

## LAKE LEFROY SALT INDUSTRY AGREEMENT.

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No. 23 of 1969.

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**AN ACT to approve an Agreement between the State of Western Australia and Norseman Gold Mines No Liability relating to the establishment and carrying on of an industry for the mining and sale of salt and other allied mining and ancillary industries.**

*[Assented to 16th May, 1969.]*

**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.

1. This Act may be cited as the *Lake Lefroy Salt Industry Agreement Act, 1969.*

## 2. In this Act—

Definition.

“the Agreement” means the Agreement a copy of which is set forth in the Schedule to this Act, and if, the Agreement is amended in accordance with its provisions, includes the Agreement as so amended from time to time.

## 3. The Agreement is approved.

Approval  
of the  
Agreement.

4. By-laws may be made for the purposes of, and in accordance with clause 11 of the Agreement, and the by-laws—

By-laws.

- (a) shall be published in the *Government Gazette*;
- (b) shall take effect and have the force of law from the date they are so published, or from a later date fixed by the order making the by-laws;
- (c) may prescribe penalties not exceeding one hundred dollars for a breach of any of the by-laws; and
- (d) are not subject to section 36 of the Interpretation Act, 1918, but shall be laid before each House of Parliament within six sitting days of such House next following the publication of the by-laws in the *Gazette*.

8.2.

### SCHEDULE.

AN AGREEMENT under seal made the 25th day of March One thousand nine hundred and sixty nine BETWEEN THE HONOURABLE DAVID BRAND, 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 instrumentalities thereof from time to time (hereinafter referred to as "the State") of the one part and NORSEMAN GOLD MINES NO LIABILITY a company incorporated under the provisions of the statutes of South Australia and having its registered office in such State at 33 Pirie Street Adelaide and registered as a foreign company in Western Australia and having its registered office at Norseman in the said State (hereinafter called "the Company" which term shall include the successors and assigns of the Company including where the context so admits the assignees and appointees of the Company under Clause 37 hereof) of the other part.

WHEREAS the parties hereto desire to enter into this Agreement with the object of the establishment and carrying on at Lake Lefroy in the vicinity of Widgiemooltha of an industry for the mining and sale of salt and other allied mining and ancillary industries as may conveniently be carried on in conjunction therewith and to do all acts matters and things to attain and to facilitate the above-mentioned objects.

AND WHEREAS the Company is the holder of a Right of Occupancy under the Mining Act of Temporary Reserve for salt No. 3802H situated at Lake Lefroy in the Coolgardie and East Coolgardie Goldfields and shown edged in "red" on the plan annexed hereto which Right of Occupancy expires on the 11th day of May, 1969.

AND WHEREAS the Company has agreed in principle with SUMITOMO SHOJI KAISHA LTD. a company duly organised and existing under the laws of Japan to enter into a joint venture for the mining and export of salt from Lake Lefroy AND for that purpose to incorporate or cause to be incorporated under the provisions of the Companies Act, 1961 of the said State a proprietary Limited Company to be known as LEFROY SALT PTY. LTD.

NOW THIS AGREEMENT WITNESSETH and the parties hereto COVENANT AND AGREE with one another as follows:—

**Definitions.**

1. In this Agreement subject to the context—

"Commencement Date" means the date on which the Company submits written application for the production site lease pursuant to subclause (1) of Clause 5 hereof;





4. The State shall upon application by the Company at any time prior to the 31st day of December, 1969, (and surrender of the then existing rights of occupancy already granted in respect of Temporary Reserve 3802H) cause to be granted to the Company for the purposes of this Agreement (including the sole right to search and prospect for evaporites and make prototype constructions) rights of occupancy under Section 276 of the Mining Act over the whole of the area comprised in Temporary Reserve 3802H for a period of twelve months and at the same rental as the last current renewal of said rights of occupancy and shall then and thereafter subject to the continuance of this Agreement cause to be granted to the Company successive renewals of such rights of occupancy (each renewal for a period of twelve months at the same rental and on the same terms) the last of which renewals notwithstanding its currency shall expire—

Temporary  
Reserve.

