



Western Australia

Evaporites (Lake MacLeod) Agreement Act 1967

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Defined terms

Evaporites (Lake MacLeod) Agreement Act 1967

An Act to approve, and give effect, to an agreement between the State of Western Australia and Texada Mines Pty. Limited relating to the production of evaporites at or near Lake MacLeod.

1. Short title

This Act may be cited as the *Evaporites (Lake MacLeod) Agreement Act 1967*¹.

2. Interpretation

In this Act —

the Agreement means the agreement of which a copy is set out in the First Schedule and, if that agreement is varied in accordance with its provisions, or as ratified by Parliament, includes the agreement as so varied;

the Company has the same meaning as it has in the Agreement;

the Variation Agreement means the agreement of which a copy is set out in the Second Schedule;

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

[Section 2 amended: No. 29 of 1973 s. 2; No. 5 of 1979 s. 2.]

3. Approval of Agreement

- (1) The Agreement is approved.
- (2) Notwithstanding any other Act of the State, the State has, and any Ministers of the State therein mentioned or referred to have,

s. 3A

all the powers, discretions and authorities necessary or requisite to enable it or them to discharge the undertakings given by the State in the Agreement, in a manner wholly consistent with the terms of the Agreement; and anything done in the exercise of those powers, discretions or authorities shall be lawful, notwithstanding the provisions of any other Act.

3A. Ratification of Variation Agreement

The Variation Agreement is ratified.

[Section 3A inserted: No. 29 of 1973 s. 3.]

3B. Ratification of Second Variation Agreement

The Second Variation Agreement is ratified.

[Section 3B inserted: No. 5 of 1979 s. 3.]

4. Provisions of certain Acts not to apply

- (1) Section 96 of the *Public Works Act 1902* does not apply to any railway constructed by the Company pursuant to the Agreement.
- (2) The provisions of section 277(5) of the *Mining Act 1904*² do not apply to any renewal of the rights of occupancy granted pursuant to paragraph (a) of clause 2 of the Agreement.

5. By-laws

The Governor may, on the recommendation of the Company, make, alter and repeal by-laws in accordance with, and for the purposes of, the Agreement, and the by-laws —

- (a) shall be published in the *Gazette*;
- (b) shall take effect and have the force of law from the date they are so published, or from a later date fixed by the order making the by-laws;
- (c) may describe penalties not exceeding \$100 for a breach of any of the by-laws; and

- (d) are not subject to section 36 of the *Interpretation Act 1918*³, but shall be laid before each House of Parliament within the 6 sitting days of such House next following the publication of the by-laws in the *Gazette*.

First Schedule — Evaporites (Lake MacLeod) Agreement

[s. 2]

[Heading inserted: No. 29 of 1973 s. 4; amended: No. 19 of 2010 s. 4.]

AN AGREEMENT under seal made the 16th day of February One thousand nine hundred and sixty-seven BETWEEN THE HONOURABLE CHARLES WALTER MICHAEL COURT O.B.E. M.L.A. Acting Premier and Minister for Industrial Development of the State of Western Australia acting for and on behalf of the said State and its instrumentalities (the State of Western Australia and its instrumentalities being hereinafter referred to as “the State”) of the one part AND TEXADA MINES PTY. LIMITED a company incorporated under the *Companies Act 1961*, of the State of Western Australia and having its registered office at 97 Saint George’s Terrace Perth in the State of Western Australia (hereinafter referred to as “the Company” which term shall include the successors and assigns of the Company including where the context so admits the assignees and appointees of the Company under clause 14 hereof) of the other part.

WHEREAS the parties hereto enter into this Agreement with the object of establishing and carrying on in the vicinity of Carnarvon works for the mining of potash and other evaporites and such other allied mining and ancillary industries as may conveniently be carried on in conjunction therewith and such other industries as may be approved by the Minister and doing all acts matters and things to attain and to facilitate the abovementioned objects.

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

Definitions⁴

1. In this Agreement subject to the context —

“associated company” means —

- (a) any company notified in writing by the Company to the Minister and which is incorporated in the United Kingdom the United States of America or any State or Territory of the Commonwealth of Australia and which:

- (i) is a subsidiary of the Company within the meaning of the term “subsidiary” in section 6 of the *Companies Act 1961*;
 - (ii) holds directly or indirectly not less than twenty per centum (20%) of the issued ordinary share capital of the Company;
 - (iii) is promoted by the Company or by any company that holds directly or indirectly not less than twenty per centum (20%) of the issued ordinary share capital of the Company for all or any of the purposes of this Agreement and in which the Company or such other company holds not less than twenty per centum (20%) of the issued ordinary share capital; or
 - (iv) is related within the meaning of that term in the aforesaid section to the Company or to any company in which twenty per centum (20%) of the issued ordinary share capital; and
- (b) any company approved in writing by the Minister for the purposes of this Agreement which is associated directly or indirectly with the Company in its business or operations hereunder;

“commencement date” means the date referred to as the commencement date in clause 7(3) hereof;

“common salt” means the evaporite sodium chloride;

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

“evaporites” means minerals chemicals elements salts and substances which are or have been deposited from aqueous solutions as a result of extensive or total evaporation of the solvent or changes in temperature of the solvent and includes all products derived from the evaporation of sea water sea water concentrates or brine including but not limited to the chlorides sulphates carbonates bromides and iodides of any of sodium potassium magnesium lithium and boron and any double or complex salts that can be obtained therefrom and any substances that develop through metamorphism of other

evaporites and any elements gases or organic substances contained in evaporite salts;

“f.o.b. revenue” means the price for evaporites from the mineral lease held by the Company in the said State the subject of any shipment or sale and payable by the purchaser or purchasers thereof to the Company or an associated company less any export duties export taxes and export fees payable to the Commonwealth on export of the evaporites and all costs and charges properly incurred and payable by the Company from the time the evaporites are shipped to the time the same are delivered and accepted by the purchaser or purchasers including —

- (a) freight;
- (b) insurance;
- (c) port and handling charges at the port or place of discharge;
- (d) costs of delivery from the port or place of discharge to the purchaser and evidenced by relevant invoices;
- (e) all weighing sampling assaying inspection and representation costs;
- (f) all shipping and forwarding agency charges after shipment; and
- (g) all import taxes by the country of the port of discharge;

“Land Act” means the *Land Act 1933*;

“lease” includes a special lease;

“mineral lease” means any lease under the Mining Act referred to in clause 8(1)(a) hereof and includes any renewal thereof;

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

“mining areas” means —

- (1) an area the boundaries of which shall be agreed by the Minister for Mines and the Company and which shall enclose an area not exceeding 550,000 acres within the boundaries of Temporary Reserve 3491H which latter area shall be defined by the Company prior to the commencement date; and

- (2) if either the stockpile area or the wharf is beyond the boundaries of the aforesaid area defined by the Company pursuant to paragraph (1) above then in the location as agreed or determined hereunder —
- (a) the stockpile area, and
 - (b) a corridor area of four chains in width or such additional width as may reasonably be required connecting the area defined by the Company pursuant to paragraph (1) above and the stockpile area and/or the wharf;

“Minister” means the Minister of the Crown to whose administration the ratifying Act is for the time being committed or if there is no such committal the Minister for Industrial Development;

“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“potash” means the evaporites potassium chloride and/or potassium sulphate;

“quarter” means each of the periods of three months expiring respectively on the last day of March June September and December;

“ratifying Act” means the Act referred to in subclause (b) of clause 2 hereof;

“shipped” includes removal from the work sites by ship or any other means;

“special lease” means a special lease or licence to be granted in accordance with the terms of this Agreement under the ratifying Act the Land Act or the *Jetties Act 1926*, and includes any renewal thereof;

“stockpile area” means such part of the mining areas having an area of not less than thirty acres adjoining the wharf as hereinafter defined and shall be located at such place and have such area and configuration as defined by the Company and approved by the

Minister and may be located either inside or outside of Temporary Reserve 3491 H;

“this Agreement” “hereof” and “hereunder” include this Agreement as from time to time added to varied or amended;

“ton” means a ton of two thousand two hundred and forty (2240) lbs. net dry weight;

“wharf” includes jetty and means the existing wharf at the port of Carnarvon as the same may be reconstructed or such other wharf which may be constructed by the Company at such other site as may be agreed by the Minister and the Company;

“work sites” includes the mining areas and the land comprised in or the subject of any lease license or easement granted or given hereunder other than any grant or lease under clause 10(a) hereof;

reference in this Agreement to an Act shall include the amendments to such 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;

marginal notes shall not affect the interpretation or the construction of this Agreement ⁴.

It is contemplated that this Agreement will operate in two phases namely: —

- (a) Phase 1 — the period from the execution hereof by the parties hereto until the commencement date; and
- (b) Phase 2 — the period thereafter.

