NICKEL REFINERY (WESTERN MINING CORPORATION LIMITED) AGREEMENT.

No. 76 of 1970.

AN ACT to amend the Nickel Refinery (Western Mining Corporation Limited) Agreement Act, 1968.

[*Assented to 18th November, 1970.*]

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:—

Short title and citation.

1. (1) This Act may be cited as the *Nickel Refinery (Western Mining Corporation Limited) Agreement Act Amendment Act, 1970.*

(2) In this Act the Nickel Refinery (Western Mining Corporation Limited) Agreement Act, 1968 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Nickel Refinery (Western Mining Corporation Limited) Agreement Act, 1968-1970.

Amendment to s. 2. (Interpretation.)

2. Section 2 of the principal Act is amended by adding after the word "time", being the last word in the section, a passage as follows—

";

"the supplemental agreement" means the agreement a copy of which is set forth in the Second Schedule to this Act" .

Addition of s. 3A.

3. The principal Act is amended by adding after section 3 a section as follows—

Approval of supplemental agreement.

3A. The supplemental agreement is approved, and subject to its provisions shall operate and take effect. .

Amendment to heading.

4. The heading "THE SCHEDULE." to the principal Act is deleted and the following headings are substituted—

THE SCHEDULES.

FIRST SCHEDULE.

Addition of Second Schedule.

5. The principal Act is amended by adding at the end thereof, the following Schedule—

SECOND SCHEDULE.

Date of Execution Parties and Principal Agreement.

AN AGREEMENT made this 4th day of November One thousand nine hundred and seventy between the HONOURABLE SIR DAVID BRAND, K.C.M.G., M.L.A. Premier and Treasurer of the State of Western Australia acting for and on behalf of the Government of the said State and the instrumentalities thereof from time to time (herein referred to as "the State") of the one part and WESTERN MINING CORPORATION LIMITED a company duly incorporated in the State of Victoria and having its principal office in that State at 360 Collins Street, Melbourne and having its registered office in the State of Western Australia at 191 Great Eastern Highway, Belmont (herein referred to as "the Corporation" which term shall where the context so admits or requires extend to and include the Corporation and also its successors and assigns) of the other part SUPPLEMENTAL to the agreement (herein referred to as "the principal agreement") between the same parties ratified by the Nickel Refinery (Western Mining Corporation Limited) Agreement Act 1968 (Act No. 24 of 1968) relating to the establishment of a nickel refinery at Kwinana in the State of Western Australia and other matters.

Recitals.

WHEREAS—

(1) By sub-clause (2) of Clause 4 of the principal agreement the Corporation agreed to continue to investigate the feasibility of establishing a smelter at Kambalda or Kalgoorlie and when and if it considered the establishment of such a smelter to be economically viable so to notify the State and as soon as possible thereafter to erect and establish on the smelter site therein referred to a smelter having such capacity to produce matte or nickel metal as its investigations showed to be desirable.

(2) The Corporation has notified the State that it intends to establish a smelter at Kalgoorlie and has requested the State to make available and sell and grant to it pursuant to sub-clause (13) of Clause 3 of the principal agreement the smelter site herein defined for the price and upon the terms and conditions herein set out.

(3) The State is aware that the Corporation needs to develop an adequate reserve of nickel ore so as to maintain the operations of the smelter hereinafter mentioned on a long term basis and that the Corporation also needs to be able to plan a reasonable flow of nickel ore or nickel concentrates to the smelter either from its own production or from other sources and accordingly in order to assist the Corporation in these respects the State has agreed to grant the Corporation the rights to apply for additional mineral leases as hereinafter provided.

(4) The parties mutually desire to add to and amend the principal agreement so as to give the Corporation rights of occupancy over a further area of land and also as to provide for the granting of additional rights to and the undertaking of additional obligations by the Corporation as herein provided.

NOW THIS AGREEMENT WITNESSETH as follows—

Rights under principal agreement unaffected.

1. Except as hereinafter provided nothing in this Agreement shall affect the rights or obligations of either party arising under the principal agreement.

Definitions.

2. (1) In this Agreement unless inconsistent with the context the following words and phrases have the meanings hereby respectively assigned to them namely—

"ancillary or associated operation" means any enterprise or undertaking (other than the establishment and operation of the smelter) which the Corporation shall carry on in connection, conjunction or association with the smelter and includes the establishment and operation of a processing works for any purpose other than that for which the smelter is established a plant for the manufacture of sulphuric acid or elemental sulphur and an electric power generating plant and also the construction and erection of all buildings and other structures (excluding living accommodation) to be used or occupied for the purposes of or in connection with the smelter or any of such other enterprises or undertakings;

"commencement date" means the date on which the ratifying Act comes into operation;

"mining area" means all those pieces of land containing two hundred and forty-six (246) square miles or thereabouts situate in what is known to the parties as the "Ora Banda-Siberia Nickel Laterite Area" the subject of the mineral claims applications for mineral claims and Temporary Reserves listed in the First Schedule hereto which are generally delineated and respectively coloured green and orange and red in the plan marked "X" signed by or on behalf of the parties for the purpose of identification;

"ratifying Act" means the Act to ratify this Agreement mentioned in sub-clause (1) of Clause 3 of this Agreement;

"smelter" means the smelter plant mentioned in sub-clause (2) of Clause 6 of this Agreement;

"smelter site" means the land mentioned in sub-clause (1) of Clause 5 of this Agreement;

"the parties" means the parties to this Agreement and to the principal agreement;

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

"this Agreement" "hereto" and "hereunder" means this Agreement in this present form and also as from time to time added to varied or amended.