- (i) upon the granting of the production site lease pursuant to subclause (1) of Clause 5 hereof;
- (ii) on the determination of this Agreement pursuant to Clause 33 of this Agreement; or
- (iii) on the day of the receipt by the State of a notice from the Company pursuant to Clause 47 of this Agreement;

whichever shall first happen.

5. (1) As soon as conveniently may be after the coming into operation of the ratifying Act the State shall on the written application of the Company cause all that land shaded "green" in the plan annexed hereto and initialled on behalf of the parties hereto for the purpose of identification and comprising approximately three thousand (3,000) acres to be leased to the Company under the provisions of the Mining Act which shall be deemed to be so amended varied and modified as to enable the lease to be granted on the following terms and conditions namely:—

Production  
site  
Lease.

- (a) for a term of twenty-one (21) years from the commencement date;
- (b) at a rental computed at the rate of twenty-five dollars (\$25) per one hundred (100) acres per annum;
- (c) subject to the payment by the Company of the royalties hereinafter mentioned and to the due and punctual performance by the Company of its obligations hereunder;
- (d) that the Company shall be entitled (provided the right of re-entry contained in the lease or the renewal thereof (as the case may be) has not been exercised) to the option to renew the lease for a further term of twenty-one (21) years and on



- (ii) grant to the Company a lease of such land as may be necessary to enable construction of the spurline, such lease to be at a peppercorn rental and for the same term and subject to the same rights of renewal as apply with regard to the production site lease.

(3) Upon the granting of the lease referred to in subclause (2) of this Clause the Company shall at its own expense in all things proceed to construct the said spurline with necessary loops crossings sidings and other facilities to the specification of the Railways Commission and shall thereafter, also at its own expense in all things, maintain the spurline loops crossings sidings and other facilities to the satisfaction of the Commission.

(4) The State may with regard to the spurline exercise any of the powers conferred by Sections 100, 101, 102, 103, 104, 108, 110, 112 or 113 of the Public Works Act, 1902, and any expense incurred by the State in so doing shall be borne and paid by the Company.

(5) The said spurline and its appurtenances shall not be subject to tenants rights in the Company and at the expiration or sooner determination of the lease the Company's interest in the spurline and appurtenances, whether fixtures or not, shall absolutely cease and shall vest or re-vest in the State and the State shall not be obliged to pay any compensation therefor.

7. If the Company notifies the Minister that it wishes to construct loading facilities on the wharf at Esperance and if having regard to the general development of the wharf harbour and vicinity with a view to the reasonable use thereof by others the Minister considers that such facilities are reasonable the State shall upon payment of the prescribed fee issue or cause to be issued to the Company an appropriate license and the Company thereupon shall construct on the said wharf loading facilities and ancillary equipment capable of loading into ships not less than one thousand (1,000) tons of salt per hour provided the Minister has approved of the plans and specifications therefor.

Loading  
facilities at  
Esperance.

8. If the Company notifies the Minister that it requires a stockpile site in the vicinity of Esperance and if having regard to the general development of the area with a view to the reasonable use thereof by others the Minister considers the Company's proposal to be reasonable and if the State has land sufficient for the Company's requirements (which as presently estimated would be five (5) acres) then the State shall grant to the Company a lease thereof subject

Lease for  
Stockpile  
Site at  
Esperance.





at the time of this Agreement or under some right granted in substitution therefor) will consult the Company and if as a consequence of that consultation the Minister for Mines is of the opinion that it is necessary in the reasonable interests of the Company the State may make the grant of any such right subject to the condition that any mining or other operations carried on on such area shall not:—

- (a) restrict the free flow of water on Lake Lefroy to such degree as is likely to prejudice the operations of the Company; or
- (b) involve the disposition of residues or tailings in such manner as may contaminate the salt reserves of Lake Lefroy as are available to the Company; or
- (c) involve the doing of anything which will unreasonably prejudice the operations of the Company.

For the purpose of this subclause the Mining Act shall be deemed to be modified so as to permit the State to impose such conditions as aforesaid.