Obligations of the State during Phase 1 ⁴

2. The State shall —

- (a) upon application by the Company at any time prior to the 16th day of June, 1967, (and surrender of the then existing rights of occupancy already granted in respect of Temporary Reserve 3491 H) cause to be granted to the Company rights of occupancy for the purposes of this Agreement (including the sole right to search and prospect for evaporites and make prototype constructions) over the whole of the area comprised in Temporary Reserve 3491 H under section 276 of

the Mining Act at the same fee as the last current renewal of said Temporary Reserve 3491 H and shall then and thereafter subject to the continuance of this Agreement cause to be granted to the Company successive renewals of the last-mentioned rights of occupancy as the Company requires (each renewal for a period of twelve (12) months at the same fee and on the same terms) the last of which renewals notwithstanding its currency shall expire —

- (i) on the date of granting the mineral lease after application by the Company under clause 8(1)(a) hereof;
- (ii) on the determination of this Agreement pursuant to its terms;
or
- (iii) on the day of the receipt by the State of a notice from the Company to the effect that the Company abandons and cancels this Agreement,

whichever shall first happen;

- (b) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage prior to the 31st day of December, 1967, and such Bill shall provide that notwithstanding the provisions of any other Act the State and any Ministers of the State herein mentioned or referred to shall have all the powers discretions and authorities necessary or requisite to enable them to discharge the undertakings given by them respectively in this Agreement and in a manner wholly consistent with the terms of this Agreement and that anything done in the exercise of such powers discretions or authorities shall be lawful notwithstanding the provisions of any other Act;
- (c) to the extent reasonably necessary for the purposes of clauses 4 and 5 hereof allow the Company to enter upon Crown Lands (including land the subject of a pastoral lease) and survey possible work sites (both in or near proposed wharf sites and on or near the areas comprised in Temporary Reserve 3491 H) processing and other areas required for the purposes of this Agreement and engage in prototype constructions and production having all of the rights as are set forth for the Company during Phase 2 as are reasonably necessary for such prototype constructions and production;

- (d) notify the Company not later than 31st December, 1967, or such other date as mutually agreed if the State desires the wharf to be utilised not only by the Company but also be available for the inward and outward shipment of cargo for third persons and in case of such notification the State shall within two (2) months agree with the Company on design criteria for the wharf terms and conditions of user and the respective financial participation of the State and the Company in the cost of constructing and maintaining the wharf and failing agreement within such two (2) months the matter shall be determined by arbitration in the manner set forth for proposals under clause 6 hereof; and
- (e) at the request and cost of the Company co-operate with the Company in the discharge of its obligations under clause 4 hereof.

Ratification and operation ⁴

3. (1) If the Bill to ratify this Agreement is not passed before the thirty-first of December, 1967, or such later date if any as the parties hereto may mutually agree upon (as the case may be) this Agreement will then cease and determine and neither of the parties hereto will have any claim against the other of them with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement except as hereinafter provided in paragraphs (r) and (s) of clause 10 hereof.

(2) If the Bill to ratify this Agreement is passed as an Act before the date or later date if any referred to in subclause (1) of this clause the following provisions of this clause shall notwithstanding the provisions of any Act or law thereupon operate and take effect namely —

- (a) the provisions of this Agreement shall take effect as though the same had been brought into force and had been enacted by the Ratifying Act;
- (b) no future Act of the said State will operate to increase the Company's liabilities or obligations hereunder with respect to rents or royalties; and
- (c) the State may be agreement acquire or compulsorily take or resume as for a public work within the meaning of the *Public Works Act 1902*, any land or any estate or interest in land which in the opinion of the Minister is reasonably required for the objects of this Agreement and may thereafter dispose of or deal with the same in

accordance with or for the purposes of this Agreement apart from the provisions of that Act or any other Act AND when any land is to be so compulsorily taken or resumed under the powers conferred by this paragraph the provisions of subsections (2) to (7) inclusive of section 17 and section 17A of the *Public Works Act 1902*, shall not apply to or in respect of the land or to the taking thereof or in any other manner whatsoever.

Obligations of Company during Phase 1 ⁴

4. (1) The Company at an estimated total cost as from the 17th June, 1965, of three hundred thousand dollars (\$300,000) shall with all reasonable diligence continue to do or shall carry out and by the 30th June, 1969, or such later date as provided for in clause 5(2) hereof (or such extended date if any as the Minister and the Minister for Mines may approve) shall complete the matters hereinafter in this subclause mentioned and everything necessary to enable it to finalise and to submit to the Minister the detailed proposals and other matters referred to in clause 5(1)(a) hereof.

The matters first referred to in this subclause are —

- (a) a thorough geological and (as necessary) geophysical investigation and proving of the evaporite deposits in the area comprised in Temporary Reserve 3491H and the testing and sampling of such deposits;
- (b) a general reconnaissance of the various sites of proposed operations pursuant to the Agreement;
- (c) an engineering investigation of the route for a road from the beneficiation plant in the mining areas to the stockpile area and the wharf;
- (d) in the event of the Company deciding to construct a new wharf an engineering investigation of a site for the wharf and design criteria for the wharf and in the event of the Company deciding to utilise the existing wharf at Carnarvon an engineering investigation and design criteria for such additions and modifications to the existing structure as are thought desirable and in either case having regard not only to the use of the wharf by the Company but also to the possible development and use of the wharf by persons other than the Company;

- (e) an investigation of suitable water supplies for the proposed mining areas;
- (f) the planning of a suitable stockpile area in consultation with the State;
- (g) metallurgical and market research; and
- (h) prototype construction and production as deemed suitable by the Company.

(2) The Company shall keep the Minister fully informed at least quarterly after the execution hereof as to the progress and results of the Company's operations under subclause (1) of this clause.

(3) If the State concurrently carries out its own investigations and reconnaissances in regard to all or any of the matters mentioned in subclause (1) of this clause or in regard to any alternative wharf or wharf site the Company shall co-operate with the State therein and so far as reasonably practicable will consult with the representatives or officers of the State and make full disclosures and expressions of opinion regarding matters referred to in this subclause.

(4) The Company will employ and retain expert consultant engineers to investigate report upon and make recommendations in regard to the design of the wharf (including areas for installations stockpiling and other purposes) reasonably required by the Company under this Agreement and in such matters the Company will require the consultant engineers to have full regard for the possible development of the wharf and land adjacent thereto and the dredged approaches thereto with a view to possible use by others of such approaches and land and the Company will furnish to the State copies of such report and recommendations. When submitting to the Minister detailed proposals as referred to in clause 5(1)(a) hereof in regard to the matters mentioned in this subclause the Company will so far as reasonably practicable ensure that the detailed proposals —

- (a) do not materially depart from the report and recommendations of the consultant engineers;
- (b) provide for the best overall development of the wharf dredged approaches thereto and the land adjacent thereto; and
- (c) disclose any conditions of user and where alternative proposals are submitted the Company's preferences in regard thereto.

Company to submit proposals⁴

5. (1) By the 30th day of June, 1969, or such later date determined in accordance with subclause (2) of this clause (or such extended date if any as the Minister and the Minister for Mines may approve) the Company will submit to the Minister —

- (a) to the fullest extent reasonably practicable detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) and including the location area lay-out design general dimension number materials and time programme for the commencement and completion of construction or the provision (as the case may be) for each of the following matters namely —
 - (i) the plant for the mining extraction and loading of potash referred to in clause 9(1)(a);
 - (ii) the wharf and adjacent work site areas including any proposed corridor to the stockpile area and wharf;
 - (iii) the berth or berths at the wharf and dredged channel or channels and turning basin and deposit of spoil therefrom and other facilities and services for shipping all of which shall be such as to permit the use of the wharf by vessels suitable for the Company's purposes;
 - (iv) the road between the beneficiation plant areas in the mining areas and the stockpile area and the wharf and its proposed use including fencing (if any) crossing places and warning and safety devices to be employed at crossing places;
 - (v) housing and facilities in relation thereto;
 - (vi) water and brine supply;
 - (vii) other roads (including details of roads in respect of which it is not intended that the provisions of clause 9(2)(b) shall operate) with particulars of warning and safety devices to be employed at crossing places; and
 - (viii) any other works services or facilities proposed or desired by the Company;

and

- (b) satisfactory evidence of the availability of finance necessary for the fulfilment of the Company's proposals hereunder relating to Phase 2 of this Agreement.

(2) The parties recognise that abnormal weather conditions including dust cyclones and rain may impede the carrying out of the obligations of the Company during Phase 1 and accordingly there shall be substituted for the date of 30th June, 1969, wherever it occurs in this Agreement such later date as is determined by adding to 30th June, 1969, the number of days in which operations of the Company were interrupted or impeded by abnormal weather the number of such days to be as mutually agreed by the parties or failing agreement as determined by the Commissioner of Main Roads.

(3) The Company shall have the right to submit to the Minister its detailed proposals aforesaid in regard to a matter or matters the subject of any of the subparagraphs numbered (i) to (viii) inclusive of paragraph (a) of subclause (1) of this clause as and when the detailed proposals become finalised by the Company PROVIDED THAT where any such matter is the subject of a subparagraph which refers to more than one subject matter the detailed proposals will relate to and cover each of the matters mentioned in the subparagraph PROVIDED FURTHER that the first detailed proposals submitted to the Minister relate to and cover the matters mentioned in subparagraph (ii) of the said paragraph (a) of the said subclause (1).