(2) Subject as contained in the last preceding sub-clause and unless the context otherwise admits or requires each word or phrase which is defined in Clause 1 of the principal agreement shall when used in this Agreement have the same meaning as that assigned to it by the said Clause 1 of the principal agreement but where the same word or phrase is defined both in the principal agreement and in this Agreement and the respective definitions conflict such word or phrase when used in the principal agreement shall have the definition given to it by Clause 1 of the principal agreement and when used in this Agreement shall have the definition given to it by the preceding sub-clause.

Ratification.

3. (1) This Agreement except for this Clause shall not come into operation unless ratified by an Act of the said Parliament.

(2) If the ratifying Act is passed by the said Parliament the provisions of this Agreement shall take effect as though the same had been enacted by the ratifying Act notwithstanding the provisions of the Land Act the Mining Act and the Public Works Act (which shall for the purpose of this Agreement be deemed to be modified and amended by the ratifying Act to the extent necessary to enable full force and effect to be given to this Agreement). For the purpose of implementing this Agreement the State and the Minister shall have all the powers discretions and authorities conferred on them respectively by this Agreement and also the same powers discretions and authorities as those conferred on them by the principal agreement for the purpose of implementing that agreement and in particular those powers conferred in paragraphs (c) and (d) of sub-clause (4) of Clause 2 of the principal agreement.

Amendment and application of principal agreement.

4. (1) The principal agreement shall be and the same is hereby altered and amended as follows—

(a) as to paragraph (b) of sub-clause (4) of Clause 2 thereof—

by inserting after the figures and brackets "(3)" in the first line thereof the figure and brackets "(4)";

(b) as to sub-clause (4) of Clause 5 thereof—by deleting the whole of the sub-clause and substituting the following new sub-clause—

"(4) Subject to the Corporation complying with its obligations hereunder and with the other conditions imposed by the said mineral lease or mineral leases or by the Mining Act or any subsequent amendment thereof or any other legislation in substitution therefor the Corporation shall be and is hereby during the continuance of this Agreement exempted in respect of the said mineral lease or mineral leases from compliance with—

(a) the labour conditions imposed on the holder of a mineral lease by the said Act or any substituted legislation; and

(b) any other conditions so imposed requiring the holder of a mineral lease to expend money or a specified sum of money on exploration or the development thereof or erecting or operating machinery thereon."

(c) as to paragraph (c) of sub-clause (5) of Clause 5 thereof—by adding to the end of that paragraph the following passage—

"provided however that it is expressly agreed that the royalties payable after the expiration of the said period of ten (10) years are not to be discriminatory."

(d) as to paragraph (b) of sub-clause (1) of Clause 6—by adding to the end thereof the following proviso—

"provided always that from and after the commencement date the State will on a resumption of any such land required for public purposes pay to the Corporation as soon as practicable after the date when such land is resumed and by way of and in satisfaction of compensation for such resumption a sum representing the assessed capital cost of installing and connecting to the nearest appropriate main all services (such as electricity, water and sewerage) to the land so resumed and the assessed capital cost (proportionate to the frontage of the resumed land thereto) of all roads, footpaths and curbs thereof to which the

resumed land abuts and which in either case were provided and paid for by the Corporation and thereafter the State will pay in respect of such land the appropriate operating charge as from time to time determined."

(e) as to sub-clause (2) of Clause 8—by inserting after the word "Kambalda" the words "and Kalgoorlie";

(f) as to Clause 9 thereof—by deleting the whole of the Clause with effect as from the date of commencement of the special freight rate mentioned in Clause 21 hereof.

(2) The State concedes that by establishing and operating the smelter in accordance with the provisions of sub-clause (2) of Clause 6 of this Agreement the Corporation has complied with the condition precedent referred to in paragraphs (b) and (c) of sub-clause (5) of Clause 5 of the principal agreement.

(3) As from the date of commencement of the special freight rate the provisions of Clauses 17 to 22 (both inclusive) of this Agreement shall apply (in lieu of the provisions of Clause 9 of the principal agreement) with respect to the obligations of the Corporation mentioned in those Clauses whether the same had already arisen under the principal agreement by virtue of the said Clause 9 or under this Agreement by virtue of the said clauses.

(4) The following provisions of the principal agreement shall mutatis mutandis be deemed to be incorporated in and form part of this Agreement namely—

(a) Clause 1 thereof subject however to the provisions of sub-clause (2) of Clause 2 of this Agreement;

(b) sub-clause (4) of Clause 2 thereof as amended by this Agreement;

(c) sub-clause (2) of Clause 5 thereof;

(d) sub-clause (4) of Clause 5 thereof as amended by this Agreement;

(e) paragraph (a) of sub-clause (5) of Clause 5 thereof in so far as the same refers to the formula therein mentioned;

(f) sub-clause (6) of Clause 5 thereof;

(g) Clauses 8 and 10 to 19 (both inclusive) thereof.

Smelter site.

5. (1) The State will as soon as practicable acquire and hold so that the same will be readily available for the purpose of a smelter site and the other purposes of this

Agreement ALL THAT piece of land containing two thousand eight hundred and thirty-five (2,835) acres or thereabouts situate approximately nine and one-half (9½) miles from the Kalgoorlie Post Office (more particularly described in the Second Schedule hereto) and which is delineated and coloured green in the plan marked "Y" initialled by the parties for the purpose of identification. The State will not sell or otherwise dispose of (except to the Corporation pursuant to this Clause) any part of the smelter site during a period of ten (10) years from the commencement date without first giving the Corporation notice of its intention so to do.

(2) The State will as soon as practicable after being required by the Corporation so to do sell to it and the Corporation will purchase from the State an estate in fee simple (free from all encumbrances but subject to the usual reservations contained in Crown Grants) in that part of the smelter site (containing one thousand five hundred (1,500) acres or thereabouts and situate at a location within the boundaries of the smelter site as the parties mutually agree) as the Corporation may require whereon to erect and construct the smelter in compliance with the provisions of Clause 6 of this Agreement.