(4) The State shall not during the term of this Agreement without the consent of the Company grant any right or title for the mining or production of salt over any part of Lake Lefroy except that it may if so required renew the lease presently held under Section 116 of the Land Act by W.A. Salt Supply.

11. At the reasonable request of the Company from time to time the Minister shall recommend to the Governor in Executive Council that he make alter or repeal as may be desirable by-laws in respect of the management or use of any of the Company's facilities that have been constructed pursuant to this Agreement. Should the State at any time consider that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Company shall recommend such alteration or repeal thereof as the State may reasonably require or in the event of there being any dispute as to the reasonableness of such requirement then as may be decided by arbitration hereunder.

By-laws.

12. (1) On application by the Company the State shall cause to be granted to the Company such machinery and tailings leases and such other leases, licenses, reserves and tenements under the Mining Act or under the provisions of the Land Act modified as in subclause (2) of this Clause provided as the Company may reasonably require and request for its purposes under this Agreement on or near the production site provided land is available. Without limiting the generality of the foregoing the State shall grant to the

Other  
Leases.

Company appropriate rights either by lease or license enabling the Company to take without royalty stone, gravel, sand, or earth from available Crown land for the purpose of making improvements to the work sites.

(2) For the purposes of the preceding subclause the Land Act shall be deemed to be modified by—

(a) The substitution for subsection (2) of Section 45A of the following subsection:

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

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

(c) the deletion of Section 135;

(d) the deletion of Section 143;

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

(f) the inclusion of a power to offer for sale or grant leases or licenses for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods and the terms, conditions and the forms referred to in the Act.

(3) The provisions of subclause (2) of this Clause shall not operate so as to prejudice the rights of the State to determine any lease, license or other right or title in accordance with the other provisions of this Agreement.

**Company's  
Obligations.**

13. The Company shall—

(1) Not later than three (3) months after the commencement date commence and thereupon diligently proceed with the construction and establishment on the production site of a salt plant designed to have the capacity to mine and produce and to load into railway wagons not less than five hundred thousand (500,000) tons of salt per annum, and estimated with its equipment and housing for employees of the Company to cost not less than three million (3,000,000) dollars provided that plans and specifications for such plant and housing have first been submitted to and approved by the Minister.

- (2) Complete the construction and establishment of the plant and housing as aforesaid not later than the thirty-first day of December, 1972.
- (3) Subject to approval of plans and specifications by the Railways Commission construct and maintain all necessary loops, spurs and sidings at the stockpile site at Esperance, such construction to be completed by the 31st day of December, 1969.

The Company shall at all times permit the Railways Commission to use such loops spurs and sidings provided such use does not unreasonably interfere with the operations of the Company.

- (4) Subject to the provisions of Clause 23 of this Agreement provide all locomotives and rolling stock including spares and replacements deemed necessary by the Railways Commission to enable the Commission to meet its obligations as mentioned in paragraph (a) of Clause 21 hereof. Such locomotives and rolling stock to be of designs and specifications to be agreed upon between the Company and the Railways Commission.

At the expiration or determination of the Agreement the locomotives and rolling stock shall become the absolute property of the State which shall not be obliged to pay any compensation to the Company in respect of the acquisition of the said locomotives and rolling stock.

- (5) Supply to the Railways Commission in writing not less than three (3) months before the beginning of every calendar year details of the estimated tonnages of salt to be railed from the production site to the stockpile site at Esperance in the ensuing calendar year also particulars of the pattern of working including weekly and monthly despatches and the proposed hours of working.
- (6) Provide and maintain staffed loading and unloading facilities with the capacity to load at the rate of fifty (50) wagons per hour at the stockpile site adjacent to the production site and unload at the stockpile site at Esperance at the rate of twenty-five (25) wagons per hour at times to meet railway timetable requirements and to perform all terminal services except shunting.
- (7) Install such equipment as to ensure that in no instance shall the gross loaded weight of any wagon exceed sixty-one (61) tons prior to the completion



17. (1) The Company shall pay freight on all salt transported from the railway wagon loading facilities to be established on the stockpile site mentioned in Clause 9 hereof to Esperance at the following rates per ton:

- (i) for the first five (5) years from the date of the ratification of the Agreement .... \$2.20
- (ii) for the period from the expiration of the period mentioned in paragraph (i) of this subclause to the expiration of the tenth (10th) year after the ratification of the Agreement, or until six million (6,000,000) tons of the company's salt have been so transported, whichever shall first occur .... \$2.25

(2) The freight rates provided in subclause (1) of this Clause may be varied by mutual agreement in writing between the parties hereto.

