintain and carry on a solar salt industry on certain land in and around Useless Loop and Useless Inlet in the Shark Bay area of the said State being Edel Locations 19, 35, 44, 47 and 48 (hereinafter in these recitals referred to as "the Shark Bay land") pursuant to the terms of an Agreement under Seal dated 26th June, 1963 made between the State and Shark Bay Salt Pty. Ltd. as amended by a Supplemental Agreement dated 10th August, 1965 (such Agreement as amended being hereinafter referred to as "the Original State Agreement") the benefit whereof was assigned (with the consent of the State) first to J. O. Clough & Son Pty. Ltd. by Deed of Assignment dated 1st September, 1972 and secondly to J. O. Clough & Son Pty. Ltd. and Mitsui Salt Pty. Ltd. as tenants in common in undivided shares that is to say;
  - to J. O. Clough & Son Pty. Ltd. as to 51/100 undivided shares; and
  - to Mitsui Salt Pty. Ltd. as to 49/100 undivided shares,by deed dated 15th December, 1972;
- (b) J. O. Clough & Son Pty. Ltd. (with the consent of the State) assigned its interest in and to the Original State Agreement to Agnew Clough

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Limited with effect from 30th June, 1975 by Deed dated 23rd March, 1976;

- (c) by a Deed dated 30th June, 1983 Agnew Clough Limited and Mitsui Salt Pty. Ltd. (with the consent of the State) assigned their joint interest in the Original State Agreement to the Joint Venturers with effect from close of business on 1st April, 1983;
- (d) the Joint Venturers or their predecessors in title in terms of the Original State Agreement have, in the course of establishing such solar salt industry, effected *inter alia* the following improvements to the Shark Bay land —
  - (i) sea walls enclosing Useless Loop and portions of Useless Inlet;
  - (ii) a brine channel or flume from Useless Inlet to Useless Loop;
  - (iii) primary and secondary concentration ponds and crystallising ponds;
  - (iv) a causeway connecting Slope Island with the mainland and an extension of Slope Island as a stockpile area;
  - (v) ship loading facilities at Slope Island;
  - (vi) salt washery;
  - (vii) service facilities including a power house workshop and store;
  - (viii) water supply;
  - (ix) workforce housing services and general facilities;
  - (x) haulroads and other roads;
  - (xi) an air strip;
- (e) pursuant to the Original State Agreement the State has —
  - (i) established and maintained navigational aids;
  - (ii) constructed a trafficable access road from the road leading from North West Coastal Highway to Denham to the Shark Bay land;
  - (iii) granted a licence to construct and maintain and use a jetty in and over the waters of the Indian Ocean at Slope Island pursuant to the provisions of the *Jetties Act 1926*;

- (iv) granted to the Joint Venturers a Special Lease No. 3116/4539 of the Shark Bay land pursuant to section 116 of the Land Act; and
- (v) (at the cost of the Joint Venturers) dredged Denham channel and a berth and swinging basin adjacent to the ship loading facilities;
- (f) the term of the Original State Agreement expires on 30th June, 1984; and
- (g) the parties hereto desire to enter into this Agreement in substitution for the terms of the Original State Agreement and with the object of enabling the Joint Venturers to maintain and carry on a solar salt industry on the Shark Bay land for an extended period as hereinafter provided and such other allied and ancillary industries as may with the approval of the State from time to time be conveniently carried on in conjunction therewith upon and subject to the following terms and conditions.

NOW THIS AGREEMENT WITNESSETH:

**Definitions**<sup>3</sup>

1. In this Agreement subject to the context —

“advise” “apply” “approve” “approval” “consent” “certify” “direct” “notice” “notify” “request” or “require” means advise apply approve approval consent certify direct notice notify request or require in writing as the case may be and any inflection or derivation of any of those words has a corresponding meaning;

“associated company” means —

- (a) any company or corporation having a paid-up capital of not less than \$2 000 000 or the equivalent thereof which is incorporated or formed within the United Kingdom the United States of America Japan or Australia or such other country as the Minister may approve and which —
  - (i) is promoted by the Joint Venturers or any of them for all or any of the purposes of this Agreement and in which the Joint Venturers or any of them or some other company or corporation acceptable to the Minister hold not

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- less than a 25% interest or some lesser interest acceptable to the Minister; or
- (ii) is related within the meaning of that term as used in section 7 of the Companies (Western Australia) Code, to one or more of the Joint Venturers or to any company in which the Joint Venturers or any of them or some other company or corporation acceptable to the Minister hold not less than 25% of the issued ordinary share capital; and
  - (iii) is notified to the Minister by the Joint Venturers or either of them as being such a company;
- (b) any company or corporation approved in writing by the Minister;

“Clause” means a clause of this Agreement;

“commencement date” means the date the Bill referred to in Clause 3 comes into operation as an Act;

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

“company public road” means a company road which is open to or used by the public;

“company road” means a road (other than a public road) which either is or has been constructed by the Joint Venturers for the purposes of this Agreement or the Original State Agreement or is agreed by the parties to be a company road for the purposes of this Agreement;

“evaporites” means minerals chemicals elements salts and substances which are or have been deposited from aqueous solutions as a result of extensive or total evaporation of the solvent or changes in temperature of the solvent and includes all products derived from the evaporation of sea water sea water concentrates or brine including but not limited to the chlorides sulphates carbonates bromides and iodides of any of sodium potassium magnesium lithium and boron and any double or complex salts

that can be obtained therefrom and any substances that develop through metamorphism of other evaporites and any elements gases or organic substances contained in evaporite salts;

“Land Act” means the *Land Act 1933*;

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

“mining lease” means the mining lease referred to in paragraph (a) of subclause (1) of Clause 5 and includes any renewal thereof;

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

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

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

“month” means calendar month;

“person” or “persons” includes bodies corporate;

“project site” means any land leased to and held by the Joint Venturers pursuant to the provisions of this Agreement;

“public road” means Road No. 16167 and any other road for the time being under the control of the Commissioner of Main Roads or a local authority and used by the Joint Venturers for the purpose of this Agreement;

“said State” means the State of Western Australia;

“shipped” includes removal from the project site by ship or other means;

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“State Energy Commission” means The State Energy Commission of Western Australia as described in section 7 of the *State Energy Commission Act 1979*;

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

“tonne” means a tonne of 1000 kilogrammes net dry weight;

“town” means a town developed by the Joint Venturers pursuant to proposals made under Clause 8 as finally approved or determined;

“townsite” means the site on which the town is situated.

**Interpretation<sup>3</sup>**

2. In this Agreement —

- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
- (b) power given under any clause other than Clause 41 to extend any period or date shall be without prejudice to the power of the Minister under Clause 41;
- (c) marginal notes shall not affect the interpretation or construction<sup>3</sup>;
- (d) reference to an Act shall include the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

**Initial obligation of the State<sup>3</sup>**

3. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31st December, 1983.