(4) If the Company should in writing and within the time later in this subclause mentioned request the Minister and the Minister for Mines to grant an extension or any further extension of time beyond the 30th day of June, 1969, (or such later date if any provided in subclause (2) or previously granted or approved by the Minister) within which to obtain the necessary finance and then demonstrates to the satisfaction of the Minister and the Minister for Mines that the Company has duly complied with its other obligations hereunder and has genuinely and actively but unsuccessfully endeavoured to obtain finance on a reasonable basis and reasonably requires an additional period for the purpose of obtaining finance the Minister and the Minister for Mines will grant such extension as is warranted in the circumstances as follows —

- (a) for up to six (6) months on request made within one month of the 30th day of June, 1969, or such later date if any provided in subclause (2);
- (b) if an extension is granted under paragraph (a) of this subclause then further for up to three (3) years on request made within one month of

the expiration of the period of extension granted under the said paragraph (a);

- (c) if an extension is granted under paragraph (b) of this subclause then further for up to two (2) years on request made within one month of the expiration of the period of extension granted under the said paragraph (b) unless the Minister and the Minister for Mines show to the Company satisfactory evidence that some third party is able and willing if made the lessee of the mining areas or some major part of the area comprised in Temporary Reserve 3491 H on terms from the State not more favourable on the whole (having regard inter alia to initial expenditure) to that party than those applicable to the Company hereunder to produce the same amount of potash as the Company hereby undertakes to produce within the same limitations and requirements as to time and capital expenditure;

subject always and in every case to the condition that the Company duly complies (or complies to the satisfaction of the Minister) with its other obligations hereunder including its obligation to submit proposals in accordance with clause 5(1)(a) hereof.

Consideration of proposals under clause 5⁴

6. Within two (2) months after receipt of the detailed proposals of the Company in regard to any of the matters mentioned in clause 5(1)(a) hereof the Minister shall give to the Company notice either of his approval of the proposals or of alterations desired thereto and in the latter case shall afford to the Company opportunity to consult with and to submit new proposals to the Minister. The Minister may make such reasonable alterations to or impose such reasonable conditions on the proposals or new proposals (as the case may be) as he shall think fit having regard to the circumstances including the overall development and use by others as well as the Company of the wharf land adjacent and seaward approaches thereto but the Minister shall in any notice to the Company disclose his reasons for any such alteration or condition. Within two (2) months of the receipt of the notice the Company may elect by notice to the State to refer to arbitration and within two (2) months thereafter shall refer to arbitration as hereinafter provided any dispute as to the reasonableness of any such alteration or condition. If by the award on arbitration the dispute is decided against the Company then unless the Company within three (3) months after delivery of the award satisfies and obtains the approval of the Minister as to the matter or matters the subject of the arbitration this Agreement shall on the expiration of that period of three (3) months cease and determine (save as

provided in paragraphs (r) and (s) of clause 10 hereof) but if the question is decided in favour of the Company the decision will 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.

Extension of time⁴

7. (1) The arbitrator arbitrators or umpire (as the case may be) on any submission to arbitration hereunder is or are hereby empowered upon application by either party hereto to grant any interim extension of time or date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of either or both parties hereunder and an award in favour of the Company may in the name of the Minister and the Minister for Mines grant any further extension of time for that purpose.

(2) Notwithstanding that under clause 6 hereof any detailed proposals of the Company are approved by the State or the Minister or determined by arbitration unless each and every such proposal required by clause 5(1)(a) is so approved or determined by the 30th day of June, 1970, or by such later or extended date if any as the Company shall be entitled to or shall be granted pursuant to the provisions hereof then at any time after the said 30th day of June, 1970, or an such later or extended date as aforesaid the Minister may give to the Company twelve (12) months notice of intention to determine this Agreement and unless before the expiration of the said twelve (12) months period all the detailed proposals are so approved or determined this Agreement shall cease and determine subject however to the provisions of paragraphs (r) and (s) of clause 10 hereof.

Commencement date⁴

(3) Subject to the approval by the Minister or determination by arbitration as herein provided of each and every of the detailed proposals referred to in clause 5(1)(a) hereof the date which is the later of the date upon which the last of those proposals of the Company shall have been so approved or determined and the date upon which the Company has submitted satisfactory evidence of the availability of finance shall be the commencement date for the purposes of this Agreement.

(4) If under any arbitration under clause 6 hereof the dispute is decided against the Company and subsequently but before the commencement date this Agreement ceases and determines the State will not for a period of three (3) years after such determination enter into a contract with any other party for the

production mining transport and shipment of evaporites from the areas comprised in Temporary Reserve 3491H on terms more favourable on the whole to the other party than those which would have applied to the Company hereunder if the question had been determined in favour of the Company.

Phase 2 — Obligations of State ⁴

8. (1) As soon as conveniently may be after the commencement date the State shall —

Mineral Lease ⁴

(a) after application is made by the Company cause the mining areas to be leased to the Company under the provisions of the Mining Act relating to mineral leases and that Act shall notwithstanding any of the provisions thereof be deemed to be so amended varied and modified as to enable the lease to be granted on the following terms and conditions namely: —

- (i) for a term specified by the Company not exceeding twenty-one (21) years commencing from a day to be agreed upon by the parties hereto;
- (ii) at a rental computed at the rate of \$4 per one hundred (100) acres per annum;
- (iii) subject to the payment by the Company of royalties hereinafter mentioned and to the due and punctual performance by the Company of its obligations hereunder;
- (iv) subject to the condition that the company shall be entitled (provided the right of re-entry contained in the lease has not been exercised) to the option —
 - (A) to renew the lease for a further term specified by the Company not to exceed twenty-one (21) years and on the expiry thereof;
 - (B) to further renew the lease for further terms specified by the Company each not to exceed twenty-one (21) years

on the same terms and conditions as are contained in subparagraphs (ii) (iii) (v) (vi) and (vii) of this paragraph and

provided that the aggregate number of years comprised in the original term and all renewal terms shall not exceed sixty-three (63) years;

- (v) that the cost of any survey required by the State be paid by the Company;
- (vi) subject to the reservations required in Crown Leases pursuant to the *Petroleum Act 1936*; and
- (vii) otherwise on such terms and conditions as are reasonably required to give effect to the provisions and objects of this Agreement;

Special Leases ⁴

- (b) in accordance with the Company's proposals as finally approved or determined as hereinbefore provided and as otherwise reasonably required by the Company to facilitate the carrying out of its operations as envisaged by this Agreement grant to the Company for such terms or periods coterminous with the terms of the mineral lease (including renewals) and on such other terms and conditions as shall be reasonable —

at peppercorn rental — special leases of Crown lands for the wharf and area to be dredged by the Company;

and at rentals as prescribed by law or are otherwise reasonable — leases rights mining tenements easements reserves and licenses in on or under Crown lands

under the Mining Act the *Jetties Act 1926*, or under the provisions of the Land Act modified as in subclause (5) of this clause provided as the Company reasonably requires for its works and operations hereunder including the construction or provision of the railway wharf bulk loading facilities roads airstrip water supplies and for the provision of stone and soil for construction purposes; and

- (c) in respect of inward and outward cargoes of the Company permit the Company to operate the said wharf with its own personnel.

State's Obligations ⁴

- (2) After the commencement date the State shall:

Construction of general purpose wharf ⁴

- (a) if it is agreed between the Company and the State that the wharf may be utilised by third persons for the shipment of general cargo contribute to such construction the funds as agreed or determined in accordance with the provisions of paragraph (d) of clause 2 hereof;

Dredging ⁴

- (b) grant the Company such licenses or leases as may be required to enable the Company from time to time during the continuance of this Agreement to dredge the berth at the wharf turning basin seabed and passages between the same so as to reach and maintain such depths as deemed suitable by the Company;

Priority to ships loading potash and evaporites ⁴

- (c) unless the parties agree otherwise in connection with a contribution of funds by the State for construction of the wharf or unless the wharf is located at the existing jetty at Carnarvon ensure that all ships requiring the berth at the wharf for the purpose of loading potash common salt and other evaporites produced from the mining areas shall be entitled at all times to the use of the wharf in priority to all other ships;
- (d) grant permission for the Company to construct a flood protection levee within or without the mining lease in accordance with plans and specifications first approved by the Minister; and
- (e) at the reasonable request of the Company recommend that the Governor in Executive Council make alter and repeal by-laws in respect to the management or use of any of the Company's facilities that have been constructed pursuant to this Agreement.

License to pump evaporite ⁴

(3) Upon the written request of the Company for the grant of a license to permit the Company to pump evaporite in the form of slurry the State will at the cost of the Company cause the route to be surveyed which the State (after consultation with the officers of the Company) considers most practicable and convenient for the purpose of so pumping without prejudicing or interfering with the use of public roads in the area the route traverses and will as soon as practicable after the commencement date cause a license over the surveyed route to be granted to the Company on such terms and conditions as are

reasonably required to give effect to the objects and provisions of this Agreement.

The license will be enjoyed by the Company for so long as the Company is the lessee of the mining areas (including renewals) and for these purposes the Company shall have the right —

- (a) to enter (by its servants agents and contractors) upon the surveyed route —
 - (i) to lay all such necessary pipes and construct all much necessary apparatus as will enable the Company to pump the evaporite in the form of slurry;
 - (ii) to renew from time to time and at all times to maintain those pipes in good order and condition and do all acts and things incidental to all or any of the said purposes and
- (b) to use those pipes for the passage of evaporite in the form of slurry.

