



Western Australia

## **Nickel (Agnew) Agreement Act 1974**



# Nickel (Agnew) Agreement Act 1974

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## Nickel (Agnew) Agreement Act 1974

**An Act to ratify an agreement between the State of Western Australia and Western Selcast (Pty) Limited and Mount Isa Mines Limited with respect to the mining and treatment of certain nickel ore reserves.**

### 1. Short title

This Act may be cited as the *Nickel (Agnew) Agreement Act 1974*.

### 2. Terms used

In this Act —

**2022 variation agreement** means the agreement a copy of which is set out in the Third Schedule;

**the Agreement** means the agreement a copy of which is set out in the First Schedule and includes that agreement as so altered from time to time in accordance with its provisions and, except in section 3, by the Variation Agreement and the 2022 variation agreement;

**the Joint Venturers** has the same meaning as it has in the Agreement;

**the Variation Agreement** means the Variation Agreement a copy of which is set out in the Second Schedule.

*[Section 2 amended: No. 98 of 1976 s. 2; No. 17 of 2023 s. 4.]*

### 3. Ratification of the Agreement

The Agreement is hereby ratified.

**s. 3A**

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**3A. Ratification of the Variation Agreement**

The Variation Agreement is hereby ratified.

*[Section 3A inserted: No. 98 of 1976 s. 3.]*

**3B. Ratification of 2022 variation agreement**

- (1) The 2022 variation agreement is ratified.
- (2) The implementation of the 2022 variation agreement is authorised.
- (3) Without limiting or otherwise affecting the *Government Agreements Act 1979*, the 2022 variation agreement operates and takes effect despite any enactment or other law.

*[Section 3B inserted: No. 17 of 2023 s. 5.]*

**4. By-laws**

The Governor may, on the recommendation of the Joint Venturers, make, alter and repeal by-laws, in accordance with and for the purposes referred to in clause 18 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 \$100 for a breach of any of the by-laws;
- (d) are not subject to section 36 of the *Interpretation Act 1918*<sup>1</sup>,

but shall be laid before each House of Parliament within the 6 sitting days of such House next following the publication of the by-laws in the *Gazette*.

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

## **First Schedule — Nickel (Agnew) Agreement**

[s. 2]

*[Heading amended: No. 19 of 2010 s. 4.]*

THIS AGREEMENT made this 21st day of November, 1974 BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part and WESTERN SELCAST (PTY) LIMITED a company incorporated under the *Companies Act 1961* of the State of New South Wales and registered in the State of Western Australia as a foreign company and having its registered office at 50 St George’s Terrace Perth and MOUNT ISA MINES LIMITED a company incorporated under the *Companies Act 1961* of the State of Queensland and registered in the State of Western Australia as a foreign company and having its registered office at 220 St 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 have established the existence of nickel ore reserves within the mining areas hereinafter defined and have carried out certain investigations relating *inter alia* to the mining and treatment of that ore and the sale of nickel containing products;
- (b) the Joint Venturers desire to develop such nickel ore reserves and to establish in the Agnew area mining concentrating and smelting facilities and associated works;
- (c) the Joint Venturers intend to investigate the technical and economic feasibility of establishing a refinery within the said State.

NOW THIS AGREEMENT WITNESSETH:

**Definitions <sup>2</sup>**

1. In this Agreement subject to the context —

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

“associated company” means —

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

(i) is promoted by the 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 less than a twenty five per cent  
(25%) interest or some lesser interest acceptable to  
the Minister; or

(ii) is related within the meaning of that term as used in  
section 6 of the *Companies Act 1961*, as at present in  
force to either 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 held not less than twenty five per cent  
(25%) of the issued ordinary share capital; and

(iii) is notified to the Minister by the Joint Venturers or  
any of them as being such a company;

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

“associated works” means and includes mine development the installation  
of mining plant mining equipment and plant for the treatment of ore as  
hereinafter defined or any derivative thereof, works for the provision  
of electricity, water, roads, communications, transportation and the



construction of housing and communal and other facilities for the proper and reasonable accommodation health and recreation of workers employed by the Joint Venturers and of contractors engaged in carrying out the Joint Venturers' operations under this Agreement;

“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;

“Land Act” means the *Land Act 1933*;

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

“mineral claim” means a mineral claim granted pursuant to regulations made under the Mining Act or any mining right (other than a mineral lease) granted in substitution therefor under any amendment to the Mining Act or any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;

“mineral lease” means the mineral lease referred to in Clause 15 and includes any renewal thereof and according to the requirements of the context shall describe the area of land demised as well as the instrument by which it is demised;

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

“mining areas” means the areas delineated and coloured red (hereinafter called “the red areas”) on the plan marked “A” (initialled by or on behalf of the parties hereto for the purposes of identification) over which the Joint Venturers as at the date hereof hold mineral leases, together with such of the areas delineated and coloured yellow (hereinafter called “the yellow areas”) on the said plan over which mineral claims may at any time (whether before or after the commencement of this Agreement) prior to application being made by the Joint Venturers for a mineral lease be granted to the Joint Venturers by the Minister for Mines or transferred to the Joint Venturers with the approval of that Minister;

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

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

“month” means calendar month;

“nickel concentrates” means concentrates obtained by treating ore as hereinafter defined;

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

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

“notice” means notice in writing;

“ore” means nickeliferous ore from the mineral lease;

“person” or “persons” includes bodies corporate;

“private road” means a road (not being a public road) which is either constructed by the Joint Venturers in accordance with their proposals as approved by the Minister hereunder or agreed by the parties to be a private road for the purposes of this Agreement;

“production date” means the date when the Joint Venturers first commence to concentrate ore;

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

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

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

“Ratifying Act” means the Act to ratify this Agreement and referred to in Clause 4;

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

“said State” means the State of Western Australia;

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

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

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

“town” means the town to be developed by the Joint Venturers as the principal housing area for their mine workforce with the approval of the State and may include an existing town;

“townsite” means the site on which the town is to be situated;

“Yakabindie Homestead” means the homestead existing at the date of this Agreement situated on Pastoral Lease No 3114/649;

## **Interpretation <sup>2</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 33 to extend any period or date shall be without prejudice to the power of the Minister under Clause 33;
- (c) marginal notes do not affect the interpretation or construction <sup>2</sup>; and
- (d) reference to an Act unless otherwise specifically expressed includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time in force thereunder.

**Initial obligations of the State <sup>2</sup>**

3. The State shall —
- (a) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to the 31st day of December, 1974; and
  - (b) to the extent reasonably necessary for the purposes of this agreement allow the Joint Venturers to enter upon Crown lands (including, if applicable, land the subject of a pastoral lease).

**Ratification and operation <sup>2</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 the 31st day of December, 1974 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 will have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

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

**Initial obligations of the Joint Venturers <sup>2</sup>**

5. (1) The Joint Venturers shall continue their field and office engineering studies and market and finance studies and other matters necessary including an environmental impact study to enable them to finalise and to submit to the Minister the detailed proposals and other matters referred to in subclauses (1) and (4) of Clause 6.

(2) The Joint Venturers shall keep the State fully informed in writing at least quarterly as to the progress and results of the Joint Venturers' operations under subclause (1) of this Clause. The first quarterly report shall be lodged during the month of July, 1975 and shall be in respect of the quarter ending on the 30th day of June, 1975 and thereafter the quarterly reports shall be in respect of

the quarter ending on the last day of the month preceding the month in which they are lodged.

(3) The Joint Venturers shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclause (1) of this Clause.

**Joint Venturers to submit Proposals <sup>2</sup>**

6. (1) On or before the 31st day of December 1975 (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 a mining and treatment project with a capacity to produce not less than one million (1 000 000) tonnes of ore per year and the transport and shipment through a port within the said State of nickel-containing products and for making provision for the necessary work force and associated population required to enable the Joint Venturers to mine ore and to process it at the Joint Venturers' plant in the Agnew area or at such other site or sites as the parties hereto may agree, and including the location, area, lay-out, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters; namely —

- (a) the mining, concentrating and smelting of ore;
- (b) roads;
- (c) railways;
- (d) facilities for the export of nickel-containing products through a port in the said State;
- (e) water supply;
- (f) townsite and town including housing, provision of utilities and services and associated facilities;
- (g) power generation and distribution;
- (h) any other works, services or facilities desired by the Joint Venturers;

- (i) any leases, licences or other tenures of land required from the State;
- (j) airport; and
- (k) measures to be taken for the protection management and rehabilitation of the environment.

**Order of Proposals <sup>2</sup>**

(2) The proposals may with the approval of the Minister and shall if so required by the State be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (k) of subclause (1) of this Clause.

**Use of existing infrastructure <sup>2</sup>**

(3) The proposals relating to any of the matters mentioned in subclause (1) of this Clause may with the approval of the Minister and that of any third parties concerned instead of providing for the construction of new facilities of the kind therein mentioned provide for the use by the Joint Venturers upon reasonable terms and conditions of any existing facilities of such kind.

**Marketing and financial arrangements <sup>2</sup>**

(4) At the time when the Joint Venturers submit the said proposals they shall furnish to the State's satisfaction evidence of —

- (a) marketing arrangements demonstrating the Joint Venturers' ability to profitably sell or use nickel-containing products or a substantial proportion thereof in accordance with the said proposals;
- (b) the availability of finance necessary for the fulfilment of the operations to which the said proposals refer; and
- (c) the readiness of the Joint Venturers to embark upon and proceed to carry out the operations referred to in the said proposals.

**Extension of time for financing and marketing <sup>2</sup>**

(5) If the Joint Venturers for any reason desire an extension of time beyond the said 31st day of December, 1975 within which to comply with the requirements of subclause (4) of this clause they may make a request therefor to the Minister not earlier than the 1st day of October, 1975 or later than the 30th

day of November, 1975 and with such request shall supply the Minister with details of their endeavours to comply with those requirements. If the Minister is satisfied that such endeavours are reasonable in the circumstances and that the Joint Venturers have otherwise duly complied with their obligations hereunder the Minister shall grant an extension of such time for a period of twelve (12) months.

**Consideration of Proposals <sup>2</sup>**

7. (1) On receipt of the said proposals the Minister shall —
- (a) approve of the said proposals either wholly or in part without qualification or reservation; or
  - (b) defer consideration of or decision upon the same until such time as the Joint Venturers submit a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 6 not covered by the said proposals; or
  - (c) 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 (having regard to the circumstances including the overall development of and the use by others as well as the Joint Venturers of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions.

**Advice of Minister's decision <sup>2</sup>**

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

**Consultation with Minister <sup>2</sup>**

- (3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) 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 or revised proposals either generally or in respect to some particular matter.

**Minister's decision subject to arbitration <sup>2</sup>**

- (4) If the decision of the Minister is as mentioned in the said paragraph (c) and the Joint Venturers consider that the condition precedent is unreasonable the

Joint Venturers within two 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>2</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 unless the Joint Venturers within three (3) months after delivery of the award give notice to the Minister of their acceptance of the award this Agreement shall on the expiration of that period of three (3) months cease and determine; 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.

**Effect of non-approval of Proposals <sup>2</sup>**

(6) Notwithstanding that under subclause (1) of this Clause any detailed proposals of the Joint Venturers are approved by the Minister or determined by arbitration award, unless each and every such proposal and the other matters referred to in subclause (4) of this Clause are so approved or determined by the 28th day of February, 1977 or by such extended date if any as the Joint Venturers shall be granted pursuant to the provisions of this Agreement then the Minister may give to the Joint Venturers twelve (12) months notice of intention to determine this Agreement and unless before the expiration of the said twelve (12) months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of Clause 35.

**Additional Proposals <sup>2</sup>**

8. (1) If the Joint Venturers at any time during the continuance of this Agreement desire to modify expand or otherwise vary their activities beyond those specified in any approved proposals they shall give notice of such desire to the Minister and within two (2) months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (k) of subclause (1) of Clause 6 as



the Minister may require. The provisions of Clauses 6 and 7 where applicable shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause.

**Determination of extent of Joint Venturers' obligations <sup>2</sup>**

(2) The extent of the Joint Venturers' responsibilities under Clause 18 to provide the capital cost of and to maintain any increased or additional services and facilities of the kind mentioned in subclause (1) of that Clause occasioned by the additional proposals or any of them becoming approved proposals shall be determined by the Minister after discussion and negotiation on such matters with the Joint Venturers and in making such determination the Minister shall have regard *inter alia* to the current and anticipated composition of the town and the extent to which the ordinary responsibilities of the State with respect to the provision of the capital cost of such services and facilities are to be assumed by the State in the light of the State's current capital resources at that time.

**Construction of works <sup>2</sup>**

9. The Joint Venturers shall in accordance with their proposals as finally approved under Clause 7 within six (6) months next following the date of such approval commence the construction of the works referred to in such proposals and will complete all such works within three (3) years of their commencement except as otherwise specified in such proposals.

**Use of local professional services labour and materials <sup>2</sup>**

10. (1) The Joint Venturers shall for the purposes of this Agreement as far as it is reasonable and economically practicable —

- (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 calling for tenders and letting contracts for works materials plant equipment and supplies ensure that Western Australian suppliers manufacturers and contractors are given 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 from time to time during the currency of this Agreement when requested by the Minister submit a report concerning their implementation of the provisions of subclause (1) of this Clause.

**Roads <sup>2</sup>**

11. (1) The Joint Venturers shall —

- (a) be responsible for the provision of finance for and the construction in maintenance of all private roads which shall be used in their operations hereunder;
- (b) at their cost make such provision as shall 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 any such private roads; and
- (c) at any place where such private roads are constructed by the Joint Venturers as to cross any railways or public roads provide adequate grade separation or such other reasonable protection as may be required by the Commissioner of Main Roads or Railways Commission as the case may be.

**Public Roads to be constructed by the State <sup>2</sup>**

(2) The State shall construct or cause to be constructed new public roads suitable for the Joint Venturers' operations hereunder in accordance with the requirements of the Commissioner of Main Roads as follows —

- (a) an unsealed road from Leonora extending to a point (to be agreed between the parties) near the Yakabindie Homestead (in this Clause called "the Leonora-Yakabindie road"). That part of the Leonora-Yakabindie road from Leonora to the turn-off to the minesite (in this Clause called "the turn-off") shall be sealed by the State to a width of not less than seven decimal three (7.3) metres within two (2) years of the date of completion of construction. That part of the Leonora-Yakabindie road from the turn-off to the Yakabindie Homestead shall be constructed to a standard similar to the existing Leonora-Wiluna main road. The

Joint Venturers shall pay to the State at the times and in the manner required by the State one half of the cost of the construction (including investigation survey and design) of the Leonora-Yakabindie road and one half of the cost of the sealing referred to in this paragraph;

- (b) an unsealed road connecting the turn-off with the townsite. Such road shall be sealed by the State to a width of not less than seven decimal three (7.3) metres within two (2) years of the date of completion of its construction. The Joint Venturers shall pay to the State at the times and in the manner required by the State one half of the cost of the construction (including investigation survey and design) and sealing of such road;
- (c) an unsealed road connecting a point to be agreed on the Leonora-Yakabindie road to a point to be agreed on the existing Leonora-Wiluna road. The Joint Venturers shall pay to the State at the times and in the manner required by the State one half of the cost of the construction (including investigation survey and design) of the road. Such road shall be constructed to a standard similar to the existing Leonora-Wiluna road.

The State shall use its best endeavours to complete the construction of the roads referred to in this subclause by the date that the Joint Venturers' mining and treatment plant comes into operation.

**Public road to be constructed by the Joint Venturers <sup>2</sup>**

(3) The Joint Venturers shall investigate survey design and construct or cause to be constructed a new sealed public road suitable for their operations hereunder in accordance with the requirements of the Commissioner of Main Roads to connect the minesite with the townsite and shall provide or arrange the finance therefor.

**Maintenance of public roads <sup>2</sup>**

(4) The State shall maintain or cause to be maintained public roads over which it has control (and which may be used by the Joint Venturers) to a standard similar to comparable public roads maintained by the State. In the event that the Joint Venturers' road haulage operations require the use of a public road which is inadequate for the purpose, or results 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 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.

**Liability**<sup>2</sup>

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

(6) Notwithstanding anything hereinbefore contained in this Clause and without limiting the Joint Venturers’ obligations under subclause (4) of this Clause the Joint Venturers shall not be or be deemed to be liable for the maintenance of any public road except when such road is within the town and the Joint Venturers have an obligation to maintain that road pursuant to the provisions of Clause 18.

