

ALUMINA REFINERY (MUCHEA) AGREEMENT.

No. 97 of 1972.

AN ACT to authorize the execution on behalf of the State of an Agreement with Hancock Prospecting Pty. Ltd., Wright Prospecting Pty. Ltd., Metals Miniere Limited and Pacminex (Operations) Pty. Limited relating to the establishment near Muchea of a refining plant to treat bauxite to produce alumina and for other purposes; and to repeal the Alumina Refinery (Upper Swan) Agreement Act, 1971.

[Assented to 6th December, 1972.]

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

1. This Act may be cited as the *Alumina Refinery (Muchea) Agreement Act, 1972.* Short title.

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SCHEDULE.

ALUMINA REFINERY (MUCHEA) AGREEMENT.

THIS AGREEMENT made the _____ day of _____

One Thousand nine hundred

and seventy-two BETWEEN THE HONOURABLE JOHN TREZISE TONKIN, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and Instrumentalities thereof from time to time (hereinafter called "the State") of the one part and HANCOCK PROSPECTING PTY. LTD. a company duly incorporated under the Companies Act of the State of Western Australia having its principal office at Lombard House, 251 Adelaide Terrace, Perth in the said State and WRIGHT PROSPECTING PTY. LTD. a company duly incorporated under the Companies Act aforesaid having its principal office at Lombard House, 251 Adelaide Terrace, Perth aforesaid and METALS MINIERE LIMITED a company duly incorporated under the Companies Act aforesaid having its principal office at 189 Saint George's Terrace, Perth and PACMINEX (OPERATIONS) PTY. LIMITED a company incorporated in the State of New South Wales and having its principal office at 15-19 Bent Street, Sydney in the State of New South Wales (hereinafter called "the Joint Venturers") of the other part.

WHEREAS:

- (a) the Joint Venturers and their predecessors in title at the cost to the date hereof exceeding two million dollars (\$2,000,000) having established the existence of bauxite reserves within the mining area defined in Clause 1 and having already carried out certain investigations relating to the mining transport and refining of bauxite and the shipment of bauxite and alumina from the mining area wish to develop those bauxite reserves and to establish a bauxite mining operation and an alumina plant all of which is expected to cost an amount exceeding eighty million dollars (\$80,000,000);
- (b) the Joint Venturers agree in due course to investigate the feasibility of establishing within the said State an industry for smelting alumina produced from bauxite; and
- (c) a report dated the 12th day of October 1972 has been received from the Environmental Protection Authority to the effect that the site north-west of Muchea proposed for the Joint Venturers' operations hereunder is acceptable in principle from an environmental point of view.

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NOW THIS AGREEMENT WITNESSETH:

Definitions. 1. In this Agreement subject to the context—

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

“associated company” means—

(a) any company having a paid up capital of
not less than two million dollars (\$2,000,000)
notified by the Joint Venturers to the Minister
that is incorporated in the United Kingdom the
United States of America or the Commonwealth of
Australia or such other country as the Minister may
approve and that—

(i) is promoted by the Joint Venturers or
any of them for all or any of the purposes of this
Agreement and in which the Joint Venturers or any
of them hold not less than twenty per cent (20%)
of the issued ordinary share capital; or

(ii) is related within the meaning of that
term as used in Section 6 of the Companies Act, 1961,
to any company in which the Joint Venturers or any
of them hold not less than twenty per cent (20%)
of the issued ordinary share capital; or

(b) any company that is associated directly or
indirectly with the Joint Venturers or any of them
in their business or operations hereunder and that is
approved by the Minister for the purposes of this
Agreement;

“bauxite” means ore mined by the Joint Venturers
under this Agreement which either with or without
crushing washing and screening is shipped or sold as
bauxite or is used for processing into alumina;

“bulk cargo” means a commodity or commodities to
be handled and transported without being first
packed or placed in specially constructed containers
and in particular the term includes alumina, caustic
soda and bauxite for the purposes of this Agreement;

“bulk storage area” means the land at Kwinana
delineated in red and subject to survey shown on the
plan marked “B” and initialled on behalf of the
parties hereto for the purposes of identification or

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such alternative land as the parties may agree upon, together with such additional land as the parties may agree upon from time to time;

“catchment area” means an area of land within a watershed which contributes to the flow of a stream or watercourse;

“Clause” means a clause of this Agreement;

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

“Conservator of Forests” and “Conservator” means the Conservator of Forests appointed under the Forests Act, 1918;

“construction” or “upgrading” in relation to a railway includes the provision of signalling and other railway operating appurtenances;

“Crown land” means all land of the Crown, except land granted or agreed to be granted in fee simple and except land held or occupied under the Crown by lease or licence for any purpose other than pastoral or timber purposes, and includes all land reserved for State forests or the purpose of water conservation;

“Environmental Protection Authority” means the Environmental Protection Authority established pursuant to the Environmental Protection Act, 1971;

“forest produce” has the same meaning as that expression has in and for the purposes of the Forests Act, 1918;

“Fremantle Port Authority” means the Fremantle Port Authority of Western Australia established pursuant to the Fremantle Port Authority Act, 1902;

“Joint Venturers’ wharf” means the wharf referred to in Clause 38 hereof;

“Land Act” means the Land Act, 1933;

“Metropolitan Water Supply Board” means the Metropolitan Water Supply Sewerage and Drainage Board established pursuant to the Metropolitan Water Supply Sewerage, and Drainage Act, 1909;

“mineral lease” means the mineral lease or mineral leases referred to in Clause 8 and includes any renewal thereof;

“Mining Act” means the Mining Act, 1904;

“mining area” means the area delineated and coloured blue in the plan marked “C” initialled on behalf of the parties hereto for the purpose of identification, but excluding land therein the subject of both existing mining tenements and applications therefor which are not held or made on behalf of the Joint Venturers and including such land as the Minister for Mines may from time to time approve.

"Minister" means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the administration of this Agreement;

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

“Minister for Works” means the Minister in the Government of the said State for the time being responsible for the administration of the Public Works Act, 1902 or the Country Areas Water Supply Act, 1947 or the Fremantle Port Authority Act, 1902 as the case may require;

"month" means calendar month:

"notice" means notice in writing:

"person" or "persons" includes a body corporate or bodies corporate:

"potable water" means water containing less than 1,000 parts per 1,000,000 of totally dissolved solids;

"production date" means the date on which the regular production of alumina commences at the refinery;

"Railways Commission" means the Western Australian Government Railways Commission established pursuant to the Government Railways Act, 1904;

"railway working area" means the land delineated in blue on the said plan marked "B".

"red mud" means the waste products and tailings resulting from the refining of bauxite into alumina;

"refinery" means a refining plant established or to be established pursuant to this Agreement at or near Muchea in which bauxite is treated to produce alumina and includes any extension thereof;

"refinery site" means that part of the land delineated green on the plan marked "A" (initialled on behalf of the parties hereto for the purposes of identification) which is the subject of the lease referred to in Clause 11 (2);

"Schedule" means a schedule to this Agreement;

"smelter" means an electrolytic reduction plant for the conversion of alumina to aluminium using alumina produced from bauxite;

“special grade bauxite” means ore that is saleable as refractory grade, abrasive grade or chemical grade bauxite;

“State Electricity Commission” means the State Electricity Commission of Western Australia established pursuant to the State Electricity Commission Act, 1945:

"State forest" means land dedicated as a State forest under the Forests Act, 1918:

"the said State" means the State of Western Australia;

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

"tonne" means a tonne of one thousand kilograms.

2. In this Agreement—

Interpreta-
tion.

- (a) monetary references are (subject to the context) references to Australian currency;
- (b) power given under any Clause other than Clause 55 to extend any period or date shall be without prejudice to the power of the Minister under Clause 55;
- (c) marginal notes do not affect the interpretation or construction; and
- (d) reference to an Act 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 being in force thereunder.

3. The State will—

Initial
Obligations
of the State.

- (a) to the extent reasonably necessary for the purposes of this Agreement allow the Joint Venturers as from the date hereof to enter upon Crown lands and survey possible sites for their operations under this Agreement;

- (c) permit the Joint Venturers on proper application to the Minister for Mines to acquire rights of occupancy over Temporary Reserve 5068H and to hold such rights until the grant of the mineral lease or the sooner determination of this Agreement on the same terms and conditions as are applicable to the rights of occupancy referred to in paragraph (b) of this Clause.

Other Acts.