**Ratification and operation<sup>3</sup>**

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

(2) If before 31st December, 1983 the said Bill has not commenced to operate as an Act this Agreement will, unless the parties hereto otherwise agree, then cease and determine and neither of the parties hereto shall 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 but without prejudice to the rights and obligations of the parties hereto under the Original State Agreement and the subsequent assignments in respect thereof which shall continue to have full force and effect.

(3) On the said Bill commencing to operate as an Act —

- (a) all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law; and
- (b) the rights and obligations of the parties hereto arising out of the Original State Agreement and the subsequent assignments in respect thereof shall thereupon cease, and have no further effect.

**Leases for mining purposes<sup>3</sup>**

5. (1) Notwithstanding the provisions of the Mining Act the State shall on application made by the Joint Venturers not later than 3 months after the commencement date but subject to the surrender by the Joint Venturers of the special lease referred to in paragraph (iv) of recital (e) hereof and subject to the surrender to the State by the holder of Pastoral Lease No. 3114/590 of so much of the land within that lease as is within the lands applied for cause to be granted to the Joint Venturers —

- (a) a mining lease of the land coloured red on the plan marked “A” (initialled by or on behalf of the parties hereto for the purpose of identification) for evaporites;
- (b) a general purpose lease of the land coloured yellow on the said plan marked “A” for loading and stockpile purposes;
- (c) a general purpose lease of the land coloured brown on the said plan marked “A” for the purpose of a flume;
- (d) a miscellaneous licence or licences of the lands coloured purple on the said plan marked “A” for road purposes;
- (e) a miscellaneous licence of the land hatched purple on the said plan marked “A” for the purpose of a road and pipeline.

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(2) The leases and licences referred to in subclause (1) of this Clause shall be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act (but, with respect to the mining lease, in the form of the Schedule to this Agreement and with such conditions or stipulations as may be inserted in the Sixth Schedule thereto by the Minister for Mines provided that any such conditions or stipulations are not inconsistent with this Agreement) and at the rentals hereinafter specified and may be granted notwithstanding that the survey in respect thereof has not been completed (but subject to such corrections to accord with the survey when completed at the Joint Venturers' expense).

(3) (a) Subject to the performance by the Joint Venturers of their obligations under this Agreement and the Mining Act and notwithstanding any provisions of the Mining Act to the contrary and subject to the sooner determination of the mining lease upon the cessation or determination of this Agreement, the term of the mining lease shall be for a period of 21 years commencing from the commencement date and the Joint Venturers shall have the right during the currency of this Agreement to two successive renewals of the said term each for a period of 21 years upon the same terms and conditions (provided that the aggregate number of years comprised in the original term and all renewal terms shall not exceed 63 years), such right to renew to be exercisable by the Joint Venturers making written application in respect of renewal for the second term not later than 1 month before the expiration of the current term of the mining lease, and in respect of renewal for the third term, not later than 1 month before the expiration of the second term of the mining lease.

(b) Each of the general purpose leases and miscellaneous licences referred to in subclause (1) of this Clause shall be for a term co-terminous with the term of the mining lease (including any renewals thereof).

**Rental<sup>3</sup>**

(4) (a) Rental in respect of the mining lease and general purpose leases granted pursuant to this Clause shall be computed at the rate of \$9.84 per 100 hectares.

(b) Rental in respect of miscellaneous licences granted pursuant to this Clause shall be the rental specified from time to time in the Mining Act.

**Expenditure conditions<sup>3</sup>**

(5) Subject to compliance with their obligations hereunder the Joint Venturers shall not be required to comply with the expenditure conditions imposed by or under the Mining Act in regard to the mining lease.

**Incorporation of additional areas in the mining lease<sup>3</sup>**

(6) Notwithstanding the provisions of the Mining Act the Joint Venturers may, within 1 year from the commencement date, apply to the Minister for Mines for inclusion in the mining lease of the land hatched red on the said plan marked "A". The Minister for Mines may at his election include the whole or any part of the land applied for in the mining lease subject to the same terms covenants and conditions as apply to the mining lease (with such apportionment of rents as is necessary), notwithstanding that the survey of such additional land has not been completed (but subject to correction to accord with the survey when completed at the Joint Venturers' expense).

**Lands<sup>3</sup>**

6. (1) Upon the surrender by the Joint Venturers of the special lease referred to in paragraph (iv) of recital (e) hereof the State shall grant to the Joint Venturers —

- (a) a special lease of the land coloured green on the said plan marked "A" for the purposes of housing for the workforce of the Joint Venturers and associated population and welfare and amenity purposes; and
- (b) a special lease of the land coloured blue on the said plan marked "A" for the purpose of an aerial landing ground.

(2) Each of the leases referred to in subclause (1) of this Clause may be granted notwithstanding that the survey in respect thereof has not been completed (but subject to such corrections to accord with the survey when completed at the Joint Venturers' expense) and shall be for a term co-terminous with the term of the mining lease and contain provisions for renewals of the term similar to the provisions for renewal in the mining lease and shall be on such terms and conditions (including with respect to the lease referred to in paragraph (a) of subclause (1) of this Clause provisions that the Joint Venturers shall from time to time as required by the Minister make available within the land the subject thereof land and accommodation required by the State or any instrumentality of the State in connection with the provision of communal or welfare services and facilities) as the

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Minister for Lands may determine and at such reasonable rental (subject to periodic review) as the Minister for Lands may determine.

**Proposals — Environment**<sup>3</sup>

7. On or before the expiration of six months from the commencement date (or thereafter within such extended time as the Minister may allow as hereinafter provided) the Joint Venturers shall submit to the Minister to the fullest extent reasonably practicable their detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister), for measures to be taken, in respect of the Joint Venturers operations under this Agreement, for the protection and management of the environment.

**Proposals — Town**<sup>3</sup>

8. (1) If the Joint Venturers desire to establish a town within the land coloured green on the said plan marked “A” or any part thereof they shall give notice thereof to the Minister and furnish to the Minister with such notice an outline of their proposals in respect thereof (including the matters mentioned in paragraphs (a) to (i) of this subclause) and if the Minister approves the submission of detailed proposals with respect thereto the Joint Venturers shall, within 6 months of such approval and subject to the provisions of this Agreement, submit to the Minister to the fullest extent reasonably practicable their detailed proposals with respect to the establishment of a town which proposals shall include plans where practicable and specifications where reasonably required by the Minister and shall make provision for the necessary workforce and associated population required in connection with the Joint Venturers’ operations under this Agreement and shall include the location, area, layout, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely —

- (a) housing and township requirements including provision of utilities and services;
- (b) roads;
- (c) water supply;
- (d) power supply;
- (e) sewerage and drainage;
- (f) education police and medical facilities including staff accommodation;

- (g) recreational and civic facilities;
- (h) air services and facilities;
- (i) any leases licences easements or other tenures of land required from the State.