(3) The freight rates to apply to the traffic mentioned in subclause (1) of this Clause after the expiration of the arrangement made by that subclause shall be negotiated by the parties hereto.

(4) Freight shall be calculated on railway weighbridge weights but subject to a minimum charge calculated on the assumption that the loaded weight on each wagon is sixty (60) tons and that no wagon contains less than forty-five (45) tons of salt.

(5) The Railways Commission will submit monthly accounts to the Company for all freight and other charges and the Company shall pay such accounts within one (1) month of their being received.

18. (1) The Company shall pay to the appropriate authority a wharfage charge as follows:—

On the first 100,000 tons in any one year—20 cents per ton.

On the second 100,000 tons in any one year—17.5 cents per ton.

On all tonnages in excess of 200,000 tons in any one year—15 cents per ton.

(2) Wharfage charges shall be adjusted proportionately with any increase or decrease in the wharfage charge on bulk products at Esperance (at present forty (40) cents per ton).

(3) If the State carries out dredging at Esperance so that ships with a greater draught than thirty (30) feet can be loaded at the wharf and the Company takes advantage of such additional depth then wharfage charges set out in this Clause are to be renegotiated.

19. The Company shall commence shipping salt from Esperance by the 31st day of December, 1969, or such later date which may be agreed upon by the parties hereto.

**Royalty.**

20. (1) The Company shall during the continuance of this Agreement pay to the State a royalty on all salt produced at the production site and shipped computed as set out hereunder:—

	Rate per ton
On the first 500,000 tons dry weight in any year ....	5 cents
On the second 500,000 tons dry weight in any year ....	6.25 cents
On all tonnages in excess of 1,000,000 tons dry weight in any year ....	7.5 cents

The royalty on salt which the Company rails to Esperance for export shall not be payable until it is shipped from there and tonnages for the purpose of assessing royalty on such salt shall be ascertained at Esperance.

The royalty on all other salt removed from the production site shall be payable as from the time of such removal and tonnages for the purpose of assessing royalty on such salt shall be ascertained at the production site.

**Returns.**

(2) Within twenty-one (21) days after the quarter days being the last days of March, June, September, and December in each year commencing with the quarter day next following the day on which the first royalty becomes payable the Company shall furnish to the Minister for Mines a return showing the quantity of all salt that has become subject to the payment of royalty during the quarter ending on the respective quarter day and shall not later than one (1) month after the date on which such return is due pay to the State the royalty in respect of all salt disposed of during that quarter.

**Inspection of Records.**

(3) Throughout the continuance of this Agreement the Company shall permit a nominee of the Minister for Mines to inspect at all reasonable times the books of account and records of the Company relative to the production of salt at the production site and any disposal thereof and to take copies or extracts therefrom so far as is necessary for the purpose of determining the royalty payable hereunder. The Company will take reasonable steps to satisfy the Minister for Mines either by the certificate of a competent independent party acceptable to him or otherwise to his reasonable satisfaction as to all relevant weights and will give due regard to any objection or representation made by the Minister for Mines or his nominee as to any particular weight of salt which may affect the amount of royalty payable hereunder.

1969.]

*Lake Lefroy Salt Industry  
Agreement.*

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21. The State shall during the currency of this Agreement **Railways.**  
at its own expense in all things—

- (a) subject to the locomotives and rolling stock provided by the Company being sufficient for the purpose operate between the production site and the stockpile site at Esperance such trains as the Company reasonably requires provided that if the needs of the Company reasonably require the operation of trains between noon on Saturday and midnight on Sunday the Company will reimburse the State for any additional wages which are payable as a consequence;
- (b) maintain the railway from Widgiemooltha to Esperance;
- (c) maintain the locomotives and rolling stock provided by the Company.

