

Queensland



**THIESS PEABODY MITSUI  
COAL PTY. LTD.  
AGREEMENTS ACTS**

**THIESS PEABDOY MITSUI  
COAL PTY. LTD.  
AGREEMENTS**

**Reprinted as in force on 5 July 1996**

**Reprint No. 1**

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the Office of the Queensland Parliamentary Counsel  
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Queensland



# **THIESS PEABODY COAL PTY. LTD. AGREEMENT ACT 1962**

**Reprinted as in force on 5 July 1996  
(Act not amended up to this date)**

**Reprint No. 1**

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# Information about this reprint

This Act is reprinted as at 5 July 1996. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (pt 4, div 2)
- express gender specific provisions in a way consistent with current drafting practice (s 24)
- use expressions consistent with current drafting practice (s 29)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 39)
- omit unnecessary referential words (s 41)
- omit the enacting words (s 42A)
- number and renumber certain provisions and references (s 43).

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in the reprint, including—**
  - **table of obsolete and redundant provisions**
  - **table of renumbered provisions.**

Queensland



**THIESS PEABODY COAL PTY. LTD.  
AGREEMENT ACT 1962**

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*Thiess Peabody Coal Pty. Ltd. Agreement Act  
1962*

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**THIESS PEABODY COAL PTY. LTD.  
AGREEMENT ACT 1962**

[as amended by all amendments that commenced on or before 5 July 1996]

**An Act with respect to an agreement between the State and Thiess Peabody Coal Pty. Ltd.; and for purposes incidental thereto and consequent thereon**

**Short title**

1. This Act may be cited as the *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*.

**Execution of agreement authorised**

2. The Premier and Chief Secretary is hereby authorised to make, for and on behalf of the State, with Thiess Peabody Coal Pty. Ltd., a company duly incorporated in the said State and having its registered office at M.L.C. Building, Adelaide and Edward Streets, Brisbane, in the said State (the “**company**”) the agreement, a copy of which is set out in the schedule (the “**agreement**”).

**Executed agreement to have force of law**

3.(1) Upon the making of the agreement the provisions thereof shall have the force of law as though the agreement were an enactment of this Act.

(2) The Governor in Council shall by proclamation notify the date of the making of the agreement.<sup>1</sup>

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<sup>1</sup> The agreement was made on 19 December 1962 (see proc pubd gaz 19 January 1963 p 201).

*Thiess Peabody Coal Pty. Ltd. Agreement Act  
1962*

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### **Variation of agreement**

**4.(1)** The agreement may be varied pursuant to agreement between the Minister for the time being administering this Act and the company with the approval of the Governor in Council by order in council and no provision of the agreement shall be varied nor the powers and rights of the company under the agreement be derogated from except in such manner.

**(2)** Any purported alteration of the agreement not made and approved in such manner shall be void and of no legal effect whatsoever.

**(3)** Unless and until the Legislative Assembly, pursuant to section 5(4), disallows by resolution an order in council approving a variation of the agreement made in such manner, the provisions of the agreement making such variation shall have the force of law as though such lastmentioned agreement were an enactment of this Act.

### **Proclamations and orders in council**

**5.(1)** Any proclamation or order in council provided for in this Act or in the agreement may be made by the Governor in Council and, in addition, the Governor in Council may from time to time make all such proclamations and orders in council not inconsistent with the agreement as the Governor in Council shall think necessary or expedient to provide for, enable or regulate the carrying out of the provisions of the agreement or any of them.

**(2)** Any such proclamation or order in council may be revoked or altered by another proclamation or order in council which is not inconsistent with the agreement.

**(3)** Every such proclamation and order in council shall—

- (a) be published in the gazette;
- (b) upon publication in the gazette be judicially noticed and such publication shall be conclusive evidence of the matters contained therein;
- (c) be laid before the Legislative Assembly within 14 sitting days after such publication if the Legislative Assembly is in session, and if not, then within 14 sitting days after the commencement of



*Thiess Peabody Coal Pty. Ltd. Agreement Act*  
1962

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the next session.

(4) If the Legislative Assembly passes a resolution of which notice has been given at any time within 14 sitting days after any such proclamation or order in council has been laid before it disallowing such proclamation or order in council or any part thereof, that proclamation or order in council or part shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further proclamation or order in council.

## **SCHEDULE**

### section 2

AN AGREEMENT<sup>2</sup> made the nineteenth day of December One thousand nine hundred and sixty-two BETWEEN THE STATE OF QUEENSLAND of the one part and THIESS PEABODY COAL PTY. LTD. a company duly incorporated in the State of Queensland and having its registered office at M.L.C. Building, Adelaide and Edward Streets, Brisbane, in that State of the other part.