(3) The Corporation will be at liberty from time to time if and when it demonstrates to the State that it has a reasonable need therefor either for the purpose of the smelter and/or that of any ancillary or associated operation to purchase from the State an estate in fee simple (unencumbered but subject as aforesaid) in such other part or parts of the smelter site as the parties shall mutually agree.

(4) If and when the State gives to the Corporation notice of its intention to sell any part of the smelter site as mentioned in sub-clause (1) of this Clause then—

(a) if the Corporation within fourteen (14) days after the giving of the notice satisfies the State that it has an immediate need for the whole or any part of the land mentioned in the notice the State will sell to the Corporation and the Corporation will purchase from the State an estate in fee simple (unencumbered but subject as aforesaid) in that part of the smelter site of which the State is satisfied the Corporation has an immediate need; or

(b) if the Corporation within fourteen (14) days after the giving of the notice satisfies the State that it is reasonably likely that the Corporation will have a reasonable need for the whole or any part of the land mentioned in the notice within the period of seven (7) years next ensuing the State will not within that period

sell that part of the smelter site otherwise than to the Corporation and in the meantime will hold the same subject to the provisions of this Clause.

(5) There shall be excepted and reserved to the State such part or parts (if any) of the smelter site as are or may hereafter be required by the State for road, rail or other public purposes or as a tailings site for the Corporation and any reference to the smelter site in this Agreement shall be read as subject to such exception and reservation.

(6) The purchase price of each of those parts of the smelter site which are purchased by the Corporation pursuant to the provisions of this Clause shall be fixed in accordance with the provisions of sub-clause (13) of Clause 3 of the principal agreement and unless otherwise required by the Minister such purchase price shall be paid on vacant possession of the land being given by the State to the Corporation.

Obligation of Corporation to construct smelter.

6. (1) In this Clause—

"dry long ton" means two thousand two hundred and forty (2,240) pounds weight avoirdupois of nickel-bearing ore from which all moisture has been removed.

(2) By the 30th day of June, 1971 or if before that date the Corporation applies to the Minister for an extension of time then before the 31st day of December, 1971 the Corporation will commence to erect and thereafter diligently proceed with the construction and establishment of a smelter on the smelter site having a capacity to treat at least one hundred and twenty-five thousand (125,000) dry long tons of nickel ore and/or nickel concentrates per annum and thereafter will continuously and progressively proceed with such construction and establishment and have it completed and ready for operation not later than the 31st day of December, 1973 or if the said extension is applied for then not later than the 30th day of June, 1974 subject however as provided in Clauses 15 and 16 of the principal agreement.

(3) The smelter will be operated by the Corporation primarily for the purpose of treating ore and/or mineral concentrates mined by the Corporation but the Corporation shall have the right to buy and treat ore and/or mineral concentrates mined or produced by other mining companies. The Corporation will also insofar as in the opinion of the Corporation it is commercially practicable and acceptable so to do treat ore and/or mineral concentrates mined or produced by other mining companies up to the capacity of the smelter from time to time provided such ore and/or mineral concentrates does not contain contaminating

elements which could adversely affect the operations of the smelter. In considering whether such treatment is commercially acceptable (and without in any way limiting the generality of its discretion) the Corporation shall be entitled to give absolute priority to or and/or mineral concentrates mined or purchased by it.

Tailings Lease.

7. (1) For the purpose of this Clause the words "mining" and "mining operations" appearing in paragraph (1) of Section 48 of the Mining Act shall be construed so as to include the operation involved in establishing and operating the smelter.

(2) Upon application by the Corporation the State will cause to be granted to the Corporation a tailings lease of such area of land (not exceeding three hundred (300) acres) within or outside the smelter site as the parties shall mutually agree for the dumping and disposal of slag or other waste and residues from the smelter or any ancillary or associated operation. Such lease shall be for such term at such rental or for such other consideration and upon and subject to such terms and conditions as the State may reasonably require.

(3) So far as reasonably possible the Corporation will not in dumping or disposing of such slag and other waste and residues cause any nuisance annoyance or undue inconvenience to third parties or cause any air or underground water pollution and will at all times and from time to time carry out promptly all or any directions which the Minister may reasonably give as to the covering of such slag, waste or residues or any part thereof with sand or soil or as to the adding thereto of chemicals or other substances or as to the limit direction and height of any dump or deposit.

Right of occupancy of Mining Area.

8. (1) Subject to the Corporation surrendering all its right title and interest in and to the mineral claims applications for mineral claims and occupancy rights over temporary reserves listed in the said Schedule the State will ensure that the land comprised in the said mineral claims applications and temporary reserves will be temporarily reserved from occupation under Section 276 of the Mining Act and that the Corporation (and only the Corporation) will be authorised under the said Section to temporarily occupy the mining area for the purposes of this Agreement (which shall be deemed to include the searching and prospecting for nickel, copper, lead, cobalt, silver, zinc and molybdenum) upon and subject to the following terms and conditions—

(a) the right of occupancy shall continue until the 30th day of June, 1978 or until the date of the termination or determination of this

Agreement, or as to each part of the mining area that is subsequently made the subject of a mineral lease pursuant to Clause 9 hereof until the date of the commencement of the term of such mineral lease, whichever date is the earliest;

(b) the right of occupancy shall be granted only upon the condition that the Corporation agrees that it will on the 30th day of June, 1975 and thereafter on the 30th day of June in each succeeding year during such time as such right shall exist in respect of any part of the mining area surrender to the State the right to occupy an area equal to one quarter of the original area of the mining area;

(c) as from the 1st day of July, 1970 until the commencement date the rentals payable in respect of the areas coloured green and orange and red on the said plan marked "X" shall be at the rates applicable thereto prior to that date. Thereafter the rental payable for the right of occupancy for each square mile of the mining area in respect of which such right for the time being exists shall be—

(i) as from the commencement date until the 30th day of June, 1975 eight dollars ($8) per annum for each square mile or other the appropriate rate payable for the time being under the Mining Act in respect of such rights of occupancy;

(ii) as from the 30th day of June, 1975 the same rental as would from time to time be payable under the Mining Act if the land for the time being subject to the right of occupancy were held as a mineral lease under the said Act;

(d) the right of occupancy shall be granted subject to the provisions of the said Act save and except sub-sections (3), (4) and (5) of Section 277 of the said Act which sub-sections shall not apply to any right of occupancy granted pursuant to this Clause.