(2) In accordance with proposals made by the Joint Venturers pursuant to subclause (1) of this Clause as finally approved or determined the State shall subject to the surrender by the Joint Venturers of the lease referred to in paragraph (a) of subclause (1) of Clause 6 grant to the Joint Venturers for residential professional business commercial and industrial purposes and the provision of communal or other facilities at the townsite a special lease or special leases under the provisions of the Land Act or occupancy rights on terms and conditions to be determined by the Minister for Lands for an area or areas of land in the townsite in accordance with the Joint Venturers' proposals as finally approved. Such lease or leases or occupancy rights as the case may be shall be for a term expiring on the expiration of the mining lease and contain provisions for renewals of the term similar to the provisions for renewal in the mining lease and shall be at reasonable rentals subject to periodic review and shall include a right for the State notwithstanding the provisions of Clause 29 at any time and from time to time to exclude from such lease or leases or occupancy rights or to resume without compensation any part or parts of such land on which no building or structure or any substantial improvements have been erected as the State may require for public purposes.

**Consideration of proposals<sup>3</sup>**

9. (1) On receipt of proposals pursuant to Clauses 7 or 8 the Minister shall —
- (a) approve of the said proposals either wholly or in part without qualification or reservation; or
  - (b) require as a condition precedent to the giving of his approval to the said proposals that the Joint Venturers make such alteration thereto or comply with such conditions in respect thereto as he thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions.

**Advice of Minister's decision<sup>3</sup>**

- (2) The Minister shall within 2 months after receipt of the said proposals give notice to the Joint Venturers of his decision in respect to the same.

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**Consultation with Minister**<sup>3</sup>

(3) If the decision of the Minister is as mentioned in paragraph (b) of subclause (1) of this Clause the Minister shall afford the Joint Venturers full opportunity to consult with him and should they so desire to submit new proposals either generally or in respect to some particular matter.

**Minister's decision subject to arbitration**<sup>3</sup>

(4) If the decision of the Minister is as mentioned in the paragraph (b) of subclause (1) of this Clause and the Joint Venturers consider that the condition precedent is unreasonable the Joint Venturers within 2 months after receipt of the notice mentioned in subclause (2) of this Clause may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the condition precedent.

**Arbitration award**<sup>3</sup>

(5) An award made on an arbitration pursuant to subclause (4) of this Clause shall have force and effect as follows —

- (a) if by the award the dispute is decided against the Joint Venturers then the decision of the Minister with respect to the said proposals shall stand; or
- (b) if by the award the dispute is decided in favour of the Joint Venturers the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

**Implementation of proposals**<sup>3</sup>

(6) The Joint Venturers shall implement the approved proposals in accordance with the terms thereof.

**Modification of Land Act**<sup>3</sup>

10. For the purposes of this Agreement in respect of any land leased to the Joint Venturers by the State the Land Act shall be deemed to be modified by —

- (a) the substitution for subsection (2) of section 45A of the following subsection —
  - “(2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be 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 grant occupancy rights over land on such terms and conditions as the Minister for Lands may determine;
- (f) the inclusion of a power to offer for leasing land within or in the vicinity of the townsite notwithstanding that the townsite has not been constituted a townsite under section 10; and
- (g) the inclusion of a power to grant leases or licences for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, the terms and conditions and the forms referred to in the Land Act.

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

**Protection and management of the environment<sup>3</sup>**

11. (1) The Joint Venturers shall in respect of the matters referred to in Clause 7 which are the subject of approved proposals under this Agreement, carry out a continuous programme of investigation and research including monitoring and the study of sample areas to ascertain the effectiveness of the measures they are taking pursuant to their approved proposals for the protection and management of the environment.

(2) The Joint Venturers shall during the currency of this Agreement at yearly intervals commencing from the date when the Joint Venturers' proposals are approved, submit an interim report to the Minister concerning investigations and research carried out pursuant to subclause (1) of this Clause and at 3 yearly intervals commencing from such date submit a detailed report to the Minister on the result of the investigations and research during the previous 3 years.

(3) The Minister may within 2 months of the receipt of the detailed report pursuant to subclause (2) of this Clause notify the Joint Venturers that he requires additional detailed proposals to be submitted for the protection and management of the environment.

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(4) The Joint Venturers shall within 2 months of the receipt of a notice given pursuant to subclause (3) of this Clause submit to the Minister additional detailed proposals as required and the provisions of Clauses 7 and 9 where applicable shall mutatis mutandis apply in respect of such proposals.

(5) The Joint Venturers shall implement the approved proposals in accordance with the terms thereof.

**Townsite and town development<sup>3</sup>**

12. (1) (a) Should proposals made pursuant to Clause 8 as finally approved or determined provide for the establishment of a town the Joint Venturers shall at their cost or with finance arranged by them and in accordance with the approved proposals —

- (i) provide at the townsite such housing accommodation services and works (including water supply, sewerage and drainage works and also social cultural and civic facilities) as may be necessary in order to provide for the needs of persons (and the dependants of those persons) connected directly with the Joint Venturers' operations under this Agreement, whether or not such persons are employed by the Joint Venturers;
- (ii) provide at the townsite all necessary public roads and buildings required for educational, hospital, medical, police, recreation, fire and other services;
- (iii) provide all equipment required for the operation and proper functioning of the services and works referred to in subparagraphs (i) and (ii) of this paragraph;
- (iv) service maintain and where necessary repair and renovate the housing accommodation services and works mentioned in subparagraphs (i) and (ii) of this paragraph;
- (v) (subject to and in accordance with by-laws from time to time to be made and altered by the Joint Venturers which include provisions for fair and reasonable prices rentals or charges or if no such by-laws are made or in force then at such prices rentals or charges and upon and subject to such terms and conditions as are fair and reasonable) ensure that the said housing accommodation services and works are at all times readily available to persons requiring the same being employees licencees or agents of the Joint Venturers or

persons engaged in providing a legitimate and normal service to or for the Joint Venturers or their employees licencees or agents including the dependants of such persons; and

- (vi) ensure that the roads buildings and other works mentioned in subparagraph (ii) of this paragraph and the equipment mentioned in subparagraph (iii) of this paragraph are readily available free of charge to the State.

**Limitation on Joint Venturers' obligations<sup>3</sup>**

(b) Nothing contained in paragraph (a) of this subclause shall be construed as placing on the Joint Venturers an obligation to provide and pay for personnel required to operate the educational hospital medical or police services mentioned in that paragraph.

**Equipment<sup>3</sup>**

(2) The Joint Venturers shall at their cost or with finance arranged by them equip all the buildings mentioned in paragraph (a) of subclause (1) of this Clause to the extent and of a standard at least equal to that normally adopted by the State in similar types of buildings used for similar purposes in comparable townsites.