WHEREAS a Proclamation was issued on the fourteenth day of January, 1960, pursuant to the powers contained in "*The Coal Mining Acts, 1925 to 1952,*" notifying, proclaiming and declaring that a defined area of about 350 square miles in the Counties of Bauhinia, Dawson, Ferguson and Kimberley, Parishes of Banana, Benleith, Capayan, Cottenham, Fairview, Highworth, Kianga, Moura, Woolthorpe and Wright shall not be open to License or Lease under these Acts; and

WHEREAS extensive prospecting work has been carried out on the land described in such Proclamation and considerable sums of money expended thereon, and

WHEREAS deposits of coal have been found to exist in a considerable part of the area described in the aforesaid Proclamation and the Company desires to bring the said deposits into large scale production for export purposes and also to continue to search for further deposits of coal, and

WHEREAS for such purpose it is necessary to construct works for the winning, treatment and transport of large tonnages of coal (including mine installations, a high capacity washing plant, a new Railway system for transportation to the port and modern bulk handling facilities at the port), and

WHEREAS the Company is prepared to provide and expend the large

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<sup>2</sup> The operative provisions of the agreement are not reprinted in this reprint. They are reprinted as part of the reprint of the Thiess Peabody Coal Pty. Ltd. Agreement 1962 which is bound with, and appears at the back of, this reprint.

SCHEDULE (continued)

capital amount required for these and associated purposes, and

WHEREAS the State is satisfied that a large capital expenditure is necessary to ensure that the coal deposits are efficiently and economically developed for export purposes for a lengthy period and that it is in the interests of the State that such coal deposits should be developed by large scale operations and that the Company is technically and financially capable of so developing these deposits, and

WHEREAS it is therefore desirable that in consideration of the Company entering into obligations on its part hereinafter set out the Company should be granted the rights titles and privileges hereinafter mentioned.

SCHEDULE (continued)

IN WITNESS WHEREOF,

**SCHEDULE**

EXECUTED the day and year aforesaid.

SIGNED by THE HONOURABLE  
GEORGE FRANCIS REUBEN  
NICKLIN, Premier and Chief Secretary  
of the State of Queensland for and on  
behalf of the said State in the presence  
of

}

Frank Nicklin

THE COMMON SEAL OF THIESS  
PEABODY COAL PTY. LTD. was  
hereunto affixed by the authority of a  
resolution of the Board of Directors in  
the presence of

}

Chairman of Directors

Secretary

## ENDNOTES

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Thiess Peabody Coal Pty. Ltd. Agreement Act 1962 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

## 4 List of legislation

### **Thiess Peabody Coal Pty. Ltd. Agreement Act 1962 No. 7**

date of assent 12 November 1962

commenced on date of assent

## 5 Table of obsolete and redundant provisions

### TABLE OF OBSOLETE AND REDUNDANT PROVISIONS under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
references to Queensland implied	Acts Interpretation Act 1954 s 35

## 6 Table of renumbered provisions

### TABLE OF RENUMBERED PROVISIONS under the Reprints Act 1992 s 43

Previous	Renumbered as
3, 1st sentence . . . . .	3(1)
3, 2nd sentence . . . . .	3(2)
4, 1st sentence . . . . .	4(1)
4, 2nd sentence . . . . .	4(2)
4, 3rd sentence . . . . .	4(3)
5(3)(i) . . . . .	5(3)(a)
5(3)(ii) . . . . .	5(3)(b)
5(3)(iii) . . . . .	5(3)(c)

Queensland



*Thiess Peabody Coal. Pty. Ltd. Agreement Act 1962*

# **THIESS PEABODY COAL PTY. LTD. AGREEMENT ORDER 1972**

**Reprinted as in force on 5 July 1996  
(order not varied up to this date)**

**Reprint No. 1**

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- update citations and references (pt 4, div 2)
- use expressions consistent with current drafting practice (s 29)
- use aspects of format and printing style consistent with current drafting practice (s 35).

**Also see endnotes for information about when provisions commenced.**



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# THIESS PEABODY COAL PTY. LTD. AGREEMENT ORDER 1972

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**THIESS PEABODY COAL PTY. LTD.  
AGREEMENT ORDER 1972**

[This is a reprint of the Thiess Peabody Coal Pty. Ltd. Agreement Order 1972 set out in the order in council published in the gazette 22 April 1972 p 1763.]