Right to obtain mineral leases.

9. (1) At any time during the continuance of the right of occupancy mentioned in Clause 8 hereof the Corporation shall have the right to apply for and to be granted by the State a mineral lease or mineral leases for the mining of nickel, copper, lead, cobalt, silver, zinc and molybdenum in respect of any part or parts of the mining area for the

time being subject to such right of occupancy upon and subject to the following terms and conditions—

(a) the Corporation shall agree to pay the royalties mentioned in sub-clause (4) of this Clause;

(b) the rental for each mineral lease shall be such sum as is prescribed from time to time by the Mining Act or the Regulations thereunder and the same shall be payable as provided in the said Act and Regulations;

(c) all relevant provisions of the said Act shall apply to each mineral lease;

(d) the term of each mineral lease shall be twenty-one (21) years as from the date when the State shall grant the same;

(e) each mineral lease shall grant the Corporation an option (to be exercised by the Corporation giving to the State notice of its intention to exercise the same not later than one (1) month before the expiry of the said term) of taking a renewal of the term thereof for a further period of twenty-one (21) years at the same rental and upon and subject to the same terms and conditions as those upon which the original term was granted (save and except the option of renewal) but subject however as provided in the next succeeding sub-clause.

Second renewal of term of mineral lease.

(2) If the Corporation desires to have the term of a mineral lease granted pursuant to the provisions of the last preceding sub-clause further renewed after the expiration of the period for which it had been renewed consequent upon the exercise by it of the option of renewal therein contained it shall make application therefor to the Minister for Mines in the said State and if this Agreement shall then still be in force the said Minister shall have the power exercisable not more than twelve (12) months or less than six (6) months before the date of the expiry of the period for which the term of the mineral lease had been renewed in his discretion to grant to the Corporation a second renewal of the said term for a further period of twenty-one (21) years upon and subject to the same terms and conditions as applied to the mineral lease after the term thereof was first renewed.

Labour conditions.

(3) The exemptions granted by sub-clause (4) of Clause 5 of the principal agreement as amended by this Agreement shall also apply to each mineral lease granted pursuant to sub-clause (1) of this Clause provided always that the foregoing provisions of this sub-clause shall cease to apply on the 30th day of June, 1978 (or such later date as the Minister for Mines may in his discretion determine) if the Corporation has not by the 30th day of June, 1978 (or such

later date as aforesaid) brought the mining area into production at a rate of not less than one million (1,000,000) tons of laterite ore per year.

Royalties.

(4) The Corporation will pay to the State the following royalties in respect of all minerals mined or produced by the Corporation from the said mineral leases and sold by it—

(a) on all nickel-containing products sold during the period of ten (10) years from the 19th day of January, 1968 a royalty calculated in accordance with the formula set out in paragraph (a) of sub-clause (5) of Clause 5 of the principal agreement;

(b) on all nickel-containing products sold after the expiration of the said period of ten (10) years such royalties as are prescribed from time to time under or pursuant to the provisions of the Mining Act provided that it is expressly agreed that royalties payable by the Corporation under this paragraph are not to be discriminatory;

(c) on all other minerals specified in sub-clause (1) of this Clause such royalties as are prescribed from time to time under or pursuant to the provisions of the Mining Act.

(5) Sub-clauses (2) and (6) of Clause 5 of the principal agreement shall mutatis mutandis be deemed to apply to and be included in this Agreement.

Right to Mineral Leases in other areas.

10. (1) In this Clause the expression—

"mining tenement" means a right to occupy any part of the land to which this Clause refers authorised under Section 276 of the Mining Act and any lease, mineral claim or other claim applied for, held, occupied, used or enjoyed under the provisions of the Mining Act.

(2) The land to which this Clause refers is land—

(a) which is situate outside the mining area defined in the principal agreement and also outside the mining area defined in this Agreement; and

(b) which in the opinion of the Minister for Mines is so located that taking into account accessibility to the smelter, it is logical, economic and desirable that nickel ore mined therefrom which requires processing be so processed at the smelter.

(3) If during the continuance of this Agreement the Corporation holds a mining tenement in respect to any part of the land to which this Clause refers and the Corporation proves to the satisfaction of the Minister for Mines that

there is an economic nickel ore deposit thereon the Corporation shall be at liberty at any time before the date of the termination or determination of this Agreement or before the date of the termination or determination of the mining tenement (whichever date is the earlier) to apply for and (provided it satisfies the Minister for Mines as aforesaid) that Minister may in his discretion grant a mineral lease for the mining of nickel, copper, lead, cobalt, silver, zinc and molybdenum of such part or parts of the land to which this Clause refers which is the subject of such mining tenement upon and subject to the same terms and conditions as those which apply to a mineral lease granted under Clause 9 hereof and the provisions of that Clause shall *mutatis mutandis* apply to a mineral lease granted pursuant to this Clause.

Air Pollution.