(7) Any contribution made by the Joint Venturers to the State pursuant to the provisions of subclause (4) of this Clause shall not be deemed to be a responsibility for road maintenance under this Agreement.

**Railway**<sup>2</sup>

12. (1) Subject to the by-laws made under the *Government Railways Act 1904* (insofar as those by-laws are not inconsistent with this Agreement) and subject to

the provisions of this Clause the Joint Venturers shall in accordance with their approved proposals consign at their own risk, and the State shall cause the Railways Commission to transport, by rail, all the Joint Venturers' requirements of —

**Nickel-containing Products** <sup>2</sup>

- (a) nickel-containing products from the railhead at Leonora to any processing plant port or ports in a location approved by the Minister;
- (b) nickel-containing products between the mining areas and Leonora in the event of a railway being constructed between those places; and
- (c) insofar as practicable all other bulk commodities required for the Joint Venturers' operations hereunder.

**Other Commodities** <sup>2</sup>

(2) The Joint Venturers may at their election transport either by road or by rail all commodities other than those referred to in subclause (1) of this Clause required for their operations hereunder between Kalgoorlie and the mining areas PROVIDED THAT the Railways Commission shall not be required to accept rail freight in less than full wagon loads.

**Road Licences** <sup>2</sup>

(3) Where the Joint Venturers elect to transport commodities by road pursuant to subclause (2) of this Clause the Commissioner of Transport shall issue licences for road carriage upon request by the Joint Venturers and upon payment of the licence fees prescribed by him under the *Transport Commission Act 1966*.

(4) The Joint Venturers shall pay to the State as advance payment of freight rates payable under subclause (10) of this Clause, the amount of One million dollars (\$1 000 000) by an instalment of Three hundred thousand dollars (\$300 000) by not later than the end of the year in which construction of the works referred to in Clause 9 commences and a further instalment of Seven hundred thousand dollars (\$700 000) by not later than the end of the next succeeding year.

**New Railway <sup>2</sup>**

(5) In the event of the State electing to construct a railway between Leonora and the mining areas to enable the Railways Commission to transport the Joint Venturers' rail freight in the course of their operations hereunder the Joint Venturers shall pay to the State a sum or sums to be agreed between the parties towards the cost of providing such railway (including all necessary land acquisitions, loops, spurs, sidings, crossings, points, bridges and other works and appurtenances and if required by the Railways Commission additional rolling stock).

**Upgrading <sup>2</sup>**

(6) The State shall complete the upgrading of the existing railway line between Leonora and Kalgoorlie by not later than the production date to achieve a capacity to enable the Railways Commission to transport nickel-containing products at a quantity of not less than fifty thousand (50 000) tonnes per annum and all other bulk commodities as required by the Joint Venturers for their operations hereunder.

**Other facilities <sup>2</sup>**

(7) The Joint Venturers shall pay or arrange finance for the provision and maintenance of such sidings, shunting loops, spurs and other connections as are required solely for their operations hereunder and the provision and maintenance of loading and unloading facilities sufficient to meet train operating requirements and terminal equipment (including weighing devices), together with a staff adequate to ensure the proper operation of all such loading and unloading facilities and terminal equipment.

**Notice of Anticipated Tonneages <sup>2</sup>**

(8) The Joint Venturers shall provide to the satisfaction of the Railways Commission adequate notice in advance of their requirements (including anticipated tonneages in each year) as to the use of the railway to enable the Railways Commission to make arrangements to meet those requirements and shall thereafter give adequate notice of any change in those requirements. In particular the Joint Venturers shall agree with the Railways Commission the pattern of working including weekly and monthly despatches and the hours of working.

### **Conditions of carriage <sup>2</sup>**

(9) All commodities transported by the Railways Commission pursuant to this Clause shall be carried at the Joint Venturers' risk and shall be subject to the by-laws made under the *Government Railways Act 1904* (insofar as those by-laws are not inconsistent with this Agreement) and to the provisions of this Clause.

### **Freight Rates <sup>2</sup>**

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

### **Leonora Interchange <sup>2</sup>**

(11) The Joint Venturers shall as required collaborate with the State in the planning of a road-rail interchange at Leonora.

### **Electricity — Purchase of Electricity <sup>2</sup>**

13. (1) For the purposes of facilitating integration of electricity generation and transmission facilities in areas where the Joint Venturers operate, the Joint Venturers shall purchase electricity if available from the State Electricity Commission, or, negotiate with the State Electricity Commission for the payment by the Joint Venturers of an equitable contribution towards the augmentation of the facilities of the State Electricity Commission to enable it to supply electricity to the Joint Venturers. Electricity supplied to the Joint Venturers pursuant to this subclause shall be at the standard tariff applicable from time to time.

### **Electricity generation <sup>2</sup>**

(2) In the event of the Joint Venturers demonstrating to the satisfaction of the Minister that the provisions of subclause (1) of this Clause would be unduly prejudicial to their operations; the Joint Venturers may —

- (a) in accordance with their approved proposals hereunder and subject to the provisions of the Electricity Act and the approval and requirements of the State Electricity Commission, install and operate without cost to the State, at an appropriate location equipment to generate electricity of sufficient capacity for their operations hereunder;

- (b) transmit power within the mining areas and from the mining areas to the town or elsewhere subject to the provisions of the Electricity Act and the approval and requirements of the State Electricity Commission; and
- (c) subject to the provisions of the Electricity Act and the requirements of the State Electricity Commission sell power transmitted pursuant to paragraph (b) of this subclause to third parties within the mining areas and to third parties elsewhere.

(3) In the event that the Joint Venturers are unable to procure easements or other rights over land required for the purposes of subclause (2) 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.

**Acquisition of facilities <sup>2</sup>**

(4) Notwithstanding the provisions of the State Electricity Commission Act the State may at any time give to the Joint Venturers twelve (12) months' notice of its intention to acquire and may thereafter acquire the Joint Venturers' electricity facilities or any part thereof up to the first point of voltage breakdown or such other appropriate point as may be agreed, at a price to be agreed between the parties and the Joint Venturers shall take all such steps as may be necessary to effect the acquisitions. The State undertakes that in such event the Joint Venturers shall for their purposes hereunder have first call on the power generated and transmitted by such electricity facilities so acquired and the State undertakes subject only to its inability to supply power for any of the reasons set forth in Clause 32 to supply the Joint Venturers with power for their purposes hereunder up to the normal continuous full load capacity of the electricity facilities so acquired and that in the event of such inability to supply power occurring the State shall take all possible steps to restore such supply regardless of the time or day when such inability arises and may call upon the Joint Venturers to provide employees for that purpose at the State's expense.

**Charges for electricity <sup>2</sup>**

(5) In the event of the State acquiring the Joint Venturers' electricity facilities the Joint Venturers shall pay to the Commission the cost of all electricity supplied to the Joint Venturers by the Commission at a rate equal to the standard tariff from time to time applying to the Commission's system less the difference (if any) between the Commission's standard tariff in force at the time of the



State's acquisition of the electricity facilities and the Joint Venturers' cost of operating the electricity facilities (including *inter alia* appropriate capital charges) at the time of the said acquisition. The Commission's rate for electricity supplied calculated as aforesaid shall apply only in respect of an amount of electricity equal to the continuous full load capability (after allowing for a standby plant) of the electricity facilities so acquired and the Joint Venturers shall pay for all electricity supplied to them by the Commission in excess of such amount at the Commission's standard tariff applicable from time to time. Should the Joint Venturers desire to expand their operations hereunder and for that purpose require power beyond the continuous full load capacity of the electricity facilities so acquired the Joint Venturers shall give to the State two (2) years notice of their additional power requirements and the State shall thereupon cause the Commission to negotiate with the Joint Venturers the terms and conditions under which the additional generating capacity required to meet the needs of such expansion may be implemented.

**Bulk supply to State <sup>2</sup>**

(6) Should the Joint Venturers' relevant approved proposal provide for the Commission to reticulate electricity to houses occupied by the Joint Venturers' work-force and by any other persons connected directly with the Joint Venturers' operations whether employees or not and to commercial establishments directly connected with such operations, the Joint Venturers shall sell to the Commission in bulk electricity in sufficient quantities to meet the needs of such workforce persons and establishments at a price equal to the Joint Venturers' actual cost of generating and transmitting such electricity including, *inter alia*, appropriate capital charges.

**Water <sup>2</sup>**

14. (1) The State recognises —

**Joint Venturers' water requirements <sup>2</sup>**

- (a) that the Joint Venturers have an indicated annual average daily water requirement of twenty eight thousand (28 000) cubic metres, comprising both potable and non potable water for their purposes (which amount or such other amounts as shall from time to time be agreed between the parties to be reasonable are hereinafter called "the Joint Venturers' daily water requirements");

- (b) that sources of water within the mining areas are inadequate to meet the Joint Venturers' daily water requirements; and
- (c) that it has been established at the Joint Venturers' cost that a ground water resource of an indicated capacity adequate to meet the Joint Venturers' daily water requirements exists in the Depot Springs Water Reserve (gazetted on the 15th day of June, 1973) (hereinafter called "the water resource").

**Development of Water Resource <sup>2</sup>**

(2) The Joint Venturers shall provide at their cost or with finance arranged by them and construct to standards and in accordance with designs approved by the State in accordance with the relevant approved proposal all necessary bores valves pipelines meters tanks equipment and appurtenances necessary to draw transport use and dispose of water drawn from sources licensed to the Joint Venturers.

**Water Licence <sup>2</sup>**

(3) The Joint Venturers shall make application to the State for a licence to draw water up to twenty eight thousand (28 000) cubic metres per day from the water resource, and the State shall grant to the Joint Venturers such licence PROVIDED HOWEVER that should the water resource prove hydrologically inadequate to meet the Joint Venturers' daily water requirements, the State may on at least six (6) months prior notice to the Joint Venturers (or on at least forty-eight (48) hours prior notice if in the opinion of the Minister an emergency situation exists) limit the amount of water which may be taken from the water resource at any one time or from time to time to the maximum which the water resource is hydrologically capable of meeting as aforesaid.

**Alternative Water Source <sup>2</sup>**

(4) Should the State at any time pursuant to the proviso to subclause (3) of this Clause limit the amount of water to be taken from the water resource or if otherwise the Joint Venturers' daily water requirements cannot be met from the water resource on a continuous basis the State shall with all reasonable expedition and in conjunction with and upon the request of the Joint Venturers search for new or additional subterranean water sources with a view to restoring or ensuring the full quantity of the joint Venturers' daily water requirements. The Joint Venturers shall pay to the State a fair and reasonable proportion of the cost of investigating and developing such new and additional water sources as agreed between the Joint Venturers and the State.

### **State's Water Supply Obligation <sup>2</sup>**

(5) The State shall use its best endeavours to supply the Joint Venturers with sufficient water (subject to availability of supply from other sources and to prior commitments if any to third parties) to meet that portion of the Joint Venturers' daily water requirements not obtainable from the water resource pending the establishment of new and additional water sources pursuant to subclause (4) of this Clause on such terms and conditions as the Minister may determine.

### **Design of Plant <sup>2</sup>**

(6) The Joint Venturers shall to the extent that it is practical and economical, design, construct and operate all plant hereunder so as —

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

### **State's Acquisition of Water Facilities <sup>2</sup>**

(7) If during the currency of a licence granted under the provisions of this Clause the Minister is of the opinion that it would be desirable for water conservation purposes or water management purposes that sources of water licensed to the Joint Venturers be controlled and operated by the State as part of a regional water supply scheme the Minister may on giving six (6) months prior notice to the Joint Venturers of his intention, revoke the licence and acquire the Joint Venturers' water supply facilities for a monetary consideration to be determined by the Minister. Immediately from the revocation of such licence the State shall, subject only to the continued hydrological availability of water from such sources, commence and thereafter continue to supply water to an amount and at a rate required by the Joint Venturers being the amount and rate to which the Joint Venturers were entitled under such revoked licence and the proviso to subclause (3) of this Clause and the provisions of subclause (4) of this Clause shall in like manner apply to this subclause.

### **Payment for Water <sup>2</sup>**

(8) The Joint Venturers shall pay to the State for water supplied by the State pursuant to subclause (7) of this Clause a fair price to be agreed between the parties hereto having regard to the actual cost of operating and maintaining the supply and provision for replacement of the water supply facilities.

Notwithstanding the foregoing provisions of this subclause, in respect of water supplied by the State to the Joint Venturers as aforesaid for domestic purposes the Joint Venturers shall pay to the State therefor charges as levied from time to time pursuant to the provisions of the *Country Areas Water Supply Act 1947*.

**Enlarged Water Capacity<sup>2</sup>**

(9) The State after first having due regard to the Joint Venturers' daily water requirements and to the hydrological adequacy of the water resource may in its discretion develop the water resource or construct any works in either case to a greater capacity than that required to supply the Joint Venturers' daily water requirements but in that event the Joint Venturers shall pay to the State a share of the cost of the system as so enlarged as may be agreed between the parties to be fair in all the circumstances.

**Third Party Use<sup>2</sup>**

(10) The State may after first having due regard to the Joint Venturers' daily water requirements and to the hydrological adequacy of the water resource upon not less than three (3) months prior notice to the Joint Venturers specifying the identity of the third party including where applicable the State and the estimated maximum daily and total quantity of water to be drawn by that third party and the period over which such drawing is to occur, grant to a third party rights to draw water or itself draw water from the water resource PROVIDED HOWEVER that —

- (a) where the Joint Venturers have paid (in whole or in part) any moneys in respect of the investigation development and utilisation of the water resource the State shall require as a condition of such grant that where such third party is or will be a substantial drawer of water from the water resource within a period of five (5) years from the commencement of first utilisation of the water resource by the Joint Venturers the third party (but not the State) shall reimburse to the Joint Venturers prior to the third party exercising its rights to draw water, a proportion of such moneys as the Minister determines is fair and reasonable; and
- (b) where the Joint Venturers draw water from the water resource the State shall ensure that it is a condition of such grant to third parties that in the event that the capacity of the water resource is reduced, such reduction shall be first applied to such third parties

and thereafter if further reduction is necessary the State's and the Joint Venturers' requirements shall be reduced in such proportion as may be agreed.

#### **State to Restrict Adverse Grants <sup>2</sup>**

(11) The State shall ensure that no rights to mine minerals petroleum or other substances are granted over the area of any aquifer from which the Joint Venturers are drawing water or from time to time have the right to draw water hereunder unless the Minister reasonably determines that such grant is not likely to unduly prejudice or to interfere with the operations of the Joint Venturers hereunder and is not likely to render the water source incapable of supplying the Joint Venturers' daily water requirements on a continuous basis.

#### **Joint Venturers' Priority for Pipeline Facilities <sup>2</sup>**

(12) Nothing herein contained or implied (and in particular the provisions of subclause (7) of this Clause) shall derogate from or curtail the absolute priority of the Joint Venturers to utilize for the purpose of their operations under this Agreement any surplus capacity which might from time to time exist in any pipeline facilities constructed at the cost of the Joint Venturers for the transportation of water from a water source to any treatment plant operated by or for the Joint Venturers pursuant to this Agreement or to the townsite PROVIDED ALWAYS that the Joint Venturers shall not unreasonably withhold their approval to the use of such surplus capacity by the State and third parties on terms and conditions to be agreed.

#### **Supply of Water to Third Parties <sup>2</sup>**

(13) The Joint Venturers may supply water to third parties including the State at a charge to be approved by the Minister after consultation with the Joint Venturers. The Joint Venturers shall have all such powers and authorities with respect to such water as are determined by the Minister which may include all or any of the powers of a water board under the *Water Boards Act 1904* and, with the consent of the Minister for Local Government, a local authority under the *Local Government Act 1960*.

#### **Mineral Lease <sup>2</sup>**

15. (1) On application made by the Joint Venturers, as soon as practicable after all their proposals hereunder have been approved and the Joint Venturers have complied with the provisions of subclause (4) of Clause 6, for a mineral lease over so much of the land in the red areas as the Joint Venturers desire and in

respect of which the Joint Venturers then hold mineral leases, the State shall upon the surrender by the Joint Venturers of all such mineral leases cause to be granted to the Joint Venturers at the rental specified from time to time in the Mining Act a mineral lease of such land within the mining areas so applied for (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed) such mineral lease to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but in the form of the Second Schedule hereto and in respect of the minerals set out therein.