Other rights ⁴

(4) On application by the Company the State shall after the commencement date cause to be granted to the Company such machinery and tailings leases (including leases for the dumping of overburden) and such other leases licenses reserves and tenements under the Mining Act or under the provisions of the Land Act modified as in subclause (5) of this clause provided as the Company may reasonably require and request for its purposes under this Agreement on or near the mineral lease.

(5) For the purposes of this clause 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 offer for sale or leasing land within or in the vicinity of any townsite notwithstanding that the townsite has not been constituted a townsite under section 10; and
 - (f) the inclusion of a power to offer for sale or grant leases or licenses for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods and the terms and conditions and the forms referred to in the Act.
- (6) The provisions of subclause (5) of this clause shall not operate so as to prejudice the rights of the State to determine any lease license or other right or title in accordance with the other provisions of this Agreement.
- (7) The State further covenants with the Company that the State —

Non-interference with Company's rights ⁴

- (a) shall not during the currency of this Agreement register any claim or grant any lease or other mining tenement under the Mining Act or any lease under the Land Act or otherwise by which any person other than the Company or an associated company will obtain under the laws relating to mining or otherwise any rights to mine or take the natural substances (other than petroleum as defined in the *Petroleum Act 1936*) or otherwise obtain surface rights within the mineral lease unless the Minister for Mines reasonably determines that such rights are not likely to unduly prejudice or to interfere with the operations of the Company hereunder assuming the taking by the Company of all reasonable steps to avoid the interference;

No Resumption ⁴

- (b) subject to the performance by the Company of its obligations under this Agreement 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 said 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 purposes of this Agreement nor any of the lands the subject of any lease or license granted to the Company in accordance with the terms of this Agreement AND without the consent of the Company (which shall not be unreasonably withheld) the State will 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 or easement of any nature or kind whatsoever over or in respect of any such lands;

Labour requirements ⁴

- (c) shall if so requested by the Company and so far as its powers and administrative arrangements permit use reasonable endeavours to assist the company to obtain adequate and suitable labour for the construction and the carrying out of the works and operations referred to in this Agreement including suitable immigrants for that purpose;

No discriminatory rates ⁴

- (d) except as provided in this Agreement shall not impose nor permit nor authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Company in the conduct of the Company's 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;

Rights to other minerals ⁴

- (e) shall where and to the extent reasonably practicable on application by the Company from time to time grant or assist in obtaining the grant to the Company of prospecting rights and mining leases with respect to other minerals reasonably required by the Company for its purposes under this Agreement;

Consents to improvements on leases ⁴

- (f) shall as and when required by the Company (but without prejudice to the foregoing provisions of this Agreement relating to the detailed proposals and matters referred to in clause 5(1)(a) hereof) consent in writing where and to the extent that the Minister considers to be reasonably justified to the Company's making improvements for the purpose of this Agreement on the land comprised in any lease granted by the State to the Company pursuant to this Agreement

PROVIDED THAT the Company shall also obtain any other consents legally required in relation to such improvements;

Upgrading of roads⁴

- (g) after the commencement date shall at the request of the Company widen upgrade or realign any public road over which the State has control subject to the prior approval of the Commissioner of Main Roads to the proposed work on the basis that the State shall bear one-third and the Company two-thirds of the cost of such work in the case of roads to be utilised by the Company for haulage of products of its mining operations and that the State shall bear two-thirds and the Company one-third of such cost in the case of other public roads where such work is requested by the Company;

Rating⁴

- (h) notwithstanding the provisions of any Act or anything done or purported to be done under any Act ensure that the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection therewith) shall for rating purposes be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate; and

Labour conditions⁴

- (i) during the currency of this Agreement and subject to compliance with its obligations hereunder ensure that the Company shall not be required to comply with the labour conditions imposed by or under any Act in regard to any lease of any land within the work sites.

Phase 2 — Obligations of Company⁴

- 9. (1) The Company shall:
 - (a) not later than the 30th day of the sixth month after the commencement date commence to construct and thereafter will diligently proceed with the construction and establishment on the work sites of a plant for the mining and extraction of potash from brine and the loading thereof into ships at the wharf and such plant and other necessary works shall within three years after the commencement date be capable of producing and loading into ships at the wharf not less than 75,000 tons of potash per

annum and within five years after the commencement date be capable of producing and loading into ships at the wharf not less than 200,000 tons of potash per annum and by this latter date the Company shall have expended on the project a sum of not less than \$13,000,000;

Expansion⁴

- (b) progressively increase the capacity of its plant and other necessary works until by the end of the eighth year after the commencement date they shall be capable of producing and loading into ships in a form suitable for sale not less than one million tons of evaporites (including potash) per annum;

Wharf and dredging⁴

- (c) construct the wharf in accordance with plans and specifications previously approved or determined hereunder on the site previously approved or determined for the purpose and dredge the berth at the wharf turning basin and the channel and approaches to the wharf to a depth suitable for the purposes of the company;

Carry out proposals⁴

- (d) carry into effect all the detailed proposals agreed or determined hereunder;

Design of the wharf⁴

- (e) at all reasonable times at the request of the State whilst the wharf is being designed and the specifications being drawn make available on the Company's behalf a person for consultation with the officers servants or agents of the State in respect of the design of the wharf or of the specifications therefor;

To make roads⁴

- (f) subject to the State having assured to the Company all necessary rights in or over Crown lands or reserves available for the purpose construct such new roads as the Company reasonably requires for its purposes hereunder of such widths with such materials gates crossings and passovers for cattle and for sheep and along such routes and crossing such public roads at such places and in such manner as the parties hereto shall mutually agree after discussion with the respective Shire Councils through whose districts any such roads may pass and subject to prior agreement with the appropriate

controlling authority (being a Shire Council or the Commissioner of Main Roads) as to terms and conditions the Company may at its own expense and risk except as otherwise so agreed upgrade or realign any existing road but nothing in this paragraph (f) provided shall derogate from the provisions of clause 8(7)(g) hereof;

Future expansion⁴

(g) unless the Minister prior to the expiration of the respective terms firstly mentioned in subparagraphs (A) and (B) advises the Company that he does not require the submission of the programmes hereinafter mentioned then the Company shall submit to the Minister —

(A) within the term of ten years following the commencement date —

(i) a firm programme for expansion of production during the period from the beginning of the eleventh year to the end of the twentieth year after the commencement date (hereinafter called “the first programme”) and

(ii) a tentative programme for expansion of production during the period from the beginning of the twenty-first year to the end of the thirtieth year after the commencement date (hereinafter called “the tentative programme”) and

(B) within the term of twenty years following the commencement date a firm programme for expansion of production during the period from the beginning of the twenty-first year to the end of the thirtieth year after the commencement date (hereinafter called “the second programme”)

and if in the opinion of the Minister —

(i) the Company in carrying out its first programme will not by the end of the twentieth year achieve an annual production as shall make use of at least sixty seven per centum of the annual capacity of the mineral lease having regard to the then reasonably estimated quantity of brines and the area then suitable and available for evaporation pans or

(ii) the Company in carrying out its second programme will not by the end of the thirtieth year achieve an annual production as

shall make use of approximately one hundred per centum of the annual capacity of the mineral lease having regard to the factors aforesaid and if the Minister having due regard to known anticipated market conditions availability of finance and physical factors relevant to the practicability of increased production is of the opinion that the particular programme does not assure that the resources of the mineral lease will be exploited to the fullest extent reasonably practicable he may within three months of his receipt of that programme give notice to the company of the extent of the alleged inadequacy and unless within six months of such notice a programme is agreed either the Minister or the Company may within a further period of three months refer the matter to arbitration and the arbitrator shall take into account all factors which would be likely to affect the economics of expansion and if —

- (i) where the matter is not submitted to arbitration a programme is not agreed within three months of the expiration of the last mentioned period of six months or
- (ii) the arbitration results in a finding that the Minister's particular opinion is justified and a programme is not agreed within three months of the date of the award and in accordance with the terms thereof

then the Minister may —

- (i) in the event of there being no agreement as to the first programme require the Company as from the end of the eleventh year or such later time as shall be reasonable having regard to the date of any award as mentioned above to reduce the area of that part of the mineral lease from which brines and evaporites are being mined but so as not to reduce the reserves of brines and evaporites to an extent that would prevent the Company from ultimately expanding its capacity for production to a level one and one half times the maximum indicated in the tentative programme;
- (ii) in the event of there being no agreement as to the second programme require the Company as from the

end of the twenty-first year or such later time as shall be reasonable having regard to the date of any award as mentioned above to reduce the area of that part of the mineral lease from which brines and evaporites are being mined but so as not to reduce the reserves of brines and evaporites to an extent that would prevent the Company ultimately expanding its capacity for production to a level one and one half times the maximum indicated in the second programme;

- (h) agree that the extent and manner of any such reduction of the mineral lease shall be decided by agreement between the Minister for Mines and the Company but failing any such agreement within two months of the Minister notifying the Company of his intention to effect such reduction the matter shall be referred to arbitration and the mineral lease shall be reduced to the extent and in the manner agreed or determined by arbitration;
- (i) agree to the State leasing any area subtracted from the Company's lease as aforesaid to any person for the purpose of producing evaporites thereon but so that the terms of such lease and other arrangements between the State and the other person shall not unduly interfere with or jeopardise the established works operations or markets of the Company and shall not be more favourable on the whole than those granted to the Company having regard to the area made available to such other person; and
- (j) implement any expansion of production as set forth in the first or second programmes of the Company as are agreed between the Minister and the Company or programmes proposed by the Company as are determined by arbitration as aforesaid as being programmes which assure that the resources of the mineral lease will be exploited to the fullest extent reasonably practicable provided that if the Company is unable to implement the programmes because changed world conditions make finance unavailable or other unforeseen circumstances cause the Company to be unable to make such implementation the Company may submit to the Minister a proposal for revised programmes and if within three (3) months of such submission the Minister and the Company do not agree on revised programmes the matter shall be submitted to arbitration as herein provided but so that nothing in this clause provided will be

deemed to limit the right of the Company to make expansions whether or not the same are set forth in such programmes.