11. (1) The provisions of the Clean Air Act 1964-1967 and any subsequent amendments thereof shall be deemed to apply to the smelter site and the smelter and any other building or structure for the time being on the smelter site shall be deemed to be scheduled premises within the meaning of that Act. Accordingly the Corporation agrees that it will duly and punctually comply with the provisions of such Act and will not unless it is exempted by the Air Pollution Control Council from the provisions of Section 33 of the said Act conduct or permit to be conducted on the smelter site any trade industry or process or operate any fuel burning equipment or industrial plant in or on the smelter site in such manner as to cause permit or suffer the emission at any prescribed point of air impurities in excess of the appropriate prescribed standard of concentration and rate of emission.

(2) The Corporation will install as part of the smelter or adjacent thereto a chimney stack at least five hundred (500) feet high through which it will direct to the atmosphere all SO_2 and other gases emitted from any operation of the smelter. In the event of the plans and specifications of the smelter providing for the construction of a smelter of a capacity substantially different from that mentioned in the said sub-clause or in the event of the presently estimated maximum and minimum rates of emission of SO_2 from the operation of the smelter being substantially changed the height of the chimney stack will be renegotiated.

(3) The Corporation will investigate the technical practicability and commercial economics of eliminating in whole or in part the emission of SO_2 from the operation of the smelter by one or more of the following processes—

(a) the conversion of the SO_2 to sulphuric acid;

(b) the conversion of the SO_2 to elemental sulphur;

(c) the use of the SO_2 in any other metallurgical process established by the Corporation.

The Corporation will within five (5) years from the date when the smelter reaches commercial production proceed to establish and operate on or near the smelter site plant necessary to effectually carry out one or more of the said processes unless it shall satisfy the State that the said processes are technically impractical or commercially uneconomic.

(4) If as a result of the Corporation's smelting operations the SO_2 emission from the smelter exceeds the rate notified to the Air Pollution Control Council and upon which they approved the location of the smelter and height of the smelter chimney stack and consequently consistently increases the level of SO_2 concentration in the Kalgoorlie-Boulder area by more than twenty (20) parts per hundred million the Air Pollution Control Council may by notice require the Corporation to reduce its rates of emission of SO_2 to not more than the rates upon which the smelter site and stack height were approved.

Electricity.

12. (1) The Corporation is authorised without cost and expense to the State and subject to it duly complying with the conditions imposed by this Clause if and when it shall desire so to do to install at a convenient location within the smelter site a plant for the generating of electric power.

(2) The electric power so generated may be—

(a) used by the Corporation in operating the smelter and carrying on any ancillary or associated operation;

(b) subject as hereinafter contained transmitted to another site or other sites owned leased or held by the Corporation for use in any operation for the time being carried on by the Corporation on such other site or sites; or

(c) subject as aforesaid sold and transmitted to customers approved by the State being consumers engaged in mining and operating ore processing works or other mining plant in the vicinity of the smelter site.

(3) In order to enable it to carry out all or any of the purposes mentioned in sub-clause (2) of this Clause the Corporation shall be at liberty subject to the due compliance with the provisions of the succeeding sub-clause of this Clause—

(a) to inter-connect any generating plant installed under sub-clause (1) of this Clause with existing or future generating plants owned by the Corporation at any of its said other sites;

(b) to erect and maintain all necessary transmission lines between such generating plant and such other site or sites or between such generating plant and the point or points to which any such customer consumer purchasing electric power from the Corporation shall require such power to be transmitted; or

(c) to augment the capacity of any such generating plant by purchasing or transmitting power in bulk from other generating plants in the Kambalda and Kalgoorlie areas or by leasing or purchasing other generating plants in such areas and transmitting the power thereby generated to the smelter or to its other site or sites or to any customer consumer.

(4) Before installing any such generating plant or erecting any necessary transmission lines or performing any other works required for any of the purposes aforesaid it will give to the State Electricity Commission notice of its intention so to do wherein it shall set up the engineering details of the proposed works and a plan of the proposed route of the proposed transmission lines and also particulars of any easements or other rights to or over the land over which the transmission lines are proposed to run. None of the proposed works shall be commenced or undertaken unless it has obtained all approvals licenses and concessions that are required to be obtained under the provisions of the Electricity Act 1945-1953 and the Regulations made thereunder.

(5) In constructing maintaining and operating the generating plant and the transmission lines the Corporation will comply with the technical requirements of the Electricity Act and Regulations and the Wiring Rules of the Standards Association of Australia.

(6) It shall be the responsibility of the Corporation to procure at its own expense all necessary easements or other rights over land and to satisfy (and indemnify the State against) all claims for compensation damages or otherwise by third parties in respect of or arising out of or in the course of anything done or omitted by it or its servants and agents in the construction maintenance and operation of any such generating plant and transmission lines and if the Corporation is unable to procure the said easements or other rights over land on reasonable terms the State will assist the Corporation to such extent as may be reasonably necessary to enable the Corporation to procure the said easements or other rights over land and the same shall be deemed to be an estate or interest in land required for the purposes of this Agreement.

(7) Where it shall be necessary for the Corporation to obtain any concession from any local authority to sell power to a customer consumer the State will ensure that the local authority concerned will as and when required by the State Electricity Commission so to do grant such concession under the provisions of the Electricity Act in such form and subject to such conditions as the said Commission shall approve.

(8) Nothing done or omitted to be done in the course of the carrying out of any of the purposes of this Clause shall in any way prejudice or affect or detract from the rights duties powers and obligations of the said Commission.

(9) In the event of any question difference or dispute arising between the Corporation and the said Commission in respect of any of the matters referred to in this Clause the same shall be referred to the Minister whose determination in respect thereof shall be final and binding on the parties to the dispute.

Housing.

13. For the purpose of housing employees of the Corporation the State undertakes to use its best endeavours to make suitable land available on reasonable conditions and cooperate to assist the Corporation in its negotiations for the necessary finance, either directly or through the agency of the Commonwealth or private housing development institutions.

Rating.