WHEREAS by the *Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Acts 1962 to 1965* (the “**Acts**”) it is amongst other things enacted that the agreement may be varied with the approval of the Governor in Council by order in council:

And whereas it has been made to appear to the Governor in Council that certain of the provisions of the agreement should be varied:

Now, therefor the Governor in Council doth hereby vary clause 8(I)(b) of the agreement to provide that the time within which the company shall have the right to surrender an area of not less than one-quarter of the coalfield shall be extended from 31 December 1971 to 31 December 1972.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Thiess Peabody Coal. Pty. Ltd. Agreement Order 1972 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

agr	=	agreement	prev	=	previous
AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
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gaz	=	gazette	RA	=	Reprints Act 1992
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om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

## **4 List of legislation**

**Thiess Peabody Coal Pty. Ltd. Agreement Order 1972 (o in c pubd gaz 22 April  
1972 p 1763)**  
commenced on date of publication



Queensland



*Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*

# **THIESS PEABODY COAL PTY. LTD. AMENDING AGREEMENT 1974**

**Reprinted as in force on 5 July 1996  
(agreement not varied up to this date)**

**Reprint No. 1**

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# **Information about this reprint**

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**See endnotes for information about when provisions commenced.**



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# THIESS PEABODY COAL PTY. LTD. AMENDING AGREEMENT 1974

## TABLE OF PROVISIONS

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## **THIESS PEABODY COAL PTY. LTD. AMENDING AGREEMENT 1974**

[This is a reprint of the Thiess Peabody Coal Pty. Ltd. Amending Agreement 1974 set out in the schedule to the order in council published in the gazette 9 November 1974 p 928.]

AN AGREEMENT<sup>1</sup> made the twenty-fifth day of October, 1974, between THE HONOURABLE RONALD ERNEST CAMM Minister for Mines and Main Roads of Queensland the Minister for the time being administering “The Thiess Peabody Coal Pty. Ltd. Agreement Act of 1962” (hereinafter called “the said Act”) for and on behalf of the State of Queensland (hereinafter called “the Minister”) of the one part and THIESS PEABODY MITSUI COAL PTY. LTD. a company duly incorporated in the State of Queensland and having its registered office at care of Messieurs Thynne and Macartney S.G.I.O. Building Turbot and Albert Streets Brisbane in the said State (hereinafter with its successors and permitted assigns called “the Company”) of the other part.

WHEREAS by an Agreement made on the Nineteenth day of December One thousand nine hundred and sixty-two between the State of Queensland and the Company (the Company being therein referred to as “Thiess Peabody Coal Pty. Ltd.”) in the form set out in the Schedule to the said Act and subsequently amended the State and the Company agreed upon certain matters therein set out.

AND WHEREAS it is provided by Section 4 of the said Act that the said Agreement may be varied pursuant to agreement between the Minister

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<sup>1</sup> The operative provisions of the agreement that amend the text of the Thiess Peabody Coal Pty. Ltd. Agreement 1962 (the “**principal agreement**”) are not reprinted in this reprint. They are included in the reprint of the principal agreement which is bound with, and appears at the back of, this reprint.

*Thiess Peabody Coal Pty. Ltd. Amending  
Agreement 1974*

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for the time being administering the Act and the Company with the approval of the Governor in Council by Order in Council.

AND WHEREAS it has been agreed between the Minister and the Company that subject to the approval by the Governor in Council by Order in Council the said Agreement shall be varied so as to extend the term of the Second Part of the said Agreement for a further period of six years from the Nineteenth day of December One thousand nine hundred and seventy-four.

AND WHEREAS by Order in Council dated the seventh day of November 1974 the Governor in Council approved the variation of the said Agreement by the making of this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED by and between the Minister and the Company that the said Agreement be varied as follows:—

*Thiess Peabody Coal Pty. Ltd. Amending  
Agreement 1974*

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IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

Signed by THE HONOURABLE  
RONALD ERNEST CAMM Minister  
for Mines and Main Roads for the State  
of Queensland for and on behalf of the  
said State in the presence of (Sgd.)  
G. Cook

}

(Sgd.) R. E. CAMM.

The COMMON SEAL OF THIESS  
PEABODY MITSUI COAL PTY.  
LTD. was hereunto affixed by the  
authority of a resolution of the Board of  
Directors in the presence of:

}

(Sgd.) J. K. W. YOUNG,

Director.

