

Western Australia

**Alumina Refinery (Mitchell Plateau) Agreement
Act 1971**

**Incorporating the amendments proposed by
the *Alumina Refinery (Mitchell Plateau)*
Agreement (Termination) Bill 2015 Pt. 2
(Bill No. 113-1)**

Alumina Refinery (Mitchell Plateau) Agreement Act 1971

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An Act to ratify an agreement made between the State and Amax Bauxite Corporation relating to the establishment of a refinery to produce alumina, to provide for carrying the Agreement into effect, to ratify a further agreement for the termination of the Agreement, effect; to repeal the *Alumina Refinery (Mitchell Plateau) Agreement Act 1969*, and for incidental and other purposes.

[Long title amended by the Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015 cl. 4.]

1. Short title

This Act may be cited as the *Alumina Refinery (Mitchell Plateau) Agreement Act 1971*¹.

2. Interpretation

In this Act, unless the contrary intention appears —

Mitchell Plateau area has the meaning given in the Fifth Schedule clause 1;

pending application means a tenement application made, but not determined, under the *Mining Act 1978* before the day on which the *Alumina Refinery (Mitchell Plateau) Agreement (Termination) Act 2015* section 6 comes into operation;

Temporary Reserve 5610H means the reserve of that designation created under the *Mining Act 1904* and continued under the *Mining Act 1978*;

tenement application means an application for a mining tenement under the *Mining Act 1978*;

termination agreement means the agreement a copy of which is set out in the Fourth Schedule;

the Agreement means the agreement of which a copy is set forth in the First Schedule, and if the Agreement is added to or varied or any of its provisions are cancelled in accordance with those provisions, includes the Agreement as so altered from time to time;

the former Agreement means the agreement of which a copy is set forth in the Schedule to the *Alumina Refinery (Mitchell Plateau) Agreement Act 1969*;

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

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

[Section 2 amended by No. 60 of 1972 s. 2; No. 90 of 1985 s. 3; Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015 cl. 5.]

3. Ratification of the Agreement

- (1) The Agreement is ratified.
- (2) Notwithstanding any other Act or law the Agreement shall, subject to its provisions, be carried out and take effect as though those provisions had been expressly enacted in this Act.

3A. Ratification of Variation Agreement

The First Variation Agreement is ratified.

[Section 3A inserted by No. 60 of 1972 s. 3; amended by No. 90 of 1985 s. 4.]

3B. Ratification of Second Variation Agreement

- (1) The Second Variation Agreement is ratified.
- (2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Second Variation Agreement shall operate and take effect according to its terms notwithstanding any other Act or law.

[Section 3B inserted by No. 90 of 1985 s. 5.]

4. Ratification and operation of termination agreement

- (1) The termination agreement is ratified.
- (2) Without limiting or otherwise affecting the operation of the *Government Agreements Act 1979*, the termination agreement is to operate and take effect despite any other Act or law.

[Section 4 inserted by the Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015 cl. 6.]

5A. Cancellation of Temporary Reserve 5610H

Temporary Reserve 5610H is cancelled by force of this section.

[Section 5A inserted by the Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015 cl. 6.]

5B. Termination of pending applications in respect of Mitchell Plateau area

- (1) Each pending application in respect of land wholly or partly within the Mitchell Plateau area is terminated by force of this section.
- (2) No action, claim or demand lies against the State, the Minister or any other person in respect of any matter or thing arising from the termination of a pending application under this section.

[Section 5B inserted by the Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015 cl. 6.]

5C. Temporary prohibition on tenement applications in respect of Mitchell Plateau area

- (1) In this section —
relevant area means the Mitchell Plateau area or that area modified to the extent necessary to reflect any changes to the boundaries of land contiguous to that area resulting from survey or cadastral information.
- (2) Despite anything in the *Mining Act 1978*, a tenement application cannot be made during the designated period in respect of land wholly or partly within the Mitchell Plateau area.
- (3) For the purposes of subsection (2), the designated period is the period —
 - (a) beginning on the day on which the *Alumina Refinery (Mitchell Plateau) Agreement (Termination) Act 2015* section 6 comes into operation; and
 - (b) ending on the day fixed under subsection (4).
- (4) When the Minister is satisfied that the relevant area has been reserved under the *Land Administration Act 1997* Part 4 for the purposes of a national park and classified as a class A reserve under that Part, the Minister must, by notice published in the *Gazette*, fix a day for the purposes of subsection (3)(b).
- (5) The day fixed must be the day after the day on which the notice is published in the *Gazette*.

[Section 5C inserted by the Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015 cl. 6.]

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~~4. — **By-laws**~~

- ~~(1) — By-laws may be made for the purposes of, and in accordance with, the Agreement.~~
- ~~(2) — By-laws made pursuant to this section —~~
 - ~~(a) — shall be published in the *Government Gazette*;~~
 - ~~(b) — take effect and have the force of law from the date they are so published or from such later date as is fixed by the by-laws;~~
 - ~~(c) — may prescribe penalties not exceeding \$100 for any contravention of, or failure to comply with, any such by-law; and~~
 - ~~(d) — are not subject to the provisions of section 36 of the *Interpretation Act 1918*², but the by-laws shall be laid before each House of Parliament within 6 sitting days of such House next following the publication of the by-laws in the *Government Gazette*.~~

5. *Alumina Refinery (Mitchell Plateau) Agreement Act 1969* repealed

The *Alumina Refinery (Mitchell Plateau) Agreement Act 1969*, is hereby repealed.

6. **Certain acts, things, etc., done under former Agreement deemed validly done under the Agreement**

Notwithstanding the repeal effected by section 5, it is hereby declared that —

- (a) any act or thing done pursuant to the former Agreement by either party thereto is deemed to have been validly done pursuant to, and the doing thereof to have been authorised by, the Agreement;
- (b) any right, title, privilege or licence granted pursuant to the former Agreement is deemed to have been validly granted pursuant to, and the granting thereof authorised by, the Agreement;
- (c) any proposal submitted and approved pursuant to the former Agreement and any extension of time granted pursuant thereto, is deemed to have been submitted and approved or granted pursuant to, and the submitting and approval or granting thereof authorised by, the Agreement.

[Heading deleted by No. 19 of 2010 s. 42(2).]

**First Schedule — Alumina Refinery (Mitchell Plateau)
Agreement**

[s. 2]

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

ALUMINA REFINERY (MITCHELL PLATEAU) AGREEMENT

THIS AGREEMENT made the 17th day of November, One thousand nine hundred and seventy one, BETWEEN THE HONOURABLE JOHN TREZISE TONKIN M.L.A. Premier and Treasurer of the State of Western Australia, acting for and on behalf of the said State and Instrumentalities thereof from time to time (hereinafter called “the State”) of the one part and AMAX BAUXITE CORPORATION a Company incorporated in the State of Delaware United States of America and registered as a foreign company in the State of Western Australia (hereinafter referred to as “the said State”) under the provisions of the *Companies Act 1961*, and having its registered office situate at Perth in the said State (hereinafter called “the Company”) of the other part.

WHEREAS:

- (a) The Company (and its predecessors in title) at a cost to 17th day of December, 1968 of over One Million Four Hundred Thousand Dollars (\$1.4 Million) having established the existence of bauxite reserves within the mining areas defined in Clause 1 hereof and having already carried out certain investigations relating to the mining beneficiation transport and refining of bauxite and the shipment of bauxite and alumina from the mining areas desires to develop such bauxite reserves and to establish a bauxite mining and beneficiation operation and an alumina plant all of which it is anticipated will cost in excess of One Hundred Million Dollars (\$100,000,000).
- (b) The Company agrees to investigate in due course the feasibility of establishing within the State an industry for smelting alumina produced from ore from the mineral lease as hereinafter defined.

NOW THIS AGREEMENT WITNESSETH: —

Interpretation³

1. In this Agreement subject to the context —

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

“associated company” means —

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- (a) any company having a paid up capital of not less than Two Million (\$2,000,000) notified by the Company to the Minister which is incorporated in the United Kingdom the United States America or the Commonwealth of Australia or such other country as the Minister may approve 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 cent (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 cent (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 cent (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 the Company holds not less than twenty per cent (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;

“bauxite” means ore from the mineral lease which either with or without crushing washing and screening is shipped or sold as bauxite or is used for processing into alumina;

“commencement date” means the date referred to as the commencement date in Clause 7(1) hereof;

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

“Company” means Amax Bauxite Corporation and —

- (a) if this Agreement is assigned, means all the permitted assigns of Amax Bauxite Corporation for the time being entitled to the benefit of this Agreement; and
- (b) where the rights of the Company under this Agreement to or as the holder of a lease, license, easement or other title have been transferred or assigned by the Company, means in

relation to the lease, license, easement or other title, the person or persons for the time being entitled to, or to the exercise of, those rights;

“Company’s wharf” means the wharf or wharves constructed by the Company pursuant to this Agreement or (except for the purposes of the definition of “port”) the temporary wharf for the time being approved by the Minister as the Company’s wharf for the purposes hereof during the period to which such approval relates;

“Land Act” means the *Land Act 1933*;

“mineral lease” means the mineral lease or mineral leases referred to in Clause 8(1)(a) hereof and includes any renewal thereof;

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

“mining areas” means the mining areas marked A, B, C, D and E and delineated and coloured red on the plan marked “X” initialled by or on behalf of the parties hereto for the purposes of identification;

“Minister” means the Minister in the Government of the said State for the time being responsible (under whatsoever title) for the administration of the Ratifying Act and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of the Minister;

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

“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“port” means the port or harbour in the general area of Port Warrender or such other area as the Company requests and the Minister approves and serving the Company’s wharf;

“RDA” means a regional development authority to which land is leased by the State for the purposes among others of construction of any regional facilities pursuant to Clause 5(3) hereof;

“Ratifying Act” means the Act to ratify this Agreement and referred to in Clause 3 hereof;

“refinery” means a refining plant at or near the port in which bauxite is treated to produce alumina;

“refinery site” means the site on which the refinery is or is to be situated;

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“regional facilities” means the town facilities and the provision of utilities including electrical generating plants and transmission lines, sewage disposal and drawing, storing, reticulating and supplying water for the Company’s operations under this Agreement;

“said State” means the State of Western Australia;

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

“special grade bauxite” means ore which is sold as refractory grade abrasive grade or chemical grade bauxite;

“special lease” means a special lease or license to be granted in terms of this Agreement under the Ratifying Act the Mining Act the Land Act or the *Jetties Act 1926* and includes any renewal thereof;

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

“ton” means a ton of two thousand two hundred and forty (2,240) lbs. net dry weight;

“town facilities” means in relation to the townsite all housing and business premises, all health, educational, social, recreational, security and welfare services, amenities, benefits and facilities, all communications and transportation facilities (including aerodrome) and all other works or facilities necessary or desirable for the purpose of the town and the anticipated population thereof;

“townsite” means the townsite to be established pursuant to this Agreement whether or not constituted and defined under Section 10 of the Land Act;

“wharf” includes any jetty structure;

“year 1” means the year next following the commencement date, and

“year” followed immediately by any other numeral has a corresponding meaning;

monetary references in this Agreement are to Australian currency;

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;

power given under any clause of this Agreement other than Clause 18 hereof to extend any period or date shall be without prejudice to the power of the Minister under the said Clause 18;

marginal notes shall not affect the interpretation or construction hereof³;

the phases in which it is contemplated that this Agreement will operate are as follows: —

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

Obligations of the State during Phase 1 ³

2. (1) The State shall —

- (a) upon application by the Company at any time prior to the 30th day of June, 1972 (and surrender of the then existing rights of occupancy already granted in respect of any portions of the mining areas) cause to be granted to the Company rights of occupancy for a period of twelve months for the purposes of this Agreement (including the sole right to search and prospect for bauxite) over each of the mining areas under Section 276 of the Mining Act at a rental of Fifty Dollars (\$50) per annum in respect of each mining area payable in advance and shall then and thereafter subject to the continuance of this Agreement cause to be granted to the Company as may be necessary successive renewals of such last mentioned rights of occupancy (each renewal for a period of twelve (12) months at the same rental and on the same terms) in respect of each mining area the last of which renewals notwithstanding its currency shall in relation to the mining area concerned expire —
 - (i) on the date of grant of a mineral lease of that mining area to the Company under Clause 8(1)(a) hereof;
 - (ii) on the expiration of six years from the commencement date; or
 - (iii) on the determination of this Agreement pursuant to its terms

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 as an Act prior to the 31st day of December, 1971, which Bill shall include a provision that notwithstanding any other Act or law this Agreement shall be carried out and take effect as though its provisions had been expressly enacted;
- (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 sites for its operations under this Agreement; and
- (d) at the request and cost of the Company co-operate with the Company in the discharge of the Company's obligations under Clause 4(1) hereof.

(2) Notwithstanding anything contained or implied in this Agreement or in the rights of occupancy granted pursuant to subclause (1) of this clause the State may grant to or register in favour of persons other than the Company rights of occupancy leases and other mining tenements in respect of minerals other than those which would be the subject of the mineral lease unless the Minister for Mines reasonably determines that such grant would be likely to unduly prejudice or interfere with the operations or possible operations of the Company assuming the taking by the Company of all reasonable steps to avoid the prejudice or interference and any mineral lease granted pursuant to Clause 8(1) hereof shall be subject to any such rights of occupancy leases or other mining tenements granted pursuant to this subclause.