(2) 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, the term of the mineral lease shall be for a period of twenty-one (21) years commencing from the date of receipt of application with the right during the currency of this Agreement to take successive renewals of the said term each for a period of twenty-one (21) years upon the same terms and conditions subject to the sooner determination of the said term upon the cessation or determination of this Agreement (subject to the provisions of subclause (4) of Clause 35) such right to be exercisable by the Joint Venturers making written application for any such renewal not later than one (1) month before the expiration of the current term of the mineral lease.

**Labour conditions <sup>2</sup>**

(3) The State shall ensure that during the currency of this Agreement and subject to compliance with their obligations hereunder the Joint Venturers shall not be required to comply with the labour conditions imposed by or under the Mining Act in regard to the mineral lease.

**Other Mining Tenements <sup>2</sup>**

(4) The State shall not during the currency of this Agreement register any claim or grant any lease or other mining tenement under the Mining Act or otherwise by which any person other than the Joint Venturers or an associated company will obtain under the laws relating to mining or otherwise any rights to mine or take the natural substances (other than petroleum as defined in the *Petroleum Act 1967*) within the mineral lease unless the Minister for Mines reasonably determines that it is not likely to unduly prejudice or to interfere with the operations of the Joint Venturers hereunder assuming the taking by the Joint Venturers of all reasonable steps to avoid the interference.

**Right to remove sand, etc. <sup>2</sup>**

(5) Subject to compliance with the requirements of any Act Regulation or By-Law from time to time in force the Joint Venturers may for the purposes of this Agreement remove stone sand clay or gravel from the mineral lease.

**Access over mineral lease <sup>2</sup>**

(6) The Joint Venturers shall at all times permit the State and third parties (with or without stock vehicles and rolling stock) to have access to and to pass over the mineral lease (by separate route, road or railway) so long as that access and passage does not unduly prejudice or interfere with the operations of the Joint Venturers under this Agreement.

**Surrender of part of Mineral Lease <sup>2</sup>**

(7) Notwithstanding the provisions of this Clause the Joint Venturers may from time to time (with abatement of future rent in respect to the area surrendered but without any abatement of rent already paid or any rent which has become due and has been paid in advance) surrender to the State all or any portion or portions (of reasonable size and shape) of the mineral lease.

**Mineral Claims in the Yellow Areas <sup>2</sup>**

16. (1) Notwithstanding the provisions of the Mining Act the following provisions shall apply in respect of mineral claims which the Joint Venturers hold over the yellow areas at the date application is made for a mineral lease pursuant to subclause (1) of Clause 15 —

**Exemption from labour conditions <sup>2</sup>**

- (a) The State shall ensure that subject to compliance with their obligations under this Agreement the Joint Venturers shall not be required to comply with the labour conditions imposed by the Mining Act.

**Exploration of the yellow areas <sup>2</sup>**

- (b) Commencing from the expiration of the third year next following the production date the Joint Venturers shall carry out a programme of exploration of the yellow areas the subject of mineral claims and report on the results of such exploration to the Minister for Mines at yearly intervals thereafter.

**Surrender of the yellow areas <sup>2</sup>**

- (c) On the expiration of the fourth year next following the production date the Joint Venturers shall surrender mineral claims totalling in area at least one third of the yellow areas.
- (d) On the expiration of the fifth year next following the production date the Joint Venturers shall surrender mineral claims totalling in area at least one half of the balance of the yellow areas.
- (e) On the expiration of the sixth year next following the production date the Joint Venturers shall surrender all mineral claims held by them in the balance of the yellow areas.

**Incorporation of yellow areas in the mineral lease <sup>2</sup>**

(2) Notwithstanding the provisions of the Mining Act the Joint Venturers shall have the right in respect of mineral claims surrendered under subclause (1) of this Clause, at the respective dates of surrender, to apply for and have included in the mineral lease, upon and subject to the same terms covenants and conditions as apply to the mineral lease (with such apportionment of rents as is necessary), such of the areas of the surrendered mineral claims as the Joint Venturers desire notwithstanding that the survey of such additional land has not been completed (but subject to correction to accord with the survey when made at the Joint Venturers' expense).

**Lands <sup>2</sup>**

17. (1) For the purposes of the Joint Venturers' operations and associated works at the town the State shall grant to the Joint Venturers for residential agricultural 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 of the said State 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 twenty-one (21) years from the date of such grant at a rental of one (1) peppercorn per annum. The Joint Venturers may at any time during the currency of such lease or leases or occupancy rights purchase for the sum of ten dollars (\$10) per lot the fee simple of any townsite lot on which buildings or structures have been erected the cost of which is not less than ten thousand dollars (\$10 000) for each such lot or, in the case of dwelling houses



when averaged over the lot being purchased, not less than seven thousand dollars (\$7 000) for each thousand square metres of such lot and on and subject to such terms and conditions not inconsistent with this Agreement as the Minister for lands considers applicable in the circumstances and including a right for the State at any time and from time to time to exclude from such lease or leases or occupancy rights or to resume without compensation any part or parts of such land on which no buildings or structure has been erected as the State may require for public purposes.

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

**Modification of Land Act <sup>2</sup>**

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

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

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

**Sale of Land Act <sup>2</sup>**

(4) Notwithstanding the provisions of the *Sale of Land Act 1970* the Joint Venturers shall, subject to the prior consent of the Minister, have the right during the currency of any lease or leases or occupancy rights granted to them under subclause (1) of this Clause to enter into an agreement to sell any lot the subject of such lease or leases or occupancy rights on condition that the purchaser erects on such lot within two (2) years from the date of such agreement, buildings or structures the cost of which is not less than ten thousand dollars (\$10 000) for each such lot, or in the case of dwelling houses when averaged over the lot being purchased not less than seven thousand dollars (\$7 000) for each thousand square metres of such lot.

**Townsite and town development <sup>2</sup>**

18. (1) (a) Should the approved proposals provide for the establishment of a new 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 sewerage reticulation and treatment works water supply works and main 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; and
- (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 sub-paragraph (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>2</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>2</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>2</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.

**Existing Towns <sup>2</sup>**

(4) If the approved proposals provide for the assimilation into any existing town of the whole or part of the Joint Venturers' workforce (including their dependants) and any other persons (including their dependants) connected directly with the Joint Venturers' operations (whether employees of the Joint Venturers or not) whereby the normal population of such existing town is significantly increased then the Joint Venturers to the extent necessary to provide for the needs of the said increase in population of such existing town shall bear the cost of the provision at that existing town of the matters mentioned in subparagraphs (i) (ii) and (iii) of paragraph (a) of subclause (1) of this Clause. The said additional housing services works and equipment may be provided by the State or by another party under an agreement with the State and in either case shall be 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 towns. The Joint Venturers shall pay to the State or such other party such proportion of the cost of such additional housing services works and equipment as is fair and reasonable having regard to the extent of the said increase in the population of such existing town.

**State services <sup>2</sup>**

(5) 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 attributable to the Joint Venturers' operations under this Agreement; and
- (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>2</sup>**

(6) Unless and until the townsite concerned 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.

#### **Sewerage Facilities <sup>2</sup>**

19. (1) The Joint Venturers may subject to such conditions as the State may from time to time approve at their cost or with finance arranged by them construct and operate sewerage facilities at the town and charge for such services. The Joint Venturers shall have all such powers and authorities with respect to such facilities as are determined by the Minister which may include, with the consent of the Minister for Local Government, all or any of the powers of a local authority under the *Local Government Act 1960*.

(2) If at any time the Minister is of the opinion that it would be desirable that the sewerage facilities operated by the Joint Venturers under subclause (1) of this Clause be controlled and operated by the State, the Minister may (after first

affording the Joint Venturers a reasonable opportunity to consult with him) on giving six (6) months prior notice to the Joint Venturers of his intention, acquire the Joint Venturers' sewerage facilities for a monetary consideration to be determined by the Minister. Thereafter in respect of sewerage facilities operated by or on behalf of the State within the town rates and charges as levied from time to time pursuant to the provisions of the *Country Towns Sewerage Act 1948* shall apply.

**Port**<sup>2</sup>

20. (1) The Joint Venturers shall ship such portion of their nickel-containing products as are destined for overseas users through the port of Esperance or if the use of that port by the Joint Venturers is not economic or practicable such other port or ports as may be approved by the Minister and shall provide at no cost to the State all necessary unloading, storage, reclaiming, and ship loading equipment and all other facilities required at such port or ports to carry out their obligations hereunder. The Joint Venturers shall provide facilities as necessary and carry out their operations at such port or ports in accordance with their proposals as submitted to and approved by the Minister hereunder.

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

(3) The Joint Venturers shall pay to the Esperance Port Authority created pursuant to the *Esperance Port Authority Act 1968* or such other Port Authority as the case may be all relevant charges properly and lawfully levied by the Authority from time to time.

(4) The Joint Venturers shall design and operate their train unloading, stockpiling, reclaiming and ship loading facilities at such port or ports so as to avoid dust nuisance and loss of nickel concentrates during handling and storage operations.

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

### **Royalties <sup>2</sup>**

21. (1) The Joint Venturers shall pay to the State in respect of all minerals mined by them or products produced by them from minerals derived from the mineral lease and sold by them royalties at the rates from time to time prescribed under or pursuant to the provisions of the Mining Act.

(2) Notwithstanding the provisions of subclause (1) of this Clause the royalties payable by the Joint Venturers in respect of all minerals mined by them or products produced by them from minerals derived from the mineral lease during a period of four (4) years from the production date shall be at rates not exceeding those prescribed pursuant to the provisions of the Mining Act in force at the production date.

### **Return and payment of royalties <sup>2</sup>**

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

### **Inspection <sup>2</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 account 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 will take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the reasonable satisfaction of the Minister for Mines as to all relevant weights and analyses and will give due regard to any objection or representation made by the Minister for Mines or his nominee as to any particular weight or assay of ore or nickel-containing products which may affect the amount of royalty payable hereunder.

### **Refinery <sup>2</sup>**

22. (1) At a time convenient to the Joint Venturers but in any event not later than ten (10) years after the commencement date the Joint Venturers shall investigate the technical and economic feasibility of establishing a refinery within

the said State. Such studies may be on the basis of the establishment of a refinery by the Joint Venturers alone or jointly with any other company or companies. The Joint Venturers shall fully report the progress and results of such investigations to the Minister not later than ninety (90) days after the expiry of the period referred to in this subclause.

(2) The State may also undertake the studies mentioned in subclause (1) of this Clause and for that purpose the Joint Venturers shall provide the State with such information as it may reasonably require but the Joint Venturers shall not be obliged to supply technical information of a confidential nature with respect to processes that have been developed by the Joint Venturers alone or with others or acquired from other sources and that is not generally available to the nickel industry.

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

(4) If the Joint Venturers disagree with the result of such decision the Joint Venturers shall have the right at any time within six (6) months after the receipt of such notice to refer the matter to arbitration hereunder. If the Joint Venturers shall agree that a refinery is technically and economically viable and competitive on world markets or if it shall be so determined by arbitration as aforesaid then the Joint Venturers shall submit a proposal with respect to a refinery to be constructed either alone or jointly with another company or other companies. The provisions of Clauses 6 and 7 where applicable shall *mutatis mutandis* apply to any proposal submitted pursuant to this subclause. Any such refinery shall be established and commence to operate not later than fifteen (15) years after the commencement date.

(5) If the Joint Venturers do not establish the refinery as provided in subclause (4) of this Clause this omission shall not give rise to any action for breach of contract nor shall the provisions of Clause 34 apply but the State may in such event negotiate with a third party to establish a refinery on terms and conditions not more favourable on the whole to the third party than any terms available to the Joint Venturers. In the event of the establishment by such third party of a refinery in accordance with the provisions hereof the Joint Venturers



shall (subject to any existing contractual supply obligations entered into by the Joint Venturers prior to the expiration of five (5) years from the commencement date) if required by the State sell to such third party nickel concentrates or matte of the nature then being sold by the Joint Venturers. Such sale shall be for a reasonable period (having regard to such matters as the Joint Venturers' ore reserves and the capital investment of the third party in the refinery) and at a reasonable price (having regard to the prevailing prices at which the Joint Venturers are then selling their nickel concentrates or matte and any *bona fide* proposed sale of nickel concentrates between the Joint Venturers and an independent company dealing at arms length) and in sufficient quantities to meet the requirements of the third party from time to time. The Minister shall not require the Joint Venturers to supply the third party with a greater annual quantity of nickel concentrates or matte than three-quarters of the previous years production by the Joint Venturers less any quantity of nickel concentrates or matte produced by the Joint Venturers that are refined in the said State.

### **Zoning**<sup>2</sup>

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

### **Rating**<sup>2</sup>

24. The State shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection with that residence and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the production of ore or nickel-containing products) 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*.

**No discriminatory rates <sup>2</sup>**

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

**Derogating legislation <sup>2</sup>**

26. Without in any way derogating from the rights or remedies of the Joint Venturers in respect of a breach of this Agreement if the Parliament of the said State should at any time enact legislation which modifies the rights or increases the obligations of the Joint Venturers under the ratifying Act or under this Agreement the Joint Venturers shall have the right to terminate this Agreement by notice to the State PROVIDED that where the modification or increase is capable of remedy within the next succeeding period of twelve (12) months the notice shall not take effect until the State has been given the opportunity to remedy the modification or increase within that period and has failed to do so.

**No resumption <sup>2</sup>**

27. Subject to the performance by the Joint Venturers of their obligations under this Agreement the State shall not during the currency hereof without the consent of the Joint Venturers resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the State any of the works installations plant equipment or other property for the time being belonging to the Joint Venturers and the subject of or used for the purpose of this Agreement nor any of the works on the lands the subject of any lease or licence granted to the Joint Venturers in terms of this Agreement AND without such consent (which shall not be unreasonably withheld) the State shall not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road right-of-way water right or easement of any nature or kind whatsoever over or in respect of any such lands which may unduly prejudice or interfere with the Joint Venturers' operations hereunder.

**Resumption for the purposes of Agreement <sup>2</sup>**

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

**Assignment <sup>2</sup>**

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

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

**Securities <sup>2</sup>**

30. Notwithstanding the provisions of section 82 of the Mining Act and of regulations 192 and 193 made thereunder and of section 81D of the *Transfer of Land Act 1893* insofar as the same or any of them may apply —

- (a) no mortgage or charge in a form commonly known as a floating charge made or given pursuant to Clause 29 over the mineral lease or any other lease licence easement grant or other title granted hereunder or pursuant hereto by the Joint Venturers or any assignee or appointee who has executed, and is for the time being bound by a deed of covenant made pursuant to Clause 29;
- (b) no transfer or assignment made or given at any time in exercise of any power of sale contained in any such mortgage or charge;

shall require any approval or consent (other than such consent as may be necessary under Clause 29) and no such mortgage or charge shall be rendered ineffectual as an equitable charge by the absence of any approval or consent (otherwise than as required by Clause 29) or because the same is not registered under the provisions of the Mining Act.

**Variation <sup>2</sup>**

31. (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 mineral 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 an 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 the twelve (12) sitting days next following its execution.

(3) Either House may, within twelve (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.

### **Delays <sup>2</sup>**

32. 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* earthquakes floods storms tempests washaways fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) acts or omissions of the Commonwealth shortages or insufficient supply of labour or water or essential materials failure to secure contractors delays of contractors inability (common in the nickel export industry) to profitably sell nickel-containing products or factors due to overall world economic conditions or factors which could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall 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.

### **Power to extend periods <sup>2</sup>**

33. 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.

### **Determination of Agreement <sup>2</sup>**

34. (1) In any of the following events namely if —
- (a) (i) the Joint Venturers make default which the State considers material in the due performance or observance of any of the covenants or obligations to the State herein or in the mineral lease or any other lease licence easement grant or other title or document granted or assigned under this Agreement on their part to be performed or observed; or

- (ii) the Joint Venturers abandon or repudiate their operation under this Agreement

and such default is not remedied or such operations resumed within a period of one hundred and eighty (180) days after notice is given by the State as provided in subclause (2) of this Clause or, if the default or abandonment is referred to arbitration, then within the period mentioned in subclause (3) of this Clause; or

- (b) the Joint Venturers go into liquidation (other than a voluntary liquidation for the purpose of reconstruction)

the State may by notice to the Joint Venturers determine this Agreement and the rights of the Joint Venturers hereunder and under the mineral lease or any other lease licence easement grant or other title or right granted hereunder or pursuant hereto shall thereupon determine.

