

**National Oil Proprietary Limited Agreement
Ratification Act.**

**NATIONAL OIL PROPRIETARY
LIMITED AGREEMENT
RATIFICATION ACT.**

Act No. 2, 1937.

George VI,
No. 2, 1937.

An Act to approve of a certain agreement made between the Commonwealth of Australia of the first part, the State of New South Wales of the second part, and National Oil Proprietary Limited of the third part, with respect to the development and carrying on of the shale oil industry at Newnes and the loan of moneys by the Commonwealth and the State to National Oil Proprietary Limited, subject to certain terms and conditions; to provide for the carrying out of such agreement; to amend the Government Railways Act, 1912, as amended by subsequent Acts, the Income Tax (Management) Act, 1936, the Special Income and Wages Tax (Management) Act, 1936, the Mining Act, 1906, the Companies Act, 1936, and certain other Acts; and for purposes incidental thereto or connected therewith. [Assented to, 16th September, 1937.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short
title.

1. This Act may be cited as the "National Oil Proprietary Limited Agreement Ratification Act, 1937."

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2. (1) This Act shall come into force on a day to be fixed by proclamation of the Governor published in the Gazette.

Commencement.
(cf. River Murray Waters Act, 1915, s. 3.)

(2) The Governor may not make such proclamation unless he is satisfied that the Parliament of the Commonwealth has passed an Act approving of the said agreement.

3. In this Act, unless the context otherwise requires—

Definitions.

“The said agreement” means the agreement a copy of which is set out in the Schedule to this Act.

“The Company” means National Oil Proprietary Limited.

4. The said agreement is hereby approved and ratified.

Approval of agreement.

5. The Moratorium Act, 1932, and any amendment thereof shall not apply to the said agreement or the deeds of covenant and charge referred to in clause twelve thereof, but such Acts are expressly excluded.

Exclusion of Moratorium Act, 1932.

6. The said agreement shall not require to be registered under Part IX of the Companies Act, 1936, or the Bills of Sale Act of 1898, as amended, but without any such registration the said agreement shall so far as any security on the Company's property or undertaking is thereby conferred be valid against the liquidator or any creditor of the Company.

Exclusion of Part IX of the Companies Act and the Bills of Sale Act as regards the agreement.

7. (1) Without affecting the other remedies of the Commonwealth or the State, the remedies of mandamus and/or injunction in the High Court of Australia or in the Supreme Court of New South Wales shall, at the suit of the Commonwealth or the State or the Attorney-General of the Commonwealth or the Attorney-General of the State, lie for enforcing the provisions of clause twenty-three of the said agreement.

Remedies of mandamus and injunction for certain matters.

(2) This section shall be read and construed so as not to exceed the legislative power of the State to the intent that where any enactment thereof would, but for this subsection, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

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Reservation
of Crown
lands from
sale, etc.

8. (1) The Crown lands included in the Fourth Schedule to the said agreement are hereby reserved from sale and from occupation under miners right or business license and from lease other than lease to the Company under clause nineteen of the said agreement.

(2) Such reservation may be revoked by the Governor by notice published in the Gazette in the event of the said agreement being cancelled, rescinded or determined for any reason whatsoever.

(3) The leases agreed to be granted by the State in clause nineteen of the said agreement may be granted notwithstanding the provisions of any other Act or anything done under any other Act.

Provision
against
double
allowance
for depre-
ciation.

9. Depreciation allowed in pursuance of clause 16 (b) of the said agreement in respect of any matters shall be in lieu of an allowance for depreciation or other like allowance under the laws of the State relating to income taxation and special income taxation in respect of such matters for the purpose of assessing under such laws the income of the Company referred to in the said clause 16 (b).

THE SCHEDULE TO THE ACT.

MEMORANDUM OF AGREEMENT made the twenty-third day of July, 1937, between the Commonwealth of Australia (hereinafter called "the Commonwealth") of the first part the State of New South Wales (hereinafter called "the State") of the second part and National Oil Proprietary Limited (hereinafter called "the Company") of the third part WHEREAS the Commonwealth is desirous of inducing the development of the shale oil industry for national defence purposes AND WHEREAS the Commonwealth has caused experimental mining retorting and distilling operations to be carried on on certain lands within an area of about 55,000 acres situated in the Parishes of Gindantherie Goolloinboin Barton Glen Alice and Capertee Counties of Cook and Hunter State of New South Wales such area being the land referred to and described in an Authority to Prospect issued to the Commonwealth by the Secretary for Mines of the State

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on the eleventh day of January, 1937, pursuant to Application No. 48 made at Lithgow in the said State and being the land described in the First Part of the Fourth Schedule hereto (which land is hereinafter called the "said land") AND WHEREAS the State also is desirous of developing the said industry on the said land AND WHEREAS the Commonwealth and the State have caused investigations to be made concerning the development of the said shale oil industry AND WHEREAS by notice published in the Commonwealth of Australia Gazette dated the 28th day of May, 1936, the Commonwealth invited offers from persons willing to develop the shale oil industry on the said land AND WHEREAS the Company has been formed for the purpose of developing the shale oil industry on the said land and intends forthwith to carry such purpose into execution AND WHEREAS the Company has been registered as a Proprietary Company under the Companies Act, 1936, of the State AND WHEREAS the Memorandum of Association of the Company contains the condition set out in the First Schedule hereto AND WHEREAS for the purpose of developing and carrying on the shale oil industry on the said land the Company has applied to the Commonwealth and to the State for the loan of moneys and assistance in other respects which the Commonwealth and the State have agreed to grant as hereinafter appears subject to and upon the terms and conditions hereinafter mentioned to which the Company has agreed AND WHEREAS the parties hereto have agreed to execute this Agreement accordingly NOW IT IS HEREBY AGREED as follows:

1. The Company hereby covenants and agrees with the Commonwealth and the State and as a separate agreement with each of them:

- (a) That it will upon and after the ratification of this Agreement by the Parliaments of the Commonwealth and the State commence and continuously proceed with the erection construction and provision on the said land or on other land purchased or leased by the Company for the purposes of the said industry of buildings improvements workings plant and machinery for the development and establishment of the shale oil industry on the said land and will expend for such purposes (inter alia) the whole of the amounts advanced to the Company by the Commonwealth and the State under this Agreement so that at the first day of January, 1940, the Company shall have in operation on the said land and other lands as aforesaid complete works capable of and properly equipped for extensively carrying on the business of producing petrol and oil from the shale in the said land.
- (b) That in the event of the Company failing to erect construct and provide such complete works as required by the preceding subclause within the time as thereby provided the Company will pay as liquidated damages and not as penalty the

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the sum of Ten thousand six hundred and sixty-six pounds thirteen shillings and four pence (£10,666 13s. 4d.) to the Commonwealth and the sum of Five thousand three hundred and thirty-three pounds six shillings and eight pence (£5,333 6s. 8d.) to the State.

- (c) If through any cause beyond the control of the Company and not arising from or due to or contributed to by any neglect default or misconduct of the Company or its agents or servants delay occurs in the erection construction and provision by the Company of such complete works as provided by paragraph (a) of this clause the Company may from time to time within three months of the happening or occurring of the event or matter causing the delay apply in writing to the Auditor General for an extension of time on account of such event or matter setting forth the cause of such application and the Auditor General shall if he thinks the cause sufficient and within the foregoing provisions of this paragraph (c) but not otherwise allow by writing under his hand such extension of time as he may think adequate.
- (d) Unless the Company shall make such application within the time and in the manner aforesaid and unless and until the Auditor-General shall allow such extension or extensions of time as aforesaid the Company shall not by reason of any delay arising as in the preceding paragraph mentioned be relieved in any way or to any extent of its liability to erect construct and provide such complete works as provided by paragraph (a) of this clause within the time as therein provided or of any other liability or obligation of the Company under this Agreement.
- (e) The expression "Auditor General" where used in this Agreement shall mean the Auditor General of New South Wales or the person acting as such for the time being.

2. (a) Subject to the provisions hereinafter contained or referred to the Commonwealth shall make advances to the Company by way of loan at interest as hereinafter mentioned to the amount of Three hundred and thirty-four thousand pounds (£334,000) upon the security hereinafter provided for:

(b) Subject to the provisions hereinafter contained or referred to the State shall make advances to the Company by way of loan at interest as hereinafter mentioned to the amount of One hundred and sixty-six thousand pounds (£166,000) upon the security hereinafter provided for.

3. No advance whatsoever shall be made by the Commonwealth or by the State until at least One hundred and sixty-six thousand six hundred and sixty-seven (166,667) shares of £1 each in the Company have been subscribed and allotted subject to the payment of the whole amount thereof in cash and have been paid for to five shillings per share.