Ratification and operation³

3. (1) Clauses 8 and 9 and Clause 10 (other than paragraphs (m) and (n) thereof) and Clause 11 of this Agreement shall not operate unless and until the Bill to ratify this Agreement as referred to in Clause 2(b) hereof is passed as an Act before the 31st day of December, 1971, or such later date if any as the parties hereto may mutually agree upon.

(2) If the Bill is not so passed before that date or later date (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 Clause 10(n) hereof.

(3) On the Bill referred to in subclause (1) of this clause 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 and for the purposes of this Agreement and notwithstanding the generality of the foregoing: —

- (a) The Mining Act the Land Act the *Transfer of Land Act 1893* and the Public Works Act shall be deemed modified and amended to the extent necessary to enable full force and effect to be given to this Agreement;
- (b) Without prejudice to the generality of the foregoing the Mining Act shall be deemed modified and amended by the deletion of subsections (3) and (5) of Section 277 and Section 282;
- (c) Without prejudice to the generality of the foregoing the *Transfer of Land Act 1893* shall be deemed modified and amended by the deletion of Section 81D;
- (d) Without prejudice to the generality of the foregoing the Land Act shall be deemed modified and amended by —
 - (i) The substitution for subsection (2) of Section 45A of the following subsection: —
 - (2) Upon the Governor signifying approval pursuant to subsection (1) of this section

in respect of any such land the same may
subject to this section be sold or leased;

- (ii) The deletion of the proviso to Section 116;
 - (iii) The deletion of Section 135;
 - (iv) The deletion of Section 143;
 - (v) The inclusion of a power to offer for sale or leasing land within or in the vicinity of the townsite notwithstanding that the townsite has not been constituted a townsite under Section 10; and
 - (vi) The inclusion of a power to offer for sale or grant leases or licenses for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods and the terms conditions and forms referred to in the Act and upon application by the Company in forms consistent as aforesaid in lieu of in the forms referred to in the Act;
- (e) The State and the Minister respectively shall have all the powers discretions and authorities necessary or requisite to enable them to carry out and perform the powers discretions authorities and obligations conferred or imposed upon them respectively hereunder;
- (f) No future Act of the said State will operate to increase the Company's liabilities or obligations hereunder;
- (g) The State may as for a public work under the *Public Works Act 1902*, resume any land or any estate right or interest to in over or in respect of land required for the purposes of this Agreement and may lease or otherwise dispose of the same to the Company;
- (h) Notwithstanding the provisions of Section 82 of the Mining Act and of regulations 192 and 193 made thereunder and of Section 81D of the *Transfer of Land Act 1893* insofar as the same or any of them may apply no mortgage or charge in a form commonly known as a floating charge made or given pursuant to Clause 14 hereof over any lease license reserve or tenement granted hereunder or pursuant hereto by the Company or any assignee or appointee who has executed and is for the time being bound by deed of covenant made pursuant to Clause 14 hereof and no transfer or assignment in exercise of any power of sale contained in such mortgage or charge shall require any approval or consent other than such consent as may be necessary under Clause 14 hereof and no such mortgage or charge shall be rendered ineffectual as an equitable charge by the absence of any approval or consent otherwise than as required by Clause 14 hereof or because the same is not registered under the provisions of the Mining Act; and

- (i) No lease sub-lease license or other title or right granted or assigned under or pursuant to this Agreement shall be subject to or capable of partition including partition under the *Property Law Act 1969* or under any order of any Court of competent jurisdiction under that Act or otherwise or be subject to the making of an order for sale under the said Act.

Obligations of the Company during Phase 1³

4. (1) The Company shall continue its field and office engineering studies and market and finance studies and other matters necessary to enable it to finalise and to submit to the Minister the detailed proposals and other matters referred to in Clause 5(1) hereof.

(2) The Company shall keep the State fully informed in writing at least quarterly commencing within three months after the execution hereof as to the progress and results of the Company's operations under subclause (1) of this clause.

(3) The Company shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclause (1) of this clause.

(4) The Company will employ and retain expert consultant engineers to investigate report upon and make recommendations in regard to the sites for and design of the Company's wharf (including areas for installations stockpiling and other purposes in the port area) reasonably required by the Company under this Agreement but in such regard the Company will require the consultant engineers to have full regard for the general development of the port area and the dredging thereof and of approaches thereto with a view to the reasonable use by others of the port area and approaches and the Company will furnish to the State copies of such report and recommendations.

Company to submit proposals³

5. (1) By the 31st day of December 1971 or if the Company requests an extension to the 30th day of June 1972 then by that date (or such further extended date if any as the Minister may approve) the Company will where not already done submit to the Minister —

Works³

- (a) to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect so far as relevant to the development of the mining areas (or so much thereof as shall be comprised in the mineral lease) for the mining transport and shipment of bauxite and the production and shipment of alumina and including the location area layout design number materials and time programme for the commencement and completion of construction

or the provision (as the case may be) of each of the following matters namely —

- (i) the port and port development including dredging and depositing of spoil the provision of navigational aids the Company's wharf (the plans and specifications for which wharf shall be submitted to and be subject to the approval of the State) the berth and swinging basin for the Company's use and port installations facilities and services all of which shall permit the use of the bauxite and alumina loading wharf by vessels having a capacity of not less than thirty thousand (30,000) tons deadweight tonnage (including but not as part of such proposals a preliminary design for and cost estimate of expanding such facilities to enable the use of the bauxite and alumina loading wharf by vessels having a capacity of not less than sixty thousand (60,000) tons deadweight tonnage);
- (ii) bauxite and alumina transport facilities;
- (iii) the townsite and town facilities;
- (iv) regional facilities other than town facilities;
- (v) the refinery;
- (vi) any other works services or facilities desired by the Company; and

Marketing and Finance³

- (b) subject to the provisions of subclause (5) of this clause reasonable evidence of marketing arrangements demonstrating the Company's ability to sell or use alumina produced from the refinery and reasonable evidence of the availability of finance necessary for the fulfilment of the Company's proposals under this clause.

Order of submission of proposals³

(2) 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 sub-paragraphs numbered (i) to (vi) 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 sub-paragraph which refers to more than one subject matter the detailed proposals will relate to and cover each of the matters mentioned in the sub-paragraph PROVIDED FURTHER that the first detailed proposals submitted to the Minister relate to and cover the matters mentioned in sub-paragraph (i) of the said paragraph (a) of the said subclause (1).

- (3) In regard to regional facilities the Company shall submit proposals in respect of arrangements with the RDA (including details of proposed borrowings by the RDA) on the basis —
- (a) of the RDA being constituted by an Act of the Parliament of Western Australia as a body corporate;
 - (b) of the RDA undertaking to construct the regional facilities and to grant to the State a head sub-lease of an area for the townsite within the area to be granted to the RDA pursuant to Clause 8(1)(d) hereof and of all regional facilities thereon or on some part thereof for a term of forty-two (42) years and one day at
 - (i) a yearly rent which with interest at a rate agreed on between the Company the RDA and the State will amortise the total cost to the RDA of constructing the regional facilities and such interest thereon over a period of forty-two (42) years provided that if the RDA is required to repay moneys borrowed for the construction of the regional facilities over a shorter period than forty-two years the State will prepay the rent in such instalments (not exceeding in total the amount payable by the RDA) as will enable the RDA to meet its obligations as to payment of principal and interest; and
 - (ii) at such additional yearly rent which with interest at a rate agreed and approved as aforesaid will amortise the total cost to the RDA of any subsequent improvements or additions to the regional facilities carried out by the RDA at the request of the Company and such interest thereon over such period (not exceeding the then balance of the term of the head sub-lease) as may be agreed between the Company, the RDA and the State;
 - (c) subject to paragraphs (e), (f), (g), (h) and (i) below of such head sub-lease containing such other terms and conditions (including renewal for the same period as any renewal of the mineral lease under Clause 8(1)(a) hereof) as may be agreed upon between the Company, the RDA and the State;
 - (d) of the State granting to the Company a sub-lease (to which sub-lease the RDA would be a party) of the regional facilities for the same term as the head sub-lease less one day and at the same rent (including the obligation to prepay rent) and on the same terms and conditions as are contained in the head sub-lease including in particular the terms and conditions set out in paragraphs (e), (f), (g), (h) and (i) below;
 - (e) of the RDA agreeing in the head sub-lease and in the sub-lease from the State to the Company that the RDA will, subject to the obtaining of finance on terms satisfactory to itself the Company and the State, make such improvements or additions to the regional facilities as

may be requested by the Company and will not, subject to paragraph (g) below, make any improvements or additions which would unduly prejudice the Company in relation to its operations under this Agreement or such sub-lease or prejudicially interfere with those operations or which would increase the Company's commitments under this Agreement or such sub-lease or prejudicially interfere with the Company's control over the land or any part thereof the subject of such sub-lease;

- (f) of the RDA agreeing that it will pay to the Company in respect of the use of any of the town facilities by the RDA or any lessee or sub-lessee of the RDA (permission for which use the Company shall not unreasonably withhold) a reasonable licence fee having regard to the proportions of use by the Company and the RDA or such lessee or sub-lessee;
- (g) of the RDA agreeing with the Company that any improvements or additions to the regional facilities (other than the town facilities) which the RDA may wish to make on any area the subject of a sub-lease to the Company for the benefit of any person other than the Company (consent to the making of which the Company shall not unreasonably withhold) shall be made without cost to the Company;
- (h) of the RDA agreeing that the Company shall be entitled to operate and maintain any improvements or additions made pursuant to paragraph (g) at the cost of the RDA and to supply power or water (as the case may be) on behalf of and at the cost of the RDA on reasonable terms including a fair charge for the rental cost to the Company of the regional facilities to which such improvements or additions have been made;
- (i) of the Company accepting the obligation (subject to paragraph (h) of this subclause) to maintain and operate the regional facilities at its own expense and indemnify the State in regard thereto; and
- (j) of the Company procuring in favour of the State a covenant in a form and by a third party or third parties approved by the State assuring the completion of all works (including regional facilities) the subject of and in accordance with the proposals of the Company as approved or determined under Clause 6 hereof and assuring that in the event of the sub-lease being terminated pursuant to its terms or pursuant to this Agreement the amounts which would thereafter have been payable by way of rental (including any rental prepayable) by the Company if such sub-lease had not been terminated will be paid as and when they would have become due and payable.

Recognising that the concept of the RDA is only at this time in the exploratory stage and that neither the State nor the Company have yet had an opportunity of considering in detail its practicability the State and the Company will consult from time to time as may be necessary with regard to the feasibility of the

establishment of the RDA in order that the State may, if at any time prior to the Company's proposals being approved or determined it considers the promotion and development of the RDA to be impracticable, request the Company to submit its proposals in accordance with subclause (4) of this clause in lieu of this subclause.

(4) If the Company considers that the foregoing arrangements for the RDA are impracticable it may at any time before or after submitting the proposals referred to in the foregoing provisions of subclause (3) of this clause or after such proposals have been disapproved under Clause 6(1)(b) hereof submit proposals or alternative proposals for the provision and financing of regional facilities either by means of one or more corporations or by the Company or any associated company, and also including such provisions as may be considered necessary or desirable for the granting of any lease or leases by the State to any one or more of such corporations of the townsite and any other areas required for regional facilities either through a head sub-lease to the State or otherwise.

Extensions of time as to finance³

(5) If the Company should in writing and within the time later in this subclause mentioned request the Minister to grant an extension or any further extension of time beyond the 30th day of June, 1972 (or such later date if any previously granted or approved by the Minister) within which to arrange finance and demonstrates to the satisfaction of the Minister that the Company has duly complied with its other obligations hereunder then —

- (a) the Minister will grant an extension for a period to the 31st day of December, 1972 provided the Company applies for such extension not earlier than the 31st day of March, 1972 and not later than the 31st day of May, 1972 and provided the Company supplies to the Minister reasonably full details of the Company's best but unsuccessful endeavours to arrange such finance; and
- (b) if an extension is granted under paragraph (a) of this subclause then provided the Company demonstrates to the satisfaction of the Minister that it has again used its best but unsuccessful endeavours to arrange such finance the Minister will grant a further extension for such period as may be warranted in the circumstances and as may be mutually agreed or fixed by arbitration as hereinafter provided but not in any case exceeding
 - (i) three years on request made within one month before the 31st day of December, 1972; and
 - (ii) if an extension is granted under sub-paragraph (i) of this paragraph then for not exceeding a further period of two years on request made before the expiration of period of extension granted under the said sub-paragraph (i)

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.

Consideration of proposals under clause 5(1)³

6. (1) (a) Within two (2) months after receipt of the detailed proposals of the Company in regard to any of the matters mentioned in Clauses 5(1)(a) and 5(3) hereof the Minister shall except as to any of the matters mentioned in Clause 5(3) hereof 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 but the Minister shall in any notice to the Company disclose his reasons for any such alterations or conditions PROVIDED THAT the Minister shall not (except on the grounds of conflict with the *Mines Regulation Act 1946*) make any alterations to or impose conditions upon the proposals or new proposals insofar as they relate to the site of the mining operations or the mining methods selected by the Company or to the technical aspects of the Company's plant for the crushing washing and screening of ore from the mineral lease or of the refinery.

