

Western Australia

**Western Mining Corporation Limited (Throssell
Range) Agreement Act 1985**

As at 06 Jan 2006

Version 01-a0-07

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Reprinted under the
Reprints Act 1984 as
at 6 January 2006

Western Australia

Western Mining Corporation Limited (Throssell Range) Agreement Act 1985

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Western Mining Corporation Limited (Throssell Range) Agreement Act 1985

An Act to ratify and authorise the implementation of an agreement between the State of Western Australia and Western Mining Corporation Limited and for incidental and other purposes.

1. Short title

This Act may be cited as the *Western Mining Corporation Limited (Throssell Range) Agreement Act 1985*¹.

2. Commencement

This Act shall come into operation on the day on which it is assented to by the Governor¹.

3. Interpretation

In this Act —

the Agreement means the agreement a copy of which is set out in the Schedule and includes the Agreement as altered from time to time in accordance with its provisions.

4. Agreement ratified and implementation authorised

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

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

5. By-laws

- (1) The Governor may make by-laws for the purposes of, and in accordance with, the Agreement.
- (2) By-laws made pursuant to this section —
- (a) shall be published in the *Government Gazette*;
 - (b) take effect and have the force of law from the date on which they are so published or from such later day or days as may be fixed by the by-laws;
 - (c) may prescribe penalties not exceeding \$100; and
 - (d) are not subject to section 42 of the *Interpretation Act 1984*, but shall be laid before each House of Parliament within 6 sitting days of such House next following the publication of the by-laws in the *Government Gazette*.

Schedule

THIS AGREEMENT is made this 29th day of October, 1985.

BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the one part and WESTERN MINING CORPORATION LIMITED a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 191 Great Eastern Highway, Belmont (hereinafter called "the Company" in which term shall be included its successors and permitted assigns) of the other part.

WHEREAS:

- (a) the Company, at a cost in excess of \$8 000 000, has established the existence of copper mineralisation within the exploration areas defined in Clause 1 of this Agreement;
- (b) the Company desires to carry out further intensive exploration work in the exploration areas and to investigate the economic feasibility of developing copper and associated minerals and, subject thereto, to develop mining and processing operations within the exploration areas;
- (c) the Company intends to provide such facilities and services as may be necessary for its activities under this Agreement and for the accommodation and welfare of its workforce; and
- (d) the State, for the purpose of promoting employment opportunity and industrial development in Western Australia, desires to assist the Company in the exploration and development of the mineralisation upon and subject to the terms of this Agreement.

NOW THIS AGREEMENT WITNESSETH:

Definitions²

1. In this Agreement subject to the context —

"advise", "apply", "approve", "approval", "consent", "certify",
"direct", "notify", "request", or "require", means advise, apply,
approve, approval, consent, certify, direct, notify, request, or

require in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;

“approved proposal” means any proposal approved or determined under this Agreement;

“associated minerals” means minerals having a genetic association;

“Clause” means a clause of this Agreement;

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

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

“exploration areas” means the areas bordered green on the plan marked “A” (initialled by or on behalf of the parties hereto for the purpose of identification);

“Land Act” means the *Land Act 1933*;

“local authority” means the council of a municipality that is a city, town or shire constituted under the *Local Government Act 1960*;

“minerals” means all minerals other than iron ore;

“mine town” means a town to be established within or in the vicinity of the exploration areas by the Company as a principal housing area for its mine workforce pursuant to an approved proposal and may with the approval of the Minister include an existing town;

“mine townsite” means the site on which a mine town is or is to be established;

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

“Mining Lease” means the mining lease granted pursuant to Clause 13 and according to the requirements of the context shall describe the area of land demised as well as the instrument by which it is demised;

“Minister” means the Minister in the Government of the State for the time being responsible (under whatsoever title) for the administration of the Act to ratify this Agreement and pending

the passing of that Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of the Minister;

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

“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“private road” means a road which is either constructed by the Company in accordance with approved proposals or agreed by the parties to be a private road for the purposes of this Agreement;

“public road” means a road as defined by the *Road Traffic Act 1974*;

“said State” means the State of Western Australia;

“secondary processing” means the processing of minerals in the said State to substantially enhance their economic value;

“Special Exploration Licence” means the licence granted pursuant to Clause 5;

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

“subclause” means subclause of the Clause in which the term is used;

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

“year 1” means the 12 month period commencing on the commencement date and “year” followed immediately by any other numeral has a corresponding meaning.

Interpretation²

2. In this Agreement —
- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
 - (b) power given under any Clause other than Clause 33 to extend any period or date shall be without prejudice to the power of the Minister under Clause 33;
 - (c) marginal notes do not affect the interpretation or construction²;
 - (d) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

Initial obligations of the State²

3. The State shall —
- (a) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31st December, 1985; and
 - (b) to the extent reasonably necessary for the purposes of this Agreement allow the Company to enter upon Crown Lands (including, if applicable, land the subject of a pastoral lease and reserves within the exploration areas).

Ratification and operation²

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

(2) If before 31st December, 1985 the said Bill has not commenced to operate as an Act then unless the parties hereto otherwise agree this Agreement shall then cease and determine and neither party hereto shall have any claim against the other with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

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

Special Exploration Licence²

5. (1) Notwithstanding the provisions of the Mining Act the State shall on application made by the Company not later than 3 months after the commencement date but subject to the surrender by the Company of all mining tenements held and the withdrawal of all applications for mining tenements made by the Company to lands within the exploration areas, cause to be granted to the Company a licence to explore for minerals within the exploration areas such licence (the "Special Exploration Licence") to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act as if it were an exploration licence under that Act and at the rentals from time to time specified in the Mining Act in respect of exploration licences but in the form of the First Schedule hereto.

(2) The term of the Special Exploration Licence shall, subject to the sooner determination thereof on the determination or cessation of this Agreement, be for a period expiring at the end of year 5 PROVIDED HOWEVER that the Minister may extend the term of the Special Exploration Licence once for a period of one year AND PROVIDED FURTHER that where the Company has, prior to the expiration of the Special Exploration Licence, submitted all the proposals required pursuant to subclause (1) of Clause 7 but those proposals have not been approved or determined at the date for expiration of the Special Exploration Licence, the Minister shall extend the term of the Special Exploration Licence for the period required for the approval or determination of those proposals and a further period of 3 months or such longer period as the Minister may allow so as to permit the grant of the Mining Lease.

(3) The Company shall not extract or remove from the areas comprised within the Special Exploration Licence more than 1 000 tonnes of ore without first obtaining the approval of the Minister for Minerals and Energy.