(2) The notice to be given by the State in terms of subclause (1) of this Clause shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Joint Venturers and all such assignees mortgagees chargees and disponees for the time being of the Joint Venturers' said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 29 whose name and address for service of notice has previously been notified to the State by the Joint Venturers or any such assignee mortgagee chargee or disponee.

- (3) (a) If the Joint Venturers contest the alleged default abandonment or repudiation referred to in paragraphs (a) and (b) of subclause (1) of this Clause the Joint Venturers shall within sixty (60) days after notice given by the State as provided in subclause (2) of this Clause refer the matter in dispute to arbitration.
- (b) The Joint Venturers shall comply with the arbitration award within a reasonable time to be fixed by the arbitration award PROVIDED THAT if the question is decided against the Joint Venturers and the arbitrator finds that there was a *bona fide* dispute and that the Joint Venturers were not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than ninety (90) days from the date of such award.

(4) The abandonment or repudiation by or liquidation of the Joint Venturers referred to in subclause (1) of this Clause means the abandonment or repudiation by or the liquidation of all of them the Joint Venturers and all assignees and appointees who have executed and are for the time being bound by a deed of covenant in favour of the State as provided in Clause 29.

(5) If the default referred to in subclause (1) of this Clause shall not have been remedied after receipt of the notice referred to in subclause (1) of this Clause 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 Joint Venturers and to make use of all plant machinery equipment and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Joint Venturers to the State on demand.

**Effect of cessation or determination of Agreement <sup>2</sup>**

35. (1) On the cessation or determination of this Agreement subject to the provisions of subclause (4) of this Clause —

- (a) except as otherwise agreed by the Minister the rights of the Joint Venturers to in or under this Agreement and the rights of the Joint Venturers or of any assignee of theirs or any mortgagee to in or under the mineral 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 or in respect of any indemnity given hereunder;
- (b) the Joint Venturers shall forthwith pay to the State all moneys which may then have become payable or accrued due;
- (c) save as aforesaid and as otherwise provided in this Agreement neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.

(2) Subject to the provisions of subclauses (3) and (4) of this Clause upon the cessation or determination of this Agreement except as otherwise determined

by the Minister all buildings erections and other improvements erected on any land then occupied by the Joint Venturers under the mineral lease or any other lease, licence, easement grant or other title made hereunder for the purpose hereof shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Joint Venturers or any other party and freed and discharged from all mortgages and other encumbrances and the Joint Venturers shall do and execute all such deeds documents and other acts matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

(3) In the event of the Joint Venturers immediately prior to the cessation or determination of this Agreement or subsequently thereto desiring to remove any of their fixed or moveable plant and equipment or any part thereof including their electricity generating plant and transmission system and including (if still owned by the Joint Venturers) the items provided by them pursuant to subclause (2) of Clause 14 and subclause (1) of Clause 19 (all of which for the purposes of this Agreement are fixed or moveable plant and equipment) from any part of the land occupied by them at the date of such cessation or determination they shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within three (3) months thereafter to purchase *in situ* such fixed or moveable plant and equipment at a fair valuation to be agreed between the parties or failing agreement determined by arbitration hereunder excepting that in the case of items provided by the Joint Venturers pursuant to subclause (2) of Clause 14 and subclause (1) of Clause 19 the price payable shall be determined by the Minister in accordance with subclause (7) of Clause 14 and subclause (2) of Clause 19 respectively.

(4) Notwithstanding the preceding provisions of this Clause the Minister shall if this Agreement is terminated by the Joint Venturers in accordance with the provisions of Clause 26 permit the Joint Venturers to continue to hold the land the subject of the mineral lease and the improvements thereon under mineral leases under and subject to the provisions of the Mining Act.

### **Provision of finance <sup>2</sup>**

36. Where under any provision of this Agreement the Joint Venturers are liable to make payments to the State the Joint Venturers may, subject to the prior consent of the Minister, in lieu of such payments otherwise provide finance or cause finance to be provided to an equal amount to the particular liability in such manner as may be determined by the Minister.



### **Environmental protection <sup>2</sup>**

37. 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>2</sup>**

38. 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.

### **Commonwealth licences and consents <sup>2</sup>**

39. (1) The Joint Venturers shall from time to time make application to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to them of any licence or consent under the laws of the Commonwealth necessary to enable or permit the Joint Venturers to enter into this Agreement and to perform any of their obligations hereunder.

(2) On request by the Joint Venturers the State shall make representations to the Commonwealth or to the Commonwealth constituted agency authority or instrumentality concerned for the grant to the Joint Venturers of any licence or consent mentioned in subclause (1) of this Clause.

### **Rentals and evictions <sup>2</sup>**

40. The State shall ensure that any State legislation for the time being in force in the State relating to the fixation of rentals shall not apply to any houses belonging to the Joint Venturers in the town and that in relation to each such house the Joint Venturers shall have the right to include as a condition of its letting thereof that the Joint Venturers may take proceedings for eviction of the occupant if the latter shall fail to abide by and observe the terms and conditions of occupancy or if the occupant shall cease to be employed by the Joint Venturers.

**Subcontracting <sup>2</sup>**

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

**Natural Gas <sup>2</sup>**

42. The State shall have regard to the Joint Venturers' reasonable requirements for natural gas in any future supply system developed and controlled by the State PROVIDED THAT —

- (a) the supply authority, after considering the amount of gas available from the gas reserves, has allocated a proportion of the reserves for uses such as that proposed by the Joint Venturers;
- (b) the supply authority is satisfied that the construction of a pipeline passing within reasonable proximity of the Joint Venturers' works is warranted and has received reasonable notice of the Joint Venturers' requirements to ensure such pipeline has adequate capacity to supply the Joint Venturers; and
- (c) the Joint Venturers pay for gas supplied to them by the supply authority in accordance with the supply authority's standard tariffs and conditions.

**Stamp duty exemption <sup>2</sup>**

43. (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 Joint Venturers or any permitted assignee of the Joint Venturers any tenement lease licence easement or other right or rights; and
- (c) any assignment sublease or disposition (other than by way of mortgage or charge) and any appointment to or in favour of the Joint Venturers or an associated company of any interest right obligation power function or authority made pursuant to the provisions of this Agreement.

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

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

#### **Arbitration**<sup>2</sup>

44. (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*.

(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 extension 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.

#### **Notices**<sup>2</sup>

45. 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 or handed to the Joint Venturers at their respective nominated offices for the

time being in the said State and by the Joint Venturers if signed on their behalf by any person or persons authorised by the Joint Venturers or by their solicitors as notified to the State from time to time and forwarded by prepaid post or handed to the Minister and except in the case of personal service 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.

**Interpretation <sup>2</sup>**

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

**THE FIRST SCHEDULE.**

**MATTE**

**Freight Rate <sup>2</sup>**

1. (i) The freight rates for the haulage of matte by rail from a loading point to be agreed between the parties shall be:
  - (a) to Esperance Wharf \$26.00 per tonne,
  - (b) to North Fremantle Wharf \$32.00 per tonne.

**Reduction in Rate <sup>2</sup>**

- (ii) Subject to the Joint Venturers making the advance payments of freight rates pursuant to Clause 12(4) the freight rates for matte specified in subparagraph (i) of this paragraph will be reduced by a sum of \$5 per tonne for a period of eleven (11) years commencing upon and following the date of first rail haulage of matte for the Joint Venturers.

**Minimum annual freight payment <sup>2</sup>**

- (iii) The minimum annual freight payable under this paragraph shall, subject to the reduction referred to in subparagraph (ii) of this paragraph, where applicable, and subject to adjustment in accordance with the provisions of paragraph (4) of this Schedule, be \$26 x 15 000.

**Minimum annual tonnage <sup>2</sup>**

2. The Joint Venturers shall provide a minimum annual tonnage for rail haulage of 15 000 tonnes of matte or such lesser amount as the Railways Commission in its sole discretion may determine.

**Provision of Wagons <sup>2</sup>**

3. The Railways Commission shall provide wagons for matte haulage to meet the anticipated requirements of the Joint Venturers given to the State pursuant to the provisions of Clause 12(8). If the Joint Venturers do not in any year provide a tonnage equivalent to the said anticipated requirements the Joint Venturers shall compensate the Railways Commission for loss of wagon usage to an amount determined by the Railways Commission.

**Escalation <sup>2</sup>**

4. The freight rates set out in paragraph 1(i) of this Schedule are based on costs prevailing at 1st July 1974 and shall be adjusted on the first day of January and July of each year with the changes becoming effective on and from those dates in accordance with the following formula but under no circumstances will this result in a greater rate per tonne than the gazetted Class 1 by-law rate effective as at the same time.

$$F1 = F + \left[ .6 F \left\{ .80 \left\{ \frac{HR1 - HR}{HR} \right\} + .05 \left\{ \frac{D1 - D}{D} \right\} + .15 \left\{ \frac{SR1 - SR}{SR} \right\} \right\} \right]$$

WHERE

- (i) F1 = New freight rate.
- (ii) F = The existing freight rate.
- (iii) HR = The average hourly rate payable as at 1st July 1974.
- (iv) HR1 = The average hourly rate payable as at the date of adjustment.
- (v) D = The wholesale price (duty free) of distillate in Perth as at 1st July 1974.

- (vi) D1 = The wholesale price (duty free) of distillate in Perth as at the date of adjustment.
- (vii) SR = Price of heavy steel rails per tonne c.i.f. Port of Fremantle as ascertained from price schedule covering despatches from The Broken Hill Proprietary Company Limited and Australian Iron & Steel Proprietary Limited as at 1st July 1974.
- (viii) SR1 = The price of heavy steel rails per tonne c.i.f. Port of Fremantle ascertained as aforementioned as at the date of adjustment.

The rates applicable at the 1st July 1974 are:

	Average hourly rate cents
1st Class driver .....	301.83
1st Class guard .....	301.83
Trackmen .....	301.83
Price of distillate per litre — .....	5.169 cents
Price of heavy steel rails per tonne c.i.f. Port of Fremantle — .....	147.50 dollars

**Trimming**<sup>2</sup>

5. The Joint Venturers shall ensure that all wagons are properly trimmed and loaded to the satisfaction of the Railways Commission.

**Loading of wagons**<sup>2</sup>

6. Wagons shall be loaded to capacity and be subject to a minimum load per wagon of 35 tonnes in the case of 16 tonne axle load wagons and 45 tonnes in the case of 19 tonne axle load wagons.

**OTHER COMMODITIES****Other Commodities**<sup>2</sup>

7. All commodities other than matte shall unless otherwise determined by the Railways Commission be carried subject to by-law 55 made under the Government Railways Act.

**Payment of Freight Charges <sup>2</sup>**

8. Freight charges shall be paid by monthly payments in the month next following the month of haulage.

THE SECOND SCHEDULE

WESTERN AUSTRALIA

*MINING ACT 1904*

*NICKEL (AGNEW) AGREEMENT ACT 1974*

MINERAL LEASE

Lease No. .... Goldfields

ELIZABETH THE SECOND by the Grace of God, Queen of Australia and Her Other Realms and Territories, Head of the Commonwealth:

TO ALL TO WHOM THESE PRESENTS shall come GREETINGS:

KNOW YE that WHEREAS by section 48 of the *Mining Act 1904*, power is given to the Governor of our State of Western Australia, in the Commonwealth of Australia, to grant leases of land for the purposes of mining thereon for any mineral other than gold upon the terms and conditions set forth in the said Act AND WHEREAS by an Agreement made between the State of Western Australia and WESTERN SELCAST (PTY) LIMITED a company incorporated under the *Companies Act 1961* of the State of New South Wales and registered in the State of Western Australia as a foreign company and having its registered office at 50 St George's Terrace Perth and MOUNT ISA MINES LIMITED a company incorporated under the *Companies Act 1961* of the State of Queensland and registered in the State of Western Australia as a foreign company and having its registered office at 220 St. George's Terrace Perth (hereinafter called "the Joint Venturers" which expression includes the successors and permitted assigns of each of them) which Agreement (hereinafter referred to as "the Agreement") was ratified by the *Nickel (Agnew) Agreement Act 1974* — the State agreed to grant to the Joint Venturers on application made by the Joint Venturers a mineral lease under and, except as otherwise provided by the Agreement, subject to the *Mining Act 1904* AND WHEREAS the Joint Venturers have now made application for a mineral lease of the land hereinafter described for the purpose of mining thereon for nickel, copper, silver, lead, zinc, cobalt, platinum, palladium, asbestos, silica

and limestone NOW WE in consideration of the rents and royalties reserved by the Agreement and in consideration of the other covenants in this lease and in the Agreement to be observed by the Joint Venturers DO BY THESE PRESENTS GRANT AND DEMISE UNTO THE JOINT VENTURERS subject to the provisions of the Agreement ALL THOSE pieces and parcels of land situated in the                      Gold Fields containing approximately                      hectares (subject to such corrections as may be necessary to accord with the survey when made) and particularly described and delineated on the plan in the Schedule hereto and all those mines, veins, seams, lodes and deposits of nickel, copper, silver, lead, zinc, cobalt, platinum, palladium, asbestos, silica and limestone in, on, or under the said land (hereinafter called "the said mines") together with the rights, liberties, easements, advantages and appurtenances thereto belonging or appertaining to a lessee of a mineral lease under the *Mining Act 1904*, including all amendments thereof for the time being in force and all regulations made thereunder for the time being in force (which Act and regulations are hereinafter referred to as "the Mining Act") or to which the Joint Venturers are entitled under the Agreement, excepting and reserving out of this demise all such portions of the said land as are now lawfully occupied (other than for pastoral or timber purposes) by persons other than the lessee, or any portion thereof which is now used for any public works or building whatsoever AND PROVIDED THAT mining on reserves created under the Land Act (other than for timber or mining) shall be confined to a depth of below fifteen (15) metres from the natural surface of the land TO HOLD the said land and the said mines and all and singular the premises hereby demised for the term of twenty-one (21) years from the ..... day of ..... 19..... with the right to renew the same from time to time for further periods each of twenty-one (21) years as provided in but subject to the terms covenants and conditions set out in the Agreement and to the Mining Act (as modified by the Agreement) YIELDING and paying therefor the rents and royalties as provided for in the Agreement AND WE do hereby declare that this lease is subject to the condition that the Joint Venturers shall observe perform and carry out the provisions of the *Mines Regulation Act 1946*, and all amendments thereof for the time being in force and the regulations for the time being in force made thereunder and the provisions of the Mining Act (as modified by the Agreement) in so far as the same affect or have application to this lease or any renewal thereof.

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

AND PROVIDED FURTHER that all petroleum and other minerals (apart from nickel, copper, silver, lead, zinc, cobalt, platinum, palladium, asbestos, silica and



limestone) on or below the surface of the demised land are reserved to Her Majesty or any person claiming under her and that subject to the terms of the Agreement any person lawfully authorised in that behalf may have access to the demised land for the purpose of searching for and obtaining petroleum or minerals (other than those aforesaid) in any part of the land under the provisions of the Mining Act or the *Petroleum Act 1967*.

IN WITNESS WHEREOF we have caused our Minister for Mines to affix his seal and set his hand hereto at Perth in our said State of Western Australia and the common seals of the Joint Venturers were hereunto affixed by authority of their respective Boards of Directors this ..... day of ..... 19.....

THE SCHEDULE ABOVE REFERRED TO (plan of lease)

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

SIGNED by the said THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A., in the presence of —	}	CHARLES COURT.
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ANDREW MENSAROS,  
Minister for Industrial Development

THE OFFICIAL SEAL of WESTERN SELCAST (PTY) LIMITED was hereunto affixed by authority of the Directors and in the presence of —	}	(C.S.)
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P. M. WREFORD,  
Director.

P. MARK SMYTH,  
Secretary.

I Peter Mark Smyth hereby certify that the  
Official Seal of Western Selcast (Pty)  
Limited was hereunto affixed by me on  
the 21st day of November, 1974 in Perth,  
Western Australia.