22. Unless the parties agree otherwise all salt shall be carried at the risk of the Company and subject to the by-laws made under the Government Railways Act, 1904.

23. If the company so requires the State will from a date to be agreed after the 1st day of July, 1969, provide such diesel locomotives to enable salt to be hauled in the Company's wagons between the production site and the stockpile site at Esperance as the Company's traffic requires but provided that the State shall not be required to provide during any one week locomotion to Esperance for more than three thousand (3,000) tons of salt nor to provide any such locomotives after the 30th day of June, 1971.

24. The parties hereto may, subject to sufficient tonnages being offered, negotiate a freight rate for other bulk materials which the Company may be desirous of transporting over the up-graded railway line.

25. (1) Notwithstanding anything herein contained it is hereby agreed by and between the parties hereto in order to provide for the equitable performance of this contract that in the event of the price of salt (as hereinafter defined) on the 14th, 21st, 28th, 35th, 42nd, 49th or 56th anniversaries of the commencement date exceeding the price of salt on the seventh (7th) anniversary of the commencement date, then the percentage by which the price of salt on the relevant anniversary exceeds the price of salt on the seventh (7th) anniversary of the commencement date shall be calculated and the several amounts mentioned herein and payable by the Company to the State as— **Escalation.**

- (a) rental under paragraph (b) of subclause (1) of Clause 5;





- (c) that the Company will within eighteen (18) months of the commencement of the term of each lease granted for housing purposes complete on the land the subject of that lease the erection of a building for the accommodation of a family or single persons at a cost of not less than ten thousand dollars (\$10,000) or such other figure as the Minister may approve;
- (d) that on the expiration of the term of the lease and subject to the due and punctual observance and performance by the company of all the covenants agreements and conditions on its part therein contained, on the request of the Company the State will grant to it an estate in fee simple in the land the subject of the lease at a price not exceeding two hundred dollars (\$200) plus Crown Grant and survey fees;
- (e) that the Company will not sell transfer assign sub-let or mortgage charge or encumber any lease without the consent of the Minister first had and obtained PROVIDED THAT the consent of the Minister shall not be required to the transfer assignment or sub-lease to an employee of the Company of a lot leased for housing purposes, nor to any mortgage of such a lot, in respect of which the Company has complied with paragraph (c) of this Clause;
- (f) that the Company will pay to the relevant local authority or any other authority of the said State which will be responsible for providing services to houses on the leased lots (when requested by the authority so to do) such amount as the authority reasonably requires at the time of the grant of the lease to enable it to supply or make available the usual services;
- (g) otherwise on such terms and conditions as are reasonably required to give effect to the provisions and objects of this Agreement.

(2) The State shall not be required to lease to the Company pursuant to this Clause more than fifty (50) lots. The request for each lot shall be made by the Company at least six (6) months before the Company requires the lease of that lot to be granted to it. In the event of the Minister consenting under the provisions of paragraph (e) of sub-clause (1) of this Clause to a transfer assignment or sub-letting of the lot the State shall not be required to lease another lot in lieu of the lot so transferred assigned or sub-let.

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Temporary  
Housing.

27. Notwithstanding the provisions of any Act by-law or regulation the Company shall be entitled to erect and maintain such temporary housing as it requires within the area of the production site lease provided that the same shall conform to any reasonable requirement of the local authority as to health and sanitation and provided any such temporary housing shall be removed before the 30th day of June, 1972.

Rights of  
Ingress and  
Egress.

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

Export  
License.

29. If at any time or times under Commonwealth law an export license is required by the Company for the export of salt then on written request by the Company the State shall make representation to the Government of the Commonwealth of Australia for the grant to the Company of a license or licenses under Commonwealth law for the export of salt in such quantities and at such rate or rates as shall be reasonable having regard to the tonnage of salt being produced by the Company at such time or times as a license is so required and to all contracts made or likely to be made by the Company for the export or supply of salt.

Limitation  
of Liability.