Consideration of proposals under clause 5(3)³

(b) Within two (2) months after receipt by the Minister of the detailed proposals of the Company in regard to any of the matters mentioned in clause 5(3) hereof the State shall give to the Company notice either of its 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 State or give notice of its disapproval of the proposals on the grounds that the State is not satisfied that appropriate financial arrangements can be made with respect to the RDA's borrowing. The State may make such alterations to or impose such conditions on the proposals or new proposals (as the case may be) as it shall think fit having regard to the circumstances but the State shall in any notice to the Company disclose its reasons for any such alterations or conditions. If the Company does not within one month thereafter notify the State that it accepts such alterations or conditions the State shall be deemed to have given notice of its disapproval of the proposals.

If the State gives notice of disapproval as aforesaid such disapproval shall not be arbitrable under this Agreement.

Arbitration as to proposals³

(2) Except as provided in Clause 6(1)(b) hereof within two (2) months of the receipt of any notice under Clause 6(1) hereof 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 gives notice to the Minister of its acceptance of the award this Agreement shall on the expiration of that period of three (3) months cease and determine (save as provided in Clause 10(n) hereof) but if the question is decided in favour of the Company the decision will take effect as a notice by the Minister or the State (as the case may be) that he or it is so satisfied with and approves the matter or matters the subject of the arbitration.

Effect of non approval of proposals³

(3) Notwithstanding that under subclause (1) of this clause any detailed proposals of the Company are approved by the State or the Minister or determined by arbitration award unless each and every such proposal and matter is so approved or determined by the 28th day of February, 1972 or by such 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 28th day of February, 1972, or if any extension or extensions should be granted under Clause 5(5) hereof or any other provision of this Agreement then on or after the expiration of the last of such extensions 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 and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of Clause 10(n) hereof.

Effect of termination on contract with any other party³

(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 operations in respect of bauxite from any part of the mining areas on terms more favourable on the whole to the other party than those which would have applied to the Company hereunder if the Company had given notice to the Minister of its acceptance of the award.

Commencement date³

7. (1) Subject to the approval or determination by arbitration as herein provided of each and every of the detailed proposals and matters referred to in Clause 5 hereof the date upon which the last of those proposals of the Company shall have been so approved or determined shall be the commencement date for the purposes of this Agreement.

Right of termination³

(2) The Company may at any time prior to the commencement date give notice to the Minister that it does not wish to proceed with this Agreement whereupon this Agreement shall cease and determine.

Phase 2 — obligations of State³

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

Mineral lease after commencement date³

- (a) On application made by the Company at any time or from time to time before the expiration of six years from the commencement date for a mineral lease of any one or more of the mining areas or parts thereof (where practicable in the shape of a parallelogram or parallelograms) cause any necessary survey to be made of the land so applied for (the cost of which survey to the State will be recouped or repaid to the State by the Company on demand after completion of the survey) and shall cause to be granted to the Company a mineral lease of the land so applied for (notwithstanding the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed) in the form of the Schedule hereto for a term which subject to the payment of rents and royalties hereinafter mentioned and to the performance and observance by the Company of its obligations under the mineral lease and otherwise under this Agreement shall be for a period expiring on the expiration of twenty-one (21) years from the commencement date with the option for the Company to renew the same for a further period of twenty-one (21) years upon the same terms and conditions (except the option for further renewal) but subject to earlier determination upon the cessation or determination of this Agreement PROVIDED HOWEVER that the Company may from time to time (without abatement of any rent then paid or payable in advance) surrender to the State all or any portion or portions (of reasonable size and shape) of the mineral lease PROVIDED FURTHER and it is hereby agreed that if required by the Company by notice to the Minister given not earlier than the end of the tenth year and not later than the end of the nineteenth year of the renewed term the State will enter into negotiations with the Company for a further renewal of the mineral lease for a further period of twenty-one (21) years at such rent and on such terms and conditions (including further renewal) as may be mutually agreed (which agreement shall not be subject to arbitration) and if the parties fail to reach such agreement before the end of the twentieth year of the renewed term the State undertakes that it will not for a period of three (3) years after the expiration of the renewed term grant a mineral lease for bauxite of the same area or any part thereof to any other party at a rent and on terms and conditions more favourable on the whole than those which the State had offered to the Company;
- (b) In accordance with the Company's proposals as finally approved or determined under Clause 6(1)(a) or 6(2) hereof grant to the Company for a term expiring on the same date and renewable for the same periods as the mineral lease and on such other terms and conditions as shall be reasonable having regard to the requirements of the Company hereunder and to the overall development of the port and access to and use by others of lands the subject of any grant

to the Company and of services and facilities provided by the Company —

- (i) At peppercorn rental — special leases of Crown lands within the port area and the townsite; and
 - (ii) At rentals as prescribed by law or are otherwise reasonable — special leases rights mining tenements easements reserves and licences in or under Crown lands for its works and operations hereunder including the construction or provision of roads or tramways or other appropriate form of transport wharf airstrip and water supplies;
- (c) In accordance with the Company's proposals as finally approved under Clause 6(1)(b) hereof introduce and sponsor a Bill in the Parliament of Western Australia to constitute the RDA;
- (d) In accordance with the Company's proposals as finally approved under Clause 6(1)(b) hereof —
- (i) grant to the RDA for a term of ninety-nine (99) years (subject to earlier determination at the State's option on the termination of this Agreement) at a peppercorn rental a special lease of Crown lands of such area as the State and the RDA may agree not being less than the area required by the Company for the provision of the regional facilities, and in particular on terms that the RDA in accordance with such proposals will undertake to construct the regional facilities and grant a head sub-lease of the regional facilities to the State; and
 - (ii) grant a sub-lease of the regional facilities to the Company;
- (e) On application by the Company at any time and from time to time cause to be granted to it such machinery and tailings leases (including leases for the dumping of over-burden) and such other leases licenses reserves and tenements easements reserves and licenses (including those for limestone stone sand soil timber and other minerals or materials) under the provisions of the Mining Act or the Land Act modified as in Clause 3(3) hereof as the Company may reasonably require for construction and operating or other purposes under this Agreement; and

Services and facilities³

- (f) Provide any services or facilities in accordance with the Company's proposals as finally approved or determined under Clause 6 hereof and also provide any expanded services or facilities which from time to time are reasonably considered necessary by the Minister subject

in either case to the Company bearing and paying the capital cost involved if reasonably attributable to or resulting from the Company's operations hereunder and bearing and paying reasonable charges for maintenance and operation except operation charges in respect of education hospital and police services and except where and to the extent that the State otherwise agrees.

- (2) The State further covenants with the Company that the State —

No resumption³

- (a) 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 authority of the said State any of the works installations plant equipment or other property for the time being the subject of or used for the purposes of this Agreement nor any of the lands the subject of any lease or license granted under or pursuant to this Agreement AND the State will not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the said State as aforesaid any road right-of-way or easement of any nature or kind whatsoever over or in respect of any such lands without the consent of the Company which consent shall not be withheld unless such road right-of-way or easement as aforesaid would —
- (i) unduly prejudice the Company or prejudicially interfere with the operations of the Company under this Agreement; or
 - (ii) increase the Company's commitments or prejudicially interfere with the Company's control over any such lands;

Labour requirements³

- (b) 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 rates³

- (c) except 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 said State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Company in the conduct of the Company's business hereunder nor 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; and

Consents to improvements on leases³

- (d) 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) hereof) consent where and to the extent that the Minister considers to be reasonably justified to the Company or the RDA making improvements for the purposes of this Agreement on the land (including seabed) comprised in any lease granted by the State to the Company or the RDA pursuant to this Agreement PROVIDED THAT the Company or the RDA shall also obtain any other consents legally required in relation to such improvements.

(3) The Company shall not have any tenant rights in improvements made by the Company on the land comprised in any lease granted by the State to the Company pursuant to this Agreement in any case where pursuant to Clause 10(o) hereof such improvements will remain or become the absolute property of the State.

Phase 2 Obligation of the Company to construct³

9. (1) The Company covenants with the State —
- (a) the Company will in accordance with its proposals as finally approved or determined under Clause 6 hereof promptly after the commencement date commence to construct a refinery and will thereafter continue such construction and shall by the end of year 3 complete and have in operation the first stage of the refinery having a capacity to produce not less than 200,000 tons of alumina per annum and by the end of year 10 complete and have in operation the refinery having a capacity to produce not less than 600,000 tons of alumina per annum and from time to time during such construction period the Company will if required by the Minister demonstrate to his satisfaction that such progress is being made as will ensure completion of such stages within the times aforesaid;
- (b) the Company will in accordance with its proposals as finally approved or determined under Clause 6 hereof —
- (i) construct the Company's wharf;
 - (ii) dredge if required the berth at the Company's wharf and any necessary channel and approaches thereto including a swinging basin;
 - (iii) develop or cause to be developed the townsite and construct or cause to be constructed the regional facilities; and

- (iv) construct and provide other works (if any); and
- (c) the Company shall not ship or sell bauxite without the prior approval of the Minister except that the Company may ship or sell the following quantities of bauxite without such approval —
 - (i) during the period from the commencement date to the end of year 3 — a quantity up to but not exceeding 3,000,000 tons;
 - (ii) during the period from the beginning of year 4 to the end of year 10 — a quantity equal to two and one half tons of bauxite for each one ton of bauxite fed to the refinery; and
 - (iii) thereafter in each year in which the refinery operates at a rate which is not below 200,000 tons less than its rated capacity a quantity of alumina which is equal to two tons of bauxite for every one ton of bauxite fed to the refinery PROVIDED THAT nothing in this paragraph shall prohibit the fulfilment of a contract for the shipment or sale of bauxite which has received the approval of the Minister.
- (2) Throughout the continuance of this Agreement the Company shall —

Operation of Tramway³

- (a) operate any tramway it may construct in a safe and proper manner and where necessary and to the extent that it can do so without unduly prejudicing or interfering with its operations hereunder allow crossing places for roads and stock;

Use of roads by others³

- (b) except to the extent that the Company's proposals as finally approved or determined under Clause 6 hereof otherwise provide allow the public to use free of charge any roads (to the extent that it is reasonable and practicable so to do) constructed by the Company hereunder PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder;

Compliance with laws³

- (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;

Maintenance³

- (d) at all times keep and maintain in good repair and working order and condition all works installations plant machinery and equipment provided by the Company and for the time being the subject of this Agreement;

Use of wharf and facilities³

- (e) 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 subclause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Company) allow the State and third parties to use the Company's wharf and port installations and port equipment PROVIDED THAT such use shall not unduly prejudice or interfere with the Company's operations hereunder and that the entire control and all personnel for or in respect of such use shall be provided by or with the approval of the Company;

Access through mining areas³

- (f) allow the State and third parties to have access (with or without stock and vehicles) over the mineral lease except for those parts of the mineral lease which the Company may from time to time reasonably designate as restricted areas for reasons of security or safety PROVIDED THAT such access over shall not unduly prejudice or interfere with the Company's operations hereunder;

Protection for Inhabitants³

- (g) 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 subclause (3) of this clause and subject thereto or if no such by-laws are made or in force then upon reasonable terms and at reasonable charges (having regard to the cost thereof to the Company) allow the inhabitants for the time being of the townsite being employees licensees or agents of the Company or persons engaged in providing a legitimate and normal service to or for the Company or their employees licensees or agents to make use of the water power recreational health and other services or facilities provided or controlled by the Company;

Use of local labour and materials³

- (h) so far as reasonably and economically practicable use labour available within the said State and give preference to *bona fide* Western Australian manufacturers and contractors in the placement of orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere. In calling tenders and or letting contracts for works materials plant equipment and supplies required by the

Company the Company will ensure that *bona fide* Western Australian manufacturers and contractors are given reasonable opportunity to tender quote or otherwise be properly considered for such works materials plant equipment and supplies;

Rent for mineral lease³

- (i) by way of rent for the mineral lease pay to the State annually in advance during the period expiring at the end of twenty-one (21) years from the commencement date a sum equal to five dollars (\$5) per square mile of the area for the time being the subject of the mineral lease and thereafter the amount from time to time prescribed by the Mining Act but not exceeding ten dollars (\$10) per square mile;

Royalties on bauxite during first 21 year period³

- (j) pay to the State royalty on all bauxite shipped or used (other than bauxite shipped solely for testing purposes) during the period expiring at the end of twenty-one years from the commencement date as follows —
 - (i) on bauxite shipped — twelve and one half (12.5) cents per ton;
 - (ii) on bauxite used in the refinery — seven and one half (7.5) cents per ton;
 - (iii) on special grade bauxite produced for refractory or special purposes (other than for processing into alumina) and shipped to points within the Commonwealth — twenty-five (25) cents per ton;
 - (iv) on special grade bauxite produced for refractory or special purposes (other than for processing into alumina) and shipped to points outside the Commonwealth — forty (40) cents per ton.