4. As from the date hereof all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any other Act or any law to the contrary and for the purposes of this Agreement and notwithstanding the generality of the foregoing—

- (a) the Mining Act the Land Act the Transfer of Land Act, 1893 and the Public Works Act shall be deemed modified and amended to the extent necessary to enable full force and effect to be given to this Agreement;
- (b) the Mining Act shall be deemed modified and amended by the deletion of Sections 277 and 282;
- (c) the Transfer of Land Act, 1893 shall be deemed modified and amended by the deletion of Section 81D;
- (d) the Land Act shall be deemed modified and amended by—
 - (i) 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;
 - (ii) the deletion of the proviso to Section 116;
 - (iii) the deletion of Sections 135 and 143; and
 - (iv) the inclusion of a power to offer for sale or grant leases or licenses for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement instead of the terms or periods and the terms conditions

and forms referred to in the Land Act and upon application by the Joint Venturers in forms so consistent instead of in the forms referred to in the Act;

- (e) the State and the Minister respectively shall have all the powers discretions and authorities necessary or requisite to enable them to carry out and perform the powers discretions authorities and obligations conferred or imposed upon them respectively hereunder;
- (f) the State may close or vary the alignments of or the boundaries of any public road;
- (g) the State may as and for a public work under the Public Works Act, 1902, resume any land or any estate right or interest in land required for the purposes of this Agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of any of the foregoing to the Joint Venturers and the provisions of subsections (2) to (7) inclusive of Section 17 and the provisions of Section 17A of that Act shall not apply to or in respect thereof or the resumption thereof;
- (h) 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 no mortgage or charge in a form commonly known as a floating charge made or given pursuant to Clause 50 hereof over any lease licence reserve or tenement granted hereunder or pursuant hereto by the Joint Venturers or any of them or any assignee or appointee who has executed and is for the time being bound by deed of covenant made pursuant to Clause 50 hereof and no transfer or assignment in exercise of any power of sale contained in such mortgage or charge shall require any approval or consent other than such consent as may be necessary under Clause 50 hereof 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 50 hereof or because it is not registered under the provisions of the Mining Act; and
- (i) no lease sublease licence or other title or right granted or assigned under or pursuant to this Agreement shall be subject to or capable of partition and the provisions of Part XIV of the Property Law Act, 1969 shall not apply thereto.

(2) The State covenants with the Joint Venturers and each of them that it will perform and observe the respective covenants and obligations falling to be performed and observed by it under the terms hereof as hereinafter provided.

6. (1) The Joint Venturers will on or before the 31st day of December, 1973 or within such extended time after that date as the Minister may as hereinafter provided allow submit to the Minister—

(i) mine development and operation;

(ii) ore treatment and handling at the mine;

(iii) transportation of ore, alumina and operating supplies;

(iv) port site storage, handling and loading facilities:

(v) construction and operation of the refinery including buffer zones;

(vi) power, fuel and water supplies;

(vii) environmental protection, including the disposal of red mud and mine lands restoration;

(viii) regional development, including any projects likely to make an impact on adjacent communities; and

(ix) construction of the Joint Venturers' wharf;
and

- (b) reasonable evidence of marketing arrangements demonstrating the Joint Venturers' ability to sell or use alumina and other products and reasonable evidence of the availability of finance necessary for the fulfilment of the Joint Venturers' proposals under this Clause.

(2) The Joint Venturers will not proceed to give effect to any proposal or plan required to be submitted pursuant to subclause (1) of this Clause and whether supplied pursuant to that subclause or not unless or until the proposal or plan has been approved or determined under this Clause.

(3) The Joint Venturers may submit to the Minister their detailed proposals in regard to the matter or matters the subject of any of subparagraphs (i) to (ix) inclusive of paragraph (a) of subclause (1) of this Clause as and when the detailed proposals become finalised by the Joint Venturers but where any such matter is the subject of a subparagraph that refers to more than one matter the detailed proposals will unless otherwise agreed relate to and cover each of the matters mentioned in the subparagraphs.

- (4) (a) Where the Joint Venturers require an extension of time beyond the 31st day of December, 1973 within which to comply with the requirements of subclause (1) of this Clause and make a request therefor to the Minister not earlier than the first day of October, 1973 or later than the 31st day of November, 1973, the Minister may if he is satisfied that it is reasonable in the circumstances so to do and that the Joint Venturers have otherwise duly complied with their obligations hereunder, grant an extension of time until the 30th day of June, 1974.

- (b) Where the Joint Venturers after having been granted an extension of time pursuant to a request made under paragraph (a) of this subclause require a further extension of time and make a request therefor to the Minister, the Minister may, if he is satisfied that it is reasonable in the circumstances so to do and that the Joint Venturers have otherwise duly complied with their obligations hereunder, grant the Joint Venturers a further extension of time until the 31st day of December, 1975.

- (c) If any request by the Joint Venturers for an extension of time made pursuant to this subclause is refused by the Minister the Joint Venturers may refer the question to arbitration provided always that the Minister shall not be required to grant any extension of time beyond the 31st day of December, 1975.

Consideration of Proposals.

(5) The Minister will within two (2) months after his receipt of the detailed proposals or new proposals submitted by the Joint Venturers pursuant to this Clause give to the Joint Venturers notice of—

- (a) his approval of the proposals; or
- (b) any alteration to the proposals or new proposals or any conditions that he may properly require or impose;

and in the latter event the Minister will afford the Joint Venturers an opportunity of consulting with and of submitting new proposals to him.

Requirements by Minister.

(6) The Minister may require such reasonable alterations to or impose such reasonable conditions on the Joint Venturers' proposals or (as the case may be) new proposals as he thinks fit having regard to the circumstances including the overall development and the use by others as well as the Joint Venturers of some or other of the facilities to be provided by them but the Minister shall in any notice to the Joint Venturers disclose his reason for any such alterations or conditions and the Minister will not require any alterations to or impose any conditions on the proposals or new proposals insofar as they relate to the technical aspects of the Joint Venturers' plant for the crushing washing and screening of ore or of the refinery.

Reference of Require- ments to Arbitration.

(7) The Joint Venturers may within two (2) months after the receipt of a notice given under subclause (5) of this Clause and requiring alterations or imposing conditions by notice to the State elect to refer to arbitration as provided by Clause 56 the question as to the reasonableness of any such alteration or condition and—

- (a) if by the award on arbitration the question is decided against the Joint Venturers then unless the Joint Venturers within three (3) months after the delivery of the award give notice to the Minister of their acceptance of the award this Agreement shall (except to the extent otherwise provided by Clause 51) cease and determine;

(b) if by the award on arbitration the question is decided in favour of the Joint Venturers that decision shall have effect as though it were a notice of the Minister's approval of the matter or matters that were the subject of the arbitration.

(8) Notwithstanding that any of the detailed proposals submitted by the Joint Venturers are approved by the Minister or are determined by arbitration unless each and every proposal so submitted is so approved or determined by the 28th day of February, 1974 or within such extended period as may be granted pursuant to this Agreement then at any time after that date or at the conclusion of the extended period the Minister may give to the Joint Venturers twelve (12) months notice of the State's intention to determine this Agreement and unless all the detailed proposals are so approved or determined within that period of twelve (12) months this Agreement shall (except to the extent otherwise provided by Clause 51) at the expiration of that period cease and determine.

Termination
of Agreement
where all
Proposals not
Approved.

(9) The Joint Venturers may at any time prior to the date upon which the last of the proposals referred to in this Clause has been approved or determined give notice to the Minister that they do not wish to proceed with this Agreement and this Agreement shall thereupon cease and determine.

Determination of Agreement by Joint Venturers.

7. (1) The Joint Venturers will before the expiration of three (3) years from the date on which the last of their proposals is finally approved or determined under Clause 6 on a site to be approved or determined in accordance with that Clause complete the construction of and bring into operation the first stage of a refinery having a capacity to produce not less than three hundred thousand (300,000) tonnes of alumina per annum and thereafter progressively extend the refinery to reach a capacity to produce not less than eight hundred thousand (800,000) tonnes of alumina per annum before the expiration of ten (10) years after the last of their proposals is finally approved or determined.

Construction of Refinery.

(2) Notwithstanding the provisions of subclause (1) of this Clause if the Joint Venturers by particulars in writing demonstrate to the reasonable satisfaction of the Minister that they have used their best endeavours to negotiate the finance required for the construction of the refinery and to

Extension of
time.

complete the sales contracts necessary for the sale of alumina to be produced at the refinery to make the project economically practicable but that by reason of prevailing finance or market conditions they have been unsuccessful the Minister will grant to the Joint Venturers such extension of any time or times limited by that subclause as is reasonable in all the circumstances of the case.

Additional proposals.

(3) If the Joint Venturers at any time during the continuance of this Agreement desire to materially 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 (i) to (ix) of subclause (1) of Clause 6 as the Minister may require. The provisions of Clause 6 shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause.

Mineral
Lease.

8. (1) The State will on the application of the Joint Venturers made after, but within two (2) years after, the date on which the last of their proposals is finally approved or determined under Clause 6 cause a mineral lease of such of the Crown land and land reserved under Section 276 of the Mining Act in respect of which the Joint Venturers are then the holders of rights of occupancy and privately owned land in respect of which the mineral rights are reserved to the Crown within the mining area as may be applied for to be granted to the Joint Venturers (in such shares as the Joint Venturers may agree) notwithstanding that the survey of any of the lands applied for has not been completed (but subject to corrections to accord with the survey when completed) for the mining of bauxite; and the lease shall be so granted under and (except to the extent that the provisions of the Mining Act are not inconsistent with this Agreement) subject to that Act but in the form set out in the Second Schedule.

(2) The Joint Venturers will pay to the State in advance a rental for the mineral lease calculated subject to subclause (3) of this Clause at the rate of one dollar and ninety three cents (\$1.93) per annum for every square kilometre or residual part of a square kilometre contained within the leased area.