14. The State will ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all land the subject of any Crown Grant, mineral lease or other lease, license or easement granted under or in pursuance of the principal agreement or of this Agreement (except any part thereof upon which a permanent residence is erected or which is occupied in connection with a permanent residence) shall for rating purposes be deemed to be the unimproved value thereof and no part of such land shall be subject to any discriminatory rate.

Zoning.

15. The State will ensure that all land the subject of any Crown Grant, mineral lease or other lease, license or easement granted under or in pursuance of the principal agreement or of this Agreement will be and during the continuance of each of the said agreements will remain so classified or zoned by any local government or other authority legally competent so to do that it shall at all times be lawful for the Corporation to use the said land for all or any of the purposes for which it is obliged or may desire to use the same under or in pursuance of either of the said agreements and the State will further ensure that the operations required or desired to be undertaken and carried out by the

Corporation as aforesaid will not be interfered with or interrupted by the State or any State agency or instrumentality or any local or other authority on the ground that such operations are or any of them is a nonconforming use within the meaning of any statute relating to town planning schemes or that the same are carried on contrary to any zoning by-law or regulation.

Railways servicing smelter and Kambalda.

16. (1) In this Clause—

"railway" (including "Railway" in the term "Kalgoorlie-Kambalda Railway") is to be construed as having the same meaning as that assigned to "railway" by Section 95 of the Public Works Act;

"narrow gauge" means a gauge of 3 feet 6 inches;

"standard gauge" means a gauge of 4 feet 8½ inches;

"Kalgoorlie-Kambalda Railway" means the standard gauge railway mentioned in paragraph (a) of sub-clause (2) of this Clause;

"the reconstructed railway" means the entire length of the existing narrow gauge railways mentioned in paragraph (c) of sub-clause (2) of this Clause upon the same being reconstructed to standard gauge including the works mentioned in paragraph (d) of that sub-clause;

"spur line" means a railway made pursuant to paragraph (b) of sub-clause (2) of this Clause and is to be construed as if the word "line" read "railway" and accordingly had the same meaning as is hereby assigned to that term.

(2) As soon as practicable after the commencement date the State will introduce and sponsor in the said Parliament a Bill for an Act to authorise the carrying out of all or any of the following works namely—

(a) to construct a standard gauge railway commencing from such point as the Railways Commission determines on the standard gauge Kalgoorlie-Perth Railway at or near Kalgoorlie and proceeding thence in a general southerly direction on a course defined on the plan marked "Z" initialled by the parties hereto to the terminus at Lake Lefroy of the narrow gauge Lake Lefroy Spur Railway;

(b) to construct a spur line from such point or points on the Kalgoorlie-Kambalda Railway as the Corporation reasonably requires and the Railways Commission approves—

(i) to the boundary of the smelter site or some agreed point or points within the site;

(ii) to the boundary of the Corporation's production area or mill area at Kambalda or at some agreed point or points within those areas;

(c) to reconstruct to a standard gauge railway each of the following existing narrow gauge railways namely—

(i) the Lake Lefroy Spur Railway; and

(ii) the railway commencing from the Lake Lefroy Spur Railway and proceeding thence to the terminus of such railway at Esperance;

(d) to construct or reconstruct (as the case may require) all loops, crossings, points, sidings, bridges, buildings, structures, workshops, plant and equipment connected with the works mentioned in the last preceding paragraph.

(3) If and when the said Bill is passed as an Act the works mentioned in sub-clause (2) of this Clause shall be deemed a railway to which Part VI of the Public Works Act applies and the State will ensure that as soon as conveniently may be thereafter the Minister for the time being administering the said Act will exercise as and when required by the State such of the rights powers and authorities conferred on him by the said Part and also Sections 104 to 108 (inclusive), 110, 112 to 115 (inclusive) and 119 of that Act as may be necessary to give effect to the purposes of this Agreement.

(4) As soon as practicable after the said Bill comes into operation as an Act but only if and when the State and the Government of the Commonwealth of Australia shall mutually agree as to the nature and extent to which the said Government agrees to participate in or contribute to the cost of such part of the works authorised by the said Act or if and when the funds required therefor otherwise become available to it the State will commence to carry out the works authorised by such Act and mentioned in paragraphs (a), (c) and (d) of sub-clause (2) of this Clause and as soon as conveniently may be thereafter will complete the same and at all times thereafter during the continuance of this Agreement will maintain the same.

(5) The cost and expense of the works mentioned in the preceding sub-clause and the maintenance thereof will be borne by the State. The Corporation agrees to pay as and by way of its contribution to the cost of such works the sum of nine million dollars ($9,000,000) and undertakes that it will pay such sum to the State as and when required by the State so to do by progress payments of such amount as the State may require to satisfy the progressive expenditure incurred in the carrying out of such works.

(6) The State shall grant the Corporation a lease of the land over which a spur line or loop runs or on which any siding or other structure is erected and such lease may be at such rental for such period with such (if any) rights of renewal and otherwise upon and subject to such terms and conditions as the parties may mutually agree but it is expressly agreed that any spur line loop siding or other structure and the appurtenances of any of them shall not by virtue of any such lease be subject to any tenant's rights in the Corporation and at the termination or sooner determination of any such lease the Corporation's interest in the spur line loop siding structure and appurtenances whether fixtures or not shall absolutely cease and such land and everything thereon shall vest or revest in the State and the State shall not be required to pay any compensation in respect thereof.

Mineral Products defined.

17. (1) In this and the next succeeding six clauses of this Agreement the term "mineral products" means mineral ore and mineral concentrates and matte of any kind which during the continuance of the principal agreement and this Agreement are transported at the instance of the Corporation between the following points of origin and the respective destination namely—

(a) between Kambalda and Kalgoorlie or between Kambalda and Kwinana or between the smelter and any intermediate point and either of such destinations; or

(b) between Kambalda and Esperance or between Kalgoorlie and Esperance or between the smelter and any intermediate point and such destination.