The royalty payable under this paragraph shall increase or decrease proportionately to the increase or decrease in the mean quarterly world selling price of aluminium above or below five hundred Australian dollars (A\$500) per ton. The mean quarterly world selling price of aluminium is deemed to be the average expressed in Australian dollars of the four prices first quoted in the London Metal Bulletin in respect of Canadian primary aluminium 99.5 per cent. purity F.O.B. Toronto in each of the four quarters immediately preceding the quarter referred to in subclause (1) of this clause in respect of which the royalty return is required:

Royalties on bauxite after first 21 year period³

- (k) After the expiration of the period referred to in paragraph (j) of this subclause pay to the State on bauxite shipped (other than bauxite

shipped solely for testing purposes) royalty at such rate or rates as are prescribed from time to time by the Mining Act and on bauxite used in the refinery at a rate determined as follows —

- (i) the rate of royalty shall be reviewed by the State prior to the commencement of year 22 and prior to the commencement of each seven yearly period thereafter;
- (ii) the rate of royalty for the seven yearly period immediately succeeding a review shall subject to subparagraph (iii) of this paragraph be the rate determined by the State on the review, or if not so determined within six (6) months after the date for a review, shall be the rate existing immediately prior to the date for the review;
- (iii) the royalty per ton for any seven yearly period shall not exceed the average royalty per ton which during the three year period expiring on the 30th day of June immediately preceding the respective date for the review was payable in respect of bauxite (not from the mineral lease) used in the production of alumina in the Commonwealth by other parties who or whose associates are engaged in the combined operation of mining bauxite (not from the mineral lease) and producing alumina in the Commonwealth in comparable projects with comparable commitments in comparable areas;

Returns and payment of royalties of bauxite³

- (l) in each of the months of January April July and October in each year the Company will furnish to the Minister for Mines a return of all bauxite shipped or used during the quarterly period ending on the preceding last day of December March June and September as the case may be together with all other particulars necessary to enable the calculation of the royalty payable thereon and shall within thirty days after the expiration of each such quarterly period pay the State the amount of royalty due and payable in respect of that quarter;

Royalties and returns for other minerals³

- (m) in relation to clay and other minerals (except bauxite and minerals contained in bauxite) mined by the Company from the mineral lease pay the royalties and make the returns and allow access to books and accounts as required from time to time by the Mining Act; and

Inspection³

- (n) permit the Minister for Mines or his nominee to inspect at all reasonable times the records of the Company relative to any

shipment or use of bauxite hereunder and to take copies or extracts therefrom for the purpose of determining the royalty payable in respect of bauxite hereunder and the Company will take reasonable steps to satisfy the State either by 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 bauxite which may affect the amount of royalty payable hereunder.

By-laws³

(3) The Governor in Executive Council may upon recommendations by the Company make alter and repeal by-laws for the purpose of enabling the Company to fulfil its obligations under paragraph (e) of subclause (2) of this clause and (unless and until the townsite is declared a townsite pursuant to section 10 of the Land Act) under paragraph (g) of subclause (2) of this clause and under paragraph (a) of clause 10 hereof upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Company) as set out in such by-laws consistent with the provisions hereof. Should the State at any time consider that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Company shall recommend such alteration or repeal thereof as the State may reasonably require or (in the event of there being any dispute as to the reasonableness of such requirement) then as may be decided by arbitration hereunder.

Restoration of Mined Areas and Regeneration of Vegetation³

(4) The Company will agree from time to time with the Minister for Mines as to the progressive restoration of the surface of the worked and mined areas and the regeneration of vegetation thereon at the cost of the Company, having regard to good mining and industrial practice, the remoteness of the area and its probable future use, the state of any area before being worked or mined, the cost to the Company, the risk of pollution or undue interference with any drainage system, the risk of erosion and the risk of injury to the public PROVIDED THAT if the Company and the Minister for Mines are unable to agree as to such restoration or regeneration from time to time the same shall be decided by a firm of consultants of international repute versed in such matters nominated by the Minister for Mines and acceptable to the Company which firm shall have regard to such criteria as aforesaid and in giving a decision such firm shall be deemed to be acting as an expert and not as an arbitrator.

Disposal of red mud³

(5) The Company will agree from time to time with the Minister for Mines as to the disposal of red mud and other effluent from the refinery at the cost of the Company having regard to good mining and industrial practice, the remoteness of the area and its probable future use, the cost to the Company, the risk of pollution or undue interference with any drainage system the risk of

erosion and the risk of injury to public health PROVIDED THAT if the Company and the Minister for Mines are unable to agree as to such disposal from time to time the same shall be decided by a firm of industrial consultants of international repute versed in such matters nominated by the Minister for Mines and acceptable to the Company which firm shall have regard to such criteria as aforesaid and in giving a decision such firm shall be acting as an expert and not as an arbitrator.

Mutual Covenants³

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

Water and power supplies³

- (a) that subject to and in accordance with proposals approved or determined under Clause 6 hereof the Company for its purposes hereunder and for the purposes of the RDA and other purposes approved by the Minister may to the extent determined by the 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 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*;

Use of sea water³

- (b) the Company may without charge draw water from the sea for any of its operations under this Agreement and for this purpose may construct such works and use such portion of the sea bed as may be mutually agreed by the Company and the State;

Use of public roads³

- (c) that the Company may use any public roads which may from time to time exist in the areas of its operations hereunder for the purpose of transportation of goods and materials in connection with such operations;

Damage to public roads³

- (d) the Company shall on demand pay to the State or the Shire Council concerned the cost of making good any damage to public roads occasioned by use by the Company for the transportation of ore won from the mineral lease;

No charge for the handling of cargoes³

- (e) 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 port 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 from the Company's wharf whether such cargoes shall be the property of the Company or of any other person or corporation 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;

Zoning³

- (f) that the mineral lease and the lands the subject of any Crown Grant lease license or easement granted under or pursuant to 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 by any State agency or instrumentality or by any local or other authority of the said State on the ground that such operations are contrary to any zoning by-law or regulation;

Rentals and evictions³

- (g) 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 let by the Company in the townsite and that in relation to each such house the Company shall have the right to include as a condition of its letting 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;

Labour conditions³

- (h) that during the currency of this Agreement and subject to compliance with its obligations hereunder the company shall not be required to comply with the labour conditions imposed by or under the Mining Act in regard to the mineral lease;

Sub-contracting³

- (i) 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;

Rating³

- (j) that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this

Agreement except as to any part upon which a permanent residence shall be erected (or which is occupied in connection therewith) shall for rating purposes be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate. Provided that nothing in this subclause shall prevent the Company making the election provided for by section 533B of the *Local Government Act 1960*;

Company deemed a municipality for certain purposes³

(k) 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 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;

(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*;

State has right to grant mining tenements for other minerals³

(l) notwithstanding anything contained or implied in this Agreement or in the mineral lease or other lease or license granted hereunder or pursuant hereto the State may grant to or register in favour of persons other than the Company leases and other mining tenements in respect of minerals other than those the subject of the mineral lease and for stone sand or gravel unless the Minister for Mines reasonably determines that such grant or registration is likely to unduly prejudice or interfere with the operations of the Company hereunder assuming the taking by the Company of all reasonable steps to avoid the prejudice or interference.

Determination of Agreement³

(m) (i) that in any of the following events namely if the Company shall make default in the due performance or observance of any of the covenants or obligations to the State herein or in

any lease sub-lease license or other title or document granted or assigned under this Agreement on its part to be performed or observed or shall abandon or repudiate its operations under this Agreement and such default shall not have been remedied or such operations resumed within a period of one hundred and eighty (180) days after notice as provided in sub-paragraph (ii) of this paragraph is given by the State (or if the alleged default abandonment or repudiation is contested by the Company and within sixty (60) days after such notice is submitted by the Company to arbitration then within a reasonable time fixed by the arbitration award but not less than ninety (90) days after the making of the arbitration award where the question is decided against the 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 shall go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto or if the Company shall surrender the entire mineral lease as permitted under Clause 8(1)(a) of this Agreement then this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder or pursuant hereto shall thereupon determine; PROVIDED HOWEVER that if the default shall not have been remedied after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand;

- (ii) the notice to be given by the State in terms of sub-paragraph (i) of this paragraph shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate or known to the State the party or parties responsible therefor and shall be given to the Company and all such assignees mortgagees chargees and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 14(1)(a) hereof whose name and address for service of notice has previously been notified to the State by the Company or any such assignee mortgagee chargee or

disponee to be an assignee mortgagee chargee or disponee as the case may be; and

- (iii) the abandonment or repudiation by or liquidation of the Company referred to in sub-paragraph (i) of this paragraph means the abandonment or repudiation by or the liquidation of all of them the Company and all assignees and appointees who have executed and are for the time being bound by a deed of covenant in favour of the State as provided in Clause 14 hereof;

Effect of cessation or determination of Agreement³

- (n) 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 of any assignee of the Company or any mortgagee to in or under the mineral lease and any other lease license easement or right granted 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 or in respect of any indemnity given hereunder;
 - (ii) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;
 - (iii) the Company shall forthwith furnish to the State complete factual statements of the field and office engineering studies carried out pursuant to Clause 4(1) hereof if and insofar as the statements may not have been so furnished; and
 - (iv) save as aforesaid and as provided in Clauses 6(4) and 8(1)(a) hereof and in the next following paragraph neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement;

Effect of cessation or determination of Agreement on leases³

- (o) that on the cessation or determination of any lease license or easement granted hereunder 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 all improvements and things (other than plant and equipment and the refinery and ancillary buildings and facilities relating to the refinery) erected on the relevant land shall become and remain 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. In the event of the Company immediately prior to such expiration or determination or subsequent thereto deciding to remove its plant and equipment and its refinery and ancillary buildings and facilities relating to the refinery or any of them from any land it 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 months thereafter to purchase at valuation *in situ* the said plant and equipment and refinery and ancillary buildings and facilities or any of them. Such valuation shall be mutually agreed or in default of agreement shall be made by such competent valuer as the parties 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. The Company may within one year from the date of such cessation or determination remove its plant and equipment or so much thereof as has not been purchased by the State and may within two years from the date of such cessation or determination remove its refinery and ancillary buildings and facilities relating to the refinery or so much thereof as has not been purchased by the State and on such removal shall leave the relevant site clean and free of structures and debris.

Aluminium Smelter³

11. (1) The Company undertakes in due course to investigate the feasibility of establishing within the said State a smelter for the conversion of alumina to aluminium using alumina produced from bauxite from the mineral lease and from time to time to review the matter and to keep the Minister fully informed in writing as to the progress and results of such investigations from time to time.

Minister may request proposals³

(2) At any time after the end of year 13 the Minister may give notice to the Company requesting it to consider the submission of proposals to the State for construction of a smelter in the vicinity of the refinery site having a capacity to produce not less than fifty thousand (50,000) tons of aluminium per annum.

Submission of proposals³

(3) If within two years after the giving of the notice referred to in subclause (2) of this clause the Company submits proposals for a smelter as referred to in subclause (2) of this clause the Minister within two months of the receipt thereof will give the Company notice either of his approval of the proposals (which approval shall not be unreasonably withheld) or of any objections raised or alterations desired thereto and in the latter case will afford to the Company an opportunity to consult with and submit new proposals to the Minister.

If within thirty days of receipt of such notice agreement is not reached as to the proposals the Company may within a further period of thirty days elect by notice to the State to refer to arbitration as hereinafter provided any dispute as to the reasonableness of the Minister's decision. If by the award on arbitration the

question is decided in favour of the Company the Minister shall be deemed to have approved the proposals of the Company.

Third party³

(4) If such proposals are not submitted by the Company to the Minister within two years after the giving of the notice referred to in subclause (2) of this clause or if such proposals are submitted but are not approved or deemed approved by the Minister in accordance with subclause (3) of this clause the Minister may at any time thereafter give the Company notice that some other party (hereinafter referred to as “the Third Party”) has agreed to establish a smelter as referred to in subclause (2) of this clause on terms and conditions not more favourable on the whole to the Third Party than those available to the Company hereunder.

Company to supply Third Party with alumina³

(5) The Company covenants and agrees with the State with effect from the date when the Third Party is operating or ready to operate a smelter as referred to in subclause (2) of this clause the Company will supply the Third Party with a quantity of alumina per annum from the refinery which unless otherwise agreed shall not exceed one third of the production of the refinery but shall not be less than two hundred thousand (200,000) tons or such lesser quantity as the Third Party shall require from time to time and such alumina shall be supplied by the Company to the Third Party —

- (i) in such quantities (subject as aforesaid) evenly spaced over each year as such Third Party may require and
- (ii) at such price and on such terms and conditions as may be mutually agreed between the Company and the State and failing agreement as decided by arbitration the arbitrator taking into account the world free market prices for sales between parties at arm’s length but not including prices for alumina sold or offered for sale at distressed prices or at prices resulting from dumping or subsidising.

Alteration of Works³

12. If at any time the State finds it necessary to request the Company to alter the situation of any of the installations or other works (other than the Company’s wharf) erected constructed or provided hereunder and gives to the Company notice of the request the Company shall within a reasonable time after its receipt of the notice but at the expense in all things (including increased running costs) of the State (unless the alteration is rendered necessary by reason of a breach by the Company of any of its obligations hereunder) alter the situation thereof accordingly.

Indemnity³

13. The Company will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by

the Company pursuant to this Agreement or relating to its operations hereunder or arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's wharf railway or other works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

Assignment³

14. (1) Subject to the provisions of this clause the Company may at any time —
- (a) assign mortgage charge sublet or dispose of to an associated company as of right and to any other company or person with the consent in writing of the Minister the whole or any part of 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 functions and authorities which are or may be conferred on the Company hereunder;

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

Company to remain liable unless released by Minister³

(2) Notwithstanding anything contained in or anything done under or pursuant to sub-clause (1) of this clause the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained herein and in any lease license easement grant or other title the subject of an assignment under the said sub-clause (1) PROVIDED THAT the Minister may agree to release the Company from such liability where he considers such release will not be contrary to the interests of the State.