(3) At the expiration of seven (7) years after the commencement date of the mineral lease and of every seven (7) years thereafter the rental payable during the next succeeding seven (7) years shall be adjusted proportionately to the increase or decrease of the mean quarterly world selling price of aluminium above or below five hundred and sixteen dollars and seventy cents (\$516.70) per tonne but in no case shall the adjusted rental be less than one dollar and ninety three cents (\$1.93) per square kilometre or residual part of a square kilometre.

(4) For the purposes of subclause (3) of this Clause the mean quarterly world selling price per tonne of aluminium for any quarter is the average expressed in Australian dollars of the four prices first quoted in the London "Metal Bulletin" in respect of Canadian primary aluminium of 99.5 per cent purity f.o.b. Toronto in each of the four completed quarters commencing on the first days of January, April, July and October which immediately precede that quarter and for the purpose of this subclause the conversion rate for Canadian dollars to Australian dollars shall be the mean between the buying and selling rate to telegraphic transfers as quoted by a trading bank acceptable to the Minister for Mines.

(5) Subject to the performance by the Joint Venturers of their obligations under this Clause the term of the mineral lease will, except as hereinafter provided, be for a term of twenty-one (21) years after the commencement of the lease with rights of renewal for two (2) consecutive further periods of twenty-one (21) years upon the terms and conditions contained in the lease except that—

- (a) the rental may be varied as provided by subclause (3) of this Clause;
- (b) royalty rates may be varied as provided by subclause (2) of Clause 43; and
- (c) the right of renewal shall be excluded from the mineral lease when renewed for the second period of twenty-one (21) years.

(6) Within the first six (6) months of the twelve (12) months immediately preceding the expiration of the second renewed period of twenty-one (21) years of the mineral lease the Joint Venturers if then operating the refinery pursuant to this Agreement may give notice to the State that they require a further mineral lease for bauxite of

the leased area or of part or parts thereof including any area leased pursuant to subclause (7) of this Clause for a term of twenty-one (21) years and the State will within six (6) months after the receipt of the notice determine and notify the Joint Venturers of the terms and conditions upon which it is prepared to grant such a further mineral lease and the Joint Venturers shall for a period of three (3) months thereafter have the right to accept such a further mineral lease on those terms and conditions and the State will not for a period of two (2) years after notifying those terms and conditions grant or offer to grant a mineral lease of the leased area or of any part thereof for bauxite to any person other than the Joint Venturers on more favourable terms and conditions than those offered to the Joint Venturers.

(7) The State will on the application of the Joint Venturers made at any time and from time to time after the granting of the mineral lease pursuant to subclause (1) of this Clause cause a mineral lease or mineral leases of such lands as may be applied for being lands comprised within any mineral claims or mineral leases under the Mining Act for bauxite that are held by or on behalf of the Joint Venturers for the purposes of their operations hereunder to be granted to the Joint Venturers (in such shares as they may agree) on the same conditions (except as herein otherwise provided as to the term thereof) that apply to the mineral lease granted pursuant to subclause (1) of this Clause and the lease or leases shall be so granted under and (to the extent that the Mining Act is not inconsistent with this Agreement) subject to that Act and may be renewed so as to be co-terminous with the mineral lease granted as aforesaid.

(8) The Joint Venturers may from time to time surrender to the State all or any portion or portions (of reasonable size and shape) of the mineral lease or of any mineral claim or mineral lease held by or on behalf of the Joint Venturers for the purposes of their operations hereunder subject to the Joint Venturers having complied with their obligations under Clauses 18, 20 and 21 in respect of that portion or those portions and upon the surrender of any portion or portions of the mineral lease the rental thereunder shall abate in proportion to every square kilometre or residual part of a square kilometre of the mineral lease so surrendered, but there shall be no refund of rental covering any part of a yearly rental already paid after becoming due.

(9) The Joint Venturers shall not be required during the currency of this Agreement to comply with labour conditions imposed by or under the Mining Act with respect to the mineral lease or to any mineral claim or mineral lease held by or, with the consent of the Minister for Mines on behalf, of the Joint Venturers for the purposes of their operations hereunder but this subclause shall not apply to a mineral claim or mineral lease of privately owned land unless the owner has been advised by the Joint Venturers as to the effect of the terms of this Agreement insofar as they relate to mineral claims or mineral leases of privately owned land and has expressly agreed in writing to the Joint Venturers exercising with respect to his land the right of noncompliance with those labour conditions.

(10) Where the Joint Venturers enter or have entered into an agreement with the owner of privately owned land for compensation arising out of their operations or proposed operations on the land, the Joint Venturers will within fourteen (14) days after the date thereof or (in the case of an agreement entered into before the date hereof) after the execution of this Agreement lodge a true copy of the agreement with the Minister for Mines provided that nothing contained in this subclause shall limit the operation of Section 157 of the Mining Act.

9. In the event of the Joint Venturers requiring to secure additional bauxite or bauxite reserves to satisfy their refinery requirements the Joint Venturers may negotiate with persons holding bauxite reserves within the said State and may if agreement is reached with such persons purchase additional bauxite, bauxite reserves or both and refine bauxite obtained from those persons or those bauxite reserves under terms and conditions approved by the State.

Other Ore
Sources.

10. (1) Notwithstanding anything contained or implied in this Agreement or in the mineral lease or in any other lease or any licence granted hereunder or pursuant hereto but subject to subclause (2) of this Clause the State may grant or register in favour of persons other than the Joint Venturers leases and other mining tenements in respect of minerals other than those the subject of the mineral lease and in respect of clay stone soil or gravel.

Right to
Grant
Mining
Tenements
for Other
Minerals.

(2) Except to such persons who are the holders of an existing mining tenement or of rights of occupancy of a temporary reserve granted at the date hereof the State will not grant to or register in favour of persons other than the Joint Venturers any lease or mining tenement if the Minister for Mines determines that the grant or registration would or would be likely unduly to prejudice or interfere with the operations of the Joint Venturers in circumstances where the Joint Venturers would take all reasonable steps to avoid or minimise the prejudice or interference.

Lease of
bulk storage
area and
railway
working
area.

11. (1) Except where the parties hereto, having regard to the requirements of the Fremantle Port Authority and the developments of the area generally, agree that some alternative land be made available to the Joint Venturers on terms to be agreed by the parties, the State will lease to them at a rental and on terms to be agreed for a period or renewed period coterminous with the period or renewed period of the mineral lease all or part of the bulk storage area as the Joint Venturers may require together with such part of the railway working area as the Minister considers practicable.

Lease of
Refinery Site.

(2) The State shall on application by the Joint Venturers cause to be granted to them a lease of such area not being less than eight hundred and ten (810) hectares of Crown land within the area delineated green on the said plan marked "A" as may be reasonable having regard to the Joint Venturers' proposals as finally approved or determined for the purposes of the construction and operation of the refinery together with a buffer zone therefor. Such lease shall contain such terms and conditions as are reasonable having regard to the Joint Venturers' requirements hereunder and in particular shall contain the following provisions—

- (a) the term thereof (unless sooner determined) shall expire on the same date as that on which the term of the mineral lease or any renewal thereof terminates or is determined; and
- (b) the rental payable thereunder shall be one peppercorn per annum payable if and when demanded.

Easements
for Conveyor
Systems or
Pipeline.

12. The State will grant or cause to be granted to the Joint Venturers such easements or licences under over or through Crown land and land owned by the Fremantle Port Authority or any instrumentality of the State or of any municipality as may be necessary to give effect to the

proposals approved or determined under Clause 6 and enable the Joint Venturers to install maintain and operate conveyor systems and pipelines but only to the extent that any such easement or licence does not conflict or unreasonably interfere with existing or planned public works such as water supplies, sewerage, drainage, electricity supplies, roads, railways or port works and operations.

13. The State will ensure that land the subject of the mineral or any other lease or of any licence or easement granted under or pursuant to statute or this Agreement and land of any other tenure (including freehold) used or occupied by the Joint Venturers for any purpose contemplated by this Agreement shall during the currency of this Agreement be and remain zoned so that the operations of the Joint Venturers hereunder may be undertaken and carried out thereon and shall not except as provided by this Agreement be made subject to any such restriction as to its use as would prevent or unreasonably hinder the Joint Venturers in carrying out the operations contemplated by this Agreement whether the restriction be by way of zoning regulation by-law or other exercise of statutory power by the State or any local or other authority. *Zoning.*

14. Except as provided by this Agreement the State will not impose nor permit nor authorise any of its agencies or instrumentalities or any local or other authority to impose any discriminatory taxes rates or charges of any nature on or in respect of the titles property or other assets products materials or services used or produced by or through the Joint Venturers in the conduct of their operations under this Agreement and the State will not take or permit any other authority of the State to take any other discriminatory action whether of a like nature to the foregoing or not that would deprive the Joint Venturers of the full enjoyment of the rights conferred by this Agreement. *No discrimination as to Rates or Otherwise.*

15. (1) Subject to subclause (2) of this Clause the State will ensure that notwithstanding the provisions of any Act of the said State or anything done or purported to be done under any such Act the valuation of all lands (whether of a freehold or leasehold nature) held for the purposes of this Agreement shall for rating purposes be the unimproved value of those lands. *Rating.*

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(2) The provisions of subclause (1) of this clause do not apply to the land appurtenant to a permanent dwelling house occupied for the purposes of a permanent dwelling house nor land upon which there exist any improvements that are used in connection with a commercial undertaking not directly related to the production of bauxite or alumina.