**Staff housing<sup>3</sup>**

(3) The Joint Venturers shall at their cost or with finance arranged by them provide adequate housing accommodation for married and single staff directly connected with the educational hospital medical and police services mentioned in subparagraphs (i) and (ii) of paragraph (a) of subclause (1) of this Clause.

**State services<sup>3</sup>**

(4) Should the approved proposals place an obligation on the State to provide for any of the matters mentioned in subparagraphs (i) (ii) and (iii) of paragraph (a) of subclause (1) of this Clause or require the State to procure and accept the responsibility of the provision of any services and facilities the State shall provide or procure the provision of the same but (unless the approved proposals otherwise provide) subject to the following conditions namely —

- (a) that the State is satisfied that the need to provide such services and facilities results from or is reasonably attributed to the Joint Venturers' operations under this Agreement; and

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- (b) the Joint Venturers agree to bear the capital cost involved and thereafter to pay reasonable charges for the maintenance and operation of the said services or facilities other than the operation charges in respect of education hospital medical and police services.

**By-laws<sup>3</sup>**

(5) Unless and until the townsite is declared a townsite pursuant to section 10 of the Land Act or otherwise with the consent of the Minister, the Governor in Executive Council may upon the recommendation of the Joint Venturers make alter and repeal by-laws for the purpose of enabling the Joint Venturers to fulfil their obligations under this Clause upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Joint Venturers) consistent with the provisions hereof. If at any time it appears that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Joint Venturers shall recommend to the Governor that he makes 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) as may be decided by arbitration as herein provided.

**Roads — Company roads<sup>3</sup>**

13. (1) The Joint Venturers shall —
- (a) be responsible for the cost of the construction and maintenance of all company roads which shall be used in their operations hereunder; and
  - (b) at any place where a company road crosses any company public road or any public road provide adequate grade separation or such other reasonable protection as may be required by the Commissioner of Main Roads.

**Maintenance of public roads<sup>3</sup>**

(2) The State shall maintain or cause to be maintained public roads to a standard similar to comparable roads maintained by the Commissioner of Main Roads or a local authority as the case may be.

(3) In the event that the Joint Venturers for the purposes of their operations under this Agreement desire to exclude the public use of any company road they shall be responsible at their own cost to make such provisions as effectively ensure that all persons and vehicles (other than those engaged upon the

Joint Venturers' operations and their invitees and licencees) are excluded from use of that road.

**Upgrading of public roads<sup>3</sup>**

(4) In the event that the Joint Venturers' operations require the use of a public road which is inadequate for the purpose, or result in excessive damage or deterioration of any public road (other than fair wear and tear) the Joint Venturers shall pay to the State the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads having regard to the use of such road by others.

**Acquisition of company roads<sup>3</sup>**

(5) Where a company road is subsequently required for public use, the State may, after consultation with the Joint Venturers and so long as resumption thereof shall not unduly prejudice or interfere with the operations of the Joint Venturers under this Agreement, resume and dedicate such road as a public road. Upon any such resumption the State shall pay to the Joint Venturers such amount as the State considers to be reasonable.

**Liability<sup>3</sup>**

- (6) The parties hereto further covenant and agree with each other that —
- (a) for the purposes of determining whether and the extent to which —
    - (i) the Joint Venturers are liable to any person or body corporate (other than the State); or
    - (ii) an action is maintainable by any such person or body corporate in respect of the death or injury of any person or damage to any property arising out of the use of any of the roads for the maintenance of which the Joint Venturers are responsible hereunder and for no other purpose the Joint Venturers shall be deemed to be a municipality and the said roads shall be deemed to be streets under the care control and management of the Joint Venturers; and
  - (b) for the purpose of this Clause the terms "municipality" "street" and "care control and management" shall have the

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meanings which they respectively have in the *Local Government Act 1960*.

**Water<sup>3</sup>**

14. (1) The State will, in addition to licences already granted to the Joint Venturers in respect of underground water sources, grant to the Joint Venturers a licence or licences to draw water for the domestic purposes of the Joint Venturers' employees and their dependants and the associated population from such source or sources and on such terms and conditions as the Minister may approve and during the continuance of this Agreement grant renewals of such licences or any of them on such terms and conditions as the Minister may approve PROVIDED HOWEVER that if at any time the Minister considers that any such source or sources are hydrologically inadequate to meet the Joint Venturers' water requirements, the State may after consultation with the Joint Venturers limit the amount of water which may be taken from such sources or any of them at any one time or from time to time to the maximum which such sources or any of them are hydrologically capable of meeting.

**Construction of water works<sup>3</sup>**

(2) The Joint Venturers shall at their own expense continue to provide and construct to standards approved by the State all necessary bores valves pipelines meters tanks pumps equipment and appurtenances necessary to draw transport use and dispose of water drawn from any source licensed to the Joint Venturers.

**Design of works<sup>3</sup>**

(3) The Joint Venturers shall to the extent that it is practical and economical, design, construct and operate its works under this Clause so as to —

- (a) make use of brackish or saline water;
- (b) recycle all water; and
- (c) prevent loss of water by leakage, spillage or evaporation.

**Rights in Water and Irrigation Act<sup>3</sup>**

(4) Any reference in the foregoing provisions of this Clause to a licence is a reference to a licence under the *Rights in Water and Irrigation Act 1914* and the provisions of that Act relating to water rights and licences shall except where inconsistent with the provisions of this Agreement apply to any water source developed for the Joint Venturers' purposes under this Agreement.

**Jetties<sup>3</sup>**

15. The State shall, on application by the Joint Venturers and subject to the surrender by them of their rights in respect of the existing jetty licence relating to the jetty at Slope Island, cause to be granted to the Joint Venturers on reasonable terms and conditions a licence under the *Jetties Act 1926* for the maintenance and use of —

- (a) the said jetty at Slope Island; and
- (b) the existing jetty adjoining the land coloured green on the said Plan marked “A”

and shall cause that licence to be renewed from time to time during the continuance of this Agreement.

**Sea water licence<sup>3</sup>**

16. The Joint Venturers may without charge draw take and use sea water for all or any one or more of their operations in respect of the mining extraction and production of salt on the project site and the Joint Venturers may store at such place within the mining lease as may be convenient or discharge at or below high water mark at such points near to the mining lease as are approved by the State residual brines resulting from those operations. If requested by the Joint Venturers the State shall grant to the Joint Venturers any necessary easement or licence for these purposes over Crown lands upon such terms and conditions as shall be reasonable having regard to the requirements of the Joint Venturers under this Clause and the overall development and use by others of those Crown lands. Subject to the Joint Venturers' compliance with the Mining Act and all other relevant statutes and regulations for the time being in force the Joint Venturers shall have the right to the exclusion of any other person to mine and recover any other minerals, substances or chemicals in the said residual brines.

**Navigation aids and services<sup>3</sup>**

17. (1) Subject to the performance by the Joint Venturers of their obligations under this Agreement the State shall provide and maintain such navigation aids and provide such navigation services as may be reasonably agreed between the parties hereto.