P. MARK SMYTH,

SIGNED AND SEALED for and on behalf of MOUNT ISA MINES LIMITED by its duly appointed attorney THOMAS SCOTT CREE in the presence of —	}	T. S. CREE    (L.S.)
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P. MARK SMYTH.

*[First Schedule amended: No. 98 of 1976 s. 4.]*

## **Second Schedule — Variation Agreement**

[s. 2]

*[Heading amended: No. 19 of 2010 s. 4.]*

THIS AGREEMENT made this Third day of September one thousand nine hundred and seventy-six BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part and WESTERN SELCAST (PTY) LIMITED a company incorporated under the *Companies Act 1961* of the State of New South Wales and registered in the State of Western Australia as a foreign company and having its registered office at 50 St George’s Terrace Perth and MOUNT ISA MINES LIMITED a company incorporated under the *Companies Act 1961* of the State of Queensland and registered in the State of Western Australia as a foreign company and having its registered office at 220 St 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 the parties are the parties to and desire to amend the agreement between them dated the 21st day of November, 1974 referred to in section 2 of the *Nickel (Agnew) Agreement Act 1974* (which agreement is hereinafter referred to as “the principal agreement”).

NOW THIS AGREEMENT WITNESSETH —

### **Interpretation <sup>2</sup>**

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

### **Initial obligations of the State <sup>2</sup>**

2. 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 the 31st day of December, 1976.

**Ratification and operation <sup>2</sup>**

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

4. The principal agreement is hereby varied as follows —

(1) Recital (b) is amended by adding after the words “in the Agnew area” in line two, the passage “(or at such other site or sites as the parties hereto may agree)”;

(2) Clause 1 is amended as to the definition of “mining areas” by substituting for the passage “plan marked “A”” in lines two and three, the passage “plan marked “A1””;

(3) Clause 6 is amended as to subclause (1) —

(a) by substituting for the passage “1975” in line one, the passage “1976”; and

(b) by substituting for the passage “one million (1 000 000)” in line nine, the passage “three hundred thousand (300 000)”;

(4) by adding after Clause 6 a new Clause 6A as follows —

**Increased capacity of project <sup>2</sup>**

6A. (1) The Joint Venturers shall continue to investigate their field and office engineering studies and market and finance studies as to the feasibility of increasing the annual capacity of the mining and treatment plant referred to in subclause (1) of Clause 6 from three hundred thousand (300 000) tonnes of ore to one million (1 000 000) tonnes of ore.

(2) The Joint Venturers shall keep the State fully informed in writing at least annually as to the progress and results of their operations under subclause (1) of this Clause.

(5) by substituting for subclause (2) of Clause 11 the following subclause —

**Public Roads to be constructed by the State**<sup>2</sup>

(2) The State shall construct or cause to be constructed new public roads suitable for the Joint Venturers' operations hereunder in accordance with the requirements of the Commissioner of Main Roads as follows —

- (a) an unsealed road from Leonora extending to a point (to be agreed between the parties) near the Yakabindi Homestead (in this subclause called "the Leonora-Yakabindie road"). That part of the Leonora-Yakabindie road from Leonora to the turn-off to the minesite (in this subclause called "the turn-off") shall be sealed by the State to a width of not less than seven decimal four (7.4) metres. That part of the Leonora-Yakabindie road from the turn-off to the Yakabindi Homestead shall be constructed to a standard similar to the existing Leonora-Wiluna main road. The Joint Venturers shall pay to the State at the times and in the manner required by the State one half of the cost of the construction (including investigation survey and design) of the Leonora-Yakabindie road and one half of the cost of the sealing referred to in this paragraph. The State shall use its best endeavours to complete the construction of the section between the turn-off and the connecting point referred to in paragraph (c) of this subclause prior to the date that the Joint Venturers' mining and treatment plant comes into operation. The balance of the construction and sealing referred to in this paragraph shall be completed within such periods as the Commissioner of Main Roads determines, after consultation with the Joint Venturers, but not earlier than five (5) years after the date of approval of the roads proposal under Clause 7 unless the parties otherwise agree.
- (b) an unsealed road connecting the turn-off with the townsite. The State shall use its best endeavours to

complete the construction of such road prior to the date that the Joint Venturers' mining and treatment plant comes into operation. Such road shall be sealed by the State to a width of not less than seven decimal four (7.4) metres within such periods as the Commissioner of Main Roads determines, after consultation with the Joint Venturers, but not earlier than five (5) years after the date of approval of the roads proposal under Clause 7 unless the parties otherwise agree. The Joint Venturers shall pay to the State at the times and in the manner required by the State one half of the cost of the construction (including investigation survey and design) and sealing of such road.

- (c) an unsealed road connecting a point to be agreed on the Leonora-Yakabindie road to a point to be agreed on the existing Leonora-Wiluna road. Such road shall be constructed to a standard similar to the existing Leonora-Wiluna road. The State shall use its best endeavours to complete the construction of such road prior to the date that the Joint Venturers' mining and treatment plant comes into operation. The Joint Venturers shall pay to the State at the times and in the manner required by the State one half of the cost of the construction (including investigation survey and design) of such road.

- (6) Clause 12 is amended as follows —

- (a) as to subclause (1) by substituting for subclause (1) the following subclause —

**Railway**<sup>2</sup>

(1) Subject to the by-laws made under the *Government Railways Act 1904* (insofar as those by-laws are not inconsistent with this Agreement) and subject to the provisions of this Clause the Joint Venturers shall in accordance with their approved

proposals consign at their own risk, and the State shall cause the Railways Commission to transport by rail —

- (a)
    - (i) all the Joint Venturers' production of nickel-containing products from the railhead at Leonora to any processing plant, port, or ports, in a location approved by the Minister;
    - (ii) all the Joint Venturers' nickel-containing products produced at any such processing plant to a port or ports in a location approved by the Minister;
  - (b) all the Joint Venturers' production of nickel-containing products from the mining areas to Leonora in the event of a railway being constructed between those places; and
  - (c) insofar as practicable all other bulk commodities required for the Joint Venturers' operations hereunder. ;
- (b) as to subclause (4) by substituting for subclause (4) the following subclause —

**Advance payment of freight <sup>2</sup>**

(4) The Joint Venturers shall pay to the State as advance payment of freight rates payable under subclause (10) of this Clause the amount of one million five hundred thousand dollars (\$1 500 000) in three (3) instalments as follows —

- (i) an amount of four hundred thousand dollars (\$400 000) on the 30th day of June next following the production date;
- (ii) an amount of five hundred thousand dollars (\$500 000) not later than one (1) year after the date for payment referred to in (i) above; and

- (iii) an amount of six hundred thousand dollars (\$600 000) not later than two (2) years after the date for payment referred to in (i) above.
- (c) as to subclause (6) by substituting for subclause (6) the following subclause —

**Improvement of railway line <sup>2</sup>**

(6) The State shall improve the existing railway line between Leonora and Kalgoorlie to achieve a capacity to enable the Railways Commission to transport nickel-containing products at a quantity of up to but not exceeding one hundred and fifty thousand (150 000) tonnes per annum in accordance with the Joint Venturers' relevant approved proposal and all other bulk commodities as required by the Joint Venturers for their operations hereunder. ;

- (d) as to subclause (8) by substituting for the words “adequate notice of any change” in lines six and seven, the passage “not less than eighteen (18) months notice of any substantial change”;
- (7) by substituting for Clause 14 the following Clause —

**Water <sup>2</sup>**

- 14 (1) The State recognises —

**Joint Venturers' water requirements <sup>2</sup>**

- (a) that the Joint Venturers have an indicated annual average daily water requirement of twenty thousand (20 000) cubic metres, comprising both potable and non potable water for their purposes (which amount or such other amounts as shall from time to time be agreed between the parties to be reasonable are hereinafter called “the Joint Venturers' daily water requirements”);
- (b) that it has been established at the Joint Venturers' cost that an underground water resource of an indicated capacity adequate to meet the Joint



Venturers' daily water requirements exists outside and at a considerable distance from the mining areas in the Depot Springs Water Reserve (gazetted on the 15th day of June, 1973) (hereinafter called "the Depot Springs Water Reserve");

- (c) that the Joint Venturers desire to continue to search for alternative underground water sources within and near the mining areas in accordance with the provisions of this Clause to meet the Joint Venturers' daily water requirements.

#### **Search in mining areas <sup>2</sup>**

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

#### **Search outside mining areas <sup>2</sup>**

(3) If in the opinion of the Minister, the details and reports of the consultants pursuant to subclause (2) of this Clause indicate that any source of underground water in the mining areas is likely to be inadequate to supply the Joint Venturers' daily water requirements, and the Joint Venturers have not applied for a licence to draw water from the Depot Springs Water Reserve pursuant to subclause (5) of this Clause the parties hereto shall agree on a programme which shall be carried out by the State at the cost of the Joint Venturers to search for water inside and outside the mining areas. The State may at its discretion extend such water search to provide a quantity of water greater than that required to supply the Joint Venturers' daily water requirements, but in that event, the cost of such search shall be shared by the parties hereto in such a manner as may be agreed to be fair in all the circumstances.

**Grant of licence <sup>2</sup>**

(4) If the investigations referred to in subclauses (2) and (3) of this Clause prove to the satisfaction of the Minister the availability of any suitable underground water source in or near the mining areas which can continue to be drawn on by the Joint Venturers without seriously affecting the water pressure in that water source beneath the mining areas or adjacent areas or the availability of water in the adjacent areas, (and the Joint Venturers' daily water requirements are not being met from the Depot Springs water Reserve pursuant to subclause (5) of this Clause) the State shall grant to the Joint Venturers a licence to develop and draw from that source without cost, the Joint Venturers' daily water requirements on such terms and conditions as are necessary to ensure good water resource management as the Minister may from time to time require and during the continuance of this Agreement grant renewals of any such licence PROVIDED HOWEVER that should that source prove hydrologically inadequate to meet the Joint Venturers' daily water requirements, the State may on at least six (6) months prior notice to the Joint Venturers (or on at least forty eight (48) hours prior notice if in the opinion of the Minister an emergency situation exists) limit the amount of water which may be taken from that source at any one time or from time to time to the maximum which that source is hydrologically capable of meeting as aforesaid.

**Depot Springs Water Reserve <sup>2</sup>**

(5) Notwithstanding any other provision in this Clause the State shall, on application made by the Joint Venturers not later than the 31st day of December, 1984, grant to the Joint Venturers a licence to develop and draw water for all or part of the Joint Venturers' daily water requirements (as the Joint Venturers may elect) from the Depot Springs Water Reserve without cost to the Joint Venturers and on such terms and conditions as are necessary to ensure good water resource management as the Minister may from time to time require and during the continuance of this Agreement grant renewals of such licence PROVIDED HOWEVER that should the Depot Springs Water Reserve prove hydrologically inadequate to meet the Joint

Venturers' daily water requirements, the State may on at least six (6) months prior notice to the Joint Venturers (or on at least forty-eight (48) hours prior notice if in the opinion of the Minister an emergency situation exists) limit the amount of water which may be taken from the Depot Springs Water Reserve at any one time or from time to time to the maximum which that Reserve is hydrologically capable of meeting.

**Development of water sources <sup>2</sup>**

(6) The Joint Venturers shall provide at their cost or with finance arranged by them and construct to standards and in accordance with designs approved by the State in accordance with the relevant approved proposal all necessary bores valves pipelines meters tanks equipment and appurtenances necessary to draw transport use and dispose of water drawn from sources licensed to the Joint Venturers under this Clause.

**Alternative water source <sup>2</sup>**

(7) Should the State at any time pursuant to the proviso to subclause (4) and/or (5) of this Clause limit the amount of water to be taken from any water source or if otherwise the Joint Venturers' daily water requirements cannot be met from any water source on a continuous basis the State shall with all reasonable expedition and in conjunction with and upon the request of the Joint Venturers search for new or additional underground water sources with a view to restoring or ensuring the full quantity of the Joint Venturers' daily water requirements. The Joint Venturers shall pay to the State a fair and reasonable proportion of the cost of investigating and developing such new and additional water sources as agreed between the Joint Venturers and the State.

**State's water supply obligation <sup>2</sup>**

(8) The State shall use its best endeavours to supply the Joint Venturers with sufficient water (subject to availability of supply from other sources and to prior commitments if any to third parties) to meet that portion of the Joint Venturers' daily water requirements not obtainable from the water sources referred to in subclauses (4) and (5) of this Clause pending the

establishment of new and additional water sources pursuant to subclause (7) of this Clause on such terms and conditions as the Minister may determine.

**Investigation of surface water** <sup>2</sup>

(9) In the event of water supplies from available underground sources proving insufficient to meet the Joint Venturers' daily water requirements the Joint Venturers shall notwithstanding the provisions of subclauses (4) and (5) of this Clause collaborate with the State in an investigation of surface water catchments and storage dams. The Joint Venturers shall if they propose to utilise such surface water, water catchments and storage dams pay to the State a sum or sums to be agreed towards the cost of such investigation and towards the cost of constructing any water storage dam or dams and reticulation facilities required.

**State's acquisition of water facilities** <sup>2</sup>

(10) If during the currency of any licence granted under the provisions of this Clause the Minister is of the opinion that it would be desirable for water conservation purposes or water management purposes that sources of water licensed to the Joint Venturers be controlled and operated by the State as part of a regional water supply scheme the Minister may on giving six (6) months prior notice to the Joint Venturers of his intention revoke that licence and acquire the Joint Venturers' water supply facilities for a monetary consideration to be determined by the Minister. Immediately from the revocation of that licence the State shall, subject only to the continued hydrological availability of water from such sources, commence and thereafter continue to supply water to an amount and at a rate required by the Joint Venturers being the amount and rate to which the Joint Venturers were entitled under that revoked licence and the proviso to subclause (4) and/or (5) of this Clause and the provisions of subclause (7) of this Clause shall in like manner apply to this subclause.

**Enlarged water capacity <sup>2</sup>**

(11) The State, after first having due regard to the Joint Venturers' daily water requirements and to the hydrological adequacy of existing water sources, may in its discretion develop all or any of the surface and/or underground water resources referred to in this Clause or construct any works in connection therewith to a greater capacity than that required to supply the Joint Venturers' daily water requirements but in that event the Joint Venturers' shall pay to the State a share of the cost of the system as so enlarged as may be agreed between the parties to be fair in all the circumstances.

**Third party use <sup>2</sup>**

(12) The State may after first having due regard to the Joint Venturers' daily water requirements and to the hydrological adequacy of the applicable water source, upon not less than three (3) months prior notice to the Joint Venturers specifying the identity of the third party including where applicable the State and the estimated maximum daily and total quantity of water to be drawn by that third party and the period over which such drawing is to occur, grant to a third party rights to draw water or itself draw water from that water source PROVIDED HOWEVER that —

- (a) where the Joint Venturers have paid (in whole or in part) any moneys in respect of the investigation development and utilisation of that water source the State shall require as a condition of the grant that where the third party is or will be a substantial drawer of water from that water source prior to the 31st day of December 1984 the third party (but not the State) shall reimburse to the Joint Venturers prior to the third party exercising its rights to draw water, a proportion of such moneys as the Minister determines is fair and reasonable; and
- (b) where the Joint Venturers draw water from that water source the State shall ensure that it is a condition of the grant to third parties that in the event that the capacity of that water source is

reduced, such reduction shall be first applied to the third parties and thereafter if further reduction is necessary the State's and the Joint Venturers' requirements shall be reduced in such proportion as may be agreed.

**Payment for water <sup>2</sup>**

(13) The Joint Venturers shall pay to the State for water supplied by the State pursuant to subclauses (9) or (10) of this Clause a fair price to be agreed between the parties hereto having regard to the actual cost of operating and maintaining the supply and provision for replacement of the water supply facilities. Notwithstanding the foregoing provisions of this subclause, in respect of water supplied by the State to the Joint Venturers as aforesaid for domestic purposes the Joint Venturers shall pay to the State therefor charges as levied from time to time pursuant to the provisions of the *Country Areas Water Supply Act 1947*.