(3) Nothing in subclause (1) of this Clause affects the Joint Venturers' right of election pursuant to Section 533B of the Local Government Act, 1960.

Resumption
of Land.

16. The State agrees that having regard to the particular nature of the industry proposed to be established by the Joint Venturers under this Agreement and subject to the performance by the Joint Venturers of their obligations hereunder the State will not resume or suffer or permit to be resumed by any State instrumentality or by any local or other authority of the said State any estate, right, title or interest in land or improvements thereon held by or acquired by or on behalf of the Joint Venturers for the purpose of their operations under this Agreement the resumption of any of which would unreasonably impede the Joint Venturers' activities nor will the State create or grant or permit or suffer to be created or granted by an instrumentality or authority of the said State as aforesaid any road right of way or easement of any nature or kind whatsoever over or in respect thereof without the consent of the Joint Venturers first having been obtained which consent shall not be arbitrarily or unreasonably withheld.

Other Leases
and Improve-
ment of
Leases.

17. The State will—

- (a) on application of the Joint Venturers made at any time and from time to time grant or cause to be granted to the Joint Venturers such machinery and tailings leases and other leases rights mining tenements easements reserves and licences (including those for clay limestone stone gravel soil timber and other minerals or materials) under the provisions of the Mining Act or the Land Act modified and amended as provided by Clause 4 as may be reasonable having regard to the requirements of the Joint Venturers under this Agreement;

(b) as and when required by the Joint Venturers (but without prejudice to the provisions hereof relating to the proposals referred to in Clause 6) consent where and to the extent that the Minister considers to be reasonably justified to the Joint Venturers making improvements for the purposes of their operations hereunder on the land comprised in any lease granted by the State to the Joint Venturers pursuant to this Agreement but the Joint Venturers will except as otherwise provided herein also obtain any other consents legally required in relation to any such improvements.

18. (1) The Joint Venturers will not cut and remove from any Crown land or State forest any forest produce in excess of those or that reasonably necessary to permit them to conduct their operations under this Agreement and will by means of contour ploughing, concrete or earth sills, diversion channels, settling ponds, drainage or other approved method as the case may require take all reasonable steps to prevent damage by water runoff and for the purposes of this subclause any such Crown land shall be deemed State forest and the Conservator shall have jurisdiction over it accordingly.

Conditions
Relating to
Crown Land.

(2) The Joint Venturers will from time to time as the occasion may require give to the Conservator of Forests on behalf of the State at least six (6) months prior notice of their intention to enter upon any area of State forest or Crown land and to cut and remove forest produce to displace overburden or otherwise affect the nature of the terrain and every such notice shall be accompanied by a map of the area setting out particulars and details of the proposed operation and the Conservator, unless he has good and sufficient reason to the contrary shall grant to the Joint Venturers any permit or licence for those purposes subject to the usual conditions but where the entry is for test purposes only the period of the notice required by this subclause is reduced to thirty (30) days.

(3) The Conservator of Forests may—

(a) before the Joint Venturers commence operations in any area in respect of which notice has been given pursuant to subclause (2) of this Clause cut and remove therefrom any merchantable timber or other forest produce; and

and in meeting those obligations the Joint Venturers will comply with the reasonable requirements of any relevant local authority but the Joint Venturers shall not be required to restore any land to its original contour.

(8) The Joint Venturers will as soon as practical after the date hereof and at their own expense and in consultation with the Conservator establish a trial area or areas not exceeding in the aggregate two (2) hectares for the purpose of investigating the most practical and effective methods of the revegetation of mined areas.

(9) The provisions of this Clause shall not apply to the refinery site, the bulk storage area or the red mud disposal area referred to in Clause 30 (1).

19. (1) The Joint Venturers will as from the commencement of mining operations or from the first day of January, 1977, whichever first occurs pay to the Conservator of Forests on behalf of the State compensation at the rate (subject to the succeeding provisions of this Clause) of six hundred and seventeen dollars (\$617) per hectare for the area of Crown land of which the vegetation has been destroyed by or in the course of the Joint Venturers' mining operations.

Compensa-
tion to
Conservator.

(2) The Joint Venturers will make payments pursuant to subclause (1) of this Clause in advance in the month of January of each year on the basis of the area of Crown land on which it is proposed to destroy the vegetation during the ensuing year and any necessary adjustments in respect of that payment and the area on which the vegetation was in fact destroyed will be made in the month of January next following.

(3) The rate of compensation mentioned in subclause (1) of this Clause is determined having regard to the cost as at the first day of January, 1972, to the Conservator of Forests of the acquisition of one (1) hectare of suitable land and of planting it with trees together with the estimated loss of royalty subsidy or grant and the increased costs of management in respect of each hectare of growing timber so destroyed and the rate shall accordingly be increased or decreased as from the termination of each period of five (5) years calculated from the date of commencement of mining or from the first day of January, 1977, whichever

[1972.

(5) The State having regard to the results of the experimental programme provided by this Clause or such other relevant information as may from time to time be available to it or both may in its discretion determine reasonable measures to be taken by the Joint Venturers at their expense in the conduct of any mining operations or restoration procedures and the Joint Venturers will give effect to every such determination.

(6) The Joint Venturers will not mine or make any use whatever of any part of the land coloured red in the plan marked "C" referred to in the interpretation "mining area" being part of the land in the Helena River catchment area until such time as the State notifies the Joint Venturers that it approves of their mining or otherwise making use of that land or part of it and then only to the extent and subject to any conditions stipulated in the notice.

Products to
be Trans-
ported by
Rail.

22. Subject to the by-laws made under the Government Railways Act, 1904, insofar as those by-laws are not inconsistent with this Agreement, the Joint Venturers will consign at their own risk, and the State will cause the Railways Commission to transport, by rail—

- (a) all the Joint Venturers' requirements of bauxite to the refinery from sites within the mining area that the Commission is prepared to serve;
- (b) all alumina produced from the refinery to the bulk storage area;
- (c) all the Joint Venturers' requirements of caustic soda and fuel oil from the bulk storage area to the refinery; and
- (d) such of the Joint Venturers' requirements of lime which the parties agree are practicable to transport by rail.

Construction of Railways.

23. (1) The Joint Venturers will by notice to the State given within two (2) years after the date on which the last of the proposals referred to in Clause 6 is approved or determined require the State to cause the Railways Commission at the expense of the Joint Venturers to—

- (a) provide either by construction of a separate railway or by conversion to dual gauge and upgrading of the existing Midland Railway, a standard gauge railway extending from and including Millendon Junction to the refinery site;

- (b) construct a standard gauge railway from about mileage 20 on the double dual gauge line of the Millendon Junction to Avon yard section of the Western Australian Government Railways to connect to the Midland Railway at about mileage 20; and
- (c) construct a standard gauge railway from about mileage 29 on the double dual gauge railway of the said Millendon Junction to Avon yard section to a crushing plant site or sites to be agreed by the parties and/or to a suitable loading siding or sidings;

and the Joint Venturers may by further notice to the State given at any time after that hereinbefore referred to in this subclause require that the Railways Commission at the expense of the Joint Venturers construct to any site at which a loading siding is proposed to be located an extension or further extension of the railway referred to in paragraph (c) of this subclause or of any previous extension of that railway and a suitable loading siding or sidings.

(2) The State will on receipt of any notice given pursuant to subclause (1) of this Clause and with all reasonable expedition and in any event within two (2) years after the receipt of the notice cause the Railways Commission to execute the railway construction and or upgrading or both required by the notice.

(3) The construction and upgrading required under this Clause shall be carried out to the specifications of the Railways Commission but in deciding on any such specifications the Railways Commission shall have due regard to the requirements of the Joint Venturers and consult them as to those requirements.

(4) The State will maintain any railway upgraded or constructed pursuant to this Clause (other than for sidings) and at its own expense maintain and service all locomotives brakevans and wagons necessary and used for the purposes of this Agreement and the Joint Venturers will at their expense maintain all sidings.

(5) The provisions of Section 96 of the Public Works Act, 1902, do not apply to any railway constructed pursuant to this Agreement.

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**Requirement in
Rail Trans-
port to be
Notified.**

24. The Joint Venturers will not less than eighteen (18) months before their first requiring the use of rail transport notify the Railways Commission of their requirements in that regard (including expected or provisional annual tonnages to be hauled) in sufficient detail to the satisfaction of the Railways Commission to enable it to make arrangements to meet those requirements and the Joint Venturers shall give such prior notice of any change in their requirements as is reasonable in the circumstances.

Ancillary Rail Facilities.