Company may sublet to employees etc.³

(3) The Company may at any time without the consent of the minister as aforesaid sublet any of the houses buildings and facilities situated in the townsite to employees of the Company and other persons engaged in or associated with the operations or activities of the Company under this Agreement.

Variation of Agreement³

15. (1) The parties hereto may from time to time by mutual agreement in writing add to cancel or vary all or any of the provisions of this Agreement or of any lease license easement or right granted hereunder or pursuant hereto for the purpose of implementing or facilitating the carrying out of such provisions or for

the purpose of facilitating the carrying out of some separate part or parts of the Company's operations hereunder by an associated company as a separate and distinct operation or for the establishment or development of any industry making use of the minerals within the mineral lease or such of the Company's works installations services or facilities the subject of this Agreement as shall have been provided by the Company in the course of work done hereunder.

Variation in respect of works³

(2) Notwithstanding the provisions of sub-clause (1) of this clause the Minister may with the consent of the Company from time to time add to cancel or vary any right or obligation relating to works for the transport and/or export of bauxite or alumina to the extent that the addition cancellation or variation implements or facilitates the method of achieving any of the purposes of export of alumina or bauxite.

Variations in respect of proposals³

(3) Notwithstanding the foregoing provisions of this clause the Minister may from time to time approve variations or require reasonable variations in the detailed proposals relating to any tramway or port site and/or port facilities or dredging programme or townsite or town planning or any other facilities or services or other plans specifications or proposals which may have been approved pursuant to this Agreement and in considering such variations shall have regard to any changes consequent upon joint user proposals of any such works facilities or services and other relevant factors arising after the date hereof and may approve variations in any area the subject of any lease (other than the mineral lease) license or easement to the Company.

Joint User³

(4) The Company shall be entitled at any time and from time to time with the prior approval in writing of the Minister to enter into an agreement with any third party for the joint construction maintenance or use of any work constructed or agreed to be constructed by the Company pursuant to the terms of this Agreement.

(5) When any agreement entered into by the Company with some other company or person results in that other company or person discharging all or any of the obligations undertaken by the Company under this Agreement or renders it unnecessary for the Company to discharge any obligation undertaken by it hereunder the Minister will discharge or temporarily relieve the Company from such part of its said obligations as is reasonable having regard to the extent of any period for which the other company or person actually effects the discharge of those obligations.

Export License³

16. The Company shall make all necessary applications from time to time to the Commonwealth for the grant to the Company of a license or licenses under Commonwealth law for the export of alumina or bauxite.

Delays³

17. (1) 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 alumina export industry) to profitably sell alumina or factors due to overall world economic conditions or factors which could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall minimise the effect of the said causes as soon as possible after their occurrence.

(2) On the happening of any event specified in this clause which in the opinion of the Company may delay the performance by the Company of an obligation which under this Agreement is to be performed by the Company within a specified time the Company may give notice to the Minister of such event and likely delay in which case the Minister shall grant such extension of time for the performance of the obligation as shall in all the circumstances be fair and reasonable. In case the Company objects to the decision of the Minister as to what is a fair and reasonable extension the same shall be referred to arbitration in manner herein provided.

Power to extend periods³

18. 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 intended.

Arbitration³

19. (1) Except where otherwise specifically provided in this Agreement any dispute or difference between the parties arising out of or in connection with this Agreement or any agreed amendment or variation thereof or agreed addition thereto or as to the construction of this Agreement or any such amendment variation or addition or as to the rights duties or liabilities of either party thereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the *Arbitration Act 1895*. PROVIDED THAT this clause shall not apply to any case where the State or the Minister is by this Agreement given either expressly or impliedly a discretionary power.

Extension of time by Arbitrator³

(2) The arbitrator, arbitrators or umpire (as the case may be) of any submission to arbitration hereunder is 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 grant any further extension or time for that purpose.

Notices³

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

Exemption from Stamp Duty³

21. (1) 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 tenement lease sublease easement license or other right or interest;
- (c) any assignment sub-lease 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;
- (d) any assignment sub-lease 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 sub-lease disposition or appointment executed pursuant to subclause (1) of Clause 14 hereof; and
- (e) any lease sub-lease or covenant executed pursuant to Clause 5(3) 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.

Alumina Refinery (Mitchell Plateau) Agreement Act 1971

First Schedule Alumina Refinery (Mitchell Plateau) Agreement

with all rights, liberties, easements, advantages and appurtenances thereto belonging or appertaining to a lessee of a mineral lease under the *Mining Act 1904* including all amendments thereof for the time being in force and all regulations made thereunder for the time being in force (which Act and regulations are hereinafter referred to as “the Mining Act”) or to which the Company is entitled under the said Agreement and for all purposes necessary effectually to carry on the Company’s overall mining operations under the Agreement on or in the land including —

- (i) cutting and constructing thereon water-races, drains, channels, dams, pathways, roads, tramways, conveyors, pipelines, power-lines and other engineering services to be used in connection with that mining;
- (ii) quarrying stone and gravel and taking sand for the Company’s operations under the Agreement;
- (iii) erecting on the land buildings, installations, facilities and machinery to be used in connection with the mining, the treatment and shipment of bauxite and the shipment of alumina, including the erection of the refinery;
- (iv) erecting houses and other buildings and facilities on the land in connection with all or any of the above purposes; and
- (v) drilling bores and wells for water.

TO HOLD the said land and mine and all and singular the premises hereby demised for a term commencing on the _____ day of _____ 19____ and expiring on the _____ day of _____ 19____ with the right to renew the same as provided in but subject to the said Agreement for the purposes but upon and subject to the terms covenants and conditions set out in the said Agreement and to the Mining Act (as modified by the said Agreement) YIELDING and paying therefor the rent and royalties as set out in the said Agreement, AND WE do hereby declare that this lease is subject to the observance and performance by the Company of the following covenants and conditions, that is to say:

- (1) The Company shall and will use the land *bona fide* exclusively for the purposes of the said Agreement.
- (2) Subject to the provisions of the said Agreement the Company shall and will observe perform and carry out the provisions of the *Mines Regulation Act 1946*, and all amendments thereof for the time being in force, and the regulations for the time being in force made thereunder and subject to and also as modified by the said Agreement the Mining Act so far as the same effect or have reference to this lease.

PROVIDED THAT this lease and any renewal thereof shall not be determined or forfeited otherwise than under and in accordance with the provisions of the said Agreement.

Alumina Refinery (Mitchell Plateau) Agreement Act 1971
Alumina Refinery (Mitchell Plateau) Agreement **First Schedule**

PROVIDED FURTHER that all petroleum on or below the surface of the demised land is reserved to Her Majesty with the right of access to the demised land subject to and in accordance with the provisions of the *Petroleum Act 1967* for the purpose of searching for and for the operations of obtaining petroleum in any part of the land.

IN WITNESS whereof we have caused our Minister for Mines to affix his seal and set his hand hereto at Perth in our said State of Western Australia and the common seal of the Company has been affixed hereto this
day of 19

THE SCHEDULE ABOVE REFERRED TO:

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

THOMAS D. EVANS M.L.A.

AMAX BAUXITE CORPORATION
by
ANTHONY CHANDLER,
Vice President.

Attested by —
MALCOLM B. BAYLISS,
Assistant Secretary.
[C.S.]

Second Schedule — First Variation Agreement

[s. 2]

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

THIS AGREEMENT made the 31st day of August 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 instrumentalities thereof from time to time (hereinafter called “the State”) and AMAX BAUXITE CORPORATION a company incorporated in the State of Delaware United States of America and registered as a foreign company in the State of Western Australia (hereinafter referred to as “the said State”) under the provisions of the *Companies Act 1961* and having its registered office situated at Perth in the said State (hereinafter called “the Company”) of the other part.

WHEREAS:

- (a) The parties are the parties to the agreement between them defined in Section 2 of the *Alumina Refinery (Mitchell Plateau) Agreement Act 1971* (which agreement is hereinafter referred to as “the principal Agreement”).
- (b) The Company has pursuant to Clause 4 of the principal Agreement carried out certain field and office engineering studies and market and finance studies into the feasibility of developing bauxite reserves within the mining areas (as defined in the principal Agreement) and establishing a bauxite mining and beneficiation operation and an alumina plant and has concluded from such studies that such development is not presently economically feasible.
- (c) The Company has requested the State for a deferral of the Company’s obligations which request the State as agreed to as a result of which the parties desire to add to and amend the principal Agreement as hereinafter provided.

NOW THIS AGREEMENT WITNESSETH:

1. In this Agreement, subject to the context:
 - “Alcoa” means Alcoa of Australia (W.A.) Limited.
 - “Pinjarra refinery site” shall have the same meaning in this Agreement as is given to it under Clause 1 of the Agreement defined in Section 2 of the *Alumina Refinery (Pinjarra) Agreement Act 1969*. 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 that Clause 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 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.

(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 as an Act prior to the 31st day of December, 1972.

4. (1) The Company covenants with the State that the Company shall, prior to the 31st day of December, 1972, cause Alcoa to give to the State written notice of the intention of Alcoa to construct additional facilities at the Pinjarra refinery site for the treatment of bauxite to produce alumina which shall have the effect of increasing the total capacity of the Pinjarra refinery to produce not less than eight hundred thousand (800,000) metric tons of alumina per annum.

(2) The notice required of Alcoa under subclause (1) of this Clause shall include the proposed date of commencement of construction, which date shall be no later than the 31st day of March, 1973, and the estimated date of completion of the additional facilities, which date shall be no later than the 31st day of March, 1976.

5. Anything contained in the principal Agreement to the contrary notwithstanding, the Company's obligations under the principal Agreement whether or not such obligations have presently accrued, shall be deferred until the 30th day of June, 1980 PROVIDED THAT if, during the calendar year 1980 and prior to the 30th day of June of such year, the Company submits a detailed report to the Minister that in the opinion of the Company development of the bauxite reserves within the mining areas is not then economically feasible or is not feasible due to an insufficient number of participants for the project the subject of the principal Agreement the State shall, at the option and request of the Company, defer the Company's obligations for an additional four (4) years until the 30th day of June, 1984.

6. The principal Agreement is hereby amended by:

(a) substituting the following for subclause (1)(a) of Clause 2 of the principal Agreement:

“(1) (a) without further action by the Company, cause to be granted to the Company pursuant to the Mining Act successive renewals (each for a period of twelve months) of the rights of occupancy held or applied for by the Company

as at the 30th day of June, 1972, in respect of the mining areas at an annual rental payable in advance in respect of each mining area of:

one thousand dollars (\$1,000) during the period from the 1st day of July, 1973 until the 30th day of June, 1976;

two thousand dollars (\$2,000) during the period from the 1st day of July, 1976 until the 30th day of June, 1979;

three thousand dollars (\$3,000) during the period from the 1st day of July, 1979 until the 30th day of June, 1982; and

five thousand dollars (\$5,000) thereafter

but otherwise on the same terms the last of which renewals notwithstanding its currency shall in relation to the mining area concerned expire —

- (i) on the date of grant of a mineral lease of that mining area to the Company under Clause 8(1)(a) hereof;
- (ii) on the expiration of three years from the commencement date; or
- (iii) on the determination of this Agreement pursuant to its terms

whichever shall first happen.

The rental payable in respect of the rights of occupancy held by the Company shall for and in respect of the year ending the 30th day of June, 1973 be increased to one thousand dollars (\$1,000) per annum in respect of each mining area.

- (b) substituting the following for Clause 4 of the principal Agreement:

“4 (1) The Company will at such times and to the extent that it deems necessary, engage in field, office, engineering, market and finance studies and such other matters necessary to enable it to finalize and to submit to the Minister the detailed proposals and other matters in accordance with the provisions of Clause 5(1) hereof.

(2) The Company shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclause (1) of this Clause.

(3) The Company will, at such time as it deems necessary, employ and retain expert consultant engineers to investigate, report upon, and make recommendations in regard to the sites for and design of the Company's wharf (including areas for installations stockpiling and other purposes in the port area) reasonably required by the Company under this Agreement but in such regard the Company will require the consultant engineers to have full regard for the general development of the port area and the dredging thereof and of approaches thereto with a view to the reasonable use by others of the port area and approaches and the Company will furnish to the State copies of such report and recommendations.

(4) The Company shall not later than the 30th day of June in each year prior to the commencement date submit to the Minister a report concerning the position of the Company in connection with the project the subject of this Agreement."

- (c) deleting from subclause (1) of Clause 5 of the principal Agreement the words "By the 31st day of December 1971 or if the Company requests an extension to the 30th day of June 1972 then by that date (or such further extended date if any as the Minister may approve) the Company will where not already done submit to the Minister — " and substituting therefor the words "By the 30th day of June 1980 or if the Company submits a detailed report to the Minister that in the opinion of the Company development of the bauxite reserves within the mining areas is not then economically feasible or is not feasible due to an insufficient number of participants for the project, and the Company requests a deferral of its obligations up to the 30th day of June, 1984 then by that date the Company will where not already done submit to the Minister — "
- (d) deleting subclause (5) of Clause 5 of the principal Agreement.
- (e) substituting the following for subclause (3) of Clause 6 of the principal Agreement:

(3) Notwithstanding that under subclause (1) of this clause any detailed proposals of the Company are approved by the State or the Minister or determined by arbitration award unless each and every such proposal and matter is so approved or determined by the 30th day of June 1985 then at any time after that date 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 and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of Clause 10(n) hereof.