**Design of plant <sup>2</sup>**

(14) The Joint Venturers shall to the extent that it is practical and economical design construct and operate all plant hereunder so as —

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

**State to restrict adverse grants <sup>2</sup>**

(15) The State shall ensure that no rights to mine minerals petroleum or other substances are granted over the area of any water source from which the Joint Venturers are drawing water or from time to time have the right to draw water hereunder unless the Minister reasonably determines that such grant is not likely to unduly prejudice or to interfere with the operations of the Joint Venturers hereunder and is not likely to render the water source incapable of supplying the Joint Venturers' daily water requirements on a continuous basis.

**Joint Venturers' priority for pipeline facilities <sup>2</sup>**

(16) Nothing herein contained or implied (and in particular the provisions of subclause (10) of this Clause) shall derogate from or curtail the absolute priority of the Joint Venturers to utilise for the purpose of their operations under this Agreement any surplus capacity which might from time to time exist in any pipeline facilities constructed at the cost of the Joint Venturers for the transportation of water from a water source to any treatment plant operated by or for the Joint Venturers pursuant to this Agreement or to the townsite PROVIDED ALWAYS that the Joint Venturers shall not unreasonably withhold their approval to the use of such surplus capacity by the State and third parties on terms and conditions to be agreed between the parties hereto.

**Charges for supply of water to third parties <sup>2</sup>**

(17) The Joint Venturers may supply water to third parties including the State at a charge to be approved by the Minister after consultation with the Joint Venturers. The Joint Venturers shall have all the powers and authorities with respect to such water as are determined by the Minister which may include all or any of the powers of a water board under the *Water Boards Act 1904* and, with the consent of the Minister for Local Government, a local authority under the *Local Government Act 1960*.

**Rights in Water and Irrigation Act <sup>2</sup>**

(18) 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.

(8) by substituting for Clause 16 the following Clause —

**Mineral Claims in the yellow areas <sup>2</sup>**

16. (1) The following provisions shall apply in respect of mineral claims which the Joint Venturers hold over the yellow

areas (in this Clause called “yellow mineral claims”) at the date application is made for a mineral lease pursuant to subclause (1) of Clause 15 (in this Clause called “the application date”) —

**Exemption from labour conditions <sup>2</sup>**

- (a) The State shall ensure that subject to compliance with their obligations under this Agreement the Joint Venturers shall not be required to comply with the labour conditions imposed by the Mining Act.

**Exploration of the yellow areas <sup>2</sup>**

- (b) The Joint Venturers shall continue to carry out a programme of exploration in respect of the yellow mineral claims and report on the results of such exploration to the Minister for Mines at yearly intervals after the application date.

**Surrender of mineral claims <sup>2</sup>**

- (c) Subject to the provisions of paragraphs (d), (e) and (f) of this subclause the Joint Venturers may surrender all or any of the yellow mineral claims at any time.
- (d) On the expiration of the fourth year next following the application date the Joint Venturers shall surrender yellow mineral claims which (together with any yellow mineral claims previously surrendered pursuant to paragraph (c) of this subclause) total in area at least one third of the total area of the yellow mineral claims held by them at the application date.
- (e) On the expiration of the fifth year next following the application date the Joint Venturers shall surrender such of the yellow mineral claims which (together with any yellow mineral claims previously surrendered pursuant to paragraphs (c) and (d) of this subclause) will result in there having been surrendered a total in area of at least



two thirds of the total area of the yellow mineral claims held by them at the application date.

- (f) On the expiration of the sixth year next following the application date the Joint Venturers shall surrender all other yellow mineral claims held by them.

**Incorporation of yellow mineral claims in the mineral lease <sup>2</sup>**

(2) The Joint Venturers shall have the right in respect of yellow mineral claims surrendered at the respective times of surrender referred to in paragraphs (d), (e) and (f) of subclause (1) of this Clause to apply for and have included in the mineral lease such of the areas of those surrendered yellow mineral claims as the Joint Venturers elect.

(3) If the Joint Venturers desire to surrender any yellow mineral claims at any time other than the times specified in paragraphs (d), (e) and (f) of subclause (1) of this Clause and to have the areas of those yellow mineral claims included in the mineral lease, the Joint Venturers shall make application to the Minister who may if he is satisfied as to the justification therefor, include those areas in the mineral lease.

(4) Any land included in the mineral lease pursuant to subclause (2) or subclause (3) of this Clause shall be upon and subject to the same terms covenants and conditions as apply to the mineral lease (with such apportionment of rents as is necessary) and shall be deemed to be included in the mineral lease as and from the date of surrender of the applicable yellow mineral claim notwithstanding that the survey of such additional land has not been completed (but subject to correction to accord with the survey when made at the Joint Venturers' expense).

(5) The provisions of this Clause shall take effect notwithstanding the provisions of the Mining Act.

- (9) by adding after Clause 30 a new Clause 30A as follows —

**Substituted securities**<sup>2</sup>

30A. Where the Joint Venturers or either of them whether before or after the execution of this Agreement execute and have registered in the Department of Mines a mortgage over a mineral claim or a mineral lease in the mining areas or any interest therein, and the land the subject of that mineral claim or mineral lease, on the surrender of such claim or lease, becomes incorporated in the mineral lease, then provided the consent of the mortgagee is first obtained, the mineral lease shall notwithstanding the provisions of the Mining Act be deemed to be the subject of such mortgage as if the mineral lease had been referred to in the mortgage. A memorandum of any such mortgages shall be endorsed on the mineral lease in the order in which they appeared registered against any such mineral claim or mineral lease at the time of its surrender and shall be noted in the appropriate registers of the Department of Mines by the Principal Registrar who shall also endorse on the original and duplicate copies of such mortgages the fact of their having been registered as an encumbrance against the mineral lease.

- (10) by adding after Clause 46 a new Clause 47 as follows —

**Consultation**<sup>2</sup>

47. 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 they 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.

- (11) by substituting for the First Schedule the following —

**THE FIRST SCHEDULE**

*Nickel concentrates ex Leonora*

1. The freight rates for the haulage of dry nickel concentrates by rail from a loading point to be agreed between the parties at Leonora to the Western Mining Corporation Limited Smelter at Hampton shall be:

<i>Tonnes per Annum</i>	<i>Rate per Tonne</i>
Up to 50 000 .....	\$15.60
Over 50 000 and up to 100 000 .....	\$12.80
Over 100 000 and up to 150 000 .....	\$10.00

In this Schedule the expression “dry nickel concentrates” means nickel concentrates having not more than 0.3% by weight of moisture, and the expression “wet nickel concentrates” means all nickel concentrates having more than 0.3% by weight of moisture.

*Matte (ex Hampton)*

2. The freight rate for the haulage by rail of matte from the Western Mining Corporation Limited Smelter at Hampton to North Fremantle wharf shall be fixed by the Railways Commission after consultation with the Joint Venturers.

3. The freight rates set out in paragraph 1 of this Schedule are subject to the following additional conditions:

- (i) Subject to subparagraph (ii) of this paragraph trains shall operate up to a maximum of six days per week commencing 12.01 a.m. Monday and ceasing 12.00 midnight on Saturday. The Railways Commission shall arrange a train operating pattern between Monday and Saturday (both days inclusive) consistent with the requirements of the Joint Venturers as advised from time to time under Clause 12(8). The train operating pattern shall be based as far as is practicable on the utilisation of the maximum number of wagons possible per train and the least number of trains per week required to meet the haulage programme of the Joint Venturers and such trains shall be tabled at the time most convenient to the operational requirements of the Railways Commission.
- (ii) If the needs of the Joint Venturers reasonably require operation on Sunday the Railways Commission shall use its best endeavours to so operate. The Joint Venturers

shall reimburse the Railways Commission for any additional expenses which are payable as a consequence.

4. The freight rates set out in paragraphs 1 and 2 of this Schedule are subject to the following additional conditions:

- (i) The Joint Venturers shall ensure that all wagons are loaded within the authorised axle load capacity and shall be subject to such minimum load per wagon and per train as may be defined by the Railways Commission.
- (ii) The Joint Venturers shall ensure that all wagons are properly trimmed and secured to permit safe transport at all times.
- (iii) Unless otherwise determined by the Railways Commission the Joint Venturers shall be responsible for the movement of wagons at the loading and unloading points. The Joint Venturers shall ensure that the loading rate is not less than 750 tonnes per hour and the unloading rate is not less than 250 tonnes per hour. If such rates are not regularly adhered to the Railways Commission reserves the right to review the freight rates.
- (iv) Freight rates shall be paid by monthly payments in the month next following the month of haulage on the basis of the tonneages hauled charged at the rate or rates applicable to the anticipated annual tonnage and subject to annual adjustment after the expiration of each year with regard to the tonnage actually carried at the rate or rates applicable thereto.
- (v) In ascertaining the actual number of tonnes carried the method of measurement shall be agreed between the parties.

5. The Railways Commission shall provide wagons for nickel concentrates and/or matte haulage to meet the anticipated requirements of the Joint Venturers given to the State pursuant to the provisions of Clause 12(8). If the Joint Venturers do not in any year provide a tonnage equivalent to the said anticipated requirements the Joint Venturers shall compensate the Railways Commission for loss of wagon usage to an amount determined by the Railways Commission.

**Escalation <sup>2</sup>**

6.     (i) *dry nickel concentrates up to 100 000 tonnes per annum*

The freight rates for dry nickel concentrates up to 100 000 tonnes annually as set out in paragraph 1 of this Schedule shall be subject to variation in proportion to any variation of rail freight rates gazetted pursuant to By-law 55 made under the Government Railways Act.

- (ii) *dry nickel concentrates over 100 000 tonnes per annum*

The freight rates for dry nickel concentrates over 100 000 tonnes per annum as set out in paragraph 1 of this Schedule are based on costs prevailing on the first day of July 1975 and shall be adjusted on the first day of January and July of each year (each such date in this paragraph referred to as “the date of adjustment”) with the changes becoming effective on and from such date of adjustment in accordance with the following formula —

$$F1 = F + \left[ .7 F \left\{ .80 \left\{ \frac{HR1 - HR}{HR} \right\} + .05 \left\{ \frac{D1 - D}{D} \right\} + .15 \left\{ \frac{SR1 - SR}{SR} \right\} \right\} \right]$$

**WHERE:**

F1     =    New freight rate.

F       =    The existing freight rate.

HR     =    The average hourly rate payable as at  
1st July, 1975.

HR1    =    The average hourly rate payable as at the date of  
adjustment.

D       =    The list price (duty free) of bulk distillate sold to  
commercial users in Perth by BP Australia  
Limited as at 1st July, 1975.

- D1    =    The list price (duty free) of bulk distillate sold to commercial users in Perth by BP Australia Limited as at the date of adjustment.
- SR    =    Price of heavy steel rails per tonne c.i.f. Port of Fremantle as ascertained from price schedule covering despatches from Broken Hill Proprietary Company Limited as at 1st July, 1975.
- SR1   =    The price of heavy steel rails per tonne c.i.f. Port of Fremantle ascertained as aforementioned as at the date of adjustment.

The rates applicable at the 1st July, 1975, are —

	Hourly rates. cents.
1st Class Driver .....	381.25
1st Class Guard .....	336.50
Trackman .....	284.50
	<hr/>
	Total 1002.25
<i>Average hourly rate</i> .....	334.08

Price of distillate per litre 6.390 cents. Price of heavy steel rails per tonne c.i.f. Port of Fremantle \$175.00.

PROVIDED ALWAYS that if at any time there is a change in —

- (a) the average hourly rate by the operation of any award or other wage determination; or
- (b) the list price (duty free) of distillate in Perth; or
- (c) the price of heavy steel rails per tonne c.i.f. Port of Fremantle (as ascertained aforesaid),

and such change is effective from a date prior to the last date of adjustment a new freight rate or freight rates as the case may be shall be calculated and shall apply from the date of adjustment next following the date from which any such change as aforesaid is effective and such new freight rate or freight rates shall be substituted for the freight rate

that would have applied but for the application of the provisions of this paragraph.

Adjustments made in accordance with this formula shall be expressed in a figure of dollars per tonne and calculated to 4 decimal places of a dollar and in doing so the fifth decimal place shall also be calculated so that if the fifth decimal place is .5 or above, the fourth decimal place shall be increased by 1.

This formula shall be subject to review by the Railways Commission after consultation with the Joint Venturers on the first July 1980 and thereafter at five-yearly intervals.

(iii) *matte ex Hampton*

The freight rate to be fixed by the Railways Commission as referred to in paragraph 2 of this Schedule for matte ex Hampton shall be subject to escalation in accordance with the formula set out in subparagraph (ii) of this paragraph.

**Nickel containing products ex Leonora <sup>2</sup>**

7. In the event that the Joint Venturers require the Railways Commission to transport wet nickel concentrates, matte or nickel metal from Leonora to a port or ports in a location approved by the Minister the freight rate applicable shall be fixed by the Railways Commission after consultation with the Joint Venturers.

**Freight rate rebates <sup>2</sup>**

8. Subject to the Joint Venturers making the advance payments of freight rates pursuant to Clause 12(4): —

- (a) the freight rates for nickel concentrates (whether dry or wet) will be reduced by a sum of \$2.70 per tonne for the first 935 000 tonnes railed from Leonora for the Joint Venturers;
- (b) if the Joint Venturers transport nickel containing products other than those referred to in subparagraph (a) of this paragraph then the rebate in respect of those other nickel containing products will be fixed by the Railways Commission after consultation with the Joint Venturers on

the basis that the Joint Venturers will receive a total rebate of \$2 524 500 on all nickel containing products transported by them from Leonora but in no event shall the rebate on such other nickel containing products be lower than \$5 per tonne.

**Other commodities <sup>2</sup>**

9. All commodities not mentioned in this Schedule shall unless otherwise determined by the Railways Commission be carried subject to By-law 55 made under the Government Railways Act.

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

SIGNED by the said THE  
HONOURABLE SIR CHARLES  
WALTER MICHAEL COURT, O.B.E.,  
M.L.A., in the presence of

}

CHARLES COURT

ANDREW MENSAROS  
Minister for Industrial Development

THE OFFICIAL SEAL of WESTERN  
SELCAST (PTY) LIMITED was  
hereunto affixed by authority of the  
Directors and in the presence of

}

[C.S.]

Director      P. M. WREFORD

Secretary      S. J. LEWIS

I Stanley James Lewis of 229 Marmion  
Street, Cottesloe, Western Australia  
hereby certify that the Official Seal of  
Western Selcast (Pty) Limited was  
hereunto affixed by me on the Second  
day of September 1976 in Perth Western  
Australia

}

S. J. LEWIS



THE COMMON SEAL of MOUNT ISA  
MINES LIMITED was hereunto affixed  
by authority of a resolution of the Board  
of Directors in the presence of    }    [C.S.]

Director    LEO JOHN CARDEN    L. J. CARDEN

Secretary    RAYMOND BROOK BYERS    R. B. BYERS

*[Second Schedule inserted: No. 98 of 1976 s. 5.]*

**Third Schedule — 2022 variation agreement**

[s. 2]

*[Heading inserted: No. 17 of 2023 s. 6.]*

**2022**

**THE HONOURABLE MARK McGOWAN**  
**PREMIER OF THE STATE OF WESTERN AUSTRALIA**  
**AND**  
**BHP NICKEL WEST PTY LTD**  
**ACN 004 184 598**

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**NICKEL (AGNEW) AGREEMENT 1974**  
**RATIFIED VARIATION AGREEMENT**

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[Solicitor's details]

**THIS AGREEMENT** is made this 20<sup>th</sup> day of December 2022

**BETWEEN**

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

**AND**

**BHP NICKEL WEST PTY LTD** ACN 004 184 598 of Level 15, 171 Collins Street, Melbourne, Victoria (the "**Joint Venturers**") of the other part.

## **RECITALS**

- A.**     The parties to this Agreement are now the parties to the agreement (herein called the "**1974 Agreement**") dated 21 November 1974, the execution of which by the State was ratified by the *Nickel (Agnew) Agreement Act 1974*, as varied by:
- (a)   the agreement dated 3 September 1976 which was ratified by the *Nickel (Agnew) Agreement Act Amendment Act 1976*;
  - (b)   the agreement dated 6 August 1977 entered into pursuant to the provisions of clause 31 of the 1974 Agreement; and
  - (c)   the agreement dated 15 May 1995 entered into pursuant to the provisions of clause 31 of the 1974 Agreement.
- The 1974 Agreement as so varied is hereinafter referred to as the "**Principal Agreement**".
- B.**     The parties wish to vary the provisions of the Principal Agreement on the terms and conditions set out in this Agreement.