25. Except as otherwise provided in Clause 23 the Joint Venturers will at their own expense provide and maintain all such sidings shunting loops spurs and other connections as may be required solely for their own operations under this Agreement and will provide and maintain loading and unloading facilities sufficient to meet train operating requirements of the Railways Commission and terminal equipment (including weighing devices) together with personnel sufficient to ensure the proper operation and rate of operation of the loading and unloading facilities and terminal equipment.

Provision of Wagons.

26. (1) The Joint Venturers will provide sufficient wagons including spare wagons (of a design and to a specification approved by the Railways Commission) to carry their requirements of bauxite caustic soda fuel oil and lime (if any) to the refinery and alumina to the bulk storage area and will if so required by the Railways Commission provide the necessary replacements therefor other than such as have been made necessary by the wilful misconduct of the Railways Commission. The Railways Commission shall not (except in the case of emergency and then only to the extent that the Joint Venturers' operations are not thereby affected) use for any purpose other than the foregoing wagons provided pursuant to this subclause and shall clean and render suitable for use by the Joint Venturers any wagons so used.

(2) The Joint Venturers will ensure that all wagons are properly trimmed and are loaded to the prescribed tonneages.

Freight Rates.

27. The Joint Venturers will pay freight in respect of all bauxite caustic soda fuel oil lime and alumina carried in trains operated by the Railways Commission pursuant to this Agreement at the appropriate freight rate set out in

the schedule of rates in the First Schedule by monthly payments in the month next following the month of haulage on the basis of the expected or provisional annual tonnage notified pursuant to Clause 24 subject to annual adjustment after the expiration of each year with regard to the tonnages actually carried and in ascertaining that tonnage railway weighbridge weights or such other method as may be agreed by the parties shall be used but in no event shall allowance be made for moisture in the material carried.

28. (1) If so required by the Joint Venturers the State will at the expense of the Joint Venturers acquire or resume such land as may be required and construct or cause to be constructed any road reasonably required by them to gain access to any land in order to carry out their operations under this Agreement and the alignment and general standard of any such road shall be such as is acceptable to the State.

(2) The Joint Venturers may construct and use private roads within the area of the mineral lease but—

- (a) the plans and specifications for any such road shall be approved in advance by the State and shall where required by the State provide for grade separation at all intersections with public roads and railways;
- (b) the Joint Venturers will—
 - (i) minimise the extent of forest clearing required for road alignments and give to the Conservator of Forests six (6) months prior notice of their intention to build any road;
 - (ii) take full responsibility for and take precautions to prevent the public from using their private roads; and
 - (iii) provide fences and stock barriers wherever necessary.

(3) The Joint Venturers will in respect of every road constructed pursuant to subclause (2) of this Clause that is open to or used by the public for passage with vehicles comply with the provisions of the Road Maintenance (Contribution) Act, 1965.

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 Agreement.

Use of Public
Roads.

29. (1) Subject to any restriction that the State may reasonably impose by way of limitation of speeds or loads or the use of railway crossings the Joint Venturers may use any public roads that may from time to time exist in the area of their operations under this Agreement for the purpose of transporting goods and materials in connection with those operations, but where the Joint Venturers' operations require the use of a public road that is inadequate for the purpose, or result in excessive damage or deterioration of any public road (other than fair wear and tear) the Joint Venturers will pay to the State or local authority concerned (except where and to the extent that the Commissioner of Main Roads or local authority agrees to bear the whole or part of the cost involved) the total cost of any upgrading required or of making good the damage or deterioration.

(2) Where the operations of the Joint Venturers bring about an increase in the conflict of trains and road vehicles at level crossings to such an extent that an improvement in the level of protection requiring the provision of either flashing lights, boom gates or grade separation is considered by the Minister to be warranted following an investigation, the Joint Venturers will pay to the State (except where and to the extent that the Minister agrees to bear the whole or part of the cost involved) the total cost of providing the increased level of protection.

Red Mud
disposal.

30. (1) The State shall on application by the Joint Venturers cause to be granted to them such area of Crown land within the area delineated red on the said plan marked "A" as may be reasonable having regard to the Joint Venturers' proposals as finally approved or determined for the purposes of construction of red mud ponds and red mud disposal hereunder. Such lease shall contain such terms and conditions as are reasonable having regard to the Joint Venturers' requirements hereunder and in particular shall contain the following provisions—

- (a) the term thereof (unless sooner determined) shall expire on the same date as that on which the term of the mineral lease or any renewal thereof terminates or is determined; and
- (b) the rental payable thereunder shall be one peppercorn per annum payable if and when demanded.

(2) The Joint Venturers will submit sufficient details pursuant to subclause (1) of Clause 6 of their red mud disposal method and procedures and will provide all necessary information to enable the Minister to be satisfied that—

- (a) all red mud produced at the refinery will be confined to the land mentioned in subclause (1) of this Clause;

- (b) all red mud and associated liquids will be contained in an impermeable barrier of a design to be approved by the Minister; and
- (c) provision is made for the restoration or reclamation of the land so used as provided by subclause (3) of this Clause and by Clause 31.

(3) The Joint Venturers will design each individual red mud disposal area within the land mentioned in subclause (1) of this Clause with a view to the progressive establishment of its productive agricultural, light industrial or other use in keeping with its locality and will within two (2) years after the production date submit to the Minister proposals in that regard giving—

- (a) drawings and details of a typical individual red mud disposal area showing the manner in which the Joint Venturers propose to restore or reclaim such an area and the drawings shall include particulars of soil cover, surface drainage, surface contour and vegetation; and
- (b) comprehensive drawings of the land mentioned in subclause (1) of this Clause showing—
 - (i) the proposed spatial arrangements of the individual red mud disposal areas within the total red mud disposal area;
 - (ii) the order of development of the several individual areas; and
 - (iii) sufficient details (including contour lines, drainage pattern, soil cover and vegetation of the proposed surface of the total disposal area after filling and restoration) to satisfy the Minister that the restored disposal area will have a pleasing contour and appearance, be secure against erosion, be capable of being put to subsequent productive use and be acceptable to the relevant local authority;

and the provisions of Clause 6 relating to the consideration of proposals by the Minister apply with such adaptations as may be necessary to proposals submitted under this subclause.

(4) The Joint Venturers will—

- (a) make provision to the satisfaction of the Minister for the monitoring of ground waters beneath and adjacent to each individual red mud disposal area;

33. The Joint Venturers will dispose of all waste materials other than red mud generated by them within the land delineated red on the said plan marked 'A' in such a manner as to prevent the pollution of rivers ground water and underground water and will comply with any reasonable direction that the Minister may give with regard to any such waste materials.

Disposal of Other Waste Materials.

34. The Joint Venturers will drain the refinery site and related facilities and dispose of the drainage in accordance with plans and specifications submitted by them to and approved by the Minister.

Drainage.

35. (1) The Joint Venturers will give to the State not less than twelve (12) months notice of their first requiring water supplies which are estimated to be fourteen thousand (14,000) cubic metres daily of which seven thousand (7,000) cubic metres shall be potable. Investigations by the State have established the existence of a subterranean water source or sources in the general vicinity of the refinery site from which the Joint Venturers' water requirements might be supplied. In order to investigate the availability and suitability of the Joint Venturers' water requirements from a subterranean source or sources within the refinery site or from such other site source or sources as may be approved by the State which approval shall not unreasonably be withheld, the Joint Venturers will employ experienced ground water consultants and establish such bores as the parties agree are necessary for the purpose and supply to the State a copy of the consultants' report and such other details of the investigations as the State may require or if both parties agree the State will conduct the investigations at the Joint Venturers' cost.

Water.

(2) If the investigations mentioned in subclause (1) of this Clause establish the availability of suitable subterranean sources, the State will grant to the Joint Venturers a licence to draw water from certain of those sources up to a maximum of fourteen thousand (14,000) cubic metres daily, but may impose a limit on the amount that may be taken and may from time to time stipulate the amount that may be taken, even though the stipulation has the effect of reducing any such limit. The State may revoke the licence subject to six (6) months notice at any time without compensation if the State considers it would be desirable for water conservation purposes, water management purposes or both

that sources of water licensed to the Joint Venturers be controlled and operated by the State. In the event of the State assuming control and operation of such sources of water the Joint Venturers' water requirements up to fourteen thousand (14,000) cubic metres per day, inclusive of seven thousand (7,000) cubic metres of potable water, (to the extent that such water is available) will be supplied by the State at a fair price to be negotiated, having regard to the capital costs already incurred and the operating costs being incurred by the Joint Venturers in obtaining water pursuant to the provisions of this Agreement at the time of the revocation of the licence and to all other relevant matters.

(3) Subject to the provisions of subclause (1) of this Clause if at any time the Joint Venturers' reasonable water requirements cannot be met from sources then available, the State will supply to the Joint Venturers from the nearest practicable economic source potable water for their operations on the refinery site in quantities not exceeding seven thousand (7,000) cubic metres daily subject to the Joint Venturers paying to the State an amount sufficient to enable the State to construct a pipeline and ancillary works of a size appropriate for the supply of such a daily quantity.