**Payment of conservancy dues to the State<sup>3</sup>**

(2) It is acknowledged by the parties hereto that vessels using the Joint Venturers' ship loading facilities and jetty will be required to pay conservancy dues prescribed by law and the Joint Venturers' covenant with the State that they

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will if required by the State so to do, act as the agent of the State for the purpose of collecting from the masters or agents of such vessels and remitting to the State such conservancy dues as may from time to time be payable.

**Joint Venturers' obligations<sup>3</sup>**

18. The Joint Venturers shall —

- (1) pay to the State for the term of any lease or leases to be issued in respect of the project site and any renewal or renewals thereof the rental in respect thereof or part thereof per annum;
- (2) maintain and carry on upon the project site a solar salt industry;
- (3) maintain the dredging of Denham Channel and the ship berth and swinging basin;
- (4) produce on and ship from the project site not less than 200 000 tonnes of salt per annum;
- (5) construct and provide within 18 months of the commencement date (notwithstanding the provisions of Clause 34) in accordance with plans and specifications previously approved by the Minister and to the satisfaction of the Minister school facilities of a permanent nature within the land coloured green on the said plan marked "A" and thereafter maintain such facilities to such standards as the Minister may reasonably require from time to time and provide suitable accommodation for teachers employed at the school;
- (6) provide and maintain (subject to the provisions of this Agreement) to such standards as the Minister may reasonably require from time to time all roads within the project site and water, electricity, power and other services as may be required for the purposes of this Agreement;
- (7) maintain to such standards as the Minister may reasonably require from time to time wharf facilities and service craft required for the purposes of this Agreement;
- (8) from time to time upon reasonable notice in that behalf from the State make available to any person or persons designated by the State the use on such terms and conditions as shall be reasonable in the circumstances from time to time existing of the facilities and installations belonging to or used by the Joint

Venturers pursuant to this Agreement provided the use first mentioned shall not unduly interfere with the operations of the Joint Venturers under this Agreement;

- (9) at all time grant reasonable access to the State pastoral lessees and others in and over the lands the subject of any lease or licence granted hereunder.

**Airport<sup>3</sup>**

19. The Joint Venturers shall during the currency of this Agreement maintain their existing airport facilities to a reasonable standard to be approved by the Minister.

**Use of local professional services labour and materials<sup>3</sup>**

20. (1) The Joint Venturers shall, for the purposes of this Agreement, as far it is reasonable and economically practicable so to do —

- (a) use the services of engineers, surveyors, architects and other professional consultants resident and available within the said State;
- (b) use labour available within the said State;
- (c) when preparing specifications calling for tenders and letting contracts for works materials plant equipment and supplies ensure that Western Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote; and
- (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere.

(2) The Joint Venturers shall in every contract entered into with a third party for the supply of services labour works materials plant equipment and supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) of this Clause and shall report to the Joint Venturers concerning such third party's implementation of that condition.

(3) The Joint Venturers shall submit a report to the Minister within six months of the commencement date and thereafter when requested by the Minister

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from time to time concerning their implementation of the provisions of this Clause together with a copy of any report received by the Joint Venturers pursuant to subclause (2) of this Clause during the period to which the report relates.

**Electricity generation<sup>3</sup>**

21. (1) The Joint Venturers may —

- (a) subject to the provisions of the *Electricity Act 1945* and the approval and requirements of the State Energy Commission, install and operate without cost to the State, at an appropriate location equipment to generate electricity of sufficient capacity for their operations hereunder;
- (b) transmit power within the project site and to the town or elsewhere subject to the provisions of the *Electricity Act 1945* and the approval and requirements of the State Energy Commission; and
- (c) subject to the provisions of the *Electricity Act 1945* and the requirements of the State Energy Commission sell power transmitted pursuant to paragraph (b) of this subclause to third parties within the project site and to third parties elsewhere.

(2) In the event that the Joint Venturers are unable to procure easements or other rights over land required for the purposes of subclause (1) of this Clause on reasonable terms the State shall assist the Joint Venturers to such extent as may be reasonably necessary to enable them to procure the said easements or other rights over land.

**Royalties — salt<sup>3</sup>**

22. (1) Throughout the continuance of this Agreement the Joint Venturers shall pay to the State a royalty on all salt produced pursuant to this Agreement and shipped computed as set out hereunder:

	Rate per Tonne
On the first 500,000 tonnes in any year	5 cents
On the second 500,000 tonnes in any year	6.25 cents
On all tonnages in excess of 1,000,000 tonnes in any year	7.5 cents

Tonnages shall be ascertained at Shark Bay in such manner as the parties hereto may from time to time agree upon.

**Returns — salt<sup>3</sup>**

(2) Within twenty-one days after the quarter days being the last days of March, June, September and December in each year commencing with the quarter day next following the commencement date the Joint Venturers shall furnish to the Minister for Mines a return showing the quantity of all salt the subject of royalty hereunder shipped during the quarter or part thereof (as the case may be) ending on the respective quarter day and shall not later than one month after the date on which such return is due pay to the State the royalty in respect of all salt shipped during that quarter.

**Other minerals<sup>3</sup>**

(3) The Joint Venturers shall in respect of all evaporites other than salt produced or obtained from the area the subject of the mining lease pay to the State royalties at the rates from time to time prescribed under the Mining Act and comply with the provisions of the Mining Act and regulations made thereunder with respect to the filing of production reports and payment of royalties.

**Inspection of records<sup>3</sup>**

(4) The Joint Venturers shall permit the Minister for Mines or his nominee to inspect at all reasonable times and to take copies of or extracts from all books of accounts and records of the Joint Venturers as are relevant for the purpose of determining the amount of royalty payable under this Clause and if required by the State take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the reasonable satisfaction of the Minister for Mines as to all relevant weights and analyses and shall give due regard to any objection or representation made by the Minister for Mines or his nominee as to any particular weight or assay of minerals mined or produced by the Joint Venturers from the mining lease and sold by it which may affect the amount of royalty payable hereunder.

**Escalation<sup>3</sup>**

23. (1) Notwithstanding anything herein contained but subject to subclause (4) of this Clause it is hereby agreed by and between the parties hereto in order to provide for the equitable performance of this Agreement that —

- (a) during the period from the commencement date to the 18th day of November, 1989 the several amounts due and payable by the Joint Venturers to the State as —
  - (i) rentals under paragraph (a) of subclause (4) of Clause 5; and

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(ii) royalty under subclause (1) of Clause 22 shall be increased by 256%; and

(b) in the event of the price of salt (as hereinafter defined) on the 18th days of November, 1989, 1996, 2003, 2010, 2017, 2024, 2431 or 2038 exceeding \$5.16 then the percentage by which the price of salt on the relevant date exceeds \$5.16 shall be calculated and the several amounts due and payable by the Joint Venturers to the State as —

(i) rentals under paragraph (a) of subclause (4) of Clause 5; and

(ii) royalty under subclause (1) of Clause 22 shall be increased by the percentage so calculated and such increased amounts in respect of those items shall be payable by the Joint Venturers to the State during the seven (7) years next following the relevant date.