- (f) deleting in subclause (1)(a) of Clause 8 of the principal Agreement the words “six years” and substituting therefor the words “three years”

7. In the event that Alcoa fails, by the 31st day of December 1972, to give the State notice of its intention to construct the said additional facilities at the Pinjarra refinery site or fails, subject to the provisions of Clause 8 of this Agreement by the 31st day of March 1973 to commence construction of the said additional facilities or to complete construction of the said additional facilities by the 31st day of March, 1976 the State shall be entitled, if such failure is not remedied within ninety (90) days after notice thereof by the State to the Company, to cancel this Agreement, whereupon this Agreement will cease and determine and neither of the parties to this Agreement 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.

8. If the commencement or completion of construction of the said additional facilities by Alcoa is delayed, interrupted, or prevented by reason of any event of force majeure (as hereinafter defined) the date of such commencement or completion shall be extended for a period of time equal to the time that such force majeure prevailed or for a period of one year, whichever is the shorter. For the purpose of this Clause an event of force majeure shall mean strike, labour difficulty, lockout, fire, explosion, earthquake, flood mobilization, war (declared or undeclared), hostilities, riots, rebellion, revolution, or any acts of any government or governments or any subdivision or agencies thereof, acts of public enemies, acts of God, inability or delay in obtaining equipment, machinery, or materials required for the construction of the said additional facilities PROVIDED THAT Alcoa shall use all reasonable endeavours to minimise the effect of the said events as soon as possible after their occurrence.

9. The State hereby agrees with the Company that notwithstanding anything contained in the Mining Act or in any other Act of the said State either presently or coming into effect in the future, in the event of the Company being granted mineral claims or other mining tenements in respect of land which is proposed to be used for the purpose of the Company’s project the subject of the principal Agreement, the Company’s obligations which it would, but for the operation of this clause, be under as holder of such mineral claims and other mining tenements shall, so long as the Company is the holder of such mineral claims and other mining tenements, be deferred (with the exception of obligations as to rent and to survey) so long as the Company’s obligations under the principal Agreement are deferred pursuant to this Agreement.

10. Except as hereby expressly varied or added to, the rights and liabilities of the parties under the principal Agreement shall continue in full force and effect.

Alumina Refinery (Mitchell Plateau) Agreement Act 1971

First Variation Agreement

**Second
Schedule**

11. The State shall exempt this Agreement from any stamp duty which, but for the operation of this Clause would or might be chargeable.

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.

DON MAY,
Minister for Mines.

AMAX BAUXITE CORPORATION
by

IAN MacGREGOR,
Vice President.

ROBERT MARCUS,
Vice President.

Attested by

CRAIG A. DAVIS,
Assistant Secretary.

[Second Schedule inserted by No. 60 of 1972 s. 5.]

Third Schedule — Second Variation Agreement

[s. 2]

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

THIS AGREEMENT is made the 29th day of October, 1985

BETWEEN:

THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier and Treasurer of the State of Western Australia, acting for and on behalf of the said State and instrumentalities thereof from time to time (hereinafter called “the State”) of the one part and

MITCHELL PLATEAU BAUXITE CO. PTY. LIMITED a company incorporated in the Australian Capital Territory and having its principal place of business in the State of Western Australia at 191 St. George’s Terrace Perth
ALCOA OF AUSTRALIA LIMITED a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at Cnr. Davy and Marmion Streets Booragoon
THE SHELL COMPANY OF AUSTRALIA LIMITED a company incorporated in Victoria and having its principal place of business in Western Australia at 200 St. George’s Terrace, Perth,
SUMITOMO ALUMINIUM SMELTING COMPANY LIMITED a company incorporated in Japan and having its registered office at 7-9 Nihonbashi, Chuo-ku, Tokyo
SUMITOMO CORPORATION a company incorporated in Japan and having its registered office at 11-1 Kandanishikicho 3-Chome, Chiyoda-ku, Tokyo and
MARUBENI CORPORATION a company incorporated in Japan and having its registered office at 4-2 Ohtemachi 1-Chome, Chiyoda-ku, Tokyo (hereinafter called “the Company”) of the other part.

WHEREAS:

- (a) on the 17th day of November, 1971 Alumax Bauxite Corporation (then called Amax Bauxite Corporation) entered into an agreement with the State (hereinafter called “the 1971 Agreement”) relating to the mining, beneficiation, transport and refining of bauxite and alumina from the Kimberley Region of Western Australia and incidental and other purposes which agreement was ratified by the *Alumina Refinery (Mitchell Plateau) Agreement Act 1971*;
- (b) on the 31st day of August, 1972 Alumax Bauxite Corporation entered into an agreement with the State (hereinafter called “the 1972 Agreement”) inter alia amending the 1971 Agreement which agreement was ratified by the *Alumina Refinery (Mitchell Plateau) Agreement Act Amendment Act 1972* and was amended by an agreement between the parties thereto bearing date the 15th day of May, 1973;

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Second Variation Agreement **Third Schedule**

- (c) by various assignments Alumax Bauxite Corporation transferred and assigned (with the consent of the State) all its interest in and to the 1971 Agreement and the 1972 Agreement (each as amended as hereinbefore recited) to the undermentioned companies as tenants in common the following shares —

Mitchell Plateau Bauxite Co. Pty. Limited	52.5%
Alcoa of Australia Limited	17.5%
Billiton Aluminium Australia B.V. (formerly called HA Bauxite Australia N.V.)	10%
Sumitomo Chemical Co. Ltd.	10%
Sumitomo Corporation (formerly called Sumitomo Shoji Kaisha Ltd.)	5%
Marubeni Corporation	5%

- (d) the said Sumitomo Chemical Co. Ltd. has transferred and assigned (with the consent of the State) its 10% interest in and to the 1971 Agreement amended as mentioned above to Sumitomo Aluminium Smelting Company Limited;
- (e) the said Billiton Aluminium Australia B.V. has transferred and assigned (with the consent of the State) its 10% interest in and to the 1971 Agreement amended as mentioned above to The Shell Company of Australia Limited;
- (f) the parties hereto desire to amend the 1971 Agreement amended as mentioned above (hereinafter referred to as “the principal Agreement”).

NOW THIS AGREEMENT WITNESSETH:

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the principal Agreement.

2. (1) The provisions of this Agreement other than this Clause and Clause 3 hereof shall not come into operation until a Bill to ratify this Agreement is passed by the Parliament of Western Australia and comes into operation as an Act.

(2) 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 as an Act prior to the 31st day of December, 1985, or such later date if any as the parties hereto may mutually agree upon.

4. The principal Agreement is hereby varied as follows —

(1) Clause 1 —

- (a) by deleting the definition of “Mining Act” and inserting the following definitions —
 - “ *“Mining Act 1904”* means the *Mining Act 1904* and the amendments thereto and the regulations made thereunder as in force on the 31st day of December, 1981;
 - “Mining Act 1978”* means the *Mining Act 1978*; ”;
 - (b) in the definition of “mining areas”, by inserting after “identification” the following —
 - “ less any part or parts thereof surrendered by the Company pursuant to Clause 4(6) hereof ”;
 - (c) in the definition of “Minister for Mines”, by deleting “Mining Act” and substituting the following —
 - “ *Mining Act 1904* and the *Mining Act 1978* ”;
 - (d) by inserting after the definition of “port” the following definition —
 - “ “project” means the project contemplated by this Agreement; ”;
 - (e) in the paragraph commencing “Reference in this Agreement to an Act”, by inserting after “Act”, where it first occurs, the following —
 - “ other than the *Mining Act 1904* ”.
- (2) Clause 2 —
- (a) subclause (1) paragraph (a) by deleting “five thousand dollars thereafter” and substituting the following —
 - “ five thousand dollars (\$5,000) during the period from the 1st day of July 1982 until the 31st day of December 1985;
 - thereafter an amount equal to the rentals which would be payable under the *Mining Act 1978* in respect of exploration licences over areas equivalent to the mining areas ”;
 - (b) by inserting after subclause (2) the following subclause —
 - “ (3) The rights of occupancy referred to in this Clause shall, subject to this Agreement, continue to be granted and in force under the

Mining Act 1904 as though that Act had not been repealed. ”.

- (3) Clause 4 — by inserting after subclause (4) the following subclauses —
- “ (5) Whether or not the Company is undertaking the studies and other matters mentioned in subclause (1) of this Clause the Company shall except during any period the Company’s rights and obligations are suspended under Clause 4A(3) hereof or during the periods known in the region in which the mining areas are situated as the “wet season” normally running from approximately December in one year to March in the next year) maintain or cause to be maintained in operational condition the airstrip within the mining areas and the Mitchell Plateau access road from its junction with the Gibb River/Kalumburu Road to the airstrip.
- (6) The Company shall on or before the 31st day of December, 1985 surrender to the State out of the rights of occupancy granted pursuant to Clause 2(1) hereof areas equal to not less than one half of the aggregate area of the mining areas but so that after such surrender the area of land that remains subject to the said rights of occupancy consists of not more than 5 discrete areas each of which constitutes a single area the shape of which is rectangular (without any restriction as to the ratio of length to breadth) or as near thereto as is practicable.
- (7) (a) The Company shall submit to the Minister during December 1987 a detailed programme for the development of the project.
- (b) The Minister shall within one (1) month of receipt of the programme submitted pursuant to paragraph (a) of this subclause give to the Company notice either of —
- (i) his approval (subject to paragraph (d) of this subclause) thereof; or
- (ii) any objections or alterations desired thereto with his reasons therefor and in such case shall afford the Company an opportunity to consult with and submit a revised programme to the Minister.
- (c) If within three months of a notice pursuant to paragraph (b)(ii) of this subclause agreement is

not reached as to the said programme the Minister may —

- (i) allow a further period for the submission by the Company of a further programme for the development of the project and the provisions of paragraphs (a) and (b) of this subclause shall apply thereto with the substitution for “during December 1987” of such later time as the Minister may specify; or
- (ii) advise the Company of his intention to invite third parties to submit a detailed programme for the development of the project whereupon the provisions of Clause 4A hereof shall apply,

PROVIDED THAT if the Minister does not do either of those things by the 31st day of December, 1988 the provisions of this Agreement (other than Clause 4A hereof) shall continue to apply without modification.

- (d) If a programme approved or agreed pursuant to this subclause contains provision for the development of the project otherwise than as contemplated by this Agreement any such approval or agreement shall be subject to —
 - (i) the Company entering into an agreement with the State in a form satisfactory to the Minister to amend this Agreement to allow such programme to proceed; and
 - (ii) the passing of a Bill to ratify that agreement by the Parliament of Western Australia and the coming into operation of that Bill as an Act.
- (8) If the Company shall fail to submit a detailed programme pursuant to subclause (7) of this Clause that failure shall not be an event of default under Clause 10(m) hereof but the Minister may advise the Company of his intention to invite third parties to submit a detailed programme for the development of the project whereupon the provisions of Clause 4A hereof shall apply. ”.

(4) By inserting after Clause 4 the following Clause —

“ 4A. (1) This Clause shall apply only if the Minister has given the advice to the Company referred to in Clause 4(7)(c)(ii) or Clause 4(8) hereof.

(2) (a) From the time of giving such advice up to and including the 31st day of December, 1988 the Minister may invite third parties to undertake appraisals with a view to submitting a detailed programme for the development of the project and for the purpose of facilitating such appraisals the State shall be at liberty to provide those third parties with such information concerning the project as the State has in its possession or control (other than written information submitted by the Company for the purposes of this Agreement and not being in the public domain unless the Company gives its prior approval).

(b) Up to and including the 31st day of December 1988, the Minister may nominate in writing to the Company a party (comprising one or more of the third parties mentioned in paragraph (a) of this subclause) to proceed with the submission of a programme for the development of the project (hereinafter called “the nominated party”) and the Company shall, subject to the nominated party first executing a confidentiality agreement in favour of the Company upon terms previously agreed between the Company and the Minister whereby the nominated party agrees to keep confidential the information hereinafter mentioned, without undue delay make available to the nominated party such of the following information in the possession or control of the Company concerning the project as the nominated party may require —

(i) written information submitted by the Company for the purposes of this Agreement;

- (ii) information on all work done in connection with exploration in the mining areas since the date of this Agreement including the matters required to be reported on annually to the Department of Mines by a holder of an exploration licence pursuant to section 68(2) of the *Mining Act 1978*;
- (iii) information relating to the investigations into and work carried out with respect to sites for and designs of the refinery, the port and the Company's wharf and other refineries, ports and wharves within the said State for the purposes of this agreement,

together with such other information in the possession or control of the Company as the nominated party may reasonably require for the purpose of evaluating the project and the preparation and submission of a programme and detailed proposals for the development of the project but the Company shall not be obliged to divulge —

- (A) technology of a proprietary nature (not including standard tests used in industry to determine the suitability of a resource for beneficiation and processing to alumina) relating to bauxite beneficiation and alumina production;
- (B) bauxite and alumina market and marketing information;
and
- (C) project cost information and financial analyses.

Provided that if the release of any information requested pursuant to this paragraph comprises data, records,

processes and other documents or things would be contrary to an agreement or agreements relating to confidentiality between the Company and third parties entered into before 1st September 1985 or after that date with the consent of the Minister, the release of that information pursuant to this paragraph shall be subject to the Company obtaining the consent of such other parties to that release and the Company shall use its best endeavours to obtain such consent without undue delay.