Use of wharf and facilities⁴

- (2) Throughout the continuance of this Agreement the Company shall —
- (a) 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 paragraph (e) of subclause (2) of clause 8 and subject thereto or if no such by-laws are made or are 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 the Company's wharf wharf machinery and equipment and wharf services and (subject to paragraphs (w) (x) and (y) of clause 10) approaches to the wharf PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder and that the entire control of and all personnel for or in respect of such use shall be provided by or with the approval of the Company;

Use of roads by others⁴

- (b) except to the extent that the Company's proposals as finally approved or determined hereunder otherwise provide allow the public to use free of charge any roads constructed or upgraded under this clause PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder;

Compliance with laws⁴

- (c) in the construction operation maintenance and use of any work installation plant machinery equipment service or facility provided or controlled by the Company comply with and observe the provisions hereof and subject thereto the laws for the time being in force in the said State;

Maintenance⁴

- (d) at all times keep and maintain in good repair and working order and condition and where necessary replace all such works installations plant machinery and equipment and the roads (other than the public roads referred to in clauses 8(7)(g) and 10(b) hereof) for the time being the subject of this Agreement;

Royalties ⁴

(e) pay to the State royalties:

- (i) on all potash from the mineral lease shipped or sold (other than such as shipped solely for testing purposes) in the amount of fifty cents (50c) per ton;
- (ii) on all common salt from the mineral lease shipped or sold (other than such as shipped solely for testing purposes) computed as set out hereunder: —

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

- (iii) on all other evaporites from the mineral lease shipped or sold (other than such as shipped solely for testing purposes) at the rate of two per centum (2%) of the f.o.b. revenue received therefor (computed at the rate of exchange prevailing on date of receipt by the Company of the purchase price in respect of such evaporites shipped or sold hereunder); and
- (iv) tonnages shall be ascertained in such a manner as the parties hereto may from time to time agree upon;

Payment of royalties ⁴

- (f) within fourteen days after the quarter days being the last days of March June September and December in each year commencing with the quarter day next following the first commercial shipment of potash or common salt furnish to the Minister for Mines a return showing the quantity of all potash common salt and other evaporites the subject of royalty hereunder and shipped during the quarter immediately preceding the due date of the return and shall not later than two (2) months after such due date pay to the Minister for Mines on account of the royalty payable hereunder a sum calculated on the basis of tonnage or f.o.b. revenue derived from invoices or provisional invoices (as the case may be) rendered by the Company to the purchaser (which invoices the Company shall render without delay simultaneously furnishing copies thereof to the Minister for Mines if requested) of such potash or common salt or other

evaporites 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 Mines full details thereof) when the actual tonnage or f.o.b. revenue realized (as the case may be) in respect of the shipments shall have been ascertained;

Inspection of records⁴

- (g) permit a nominee of the Minister for Mines to inspect at all reasonable times the books of account and records of the Company relative to the mining of evaporites and any sale or shipment thereof and to take copies or extracts therefrom so far as is necessary for the purpose of determining the revenue payable in respect of potash common salt and other evaporites shipped or sold hereunder and the Company will take reasonable steps to satisfy the State either by the certificate of a competent independent party acceptable to the State or otherwise to the reasonable satisfaction of the Minister for Mines as to all relevant weights and analyses and will give due regard to any objection or representation made by the Minister for Mines or his nominee as to any particular weight or assay of potash common salt or other evaporite which may affect the amount of royalty payable hereunder; and

Sale price⁴

- (h) use its best endeavours to obtain for the potash common salt and other evaporites the best price possible having regard to market conditions from time to time prevailing.

Mutual covenants⁴

- 10. The parties hereto covenant and agree with each other as follows: —

Housing⁴

- (a) that subject to the provisions of this paragraph the State will on the written application made from time to time by the Company for land for housing purposes grant to the Company after the commencement date a lease of such lots as are vacant and available and as the Company and the Minister for Lands agree are suitable on the following terms and conditions namely: —

- (i) for a term of five years commencing from a day to be agreed upon by the parties hereto;
- (ii) at a rental sufficient to reimburse a reasonable proportion of the costs (if any) incurred by the State in the preparation of the land for subdivision;
- (iii) that the Company will within eighteen months of the commencement of the term of each lease complete on the land the subject of that lease the erection of living accommodation for occupation by a family or single persons at a cost of not less than \$7,000 for each lot;
- (iv) that on the expiration of the term of the lease and subject to the due and punctual observance and performance of all the covenants agreements and conditions on the Company's part therein contained then on the request of the Company grant to it an estate in fee simple in the land the subject of the lease at a price not exceeding two hundred dollars (\$200) plus Crown Grant and survey fees;
- (v) that the Company will not sell transfer assign sub-let or mortgage charge or encumber any such lease without the consent of the State first had and obtained PROVIDED THAT the consent of the State shall not be required to the transfer assignment or sub-lease of a lot to an employee of the Company nor to any mortgage where the Company has complied with subparagraph (iii) of this paragraph in relation to that lot;
- (vi) that the Company will pay to the relevant local authority (when requested by the local authority so to do) such amount as the local authority reasonably requires at the time of the grant of the lease to enable it to supply or make available the usual services;
- (vii) otherwise on such terms and conditions as are reasonably required to give effect to the provisions and objects of this Agreement; and
- (viii) the State shall not be required to lease to the Company during the currency of this Agreement more than one hundred and fifty lots nor more than twenty-five lots in any one year and

the request for each lot shall be made by the Company at least three months before the Company requires the lease of that lot to be granted to it and in the event of the State consenting under the provisions of subparagraph (v) of paragraph (a) of this clause to a transfer or an assignment of the lot the State shall not be required to lease another lot in lieu of the lot so transferred or assigned;

Road Transport⁴

- (b) that it shall be lawful for the Company to use for the carriage of potash common salt and other evaporites on any Company road or any specified public road as approved by the Minister for Traffic between any part of the mining areas stockpile area and the wharf an articulated vehicle and trailer the combined length of which shall not exceed ninety-five (95) feet;

Railway⁴

- (c) that the Company shall be entitled to construct and operate a railway within the mining areas and upon the written request of the Company for the grant of a lease outside the mining areas to enable the Company to construct and operate a railway from any part of the mining areas to any other part and to the stockpile area and/or the wharf the State will at the cost of the Company cause a route to be surveyed which the State (after consultation with the officers of the Company) considers most practicable and convenient therefor and will as soon as practicable after the completion of that survey at the cost and expense of the Company in all things (including the acquisition and resumption of the lands over which the route passes) and without regard to the provisions of the *Public Works Act 1902*, relating to the construction of railways cause a lease (including renewals) of the surveyed route (other than any part thereof declared dedicated or proclaimed as a public road) to be granted to the Company for so long as the Company is the lessee of the mining areas for the sole purpose of the Company constructing and operating a railway on the leased land and on such terms and conditions as are reasonably required to give effect to the objects and provisions of this Agreement and the State shall permit the Company during she period of such lease (including renewals) to construct and operate a private railway on the leased area for the purpose of carrying the products and requirements of the Company and in

respect of any part of a public road over which the railway operates the State will cause the Company to be granted a license to operate its railway over that part of the public road on such terms and conditions as are reasonably required to give effect to the provisions and objects of this Agreement and the provisions of the *Private Railways (Level Crossings) Act 1966*, shall apply to any such crossings;

Sea Water⁴

- (d) that the Company may without charge draw sea water from the Indian Ocean for all or any one or more of its operations in respect of the mining extraction and production of potash common salt and other evaporites on the work sites and the Company may store at such place as may be convenient or discharge at high water mark at points near to the mining areas residual brines resulting from those operations and the State shall grant to the Company and necessary easement or license for these purposes over Crown lands upon such terms and conditions as shall be reasonable having regard to the requirements of the Company under this clause and the overall development and use by others of those Crown lands and subject to the Company's compliance with the Mining Act and all other relevant statutes and regulations for the time being in force the Company if and when it becomes economical so to do shall have to right to the exclusion of any other person to mine and recover any chemicals in the brines;

Rights of Ingress and Egress⁴

- (e) that the State shall from time to time after the commencement date on the written application of the Company grant to the Company a license or licenses over Crown lands for the purpose of the Company by its servants agents contractors invitees and customers enjoying the right of ingress to and egress from all or any one or more part or parts of the work sites for a term or terms respectively concurrent with the term (including renewals) of the mining lease and on such terms and conditions as shall be reasonable having regard to the requirements of the Company in respect of its obligations to construct maintain operate and inspect the improvements from time to time constructed or installed on the work sites and to the overall development and use by others of those Crown lands;