(4) The price to be paid to the State by the Joint Venturers for water supplied by the State pursuant to subclause (3) of this Clause shall be at a rate equivalent to that ruling from time to time for water supplied for industrial purposes by the Metropolitan Water Supply Board pursuant to the provisions of the Metropolitan Water Supply Sewerage and Drainage Act, 1909.

(5) Subject to the conduct of adequate investigations on behalf of the Joint Venturers by an experienced consultant whose report will be submitted by them to the State, the State will issue a licence to the Joint Venturers for the development of a water supply from an agreed source near the crushing and loading sites and the water used from that source—

- (a) will (unless otherwise agreed) be limited to requirements for boring blasting dust suppression and other like minor uses up to a maximum of nine hundred and ten (910) cubic metres in any one day; and
- (b) will not be used for sluicing or other hydraulic mining methods.

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 Agreement.

(6) Any reference in 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 apply to any water source developed for the purpose of the Joint Venturers under this Agreement.

(7) The Joint Venturers will so far as is reasonably practicable recirculate on the refinery site the non-saline water used for cooling and processing purposes there.

36. The State will cause the State Electricity Commission within two (2) years of any request in writing from the Joint Venturers to supply fifty (50) cycle electric power in such quantities and under the same terms and conditions as the Commission would be prepared to supply electric power to any other consumer with similar technical and general requirements for electric power in the same areas. Electricity.

37. (1) The Joint Venturers are authorised to generate electricity at the refinery site and at the crushing and loading sites for their own use there as provided by subsection (3) of Section 7 of the Electricity Act, 1945, but electricity so generated shall not be sold to any other person or be transmitted outside any of those sites unless the State Electricity Commission having determined that supply considerations warrant it approves of the power being so transmitted in which event the power line used for the transmission and its technical details shall be such as are approved by the Commission. Electricity Generated by Joint Venturers.

(2) Electricity generated pursuant to subclause (1) of this Clause may be used for the operation of any plant on the refinery site and the crushing and loading sites as the case may be but the Joint Venturers will not without the prior approval of the Commission use any power so generated at any time during which their system is inter-connected with the State Electricity Commission's power system there and where that approval is given will comply with any operating requirements of the Commission to which its approval may be subject.

38. (1) The State will in accordance with the proposals as finally approved or determined under Clause 6 cause the Fremantle Port Authority to construct a wharf in the Fremantle Outer Harbour other than by way of an extension of the Fremantle Port Authority's proposed bulk grain jetty and in such suitable location as may be agreed. Wharf.

(2) The Joint Venturers will at their expense install on the wharf a shiploader and conveyor capable of loading alumina into ships at a rated capacity of three thousand (3,000) tonnes per hour and a pipeline in accordance with the proposals as finally approved or determined.

(3) The State will cause the Fremantle Port Authority to grant to the Joint Venturers such licences or easements in respect of the wharf as may be necessary or required for the purposes of their operations under this Agreement.

(4) The Joint Venturers shall have access to and over the wharf and approach jetty at all reasonable times for the purpose of installing and testing the shiploader and other facilities and thereafter to and over the wharf and approach jetty for the purposes of their operations under this Agreement.

(5) The State will cause the Fremantle Port Authority at the Authority's expense during the currency of this Agreement to maintain the wharf in good order and condition and operate the wharf so as to enable the Joint Venturers to conduct their operations.

(6) The Joint Venturers may from time to time request, and in that event the State will cause, the Fremantle Port Authority during such period within the currency of this Agreement as the Joint Venturers may request to maintain the shiploader and other facilities in good order and condition or to operate them or both so as to enable the Joint Venturers to conduct their operations; and during any period in which the Fremantle Port Authority is required to maintain the shiploader or other facilities or all of them the cost of any maintenance (including replacements) shall be borne, in the first instance, by the Authority, but all those costs together with all costs of operating the facilities incurred by the Authority shall be recovered by it by way of the handling charges provided by this Agreement.

(7) The Joint Venturers will in relation to their bulk cargoes that are shipped from or discharged upon over or under the wharf, pay to the Fremantle Port Authority wharfage charges on all outward bulk cargoes at a rate equivalent to that prescribed from time to time in the Fremantle Port Authority Regulations for goods wholly manufactured in the said State (which at the date of this

Agreement is thirty nine decimal three six eight (39.368) cents per tonne) and on inward bulk cargoes at a rate equivalent to that prescribed from time to time in those Regulations for materials in crude form imported for the manufacture of artificial manures and acids (which at the date of this Agreement is twenty nine decimal five two six (29.526) cents per tonne) and where applicable will further pay to the Fremantle Port Authority such handling charges as are incurred by it in the operation and maintenance of the shiploader and other facilities as provided for by sub-clause (6) of this Clause but handling charges shall not be payable for inward bulk cargoes discharged through pipelines.

(8) The wharfage charges in respect of inward and outward bulk cargoes shall not be varied unless the appropriate rates prescribed in the Fremantle Port Authority Regulations for like commodities are increased or decreased as the case may be and in such event the wharfage charges will be proportionately increased or as the case may be decreased.

(9) Charges against ships into which the outward bulk cargoes of the Joint Venturers are loaded or from which their inward bulk cargoes are discharged shall be levied at rates not in excess of the rates prescribed generally in the Fremantle Port Authority Regulations from time to time for ships using the Port, for Tonnage Rates and Pilotage and in respect of any other services rendered by the Fremantle Port Authority.

(10) Except as provided by this Clause no charges or dues (except for services actually rendered at the request of the Joint Venturers) shall be levied by the Fremantle Port Authority on outward and inward cargoes belonging to the Joint Venturers or consigned to or by them and shipped from or discharged upon, over or under the wharf.

(11) The parties recognise that to ensure the continuity of the operation of the Joint Venturers' plant and the adequacy of the bulk storage facilities a regular shipping programme for the Joint Venturers' inward and outward cargoes is vital, and the State will cause the Fremantle Port Authority to reserve to the Joint Venturers preference in the berthing of ships at the wharf to load or discharge the Joint Venturers' outward or inward bulk cargoes within reasonable limits of any predetermined shipping programme but to the extent that the wharf is not so required the Fremantle Port Authority may use the wharf for the berthing of other ships and the handling of other cargoes but

only to the extent that such other usage does not unduly or unreasonably affect that preference or unduly interfere with the Joint Venturers' operations.

(12) The Joint Venturers may if the use of the ship-loader and other facilities does not unduly interfere with their operations permit the shiploader and other facilities to be used by others for the handling of cargoes not incompatible with the Joint Venturers' bulk cargoes upon such terms and conditions, including charges, as shall from time to time be determined by the Fremantle Port Authority and any charges recovered shall be allocated between the Joint Venturers and the Fremantle Port Authority in such proportions as they may agree.

Environ-
mental
Protection.

39. (1) Nothing in this Agreement shall be construed as exempting the Joint Venturers from compliance with any requirement in connection with protection of the environment arising out of or incidental to the operations of the Joint Venturers 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 for the time being in force.

(2) The Joint Venturers will not carry out any operations nor erect any structures nor clear nor construct any roads within the boundaries of the Avon Class A Reserves 30191 or 30192 nor without the consent of the Minister within any other reserve created under the Land Act in the mining area and the State may in its discretion prohibit any mining or ore transportation operations that are likely to threaten the natural state of Walunga National Park.

(3) The Minister and where appropriate the arbitrators or umpire as the case may be, shall, in approving or determining proposals made pursuant to Clauses 6 (1) and 7 (3) give effect (so far as the Minister the arbitrators or the umpire as the case may be considers practicable) to the report of the Environmental Protection Authority dated the 12th day of October 1972 and to its recommendations contained in that report which recommendations are summarised in the Third Schedule.

Compliance
with Acts
Relating to
Water
Reserves.

40. The Joint Venturers will at all times comply with and observe the provisions of the Metropolitan Water Supply, Sewerage and Drainage Act, 1909, the Country Water Supply Act, 1947; the Rights in Water and Irrigation Act, 1914 and all other Acts, regulations and by-laws for the time being

having application to any water reserve or catchment area within the mining area and upon any land used by them in their operations including the refinery site and red mud disposal areas and nothing in this Agreement shall be construed so as to derogate from the provisions of those Acts, regulations or by-laws or their application as mentioned in this subclause.

41. The Joint Venturers will—

Use of Local
 Labour and
 Materials.

- (a) as far as reasonably and economically practicable use the services of engineers, surveyors, architects, professional consultants and labour resident and available within the said State and give preference to Western Australian suppliers manufacturers and contractors in the placement of orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere; and
- (b) in calling 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 quote or otherwise be properly considered for such works materials plant equipment or supplies.

42. The Joint Venturers will from time to time make all necessary applications to the Commonwealth or Commonwealth constituted agency, authority or instrumentality that may be concerned for the grant to the Joint Venturers of any licence required under Commonwealth law for the export of alumina or bauxite.

Common-
 wealth
 Consent.

43. (1) Subject to any increase or decrease as provided by subclause (2) of this Clause the Joint Venturers will pay to the State a royalty of twenty five decimal eight three five two (25.8352) cents per dry tonne on all alumina produced at the refinery during the period expiring at the end of seven (7) years from the production date.