(4) (a) The Company shall expend in exploration for minerals within the Special Exploration Licence but excluding that part thereof shown bordered red on the plan marked "B" initialled by or on behalf of the parties hereto for the purpose of identification, in addition to any expenditure under Clause 6, at least the following amounts for each square kilometre or part thereof of the area of the Special Exploration Licence (excluding the area

of the said part bordered red on the said plan “B”) during the following years —

Year	Amount per sq: kilometre
1	\$ 600
2	\$ 900
3	\$1 200
4	\$1 200
5	\$1 200
6	(if term extended to year 6) \$1 200

PROVIDED THAT and notwithstanding the provisions of subclause (2) of Clause 32 the Minister may allow a lesser expenditure in any year where the Company shows to the satisfaction of the Minister that its failure to expend the required amount was caused by exploration being suspended due to abnormally wet weather conditions.

- (b) (i) Exploration for minerals under this subclause shall be such as to spread as far as practicable the exploration work over the whole of the area of the Special Exploration Licence (other than the said area bordered red on the said plan “B”).
- (ii) At the commencement of each year of the Special Exploration Licence the Company shall submit to the Minister a report detailing its exploration programme for the following 12 months. In respect of years 4, 5 and 6 (if the Special Exploration Licence is then in existence) the Minister if he is not satisfied as to the proposed spread of work in any exploration programme shall consult with the Company thereon. The Minister may agree to areas within the Special Exploration Licence not being explored under any particular programme but where he does not so agree and the Company does not amend its programme to include exploration of those areas, the

Minister may require the Company to surrender those areas.

- (c) For the purpose of this subclause, “exploration for minerals” means all activities related to the search for deposits of economic minerals, and the investigation of discovered deposits to determine their size, shape, grade-distribution, and other characteristics necessary for preliminary appraisal of economic viability but does not include the detailed assessment of a discovered deposit of minerals to determine the mining and metallurgical methods to be used in its extraction.

(5) The Company may at any time and from time to time surrender any area or areas of the Special Exploration Licence. The provisions of section 65 of the Mining Act shall not apply to the Special Exploration Licence. All areas surrendered pursuant to this subclause shall except in those cases where the Minister otherwise agrees be in the form of a rectangle (with the length not exceeding twice the width) but if the presence of boundaries of mining tenements held by third parties, other boundaries or natural features make it necessary or desirable to vary this shape, each side of the area surrendered shall be a straight line and where possible at right angles to an adjacent side or parallel to an opposite side and each area so surrendered shall not unless the Minister otherwise agrees be less than 100 square kilometres in area.

(6) Save where the same are inconsistent with the provisions of this Clause the provisions of the Mining Act (including, without limiting the generality of the foregoing, sections 68 and 70 and regulation 22) shall apply to the Special Exploration Licence as if it were an exploration licence under the Mining Act.

(7) Notwithstanding regulation 96 of the regulations made under the Mining Act —

- (a) the Minister for Minerals and Energy may at any time and from time to time after the grant of the Special Exploration Licence make public any information contained in reports submitted to him in respect of —
- (i) areas within the Special Exploration Licence surrendered pursuant to subclause (5); and

(ii) areas within the exploration areas surrendered for the purposes of subclause (1) of Clause 13 but not included in the Mining Lease;

(b) the Company shall from time to time make public such geological data relating to the Special Exploration Licence as agreed between the Company and the Minister.

(8) If the Company does not submit all the proposals required pursuant to subclause (1) of Clause 7 during the term of the Special Exploration Licence this Agreement shall on the date of expiration of the Special Exploration Licence cease and determine without the need for any notice by the State pursuant to Clause 34 but subject however to the provisions of Clause 35.

Initial obligations of the Company²

6. (1) The Company shall carry out field and office engineering, environmental, market and finance studies and other matters necessary to enable it to finalise and to submit to the Minister the detailed proposals referred to in Clause 7 and shall keep the State fully informed in writing as and when required by the State as to the progress and results of its investigations, studies and other works and operations under this Clause.

(2) The Company shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclause (1) and any other relevant studies in relation to that subclause that the Minister may wish to undertake.

Company to submit proposals²

7. (1) The Company shall on or before the end of year 5 (or the end of year 6 where the Minister has extended the term of the Special Exploration Licence for a period of one year pursuant to subclause (2) of Clause 5) and subject to the provisions of this Agreement, submit to the Minister to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect to a mining project on those areas within the exploration areas which it proposes to have included in the Mining Lease which proposals shall make provision for the necessary workforce and associated population required to enable the Company to mine and recover copper and associated minerals from the areas the subject of the proposals and to transport and ship such minerals and shall include the location, area, lay-out, design, quantities, materials and time programme for the

commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely —

- (a) the establishment of mining and treatment operations in respect of copper and associated minerals;
- (b) roads;
- (c) accommodation for the Company's workforce associated with its mining operations carried on pursuant to this Agreement (and for any other of the Company's workforce engaged in the shipment of copper and associated minerals from ports in the Pilbara and for the processing of such minerals pursuant to this Agreement) including housing, provision of utilities and services and associated facilities;
- (d) water supply;
- (e) power supply;
- (f) port facilities;
- (g) airstrip in or adjacent to the exploration areas and other airport facilities and services;
- (h) any other works, services or facilities desired by the Company;
- (i) use of local labour professional services manufacturers suppliers contractors and materials and measures to be taken with respect to the engagement and training of employees by the Company its agents and contractors;
- (j) any leases (other than mining leases) licences or other tenures of land required from the State; and
- (k) an environmental management programme as to measures to be taken, in respect of the Company's activities under this Agreement, for the protection and management of the environment.

(2) The proposals pursuant to paragraph (c) of subclause (1) shall include the provision of a mine town (which may include with the approval of the Minister an existing town) but the Minister may in lieu thereof approve alternative provisions for the accommodation of the Company's workforce and

support facilities and in considering any approach from the Company in this regard the Minister shall take into account —

- (a) the scale of the proposed operations and associated facilities;
- (b) the term of the proposed mining operations;
- (c) relevant economic and social factors

and such other factors as the Minister may consider relevant.

Other minerals²

(3) The proposals pursuant to subclause (1) may with the approval of the Minister be in respect of minerals other than copper and associated minerals;

Order of proposals²

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

Use of existing infrastructure²

(5) The said proposals may with the approval of the Minister and that of any third parties concerned instead of providing for the construction of new facilities of the kind therein mentioned provide for the use by the Company of any existing facilities of such kind belonging to the Company or upon reasonable terms and conditions of any other existing facilities of such kind.