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4. The advances so to be made by the Commonwealth and the State shall subject to the provisions of this Agreement be made from time to time to the Company as the capital of the Company is paid up in cash and the total amount of all advances made by the Commonwealth and the State shall not at any time be more than three (3) times the amount of the capital of the Company actually paid up in cash.

5. The Commonwealth and the State shall make their respective advances to the Company simultaneously and until the State has paid the final amount of its advances the amount of each Commonwealth advance shall be twice the amount of each State advance. Subject to the provisions of this Agreement such advances shall be made by the Commonwealth and the State within fourteen (14) days of a request therefor being lodged by the Company with the Prime Minister and the Premier.

6. Neither the Commonwealth nor the State shall be liable to re-advance to the Company the whole or any part of any moneys which have been repaid by the Company to the Commonwealth or the State.

7. It is a condition precedent to the right of the Company to claim any advance whatsoever from the Commonwealth or the State that it has fulfilled all the obligations on its part to be fulfilled under this Agreement and under each of the Deeds of Covenant and Charge hereinafter mentioned so far as such obligations are capable of being fulfilled at the time when a claim for an advance is made.

8. Amounts advanced by the Commonwealth and the State to the Company or such parts thereof as shall for the time being remain owing by the Company shall bear interest at the rate of four and one-half (4½) per centum per annum accruing from day to day and computed from the respective dates upon which such amounts were advanced and the Company covenants and agrees with the Commonwealth to pay such interest to the Commonwealth on the amounts advanced by it (or such parts thereof as remain owing) half-yearly on the 30th day of June and the 31st day of December in each year until the whole amounts of such advances are repaid to the Commonwealth and the Company covenants and agrees with the State to pay such interest to the State on the amounts advanced by it (or such parts thereof as remain owing) half-yearly on the 30th day of June and the 31st day of December in each year until the whole amounts of such advances are repaid to the State.

9. (1) The Company shall at or before the end of each of the first nineteen years computed from the 1st day of January, 1940, apply its income for the year in the following order, viz.:

Firstly: in payment of reasonable working expenses (including interest) for the year.

Secondly: on account of reasonable working expenses (including interest) for previous years to the extent to which income in such years was insufficient for such purposes.

Thirdly: in making reasonable provision for taxation in respect of the year.

Fourthly:

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Fourthly: in payment (in reduction of principal) of an amount equal to one-twentieth of the highest amount of advances made by the Commonwealth and the State to the Company at any time prior to the close of the year in respect of which the payment is made.

Fifthly: in payment (in reduction of principal) of amounts (if any) which would have been payable fourthly in previous years if the income of the Company in the said years had been sufficient, but which by reason of insufficiency of income did not become payable and have not been paid.

Sixthly: in transferring to a reserve an amount to cover depreciation for the year calculated in accordance with Clause 16 of this Agreement.

Seventhly: in transferring to such reserve amounts (if any) which would have been so transferable sixthly in previous years if the income of the Company in the said years had been sufficient, but which by reason of insufficiency of income did not become so transferable and have not been so transferred.

Eighthly: in payment of a dividend not exceeding ten (10) per centum for the year on the subscribed capital of the Company for the time being actually paid in cash.

Ninthly: in payment of dividends (if any) which would have been payable eighthly in previous years if the income of the Company in the said years had been sufficient, but which by reason of insufficiency of income did not become payable and have not been paid.

Tenthly: in payment (in reduction of principal) to the Commonwealth and to the State on account of moneys advanced by them.

(2) If the amount provided thirdly is found to exceed the amount actually required for taxation, the excess shall be paid in reduction of principal and if the said amount provided thirdly is found to be insufficient the deficiency shall be regarded and treated as a working expense in the year in which the taxation is paid.

(3) Of the amounts payable in reduction of principal, viz. the amounts payable fourthly, fifthly and tenthly, and excess provision for taxation the Company shall until all amounts advanced by the State have been repaid pay to the Commonwealth two equal third parts, and to the State one equal third part, and the Company shall make such payments simultaneously. After all amounts advanced by the State have been repaid amounts payable in reduction of principal shall be paid to the Commonwealth. When the income of the Company is sufficient to enable a payment to be made in reduction of principal, the amount payable shall be paid within six (6) weeks from the close of the year from the income of which the payment is to be made. Excess provision for taxation shall be payable in reduction of principal within one month after the amount of taxation is ascertained.

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(4) The Company shall not use the depreciation reserve for the purpose of any payment in the nature of a dividend.

(5) This Clause shall cease to have effect if within the period of nineteen years referred to in sub-clause (1) hereof the Company shall have repaid in accordance with this Agreement all amounts advanced to the Company by the Commonwealth and the State.

10. Within thirteen (13) months after the close of the period of nineteen (19) years referred to in Clause 9 hereof the Company shall repay to the Commonwealth and to the State the balances (if any) of the amounts of advances outstanding. In this respect time shall be of the essence of the contract.

11. If at any time the Company shall be desirous of making repayments in reduction of the amounts advanced by the Commonwealth and the State in addition to the repayments hereinbefore provided for it may simultaneously tender two equal third parts of the proposed additional repayment to the Commonwealth and one equal third part thereof to the State and the Commonwealth and the State shall accept the amounts so tendered if at the time of such tenders the Company has fulfilled all the obligations on its part to be fulfilled under the provisions of this Agreement and of each of the Deeds of Covenant and Charge hereinafter mentioned so far as such obligations are capable of being fulfilled at the time of such tenders.

12. Notwithstanding anything in this Agreement contained before any advance is made by the Commonwealth or the State to the Company the Company shall execute and deliver to each of them the Commonwealth and the State as security for the advances to be made by it and interest thereon a Deed of Covenant and Charge in accordance with the form contained in the Second Schedule hereto with such variations modifications and additions as the Prime Minister of the Commonwealth and the Premier of the State and the Company consider necessary or desirable and so that the said Deeds of Covenant and Charge shall rank *pari passu* as a first charge on the property and assets of the Company comprised therein or subject thereto without any preference or priority one over the other.

13. For the period ending on the 31st day of December 1964 the Commonwealth will grant protection to petrol produced by the Company from shale mined on the said land up to ten million gallons per annum against imported petrol and petrol produced from imported crude oil to the extent of the Customs Duty excise duty and primage at present operating but no further. If the present rates of Customs Duty (seven pence per gallon) and Primage Duty (four-tenths of one penny per gallon) on imported petrol or the present rate of Excise Duty (five and one-half pence per gallon) on petrol produced from imported crude oil are reduced during the said period ending on the 31st December 1964 a bounty equivalent to the amount of such reduction will be paid by the Commonwealth on petrol produced by the Company as aforesaid up to ten million gallons per annum. For the purposes of this clause "petrol" means petrol, naphtha, benzine, benzoline, benzol, gasoline, pentane and any other petroleum or shale spirit.

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14. The Commonwealth shall permit the entry into Australia free of Customs Duty of the cracking plant required by the Company for the development of the shale oil industry on the said land and such other plant as in the opinion of the Company and the Commonwealth cannot be satisfactorily and economically manufactured in Australia and also during the period ending on the 31st December 1964 mentioned in Clause 13 of this Agreement the products required by the Company for ethylising its petrol or treating its petrol by any process hereafter used in substitution for the said ethylising process.

15. (a) If in the opinion of the Commonwealth or an authority of the Commonwealth the prices and qualities of the petrol produced by the Company from shale mined on the said land are equal to the prices and qualities of other petrols the Commonwealth will so far as may be considered practicable in the circumstances give preference to the petrol produced by the Company as aforesaid when purchasing supplies in bulk for Commonwealth Departments during a period of twenty-five years from the date of the ratification of this Agreement by the Parliaments of the Commonwealth and the State provided that if the petrol produced by the Company as aforesaid is blended with imported petrol or petrol produced from imported crude oil this preference shall not apply to the blend but the right to preference shall not be lost by the inclusion of any ethylising or similar substance.

(b) If in the opinion of the State or an authority of the State the prices and qualities of the petrol produced by the Company from shale mined on the said land are equal to the prices and qualities of other petrols the State will so far as may be considered practicable in the circumstances give preference to the petrol produced by the Company as aforesaid when purchasing supplies in bulk for State Departments during a period of twenty-five years from the date of the ratification of this Agreement by the Parliaments of the Commonwealth and the State provided that if the petrol produced by the Company as aforesaid is blended with imported petrol or petrol produced from imported crude oil this preference shall not apply to the blend but the right to preference shall not be lost by the inclusion of any ethylising or similar substance.