(2) For the purpose of this Clause the price of salt on each of the aforesaid dates means the weighted average price per tonne of salt shipped during the previous year pursuant to this Agreement payable by the purchaser or purchasers thereof to the Joint Venturers less all export duties taxes and fees payable to the Commonwealth on the export of salt and the costs and expenses properly incurred and payable by the Joint Venturers in respect of that sale from the time it is shipped to the time it is delivered to and accepted by the purchaser or purchasers including —

- (a) ocean freight;
- (b) marine insurance;
- (c) port and handling charges at the port of discharge;
- (d) all costs properly incurred in delivering the salt from the port of discharge to the purchaser as evidenced by relevant invoices;
- (e) all weighing, sampling, analysis, inspection and representation costs;
- (f) all shipping agency charges after shipment; and
- (g) all import taxes imposed or levied by the country of the port of discharge.

(3) Throughout the continuance of this Agreement the Joint Venturers shall use their best endeavours to obtain for the salt produced hereunder the best price possible having regard to market conditions from time to time prevailing.

(4) The Minister may from time to time after consultation with the Joint Venturers vary the dates specified in paragraph (b) of subclause (1) of this Clause or any of them to a later date or dates consistent with the corresponding dates for review of royalty contained in any other Government agreement (as defined in the Government Agreements Act 1979) relating to the production of salt. In the event of any variation of a date pursuant to this subclause any increases to the amounts referred to in subparagraphs (i) and (ii) of paragraphs (a) and (b) of subclause (1) of this Clause then in effect pursuant to that subclause shall continue to apply until the varied date.

**Ingress and egress<sup>3</sup>**

24. The State shall from time to time on the written application of the Joint Venturers grant to the Joint Venturers a licence or licences over Crown lands to permit the Joint Venturers or their servants agents contractors invitees and customers the right of ingress to and egress from all or any one or more part or parts of the project site on such terms and conditions as shall be reasonable having regard to the requirements of the Joint Venturers in respect of the construction maintenance operation and inspection of the improvements from time to time constructed or installed on the project site and to the overall development and use by others of those Crown lands.

**Export licence<sup>3</sup>**

25. If at any time or times under Commonwealth law an export licence is required by the Joint Venturers for the export of salt then on written request by the Joint Venturers the State shall make representations to the Government of the Commonwealth of Australia for the grant to the Joint Venturers of a licence or licences under Commonwealth law for the export of salt in such quantities and at such rate or rates as shall be reasonable having regard to the tonnage of salt being produced by the Joint Venturers at such time or times as a licence is so required and to all contracts made or likely to be made by the Joint Venturers for the export or supply of salt from the project site.

**Limitation of liability<sup>3</sup>**

26. Where the Joint Venturers from time to time construct a levee or other works on the project site for or incidental to the production of salt and thereafter a third party makes improvements to lands or becomes the owner of improvements

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so made on lands adjacent to the project site and subsequent to those improvements being made the Joint Venturers remove (either wholly or partly) or fail to maintain or to repair that levee or other works and in consequence thereof the third party suffers sustains or incurs damage to those improvements or any part thereof then notwithstanding any Act or any rule of law or equity to the contrary, the Joint Venturers shall not be liable for those damages to any person or persons whatsoever.

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

**Default**<sup>3</sup>

- (a) that in any of the following events namely if the Joint Venturers fail in any year after the 30th June, 1985 to ship at least 200 000 tonnes of salt and furthermore the average of the tonnage shipped in that year and in the previous three years is less than 200 000 tonnes a year or if the Joint Venturers make default in the due and punctual performance of any of the covenants agreements or obligations to the State herein or in any lease easement licence or other right or title granted under this Agreement on their part to be performed or observed and shall fail to remedy that default within a period of 180 days after notice specifying the default is given by the State to the Joint Venturers and also to any Mortgagee approved pursuant to Clause 30 if it has a registered office in Perth (or if the alleged default is contested by the Joint Venturers and promptly submitted to arbitration within a reasonable time fixed by the arbitration award, where the question is decided against the Joint Venturers the arbitrator finding that there was a bona fide dispute and that the Joint Venturers had not been dilatory in pursuing the arbitration) or if the Joint Venturers abandon or repudiate their operations under this Agreement or if the Joint Venturers or any of them shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 3 months from the date of such liquidation the share estate and interest of the Joint Venturer in liquidation in or under this Agreement and in or under any special lease issued hereunder and any other lease, licence, easement or right granted hereunder or pursuant hereto is assigned to another Joint Venturer or to an assignee approved by the Minister under Clause 30 then and in any of such events the State may by notice given to the Joint Venturers determine this Agreement, and the rights of the Joint Venturers hereunder and under any lease licence easement or right granted or

demised hereunder or pursuant hereto PROVIDED HOWEVER that if the Joint Venturers fail to remedy any default (other than a default under subclause (4) of Clause 18) after notice is given to the Joint Venturers specifying the default 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 its agents workmen or otherwise shall have full power to enter upon lands occupied by the Joint Venturers and to make use of all plant, machinery, equipment and installations thereon) and the costs and expenses incurred by the State remedying or causing to be remedied such default shall be a debt payable by the Joint Venturers to the State on demand made by the State;

**Effect of cessation or determination of Agreement<sup>3</sup>**

- (b) that on the cessation or determination of this Agreement —
  - (i) except as otherwise agreed by the Minister the rights of the Joint Venturers to in or under this Agreement and the rights of the Joint Venturers or any assignee of the Joint Venturers or any mortgagee to in or under the mining lease and any other lease licence easement grant or other title 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 AND the Joint Venturers shall 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 lease licence easement or right granted or demised hereunder or pursuant hereto and the Joint Venturers hereby irrevocably constitute and appoint the Minister or such person as he may from time to time nominate the true and lawful attorney of the Joint Venturers to execute the transfer or surrenders aforesaid;
  - (ii) the Joint Venturers shall forthwith pay to the State all moneys which are owed to the State at the date of cessation or determination of this Agreement notwithstanding that demand in respect of such moneys