Financial arrangements²

(6) At the time when the Company submits the proposals it shall furnish to the State's satisfaction evidence of —

- (a) the availability of finance necessary for the fulfilment of the operations to which the said proposals refer;
- (b) the readiness of the Company to embark upon and proceed to carry out the operations referred to in the said proposals.

Consideration of proposals²

8. (1) On receipt of the said proposals pursuant to subclause (1) of Clause 7 the Minister shall —

- (a) approve of the said proposals either wholly or in part without qualification or reservation; or
- (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 7 not covered by the said proposals; or
- (c) require as a condition precedent to the giving of his approval to the said proposals that the Company makes such alteration thereto or complies with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions.

Advice of Minister's decision²

(2) The Minister shall within two months after receipt of the said proposals pursuant to subclause (1) give notice to the Company of his decision in respect to the same.

Consultation with Minister²

(3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.

Minister's decision subject to arbitration²

(4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) and the Company considers that the decision is unreasonable the Company within two months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision.

Arbitration award²

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

- (a) if by the award the dispute is decided against the Company then unless the Company within 3 months after delivery of the award gives notice to the Minister of its acceptance of the award this Agreement shall on the expiration of that period of 3 months cease and determine; or
- (b) if by the award the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

Effect of non-approval of proposals²

(6) Notwithstanding that under subclause (1) any detailed proposals of the Company are approved by the Minister or determined by arbitration award, unless each and every such proposal and matter is so approved or determined by the end of year 6 or by such extended date if any as the Company shall be granted pursuant to the provisions of this Agreement then the Minister may give to the Company 3 months notice of intention to determine this Agreement and unless before the expiration of the said 3 months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of Clause 35.

Implementation of proposals²

(7) The Company shall implement the approved proposals in accordance with the terms thereof.

Additional proposals²

9. If the Company at any time during the continuance of this Agreement desires to significantly modify expand or otherwise vary its activities carried on pursuant to this Agreement beyond those specified in any approved proposals it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (k) of subclause (1) of Clause 7 as the Minister may require. The provisions of Clause 7 and Clause 8 (other than subclauses (5) and (6)) shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause with the proviso

that the Company may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same. The Company shall implement the approved proposals in accordance with the terms thereof.

Protection and management of the environment ²

10. (1) The Company shall in respect of the matters referred to in paragraph (k) of subclause (1) of Clause 7 and which are the subject of approved proposals under this Agreement, carry out a continuous programme of investigation and research including monitoring and the study of sample areas to ascertain the effectiveness of the measures it is taking pursuant to such approved proposals for rehabilitation and the protection and management of the environment.

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

(3) The Minister may within 2 months of the receipt of the detailed report pursuant to subclause (2) notify the Company that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the detailed report.

(4) The Company shall within 2 months of the receipt of a notice given pursuant to subclause (3) submit to the Minister additional detailed proposals as required and the provisions of Clause 7 and Clause 8 (other than subclauses (5) and (6)) where applicable shall *mutatis mutandis* apply in respect of such proposals.

(5) The Company shall implement the decision of the Minister or an award made on arbitration as the case may be in accordance with the terms thereof.

Use of local labour services and materials ²

11. (1) The Company shall, for the purposes of this Agreement —

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

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

(3) The Company shall submit a report to the Minister at monthly intervals commencing from the date of this Agreement or such longer periods as the Minister may from time to time determine concerning its implementation of the provisions of this Clause and the performance of third parties in relation thereto pursuant to subclause (2) together with a copy of any report received by the Company pursuant to that subclause during that month.

Roads — Private roads²

12. (1) The Company shall —

- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in its operations hereunder;

- (b) at its own cost make such provision as shall ensure that all persons and vehicles (other than those engaged upon the Company's operations and its invitees and licencees) are excluded where required by the Company from use of any such private roads; and
- (c) at any place where such private roads cross any railways or public roads provide at its cost such reasonable protection as may be required by the Railways Commission or the Commissioner of Main Roads as the case may be.

Public roads — construction²

(2) The State may construct or cause to be constructed by either the Company or others after consultation with the Company within such period of time as the parties shall agree public roads of an appropriate standard and in accordance with the requirements of the Commissioner of Main Roads to connect the mine town with existing public roads. The cost of any such construction shall be borne by the Company subject to the State contributing such amount as the State considers to be a reasonable proportion thereof.

Maintenance of public roads²

(3) The State shall maintain or cause to be maintained those public roads under the control of the Commissioner of Main Roads or a local authority which may be used by the Company to a standard similar to comparable public roads maintained by the Commissioner of Main Roads or a local authority as the case may be.

Upgrading of public roads²

(4) In the event that for or in connection with the Company's operations hereunder the Company or any person engaged by the Company uses or wishes to use a public road referred to in subclause (2) which is inadequate for the purpose, or any use by the Company or any person engaged by the Company of any such public road results in excessive damage thereto or deterioration thereof (other than fair wear and tear) the Company shall pay to the State the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads having regard to the use of such public road by others.

Liability²

(5) The State and the Company further covenant and agree with each other that —

- (a) for the purposes of determining whether and if so the extent to which —
 - (i) the Company is liable to any person or body any person or body corporate (other than the State); or
 - (ii) an action is maintainable by any such person or body corporate in respect of the death or in respect of the death or injury of any person or damage to any property arising out of the use of any of the roads for the maintenance of which the Company is responsible hereunder 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
- (b) for the purposes of this Clause the terms “municipality” “street” and “care control and management” shall have the meaning which they respectively have in the *Local Government Act 1960*.

Acquisition of private roads²

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

Mining Lease²

13. (1) On application made by the Company not later than 3 months after all its proposals submitted pursuant to subclause (1) of Clause 7 have been approved or determined and the Company has complied with the provisions of subclause (6) of Clause 7, for a mining lease of so much of the land, not exceeding in the aggregate 250 square kilometres (or such greater area as the Minister may approve), within the areas the subject of the Special Exploration Licence or within any areas formerly the subject of the Special Exploration

Licence and in respect of which the Company then holds a mining tenement or mining tenements under the Mining Act as the Company desires, the State shall upon the surrender by the Company of the Special Exploration Licence and all mining tenements then held by the Company in respect of land formerly within the Special Exploration Licence cause to be granted to the Company at the rental specified from time to time in the Mining Act a mining lease of the land so applied for (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed at the Company's expense) for all minerals such mining lease (the "Mining Lease") to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but in the form of the Second Schedule hereto and subject to such conditions as the Minister for Minerals and Energy determines.