Export License ⁴

- (f) that if at any time or times under Commonwealth law an export license is required by the Company for the export of any potash common salt or other evaporites then on written request by the Company the State shall make representation to the Commonwealth for the grant to the Company of a license or licenses under Commonwealth law for such export in such quantities and at such rate or rates as shall be reasonable having regard to the tonnage being produced by the Company at such time or times as a license is so required and to all contracts made or likely to be made by the Company for the export or supply of potash common salt and other evaporites from the work sites;

Water and power ⁴

- (g) that subject to and in accordance with proposals approved or determined hereunder the Company for its purposes hereunder and for domestic and other purposes in relation to any housing established by the Company in the mining areas may to the extent determined by the responsible Minister but notwithstanding any Act bore for water construct catchment areas store (by dams or otherwise) take and charge for water from any Crown lands available for the purpose and generate transmit supply and charge for electrical energy and the Company shall have all such powers and authorities with respect to such water and electrical energy as are determined by the Minister for the purposes hereof which may include the powers of a water board under the *Water Boards Act 1904*, and of a supply authority under the *Electricity Act 1945*;

Diversion of fresh water ⁴

- (h) that to enable the Company to successfully operate it will be necessary to prevent fresh or rain water from entering the concentrating and crystallising areas and accordingly the Company desires the right to divert from time to time the fresh or rain water flowing into Lake MacLeod from their respective normal courses and the State acknowledges the necessity of such diversions and will so far as practicable having regard to the users of the surrounding land permit the Company to make such diversions subject to and in accordance with the provisions set out in paragraphs (i) and (j) of this clause;

- (i) that when and as often as the Company desires to make a diversion for the purpose aforesaid and where such diversion may affect lands outside the work sites it shall before commencing any such diversion immediately submit to the Minister in duplicate its proposals (which shall include all plans and specifications) in respect of the diversion it is desirous of making and shall also give to the Minister such further information and plans in respect of the diversion as the Minister from time to time reasonably requires in respect of the diversion and as soon as reasonably possible after the Minister has been given the Company's proposals and such further information and plans which he may require the Minister shall either inform the Company in writing —
- (i) that he has approved of the Company's proposals as submitted by the Company or as amended by him whereupon the company shall be at liberty (subject to the provisions of paragraph (j) of this clause) to proceed with the making of the diversion in the manner submitted or as amended by the Minister (as the case may be); or
 - (ii) that he has disapproved of the Company's proposals as originally submitted or as amended or qualified by any further information and plans (as the case may be) whereupon within the month next following the receipt of this disapproval the Company may elect by notice to the Minister to refer to arbitration the dispute as to the reasonableness of the Minister's disapproval and within the month following such election shall refer such dispute to arbitration and if by the award on arbitration the dispute is decided against the Company then the Company shall not be at liberty to proceed to make such diversion but if the question is decided in favour of the Company the award will take effect as an approval by the Minister and the Company shall be at liberty (subject to the provisions of paragraph (j) of this clause) to proceed to make such diversion in accordance with the terms of the award;
- (j) that before the Company proceeds with the making of the diversion referred to in the immediately preceding paragraph the Company shall enter into a Deed of Covenant with the State in such form as the Minister in his absolute discretion determines covenanting to indemnify the Crown in right of the State against all claims costs and

expenses which may at any time or times be made against the Crown in right of the State in respect of that diversion or arising out of or incidental to or in consequence of that diversion;

Zoning⁴

- (k) that the mineral lease and the lands the subject of any Crown Grant lease license 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 or building by-law or regulation;

Housing rentals⁴

- (l) that any State legislation for the time being in force in the said State relating to the fixation of rentals shall not apply to any houses belonging to the Company and that in relation to each such house the Company shall have the right to include as a condition of its letting or occupancy thereof that the Company may take proceedings for eviction of the occupant if the latter shall fail to abide by and observe the terms and conditions of occupancy or if the occupant shall cease to be employed by the Company;

Subcontracting⁴

- (m) 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;

Extraction of brine⁴

- (n) that the Company may within the mining areas construct utilise and abandon evaporation pans and or may bore for and construct ditches pipelines tunnels and channels flumes and catchment areas to take and store brine sea water and sea water concentrates in such quantities as required by the Company in any of its operations permitted hereunder and regardless of whether such taking depletes reserves of these substances outside of the mining areas;

Liability for road use ⁴

(o) that —

(i) for the purposes of determining whether and the extent to which —

(A) the Company is liable to any person or body corporate (other than the State)

or

(B) an action is maintainable by any such person or body corporate

in respect of the death or injury of any person or damage to any property arising out of the use of any of the roads for the construction or 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

(ii) for the purposes of this paragraph the terms “municipality” “street” and “care control and management” shall have the meanings which they respectively have in the *Local Government Act 1960*;

Employees ⁴

(p) that the parties hereto acknowledge the principle that in the operation of a solar evaporation plant all employees during their respective normal working hours are not continuously or fully engaged in the performance or discharge of their respective duties and hence from time to time there is or could be a surplus in the number of employees required by the Company and to avoid this so happening and to maintain so far as practicable full employment for all its employees at all times the Company proposes to use employees whilst not engaged in the performance or discharge of their respective duties to assist in the loading of ships at the wharf with potash common salt and other evaporites produced from the mining areas and in the supervision thereof and to perform or discharge such other duties as may be assigned to them from time to time by the Company and to enable the foregoing objectives to be put into practice the State will at the request of the Company made to it from

time to time use reasonable endeavours to assist in the implementation and achievement of these objectives but nothing contained in this paragraph is intended to interfere with the jurisdiction of the Industrial Arbitration Commission or the operation of any award made under the *Industrial Arbitration Act 1912*;

Default⁴

- (q) that in any of the following events namely if the Company fails in any year after the eighth anniversary of the commencement date to ship at least 200,000 tons of potash (or at the option of the Company at least 200,000 tons of potash and/or evaporites other than common salt) and furthermore the average of the tonnage shipped in that year and in the previous three years is less than 200,000 tons a year or if the Company makes default in the due and punctual performance of any of the covenants agreements or obligations to the State herein or in any lease sublease easement license or other title or document granted or assigned under this Agreement on its part to be performed or observed and shall fail to remedy that default within reasonable time after notice specifying the default is given to it by the State (or if the alleged default is contested by the Company and promptly submitted to arbitration within a reasonable time fixed by the arbitration award where the question is decided against the Company the arbitrator finding that there was a bona fide dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company abandons or repudiates its operations under this Agreement or if the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) or if the Company gives the notice referred to in clause 22 hereof then and in any of such events the State may by notice given to the Company determine this Agreement and the rights of the Company hereunder and under any lease license easement or right granted or demised hereunder or pursuant hereto and upon receipt by the Company of that notice this Agreement and the rights of the Company hereunder and under any lease license easement or right granted or demised hereunder or pursuant hereto shall determine PROVIDED HOWEVER that if the Company falls to remedy any default after notice is given to the Company specifying the default or within the time fixed by the arbitration award as aforesaid and the Company has not given notice to the State under clause 22 hereof the State

instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by its agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant and machinery equipment and installations thereon) and the costs and expenses incurred by the State remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand made by the State and shall be recoverable by action taken in any court of competent jurisdiction;

Effect of determination of Agreement ⁴

- (r) that on the cessation or determination of this Agreement: —
 - (i) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement and the rights of the Company or any assignee of the Company or any mortgagee to in or under any lease license easement or right granted or demised hereunder or pursuant hereto shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement AND the Company shall without further consideration but otherwise at the request and cost of the State transfer or surrender to the State or the Crown all land the subject of any lease license easement or right granted or demised hereunder or pursuant hereto AND the Company hereby irrevocably constitutes and appoints the Minister or such person as he may from time to time nominate the true and lawful attorney of the company to execute the transfer or surrenders aforesaid;
 - (ii) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due; and
 - (iii) save as aforesaid neither of the parties hereto shall have any claim against the other with respect to any matter or thing in or arising out of this Agreement;
- (s) that on the cessation or determination of any lease license easement or right granted or demised hereunder or pursuant hereto by the State to the Company or (except as otherwise agreed by the Minister) to an associated company or other assignee of the Company under

clause 14 hereof the improvements and things other than locomotives rolling stock plant equipment and removable buildings erected on the relevant land and provided for in connection therewith shall remain or become the absolute property of the State without compensation and freed and discharged from all mortgages and encumbrances and the Company will do and execute such documents and things (including surrenders) as the State may reasonably require to give effect to this provision AND the Company hereby irrevocably constitutes and appoints the Minister or such person as he may from time to time nominate the true and lawful attorney of Company to execute those documents and things (including surrenders) and in the event of the Company prior to such expiration or determination or subsequent thereto deciding to remove its locomotives rolling stock plant equipment and removable buildings or any of them from any land the Company shall not do so without first notifying the State in writing of its decision and thereby granting to the State the right or option exercisable within three (3) months thereafter to purchase at valuation in situ the said locomotives rolling stock plant equipment or removable buildings or any of them and such valuation will be mutually agreed or in default of agreement shall be made by such competent valuer as the parties hereto may appoint or failing agreement as to such appointment then by two competent valuers one to be appointed by each party or by an umpire appointed by such valuers should they fail to agree;