30. Where the Company from time to time constructs a levee or other works on the production site for or incidental to the production and transport of salt and thereafter a third party makes improvements to lands or becomes the owner of improvements so made on lands adjacent to the production site and subsequent to those improvements being made the Company removes (either wholly or partly) or fails to maintain or to repair that levee or other works and in consequence thereof the third party suffers sustains or incurs damage to those improvements or any part thereof then notwithstanding any Act or any rule or law or equity to the contrary, the Company shall not be liable for those damages to any person or persons whatsoever.

Liability for  
road use.

31. For the purposes of determining whether and the extent to which—

- (a) the Company is liable to any person (other than the State);
- or—

(b) an action is maintainable by any such person;

in respect of the death or injury of any person or damage to any property arising out of the use of any roads constructed or maintained by the Company and for no other purpose the Company shall be deemed to be a municipality and the said roads shall be deemed to be streets under the care control and management of the Company and for the purposes of this paragraph the terms "municipality" "street" and "care control and management" shall have the meanings which they respectively have in the Local Government Act, 1960.

32. (1) The spurline referred to in Clause 6 hereof and the loading facilities referred to in Clause 7 hereof are being established primarily for the mining and export of salt but it may be desired from time to time for the State or others to make use of those facilities and in this event such use shall not be withheld providing that it will not unreasonably prejudice the Company's operations or be unreasonably contrary to the business interests of the Company and providing that arrangements therefor can be made which will result in a reasonable return to the Company for such use having regard to the cost to the Company of establishing and maintaining the facilities concerned.

Use of  
facilities  
by third  
parties.

(2) In the event of a third party and the Company failing to agree on terms for the use of any such facilities as are mentioned in subclause (1) of this Clause the dispute shall be determined by the Minister and in the event of any dispute between the State and the Company as to the former's proposed use of any such facilities the dispute shall be referred to arbitration in accordance with the provisions of this Agreement.

(3) Nothing in this clause shall be taken to permit any unreasonable interference with the use of the aforesaid loading facilities by Co-operative Bulk Handling Ltd. where such use is in accordance with any relevant Agreement made between that organisation and the Company.

33. The parties hereto covenant and agree with each other as follows:

Default.

(a) that in any of the following events namely if the Company fails in any year after the 30th day of June, 1976, to ship at least five hundred thousand (500,000) tons of salt and furthermore the average of the tonnage shipped in that year and in the previous three (3) years is less than five hundred thousand (500,000) tons a year or if the Company makes default in the due and punctual performance of any of the covenants agreements or obligations to the State herein or in any lease

sublease easement license or other right or title granted under this Agreement on its part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given by the State to the Company and also to any Mortgagee approved pursuant to Clause 37 hereof if it has a registered office in Perth (or if the alleged default is contested by the Company and promptly submitted to arbitration within a reasonable time fixed by the Arbitration Award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company abandons or repudiates its operations under this Agreement or if the Company without having assigned or disposed of the rights and obligations of the Company and/or having appointed any other Company or person to exercise its powers functions and authorities hereunder pursuant to the provisions of Clause 37 hereof goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice given to the Company determine this Agreement and the rights of the Company hereunder and under any lease license easement or right granted or demised hereunder or pursuant hereto PROVIDED HOWEVER that if the Company fails to remedy any default after notice is given to the Company specifying the default or within the time fixed by the Arbitration Award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by its agents, workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant, machinery, equipment and installation thereon) and the costs and expenses incurred by the State remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand made by the State;

Effect of  
Determination of  
Agreement.