Term²

(2) Subject to the performance by the Company of its obligations under this Agreement and the Mining Act and notwithstanding any provisions of the Mining Act to the contrary the term of the Mining Lease shall be for a period of 21 years commencing from the date of approval of the proposals made pursuant to Clause 7 with the right during the currency of this Agreement to take two successive renewals of the said term each for a further period of 21 years upon the same terms and conditions, subject to the sooner determination of the said term upon cessation or determination of this Agreement, such right to be exercisable by the Company making written application for any such renewal not later than 1 month before the expiration of the current term of the Mining Lease.

Exemption from expenditure conditions²

(3) The State 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 expenditure conditions imposed by or under the Mining Act in regard to the Mining Lease.

Access over mining lease²

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

Surrender of part of Mining Lease²

(5) Notwithstanding the provisions of this Clause and the Mining Act the Company may from time to time (with abatement of future rent in respect to the area surrendered but without any abatement of rent already paid or any rent which has become due and has been paid in advance) surrender to the State all or any portion or portions of the Mining Lease.

Stone, sand, clay and gravel²

(6) The Company in accordance with approved proposals may for the construction of works (and the maintenance thereof) for the purposes of this Agreement and without payment of royalty, obtain stone sand clay or gravel from the Mining Lease.

Electricity — Purchase of electricity²

14. (1) For the purposes of facilitating integration of electricity generation and transmission facilities in areas where the Company carries on operations under this Agreement, the Company shall purchase electricity if available from the State Energy Commission or, negotiate with the State Energy Commission for the payment by the Company of an equitable contribution towards the augmentation of the facilities of the State Energy Commission to enable it to supply electricity to the Company. Electricity supplied to the Company pursuant to this subclause shall be on terms and conditions to be negotiated between the State Energy Commission and the Company.

Electricity generation²

(2) In the event of the Company demonstrating to the satisfaction of the Minister that the provisions of subclause (1) would be unduly prejudicial to its operations, or if the State Energy Commission is unable to provide supply, the Company may —

- (a) in accordance with its approved proposals hereunder and subject to the provisions of the *Electricity Act 1945* and the approval and requirements of the State Energy Commission, install and operate without cost to the State, at an appropriate location equipment to generate electricity of sufficient capacity for its operations hereunder;
- (b) transmit power within the areas of its mining operations and from those areas to the mine town or elsewhere subject to the

provisions of the *Electricity Act 1945* and the approval and requirements of the State Energy Commission; and

- (c) subject to the provisions of the *Electricity Act 1945* and the requirements of the State Energy Commission sell power transmitted pursuant to paragraph (b) of this subclause to third parties within the areas of its mining operations and to third parties elsewhere.

(3) In the event that the Company is unable to procure easements or other rights over land required for the purposes of subclause (2) on reasonable terms the State shall assist the Company to such extent as may be reasonably necessary to enable it to procure the said easements or other rights over land.

Bulk supply to State²

(4) Should the Company's relevant approved proposal provide for the State Energy Commission to reticulate electricity to houses occupied by the Company's workforce and by any other persons connected directly with the Company's operations whether employees or not and to commercial establishments directly connected with such operations, the Company shall sell to the State Energy Commission in bulk electricity in sufficient quantities to meet the needs of such workforce persons and establishments on terms and conditions to be negotiated between the State Energy Commission and the Company.

(5) If the State Energy Commission desires to purchase power for its own use and the Company has the ability to supply such power, the Company shall use its best endeavours to supply on terms and conditions to be negotiated between the State Energy Commission and the Company, and the Company shall in that event be empowered to supply such power.

Acquisition of facilities²

(6) Notwithstanding the provisions of the *State Energy Commission Act 1979* the State may at any time give to the Company 12 months notice of its intention to acquire and may thereafter acquire the Company's electricity facilities or any part thereof up to the first point of voltage breakdown or such other appropriate point as may be agreed, at a price to be agreed between the parties and the Company shall take all such steps as may be necessary to effect the acquisitions. The State undertakes that in such event the Company shall for its purposes hereunder have first call on the power generated and transmitted by such electricity facilities so acquired at levels of supply from time to time

agreed between the State and the Company and the State undertakes subject only to its inability to supply power for any of the reasons set forth in Clause 32 to supply or cause to be supplied to the Company power for its purposes hereunder at the said levels of supply and that in the event of such inability to supply power occurring the State shall take all possible steps to restore such supply regardless of the time or day when such inability arises.

Charges for electricity²

(7) In the event of the State acquiring the Company's electricity facilities the Company shall pay to the State Energy Commission the cost of all electricity supplied to the Company by the State Energy Commission at rates to be agreed between the State Energy Commission and the Company from time to time. Should the Company desire to expand its operations hereunder and for that purpose require power beyond the level agreed pursuant to subclause (6) the Company shall give to the State 1 years notice of its additional power requirements and the State shall thereupon cause the State Energy Commission to negotiate with the Company the terms and conditions under which the additional generating capacity required to meet the needs of such expansion is to be provided.

Water — mining areas²

15. (1) The State and the Company shall agree upon the amounts (and qualities thereof) of the Company's annual and maximum daily water requirements for its purposes hereunder at its mining areas and the mine townsite (which amounts or such other amounts as shall from time to time be agreed between the parties to be reasonable are hereinafter called "the mining water requirements").

Search in mining areas²

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

Search outside mining areas²

(3) If in the opinion of the Minister, the details and reports of the consultants pursuant to subclause (2) indicate that any source of underground water in the Mining Lease is likely to be inadequate or unsuitable to supply the

mining water requirements the State and the Company shall (having due regard to the then present or likely future requirements of third parties for water) collaborate and agree on a programme which shall be carried out by the State at the cost of the Company to search for water inside and outside the Mining Lease. The State may at its discretion require the Company to extend such water search to provide a quantity of water greater than that required to supply the Company's daily water requirements but in that event the cost of such search shall be shared by the parties hereto in such a manner as may be agreed to be fair in all the circumstances.

Grant of licence²

(4) If the investigations referred to in subclauses (2) and (3) prove to the satisfaction of the Minister the availability of any suitable underground water source in or near the Mining Lease which can continue to be drawn on by the Company without seriously affecting the water level in that water source beneath the Mining Lease or adjacent areas or the availability of water in the adjacent areas the State shall grant to the Company a licence to develop and draw from that source at the Company's cost but without fee, the mining water requirements on such terms and conditions as are necessary to ensure good water resource management as the Minister may from time to time require and during the continuance of this Agreement grant renewals of any such licence PROVIDED HOWEVER that should that source in the opinion of the Minister prove hydrologically inadequate to meet the mining water requirements, the State may on at least 6 months prior notice to the Company (or on at least 48 hours prior notice if in the opinion of the Minister an emergency situation exists) limit the amount of water which may be taken from that source at any one time or from time to time to the maximum which that source is hydrologically capable of meeting as aforesaid.