16. (a) For the purpose of assessing under the laws of the Commonwealth relating to Income Taxation the income of the Company derived from the business of producing petrol oil and other products from shale mined from the said land depreciation shall be allowed (so far only as the Company has expended moneys from whatever source derived for the establishment of the shale oil industry on the said land) on the basis of the recommendations made by The Newnes Investigation Committee in its Report dated the 9th April 1934 as amplified by the provisions referred to in the Third Schedule hereto.

(b) For the purpose of assessing under the laws of the State relating to Income Taxation and Special Income Taxation the income of the Company derived from the business of producing petrol oil and other products from shale mined from the said land depreciation shall be allowed (so far only as the Company has expended moneys from

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from whatever source derived for the establishment of the shale oil industry on the said land) on the basis of the recommendations made by The Newnes Investigation Committee in its Report dated the 9th April 1934 as amplified by the provisions referred to in the Third Schedule hereto.

(c) This clause shall not operate after the expiration of the period of twenty (20) years from the date of the ratification of this Agreement by the Parliaments of the Commonwealth and the State.

17. The Commonwealth shall make available to the Company the services of Mr. L. J. Rogers, M.Sc., B.E., and Mr. D. J. Davies during the construction and starting up of the plant to be installed by the Company for the development of the shale oil industry on the said land and the Company shall reimburse the Commonwealth for all expenditure in respect of salary wages and leave of absence attributable to the services of Messrs. Rogers and Davies while with the Company and the certificate of the Accountant, Sub-Treasury of the Commonwealth, Sydney, as to the amount to be so reimbursed shall be accepted by the Company as final and conclusive. The Company shall also be responsible for and pay all out of pocket expenses in connection with its obtaining and utilising the services of Messrs. Rogers and Davies.

18. Within one month from the date of ratification of this Agreement by the Parliaments of the Commonwealth and the State the Company shall complete the purchase from the Commonwealth for the sum of £3,500 (such sum being payable by the Commonwealth to other persons in accordance with obligations previously contracted) of the option granted to the Commonwealth in respect of certain machinery plant and other property at Newnes by Shale Oil Investigations Proprietary Limited whose registered office is situate at 360 Collins-street Melbourne in the State of Victoria. The Company shall be deemed to have made full inquiry as to the nature and extent of such option and of the Commonwealth's title thereto and to have accepted such title and the Company shall not be entitled to make any objection or requisition with respect thereto or to the Commonwealth's power to sell and transfer the option to the Company.

19. (a) The State shall (the consent of the Commonwealth being hereby testified) grant under the Mining Act 1906 of the State as amended by subsequent Acts for a term expiring on 31st December 1965 subject to such rights and interests as may be lawfully subsisting therein at the date of the lease such Mineral Leases and Leases for Mining Purposes of Crown Lands forming part of the said land and of the lands described in the Second Part of the Fourth Schedule hereto as the Company may require for the development of the shale oil industry on the said land.

(b) The Crown Lands included in the said Fourth Schedule shall be reserved from sale and from occupation under Miner's Right or Business License and from lease other than lease to the Company under this clause and the Act of the State ratifying this Agreement shall provide accordingly. Such Act may provide for the revocation of the said reservation in the event of this Agreement being cancelled rescinded or determined for any reason whatsoever.

(c)

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(c) The rent payable by the Company to the State under any such Lease shall not exceed £1 per annum.

(d) Any mining lease to be granted under subclause (a) of this clause may be for an area in excess of 640 acres—and the requirements of the Mining Act, 1906, as amended and the Regulations thereunder as to marking out the land applied for and the mode of taking possession thereof shall not apply with respect to any leases to be granted under subclause (a) of this clause.

(e) Upon application by the Company the Minister shall under subsection 1 of Section 118 of the Mining Act 1906 as amended authorise the amalgamation of the Mining Leases held by the Company from time to time whether adjoining or not. Provided that any such amalgamation shall not be cancelled except at the request of the Company.

(f) Mineral leases so issued shall provide that if the petrol produced by the Company during any year from shale won from the said land does not exceed 10,000,000 gallons no royalty shall be payable to the State for that year and if the petrol so produced by the Company during any year exceeds such quantity the Company shall for that year pay to the State under the said Leases royalty at the rate provided by the said Act on such quantity of shale whenever won as is sufficient to produce the quantity of petrol which is equal to the excess over 10,000,000 gallons of the quantity of petrol produced during such year.

(g) The Leases issued pursuant to subclause (a) hereof shall contain necessary reservations to the public of authority to use roads and tracks in use and covenants by the Company to prove to the Secretary of Mines or other officer of the State from time to time the quantities of shale won from the said land and the quantities of petrol produced from the shale so won and also (in addition to the usual and other provisions to be inserted therein) provisions for the cancellation of the Leases by the Secretary of Mines of the State by notice in the Government Gazette of the State in the event of this Agreement being cancelled rescinded or determined for any reason whatsoever.

20. (a) During the period ending on the thirty-first day of December, 1959, the Company shall be entitled to claim an allowance by way of preference of twenty per centum on the railway freights payable by the Company to the Commissioner for Railways for the carriage on the New South Wales Government Railways of petrol or other shale spirit or oil produced by the Company from shale won from the said land and consigned by the Company for such carriage on the said railways. Provided always that if petrol or spirit or oil so produced is blended with any other petrol spirit or oil no such allowance shall be claimable with respect to the blend but the allowance shall not be lost by the inclusion of any ethylising or similar substance (including benzol or alcohol produced in Australia up to twenty per centum of the blend).

(b)

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(b) Every preference to which the Company is entitled under this clause shall be granted by way of rebate to it upon proof to the Commissioner for Railways that the Company is entitled thereto. A Statutory Declaration of the Secretary of the Company shall be accepted as prima facie evidence that the petrol of the Company has not been blended as aforesaid.

21. Before commencing production the Company shall at its own cost instal such additional plant as shall be necessary to permit of the production of fuel oil suitable for use in the Australian Navy.

22. The Company hereby covenants and agrees with the Commonwealth and the State and as a separate covenant with each of them that it will unless prevented by matters beyond the control of the Company and which are not due to the Company's default neglect or misconduct take all steps necessary to develop and carry on continuously the shale oil industry on the said land on a commercial scale.

23. The Company shall not without the consent in writing of the Commonwealth or the State alter the provisions of its Memorandum of Association which are set out in the First Schedule hereto or alter the Articles of Association made in pursuance of such provisions and the Company shall at all times and in all respects observe the said provisions of its Memorandum and the Articles of Association made in pursuance thereof and without affecting the other remedies of the Commonwealth or the State the remedies of mandamus and/or injunction in the High Court of Australia or in the Supreme Court of New South Wales may at the suit of the Commonwealth or the State or the Attorney General of either of them lie for enforcing the provisions of this clause and the Acts ratifying this Agreement may provide accordingly.

24. If within the period ending on the 31st December 1959 petrol is produced from Australian flow oil to an extent that it is impossible for the Company as a result of such production to operate except at a loss and if at that time the Company is not in default under this Agreement or the Deeds of Covenant and Charge hereinbefore referred to the Commonwealth and the State shall favourably consider granting adequate relief to the Company.

25. This Agreement shall not be required to be registered under Part IX of the Companies Act 1936 or the Bills of Sale Act of 1898 as amended of the State but without any such registration it shall so far as any security on the Company's property or undertaking is thereby conferred be valid against the Liquidator or any creditor of the Company.

26. The Company shall from time to time produce all books vouchers documents papers and evidence to, and allow the said land and all buildings workings improvements works plant and machinery to be inspected by a person authorised by the Prime Minister and by a person authorised by the Premier for the purpose of ascertaining the performance or non-performance by the Company of the provisions of this Agreement on its part to be observed or performed.

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27. If the Company shall omit to fulfil observe or perform the provisions of this Agreement on the part of the Company to be fulfilled observed or performed the Commonwealth and the State jointly may by notice in writing served on the Company call upon the Company to rectify the default complained of within a reasonable time (to be stated in the notice) after the service of such notice and if the Company shall fail after service of the said notice upon it to rectify the said default within such reasonable time the Commonwealth and the State jointly may by notice in writing served on the Company determine this Agreement but without prejudice to any claim which the Commonwealth and/or the State may have against the Company in respect of any breach of the provisions of this Agreement on the part of the Company to be fulfilled observed and performed.

28. Any notice or other communication required to be or that may be served by the Commonwealth (whether jointly with the State or otherwise) on the Company shall be deemed to have been duly served if signed by or on behalf of the Secretary, Prime Minister's Department, and forwarded by prepaid post addressed to the Company at its registered office and any such notice shall be deemed to have been served on the date on which it would be delivered in the ordinary course of post.

29. Any notice or other communication required to be or that may be served by the State (whether jointly with the Commonwealth or otherwise) on the Company shall be deemed to have been duly served if signed by or on behalf of the Under-Secretary, Premier's Department, and forwarded by prepaid post addressed to the Company at its registered office and any such notice shall be deemed to have been served on the date on which it would be delivered in the ordinary course of post.