- (3) If the State nominates a third party as mentioned in subclause (2) of this Clause, the rights and obligations of the Company under this Agreement (other than under this Clause) shall be suspended until such time as they are revived under subclause (4) of this Clause or are assigned under subclause (5) of this Clause. Any suspension under this subclause shall not affect the Company's rights of occupancy or other mining tenements in respect of the mining areas save that the nominated party, subject to it first executing a deed of covenant in favour of the Company containing terms previously agreed between the Company and the Minister in respect of the nominated party's observance and performance of all the obligations of the Company under this Agreement (other than this Clause 4A) and related matters during the period of suspension and subject to it paying the rentals payable in respect of the rights of occupancy and any other government charges imposed upon the Company in respect of the mining areas during the period of the suspension, may have unrestricted access to the mining areas (and to the facilities established by the Company in connection with the project in the Kimberley region on reasonable terms and conditions) for purposes related to the preparation and submission of a programme and detailed proposals for the development of the project and may construct such facilities thereon and carry out such tests and take and remove such samples as the nominated party may require for such purposes.

- (4) On the occurrence of any of the following events the rights and obligations of the Company under this Agreement shall revive and be of full force and effect —
- (a) the nominated party fails to submit to the Minister by the 30th day of June, 1990 detailed proposals and evidence of the nature set out in paragraphs (a) and (b) respectively of Clause 5(1) hereof;
 - (b) the Minister fails to approve or agree (whether voluntarily or by virtue of an arbitration award) with the nominated party by the 30th day of June, 1991 all detailed proposals covering the matters set out in paragraph (a) or Clause 5(1) hereof; or
 - (c) the Minister notifies the Company that the nominated party has withdrawn from the project or that the Minister has withdrawn nomination from that party.
- (5) (a) If the rights and obligations of the Company shall not have revived under subclause (4) of this Clause and the Minister approves or agrees the detailed proposals of the nominated party as mentioned in paragraph (b) of that subclause (4), the Company shall on the expiration of three months' notice from the Minister requiring the same assign to the nominated party free of all encumbrances all the Company's right title and interest in —
- (i) this Agreement;
 - (ii) rights of occupancy and mining tenements in respect of the mining areas;
 - (iii) leases sub-leases licences or other title or right granted under this Agreement; and

- (iv) improvements constructed on any of the foregoing for the purposes of this Agreement

on reasonable terms and conditions and for the consideration mentioned in paragraph (b) of this subclause.

- (b) As consideration for the said assignment the Company shall be entitled to be paid by the nominated party (except to the extent that the nominated party may have already made payment therefore to the Company) the fair values of —
 - (i) the right title and interest of the Company in the improvements to be assigned under paragraph (a) of this subclause as at the date that the Minister gives notice to the Company under paragraph (a) of this subclause;

and
 - (ii) the information made available by the Company under subclause (2) of this Clause (but excluding any such information which was either in the public domain or already known to the nominated party or not taken by the nominated party) as at the time when that information was made available together with interest at fair and reasonable rates on the value thereof from the time the information was made available in each case up to the date on which payment takes place.
- (c) If within one month after the Minister gives notice to the Company under paragraph (a) of this subclause the Company and the nominated party have not agreed on the reasonable terms and conditions mentioned in that paragraph or on the fair values and interest rates mentioned in paragraph (b) of this

subclause, as the case may be, the same shall be determined by two independent experts, one nominated by the Company and other nominated by the nominated party (and if the experts cannot agree by a third expert selected by them). The decision of the experts (or their umpire) shall be final and binding on the parties. If a party shall fail to nominate an expert within one month of the other party giving notice specifying the matters of disagreement which are to be referred to the experts hereunder then the matters of disagreement the subject of the notice shall be determined by the expert nominated by the party giving the notice. The costs of the experts shall be borne equally by the Company and the nominated party.

- (6) Notwithstanding the provisions of Clause 14(2) hereof, on an assignment of the rights of the Company hereunder pursuant to subclause (5) of this Clause, the Minister shall agree to release the Company from all liability under the covenants and agreements on its part contained herein and in any lease licence easement grant or other title the subject of an assignment under the said subclause (5). ”.

- (5) Clause 5(1) —

by deleting “By the 30th day of June 1980 or if the Company submits a detailed report to the Minister that in the opinion of the Company development of the bauxite reserves within the mining areas is not then economically feasible or is not feasible due to an insufficient number of participants for the project, and the Company requests a deferral of its obligations up to the 30th day of June, 1984 then by that date” and substituting the following —

“ By the 30th day of June, 1990 (or, if the Company’s rights and obligations revive under —

- (A) Clause 4A(4)(a) hereof, then by the 30th day of June, 1991;
- (B) Clause 4A(4)(b) hereof, then by the 30th day of June, 1992; or
- (C) Clause 4A(4)(c) hereof after the 30th day of June 1989, then by the anniversary of the date on which

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the Minister notifies the Company under
Clause 4A(4)(c) hereof ”.

(6) Clause 6(3) —

(a) by deleting “30th day of June 1985” and substituting the following —

“ the first anniversary of the final date for
submission of detailed proposals under Clause 5(1)
hereof ”;

(b) by inserting at the end thereof the following —

“ The provisions of Clause 17 hereof shall not apply
to this subclause. ”.

(7) Clause 18 —

(a) by deleting “Notwithstanding” and substituting the following —

“ (1) Subject to subclause (2) of this Clause but
otherwise notwithstanding ”;

(b) by inserting the following subclause —

“ (2) The Minister may at the request of the
nominated party from time to time extend either
or both of the dates referred to in paragraphs (a)
and (b) of Clause 4A(4) hereof for a single
period of three months and on any such
extension taking effect the dates of the 30th day
of June 1990 and/or the 30th day of June 1991
mentioned in Clause 5(1) hereof as the case
may be shall be extended accordingly. ”.

5. Any reference in the Principal Agreement to the Mining Act without any reference to a year shall be read and construed as a reference to the “*Mining Act 1904*” as defined in the Principal Agreement as amended by this Agreement.

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

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

BRIAN BURKE.

D. PARKER
MINISTER FOR MINERALS
AND ENERGY:

THE COMMON SEAL of MITCHELL
PLATEAU BAUXITE CO. PTY.

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Second Variation Agreement **Third Schedule**

[Third Schedule inserted by No. 90 of 1985 s. 6.]

Fourth Schedule — Termination agreement

[s. 2]

[Heading inserted by the Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015 cl. 7.]

2015

THE HONOURABLE COLIN JAMES BARNETT
PREMIER OF THE STATE OF WESTERN AUSTRALIA

AND

MITCHELL PLATEAU BAUXITE CO. PTY. LIMITED
ACN 008 545 499

ALCOA OF AUSTRALIA LIMITED
ACN 004 879 298

ALUMINA REFINERY (MITCHELL PLATEAU) AGREEMENT 1971
TERMINATION AGREEMENT

[Solicitor's details]

Alumina Refinery (Mitchell Plateau) Agreement Act 1971
Termination agreement

THIS AGREEMENT is made this 20th day of February 2015

BETWEEN

THE HONOURABLE COLIN JAMES BARNETT, M.Ec., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and instrumentalities thereof from time to time ("the State") of the one part

AND

MITCHELL PLATEAU BAUXITE CO. PTY. LIMITED ACN 008 545 499 of 123 Albert Street, Brisbane, Queensland and ALCOA OF AUSTRALIA LIMITED ACN 004 879 298 of Corner Davy and Marmion Streets, Booragoon, Western Australia (together called "the Company" in which term shall be included their respective successors and permitted assigns) of the other part.

WHEREAS:

- A. The State and the Company are now the parties to the agreement dated 17 November 1971 which agreement was ratified by the Agreement Act and subsequently varied or supplemented by agreements dated 31 August 1972, 15 May 1973, 29 October 1985 and 29 August 2003, and which agreement as subsequently varied or supplemented is referred to in this Agreement as "the Principal Agreement".
- B. The State and the Company wish to terminate the Principal Agreement in the manner and on the terms set out in this Agreement.

NOW THIS AGREEMENT WITNESSES:

1. Definitions

In this Agreement subject to the context:

Agreement Act means the Alumina Refinery (Mitchell Plateau) Agreement Act 1971 (WA).

Cape Bougainville Mining Leases means mining leases 80/47 - 80/60 (both inclusive).

LAA means the Land Administration Act 1997 (WA).

Mining Act means the Mining Act 1978 (WA).

Operative Date has the meaning given in clause 3(2).

Right of Occupancy means the right of occupancy in respect of the Temporary Reserve referred to in, and renewed pursuant to, the Principal Agreement.

Temporary Reserve means Temporary Reserve 5610H.

this Agreement, hereof and hereunder refer to this Agreement, whether in its original form or as from time to time added to, varied or amended.

2. Interpretation

In this Agreement:

- (a) clause headings do not affect interpretation or construction;
- (b) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
- (c) one gender includes the other genders;
- (d) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (e) a reference to a "person" includes a body corporate;
- (f) a reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;
- (g) a reference to any document includes that document as from time to time added to, varied or amended and notwithstanding any change in the identity of the parties;
- (h) a reference to a clause or schedule is a reference to a clause in or schedule to this Agreement, and a reference to a subclause or paragraph is a reference to the subclause of the clause or paragraph of the clause or subclause as the case may be in, or in relation to, which the reference is made;
- (h) a reference to this Agreement includes all recitals, schedules and annexures; and
- (i) "including" means "including, but not limited to".

3. Ratification and operation

- (1) This Agreement, other than this clause and clauses 1 and 2, does not come into operation except in accordance with subclause (2).
- (2) This Agreement, other than this clause and clauses 1 and 2, comes into operation on the day on which it is ratified by an Act of the Parliament of Western Australia (Operative Date) unless, before that day, it terminates under subclauses (4) or (5).
- (3) The State must introduce in the Parliament of Western Australia before 31 March 2015, or a later date agreed between the parties to this Agreement, a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.

(4) If by 31 December 2015 this Agreement has not been ratified by an Act of the Parliament of Western Australia then, unless the parties to this Agreement otherwise agree, this Agreement terminates on that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

(5) The parties agree that if the Principal Agreement is otherwise determined in accordance with its provisions on a day prior to the Operative Date, then this Agreement shall also terminate on and from that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

4. Termination of Principal Agreement

(1) Subject to the remainder of this clause, the Principal Agreement is hereby terminated with effect on and from the Operative Date and, except as otherwise provided in this Agreement, neither the State nor the Company shall have any claim against the other with respect to any matter or thing in or arising out of the Principal Agreement.

(2) Notwithstanding subclause (1), but subject to subclause (6), the Company shall remain liable for any antecedent breach or default under the Principal Agreement and in respect of any indemnity given under the Principal Agreement.

(3) Notwithstanding subclause (1):

(a) on and from the Operative Date the Cape Bougainville Mining Leases shall continue in force only under and, except as provided in this subclause, subject to the provisions of the Mining Act and, for the avoidance of doubt, shall cease to have the benefit of the rights and privileges conferred by the Principal Agreement;

(b) in relation to each of the Cape Bougainville Mining Leases, for the period from and including the Operative Date up to and including the earlier of:

(i) the date of expiry of the current term of that mining lease; and

(ii) the date on which the companies comprising the Company at the date of this Agreement cease to hold greater than a 30% interest in that mining lease (where such interest may be held individually by one of those companies or by both of them in the aggregate).

the holder of that mining lease shall not be required:

(iii) to comply with the expenditure conditions prescribed under the Mining Act that are applicable to that mining lease; or

(iv) to lodge a Form 5 (operations report—expenditure on mining tenement) in relation to that mining lease in compliance with the requirements of the Mining Act; and

(c) in relation to each of the Cape Bougainville Mining Leases, if exploration or mining expenditure has been incurred in the relevant reporting period in relation to that mining lease, the holder of that mining lease must notwithstanding the reporting exemption contained in paragraph (b)(iv) file, or cause to be filed, as the case may be, the mineral exploration report required by section 115A of the Mining Act in relation to that mining lease at the times that would otherwise have been applicable (including whenever required under section 115A(2)(b)) if such exemption had not been granted.

and on application under section 103G of the Mining Act made within 3 months after the Operative Date, the State shall cause an endorsement to be made in the register maintained under section 103F of the Mining Act that the provisions of this subclause apply to the Cape Bougainville Mining Leases.

(4) Within 14 days after the Operative Date the Company shall pay to the State an amount of \$760,000 to fund rehabilitation and other proposed on-ground activities of the State within the area of land comprised within the Temporary Reserve immediately before the Operative Date.

(5) Subject to subclause (6), on and from the Operative Date the Company will indemnify and keep indemnified the State and the State's employees, agents and contractors in respect of all actions, suits, claims, demands or costs of third parties arising out of or in connection with any work carried out by the Company pursuant to the Principal Agreement or relating to its operations under the Principal Agreement or arising out of or in connection with the construction, maintenance or use by the Company or its employees, agents, contractors, assignees or sublessees of the Company's works or services the subject of the Principal Agreement or the plant, apparatus or equipment installed in connection with the Principal Agreement.

This indemnity shall remain in force for a period ending on the date which is 20 years after the Operative Date.