Investigation of surface water²

(5) In the event of water supplies from available underground sources proving insufficient to meet the mining water requirements the Company shall notwithstanding the provisions of subclause (4) collaborate with the State in an investigation of surface water, water catchments and storage dams. The Company shall if it proposes to utilise such surface water, water catchments and storage dams pay to the State a sum or sums to be agreed towards the cost of such investigation.

Alternative water source²

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

Development of water sources²

(7) The Company shall provide at its cost or with finance arranged by it and construct to standards and in accordance with designs approved by the State and operate and maintain in accordance with the relevant approved proposals all necessary dams, bores, valves, pipelines, meters, tanks, equipment and appurtenances necessary to draw transport use and dispose of water obtained by the Company pursuant to this Clause.

State's acquisition of water facilities²

(8) If during the currency of this Agreement the Minister is of the opinion that it would be desirable for water conservation purposes or water management purposes that sources of water utilised by the Company be controlled and operated by the State as part of a regional water supply scheme, the Minister may, on giving 6 months prior notice to the Company of his intention to do so, acquire the Company's water supply facilities for a monetary consideration to be determined by the Minister. Immediately thereafter the State shall, subject only to the continued hydrological availability of water from such sources (as determined by the Minister) commence and thereafter continue to supply water of the relevant qualities up to the amount and at the rates required by the Company being the amounts and rates to which the Company was previously entitled and the proviso to subclause (4) and the provisions of subclause (5) shall in like manner apply to this subclause.

Enlarged water capacity²

(9) The State, after first having due regard to the mining water requirements and to the hydrological adequacy of existing water sources, may in its discretion develop all or any of the surface and/or the underground water resources referred to in this Clause or construct any works in connection

therewith to a greater capacity than that required to supply the mining water requirements but in that event the Company shall pay to the State a share of the cost of the system as so enlarged as may be agreed between the State and the Company to be fair in all the circumstances.

Third party use²

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

- (a) where the Company has paid (in whole or in part) any moneys in respect of the investigation development and utilisation of that water source the State shall require as a condition of the grant that where the third party is or will be a substantial drawer of water from that water source within 5 years of the commencement date the third party (but not the State) shall reimburse to the Company prior to the third party exercising its rights to draw water, such proportion of those moneys as the Minister determines is fair and reasonable; and
- (b) where the Company draws water from that water source the State shall ensure that it is a condition of the grant to third parties that in the event that the capacity of that water source is reduced, such reduction shall be first applied to the third parties and thereafter if further reduction is necessary the State's and the Company's requirements shall be reduced in such proportion as may be agreed.

Payment for water²

(11) The Company shall pay to the State for water supplied by the State pursuant to subclauses (5) and (8) a fair price to be agreed between the parties hereto having regard to the actual cost to the State of establishing operating and maintaining the supply and provision for replacement of the water supply facilities.

Design of plant²

(12) The Company shall to the extent that it is practical and economical design construct and operate all plant required under this Clause so as to ensure the most efficient use of the available water resources including if required by the Minister the use of brackish or saline water.

State to restrict adverse grants²

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

Charges for supply of water to third parties²

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

Rights in Water and Irrigation Act²

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

Water — existing towns²

16. Water for the Company's operations and the Company's workforce in any existing town shall be made available at the rates and charges levied in respect thereof from time to time pursuant to the provisions of the *Country Areas Water Supply Act 1947* or such other relevant Act.

Townsite and town development²

17. (1) (a) Should the approved proposals provide for the establishment of a new town for the mine town the Company shall except as otherwise agreed by the Minister at its cost or with finance arranged by it and in accordance with the approved proposals —
- (i) provide at the mine townsite such housing accommodation services and works (including sewerage reticulation and treatment works water supply works and drainage works and also social cultural and civic facilities) as may be necessary in order to provide for the needs of persons (and the dependants of those persons) connected directly with the Company's operations under this Agreement, whether or not such persons are employed by the Company;
 - (ii) provide at the mine townsite all buildings required for educational, hospital, medical, police, recreation, fire and other services and all necessary public roads;
 - (iii) provide all equipment required for the operation and proper functioning of the services and works referred to in subparagraphs (i) and (ii) of this paragraph;
 - (iv) service maintain and where necessary repair and renovate the housing accommodation services and works mentioned in subparagraphs (i) and (ii) of this paragraph;
 - (v) (subject to and in accordance with by-laws from time to time to be made and altered by the Company which include provisions for fair and reasonable prices rentals or charges or if no such by-laws are made or in force then at such prices rentals or charges and upon and subject to such terms and conditions as are fair and reasonable) ensure that the said housing accommodation services and works are at all times readily available to persons requiring the same being employees licencees or agents of the Company or persons engaged in providing a legitimate and normal service to or for the Company or its employees licencees or agents including the dependants of such persons; and

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

Limitation on Company's obligations²

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

Equipment²

(2) The Company shall at its cost or with finance arranged by it equip all the buildings the construction of which the Company is responsible for mentioned in paragraph (a) of subclause (1) to the extent and of a standard at least equal to that normally adopted by the State in similar types of buildings used for similar purposes in comparable townsites.

Staff housing²

(3) The Company shall except where the Minister otherwise agrees at its cost or with finance arranged by it provide adequate housing accommodation for married and single staff directly connected with the educational hospital medical and police services mentioned in subparagraphs (i) and (ii) of paragraph (a) of subclause (1).

Existing towns²

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

shall be to the extent and of a standard at least equal to that normally adopted by the State in similar types of buildings used for similar purposes in comparable towns. The Company shall pay to the State or such other party such proportion of the cost of such additional housing services works and equipment as is fair and reasonable having regard to the extent of the said increase in the population of such existing town.

State services²

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

- (a) that the State is satisfied that the need to provide such services and facilities results from or is reasonably attributed to the Company's operations under this Agreement; and
- (b) the Company agrees to bear the capital cost involved and thereafter to pay reasonable charges for the maintenance and operation of the said services or facilities other than the operation charges in respect of educational hospital medical and police services.

Sewerage facilities²

18. (1) The Company shall unless the Minister otherwise determines and subject to such conditions as the Minister may from time to time approve at its cost or with finance arranged by it construct or cause to be constructed and operate sewerage facilities at the mine town and charge for such services. The Company shall have all such powers and authorities with respect to such facilities as are determined by the Minister which may include, with the consent of the Minister for Local Government, all or any of the powers of a local authority.