30. In this Agreement unless the context otherwise requires the singular includes the plural and vice versa and the following expressions shall have the meanings respectively set opposite thereto:—

“Prime Minister” includes any Minister of State of the Commonwealth or member of the Federal Executive Council for the time being acting for and on behalf of the Prime Minister:

“Premier” includes the Minister of the State for the time being acting as such:

“Commonwealth Departments” and “State Departments” mean Departments (other than corporations) under the control of a Minister of the Crown.

31. This Agreement shall have no force or effect and shall not be binding on any party unless and until it is approved by the Parliaments of the Commonwealth and of the State provided that if this Agreement is not ratified by the said Parliaments before the 31st December 1937 it shall become null and void.

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IN WITNESS whereof the parties hereto have executed these presents the day and year first above written:—

Signed Sealed and Delivered by the Rt. Honourable JOSEPH ALOYSIUS LYONS the Prime Minister of the Commonwealth of Australia for and on behalf of the Commonwealth in the presence of:

L.S.
J. A. LYONS

F. STRAHAN.

Signed Sealed and Delivered by the Honourable BERTRAM SYDNEY BARNSDALE STEVENS the Premier of the State of New South Wales for and on behalf of the State in the presence of:

L.S.
B. S. B. STEVENS

J. W. FERGUSON.

The Common Seal of NATIONAL OIL PROPRIETARY LIMITED was hereunto affixed by authority of the Board of Directors in the presence of:

L.S.
C. CHRIS. DAVIS
N. FRAZER
Directors.

V. H. BARR-SMITH,
Secretary.

THE FIRST SCHEDULE.

1. (1) It is to be regarded as a cardinal principle of the Company that it is to be and remain under the control of persons who are subjects of His Majesty and accordingly:—

- (a) No foreigner shall be qualified to hold office as a director of the Company or to be employed as one of the principal officers of the Company.
- (b) No share in the Company shall be held by, or in trust for, or be in any way under the control of any foreigner or foreign corporation or any corporation under foreign control.

(2) In this clause the expression "foreigner" means any person who is not a subject of His Majesty, and the expression "foreign corporation" means any corporation other than a corporation established under and subject to the laws of some part of His Majesty's dominions, and having its principal place of business in those dominions.

The expression "corporation under foreign control" includes—

- (a) A corporation of which the majority of the directors or persons occupying the position of directors by whatever name called, are foreigners;

(b)

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- (b) A corporation, shareholders in which holding shares or stock conferring a majority of the votes are foreigners or foreign corporations, or persons who hold directly or indirectly for foreigners or foreign corporations;
- (c) A corporation which is by any other means, whether of a like or of a different character, in fact under the control of foreigners or foreign corporations;
- (d) A corporation, the executive whereof is a corporation within (a), (b) or (c).

And the expression "principal officers" of the Company shall be deemed to mean and include persons holding the following or any analogous position:—

- (i) General Manager;
- (ii) Assistant General Manager;
- (iii) Secretary;
- (iv) Assistant Secretary;
- (v) General Superintendent;
- (vi) Assistant General Superintendent;
- (vii) Marine Superintendent;
- (viii) Assistant Marine Superintendent;
- (ix) Superintendent Engineer;
- (x) Assistant Superintendent Engineer;
- (xi) Masters and officers and engineers in charge of a watch on board any of the Company's ocean steamships.

(3) Whenever a majority of the directors certify in writing that there is, in their opinion, reason to believe that any share in the Company is, in violation of subparagraph (b) of paragraph (1) of this clause, held by or in trust for, or in any case under the control of, a foreigner or foreign corporation or any corporation under foreign control, the directors shall call on the holder of such share to prove to their satisfaction that the share in question is not so held, and unless within three weeks thereafter such proof is given, the directors shall serve such holder with a requisition in writing to transfer such share to some properly qualified person approved by them, and unless such transfer is duly made and delivered to the Company within three days after the service of such requisition the directors shall sell the share at the market price to any properly qualified person approved by them, and may authorise any officer of the Company to execute on behalf of the holder a transfer of such share to the purchaser, and a transfer executed under such authority shall be valid and effective, and the purchase money shall be paid to the Company, whose receipt shall be a good discharge and shall be paid over by the Company to the late holder on his application.

(4) As from the time when any such certificate as aforesaid is signed up to the time when such proof as aforesaid is given, or such transfer is registered, the share referred to in such certificate shall not confer on the holder or owner any right to vote.

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2. Every transfer of any share must contain a declaration as follows, namely:—

- (a) Where the transfer is not to a corporation a declaration by the transferee (1) that he is a natural-born subject of His Majesty, and has never taken the oath of allegiance to any foreign sovereign or state, or has otherwise become a citizen or subject of any foreign state; or (2) that he is a person naturalised by or in pursuance of an Act or ordinance of the proper legislative authority in a British possession, and has taken the oath of allegiance to His Majesty, and is a subject of His Majesty and, in either case, that there is not any arrangement under which he will hold the said shares or any of them in trust for, or in any way under the control of, any foreigner or foreign corporation, or any corporation under foreign control, in contravention of the provisions of subclause one of clause 1 hereof; or
- (b) Where the transfer is to a corporation a declaration by some principal officer of such corporation, duly authorised by such corporation to make the same, that such corporation is not a foreign corporation, or a corporation under foreign control within the meaning of subclauses 1 and 2 of clause 1 hereof, and that to the best of his knowledge there is no arrangement under which the transferee is to hold such shares or any of them in trust for, or in any way under the control of, any foreigner or foreign corporation, or any corporation under foreign control, within the meaning of subclauses 1 and 2 of clause 1 hereof.

And where the directors think fit they may, before passing any such transfer, require such further evidence in support of any such declaration, whether by statutory declaration or otherwise as they think fit.

3. Before registering any person as a member under either of the last preceding clauses hereof the directors shall require the person proposed to be registered to provide a declaration as follows:—

- (a) Where the person to be registered is not a corporation a declaration by such person to the effect set forth in paragraph (a) of clause 2 hereof;
- (b) Where such a person is a corporation, a declaration in writing by some principal officer of such corporation duly authorised by such corporation to make the same, to the effect set forth in paragraph (b) of clause 2 hereof.

And where the directors think fit they may, before registering, require such further evidence in support of any such declaration whether by statutory declaration or otherwise, as they think fit.

SECOND

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SECOND SCHEDULE.

Deed of Covenant and Charge.

THIS DEED made the _____ day of _____
 One thousand nine hundred and thirty _____ between
 National Oil Proprietary Limited a Company incorporated
 under the provisions of the Companies Act, 1936, of the State
 of New South Wales (hereinafter termed "the Company") of
 the one part and "(a)" _____ (hereinafter
 termed "the Lender") of the other part WHEREAS by an Agree-
 ment made the _____ day of _____
 1937 between the Commonwealth of Australia (hereinafter
 called "the Commonwealth") of the first part the State of New
 South Wales (hereinafter called "the State") of the second
 part and the Company of the third part (hereinafter called
 "the said Agreement") it was agreed in Clause 2 that subject
 to the provisions thereafter contained or referred to the
 Lender should make advances to the Company by way of loan
 at interest as thereafter mentioned to the amount of "(b)"
 _____ pounds (£ _____) upon the
 security of a deed of Covenant and Charge in the form of these
 presents AND WHEREAS the said Agreement was ratified by the
 following Acts of the Parliaments of the Commonwealth and
 the State being the _____

"(a)" Insert
 "the Common-
 wealth of Aus-
 tralia" or "the
 State of New
 South Wales"
 as the case
 requires.

"(b)" Insert
 "£334,000" or
 "£166,000" as
 the case
 requires.

_____ of the Commonwealth and the
 _____ of the State AND WHEREAS

the Company has agreed to execute and deliver to the Lender
 this Deed of Covenant and Charge as security for the advances
 to be made by the Lender under the said Agreement and interest
 thereon and for other moneys as hereinafter referred to: NOW
 THIS DEED WITNESSETH as follows:—

1. In pursuance of the said Agreement and of the premises
 the Company doth hereby charge in favour of the Lender all and
 singular its undertaking and all its assets and property whatsoever
 and wheresoever both present and future and (but without limiting
 in any way the generality of the foregoing) also its uncalled capital
 and unpaid calls for the time being and all present and future
 book debts of the Company (which undertaking assets property
 uncalled capital unpaid calls and book debts are hereinafter for
 brevity referred to as the "mortgaged premises") with the repayment
 to the Lender of all advances now and hereafter made by the Lender
 to the Company under the said Agreement and with the payment
 to the Lender of all principal interest and other moneys hereinafter
 covenanted or agreed to be paid by the Company to the Lender.