Royalties
 on Alumina
 during First
 Seven Year
 Period.

(2) The royalty mentioned in subclause (1) of this Clause shall increase or decrease proportionately to the increase or decrease in the mean quarterly world selling price of aluminium above or below five hundred and sixteen dollars and seventy cents (\$516.70) per dry tonne and for the purposes of this subclause the mean quarterly world selling price per tonne of aluminium for any quarter is that provided by subclause (4) of Clause 8.

Agreement.

(3) During the period referred to in subclause (1) of this Clause the Joint Venturers will pay to the State a royalty of forty nine decimal two one (49.21) cents per dry tonne on all special grade bauxite mined by the Joint Venturers within the areas of the mineral lease.

(4) In addition to, and without affecting, the royalties payable pursuant to subclauses (1) and (3) of this Clause the Joint Venturers will, in the event of the annual rated capacity of the refinery being expanded by an increment of not less than three hundred thousand (300,000) tonnes in excess of the annual rated capacity of eight hundred thousand (800,000) tonnes, pay to the State in respect of the first one million two hundred thousand (1,200,000) tonnes of alumina produced at the refinery—

- (a) during a period commencing on the date on which the regular production of alumina commences at the expanded refinery; and
- (b) during a period commencing on the fourth anniversary of that date

a royalty of sixty three decimal nine seven three (63.973) cents per tonne payable in each case within thirty (30) days after the date on which that tonnage is attained in the aggregate; but the foregoing provisions of this subclause shall not take effect in respect of either period mentioned in paragraphs (a) and (b) of this subclause if prior to the commencement of the period the Joint Venturers have elected to make and have made a donation of not less than five hundred thousand dollars (\$500,000) to a public hospital in the said State or a hospital in the said State which is carried on by a society or association otherwise than for the purposes of profit or gain to the individual members of that society or association.

(5) Notwithstanding the provisions of subclauses (1) and (3) but without affecting the provisions of subclause (4) of this Clause or any of them if the Joint Venturers satisfy the Minister for Mines that any tonnage of alumina produced by them at the refinery was so produced from bauxite mined on and recovered from privately owned land in respect of which the mineral rights are vested in a person other than the Crown and royalty has been paid to that person in respect of the bauxite at a rate not less than that payable to the State then the State will repay to the Joint Venturers the amount of any royalties paid or (as the case may require) will remit the amount of the royalties otherwise payable in respect of that tonnage.

Smelter.

48. (1) The Joint Venturers shall not later than five (5) years after the production date undertake to investigate the technical and economic feasibility of establishing a smelter in the State of Western Australia and from time to time review the matter and when requested by the Minister but not more than once in every twelve (12) months to inform the State fully in writing as to the progress and results of such investigations.

(2) The State may if it so requires also undertake the studies mentioned in subclause (1) of this Clause and for that purpose the Joint Venturers will provide the State with such information as it may reasonably require but the Joint Venturers will not be obliged to supply technical information of a confidential nature with respect to processes that have been developed by the Joint Venturers or any associated company or acquired from other sources and that is not generally available to the aluminium industry, or financial and economic information of a confidential nature that, if disclosed, could unduly prejudice the contractual or commercial arrangements between the Joint Venturers and third parties.

(3) If the studies undertaken under subclause (1) of this Clause show that in the circumstances then applying to the Joint Venturers a smelter is both technically and economically practicable and competitive on world markets then the Joint Venturers will establish a smelter and have it operating at a capacity and within a time to be agreed.

(4) If the Joint Venturers are unwilling or fail to establish the smelter as provided in subclause (3) of this Clause the State may negotiate with any one third party to establish a smelter on terms and conditions not more favourable on the whole to the third party than the terms it has offered to the Joint Venturers and in that event the Joint Venturers will if so required and if it is practicable to do so having regard to their existing contracts for sale of alumina and subject to subclause (5) of this Clause supply the third party's requirements for alumina from the existing plant for a reasonable period and at a reasonable price which will have regard to the prevailing free world prices from time to time for sales between parties at arms length but not including prices for alumina sold or offered for sale at distressed prices or at prices resulting from dumping or subsidising.

(5) Where, in order to meet the requirements for alumina of a third party, pursuant to subclause (4) of this Clause, the Joint Venturers are obliged to install additional plant to provide a greater capacity or to hold more reserves

of economically extractable bauxite than would otherwise be required for their own needs, or both, the reasonable price of alumina shall, for the purposes of that subclause, be such as will (after meeting depreciation and all operating costs) provide a reasonable return on the capital invested in constructing the additional plant or in providing those reserves; and, in any event, the Joint Venturers shall not be required to supply the third party with an annual quantity of alumina greater than one hundred thousand (100,000) tonnes during the first year after the establishment of that party's smelter and thereafter more than such progressively increasing annual quantities as will provide two hundred thousand (200,000) tonnes during the fifth and every succeeding year during the continuance of this Agreement after the establishment of the smelter.

49. (1) This Agreement is deemed to be made subject to Delays. any delays in the performance of obligations under this Agreement and to the temporary suspension of continuing obligations hereunder that may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including delays or any such temporary suspension as aforesaid caused by or arising from Act of God *force majeure* floods storms tempests washaways fire (unless caused by the actual fault or privity of the Joint Venturers) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential material reasonable failure to secure contractors delays of contractors and inability to profitably sell alumina or factors due to overall world economic conditions or factors that could not reasonably have been foreseen but the party whose performance of obligations is affected by any of those causes will minimise the effect of them as soon as may be practicable after their occurrence.

(2) On the happening of any event specified in this Clause that in the opinion of the Joint Venturers may delay the performance by them of an obligation that under this Agreement is to be performed by them within a specified time the Joint Venturers will promptly give notice to the Minister of the event and likely delay and the Minister will thereupon grant such extension of time for the performance of the obligation as shall in all the circumstances be fair and reasonable and where the Joint Venturers object to the decision of the Minister as to what is a fair and reasonable extension the matter will be referred to arbitration hereunder.

Assignment. 50. (1) Subject to the provisions of this Clause—

- (a) the Joint Venturers or any of them may at any time assign mortgage charge sublet or dispose of to an associated company as of right and to any other company or person with the consent in writing of the Minister the whole or any part of their or its rights (including their or its rights to or as the holder of any lease licence easement grant or other title) and obligations hereunder; and
- (b) the Joint Venturers may at any time 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 that are or may be conferred on them hereunder;

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

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this Clause but subject to the provisions of subclause (3) of this Clause the Joint Venturers and each of them will at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on their part contained herein and in any lease licence easement grant or other title the subject of an assignment under subclause (1) aforesaid but the Minister may however agree to release the Joint Venturers or any of them from any such liability where he considers such release will not be contrary to the interests of the State.

(3) Where any agreement entered into by the Joint Venturers that is not inconsistent with the terms of this Agreement with some other company or person results in that other company or person discharging all or any of the obligations undertaken by the Joint Venturers under this Agreement (including, without prejudice to the generality

of this provision, the obligation to construct and operate a refinery as imposed by subclause (1) of Clause 7) or renders it unnecessary for the Joint Venturers to discharge any obligations undertaken by them hereunder the Minister will discharge or temporarily relieve the Joint Venturers from such part of their obligations as is reasonable having regard to the extent of and the period during which the other company or person actually effects the discharge of those obligations.

51. (1) In any of the following events namely if the Joint Venturers make default in the due performance or observance of any of the covenants or obligations to the State herein or in any lease sublease licence or other title or document granted or assigned under this Agreement on their part to be performed or observed or abandon or repudiate their operations under this Agreement and the default has not been remedied or the operations resumed within a period of one hundred and eighty (180) days after notice as provided in subclause (2) of this Clause has been given by the State (or if the alleged default abandonment or repudiation is contested by the Joint Venturers and within sixty (60) days after such a notice is submitted by the Joint Venturers to arbitration then within a reasonable time fixed by the arbitration award but not less than ninety (90) days after the making of the arbitration award where the question is decided against the Joint Venturers the arbitrator finding that there was a *bona fide* dispute and that the Joint Venturers had not been dilatory in pursuing the arbitration) or if the Joint Venturers go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Joint Venturers determine this Agreement and the rights of the Joint Venturers hereunder and under any lease mining tenement licence easement or right granted hereunder or pursuant hereto or if the Joint Venturers surrender the entire mineral lease as permitted under Clause 8 then this Agreement and the rights of the Joint Venturers hereunder and under any lease mining tenement licence easement or right granted hereunder or pursuant hereto shall thereupon determine but if the default has not been remedied after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Joint Venturers and to make use of all plant machinery equipment and installations thereon)

Determina-
tion of
Agreement.

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 Agreement.

and the costs and expenses incurred by the State in remedying the default or causing it to be remedied shall be a debt payable by the Joint Venturers to the State on demand.

(2) The notice to be given by the State in terms of and first mentioned in subclause (1) of this Clause shall specify—

(a) the nature of the default or other grounds so entitling the State to exercise the right of determination; and

(b) where appropriate or known to the State the party or parties responsible therefor;

and shall be given to the Joint Venturers and to all assignees, mortgagees, chargees and disponees for the time being of the rights of the Joint Venturers or any of them to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of subclause (1) of Clause 50 and whose name and address for service of notice has previously been notified to the State by the Joint Venturers or by any such assignee, mortgagee, chargee, or disponee.