(2) If at any time the Minister is of the opinion that it would be desirable that the sewerage facilities operated by the Company under subclause (1) of this Clause be controlled and operated by the State, the Minister may (after first affording the Company a reasonable opportunity to consult with him) on giving 6 months prior notice to the Company of his intention, acquire the Company's sewerage facilities for a monetary consideration to be determined by the

Minister. Thereafter in respect of sewerage facilities operated by or on behalf of the State within the mine town, rates and charges as levied from time to time pursuant to the provisions of the *Country Towns Sewerage Act 1948* shall apply.

Lands²

19. (1) For the purposes of the Company's operations and associated works at the mine town the State shall grant to the Company for residential agricultural professional business commercial and industrial purposes and the provision of communal or other facilities at the mine townsite a special lease or special leases under the provisions of the Land Act or occupancy rights on terms and conditions to be determined by the Minister for Lands and Surveys of the said State for an area or areas of land in the mine townsite in accordance with approved proposals. Such lease or leases or occupancy rights as the case may be shall be for a term not exceeding 21 years from the date of such grant and shall be at reasonable rentals subject to periodic review. The Company may at any time during the currency of such lease or leases or occupancy rights purchase the fee simple of any relevant townsite lot on which buildings or structures of a type and to a value to be approved by the Minister have been erected and at such reasonable price and on and subject to such terms and conditions not inconsistent with this Agreement as the Minister for Lands and Surveys considers applicable in the circumstances and including a right for the State notwithstanding the provisions of Clause 29 at any time and from time to time to exclude from such lease or leases or occupancy rights or to resume without compensation any part or parts of such land on which no building or structure or any substantial improvements have been erected as the State may require for public purposes.

(2) The State shall in accordance with the approved proposals grant to the Company, or arrange to have the appropriate authority or other interested instrumentality of the State grant, for such periods (not exceeding the term of the Mining Lease) and on such terms and conditions (including rental and renewal rights) as shall be reasonable having regard to the requirements of the Company, leases and where applicable licences easements and rights of way for all or any of the purposes of the Company's operations hereunder including any of the following namely —

private roads, water pipelines, pumping installations and reservoirs, airstrip, power transmission lines and plant site areas and borrow pits for sand gravel and aggregate.

Modification of Land Act²

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

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

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

Sale of Land Act²

(4) Notwithstanding the provisions of the *Sale of Land Act 1970*, the Company shall, subject to the prior consent of the Minister, have the right during the currency of any lease or leases or occupancy rights granted to it under subclause (1) to enter into an agreement to sell any lot the subject of such lease or leases or occupancy rights on condition that the purchaser erects on

such lot within 2 years from the date of such agreement, buildings or structures of a type and to a value to be approved by the Minister.

Royalties²

20. (1) Subject to the provisions of subclause (6) of Clause 13, the Company shall pay to the State in respect of all minerals obtained from the Special Exploration Licence or the Mining Lease royalties at the rates from time to time prescribed under or pursuant to the Mining Act or such other rates as the State may agree from time to time.

Payment of royalties²

(2) The Company shall within 30 days after the expiry of each month during the continuance of this Agreement during which any mineral is produced or obtained from the Special Exploration Licence or the Mining Lease furnish to the Minister for Minerals and Energy a return showing the quantity of all minerals so produced or obtained during that month and with such return shall pay to the Minister for Minerals and Energy the royalty payable in respect thereof PROVIDED THAT in respect of any mineral for which royalty is payable on the realised value thereof the Company shall pay to the Minister for Minerals and Energy on account of the royalty payable hereunder a sum calculated on the basis of invoices or provisional invoices (as the case may be) rendered by the Company to the purchaser or consignee (which invoices the Company shall render without delay simultaneously furnishing copies thereof to the Minister for Minerals and Energy) of such mineral and shall from time to time in the next following appropriate return and payment make (by the return and by cash) all such necessary adjustments (and give to the Minister for Minerals and Energy full details thereof) when the realised value in respect of the mineral shall have been ascertained.

Inspection²

(3) The Company shall permit the Minister for Minerals and Energy or his nominee —

(a) at all reasonable times to —

- (i) inspect all books, records, accounts and other documents of the Company relative to the Company's operations hereunder and to any sale, use, shipment, transfer or other disposal of minerals, including sales contracts;

- (ii) take and retain extracts and copies of books, records, accounts and other documents inspected under this subclause;
 - (iii) inspect, take stock of and value minerals in respect of which royalties are payable or, in the opinion of the Minister for Minerals and Energy, are likely to be payable; and
- (b) obtain all information necessary to ascertain the quantity or value of minerals produced or obtained from a mining tenement or from land the subject of an application for a mining tenement and to determine the amount of royalty payable with respect to those minerals.

For the purposes of determining the realised value in respect of any minerals hereunder the Company shall take reasonable steps (either by the certificate of a competent independent party acceptable to the Minister for Minerals and Energy or otherwise to his reasonable satisfaction) to satisfy the State as to all relevant matters including weights assays and analyses and shall give due regard to any objection or representation made by the Minister for Minerals and Energy or his nominee as to any matter and/or any particular weight assay or analysis which may affect the amount of royalty payable hereunder.

Company's wharf and facilities²

21. The Company and the State recognise with respect to any wharf, port facilities and services required to be established for the purposes of this Agreement that it may be advantageous for the State to provide all or any of such works or services and in such case the Company and the State shall together with other users and potential users of that wharf and/or those facilities or services confer as to the manner in and the conditions upon which the State should provide such works facilities or services to the mutual advantage of all. The Company shall pay to the State a sum or sums to be agreed (not exceeding the amount that would have been payable had the Company carried out the said works) towards the cost of the said works facilities or services provided by the State.

Use of wharf and facilities²

22. The Company shall subject to and in accordance with by-laws (which shall include provision for reasonable charges) from time to time to be made and altered as provided in Clause 23 and subject thereto, or if no such by-laws

are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Company) allow the State and third parties to use any wharf and port installations wharf machinery and equipment and wharf and port services and port facilities constructed or provided by the Company PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder and that such use shall be subject to the prior approval of the Company.

By-laws²

23. The Governor in Executive Council may upon recommendation by the Company make alter and repeal by-laws for the purpose of enabling the Company —

- (a) unless and until the mine townsite is declared a townsite pursuant to section 10 of the Land Act or otherwise with the consent of the Minister, to fulfil its obligations under Clause 17;
- (b) to fulfil its obligations under Clause 22 upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Company) as set out in such by-laws consistent with the provisions hereof. 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.