- (b) that on the cessation expiration or determination of this Agreement:
  - (i) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement and the rights of the Company or any assignee of the Company or any mortgagee to in or under any lease license easement or right granted or demised hereunder or pursuant hereto shall

thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement AND the Company shall without further consideration but otherwise at the request and cost of the State transfer or surrender to the State or the Crown all land the subject of any lease license easement or right granted or demised hereunder or pursuant hereto AND the Company hereby irrevocably constitutes and appoints the Minister or such person as he may from time to time nominate the true and lawful attorney of the Company to execute the transfer or surrenders aforesaid;

- (ii) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
  - (iii) save as aforesaid and as provided in paragraph (c) of this clause neither of the parties hereto shall have any claim against the other with respect to any matter or thing in or arising out of this Agreement.
- (c) that on the cessation expiration or determination of any lease license easement or right granted or demised hereunder or pursuant hereto by the State to the Company or (except as otherwise agreed by the Minister) to an assignee of the Company under Clause 37 hereof the improvements and things constructed on the relevant land other than machinery equipment and removable buildings shall remain or become the absolute property of the Crown without compensation and freed and discharged from all mortgages and encumbrances and the Company will do such things and execute such documents (including surrenders) as the State may reasonably require to give effect to this provision AND the Company hereby irrevocably constitutes and appoints the Minister or such person as he may from time to time nominate the true and lawful attorney of the Company to do those things and to execute those documents (including surrenders). In the event of the Company immediately prior to such cessation, expiration or determination or subsequent thereto deciding to remove its machinery equipment and removable buildings or any of them the Company shall not do so without first notifying the State in writing of its decision and thereby granting to the State the right or option exercisable within

three (3) months thereafter to purchase at valuation in situ the said machinery equipment and removable buildings or any of them.

Such valuation will be mutually agreed or in default of agreement shall be made by such competent valuer as the parties hereto may appoint or failing agreement as to such appointment then by two competent valuers one to be appointed by each party or by an umpire appointed by such valuers should they fail to agree;

- (d) the provisions of this clause shall not apply to any land which at or prior to the date of cessation, expiration or termination of this Agreement had been the subject of a lease granted to the Company pursuant to Clause 26 and which at that date is held for an estate in fee simple by any person, or is held for an estate in leasehold by any person other than the Company, or is held for an estate in leasehold by the Company and in respect of which the Company has effected improvements in accordance with the requirements of paragraph (c) of subclause (1) of Clause 26 hereof and has not failed to observe any obligation on its part under the lease.

34. Any hospital police or educational facilities including staff accommodation which appear to be reasonably necessary to meet the needs of employees of the Company or contractors engaged by the Company and their families shall be supplied by the State subject to the Company bearing and paying the capital cost thereof.

Salt for  
use in  
Australia.

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

Restrictions  
on  
Resumption.

36. The State further covenants with the Company that the State—

- (a) having regard to the particular nature of the industry proposed to be established by the Company under this Agreement and subject to the performance by the Company of its obligations here-

under shall not resume or suffer or permit to be resumed by any State instrumentality or by any local or other authority of the said State any portion of the production site the resumption of which would unreasonably impede the Company's activities nor shall the State create grant or permit or suffer to be created or granted by an instrumentality or authority of the said State as aforesaid any road right of way or easement of any nature or kind whatsoever over or in respect of the production site which may unduly prejudice or interfere with the Company's operations hereunder (without the consent in writing of the Company first having been obtained which consent shall not be arbitrarily or unreasonably withheld);

- (b) except as provided in this Agreement shall not impose or permit or authorise any of its agencies or instrumentalities or any local or other authority of the said State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Company in the conduct of the Company's business hereunder nor shall the State take or permit to be taken by any such agency instrumentality or authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement;
- (c) shall at the request and cost of the Company (except where and to the extent that the Commissioner of Main Roads agrees to bear the whole or part of the cost involved) widen up-grade or realign any public road over which the State has control subject to the prior approval of the said Commissioner to the proposed work;
- (d) shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection therewith) shall for rating purposes be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate;
- (e) shall ensure that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the labour conditions imposed by or under any Act in regard to any lease of any land within the production site.

No discrim-  
inatory taxes  
or charges.

Up-grading  
of roads.

Rating.

Labour  
Conditions.



**Assignment.**

37. (1) Subject to the provisions of this Clause and of paragraph (e) of subclause (1) of Clause 26 hereof the Company may at any time with the prior written consent of the Minister—

- (a) assign mortgage charge sublet or dispose of to any company or person the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of any lease license easement grant or other title) and of the obligations of the Company hereunder; and
- (b) appoint any other company or person to exercise all or any of the powers functions and authorities which are or may be conferred on the Company hereunder;

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

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

**Arbitration.**

38. 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 as to the rights duties or liabilities of either party hereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the Arbitration Act, 1895.