(3) 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 50.

Effect of
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tion of
Agreement.

52. On the cessation or determination of this Agreement—

(a) the rights of the Joint Venturers to in or under this Agreement and the rights of the Joint Venturers or of any assignee of them or any mortgagees to in or under the mineral lease licence easement or right granted hereunder or pursuant hereto will except as otherwise agreed by the Minister 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 will forthwith pay to the State all moneys that may then have become payable or accrued due;

- (e) the Joint Venturers shall remove all loading unloading or conveying equipment installed by them on the Joint Venturers' wharf and make good the wharf to the satisfaction of the Minister but where the Fremantle Port Authority desires to purchase that equipment the Joint Venturers will sell it to the Fremantle Port Authority at a fair valuation to be agreed between the parties.

Indemnity.

Variation.

(2) Where in the opinion of the Minister an agreement made pursuant to subclause (1) of this Clause would constitute a material or substantial alteration of the rights or obligations of either party hereto, the agreement shall contain a provision to that effect and the Minister will cause that agreement to be laid before each House of Parliament within the twelve (12) sitting days next following its execution.

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 Agreement.

(3) If either House does not pass a resolution disallowing the agreement, within twelve (12) sitting days of that House after the agreement has been laid before it, the agreement shall have effect, from and after the last day on which the agreement might have been disallowed.

Power to
Extend
Periods.

55. The Minister may whether or not the period to be extended has expired or the date to be varied has passed 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.

Arbitration.

56. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Agreement or any such amendment variation or addition or as to the rights duties or liabilities of either party thereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to 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 PROVIDED THAT except where this Agreement makes express provision for arbitration hereunder this Clause does not apply to any case where the State the Minister or any Minister is by this Agreement given either expressly or impliedly a discretionary power.

(2) The arbitrator, arbitrators or umpire (as the case may be) of any submission to arbitration hereunder is hereby empowered upon the application of either of the parties hereto to grant 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 in favour of the Joint Venturers may in the name of the Minister grant any further extension or variation for that purpose.

Notices.

57. 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 pre-paid post to the Joint Venturers at their nominated office for the time being in the said State and by the Joint Venturers if signed on their behalf by a director, manager, or secretary of one of them or by any person or persons authorised by them in that behalf or by their solicitors (which solicitors have been notified to the State from time to time) and forwarded by pre-paid post to the Minister and every 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.

58. (1) The State will exempt from any stamp duty which but for the operation of this Clause would or might be chargeable—

Exemption
from Stamp
Duty.

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Joint Venturers or any permitted assignee of them any tenement lease easement licence or other right or interest;
- (c) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment made in conformity with the provisions of subclause (1) of Clause 50; and
- (d) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment to or in favour of the Joint Venturers or an associated company of any interest right obligation power function or authority that has already been the subject of an assignment sublease disposition or appointment executed pursuant to subclause (1) of Clause 50.

(2) This Clause does not apply to any instrument or other document executed or made more than seven (7) years from the date hereof.

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

FIRST SCHEDULE.

1. Rates per tonne kilometre for bauxite carried on trains operating between agreed sites and the refinery and alumina on trains operating between the refinery and Kwinana backloading with any of caustic soda fuel oil and lime from Kwinana to the refinery, from Monday to Saturday of each week. Should Sunday working be required the Joint Venturers shall meet the additional costs involved.

BAUXITE:

(i) Agreed sites to the refinery:

Total tonnes of bauxite per year (millions)	Cents per tonne Kilometre
Over 0.5 and up to 1	0.764
1 and up to 2	0.703
2 and up to 3	0.642
3 and up to 4	0.581
4 and up to 5	0.550
5 and up to 6	0.520

ALUMINA CAUSTIC SODA FUEL OIL AND LIME:

(ii) Alumina from the refinery to the bulk storage area at Kwinana and backloading with caustic soda fuel oil and lime:

Total tonnes of alumina caustic soda fuel oil and lime per year (millions)	Cents per tonne Kilometre
Up to 0.5	0.917
0.5 and up to 1.0	0.764
1.0 and up to 1.5	0.734
1.5 and up to 2.0	0.703
2.0 and up to 2.5	0.673
2.5 and up to 3.0	0.642

The rates for freight set out in this Schedule have been calculated on the basis of the total train time not exceeding two and one-half hours at each of the loading terminal and at the unloading terminal for bauxite trains and three hours at the refinery and two hours at the bulk storage area for trains carrying any alumina caustic soda fuel oil

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or lime. If such times are not regularly adhered to by the Joint Venturers the Railways Commission reserves the right to review the freight rates. The rates for freight are based on wagons being loaded to capacity and shall be subject to the minimum load per train being not less than:—

Bauxite	....	....	....	75.2 tonnes per wagon
Alumina	....	....	....	76.2 tonnes per wagon
Caustic Soda	....	....	....	67.1 tonnes per wagon
Fuel Oil	....	....	....	75.2 tonnes per wagon
Lime	....	....	....	71.1 tonnes per wagon

2. The rates for freight set out in this Schedule are based on costs prevailing at the 1st September, 1972 and shall be adjusted half yearly on the first days of January and July with the new rates becoming effective on and from those dates in accordance with the following formula:—

$$F1 = F + \left[.45F \left\{ .80 \left\{ \frac{HR1 - HR}{HR} \right\} + .05 \left\{ \frac{D1 - D}{D} \right\} + .15 \left\{ \frac{SR1 - SR}{SR} \right\} \right\} \right]$$

WHERE:

- (i) F1 = New freight rate.
- (ii) F = The freight rate which was payable as at 1st September, 1972.
- (iii) HR = The average hourly rate payable as at 1st September, 1972.
- (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 September, 1972.
- (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 and Steel
Proprietary Limited as at 1st September,
1972.

(viii) SR1 = The price of heavy steel rails per tonne c.i.f. Fremantle ascertained as aforementioned.

The rates applicable at the 1st September, 1972 are:—

					Per Hour
1st class driver	....	....	....	....	\$2.2725
1st class guard	....	....	....	....	\$1.8588
Track repairer	....	....	....	....	\$1.4838
					<hr/>
					\$5.6151
Average hourly rate	....	....	....		\$1.8717
Price of distillate per litre	....	....			4.707 cents.
Price of heavy steel rails per tonne					
c.i.f. Port of Fremantle	....	....			\$118.10

The escalation formula shall be subject to review on the 1st January, 1978, and thereafter at five yearly intervals.

3. Bauxite, alumina caustic soda fuel oil and lime shall be carried at the risk of the Joint Venturers.

SECOND SCHEDULE.

WESTERN AUSTRALIA.

MINING ACT, 1904.

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ELIZABETH THE SECOND by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith: TO ALL 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 Hancock Prospecting Pty. Ltd.,

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

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 bauxite) on or below the surface of the demised lands 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 lands for the purpose of searching for and obtaining petroleum or other minerals in any part of the lands under the provisions of the Petroleum Act, 1967, or the Mining Act.

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 this day of

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THE SCHEDULE ABOVE REFERRED TO (plan of lease)

THIRD SCHEDULE.

Pursuant to environmental considerations within this Agreement, and having noted existing applicable Clauses, the Environmental Protection Authority summarises the recommendations included in its report to the Honourable J. T. Tonkin, Premier of Western Australia dated October 12, 1972.

1. The refinery stacks to be located in the western one-third of the refinery site.
2. A detailed groundwater investigation of the area around the refinery site be initiated, and the red mud ponds be located east of the groundwater divide so delineated.

3. Recently initiated investigations by the Public Works Department into the physical properties of red mud effluent be continued. Precautions be taken, including sealing of the red mud ponds to the satisfaction of the Public Works Department to avoid leakage of effluent into the groundwater. Any leakage which does occur should be controlled to the satisfaction of the Public Works Department.
4. A series of bores from which samples may be drawn to monitor leakage, be located around the red mud areas to the satisfaction of the Public Works Department.
5. Process water for the refinery be drawn from around the red mud ponds in such a way as to minimize the possibility of leakage from the pits entering the main groundwater flow.
6. Due consideration be given to minimizing interference with State Forest 65 in regard to road access to the refinery site from the west.
7. At least one sample area be set aside for study, which is of a size commensurate with a mined area, and be representative of appropriate mined areas;
 - (a) to assess adequately the effect of bauxite removal on the hydrological cycle and particularly water salinity;
 - (b) separately for reafforestation or rehabilitation.
8. To assess the dispersal of emissions from the refinery meteorological observations be initiated at the refinery site and continued on a permanent basis under the direction of an appropriate authority.
9. The Environmental Protection Authority considers it appropriate that the bauxite from areas south of the Avon Valley will be transported by rail under Clause 22 of the Agreement and that the main highways will thereby be largely relieved of the competitive use by heavy transport.
10. Wherever in the Agreement the terms "environment" and "pollution" occur, they shall be interpreted as in the Environmental Protection Act, 1971.