- (t) that the provisions of paragraphs (q) (r) and (s) of this clause shall not apply to any land or the improvements thereon the subject of a grant of an estate in fee simple granted to the Company pursuant to the provisions of paragraph (a) of clause 10 hereof nor to any land or the improvements thereon the subject of a lease granted under the provisions of such paragraph to which the Company at the date of cessation or determination of this Agreement is entitled to a grant of an estate in fee simple under the provisions of paragraph (a) of this clause;

Escalation ⁴

- (u) that notwithstanding anything herein contained it is hereby agreed by and between the parties hereto in order to provide for the equitable performance of this Agreement in the event of the price (as hereinafter defined) of potash or common salt on the 14th 21st 28th 35th 42nd 49th and 56th anniversary of the commencement date

exceeding the price of potash or common salt respectively on the 7th anniversary day of the commencement date then the percentage by which the price of potash or common salt respectively on the relevant anniversary day exceeds the price of potash or common salt respectively on the 7th anniversary day of the commencement date shall be calculated and the several amounts mentioned herein and payable by the Company to the State as —

- (i) rental under clause 8(1)(a)(ii)
- (ii) royalty under clause 9(2)(e)(i) and
- (iii) royalty under clause 9(2)(e)(ii)

shall be increased in the case of rental under clause 8(1)(a)(ii) and royalty under clause 9(2)(e)(i) by the percentage calculated for potash and in the case of royalty under clause 9(2)(e)(ii) by the percentage so calculated for common salt and such increased amounts in respect of those items shall be payable by the Company to the State during the seven (7) years next following the relevant anniversary day;

- (v) that for the purposes of paragraph (u) of this clause the price of potash or common salt on the 7th anniversary day of the commencement date and on each of the aforesaid anniversary days means the average price of potash or common salt as the case may be shipped from the mining areas to places within or without the Commonwealth during the previous year payable by the purchaser or purchasers thereof to the Company less all export duties export taxes and export fees payable to the Commonwealth on the said export and all costs and expenses properly incurred and payable by the Company from the time the potash or common salt as the case may be is shipped to the time the said potash or common salt is delivered to and accepted by the purchaser or purchasers including —
 - (i) freight;
 - (ii) insurance;
 - (iii) port and handling charges at the port or place of discharge;
 - (iv) costs of delivery from the port or place of discharge to the purchaser as evidenced by relevant invoices;

- (v) all weighing sampling analysis inspection and representation costs;
- (vi) all shipping and forwarding agency charges after shipment; and
- (vii) all import taxes imposed or levied by the country of the port of discharge

provided that if the State is not satisfied that the prices obtained by the Company have been negotiated on a normal commercial basis the State may refer the matter to arbitration;

Use of wharf and channel by third parties ⁴

- (w) that the State and the Company acknowledge that some party other than the Company may utilise the wharf or approaches to the wharf;
- (x) that the State and the Company acknowledge the principle that the Company should be paid a fair and reasonable charge for use of the channel approach and the wharf as may be set forth in schedules provided by the Company and approved by the Minister and in the case of regular use by a shipper of bulk commodities by reimbursed by the other party of a fair and reasonable proportion of the capital outlay and operation and maintenance costs respectively for the wharf and the channel approach as may be determined by mutual agreement between the parties concerned or failing agreement then as determined by the Minister;
- (y) that the State agrees not to permit vessels of the other party or vessels engaged in any of its operations or for any of its purposes of which notice is given to the State by the Company to enter the channel approach and use the wharf unless and until the other party pays the charges or makes the arrangements as the case may be as set forth in paragraph (x) PROVIDED THAT the Company shall have no right of action against the State by reason of its failure to discharge the duty placed upon it in this subclause;

Temporary housing ⁴

- (z) that notwithstanding the provisions of any Act by-law or regulation the Company shall be entitled to erect maintain and remove such temporary housing as it requires within the area comprised in Temporary Reserve 3491H provided that the same shall conform to

any reasonable requirement of the local authority as to health and sanitation;

- (aa) that the State shall have the right at any time during the currency of this Agreement to grant to a person other than the Company any of the Rights mentioned in clause (8)(7)(a) hereof but subject to the restrictions therein mentioned; and
- (bb) that the State shall have the right at any time during the currency of this Agreement to make a declaration pursuant to the terms of the *Ports and Harbours Act 1917*, that the wharf site and surrounding area shall be a port or harbour for the purpose of the *Shipping and Pilotage Consolidation Ordinance 1855*.

No charge for the handling of cargoes ⁴

11. That subject to the Company at its own expense providing all works buildings dredging and things of a capital nature reasonably required for its operations hereunder at or in the vicinity of the wharf no charge or levy shall be made by the State or by any State authority in relation to the loading of outward or the unloading of inward cargoes at the Company's wharf whether such cargoes shall be the property of the Company or of any other persons but the State accepts no obligation to undertake such loading or unloading and may make the usual charges from time to time prevailing in respect of services rendered by the State or by any State agency or instrumentality or other local or other authority of the State and may charge vessels using the Company's wharf ordinary light conservancy and tonnage dues.

Limitation of Liability ⁴

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

Potash for use in Australia ⁴

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

Assignment ⁴

14. (1) Subject to the provisions of this clause and of paragraph (a) of clause 10 hereof the Company may at any time —

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

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

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

easement grant or other title the subject of an assignment under the said subclause (1).

Arbitration⁴

15. Any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Agreement or any such amendment variation or addition as to the rights duties or liabilities of either party hereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the *Arbitration Act 1895*.

Variation⁴

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

Force Majeure⁴

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

Continuance of Agreement ⁴

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

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

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

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

(3) If the Company does not accept the offer or does not elect to refer the offer to arbitration or does not accept the offer as varied or modified by the award on arbitration in accordance with the provisions set out in subclause (1) or (2) of this clause as the case may be then the State may enter into an agreement for the mining and shipment of potash common salt and other evaporites from the mining areas with any other person on terms and conditions more favourable on the whole than the offer made by the State or in the event of the offer having been submitted to arbitration provided the State has first

offered to the Company the right of first refusal of such terms and conditions and such offer is not accepted by the Company within a reasonable time.

Notices⁴

19. Any notice consent request or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Civil Service of the said State acting by the direction of the Minister and forwarded by pre-paid registered post to the Company at its registered office for the time being in the said State and by the Company if signed on its behalf by an officer of the Company or by any person or persons authorised by the Company in that behalf or by its solicitors as notified to the Minister from time to time and forwarded by prepaid registered post to the Minister AND 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.

Relevant Law⁴

20. (1) This Agreement shall be interpreted according to the law for the time being in force in the said State.

(2) All payments made or to be made under this Agreement shall be made in the State of Western Australia in Australian currency unless otherwise agreed and all sums mentioned herein are in Australian currency.

Expiration of Agreement⁴

21. This Agreement shall expire on the expiration or sooner determination of the mining lease (including the respective renewals thereof) of the mining areas but without prejudice to the right of action of either party hereto in respect of any breach of the covenants agreements and conditions herein contained.

Determination by Company⁴

22. Notwithstanding anything herein contained the Company may at any time give notice to the State that matters have arisen which make the completion or continuance of the works impracticable or uneconomic and desires to determine this Agreement whereupon this Agreement will then cease and determine and the State may enforce all or any one or more of its rights remedies or powers set out in paragraphs (r) and (s) of clause 10 hereof.

Power to extend periods ⁴

23. Notwithstanding any provision hereof the Minister may at the request of the Company from time to time extend any period or date referred to in this Agreement for such period or to such later date as the Minister thinks fit and the extended period or later date when advised to the Company by notice from the Minister shall be deemed for all purposes hereof substituted for the period or date so extended.

Provided that where any such extension of period or date would have the effect either directly or indirectly of extending the term of any lease license temporary reserve or other concession granted under the Mining Act the consent of the Minister shall not operate until the Company has also obtained the like consent of the Minister for Mines.

Application of Private Railway (Level Crossings) Act ⁴

24. The provisions of the *Private Railways (Level Crossings) Act 1966*, shall apply to all crossings by those private roads of the Company used for transportation of its products by heavy haulage vehicles with a “road” within the meaning of that term as used in the said Act as though every such Company road is a “private railway” within the meaning of that term as used in the said Act.

Exemption from Stamp Duty ⁴

25. The State shall exempt from any stamp duty which but for the operation of this clause would or might be chargeable on —

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee of the Company any lease license easement or right granted or demised hereunder or pursuant hereto;
- (c) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment made in conformity with the provisions of subclause (1) of clause 14 hereof; and
- (d) any assignment sublease or disposition (other than by way of mortgage or charge) or any appointment to or in favour of the Company or an associated company of any interest right obligation power function or authority which has already been the subject of an

assignment sublease disposition or appointment executed pursuant to
subclause (1) of clause 14 hereof.

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

IN WITNESS WHEREOF THE HONOURABLE CHARLES WALTER
MICHAEL COURT O.B.E. M.L.A. has hereunder set his hand and seal and the
COMMON SEAL of the Company has hereunto been affixed the day and year
first hereinbefore mentioned.

SIGNED SEALED AND DELIVERED
BY THE HONOURABLE CHARLES
WALTER MICHAEL COURT O.B.E.
M.L.A., in the presence of: —

C. W. COURT

[L.S.]

ARTHUR GRIFFITH,

.....
Minister for Mines.