(2) Without limiting the generality of the definition contained in the last preceding sub-clause the said term thereby defined includes in particular—

(a) mineral ore mined and mineral concentrates produced by the Corporation from its own leases wherever situate being the property of the Corporation;

(b) mineral ore mined and mineral concentrates produced by a mining concern other than the Corporation and purchased by the Corporation;

(c) mineral ore and mineral concentrates the property of another mining concern which ore is being handled by the Corporation on a toll basis;

(d) matte being the property of the Corporation and the product of the smelter;

(e) fuel oil used for the purpose of generating heat or as a reducing agent in metallurgical processes or as a reducing agent in the production of elemental sulphur;

(f) sulphuric acid being a by-product of the smelter.

(3) The said term does not include—

(a) matte produced by the smelter from mineral ore or mineral concentrates handled by the Corporation on a toll basis; or

(b) fuel oil used in the generation of electric power; or

(c) commodities other than mineral ore and mineral concentrates carried over the State's railways for the Corporation.

Rolling Stock.

18. (1) In this Clause and in Clause 19 hereof—

"rolling stock" means the locomotive power of a type and capacity adequate and suitable to transport the mineral products and also wagons brake-vans and all other necessary railway vehicles.

(2) (a) The Corporation will provide to the specifications of the Railways Commission and own all rolling stock necessary for the carriage of the mineral products to and from the required destinations; and

(b) the State will at all times ensure that the Railways Commission will operate and maintain the rolling stock in good order and condition.

(3) In respect of the rolling stock the following provisions shall apply—

(a) the number of each class of each item of the rolling stock to be supplied and provided by the Corporation shall be determined by the parties but shall not be a greater number than is reasonably required to ensure the prompt efficient and expeditious haulage and carriage of the mineral products and wagon requirements will include ten per centum (10%) for spares;

(b) each item of rolling stock shall be of such design and standard and constructed to such specifications as the Railways Commission shall from time to time reasonably consider necessary for the purpose of this Agreement. Where the railway to any one of the said destinations has been constructed to carry a gross axle load of twenty-three and one-half (23½) tons (that is a gross wagon weight of ninety-four (94) tons) each wagon in each train hauled thereover shall be of such design as to permit the net load of the wagon to be not less than

seventy (70) tons and where the gross axle load is twenty (20) tons (that is a gross wagon weight of eighty (80) tons) the net load shall be not less than fifty-eight (58) tons;

(c) if and when in the opinion of the Railways Commission any rolling stock is no longer capable of being serviced or maintained satisfactorily the Corporation will upon the written request of the Railways Commission at the cost and expense in all things of the Corporation, replace any such rolling stock with a similar item approved by the Railways Commission.

Transport of nickel ore and other goods.

19. (1) Each consignment of the mineral products shall be carried at the cost and risk of the Corporation and subject to the provisions of the Government Railways Act 1904-1967 and the regulations and by-laws made thereunder in a block train having a minimum pay-load of one thousand five hundred (1,500) tons (except however in the case of the trains transporting the mineral products mentioned in paragraph (a) of sub-clause (1) of Clause 20 hereof where no minimum pay-load is specified). For the purpose of this Clause a "block train" means a train composed of rolling stock carrying mainly only mineral products of one or more kinds and operating only between a specified point of origin and a specific destination.

(2) If at any time in order to satisfy the reasonable requirements of the Corporation for the carriage of the mineral products for the time being offering for carriage it is necessary for the Railways Commission to operate between noon on any Saturday and midnight on the following Sunday a train or trains in addition to those ordinarily required for the purpose of carrying the mineral products being part of the minimum tonnage mentioned in sub-clause (1) of Clause 20 hereof and the need to operate such additional train or trains does not arise solely from any refusal neglect or default on its part the Railways Commission will upon the Corporation requesting it so to do and agreeing to reimburse it for all consequential additional costs provide the services necessary to operate such additional train or trains.

(3) The Corporation will at its own cost and expense provide erect and install at the smelter site the production and mill areas at Kambalda the port at Esperance and at any other point where the mineral products are required or likely to be loaded into or unloaded from wagons all necessary plant and equipment for those processes and will at its cost and expense staff operate and maintain all such plant and equipment in accordance with the reasonable requirements of the Railways Commission.

(4) For the purpose of this Clause and Clauses 20 and 21 hereof the weight of the mineral products carried shall be ascertained by weighing the same on the railway weigh-bridge most conveniently situated unless some other method of weighing the same is agreed between the parties.

(5) All mineral products carried shall be properly and securely packed, stacked or otherwise stowed in the wagons provided and if required by the Railways Commission covered and in the course of transit kept covered in accordance with the reasonable requirements of the Railways Commission. Each wagon shall be loaded as near as practicable to its full capacity but otherwise at least to the capacity for which it was designed.

Minimum tonnage to be carried.

20. (1) The Corporation undertakes and guarantees that the following minimum net tonnages of mineral products will be made available for carriage during the periods mentioned—

(a) for carriage between Kambalda and Esperance —at least fifty thousand (50,000) tons of nickel concentrates each year from and after the date of commencement of the special freight rate until the 31st day of December, 1977 or during the continuance of the Corporation's current contract with Sumitomo Metal Mining Company for the delivery of nickel concentrates to Esperance whichever is the longer period; and

(b) for carriage between Kambalda and Kwinana or between Kalgoorlie and Kwinana—at least one hundred and fifty thousand (150,000) tons of nickel ore and/or nickel concentrates each year from and after the commencement of the special freight rate during the continuance of this Agreement and the principal agreement until the date of renegotiation mentioned in sub-clause (1) of Clause 23 hereof.