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- has not been made by the State and without prejudice to the State's other remedies pursuant to this Agreement;
- (iii) save as aforesaid and as provided in paragraph (c) of this Clause neither of the parties hereto shall have any claim against the other with respect to any matter or thing in or arising out of this Agreement;
- (c) that on the expiration cessation or determination of any lease licence easement or right granted or demised hereunder or pursuant hereto by the State to the Joint Venturers or (except as otherwise agreed by the Minister) to an assignee of the Joint Venturers under Clause 30 —
- (i) the improvements and things erected on the relevant land other than machinery equipment (including the flume structure (other than the earth-works) and linings to the concentration ponds and crystallising ponds) and removable buildings shall remain or become the absolute property of the State without compensation and freed and discharged from all mortgages and encumbrances and the Joint Venturers will do such things and execute such documents (including surrenders) as the State may reasonably require to give effect to this provision AND the Joint Venturers hereby irrevocably constitute and appoint the Minister or such person as he may from time to time nominate the true and lawful attorney of the Joint Venturers to do those things and to execute those documents (including surrenders);
- (ii) in the event of the Joint Venturers immediately prior to such expiration cessation or determination or subsequent thereto deciding to remove their machinery equipment (including the flume structure (other than the earthworks) and linings to the concentration ponds and crystallising ponds) and removable buildings or any of them from the project site the Joint Venturers shall not do so without first notifying the State in writing of their decision and thereby granting to the State the right or option exercisable within 3 months thereafter to purchase *in situ* the said machinery equipment and removable buildings or any of them at a

valuation to be mutually agreed or in default of agreement to be made by such competent valuer as the parties hereto 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; and

- (iii) any machinery equipment and removable buildings not purchased by the State pursuant to subparagraph (ii) of this paragraph and not removed by the Joint Venturers from the project site at the expiration of 6 months from such expiration cessation or determination shall thereupon become the absolute property of the State without compensation and freed and discharged from all charges and encumbrances.

**Salt for use in Australia**<sup>3</sup>

28. The Joint Venturers acknowledge the desire of the State to have available a constant and reliable source of supply of salt for use in Australia. To attain this object the Joint Venturers subject to the fulfilment of their overseas contracts will use their best endeavours to have such quantities of salt available at all times during the currency of this Agreement for sale for use in Australia as will meet reasonable demands therefor made on the Joint Venturers from time to time at a price which is competitive in the Australian market provided that such price is not less than that which the Joint Venturers are receiving or able to receive for similar quantities of salt sold on similar terms and conditions for use outside Australia.

29. The State further covenants with the Joint Venturers that the State —

**Restrictions on resumption**<sup>3</sup>

- (a) having regard to the particular nature of the industry in which the Joint Venturers are engaged pursuant to this Agreement and subject to this Agreement and to the performance by the Joint Venturers of their obligations hereunder shall not resume or suffer or permit to be resumed by any State instrumentality or by any local or other authority of the said State any portion of the project site the resumption of which would unreasonably impede the Joint Venturers' activities nor shall the State create grant or permit or suffer to be created or granted by an instrumentality or authority of the said State as aforesaid any road right of way or easement of any nature or kind whatsoever over or in respect of the project site which

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may unduly prejudice or interfere with the Joint Venturers' operations hereunder without the consent in writing of the Joint Venturers first having been obtained which consent shall not be arbitrarily or unreasonably withheld;

**No discriminatory taxes or charges**<sup>3</sup>

- (b) except as provided in this Agreement shall not impose or permit or authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Joint Venturers in the conduct of the Joint Venturers' business hereunder nor shall the State take or permit to be taken by any such agency instrumentality or authority any other discriminatory action which would deprive the Joint Venturers of full enjoyment of the rights granted and intended to be granted under this Agreement;

**Rating**<sup>3</sup>

- (c) shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands the subject of this Agreement (except as to any part upon which a residence is erected or which is occupied in connection with that residence and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the production of salt) shall for rating purposes under the *Local Government Act 1960*, be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate PROVIDED THAT nothing in this Clause shall prevent the Joint Venturers making the election provided for by section 533B of the *Local Government Act 1960*.

**Assignment**<sup>3</sup>

30. (1) Subject to the provisions of this Clause the Joint Venturers or any of them 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 persons

with the consent of the Minister the whole or any part of the rights of the Joint Venturers hereunder (including their rights to or as the holder of the mining lease or any other lease licence easement grant or other title) and of the obligations of the Joint Venturers hereunder; and

- (b) appoint as of right an associated company or with the consent of the Minister any other company or person to exercise all or any of the powers functions and authorities which are or may be conferred on the Joint Venturers hereunder; subject however in the case of an assignment subletting disposition or appointment to the assignee sublessee disposee or the appointee (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Joint Venturers to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting disposition or appointment.

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this Clause the Joint Venturers shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on their part contained herein and in the mining lease or any other lease licence easement grant or other title the subject of an assignment mortgage subletting disposition or appointment under subclause (1) of this Clause PROVIDED THAT the Minister may agree to release the Joint Venturers or any of them from such liability where he considers such release will not be contrary to the interests of the State.

### **Arbitration<sup>3</sup>**

31. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights duties or liabilities of either party hereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to the arbitration of two arbitrators one to be appointed by each party the arbitrators to appoint their umpire before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the *Arbitration Act 1895*.

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(2) Except where proposals are pursuant to the provisions of this Agreement referred to arbitration, the provisions of this Clause shall not apply to any case where the State the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.

(3) The arbitrators or umpire (as the case may be) of any submission to arbitration hereunder are hereby empowered upon the application of either of the parties to grant in the name of the Minister any interim extensions of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties hereunder and an award may in the name of the Minister grant any further extension or variation for that purpose.

**Variation<sup>3</sup>**

32. (1) The parties hereto may from time to time by agreement In writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of the mining lease or any other lease licence easement grant or other title granted hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

(2) The Minister shall cause any agreement made pursuant to subclause (1) of this Clause in respect of any addition substitution cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.

(3) Either House may, within 12 sitting days of that House after the agreement has been laid before it pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

**Protection of flow of sea water<sup>3</sup>**

33. During the period of this Agreement the State shall not authorise the construction of any works which could reasonably be considered as having the possible effect of stopping the flow of sea water into Useless Inlet or diminishing such flow as to result in the drawing of sea water by the Joint Venturers from Shark Bay being either impracticable or only practical with the expenditure by the Joint Venturers of additional money for capital or in operating costs.

**Force majeure<sup>3</sup>**

34. 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 and to relief from forfeiture for failure to ship the annual and average tonneages referred to in paragraph (a) of Clause 27 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 or failure as aforesaid caused by or arising from act of God force majeure floods storms tempests washaways abnormal tides and waves fire (unless caused by the actual fault or privity of the Joint Venturers) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability (common in the salt export industry) to profitably sell salt 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 promptly give notice to the other party of the event or events and shall minimise the effect of the said causes as soon as possible after their occurrence.

**Environmental protection**<sup>3</sup>

35. Nothing in this Agreement shall be construed to exempt the Joint Venturers from compliance with any requirement in connection with the protection of the environment arising out of or incidental to their operations hereunder that may be made by the State or by any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act from time to time in force.

**Indemnity**<sup>3</sup>

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

**Compliance with laws**<sup>3</sup>

37. Subject to this Agreement the Joint Venturers in the construction operation maintenance and use of any work installation plant machinery equipment service or facility provided or controlled by them shall comply with and observe the laws for the time being in force in the said State.