THE COMMON SEAL OF TEXADA
MINES PTY. LIMITED was hereunto
affixed by the authority of the Directors
and this instrument signed and
countersigned by:

[C.S.]

K. NICHOLSON,

.....
Director.

RONALD F. SULLIVAN,

.....
Secretary.

Second Schedule — Variation Agreement

[s. 2]

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

AN AGREEMENT made the 15th day of November, One thousand nine hundred and seventy two BETWEEN THE HONOURABLE JOHN TREZISE TONKIN, M.L.A., THE PREMIER AND TREASURER OF THE STATE OF WESTERN AUSTRALIA acting for and on behalf of the said State and its instrumentalities (the State of Western Australia and its instrumentalities being hereinafter referred to as “the State”) of the one part and Texada Mines Pty. Limited a company incorporated under the *Companies Act 1961* of the State of Western Australia and having its registered office at 266 Hay Street Subiaco in the State of Western Australia (hereinafter referred to as “the Company”) of the other part.

WHEREAS:

- (a) The parties to this Agreement are the parties to the agreement between them as defined in Section 2 of the *Evaporites (Lake MacLeod) Agreement Act 1967* (which agreement is hereinafter referred to as “the principal Agreement”)
- (b) The parties desire to vary the provisions of the principal Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. In this Agreement, subject to the context words and phrases to which meanings are given under clause 1 of the principal Agreement (other than words and phrases to which meanings are given in this Agreement) shall have the same respective meanings in this Agreement as are given to them in clause 1 of the principal Agreement.
2. (1) The provisions of this Agreement other than clause 3 and clause 4(4) 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 the said Bill is not passed this Agreement shall then cease and determine and neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

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

3. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage an Act prior to the 31st day of December, 1973.

4. The principal Agreement is hereby varied as follows:

(1) by adding after clause 6 a new clause 6A as follows —

Additional proposals ⁴

6A. Should the company at any time during the first ten years next following the commencement date desire to substantially modify expand or otherwise substantially vary its activities to produce products other than those specified in any approved proposals hereunder the Company shall give notice of such desire to the Minister and thereupon or within such time thereafter as the Minister shall fix shall submit to the Minister for approval detailed proposals to the fullest extent reasonably practicable in respect of all matters covered by such notice and such of the other matters mentioned in subclause (1) of clause 5 as the minister may reasonably require. The provisions of clauses 5 and 6 shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause. ;

(2) by deleting the word “and” in the last line of paragraph (g) of clause 9(2);

(3) by substituting for the passage “prevailing.” in the last line of paragraph (h) of clause 9(2) the passage “prevailing;”;

(4) by inserting after paragraph (h) of clause 9(2) the following new paragraphs —

Utilisation of brines and evaporites ⁴

(i) in respect of potash produced pursuant to this Agreement, ensure that the potassium content of the brine and evaporites produced in on or under the land the subject of the mineral lease is, as far as is practicable, fully utilised in the

production of potash and/or other evaporites in accordance with its approved proposals;

Reports ⁴

- (j) furnish to the Minister quarterly such reports as the Minister may reasonably require concerning the mining and utilisation of the brines in connection with the Company's operations hereunder; and

Limitation of salt exports ⁴

- (k) limit its sales of common salt for delivery to Japan to 1,750,000 tons during each of the years ending 31st March, 1973, 1974 and 1975.
- (5) by substituting for the passage "(8)(7)(a)" in line four of clause 10 (aa) the passage "8(7)(a)"; and
- (6) by adding to clause 17 of the principal Agreement after the word "shall" in line twenty the words "promptly give notice to the other party of the event or events and shall".

IN WITNESS WHEREOF this Agreement has been executed the day and year first hereinbefore written.

SIGNED by the said THE HONOURABLE
JOHN TREZISE TONKIN, M.L.A. in the
presence of —

JOHN T. TONKIN.

H. E. GRAHAM,
Minister for Development
and Decentralisation.

THE COMMON SEAL OF TEXADA MINES
PTY. LIMITED was hereunto affixed by the
authority of the Directors and this instrument
signed and countersigned by —

[C.S.]

Director ALLEN D. CHRISTENSEN.
Secretary RONALD F. SULLIVAN.

[Second Schedule inserted: No. 29 of 1973 s. 5.]

Third Schedule — Second Variation Agreement

[s. 2]

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

AN AGREEMENT made the Fifteenth day of November, 1978 BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A., Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities (the State of Western Australia and its instrumentalities being hereinafter referred to as “the State”) of the one part and TEXADA MINES PTY. LIMITED a company incorporated under the *Companies Act 1961* of the State of Western Australia and having its registered office at 37 St. George’s Terrace, Perth in the State of Western Australia (hereinafter referred to as “the Company”) of the other part.

WHEREAS:

- (a) The parties to this Agreement are the parties to the agreement between them as defined in section 2 of the *Evaporites (Lake MacLeod) Agreement Act 1967* (which agreement is hereinafter referred to as “the principal Agreement”).
- (b) The parties desire to vary the provisions of the principal Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. In this Agreement, subject to the context words and phrases to which meanings are given under clause 1 of the principal Agreement (other than words and phrases to which meanings are given in this Agreement) shall have the same respective meanings in this Agreement as are given to them in clause 1 of the principal Agreement.
2. (1) The provisions of this Agreement other than clause 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 the said Bill is not passed within 12 months after the date hereof this Agreement shall then cease and determine at the expiration of the said 12 months period and neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed, under this Agreement.

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

Initial obligations of State ⁴

3. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to the 30th day of June, 1979.

4. Notwithstanding the provisions of the principal Agreement —

Upgrading of salt installations ⁴

(1) The company shall, in accordance with a programme approved by the Minister, not later than the 31st day of December, 1979 and at an additional cost of \$2 500 000, upgrade the Company's common salt installations to improve both their efficiency and their security against the elements and have such work completed by the 31st day of December, 1980 to the satisfaction of the Minister.

Shipment of common salt ⁴

(2) The Company shall during the continuance of this Agreement produce from the mineral lease and ship common salt at a rate of not less than 700 000 tons during each of the years ending 31st March, 1980, 1981 and 1982 and thereafter at a rate of not less than 500 000 tons per annum

Relief from potash obligations ⁴

(3) The Company is relieved from its obligations under the principal Agreement in respect of potash, subject to compliance with each of the following conditions —

Investigation and report on utilisation of resource ⁴

(a) The Company shall during the currency of this Agreement continue to investigate the full utilisation of the resource the subject of the mineral lease and shall report thereon to the reasonable satisfaction of the Minister at intervals of three years, the first report being due on the 31st day of December, 1981.

Third party participation⁴

- (b) In the event that the State notifies the Company that a third party wishes to utilise any part of the said resource (other than common salt) the Company shall, if it does not wish to proceed with the utilisation of such part of the said resource, consult and co-operate with the Minister and the third party on fair and reasonable conditions of usage of such part of the said resource and of access to the Company's established facilities by the third party. If any dispute arises as to the terms and conditions under which such use shall take place, the Minister shall determine the position on the basis that the terms of any arrangement between the State, the Company and such third party shall not unduly interfere with or jeopardise the established works operation or markets of the Company and shall not be more favourable on the whole than those granted to the Company having regard to the area or part of the said resource made available to such third party PROVIDED THAT the decision of the Minister as aforesaid may at the option of the Company be referred to arbitration hereunder. The parties hereto agree to enter into any variation of this Agreement or the principal Agreement that may be necessary to give effect to the decision of the Minister or to an award made on an arbitration.

Maintenance of Langbeinite plant⁴

- (c) The Company shall continue to maintain its plant referred to in paragraph (a) of subclause (1) of clause 9 of the principal Agreement until such time as the Minister is satisfied that such plant is unsuitable for use by either the Company or a third party under this subclause.

Interpretation⁴

5. The provisions of the principal Agreement shall be read and construed subject to the provisions of this Agreement.

IN WITNESS WHEREOF this Agreement has been executed the day and year first hereinbefore written.

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

ANDREW MENSAROS,
Minister for Industrial
Development.

THE COMMON SEAL OF TEXADA MINES PTY. LIMITED was hereunto affixed by the authority of the Directors and this instrument signed and countersigned by } [C.S.]

Director Ian H. CARNE.

Secretary R. DICKINSON.

[Third Schedule inserted: No. 5 of 1979 s. 4.]

Notes

- ¹ This is a compilation of the *Evaporites (Lake MacLeod) Agreement Act 1967* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Evaporites (Lake MacLeod) Agreement Act 1967</i>	3 of 1967	5 Oct 1967	5 Oct 1967
<i>Evaporites (Lake MacLeod) Agreement Act Amendment Act 1973</i>	29 of 1973	6 Jun 1973	6 Jun 1973
<i>Evaporites (Lake MacLeod) Agreement Act Amendment Act 1979</i>	5 of 1979	17 May 1979	17 May 1979
Reprint of the <i>Evaporites (Lake MacLeod) Agreement Act 1967</i> as at 20 Dec 2002 (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)

- ² Repealed by the *Mining Act 1978*.
- ³ Repealed by the *Interpretation Act 1984*.
- ⁴ Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
the Agreement.....	2
the Company.....	2
the Second Variation Agreement.....	2
the Variation Agreement.....	2