2. In further pursuance of the said Agreement and of the premises
 the Company hereby covenants with the Lender as follows:—

(a) That the Company shall pay to the Lender interest on all
 amounts now and hereafter advanced by the Lender to the
 Company or on so much thereof as shall for the time
 being remain unpaid at the rate of four pounds ten shillings
 per _____

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per centum per annum accruing from day to day and computed from the respective dates upon which such amounts were advanced by the Lender until the whole of the moneys advanced shall have been repaid to the Lender: such interest to be payable half-yearly on the last day of the months of June and December in each and every year and the first of such half-yearly payments to be made on the thirtieth day of June 1938.

- (b) That the Company shall at or before the end of each of the first nineteen years computed from the first day of January 1940 apply its income for the year in the following order viz:--

Firstly: in payment of reasonable working expenses (including interest) for the year.

Secondly: on account of reasonable working expenses (including interest) for previous years to the extent to which income in such years was insufficient for such purposes.

Thirdly: in making reasonable provision for taxation in respect of the year

Fourthly: in payment (in reduction of principal) of an amount equal to one-twentieth of the highest amount of advances made by the Commonwealth and the State to the Company at any time prior to the close of the year in respect of which the payment is made.

Fifthly: in payment (in reduction of principal) of amounts (if any) which would have been payable fourthly in previous years if the income of the Company in the said years had been sufficient, but which by reason of insufficiency of income did not become payable and have not been paid.

Sixthly: in transferring to a reserve an amount to cover depreciation for the year calculated in accordance with Clause 16 of the said agreement.

Seventhly: in transferring to such reserve amounts (if any) which would have been so transferable sixthly in previous years if the income of the Company in the said years had been sufficient, but which by reason of insufficiency of income did not become so transferable and have not been so transferred.

Eighthly: in payment of a dividend not exceeding ten (10) per centum for the year on the subscribed capital of the Company for the time being actually paid in cash.

Ninthly: in payment of dividends (if any) which would have been payable eighthly in previous years if the income of the Company in the said years had been sufficient

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sufficient, but which by reason of insufficiency of income did not become payable and have not been paid.

Tenthly: in payment (in reduction of principal) to the Commonwealth and the State on account of moneys advanced by them to the Company.

Provided that if the amount provided thirdly is found to exceed the amount actually required for taxation the excess shall be paid in reduction of principal and if the said amount provided thirdly is found to be insufficient the deficiency shall be regarded and treated as a working expense in the year in which the taxation is paid.

- (c) That of the amounts payable in reduction of principal under subclause (b) of this clause viz. the amounts payable fourthly, fifthly and tenthly and excess provision for taxation the Company shall until all amounts advanced by the State have been repaid pay to the Commonwealth two equal third parts, and to the State one equal third part, and the Company shall make such payments simultaneously and after all amounts advanced by the State have been repaid the amounts payable in reduction of principal shall be paid by the Company to the Commonwealth. When the income of the Company is sufficient to enable a payment to be made in reduction of principal the amount payable shall be paid by the Company within six weeks from the close of the year from the income of which the payment is to be made but excess provision for taxation payable in reduction of principal shall be paid by the Company within one month after the amount of the taxation is ascertained.
- (d) That the Company shall not use the depreciation reserve referred to in subparagraphs Sixthly and Seventhly in subclause (b) of this clause for the purposes of any payment in the nature of a dividend.
- (e) That subclauses (b), (c) and (d) of this clause shall cease to have effect if within the period of nineteen years referred to in subclause (b) of this clause the Company shall have repaid in accordance with the said Agreement and this Deed of Covenant and Charge and the other Deed of Covenant and Charge executed or to be executed pursuant to the said Agreement by the Company in favour of "(c)" (such Deed of Covenant and Charge being hereinafter called "the other Deed of Covenant and Charge") all amounts advanced to the Company by the Commonwealth and the State.
- (f) That within thirteen (13) months after the close of the period of nineteen (19) years referred to in subclause (b) of this clause the Company shall repay to the Lender the balance (if any) of the amounts of advances now and hereafter made by the Lender to the Company that remains unpaid and in this respect time shall be of the essence of the contract.

Nothing

"(c)" Insert
"the Common-
wealth" or
"the State"
as the case
requires.

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Nothing in this subclause or subclauses (b), (c), (d) or (e) of this clause shall affect clause 1 of this Deed of Covenant and Charge or the provisions hereinafter contained as to the repayment to and recovery by the Lender of the advances made by it.

- (g) That the Company will at all times during the continuance of this security observe the provisions of the Mines Inspection Act 1901 of the State and the amendments thereof and will comply with all directions and notices thereunder in reference to the mines carried on by the Company and to the mortgaged premises so far as the same may respectively be applicable thereto.
- (h) That the Company shall from time to time immediately on being requested so to do furnish to the Lender full true and particular returns and accounts in writing in respect of the mortgaged premises and the operations and dealings of the Company therewith with such particulars as the Lender may require and the Company will duly enter and keep in books to be kept during the continuance of this security by the Company for that purpose true particular and complete accounts of all its dealings and all expenditure in relation to the mines carried on by the Company and to the mortgaged premises or any part thereof and of all shale and other substances obtained or treated or dealt with by or on behalf of the Company and of the yield of all petrols oils and other products from the substances so obtained treated or dealt with and all accounts books records and papers of the Company relating in any way to the mortgaged premises shall at all times be open to inspection by the Lender or any person authorised by the Lender and such person may take copies and extracts therefrom and the Company shall at all times render to the Lender and every such person all and every assistance and explanation in making such inspection and taking such copies and extracts and will verify and prove such entries accounts and books to the satisfaction of the Lender and every such person as aforesaid in such manner as the Lender and every such person may direct and will furnish the Lender with all such information as the Lender shall require concerning the operations of the Company and concerning the mortgaged premises.
- (j) That the Company will duly and punctually pay all rates taxes duties charges outgoings and assessments of every description now or hereafter charged or chargeable upon or in respect of the mortgaged premises and every part thereof and will on demand produce to the Lender the receipt for every such payment.
- (k) That the Company will duly and punctually pay all rents and royalties reserved by and perform and observe all covenants conditions and provisions on the part of the Lessee contained or implied in any lease or under-lease for the time being

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being held by the Company or in which the Company is interested and will forthwith on demand produce to the Lender the receipt for every such payment. And the Company will from time to time duly apply for and do everything in the Company's power for obtaining perfecting and maintaining the absolute title of the Company to the mortgaged premises free from encumbrances other than the said Agreement and these presents and the other Deed of Covenant and Charge and also for obtaining a renewal or extension or a fresh tenancy upon reasonable terms in the place of any and every such lease or under-lease which being at any time subject to this security shall expire during the continuance of this security except leases or under-leases which have become useless for the purposes of the Company's business.

- (l) That the Company will duly and punctually comply with and observe all statutes now or hereafter in force and all ordinances regulations and by-laws thereunder and all requirements and orders of any authority statutory or otherwise in all cases in which the non-compliance therewith or non-observance thereof would or might impose some charge or liability or disability upon the mortgaged premises or any part thereof or prejudicially affect this security or the Lender.
 - (m) That the Company will not without the written consent of the Lender and except in the case of removals in the ordinary course of the Company's business remove or destroy or suffer to be removed or destroyed any part of the mortgaged premises and the Company will at all times keep the mortgaged premises in good order and condition and safeguarded from damage deterioration or loss and will on being required by the Lender so to do forthwith amend every defect therein and on the Company failing to make such amendment it shall be lawful for the Lender to remedy such failure and the costs charges and expenses incurred by the Lender shall be a debt due from the Company with interest at Five pounds ten shillings per centum per annum thereon and shall be payable on demand and while unpaid such debt and interest shall be a charge on the mortgaged premises.
 - (n) That the Company will insure and keep insured against loss or damage by fire or otherwise in the full insurable value thereof in the names of the Commonwealth and the State with some Insurance Company to be approved of by them such of the mortgaged premises as are of an insurable nature and will punctually pay all moneys necessary for effecting and keeping up such insurance and forthwith hand to such person as the Commonwealth and the State may direct every policy and receipt relating thereto.
 - (o) That the Company has good right to charge the mortgaged premises in the manner mentioned in clauses 1 and 3 of these presents and that the same are free from encumbrance.
- (p)