(Sgd.) M. F. LARKINS,

Secretary.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

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para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

## **4 List of legislation**

**Thiess Peabody Coal Pty. Ltd. Amending Agreement 1974 (o in c pubd gaz  
9 November 1974 p 928)**

commenced on date of publication

agr made 25 October 1974

approved by the Governor in Council 7 November 1974





Queensland



# **THIESS PEABODY MITSUI COAL PTY. LTD. AGREEMENTS ACT 1965**

**Reprinted as in force on 5 July 1996  
(Act not amended up to this date)**

**Reprint No. 1**

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- update references (pt 4, div 3)
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- use expressions consistent with current drafting practice (s 29)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (ss 36 and 39)
- omit unnecessary referential words (s 41)
- omit the enacting words (s 42A)
- number and renumber certain provisions and references (s 43).

**Also see endnotes for information about—**

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- **editorial changes made in the reprint, including—**
  - **table of changed citations and remade laws**
  - **table of obsolete and redundant provisions**
  - **table of renumbered provisions.**

Queensland



**THIESS PEABODY MITSUI COAL PTY.  
LTD. AGREEMENTS ACT 1965**

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Agreements Act 1965*

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*Thiess Peabody Mitsui Coal Pty. Ltd.  
Agreements Act 1965*

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**THIESS PEABODY MITSUI COAL PTY. LTD.  
AGREEMENTS ACT 1965**

[reprinted as in force on 5 July 1996]

**An Act with respect to agreements between the State and Thiess Peabody Mitsui Coal Pty. Ltd., in relation to the construction by the State of a railway from the company's coal mines at Moura to Barney's Point, Gladstone, and for purposes incidental thereto and consequent thereon**

**PART 1—PRELIMINARY**

**Short title**

**1.** This Act may be cited as the *Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965*.

**Construction and collective title**

**2.** The *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*, and this Act may be collectively cited as the *Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Acts 1962 to 1965*.

## **PART 2—RAILWAY AGREEMENT**

### **Execution of agreement authorised**

**4.** The Minister for Transport is hereby authorised to make, for and on behalf of the State, with Thiess Peabody Mitsui Coal Pty. Ltd., a company duly incorporated in the said State and having its registered office at care of Messieurs Thynne & Macartney, Solicitors, M.L.C. Building, Adelaide and Edward Streets, Brisbane, in the said State (the “**company**”), the agreement, a copy of which is set out in schedule 1 (the “**railway agreement**”).

### **Executed agreement to have force of law**

**5.(1)** Upon the making of the railway agreement the provisions thereof shall have the force of law as though the railway agreement were an enactment of this Act.

**(2)** The Governor in Council shall by proclamation notify the date of the making of the railway agreement.<sup>1</sup>

### **Variation of railway agreement**

**6.(1)** The railway agreement may be varied pursuant to agreement between the Minister for the time being administering the *Transport Infrastructure Act 1994*, and the company with the approval of the Governor in Council by order in council and no provision of the railway agreement shall be varied nor the powers and rights of the company under the railway agreement be derogated from except in such manner.

**(2)** Any purported alteration of the railway agreement not made and approved in such manner shall be void and of no legal effect whatsoever.

**(3)** Unless and until the Legislative Assembly, pursuant to section 10(4), disallows by resolution an order in council approving a variation of the railway agreement made in such manner, the provisions of the agreement

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<sup>1</sup> The railway agreement was made on 13 May 1965 (see proc pubd gaz 22 May 1965 p 528).

*Thiess Peabody Mitsui Coal Pty. Ltd.*  
*Agreements Act 1965*

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making such variation shall have the force of law as though such lastmentioned agreement were an enactment of this Act.

### **Powers of commissioner for railways**

7.(1) The commissioner for railways, the corporation constituted under the *Railways Act 1914*, shall have and may exercise all the powers of that Act with respect to the construction, operation and maintenance of the line of railway defined in the railway agreement as “the short line railway”.

(2) However, it shall not be necessary for the procedures set forth in sections 33 to 35 of that Act to be observed in such construction.

## **PART 3—AMENDING AGREEMENT**

### **Execution of amending agreement authorised**

8. The Minister for Mines and Main Roads is hereby authorised to make for and on behalf of the State with the company the agreement, a copy of which is set out in schedule 2 (the “**amending agreement**”) which agreement amends the agreement made 19 December 1962 a copy of which is set out in the *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*, schedule (the “**principal agreement**”).

### **Principal agreement as amended to have force of law**

9.(1) Notwithstanding any provisions of the *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*, upon the making of the amending agreement the provisions thereof and of the principal agreement as amended by the amending agreement shall have the force of law as though the amending agreement was an enactment of this Act and the principal agreement as so amended was an enactment of the *Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Acts 1962 to 1965*.