**Variation.**

39. The parties hereto may from time to time by mutual agreement in writing add to, vary or cancel all or any of the provisions of the Agreement or any lease license easement or right granted or demised hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

40. This Agreement shall be deemed to be made subject to any delays in the performance of obligations under this Agreement and to the temporary suspension of continuing obligations hereunder and to relief from forfeiture for failure to produce the annual and average tonnages referred to in paragraph (a) of Clause 33 which may be occasioned by or arise from circumstances beyond the power and control of the party responsible for the performance of such obligations including delays or any such temporary suspension or failure as aforesaid caused by or arising from Act of God force majeure floods storms tempests washaways abnormal tides and waves fire (unless caused by the actual fault of privity of the Company) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability (common in the salt export industry) to profitably sell salt or factors due to overall world economic conditions or factors which could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall minimise the effect of the said causes as soon as possible after their occurrence.

Force  
Majeure.

41. (1) If the Company is desirous of a further continuance of this Agreement (whether in the same or any varied or modified form) and if the parties hereto have not at least fifteen (15) months prior to the expiration of the second term of renewal of the lease of the production site (hereinafter referred to as "the expiration of the second renewal") agreed upon the terms and conditions in respect of a further agreement for the production at and shipment of salt from the production site then the State shall at least fourteen (14) months prior to the expiration of the second renewal make the Company such written offer (hereinafter called "the offer") of the terms and conditions of the further agreement as it deems reasonable and unless the Company has—

Continuance  
of  
Agreement.

- (i) within the month next following the receipt of the offer accepted it (either in the form so offered or as modified or varied by negotiation between the parties hereto), or
- (ii) within the fourteen (14) days next following the receipt of the offer referred that offer or the part or parts thereof which the Company considers unreasonable to arbitration as provided in subclause (2) of this Clause;

the State may at the expiration of that month proceed as in manner set out in subclause (3) of this Clause.

(2) Within the fourteen (14) days next following the receipt of the offer the Company may elect by notice to the

State to refer to arbitration any dispute concerning the reasonableness of the State's offer or any part or parts thereof and will within fourteen (14) days next following such election refer to arbitration that dispute. Unless the Company within the fourteen (14) days next following the receipt by it of the award on arbitration by notice to the State accepts the offer as varied or modified by the award on arbitration the State may proceed as in manner set out in subclause (3) of this Clause.

(3) If the Company has not accepted the offer or the offer as varied or modified by the award on arbitration subject to and in accordance with the provisions set out in subclause (1) or (2) respectively of this Clause then the State may enter into an Agreement for the production and shipment of salt from the sites previously leased to the Company with any other person on terms and conditions more favourable on the whole than the offer made by the State or in the event of the offer having been submitted to arbitration the offer as varied or modified by the award on arbitration provided the State has first offered to the Company the right of first refusal of such terms and conditions and such offer is not accepted by the Company within a reasonable time.

**Indemnity.**

42. The Company will indemnify and keep indemnified the State and its servants agents (including all Ministers of the Crown in right of the State of Western Australia) and contractors in respect of all actions suits claims demands or costs arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's salt plant, loading facilities, roads, railways or other works or services the subject of this Agreement or any plant apparatus or equipment associated therewith.

**Compliance  
with Laws.**

43. Subject to this Agreement the Company in the construction operation maintenance and use of any work installation plant machinery equipment service or facility provided or controlled by it shall comply with and observe the laws for the time being in force in the State of Western Australia.

**Notices.**

44. Any notice consent request or other writing authorised or required by this Agreement to be given shall be deemed to have been duly given by the State or the Minister 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 registered post to the Company or an approved mortgagee or assignee as the case may require at its registered office for the time being in the said State and by the Company if signed on its behalf by any person or persons for the time being appointed by it for the purposes of this Clause and forwarded by pre-paid registered