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- (p) That the Company will forthwith on receipt thereof lodge with such person as may be nominated by the Commonwealth and the State as security under these presents and the other Deed of Covenant and Charge all mortgages liens and charges over and all documents of title to any real or personal estate whatsoever belonging to the Company or which shall have been or shall be given to secure the payment of any money to the Company.
 - (q) That the Company will whenever requested by the Commonwealth and the State so to do execute in favour of such person as the Commonwealth and the State may direct for the further perfecting of this security and the other Deed of Covenant and Charge such legal mortgages transfers assignments submortgages or other securities over all or any part of the mortgaged premises in such form and containing such powers (including power of sale) and provisions as the Commonwealth and the State shall require.
 - (r) That the Company will not without the consent in writing of the Lender first had and obtained call up or receive in advance of calls any of the uncalled capital hereby charged beyond one hundred and sixty-six thousand six hundred and sixty-seven pounds (£166,667).
 - (s) That the Company will once at least in every year or oftener if so required by the Lender allow the books of the Company to be fully audited by the Auditor General of the Lender and will cause him and his officers to be afforded all necessary information and facilities for such purposes.
3. And it is hereby agreed and declared as follows:—
- (a) That the Charge created by clause one hereof in favour of the Lender shall operate as a Fixed Charge as regards all real and leasehold property and the buildings and erections thereon and all uncalled capital engines machinery plant and books of account vouchers and other documents relating in any way to the mortgaged premises or any part thereof and all securities negotiable or otherwise and documents evidencing title to or right to possession of any property and the property mentioned in covered by or evidenced by any such documents and shall operate as a Floating Security only as regards the remainder of the mortgaged premises hereby charged but so that (except only in the case of the other Deed of Covenant and Charge) the Company shall not be at liberty to create in respect of any part of the mortgaged premises any mortgage or charge in priority to or pari passu with this security except with the consent in writing of the Lender AND so that the charge created by these presents in favour of the Lender and the charge created by the other Deed of Covenant and Charge shall rank pari passu as a first charge on the mortgaged premises without any preference or priority one over the other AND without affecting the operation of the foregoing provisions of this subclause

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subclause the Company agrees with the Lender that it will not without the previous consent in writing of the Lender sell or dispose of or part with the possession of any part of the mortgaged premises subject to the fixed Charge as aforesaid.

- (b) That notwithstanding anything herein or in the said Agreement contained this security shall at the option of the Lender (and notwithstanding any delay or previous waiver of the right to exercise such option) immediately become enforceable and the moneys advanced to the Company by the Lender and all other moneys hereby secured to the Lender immediately become payable in full by and recoverable from the Company without any demand or notice or expiration of time in each or any of the following events:—
- (i) If a petition is lodged or an order is made or a resolution is passed for the winding up of the Company or if a meeting is called for the purpose of considering the applying for any such order or the passing of any such resolution, or
 - (ii) If a Receiver of the undertaking or assets of the Company or any part thereof shall be appointed, or
 - (iii) If any execution or other process of any Court or authority or any distress is sued out against or levied upon any of the mortgaged premises, or
 - (iv) If the Company shall without the consent in writing of the Lender first had and obtained create or purport or attempt to create any charge or mortgage (other than the other Deed of Covenant and Charge) ranking or which might by any means be made to rank on the mortgaged premises or any part thereof in priority to or pari passu with these presents, or
 - (v) If the Company shall stop payment or threaten so to do or shall without the assent in writing of the Lender cease or threaten to cease to carry on its operations or business, or
 - (vi) If the Company makes default for fourteen days after the due date for the payment thereof in the payment of any interest required to be paid by subclause (a) of clause 2 of this Deed, or
 - (vii) If the Company makes default in the repayment to the Lender in accordance with the provisions hereinbefore contained of the moneys advanced by the Lender to the Company or any part thereof, or
 - (viii) If the Company shall omit to fulfil observe or perform any of the covenants or provisions contained or implied in this Deed or in the other Deed of Covenant

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Covenant and Charge (other than covenants or provisions to make the payments referred to in paragraphs (vi) and (vii) of this sub-clause) and on its part to be observed or performed and the Company shall fail to rectify such omission for a period of twenty-one (21) days after the service of a Notice by the Lender upon it requiring it to rectify the omission, or

- (ix) If the Company shall omit to fulfil observe or perform the provisions of the said Agreement on the part of the Company to be fulfilled observed or performed (other than covenants or provisions to make the payments referred to in paragraphs (vi) and (vii) of this sub-clause) and the Commonwealth and the State shall jointly by Notice served on the Company call upon it to rectify the omission within a reasonable time (to be stated in the Notice) after the service of the said notice and the Company shall fail after service of such notice to rectify the omission within such reasonable time.
- (c) That at any time after this security becomes enforceable and the moneys hereby secured become payable under sub-clause (b) of this clause and without giving any notice to the Company or expiration of any time the Lender may appoint in writing any person to be a Receiver (hereinafter called Receiver) of the mortgaged premises and without any notice to the Company or expiration of any time remove any such Receiver with or without appointing another in his place and in case of the removal retirement or death of any Receiver may appoint another in his place and may fix the remuneration of any such Receiver at a rate not exceeding five per centum on the gross amount of all moneys received by him PROVIDED ALWAYS that every such Receiver shall be the agent of the Company and the Company alone shall be responsible for his acts and defaults and any such Receiver so appointed shall (without any consent on the part of the Company or any notice to the Company or expiration of any time) have in addition to the powers conferred upon a Receiver by the provisions of Section 115 of the Conveyancing Act 1919-1932 the following powers viz:—
- (i) To take possession of collect recover and get in the whole or any part of the mortgaged premises
- (ii) To lease in the name of the Company or otherwise (whether the Receiver shall or shall not have so taken possession as aforesaid) the whole or any part of the mortgaged premises from year to year or for any term of years or for any term less than a year at such rent and upon such terms and conditions as to such Receiver may seem expedient
- (iii)

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- (iii) To carry on or concur in carrying on the business and operations of the Company and to make and effect all repairs purchases and insurances and to do all acts which the Company might do for the protection or improvement of the mortgaged premises or any of them or for obtaining income or returns therefrom
- (iv) To borrow from the Lender or elsewhere any money which may be required for any of the purposes mentioned in the preceding subparagraph (iii) of this subclause and in the name of the Company or otherwise to secure any moneys so borrowed by mortgage or charge over the mortgaged premises or any part thereof but so that no such mortgage or charge to or in favour of any person other than the Lender shall rank in priority to or pari passu with the Charge hereby created or the Charge created by the other Deed of Covenant and Charge without the written consent of the Commonwealth and of the State having been first obtained. Any moneys borrowed by a Receiver from the Lender under this power shall subject to any agreement between the Receiver and the Lender be deemed to have been borrowed by the Company upon the security of these presents and shall bear interest at the rate of Five pounds ten shillings per centum per annum and the Company hereby covenants to pay the same to the Lender accordingly but no such moneys borrowed from the Lender by a Receiver shall without the written consent of the "(d)" rank in priority to or pari passu with the charge created by the other Deed of Covenant and Charge PROVIDED HOWEVER that the Lender or other person or lender lending money to the Receiver shall not be bound or entitled to inquire as to the necessity or propriety of any such borrowing nor be responsible for the mis-application or non-application of any moneys so borrowed.
- (v) To sell or concur in selling the Company's business and assets as a going concern and the provisions of the following paragraph shall mutatis mutandis apply to and with respect to any sale under this paragraph.
- (vi) To sell or concur in selling (whether such Receiver shall or shall not have so taken possession as aforesaid) all or any of the mortgaged premises either by public auction or private treaty or by tender for cash or on credit and either in one lot or in parcels and either with or without special conditions or stipulations as to title or time or mode of payment
of

"(d)" Insert
"the Common-
wealth" or
"the State" as
the case
requires.

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of purchase money or otherwise and with power to allow the whole or any part of the purchase money to remain on mortgage of the property sold or on any other security or without any security and upon such other terms and conditions as such Receiver may consider expedient without being responsible for any loss occasioned thereby and with full power to buy in and rescind or vary any contract for sale and to resell without being responsible for loss and to compel the specific performance of any contract by suit in equity or otherwise and to execute assurances of all or any of the mortgaged premises in the name and on behalf of the Company or otherwise and to do all other acts and things for completing any such sale which the Receiver may deem necessary.

- (vii) To sever fixtures belonging to the Company and sell them under the aforesaid power of sale apart from any other part of the mortgaged premises.
- (viii) To employ managers solicitors officers agents auctioneers workmen clerks and servants for all or any of the purposes mentioned in this clause at such salaries or remuneration as the Receiver shall think fit.
- (ix) To make any arrangement or compromise which any such Receiver shall think expedient in the interests of the Commonwealth and the State.
- (x) To give effectual receipts for all moneys and other assets which may come to the hands of any such Receiver in exercise of any power hereby conferred which receipts shall exonerate any person paying or handing over such moneys or other assets from all liability to see to the application thereof and from all liability to inquire whether the moneys hereby secured have become payable or otherwise as to the propriety or regularity of the appointment of such Receiver.
- (xi) To carry out and enforce specific performance of or otherwise obtain the benefit of all contracts entered into or held by the Company or entered into in exercise of the powers or authorities hereby conferred.
- (xii) To make debtors bankrupt and to wind up companies and do all things in connection with any bankruptcy or winding up which the Receiver shall think necessary for the recovery or protection of the mortgaged premises or any part thereof or for the security of the Lender.