(2) If in any year the net tonnage available for carriage pursuant to paragraph (a) or paragraph (b) of the last preceding sub-clause is short of the respective minimum net tonnage thereby required to be available the Corporation shall at the end of such year pay to the State a sum equal to the freight calculated at seventy-five per centum (75%) of the special freight rate mentioned in the next succeeding Clause as escalated from time to time which would have been payable under this Agreement on the shortage of net tonnage had such shortage been available and carried and upon such payment being made the Corporation shall for the purpose of this Clause and of Clause 11 of the principal agreement be deemed to have remedied any default made under the last preceding sub-clause during the year in question.

Freight Rate.

21. (1) In this and the next two succeeding Clauses—

"date of commencement of special freight rate" means—

(a) the date of the completion of the works mentioned in paragraph (a) of sub-clause (2) of Clause 16 hereof and the same being available for use for the transport of mineral products between Kambalda and Kwinana;

(b) the date of the completion of the works mentioned in paragraphs (c) and (d) of sub-clause (2) of Clause 16 hereof and and the same being available for use as standard gauge railway for the transport of mineral products between Kambalda and Esperance;

"special freight rate" means a freight rate of 1.8 cents per net ton mile.

(2) The Corporation will pay freight for the carriage of all the mineral products transported pursuant to this Agreement at the special freight rate. All freight and other charges will be payable to the Railways Commission monthly on such day during the month following that in which the mineral products were carried by the Railways Commission or as the parties shall mutually agree.

(3) If the Corporation shall in any one year from and after the commencement of the special freight rate make available for carriage between Kalgoorlie and Kwinana or between Kalgoorlie and Esperance not less than twenty thousand (20,000) tons of sulphuric acid being a by-product of the smelter and shall transport the same as required by sub-clause (1) of Clause 19 hereof then the Corporation shall pay for the carriage of such sulphuric acid in that year at the special freight rate but otherwise at a rate which is ten per centum (10%) less than that prescribed from time to time for freight of the same class hauled in the Railways Commission's rolling stock.

(4) The provisions of this Clause (other than sub-clause (1) hereof) and the four preceding Clauses shall have effect as from the date of commencement of the special freight rate.

Escalation of special freight rate.

22. (1) The escalation of the special freight rate defined in sub-clause (1) of Clause 21 of this Agreement shall be based on the average hourly rate of wages payable to a first class locomotive driver, a first class guard and a track repairer as at 16th day of June, 1970, the price per gallon of distillate delivered to the public at North Fremantle prevailing on

(3) A proposal submitted by the Corporation shall *inter alia* provide—

(a) that the route design, construction and equipment of the proposed railway will be to standards acceptable to the Railways Commission;

(b) that where required mineral ore and concentrates produced by other mining or other companies or concerns will be transported by the Corporation over the proposed railway on terms approved by the State;

(c) that where for some sufficient reason it appears preferable that the proposed or required services for certain purposes or to certain centres of population adjacent to the proposed railway be provided otherwise than by rail provision will be made in the proposal for such services to be provided by road.

(4) Should the State at any time wish to acquire the said railway or railways it may do so on terms mutually agreeable which terms will be based on a valuation arrived at by normal accounting depreciation procedures as distinct from any special depreciation allowances provided under the Commonwealth Income Tax legislation and will transport the mineral products of the owner company or companies at the operating cost established by that company or companies (as escalated from time to time to allow for reasonable cost increases) plus a reasonable margin of profit taking into account the capital cost interest and depreciation of the asset acquired.

FIRST SCHEDULE.

Mineral Claims.

Suffixed "S" — Nos. 130-131, 134-135, 138-139, 152-153, 160-165, 171-175, 181-185, 191-194.

Suffixed "W" — Nos. 31-32, 34, 108, 172-176, 180-186, 247, 254-255, 260-263, 266-276, 300, 339-341, 344, 363-364, 387-391, 564-601, 603-605, 607-621, 676, 710-712, 726-730, 733-734, 756-811, 815-816, 820-821, 824-835, 837-979, 1019-1023, 1066.

Suffixed "Z" — Nos. 7-13, 78-86, 312-315, 338-341.

Temporary Reserves.

Nos. 3560H, 3667H, 3752H, 5215H.

SECOND SCHEDULE.

All that portion of land containing about 2,835 acres bounded by lines starting at a point situate 179 degrees 57 minutes, 58 chains 58 and three tenths links; 162 degrees 26 minutes, 54 chains 69 and five tenths links; 164 degrees 6 minutes, 4 chains 95 and two tenths links; 166 degrees 40 minutes, 71 chains 97 and seven tenths links; 177 degrees 9 minutes, 35 chains and nine tenths links; 165 degrees 52 minutes, 35 chains 74 and six tenths links; 156 degrees 56 minutes, 6 chains 95 and three tenths links; 148 degrees 1 minute, 96 chains 13 and six tenths and 152 degrees 30 minutes, 4 chains 87 and three tenths links as shown on Lands and Surveys Original Plans 11329 and 11330; thence west approximately 98 chains; thence north approximately 58 chains to a point on the southern boundary of Reserve 8168, from the intersection of the southern side of Lynch Street with the proposed western side of Celebration Road and extending 159 degrees 57 minutes, 210 chains; west 143 chains 71 links; 339 degrees 57 minutes, 210 chains; east 143 chains 71 links to the starting point.

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

SIGNED SEALED AND DELIVERED by the said THE HONOURABLE SIR DAVID BRAND, K.C.M.G., M.L.A., in the presence of— } DAVID BRAND

C. W. COURT,
MINISTER FOR INDUSTRIAL DEVELOPMENT.

ARTHUR GRIFFITH,
MINISTER FOR MINES.

The Common Seal of WESTERN MINING CORPORATION LIMITED was hereunto affixed in the presence of— } L. BRODIE-HALL [C.S.]

R. M. REYNOLDS.