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(6) The Company is not liable to indemnify the State and the State's employees, agents and contractors under subclause (5) or under the Principal Agreement (as the case may be):

(a) to the extent that the relevant action, suit, claim, demand or cost relates to activities or works carried out before the Operative Date by the State or the State's employees, agents or contractors (including activities or works funded by the Company);

(b) to the extent that the relevant action, suit, claim, demand or cost relates to rehabilitation or other on-ground activities of the State undertaken after the Operative Date as contemplated by subclause (4);

(c) to the extent that the relevant action, suit, claim, demand or cost relates to earthworks or ground disturbances, within the area of land comprised within the Temporary Reserve immediately before the Operative Date, relating to exploration activities conducted pursuant to the Principal Agreement; or

(d) to the extent that the relevant action, suit, claim, demand or cost relates to third party use after the Operative Date of works, services, plant, apparatus or equipment constructed, operated or maintained by the Company within the area of land comprised within the Temporary Reserve immediately before the Operative Date, including the airstrip and the access road.

(7) For the avoidance of doubt a reference to matters or things in, under, pursuant to, conferred by or arising out of or in connection with the Principal Agreement for the purposes of this clause includes matters or things deemed to be so attributed to the Principal Agreement by section 6 of the Agreement Act.

5. Termination of Right of Occupancy

(1) The Right of Occupancy shall be deemed to have been surrendered with effect on and from the Operative Date.

(2) The Company shall remain liable for any antecedent breach or default of the conditions of the Right of Occupancy.

6. Applicable law

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

Alumina Refinery (Mitchell Plateau) Agreement Act 1971

Termination agreement

EXECUTED as a deed.

SIGNED by THE HONOURABLE)
COLIN JAMES BARNETT) [Signature]
in the presence of:)

[Signature]
Signature of witness

NICOLE JANE HENDERSON
Name of witness

EXECUTED by MITCHELL PLATEAU)
BAUXITE CO. PTY. LIMITED)
ACN 008 545 499 in accordance with)
section 127(1) of the Corporations Act 2001)
(Cth))

[Signature]) [Signature])
Signature of Director) Signature of Secretary)

PAUL GERARD ARNOLD) ALFRED PATRICK GRIGG)
Full Name) Full Name)

Alumina Refinery (Mitchell Plateau) Agreement Act 1971

Fifth Schedule Mitchell Plateau area

Division 1 Description

Fifth Schedule — Mitchell Plateau area

[s. 2]

[Heading inserted by the Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015 cl. 7.]

Division 1 — Description

[Heading inserted by the Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015 cl. 7.]

1. Mitchell Plateau area

(1) In this clause —

high water mark means ordinary high water mark at spring tides;

point means a point on the surface of the Earth identified by a number on the map set out in Division 2.

(2) The Mitchell Plateau area is the area of land bounded by —

(a) the straight line starting at the intersection of the high water mark and the straight line connecting points 1 and 2, and ending at point 2; and

(b) the straight lines connecting points 2 to 38; and

(c) the straight line starting at point 38 and ending at the intersection of the high water mark and the straight line connecting points 38 and 39; and

(d) the line along the high water mark starting at the intersection of the high water mark and the straight line connecting points 38 and 39 and ending at the intersection of the high water mark and the straight line connecting points 40 and 41; and

(e) the straight line starting at the intersection of the high water mark and the straight line connecting points 40 and 41, and ending at point 41; and

(f) the straight lines connecting points 41 to 44; and

(g) the straight line starting at point 44 and ending at the intersection of the high water mark and the straight line connecting points 44 and 45; and

(h) the line along the high water mark starting at the intersection of the high water mark and the straight line connecting points 44 and 45 and ending at the intersection of the high water mark and the straight line connecting points 1 and 2.

(3) However, the Mitchell Plateau area does not include the area of land bounded by straight lines connecting points 46, 47, 48 and 49, starting at point 46 and ending at that point.

(4) The Mitchell Plateau area is depicted on the map set out in Division 2.

Alumina Refinery (Mitchell Plateau) Agreement Act 1971

Mitchell Plateau area **Fifth Schedule**

Description **Division 1**

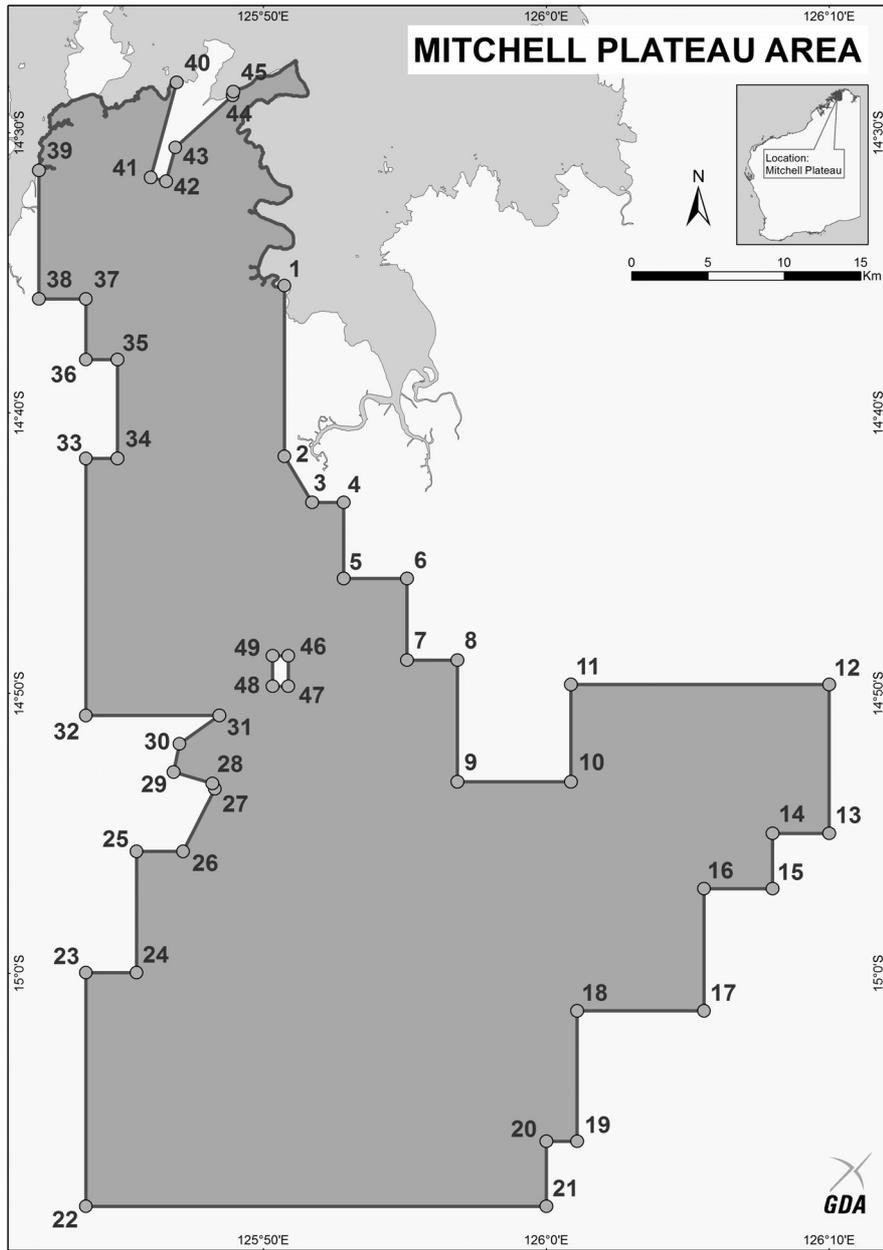
(5) The position of a point is to be determined by reference to the coordinates set out in Division 3 opposite the relevant point number.

(6) The coordinates referred to in subclause (5) are Geocentric Datum of Australia 1994 coordinates.

[Division 1 inserted by the Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015 cl.7.]

Division 2 — Map

[Heading inserted by the Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015 cl. 7.]



[Division 2 inserted by the Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015 cl. 7.]

Alumina Refinery (Mitchell Plateau) Agreement Act 1971

Mitchell Plateau area **Fifth Schedule**

Coordinates **Division 3**

Division 3 — Coordinates

[Heading inserted by the Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015 cl. 7.]

<u>Point</u>	<u>Latitude</u>	<u>Longitude</u>
<u>1</u>	<u>14°35'27.24" S</u>	<u>125°50'44.84" E</u>
<u>2</u>	<u>14°41'33.24" S</u>	<u>125°50'44.84" E</u>
<u>3</u>	<u>14°43'11.86" S</u>	<u>125°51'43.34" E</u>
<u>4</u>	<u>14°43'11.86" S</u>	<u>125°52'50.20" E</u>
<u>5</u>	<u>14°45'54.54" S</u>	<u>125°52'50.20" E</u>
<u>6</u>	<u>14°45'54.55" S</u>	<u>125°55'04.55" E</u>
<u>7</u>	<u>14°48'49.00" S</u>	<u>125°55'04.55" E</u>
<u>8</u>	<u>14°48'49.00" S</u>	<u>125°56'51.57" E</u>
<u>9</u>	<u>14°53'09.28" S</u>	<u>125°56'51.58" E</u>
<u>10</u>	<u>14°53'09.28" S</u>	<u>126°00'52.45" E</u>
<u>11</u>	<u>14°49'41.05" S</u>	<u>126°00'52.45" E</u>
<u>12</u>	<u>14°49'41.04" S</u>	<u>126°10'00.00" E</u>
<u>13</u>	<u>14°55'00.00" S</u>	<u>126°10'00.00" E</u>
<u>14</u>	<u>14°55'00.00" S</u>	<u>126°08'00.00" E</u>
<u>15</u>	<u>14°56'58.36" S</u>	<u>126°08'00.00" E</u>
<u>16</u>	<u>14°56'58.38" S</u>	<u>126°05'34.55" E</u>
<u>17</u>	<u>15°01'20.19" S</u>	<u>126°05'34.55" E</u>
<u>18</u>	<u>15°01'20.19" S</u>	<u>126°01'05.17" E</u>
<u>19</u>	<u>15°06'00.00" S</u>	<u>126°01'05.17" E</u>
<u>20</u>	<u>15°06'00.00" S</u>	<u>126°00'00.00" E</u>
<u>21</u>	<u>15°08'19.08" S</u>	<u>126°00'00.00" E</u>
<u>22</u>	<u>15°08'19.09" S</u>	<u>125°43'43.74" E</u>

Alumina Refinery (Mitchell Plateau) Agreement Act 1971

Fifth Schedule Mitchell Plateau area

Division 3 Coordinates

<u>Point</u>	<u>Latitude</u>	<u>Longitude</u>
23	14°59'58.66" S	125°43'43.74" E
24	14°59'58.66" S	125°45'30.86" E
25	14°55'38.38" S	125°45'30.86" E
26	14°55'38.38" S	125°47'09.57" E
27	14°53'24.97" S	125°48'17.01" E
28	14°53'13.00" S	125°48'11.84" E
29	14°52'48.63" S	125°46'49.63" E
30	14°51'48.34" S	125°47'02.22" E
31	14°50'47.19" S	125°48'26.40" E
32	14°50'47.19" S	125°43'43.76" E
33	14°41'37.33" S	125°43'43.75" E
34	14°41'37.33" S	125°44'50.60" E
35	14°38'05.84" S	125°44'50.60" E
36	14°38'05.85" S	125°43'43.77" E
37	14°35'55.70" S	125°43'43.77" E
38	14°35'55.70" S	125°42'03.54" E
39	14°31'20.50" S	125°42'03.53" E
40	14°28'11.87" S	125°46'56.18" E
41	14°31'35.31" S	125°46'01.21" E
42	14°31'43.46" S	125°46'33.54" E
43	14°30'31.09" S	125°46'53.10" E
44	14°28'40.14" S	125°48'55.22" E
45	14°28'31.60" S	125°48'56.22" E

Alumina Refinery (Mitchell Plateau) Agreement Act 1971

Mitchell Plateau area **Fifth Schedule**
Coordinates **Division 3**

<u>Point</u>	<u>Latitude</u>	<u>Longitude</u>
46	14°48'39.88" S	125°50'52.95" E
47	14°49'44.95" S	125°50'52.95" E
48	14°49'44.95" S	125°50'19.50" E
49	14°48'39.88" S	125°50'19.51" E

[\[Division 3 inserted by the Alumina Refinery \(Mitchell Plateau\) Agreement \(Termination\) Bill 2015 cl. 7.\]](#)

Alumina Refinery (Mitchell Plateau) Agreement Act 1971

Notes

- ¹ This is a compilation of the *Alumina Refinery (Mitchell Plateau) Agreement Act 1971* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Alumina Refinery (Mitchell Plateau) Agreement Act 1971</i>	67 of 1971	22 Dec 1971	22 Dec 1971
<i>Alumina Refinery (Mitchell Plateau) Agreement Act Amendment Act 1972</i>	60 of 1972	31 Oct 1972	31 Oct 1972
<i>Alumina Refinery (Mitchell Plateau) Agreement Amendment Act 1985</i>	90 of 1985	4 Dec 1985	4 Dec 1985 (see s. 2)
Reprint of the <i>Alumina Refinery (Mitchell Plateau) Agreement Act 1971</i> as at 6 Sep 2002 (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010</i> s. 4 and 42(2)	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015 Pt. 2</i>	Current Bill No. 113-1		

- ² Repealed by the *Interpretation Act 1984*.
- ³ 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 First Variation Agreement	2
the former Agreement.....	2
the Second Variation Agreement	2