(xiii)

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- (xiii) To take proceedings at law or in equity or in bankruptcy in the name of the Company or otherwise for all or any of the purposes aforesaid.
 - (xiv) To do all things necessary to perform and observe any of the covenants agreements or stipulations in this Deed or in the said agreement contained or implied and on the part of the Company to be performed and observed.
 - (xv) With the consent in writing of the Lender to delegate to any person any of the powers hereinbefore conferred upon any such receiver and any such delegation may be general or particular.
- (d) That notwithstanding a Receiver may or may not have been appointed as aforesaid it shall be lawful for the Lender at any time after this security becomes enforceable and the moneys hereby secured become payable under subclause (b) of this clause or otherwise and without any expiration of time or giving any notice to the Company to exercise all or any of the powers authorities and discretions conferred on a Receiver as aforesaid.
- (e) That it shall not be incumbent on the Lender to give any notice of this security to any debtors of the Company or to any person or company whomsoever or whatsoever or to enforce payment of any moneys payable to the Company or of any of the debts hereby charged or to take any steps or proceedings for that purpose unless the Lender shall think fit so to do and the Lender shall not nor shall any Receiver appointed by the Lender as aforesaid be answerable for any involuntary losses or irregularities which shall happen in or about the exercise or non-exercise of any of the powers rights or remedies conferred on the Lender or on such Receiver by these presents.
- (f) That all moneys received by any such Receiver under or by virtue of these presents shall be applied in manner following, namely:—
- (i) in discharge of all rents taxes rates and outgoings whatever affecting the mortgaged premises;
 - (ii) in keeping down all annual sums or other payments (if any) and the interest on all principal sums (if any) having priority to the Charge hereby created;
 - (iii) in payment of all costs charges and expenses and liabilities and outgoings incurred by any and/or every such Receiver in or incidental to the exercise or performance or attempted exercise or performance of any of the powers or authorities hereby conferred;
 - (iv) in payment to the Receiver of a Commission at the rate of five per centum on the gross amount of all moneys received by him or at such lower rate as shall be specified in his appointment;
- (v)

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- (v) in payment to the Commonwealth and the State of the moneys respectively secured to them by these presents and by the other Deed of Covenant and Charge or such of the same as may remain unpaid. Of the moneys available from time to time for such payments two equal third shares shall be paid to the Commonwealth and one equal third share shall be paid to the State until the State has been repaid and thereafter to the Commonwealth. Such payments shall be in the first place in satisfaction of interest owing (if any). The surplus (if any) remaining after payment of all moneys secured hereby and by such other Deed of Covenant and Charge and after payment of the costs charges and expenses of the Commonwealth and the State in connection with the said securities shall belong to the Company but such surplus shall not carry interest and the Receiver or the Lender shall be at liberty to pay the same to the credit of an account in the name of the Company in the books of any Bank and shall inform the Company of such payment and shall thereupon be under no further liability in respect thereof.
- (g) That all moneys received by the Lender under or by virtue of the powers and authorities conferred upon it by these presents may be applied in manner following:—
- (i) in payment of all costs charges and expenses incurred by the Lender in the exercise or performance or attempted exercise or performance of any of the powers or authorities conferred by these presents or incurred by the “(e)”.....
 - (ii) in making the payments referred to in paragraphs (i) (ii) and (iii) of subclause (f) of this clause and in payment of all costs charges and expenses and liabilities and outgoings incurred by any and/or every Receiver appointed under the other Deed of Covenant and Charge in or incidental to the exercise or performance or attempted exercise or performance of any of the powers and authorities by the other Deed of Covenant and Charge conferred;
 - (iii) in making the payments to the Commonwealth and the State referred to in paragraph (v) of subclause (f) of this clause.

“(e)” Insert
“the Common-
wealth” or
“the State” as
the case
requires.

The surplus (if any) remaining shall belong to the Company but such surplus shall not carry interest and the Lender shall be at liberty to pay the same to the credit of an account

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account in the name of the Company in the books of any Bank and shall inform the Company of such payment and shall thereupon be under no further liability in respect thereof.

- (h) That upon the exercise of any power or authority herein contained or implied no person dealing with the Lender or any Receiver appointed as aforesaid or any attorney appointed as hereinafter provided shall be bound to inquire whether any default has been made by the Company hereunder or under the said Agreement or the other Deed of Covenant and Charge or whether any moneys remain owing on the security of these presents or otherwise as to the propriety or regularity of the exercise of such power or authority and notwithstanding any impropriety or irregularity therein such exercise shall as far as regards the safety and protection of such person be deemed to be valid and effectual and the remedy of the Company in respect of any impropriety or irregularity therein shall be in damages only.
- (j) That no forfeiture of any lease under the provisions of the lease or of the Mining Act 1906 or any Act amending or taking the place of the same and no sale or lease or disposition of the mortgaged premises under the provisions herein implied or contained shall affect the Company's liability upon the covenants for payment herein contained or deprive the Lender of the right to sue the Company for the amounts hereby secured.
- (k) That in the event of any loss or damage by fire or otherwise the Commonwealth and the State alone shall have full power to make enforce and compromise every claim in respect of every insurance and to sue for recover receive and give discharges for all insurance moneys whether the policy be in the names of the Commonwealth and the State or in the name of either of them or of the Company and whether the same shall or shall not cover other property as well as the mortgaged premises or part thereof and every such policy and the insurance moneys payable thereunder shall be held as further security for the moneys secured by this Deed and by the other Deed of Covenant and Charge and notwithstanding anything elsewhere herein contained all or any moneys received on or under any insurance over or affecting the mortgaged premises may with the written consents of the Commonwealth and the State be applied by the Company towards making good the loss or damage in respect of which the money has been received or may with the like consents be applied by it in or towards discharge of the moneys respectively secured by this Deed and the other Deed of Covenant and Charge whether due or not or may be otherwise applied by the Company with the written consents of the Commonwealth and the State as may be thought fit.

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- (l) That in applying any moneys received by the Lender or any Receiver appointed hereunder towards satisfaction of the moneys respectively secured by this Deed and the other Deed of Covenant and Charge the Company shall be credited with only such of the said money available for that purpose as shall be actually received in cash such credit to date from the time of such receipt.
- (m) That statements in writing from time to time signed by the “(f)” or the person acting as such for the time being stating the respective sums advanced by the Lender to the Company on the security of this Deed and the respective dates of payment of such sums to the Company by the Lender and the interest owing thereon or on any part thereof to the date or for the period in the statement mentioned and the interest and moneys from time to time paid to or received by the Lender under this Deed and the dates of payment thereof respectively and/or stating the amounts due to the Lender upon or secured by this security including sums so due to the Lender for interest at the date or dates mentioned in such statement shall be prima facie evidence of all matters therein stated or mentioned.
- (n) That it shall be lawful for the Lender or any person authorised by or on behalf of the Lender at all reasonable times to enter upon any of the mortgaged premises or into or upon any premises wherein or whereon any of the mortgaged premises may be and to inspect the state and condition of the mortgaged premises or any part thereof and to obtain particulars thereof and the Company its servants and agents shall afford the Lender and any such person as aforesaid every assistance and facility to exercise any of the powers conferred by this subclause.
- (o) That neither the taking of this security nor anything herein contained shall be held to merge discharge postpone or lessen or otherwise prejudice any other security now held or hereafter taken by the Lender for payment of any money or to affect the rights and remedies conferred on the Lender by the said agreement or to affect any claim or demand which the Lender now has or may hereafter have against any other person whomsoever as surety or otherwise nor shall any other security now held or hereafter taken by the Lender abate or prejudice the powers and provisions herein contained and these presents shall be a continuing security notwithstanding any settlement of account or other matter or thing whatsoever until a final discharge hereof shall have been given to the Company.
- (p) That all things which under or by virtue of this security or of the covenants or agreements or provisions herein contained or implied the Lender is empowered to do whether alone or jointly with the “(g)” may be done

“(f)” Insert in Deed of Covenant and Charge in favor of the Commonwealth the following:—
“The Secretary, Prime Minister’s Department.”
and in Deed of Covenant and Charge in favor of the State of New South Wales the following:—
“The Under Secretary, The Treasury, Sydney.”