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**Notices**<sup>3</sup>

38. Any notice consent request 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 or the Minister if signed by the Minister or by any senior officer of the Public Service of the said State acting by the direction of the Minister and forwarded by pre-paid registered post to the Joint Venturers at their respective registered offices or principal place of business for the time being in the said State and by the Joint Venturers if signed on their behalf by any person or persons for the time being appointed by them for the purposes of this Clause and forwarded by pre-paid registered post to the Minister at his office in Perth AND any such notice consent or writing shall be deemed to have been duly given on the day on which it would be delivered in the ordinary course of post.

**Consultation**<sup>3</sup>

39. The Joint Venturers shall during the currency of this Agreement consult with and keep the State fully informed on a confidential basis concerning any action that the Joint Venturers propose to take with any third party (including the Commonwealth or any Commonwealth constituted agency authority instrumentality or other body) which might significantly affect the overall interest of the State under this Agreement.

**Determination by Joint Venturers**<sup>3</sup>

40. (1) Notwithstanding anything herein contained the Joint Venturers may at any time give notice to the State that matters have arisen which make the completion or continuance of the works impracticable or uneconomic and that they desire to determine this Agreement whereupon this Agreement will then cease and determine and the State may enforce all or any one or more of its rights remedies or powers set out in Clause 27.

**Right of surrender**<sup>3</sup>

(2) The Joint Venturers shall have the right at any time and from time to time to surrender to the Crown in right of the State any reasonably substantial part of the project site which is no longer required by the Joint Venturers.

**Power to extend periods**<sup>3</sup>

41. Notwithstanding any provision of this Agreement the Minister may at the request of the Joint Venturers from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

**Applicable law**<sup>3</sup>

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

THE SCHEDULE  
WESTERN AUSTRALIA  
*MINING ACT 1978*  
SHARK BAY SOLAR SALT INDUSTRY AGREEMENT  
MINING LEASE

Mining Lease No.

The Minister for Mines a corporation sole established by the *Mining Act 1978* with power to grant leases of land for the purposes of mining in consideration of the rents and royalties reserved by the Agreement described in the Second Schedule to this lease (hereinafter called “the Agreement”) and of the covenants on the part of the Lessee described in the First Schedule to this lease and of the conditions hereinafter contained and pursuant to the *Mining Act 1978* (except as otherwise provided by the Agreement) hereby leases to the Lessee the land more particularly delineated and described in the Third Schedule to this lease for evaporites as defined in the Agreement subject however to the exceptions and reservations set out in the Fourth Schedule to this lease and to any other exceptions and reservations which subject to the Agreement are by the *Mining Act 1978* and by any Act for the time being in force deemed to be contained herein to hold to the Lessee this lease for a term of twenty-one years commencing on the date set out in the Fifth Schedule to this lease upon and subject to such of the provisions of the *Mining Act 1978* except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the covenants and conditions herein contained or implied and any further conditions or stipulations set out in the Sixth Schedule to this lease the Lessee paying therefor the rents and royalties as provided in the Agreement with the right during the currency of the Agreement and in accordance with the provisions of the Agreement to take two successive renewals of the term each for a further period of 21 years upon the same terms and conditions subject to the sooner determination of the said term upon cessation or determination of the Agreement PROVIDED ALWAYS that this lease and any renewal thereof shall not be determined or forfeited otherwise than in accordance with the Agreement.

**Schedule**

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In this Lease —

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

**FIRST SCHEDULE**

(name address and description of the Lessee.)

AGNEW CLOUGH LIMITED a company incorporated in Western Australia and having its registered office in the said State at 22 Mount Street, Perth and MITSUI SALT PTY. LTD. a company incorporated in Western Australia and having its registered office in the said State at 44 Saint George’s Terrace, Perth and AUSTRALIAN MUTUAL PROVIDENT SOCIETY a body corporate duly incorporated by Act of Parliament of New South Wales and having its principal place of business in Western Australia at 140 Saint George’s Terrace, Perth.

**SECOND SCHEDULE**

(the Agreement)

The Agreement ratified by the *Shark Bay Solar Salt Industry Agreement Act 1983* including any amendments to that Agreement.

**THIRD SCHEDULE**

(Sketch of Land)

Locality:

Mineral Field:

Area, etc.:

**FOURTH SCHEDULE**

All petroleum as defined in the *Petroleum Act 1967* on or below the surface of the land the subject of this lease is reserved to the Crown in right of the State of Western Australia with the right of the Crown in right of the State of Western

Australia and any person lawfully claiming thereunder or otherwise authorised to do so to have access to the land the subject of this lease for the purpose of searching for and for the operations of obtaining petroleum (as so defined) in any part of the land.

**FIFTH SCHEDULE**

(Date of commencement of the lease).

**SIXTH SCHEDULE**

(Any further conditions or stipulations).

In witness whereof the Minister for Mines has affixed his seal and set his hand hereto this            day of            19 .

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

SIGNED by the said THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., in the presence of —	}	BRIAN BURKE.
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MALCOLM J. BRYCE,  
MINISTER FOR ECONOMIC DEVELOPMENT  
AND TECHNOLOGY.

THE COMMON SEAL of AGNEW CLOUGH LIMITED was hereunto affixed in accordance with its Articles of Association in the presence of —	}	(C.S.)
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G. COHEN, DIRECTOR

J. SMITHSON, SECRETARY

**Schedule**

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THE COMMON SEAL of MITSUI SALT  
PTY. LTD. was hereunto affixed in  
accordance with its Articles of Association  
in the presence of —

}

(C.S.)

Y. OKAMOTO, DIRECTOR

M. KINURA, SECRETARY

SIGNED for and on behalf of  
AUSTRALIAN MUTUAL PROVIDENT  
SOCIETY by its duly authorised attorneys  
SIR ERNEST HENRY LEE-STEERE and

}

E. H. LEE-STEERE

ERIC HOWARD WHEATLEY under  
Power of Attorney dated 9th September  
1981 who hereby state that they have no  
notice of revocation of the said Power of  
Attorney in the presence of —

}

E. H. WHEATLEY

M. L. PEACOCK,  
OFFICER OF THE SOCIETY

## **Notes**

- <sup>1</sup> This reprint is a compilation as at 4 July 2003 of the *Shark Bay Solar Salt Industry Agreement Act 1983*. The following table contains information about that Act and any reprint.

### **Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Shark Bay Solar Salt Industry Agreement Act 1983</i>	67 of 1983	22 Dec 1983	22 Dec 1983
<b>Reprint 1: The <i>Shark Bay Solar Salt Industry Agreement Act 1983</i> as at 4 July 2003</b>			

- <sup>2</sup> Repealed by the *Interpretation Act 1984*.
- <sup>3</sup> Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.