Secondary processing²

24. (1) Having regard to the State's intention to have established the secondary processing of minerals within the said State the Company shall in accordance with the provisions of this Clause unless otherwise agreed in writing by the Minister investigate the secondary processing within the said State of minerals mined from the Mining Lease.

(2) The said investigation shall ascertain the feasibility of the secondary processing of such minerals.

(3) The Company shall within 10 years of the commencement date provide to the Minister a report in writing setting out the results of such investigation.

(4) Upon submitting to the Minister the report referred to in subclause (3) of this Clause the Company shall whilst such minerals are not subjected to secondary processing within the said State continue to review the secondary processing of such minerals within the said State and shall every 4 years thereafter provide to the Minister a further report in writing setting out the results of such continued review.

(5) The Company shall give preference to the secondary processing of such minerals within the said State and will if secondary processing of such minerals within the said State is technically and economically feasible use its reasonable endeavours to initiate and/or facilitate such secondary processing.

(6) Nothing in this Clause shall oblige the Company to disclose any information the disclosure of which will or may be in breach of any obligation (whether statutory or otherwise) which will or may render the Company liable to a fine, penalty, forfeiture or detriment of any kind.

(7) Nothing in this Clause shall oblige the Company to process or sell minerals mined from the Mining Lease on other than commercial terms acceptable to it or impinge upon or restrict in any way the rights of the Company to enter into and comply with contracts for the sale of such minerals in any form.

Zoning²

25. The State shall ensure after consultation with the relevant local authority that the Special Exploration Licence and the Mining Lease and any lands the subject of any Crown Grant lease licence or easement granted to the Company under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State or by any State agency or instrumentality or by any local or other authority of the State on the ground that such operations are contrary to any zoning by-law regulation or order.

Rating²

26. The State shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands

(whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection with that residence and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the mining operations carried out by the Company pursuant to approved proposals) shall for rating purposes under the *Local Government Act 1960*, be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate PROVIDED THAT nothing in this Clause shall prevent the Company making the election provided for by section 533B of the *Local Government Act 1960*.

No discriminatory rates²

27. Except as provided in this Agreement the State shall not impose, nor shall it permit or authorise any of its agencies or instrumentalities or any local or other authority of this 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 its business hereunder nor will the State take or permit to be taken by any such State 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.

Resumption for the purposes of this Agreement²

28. The State may as and for a public work under the *Public Works Act 1902*, resume any land required for the purposes of this Agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of that land to the Company and the provisions of subsections (2) to (7) inclusive of sections 17 and 17A of that Act shall not apply to or in respect of that land or the resumption thereof. The Company shall pay to the State on demand the costs of and incidental to any land resumed at the request of and on behalf of the Company.

No resumption²

29. Subject to the performance by the Company of its obligations under this Agreement the State shall not during the currency hereof without the consent of the Company resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the State any of the works installations plant equipment or other property for the time being belonging to the Company and the subject of or used for the purpose of this Agreement or

any of the works on the lands the subject of any lease or licence granted to the Company in terms of this Agreement AND without such consent (which shall not be unreasonably withheld) the State shall not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road right-of-way water right or easement of any nature or kind whatsoever over or in respect of any such lands which may unduly prejudice or interfere with the Company's operations hereunder.

Assignment²

30. (1) Subject to the provisions of this Clause the Company may at any time with the consent of the Minister assign mortgage charge sublet or dispose of to any company or persons the whole or any part of its rights hereunder (including its rights to or as the holder of the Special Exploration Licence, the Mining Lease or any other lease licence easement grant or other title) and of the obligations of the Company hereunder subject however in the case of an assignment subletting or disposition to the assignee sublessee or disponent (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting or disposition.

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) the Company 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 the Special Exploration Licence, the Mining Lease or any other lease licence easement grant or other title the subject of an assignment mortgage subletting or disposition under subclause (1) PROVIDED THAT the Minister may agree to release the Company from such liability where he considers such release will not be contrary to the interests of the State.

(3) Notwithstanding the provisions of the Mining Act, the *Transfer of Land Act 1893* and the Land Act, insofar as the same or any of them may apply —

- (a) no assignment mortgage charge sublease or disposition made or given pursuant to this Clause of or over the Special Exploration Licence, Mining Lease or any other lease licence easement grant or other title granted hereunder or pursuant hereto by the Company or any assignee sublessee or disponent who has

executed and is for the time being bound by deed of covenant made pursuant to this Clause; and

- (b) no transfer assignment mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge

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

Variation²

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

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

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

Force majeure²

32. (1) Subject to subclause (2) this Agreement shall be deemed to be made subject to any delays in the performance of the obligations hereunder and to the temporary suspension of continuing obligations hereunder that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including without limiting the generality of the foregoing delays or any such temporary suspension as aforesaid caused by or arising from act of God *force majeure* earthquakes floods storms tempest washaways fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other

similar acts (whether partial or general) acts or omissions of the Commonwealth shortages of labour or essential materials reasonable failure to secure contractors delays of contractors or factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

(2) The provisions of subclause (1) shall not apply to Clause 5 or the Special Exploration Licence.

Power to extend periods²

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

Determination of Agreement²

34. (1) In any of the following events namely if —

- (a) (i) the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations of the Company herein or in the Special Exploration Licence or the Mining Lease or any other lease licence easement grant or other title or document granted or assigned under this Agreement on its part to be performed or observed; or
- (ii) the Company abandons or repudiates this Agreement or its operations under this Agreement and such default is not remedied or such operations resumed within a period of 180 days after notice is given by the State as provided in subclause (2) or, if the default or abandonment is referred to arbitration, then within the period mentioned in subclause (3); or

- (b) the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 3 months from the date of such liquidation the interest of the Company is assigned to an assignee approved by the Minister under Clause 30;

the State may by notice to the Company determine this Agreement.

(2) The notice to be given by the State in terms of paragraph (a) of subclause (1) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and shall be given to the Company and all such assignees mortgagees chargees and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 30 whose name and address for service of notice has previously been notified to the State by the Company or any such assignee mortgagee chargee or disponent.

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

(4) If the default referred to in subclause (1) shall not have been remedied after receipt of the notice referred to in that subclause or within the time fixed by the arbitration award as aforesaid, the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be payable by the Company to the State on demand.