“(g)” Insert “the Commonwealth” or “the State” as the case requires.

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“(h)” Insert in the Deed in favor of the Commonwealth “the Prime Minister of the Commonwealth” and in the Deed in favor of the State of New South Wales “the Premier of the State”.

done by the “(h)” or by any attorney of the Lender appointed by the “(h)” for such purposes generally or otherwise either in the name of the Lender or of “(h)” or of such attorney AND the Company for the consideration aforesaid hereby irrevocably appoints any person or persons from time to time nominated in that behalf by the Commonwealth and the State the Attorney of the Company for the purposes in the name of any such person or the name of the Lender or the Company of doing or making and with full power to do or make any act deed matter and thing which the Company by virtue of the provisions of these presents ought to do or make and with full power in any such Attorney for all or any of such purposes powers and authorities to appoint a substitute or substitutes who may act in the premises in the name of the Company the Lender the Attorney or such substitute.

- (g) That the powers conferred on a mortgagee by the Conveyancing Act 1919-1932 shall be in augmentation of the powers herein mentioned and shall be exercisable by the Lender immediately upon or at any time after default by the Company hereunder without any notice or expiration of time as required under that Act being necessary AND all other provisions of the said Act shall be deemed to be negatived or varied only so far as they are inconsistent with the terms and provisions herein expressed but the Company shall not be entitled to exercise the power of leasing conferred by Section 106 of that Act and subsections (5) (6) (7) and (8) of that Section shall not apply to any lease by the Lender hereunder.
- (r) That the Company so far as it has power so to do hereby authorises any of the following persons namely any person from time to time appointed by the Commonwealth and the State and any Receiver appointed hereunder at any time after this security becomes enforceable and the moneys hereby secured become payable under subclause (b) of this clause or otherwise to make calls on the members of the Company in respect of the uncalled capital hereby charged and with power to control the making thereof and power to veto transfers of shares and to sue in the name of the Company or otherwise for the recovery of moneys due or becoming due in respect of calls and to give valid receipts for such moneys and the provisions contained in the Articles of Association of the Company in regard to calls shall mutatis mutandis apply to calls made under this authority and this authority shall be exercisable to the exclusion of the powers of the Directors of the Company.
- (s) That any demand direction or notice to be or that may be made upon or given to the Company hereunder by or on behalf of the Lender (whether alone or jointly with the “(j)”

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“(j)” shall be deemed to be duly made or given if the same be in writing and signed by the “(k)” or the person acting as such for the time being and be left at or sent through the Post Office addressed to the Company at the office of the Company or be affixed to some part of any land hereby charged or some building thereon or be advertised in the “(l)” Gazette and any such mode of service shall in all respects be valid and effectual notwithstanding that the Company may be in liquidation or wound up or in process thereof and notwithstanding any other matter or event whatsoever. Any and every notice direction or demand so made or given through the Post Office shall be deemed to be made or given to the Company at the time when the letter containing the same would in the ordinary course be delivered.

“(j)” Insert “the Commonwealth” or “the State” as the case requires.

“(k)” Insert in Deed of Covenant and Charge in favor of Commonwealth the following: “Secretary, Prime Minister’s Department”

and in Deed of Covenant and Charge in favor of the State the following: “Under Secretary the Treasury Sydney.”

“(l)” Insert in Deed of Covenant and Charge in favor of the Commonwealth the following: “Commonwealth of Australia.”

and in Deed of Covenant and Charge in favor of the State the following: “New South Wales Government.”

4. In further pursuance of the said agreement and of the premises the Company hereby further covenants with the Lender that the Company will carry on and conduct the business of the Company (including the business of developing and carrying on the shale oil industry on the land containing about 55,000 acres and other land referred to in the said agreement) in a proper and efficient manner and that the Company and its directors will carry out the objects of the Company and exercise the powers of the Company and its directors so that the Company shall have and retain full capacity and power to fulfil in all respects the obligations of the Company under the said agreement and these presents and not otherwise and in particular that the Company will not unite or amalgamate or enter into partnership with any person company or partnership and will not declare or pay any dividend on any of the shares in the Company except in cash and in the cases and to the extent permitted by the said agreement and these presents and will not otherwise distribute or cause or permit to be distributed any of the assets of the Company.

5. And it is further hereby agreed and declared as follows:—

- (a) That if at any time the Company shall be desirous of making repayments in reduction of the amounts advanced by the Commonwealth and the State in addition to the repayments provided for in subclause (b) of clause 2 of this Deed the Company may simultaneously tender two equal third parts of the proposed additional repayment to the Commonwealth and one equal third part thereof to the State, and the Commonwealth and the State shall accept the amounts so tendered if at the time of such tenders the Company has fulfilled all the obligations on its part to be fulfilled under the provisions of the said agreement and of this Deed and of the other Deed of Covenant and Charge so far as such obligations are capable of being fulfilled at the time of such tenders.
- (b) That in this deed unless the context otherwise requires the singular includes the plural and vice versa the word “person” includes

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includes a corporation, and the expressions "Prime Minister" and "Premier" have the same meaning as they have in the said agreement.

- (c) That it is a condition hereof that the provisions of the Moratorium Act, 1932, and of any amendment thereof shall not apply hereto but are expressly excluded.

IN WITNESS whereof the parties have executed these presents the day and year first hereinbefore written.

THE COMMON SEAL of NATIONAL OIL
PROPRIETARY LIMITED was hereunto
affixed by authority of the Board of
Directors in the presence of--

Director.

Secretary.

THE THIRD SCHEDULE.

The period to be taken for purposes of depreciation in respect of expenditure on any item shall be the estimated economic life of the item or 20 years whichever is less.

The provisions in respect of depreciation shall apply to items of a like nature to those referred to in the said report of the Newnes Investigation Committee and to other capital items.

THE FOURTH SCHEDULE.

FIRST PART.

County of Hunter Parishes of Glen Alice and Capertee, and County of Cook, Parishes of Barton, Gindantherie and Goollooinboin, containing an area of about 55,000 acres being the Crown lands within the following boundaries:—Commencing at the south-eastern corner of portion 1 (one) of 1760 acres, Parish of Glen Alice, County of Hunter; and bounded thence by part of the southern boundary of that portion; by portion 21, a line, portions 17, 26, 2, 7, 8 and 9 and 25, of that Parish, Portion 7, Parish of Gindantherie, County of Cook; Portions 16, 11, 12, 13, 14 and 15 Parish of Glen Alice, County of Hunter; Portions 6, 5, 4, 3, 2, 1 and again Portion 7, Parish of Gindantherie, County of Cook; Portions 119, 120 and 121, Parish of Goollooinboin, County of Cook, to the north-east corner of Portion 111 of 849 acres ex road, in the lastmentioned Parish; thence by the lastmentioned

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lastmentioned Portion to its most southerly south-eastern corner; thence by a line due south about 200 chains to the northern boundary of Portion MP 32 of 640 acres, Parish of Gindantherie, County of Cook; thence by the northern boundary of that Portion and of Portions MP 31 and MP 22 to the south-western corner of Portion 12 of 171 acres ex road; thence by Portions 12 and 8 to the south-eastern corner of Portion 12 aforesaid; thence by a line due east about 423 chains to a point due south of the south-eastern corner of Portion ML 18 of 640 acres, Parish of Barton, County of Cook; thence by a line north about 48 chains to that corner of that Portion; thence by the east boundaries of Portions ML 18, Parish of Barton, County of Cook, MP 42, MP 41 and ML 17, Parish of Gindantherie, County of Cook, and ML 4 Parish of Capertee, County of Hunter, to the north-east corner of the last-mentioned Portion; thence by a line north about 445 chains to the southern boundary of the Parish of Jamieson, County of Hunter; thence by that Parish and the Parish of Coorongooba, to the north-eastern corner of Portion 19, Parish of Glen Alice, County of Hunter; thence by that Portion and Portions 10 and 1, to the point of commencement—exclusive of Portions MPs. 16, 27 and 28, Parish of Gindantherie and MP 10, Parishes of Gindantherie and Barton, County of Cook, also Portions 9, 10, 11, 20, 21 and 23, Parish of Gindantherie, County of Cook, and Portions 1 and 25, Parish of Barton, County of Cook.

SECOND PART.

County Cook, Parishes of Gindantherie, Barton, Cook, Clwydd, Rock Hill, and Marangaroo, containing an area of about 460 acres, being the Crown land within Portion M.L. 4, and that part of Portion M.L. 3, within Portion M.P. 10, Parishes of Gindantherie and Barton, also that part of Portion M.L. 3, south of the north boundary of Portion M.P. 43, Parish of Barton, and shown on plans catalogued M.13424.R. and M.13553R., in the Mines Department.

MORATORIUM