## **THE PARTIES AGREE AS FOLLOWS:**

### **1.     Ratification and operation**

- (1)   This Agreement, other than this clause, does not come into operation except in accordance with subclause (2).
- (2)   This Agreement, other than this clause, comes into operation on the day on which it is ratified by an Act of the Parliament of Western Australia ("**Operative Date**") unless, before that day, it terminates under subclauses (4) or (5).
- (3)   The State must introduce in the Parliament of Western Australia before 30 June 2023 or a later date agreed between the parties to this Agreement, a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.

- (4) If by 31 December 2023 this Agreement has not been ratified by an Act of the Parliament of Western Australia then, unless the parties to this Agreement otherwise agree, this Agreement terminates on that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (5) The parties agree that if the Principal Agreement is otherwise determined in accordance with its provisions on a day prior to the Operative Date, then this Agreement shall also terminate on and from that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

## **2. Variations of the Principal Agreement**

The Principal Agreement is varied as follows:

- (1) in clause 1 by:
  - (a) inserting in the appropriate alphabetical position the following new definitions:

"Leinster concentrator" means the plant constructed under this Agreement upon the mineral lease for the concentration of nickeliferous ore, as modified or replaced from time to time in accordance with this Agreement;

"mine closure plan" means a document that:

    - (a) is in the form required under the Mining Act 1978 for a mine closure plan relating to mining leases granted under that Act; and
    - (b) contains information required under the Mining Act 1978 for a mine closure plan relating to mining leases granted under that Act including about:
      - (i) the decommissioning of each mine (within the meaning given to that term in the Mining Act 1978) and whether proposed or, as at the variation date,

existing and not already decommissioned;  
and

(ii) the rehabilitation of land,

within the area of the mineral lease;

"Mining Act 1978" means the *Mining Act 1978* (WA);

"Mining Regulations" means the *Mining Regulations 1981* (WA);

"mining tenement" has the meaning given to it in section 8 of the Mining Act 1978;

"MRF Act" means the *Mining Rehabilitation Fund Act 2012* (WA);

"non-Agreement nickel concentrates" means concentrates obtained by treating non-mineral lease ore (other than concentrates produced in accordance with Clause 6B or as authorised by subclause (9) of Clause 8);

"non-mineral lease ore" means nickeliferous ore mined from areas other than within the mineral lease and whether within or outside Australia;

"register" has the meaning given to that term in section 8 of the Mining Act 1978;

"Relevant Endorsement Time", in respect of a particular Specified Mining Tenement, means the time the register is endorsed pursuant to subclause (4) of Clause 16A in respect of that particular Specified Mining Tenement;

"Specified Mining Tenement" means general purpose leases 36/49, 36/50 and 36/51 and mining leases 36/87, 36/156, 36/230, 36/389 and 36/439, or, depending on the context, any one or more of them, and includes any renewals or extensions thereof as the case may be;

"Townsite Lease" means the Land Act lease O260893L held by the Joint Venturers over land comprised in the townsite;

"variation date" means the date on which Clause 2 of the variation agreement made on or about 20 December 2022 between The Honourable Mark McGowan, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time and the Joint Venturers comes into operation;

- (b) in the definition of "townsite", deleting "land contained in Special Lease 3116/6675" and substituting "townsite constituted under section 10 of the *Land Act 1933* (WA) (and which by the Land Act is to be treated as constituted under section 26 of the Land Act) and known as the Leinster Townsite";
  - (c) in the definition of "Minister for Mines", after the words "Mining Act" inserting the words "and the Mining Act 1978";
  - (d) in the definition of "native title" by:
    - (i) deleting "has" and substituting "and "native title rights and interests" have"; and
    - (ii) deleting "it" and substituting "them"; and
  - (e) in the definition of "nickel concentrates", after the words "obtained by treating ore" inserting the words "or non-mineral lease ore or both together";
- (2) by inserting after clause 2 the following new clause:
- "2A. Nothing in this Agreement, including the approval of proposals, shall be construed to exempt the State or the Joint Venturers from compliance with, or to require the State or the Joint Venturers to do any thing contrary to, any laws relating to native title or any lawful obligation imposed on the State or the Joint Venturers, as the case may be, pursuant to any laws relating to native title."
- (3) in clause 6 by:
- (a) in clause 6(1)(c), deleting "railways";
  - (b) in clause 6(1)(d), deleting "facilities for the export of nickel-containing products through a port in the said State";

- (c) in clause 6(1)(g), after the word "power" inserting the word "supply,";
- (4) by inserting after clause 6A the following new clause:

**"Non-Mineral Lease Ore and Non-Agreement Nickel Concentrates**

- 6B. Subject to subclauses (9) to (14) of Clause 8, the Joint Venturers may in accordance with this Agreement:
  - (a) treat at the Leinster concentrator non-mineral lease ore separately or blended with ore to produce nickel concentrates; and
  - (b) blend at the Joint Venturers' facilities upon the mineral lease nickel concentrates produced in accordance with approved proposals under this Agreement with non-Agreement nickel concentrates."
- (5) in clause 8 by:
  - (a) deleting clause 8(1) and substituting the following new subclause:
    - "(1) Subject to the following subclauses of this Clause, if the Joint Venturers at any time during the continuance of this Agreement desire to significantly modify, expand or otherwise vary their activities that may be carried on by them pursuant to this Agreement beyond those specified in any approved proposals or in paragraphs (a) or (b) of subclause (9) of this Clause, they shall give notice to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a), (b) and (e) to (k) (both inclusive) of subclause (1) of Clause 6 as the Minister may require. The provisions of subclauses (2), (3) and (4) of Clause 6 shall, subject to this Clause, apply mutatis mutandis to detailed proposals submitted pursuant to this subclause."

- (b) inserting after clause 8(1) the following new subclauses (2) through to (14) (inclusive):
- "(2) On receipt of each proposal pursuant to subclause (1) of this Clause, the Minister, subject to the EP Act, shall:
- (a) approve of the proposal without qualification or reservation; or
  - (b) defer consideration of or decision upon the same until such time as the Joint Venturers submit a further proposal or proposals in respect of some other of the matters referred in subclause (1) of this Clause not covered by the said proposal; or
  - (c) require as a condition precedent to the giving of the Minister's approval to the said proposal, that the Joint Venturers make such alteration thereto or comply with such conditions in respect thereto as the Minister (having regard to the circumstances including the overall development of and the use by others as well as the Joint Venturers of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose the Minister's reasons for such conditions,

PROVIDED ALWAYS that:

- (d) where implementation of any proposals hereunder have been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this Clause shall, if the case so requires, incorporate a requirement that the Joint Venturers make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures; and
- (e) the Minister shall not consider a purported proposal or proposals (as the case may be) if the Minister is of the opinion that the purported proposal or proposals does not or do not (as the



case may be) comply with this Clause or other applicable provisions of this Agreement and in such circumstances:

- (i) this subclause (2) (other than this paragraph (e)) and subclause (3) shall not apply to the purported proposal or proposals;
  - (ii) subject to this Agreement, the Minister shall afford the Joint Venturers full opportunity to consult with him (including disclosure of reasons for his opinion) and should they so desire to submit a new or revised proposal or proposals either generally or in respect to some particular matter; and
  - (iii) the Minister's opinion is not subject to arbitration under Clause 44.
- (3) The Minister shall within 2 months after the later of:
- (a) receipt of proposals pursuant to subclause (1) of this Clause;
  - (b) where any of the proposals are to be assessed under Part IV of the EP Act, service on the Minister of an authority under section 45(12) of the EP Act; or
  - (c) where any of the proposals will or may require the State to do any act which affects native title rights and interests, completion of all processes required by laws relating to native title to be undertaken by the State before that act may be done by the State,
- give notice to the Joint Venturers of the Minister's decision in respect to the proposals.
- (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (2) of this Clause

the Minister shall afford the Joint Venturers full opportunity to consult with the Minister and should they so desire to submit new or revised proposals either generally or in respect to some particular matter.

- (5) If the decision of the Minister is as mentioned in paragraph (c) of subclause (2) 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 (3) of this Clause may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the condition precedent **PROVIDED THAT** any requirement of the Minister pursuant to the proviso to subclause (2) or a decision of the Minister under paragraph (b) of subclause (2) of this Clause shall not be referable to arbitration under this Agreement.
- (6) If by the award made on an arbitration pursuant to subclause (5) of this Clause the dispute is decided in favour of the Joint Venturers, the decision shall take effect as a notice by the Minister that the Minister is so satisfied with and approves the matter or matters the subject of the arbitration.
- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act, the Joint Venturers shall implement the approved proposals in accordance with the terms thereof.
- (8) Notwithstanding Clause 31, the Minister may during the implementation of approved proposals approve variations to those proposals.
- (9) On and from the variation date, the activities referred to in Clause 6B may only be undertaken in accordance with this Clause and otherwise in accordance with the provisions of this Agreement and the parties acknowledge that as at the variation date the following activities of the nature referred to in Clause 6B are

authorised and subject to the Agreement obliged to be implemented by the Joint Venturers:

- (a) the continued treatment at the Leinster concentrator of:
    - (i) between 500,000 and 600,000 tonnes per annum over a 4 year period from the variation date of non-mineral lease ore from mining leases 36/9 and 36/618 blended with ore;
    - (ii) between 500,000 and 1,000,000 tonnes per annum over a 3 year period from the variation date of non-mineral lease ore from mining lease 36/102 blended with ore; and
  - (b) the continued blending at the Joint Venturers' facilities upon the mineral lease of between 250,000 and 350,000 tonnes per annum over a 20 year period from the variation date of non-Agreement nickel concentrates obtained from the treatment at the Mount Keith concentrator of non-mineral lease ore from mining leases 36/183, 36/184, 36/185, 36/246, 53/56 and 53/57 with nickel concentrates.
- (10) Without limiting the operation of subclause (1) of this Clause, the parties acknowledge that the treatment at the Leinster concentrator of non-mineral lease ore or the blending at the Joint Venturers' facilities of non-Agreement nickel concentrate from or including a source not then the subject of approved proposals under this Agreement (including from a mining tenement not referred to in subclause (9) of this Clause) shall be regarded as a significant modification, expansion or other variation of the Joint Venturers' activities carried on by them pursuant to this Agreement and may only be undertaken in accordance with proposals submitted and approved or determined under this Clause 8 and

otherwise in accordance with the provisions of this Agreement.

- (11) A proposal or proposals submitted pursuant to subclause (1) of this Clause for the undertaking of any of the activities referred to in Clause 6B must clearly identify the non-mineral lease ore and/or non-Agreement nickel concentrates as the case may be the subject of the proposal (including by reference to source, tonnage and duration) or where the proposal relates also to ore and/or nickel concentrates produced from ore, clearly differentiate the non-mineral lease ore and/or non-Agreement nickel concentrates as the case may be from ore and/or nickel concentrates produced from ore.
- (12) The Joint Venturers shall not without the prior consent of the Minister submit a proposal under this Clause for, or in any way to support, the undertaking of any of the activities referred to in Clause 6B using non-mineral lease ore obtained from outside of Australia.
- (13) The Joint Venturers shall not without the prior consent of the Minister submit a proposal under this Clause for the grant of any lease, licence or other tenure to support either wholly or in part the undertaking of any of the activities referred to in Clause 6B.
- (14) To avoid doubt the parties acknowledge that none of:
  - (a) the mining of non-mineral lease ore;
  - (b) the treatment of such non-mineral lease ore outside the mineral lease to produce non-Agreement nickel concentrates;
  - (c) the transport of such non-mineral lease ore and non-Agreement nickel concentrates to the mineral lease;
  - (d) the transport of nickel concentrates produced from or containing non-mineral lease ore or

non-Agreement nickel concentrates from the mineral lease; or

- (e) the smelting and refining of such nickel concentrates,

will be part of the activities that may be undertaken under this Agreement to the intent that the same, whether undertaken by the Joint Venturers or a third party, shall be undertaken in accordance with the general laws from time to time of the said State and upon tenure not subject to this Agreement."

- (c) renumbering subclause (2) of clause 8 as subclause (15);
- (6) in clause 10, by inserting "and subclause (7) of Clause 10B" at the end of clause 10(2) before the full stop;
- (7) by inserting after clause 10 the following new clauses:

**"Community Development Plan**

- 10A. (1) In this Clause, the term "community and social benefits" includes:
  - (a) assistance with skills development and training opportunities to promote work readiness and employment for persons living in the northern Goldfields region of the said State;
  - (b) training and employment for indigenous and non-indigenous persons living in the northern Goldfields region of the said State;
  - (c) regional development activities in the northern Goldfields region of the said State, including partnerships and sponsorships and local procurement of goods and services;
  - (d) contribution to any community projects, town services or facilities; and
  - (e) a regionally based workforce.

- (2) The Joint Venturers acknowledge the need for community and social benefits flowing from this Agreement.
- (3) The Joint Venturers agree that:
  - (a) they shall prepare a draft plan which describes the Joint Venturers' proposed strategies for achieving community and social benefits in connection with their activities under this Agreement;
  - (b) within 2 months after the variation date, they shall confer with the Minister in respect of the draft plan; and
  - (c) they shall, following such conferral and within 3 months after the variation date, provide to the Minister a plan describing the Joint Venturers' strategies for achieving community and social benefits in connection with their activities under this Agreement.
- (4) At least 3 months before the anticipated submission of proposals under Clause 8 (or such lesser period as the Minister may, at the request of the Joint Venturers, approve in respect of such anticipated proposals), the Joint Venturers shall, unless the Minister otherwise requires, give to the Minister information about how the proposed activities may affect the plan provided to the Minister under this Clause. This obligation operates in relation to all proposals submitted on or after the date that is 4 months after the date when a plan is first provided under this Clause.
- (5) During the currency of this Agreement, the Joint Venturers shall implement the plan provided to the Minister under this Clause.
- (6) The Joint Venturers shall at least annually report to the Minister about the Joint Venturers' implementation of the plan provided to the Minister under this Clause.

- (7) At the request of either of them made at any time and from time to time, the Minister and the Joint Venturers shall confer as to any amendments desired to any plan provided to the Minister under this Clause and following such conferral the Joint Venturers may provide to the Minister an amended or a new plan. Any such amended plan or new plan will be deemed to be the plan provided to the Minister under this Clause.

#### **Local Participation Plan**

- 10B. (1) In this Clause, the term "local industry participation benefits" means:
- (a) the use and training of labour available within the said State;
  - (b) the use of the services of engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and contractors available within the said State; and
  - (c) the procurement of works, materials, plant, equipment and supplies from Western Australian suppliers, manufacturers and contractors.
- (2) The Joint Venturers acknowledge the need for local industry participation benefits flowing from this Agreement.
- (3) The Joint Venturers agree that they shall, not later than 3 months after the variation date, prepare and provide to the Minister a plan which contains:
- (a) a clear statement on the strategies which the Joint Venturers will use, and require a third party as referred to in subclause (7) of this Clause to use, to maximise the uses and procurement referred to in subclause (1) of this Clause;
  - (b) detailed information on the procurement practices the Joint Venturers will adopt, and require a third party as referred to in

subclause (7) of this Clause to adopt, in calling for tenders and letting contracts for works, materials, plant, equipment and supplies stages in relation to a proposed development and how such practices will provide fair and reasonable opportunity for suitably qualified Western Australian suppliers, manufacturers and contractors to tender or quote for works, materials, plant, equipment and supplies;

- (c) detailed information on the methods the Joint Venturers will use, and require a third party as referred to in subclause (7) of this Clause to use, to have their respective procurement officers promptly introduced to Western Australian suppliers, manufacturers and contractors seeking such introduction; and
- (d) details of the communication strategies the Joint Venturers will use, and require a third party as referred to in subclause (7) of this Clause to use, to alert Western Australian engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and consultants and Western Australian suppliers, manufacturers and contractors to services opportunities and procurement opportunities respectively as referred to in subclause (1) of this Clause.

It is acknowledged by the Joint Venturers that the strategies of the Joint Venturers referred to in paragraph (a) of subclause (3) of this Clause will include strategies of the Joint Venturers in relation to supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement.

- (4) At the request of either of them made at any time and from time to time, the Minister and the Joint Venturers shall confer as to any amendments desired to any plan



provided under this Clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.