Effect of cessation or determination of Agreement²

35. (1) On the cessation or determination of this Agreement —
- (a) 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 of any assignee of the Company or any mortgagee to in or under the Special Exploration Licence, the Mining Lease and any other lease licence easement grant or other title or right granted hereunder or pursuant hereto (but excluding any townsite lots which have been granted to the Company pursuant to this Agreement (and which are no longer owned by it)) shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder;
 - (b) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
 - (c) save as aforesaid and as otherwise provided in this Agreement neither of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.

(2) Subject to the provisions of subclause (3) upon the cessation or determination of this Agreement except as otherwise determined by the Minister all buildings erections and other improvements erected on any land then occupied by the Company under the Special Exploration Licence, the Mining Lease or any other lease, licence, easement, grant or other title made hereunder for the purpose hereof shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Company or any other party and freed and discharged from all mortgages and other encumbrances and the Company shall do and execute all such deeds documents and other acts matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

(3) In the event of the Company immediately prior to the cessation or determination of this Agreement or subsequently thereto desiring to remove any of its fixed or movable plant and equipment to any part thereof from any part of the land occupied by it at the date of such cessation or determination it shall give to the State notice of such desire and thereby grant to the State the right or option exercisable within 3 months thereafter to purchase in situ such fixed or

movable plant and equipment at a fair valuation to be agreed between the State and the Company or failing agreement determined by arbitration hereunder.

Provision of finance²

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

(2) Where under any provision of this Agreement or any approved proposal hereunder the Company is liable to make payments to the State for services and facilities to be provided by the State the parties shall subject to the relevant provision or approved proposal enter into an agreement regarding the nature and extent of such payments prior to the commencement of any such work or expenditure.

Environmental protection²

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

Indemnity²

38. The Company shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Company pursuant to this Agreement or relating to its operations hereunder or 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 works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith PROVIDED THAT subject to the provisions of any other relevant Act such indemnity shall not apply in circumstances where the State, its servants, agents, or contractors are negligent in carrying out work for the Company pursuant to this Agreement.

Commonwealth licences and consents²

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

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

Subcontracting²

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

Stamp duty exemption²

41. (1) The State shall exempt from any stamp duty which but for the operation of this Clause would or might be assessed and chargeable on —

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee any tenement lease licence easement or other right or rights; and
- (c) any assignment sublease or disposition (other than by way of mortgage or charge) made in conformity with the provisions of subclause (1) of Clause 30;

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

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

Arbitration²

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

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

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

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

Notices²

44. Any notice consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Civil Service of the said State acting by the direction of the Minister and forwarded by prepaid post or handed to the Company at its address in the said State hereinbefore set forth or other address in the said State nominated by the Company to the Minister from time to time for the purpose of this Clause and by the Company if signed on its behalf by any person or persons authorised by it

or by its solicitors as notified to the State from time to time and forwarded by prepaid post or handed to the Minister and except in the case of personal service any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

Applicable law²

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

THE FIRST SCHEDULE

WESTERN AUSTRALIA
MINING ACT 1978

*WESTERN MINING CORPORATION LIMITED (THROSSSELL RANGE)
AGREEMENT ACT 1985
SPECIAL EXPLORATION LICENCE*

No:

Western Mining Corporation Limited a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 191 Great Eastern Highway, Belmont is hereby authorised, pursuant to the Agreement ratified by the *Western Mining Corporation Limited (Throssell Range) Agreement Act 1985* (hereinafter called “the Agreement”) and the *Mining Act 1978* (except as otherwise provided in the Agreement), to explore in accordance with section 66 of the *Mining Act 1978* but subject to the provisions of the Agreement and such of the provisions of the *Mining Act 1978* (except as otherwise provided by the Agreement) as are applicable to exploration licences granted thereunder and also to the conditions stated in the Schedule of conditions hereunder the land the subject of this licence situated at _____ in the _____ Mineral Field for a term of 5 years which shall be deemed to have commenced from the “commencement date” as defined in the Agreement (subject to extension as provided in the Agreement) subject however to sooner determination of the term upon the cessation or determination of the Agreement.

Schedule of Conditions.

Dated the _____ day of _____ 19

Mining Registrar

Mineral Field

THE SECOND SCHEDULE

WESTERN AUSTRALIA
MINING ACT 1978

*WESTERN MINING CORPORATION LIMITED (THROSSELL RANGE)
AGREEMENT ACT 1985
MINING LEASE*

MINING LEASE NO.

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

In this Lease —

“Lessee” includes the respective successors and permitted assigns of each Lessee.

If the Lessee shall be more than one the liability of the Lessee hereunder shall be joint and several.

Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and to the regulations and by-laws for the time being in force thereunder.

FIRST SCHEDULE

WESTERN MINING CORPORATION LIMITED a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 191 Great Eastern Highway, Belmont.

SECOND SCHEDULE

The Agreement made between the State of Western Australia and Western Mining Corporation Limited and ratified by the *Western Mining Corporation Limited (Throssell Range) Agreement Act 1985* and any amendments to that Agreement.

THIRD SCHEDULE

(Description of land:)

Locality:

Mineral Field:

Area, etc.:

Being the land delineated on Survey Diagram No.
and recorded in the Department of Mines, Perth.

FOURTH SCHEDULE

All petroleum as defined in the *Petroleum Act 1967* on or below the surface of the land the subject of this lease is reserved to the Crown in right of the State of Western Australian with the right of the Crown in right of the State of Western Australia and any person lawfully claiming thereunder or otherwise authorised to do so to have access to the land the subject of this lease for the purpose of searching for and for the operations of obtaining petroleum (as so defined) in any part of the land.

FIFTH SCHEDULE

(Date of commencement of the lease).

SIXTH SCHEDULE

(Any further conditions or stipulations).

In witness whereof the Minister for Minerals and Energy has affixed his seal and set his hand hereto

this day of 19.....

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

SIGNED by the HONOURABLE BRIAN THOMAS BURKE, M.L.A. in the presence of — } BRIAN BURKE.

D. PARKER
MINISTER FOR MINERALS AND ENERGY

THE COMMON SEAL of WESTERN MINING CORPORATION LIMITED was hereto affixed in the presence of — } (C.S.)

Director.
H. S. AMOS.

Secretary
G. S. DIXON.

Notes

- ¹ This is a reprint as at 6 January 2006 of the *Western Mining Corporation Limited (Throssell Range) Agreement Act 1985*. The following table contains information about that Act and any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Western Mining Corporation Limited (Throssell Range) Agreement Act 1985</i>	93 of 1985	4 Dec 1985	4 Dec 1985 (see s. 2)

Reprint 1: The Western Mining Corporation Limited (Throssell Range) Agreement Act 1985 as at 6 Jan 2006

- ² Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.