- (5) At least 3 months before the anticipated submission of proposals pursuant to Clause 8 (or such lesser period as the Minister may, at the request of the Joint Venturers, approve in respect of any such anticipated proposals), the Joint Venturers shall, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this Clause in relation to the activities to be the subject of such proposals. This obligation operates in relation to all proposals submitted on or after the date that is 4 months after the date when a plan is first provided under this Clause.
- (6) During the currency of this Agreement the Joint Venturers shall implement the plan provided under this Clause.
- (7) Except as otherwise agreed by the Minister, the Joint Venturers shall:
  - (a) in every contract entered into with a third party where the third party has an obligation or right to procure the supply of services, labour, works, materials, plant, equipment or supplies for or in connection with a proposed development, ensure that the contract contains appropriate provisions requiring the third party to undertake procurement activities in accordance with the plan provided under this Clause; and
  - (b) use reasonable endeavours to ensure that the third party complies with those provisions."
- (8) in clause 11 by:
  - (a) in clause 11(5)(a), deleting the words "a municipality and the said roads shall be deemed to be streets under the care control and management of the Joint Venturers" and substituting the words "a local government and the said roads shall each be

deemed to be a thoroughfare under the care control and/or management of the Joint Venturers and which the public are allowed to use"; and

- (b) deleting clause 11(5)(b) and substituting the following new subparagraph:

"(b) for the purposes of this Clause the terms "local government" and "thoroughfare" shall have the meanings which they respectively have in the *Local Government Act 1995 (WA)*."

- (9) in clause 12 by deleting subclauses (1), (2), (3), (5) and (7) (including subheadings);

- (10) in clause 13 by:

- (a) deleting subclauses (1), (4) (5) and (6) (including subheadings); and
- (b) in clause 13(2), by deleting the words "In the event of the Joint Venturers demonstrating to the satisfaction of the Minister that the provisions of subclause (1) of this Clause would be unduly prejudicial to their operations; the" and substituting the word "The";

- (11) in clause 15 by:

- (a) inserting the following new subclause after clause 15(3):

**"Rent**

- (3a) On and from the variation date, the Joint Venturers shall pay rent for the mineral lease in the amounts (including on a pro rata basis for portions of a rental period) and otherwise at the times and in the manner that would be required from time to time by the Mining Act 1978 and the Mining Regulations if the mineral lease was a mining lease granted under the Mining Act 1978."

- (b) inserting the following new subclauses after clause 15(7):

**"MRF Act**

- (8) On and from the variation date, the mineral lease shall be deemed to be a mining authorisation for the purposes of the MRF Act and the regulations made under that Act.

**Mine closure planning**

- (9) The Joint Venturers shall, not later than 6 months after the variation date, lodge with the State a mine closure plan for, subject to the EP Act, approval by the Minister for Mines (acting with the concurrence of the Minister) and on provision of such approval:
- (a) the mine closure plan shall be deemed to be a mine closure plan within the meaning given to that term in the Mining Act 1978 that, subject to this Clause, is to be reviewed, amended and implemented in accordance with that Act as if the mineral lease was a mining lease under the Mining Act 1978;
  - (b) the mineral lease shall be deemed to be subject to:
    - (i) a condition that the holder of the mineral lease must review the mine closure plan and obtain approval for the reviewed mine closure plan in accordance with this Clause; and
    - (ii) a condition that the holder of the mineral lease must decommission all mines (within the meaning given to that term in the Mining Act 1978) from time to time within the area of, and rehabilitate the land within, the mineral lease in accordance with the approved mine closure plan from time to time.

- (10) The Joint Venturers shall ensure that the mine closure plan referred to in subclause (9) of this Clause is reviewed at the times that a mine closure plan under the Mining Act 1978 is required by that Act to be reviewed and otherwise at the times determined from time to time by the Minister for Mines (acting with the concurrence of the Minister).
- (11) The Joint Venturers shall ensure that a reviewed mine closure plan is within the applicable times under subclause (10) of this Clause lodged with the State for approval, subject to the EP Act, by the Minister for Mines (acting with the concurrence of the Minister).
- (12) The Minister for Mines (acting with the concurrence of the Minister) may approve the mine closure plan or a reviewed mine closure plan as lodged or subject to such changes as required by the Minister for Mines (acting with the concurrence of the Minister). If the Joint Venturers are unwilling to accept the changes required to be made, they shall notify the Minister to that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes and the effect of an award made on arbitration shall be that the mine closure plan or reviewed mine closure plan (as the case may be) lodged by the Joint Venturers shall, with such changes as required by the Minister for Mines (acting with the concurrence of the Minister) as the arbitrator determines to be reasonable (with or without modification by the arbitrator) be deemed to be the plan approved by the Minister for Mines (acting with the concurrence of the Minister) under this Clause.
- (13) Without limiting the Mining Act 1978, the Joint Venturers shall implement the mine closure plan or reviewed mine closure plan approved or deemed to be approved from time to time under subclause (12) of this Clause.
- (14) Without limiting the Mining Act 1978, the obligations set out in subclause (13) of this Clause shall survive the

cessation or determination of this Agreement and the expiry or surrender of the mineral lease, in which case the Joint Venturers may enter and re-enter the land that was the subject of the mineral lease with such agents, employees, vehicles, machinery and equipment as may be necessary for the purpose of implementing the relevant mine closure plan and complying with the relevant conditions."

(12) by inserting after clause 16 the following new clause:

**"Incorporation of Specified Mining Tenements in the mineral lease and continuation proposals**

- 16A.    (1)    The Joint Venturers shall, not later than 2 months after the variation date, submit proposals under subclause (1) of Clause 8 for the continuation under this Agreement and upon the mineral lease (as it would be following the inclusion of the area of land of the Specified Mining Tenement within the mineral lease pursuant to this Clause) of their then current and contemplated activities on the Specified Mining Tenement and the provisions of Clause 8 shall be deemed to authorise the submission of such proposals.
- (2)    If the proposals contemplated by subclause (1) of this Clause are approved or determined in accordance with Clause 8 such approval or determination shall take effect in respect of the area of a Specified Mining Tenement on and from the Relevant Endorsement Time and otherwise in accordance with and subject to the provisions of Clause 8.
- (3)    Notwithstanding the provisions of the Mining Act or the Mining Act 1978 and subject to subclause (4) of this Clause, at the Relevant Endorsement Time applicable to a Specified Mining Tenement:
- (a)    the Specified Mining Tenement shall be deemed to be surrendered; and
- (b)    the area of land of the Specified Mining Tenement shall be deemed included in the

mineral lease subject to such of the then existing conditions of the surrendered Specified Mining Tenement as the Minister for Mines determines (such determination to be made after the variation date and prior to the Relevant Endorsement Time) but otherwise subject to the same terms covenants and conditions as apply to the mineral lease (with such apportionments of rents as may be necessary) and 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.

- (4) As soon as practicable after the approval or determination of proposals contemplated by subclause (1) of this Clause in respect of the area of land the subject of a Specified Mining Tenement, the State shall cause a notation or other endorsement to be made in the register that the mineral lease includes the area of land of the Specified Mining Tenement subject to the determined conditions and the terms, covenants and conditions otherwise applicable in accordance with paragraph (b) of subclause (3) of this Clause.
- (5) For the avoidance of doubt, the abovementioned endorsements are authorised to be made in the register without any further formalities, approvals or other preconditions."

(13) in clause 17 by:

- (a) in clause 17(2), deleting the word "townsites,"; and
- (b) in clause 17(4):
  - (i) after the words "third party" inserting the word "with"; and
  - (ii) after the words "subject to" inserting the words "subclause (3) of Clause 29,";

(14) in clause 18 by deleting subclause (4) (including the subheading);

(15) by deleting clause 20 and substituting the following new clause:

**"Port**

20. To avoid doubt the parties acknowledge that after the variation date:

- (a) the transport of nickel containing products from the mineral lease for delivery or sale to a third party (including without limitation the construction or provision of facilities and infrastructure outside of the mineral lease for such purposes); and
- (b) the transport (including by road or rail) to, and shipment through, a port in the said State of nickel containing products (including without limitation the construction or provision of facilities and infrastructure for such purposes),

will not be part of the activities that may be undertaken under this Agreement after the variation date to the intent that the same, whether undertaken by the Joint Venturers or a third party, shall be undertaken in accordance with the general laws from time to time of the said State."

(16) in clause 21 by:

- (a) in clause 21(1), inserting "1978 in respect of mining leases granted under that Act " before the full stop;
- (b) deleting clause 21(3) and substituting the following new subclauses:
  - "(3) The Joint Venturers shall within 30 days after the last day (provided that last day occurs after the variation date) of each of March, June, September and December in each year give to the State a return showing the number of tonnes of minerals mined by them or products produced by them from minerals derived from the mineral lease and for which payment is received during the 3 calendar months ending on that last day and all other particulars necessary to enable the calculation, and to assist in the verification, of the

royalty payable thereon and shall pay to the State the royalty payable on such product and mineral.

- (3A) The Joint Venturers shall within 30 days of the expiration of the last day (provided such last day occurs after the variation date) of March, June, September and December in each year during which they, in accordance with paragraph (a) of subclause (9) of Clause 8 and approved proposals under this Agreement (as applicable), treat non-mineral lease ore to produce nickel concentrates, give to the State a return showing in respect of each source from which such non-mineral lease ore is mined:
- (a) the tonnes of non-mineral lease ore treated in the 3 calendar months ending on that last day;
  - (b) the assay percentages of nickel contained in that non-mineral lease ore;
  - (c) the tonnes of nickel contained in that non-mineral lease ore;
  - (d) the nickel recovery rates in respect of that non-mineral lease ore;
  - (e) the tonnes of nickel concentrate recovered from the treatment of that non-mineral lease ore; and
  - (f) such other information as the State shall from time to time reasonably require to enable the calculation of royalty payable in respect of nickel mined from each such abovementioned source.
- (3B) The Joint Venturers shall within 30 days of the expiration of the last day (provided such last day occurs after the variation date) of March, June, September and December in each year during which they, in accordance with paragraph (b) of subclause (9) of Clause 8 and approved proposals under this Agreement (as applicable) blend nickel concentrates produced in accordance with paragraph (a) of subclause (9) of



Clause 8 and approved proposals under this Agreement (as applicable) with non-Agreement nickel concentrates, give to the State a return showing in respect of each source from which non-Agreement nickel concentrates are obtained:

- (a) the tonnes of non-Agreement nickel concentrates delivered to the Joint Venturers in the 3 calendar months ending on that last day;
  - (b) the assay percentages of nickel contained in the non-Agreement nickel concentrates delivered;
  - (c) the tonnes of nickel contained in the non-Agreement nickel concentrates delivered;
  - (d) the nickel recovery rates in respect of the non-Agreement nickel concentrates delivered after blending with nickel concentrates produced in accordance with approved proposals under this Agreement;
  - (e) the tonnes of nickel concentrates recovered from the blending of the non-Agreement nickel concentrates delivered with nickel concentrates produced in accordance with approved proposals under this Agreement; and
  - (f) such other information as the State shall from time to time reasonably require to enable the calculation of royalty payable in respect of nickel mined from each such abovementioned source."
- (c) in subclause 21(4), by deleting the words "Minister for Mines" and each occurrence of the words "Minister for Mines or his nominee" and substituting in each case the word "State";
- (d) in subclause 21(4), after the words "royalty payable under this Clause" inserting the words ", and under the Mining Act 1978 in respect of non-mineral lease ore and nickel concentrates and

non-Agreement nickel concentrates the subject of approved proposals under this Agreement,";

(e) by inserting after clause 21(4) the following new subclauses:

"(5) The Joint Venturers shall to the extent they have not already done so, within 3 months after the variation date, establish and thereafter during the continuance of this Agreement maintain in place to the reasonable satisfaction of the State adequate systems and controls for the correct apportionment, where blending as referred to in Clause 6B is being undertaken, between ore and non-mineral lease ore and nickel concentrates produced in accordance with approved proposals under this Agreement and non-Agreement nickel concentrates of the quantities of nickel comprised in the resulting nickel containing products and which systems and controls monitor production, concentration, processing, transportation, stockpiling and shipping activities in respect of such nickel.

(6) If at any time the State ceases to be so satisfied it may, after consulting the Joint Venturers and provided that the Joint Venturers have not within 3 months after the commencement of such consultation addressed the matters of concern to the State's satisfaction, by notice in writing to the Joint Venturers suspend the above authority for blending to be undertaken until the State is again so satisfied in terms of subclause (5) of this Clause."

(17) by deleting clause 24 and substituting with the following new clause:

**"Rating**

24. (1) The State shall ensure that, notwithstanding the provisions of any Act or anything done or purported to be done under any Act, the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except land the subject of the Townsite Lease and except as to any part of other land upon which is situated a specified improvement as

referred to below) shall for rating purposes under the *Local Government Act 1995* (WA), be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate.

- (2) For the purpose of this Clause, the following improvements are specified improvements:
- (a) accommodation, recreation and administration facilities and associated buildings; and
  - (b) maintenance workshops existing within 100 metres of facilities listed in paragraph (a) above."

(18) by deleting clause 26 (other than the heading);

(19) by inserting after clause 29(2) the following new subclause:

- "(3) Notwithstanding the provisions of the Land Act insofar as the same may apply, no sublease by the Joint Venturers of land from time to time comprised in the Townsite Lease for:
- (a) a purpose or purposes falling within the permitted use of the land the subject of that lease; and
  - (b) a potential term shorter than the current term from time to time of the Townsite Lease,

will require any approval or consent under subclause (1) of this Clause or under the Land Act provided that the Joint Venturers give notice to the Minister and the Minister responsible for the Land Act of the proposed sublease."

(20) in clause 35 by deleting subclause (4);

(21) in clause 44 by:

- (a) in clause 44(1):
  - (i) deleting the words "their umpire" and substituting the words "a third and presiding arbitrator"; and

- (ii) deleting the words "Arbitration Act 1895" and substituting the words "*Commercial Arbitration Act 2012* (WA)"; and
- (b) in clause 44(3), deleting the words "or umpire (as the case may be)"; and
- (22) in clause 46, by inserting after the words "the State of Western Australia" the words "and, except for matters to be referred to arbitration pursuant to this Agreement, the parties to this Agreement submit to the jurisdiction of the courts of Western Australia in relation to any action or proceeding to settle any dispute or question arising out of or in connection with this Agreement".

**EXECUTED** as a deed.

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

[Signature]

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Signature of witness

DAVID PAUL COGGIN

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Name of witness

**EXECUTED** by **BHP NICKEL**      )  
**WEST PTY LTD** ACN 004 184 598      )  
in accordance with section 127(1) of      )  
the *Corporations Act 2001* (Cth) by      )  
authority of its directors:      )

[Signature]

[Signature]

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/~~company~~  
~~secretary~~\*

JESSICA FARRELL

RIAAN CLOETE

\_\_\_\_\_  
Full name of director (block letters)

\_\_\_\_\_  
Full name of director/~~company~~  
~~secretary~~\* (block letters)

\*delete whichever is not applicable

*[Third Schedule inserted: No. 17 of 2023 s. 6.]*

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## Notes

This is a compilation of the *Nickel (Agnew) Agreement Act 1974* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Nickel (Agnew) Agreement Act 1974</i>	81 of 1974	10 Dec 1974	10 Dec 1974
<i>Nickel (Agnew) Agreement Act Amendment Act 1976</i>	98 of 1976	12 Nov 1976	12 Nov 1976
<b>Reprint 1: The <i>Nickel (Agnew) Agreement Act 1974</i> as at 3 Oct 2003</b> (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010</i> s. 4 and 42(2)	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Nickel (Agnew) Agreement Amendment Act 2023</i>	17 of 2023	17 Aug 2023	s. 1 and 2: 17 Aug 2023 (see s. 2(a)); Act other than s. 1 and 2: 18 Aug 2023 (see s. 2(b))

### Other notes

- <sup>1</sup> Repealed by the *Interpretation Act 1984*.
- <sup>2</sup> Marginal notes in the agreement have been represented as bold headnotes in this compilation but that does not change their status as marginal notes.

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

Defined term	Provision(s)
2022 variation agreement.....	2
the Agreement.....	2
the Joint Venturers .....	2
the Variation Agreement.....	2

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