(2) The Governor in Council shall by proclamation notify the date of the making of the amending agreement.<sup>2</sup>

## **PART 4—PROCLAMATIONS AND ORDERS IN COUNCIL**

### **Proclamations and orders in council**

**10.(1)** Any proclamation or order in council provided for in this Act or in the railway agreement may be made by the Governor in Council and, in addition, the Governor in Council may from time to time make all such proclamations and orders in council not inconsistent with the railway agreement as the Governor in Council shall think necessary or expedient to provide for, enable, or regulate the carrying out of the provisions of the railway agreement or any of them.

(2) Any such proclamation or order in council may be revoked or altered by another proclamation or order in council which is not inconsistent with the railway agreement.

(3) Every such proclamation and order in council shall—

- (a) be published in the gazette;
- (b) upon publication in the gazette be judicially noticed and such publication shall be conclusive evidence of the matters contained therein;
- (c) be laid before the Legislative Assembly within 14 sitting days after such publication if the Legislative Assembly is in session, and if not, then within 14 sitting days after the commencement of the next session.

(4) If the Legislative Assembly passes a resolution of which notice has been given at any time within 14 sitting days after any such proclamation or

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<sup>2</sup> The amending agreement was made on 13 May 1965 (see proc pubd gaz 22 May 1965 p 528).



*Thiess Peabody Mitsui Coal Pty. Ltd.  
Agreements Act 1965*

---

order in council has been laid before it disallowing such proclamation or order in council or any part thereof, that proclamation or order in council or part shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further proclamation or order in council.

## SCHEDULE 1

section 4

*An Agreement*<sup>3</sup> made the Thirteenth day of May, One thousand nine hundred and sixty-five BETWEEN THE STATE OF QUEENSLAND (hereinafter called “the State”) of the one part and THIESS PEABODY MITSUI COAL PTY. LTD. a company duly incorporated in the State of Queensland and having its registered office at care of Messrs. Thynne & Macartney, Solicitors, M.L.C. Building, Adelaide and Edward Streets, Brisbane in the said State (hereinafter called “the Company”) of the other part:

WHEREAS by the Principal Agreement as defined in clause 1 the Company agreed *inter alia* to construct and maintain a railway in accordance with the provisions of Part IV of the Principal Agreement;

AND WHEREAS it has been agreed between the State and the Company that instead of the Company constructing and maintaining a railway in accordance with the provisions of Part IV of the Principal Agreement the State shall construct and maintain the short line railway hereinafter referred to and that the Company shall lodge with the State certain moneys by way of Security Deposit refundable to the Company upon the Company offering for transportation over the short line railway certain annual tonnages of coal for such period and at such freight rates as are more particularly hereinafter set forth;

AND WHEREAS it has been further agreed between the State and the Company that for the purposes of implementing this Agreement and other purposes the Principal Agreement should be amended by an amending agreement between the State and the Company in the form set out in the Second Schedule to the Act;

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<sup>3</sup> The operative provisions of the agreement are not reprinted in this reprint. They are reprinted as part of the reprint of the Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement 1965 which is bound with, and appears at the back of, this reprint.

SCHEDULE 1 (continued)

SIGNED by THE HONOURABLE  
GORDON WILLIAM WESLEY CHALK,  
the Minister for Transport of Queensland, for  
and on behalf of the said State in the presence of  
Ron E. Camm

}

THE COMMON SEAL OF THIESS  
PEABODY MITSUI COAL PTY. LTD. was  
hereunto affixed by the authority of a resolution  
of the Board of Directors in the presence of

}

Thiess

Director.

Secretary.

## SCHEDULE 2

section 8

*An Agreement*<sup>4</sup> made the thirteenth day of May, One thousand nine hundred and sixty-five BETWEEN THE STATE OF QUEENSLAND of the one part (hereinafter called “the State”) and THIESS PEABODY MITSUI COAL PTY. LTD. a company duly incorporated in the State of Queensland and having its registered office at care of Messrs. Thynne & Macartney, Solicitors, M.L.C. Building, Adelaide and Edward Streets, Brisbane in the said State (hereinafter called “the Company”) of the other part:

WHEREAS by an Agreement made the Nineteenth day of December One thousand nine hundred and sixty-two between the parties hereto (the Company being therein referred to as THIESS PEABODY COAL PTY. LTD.) in the form set out in and authorised by the Schedule to “*The Thiess Peabody Coal Pty. Ltd. Agreement Act of 1962*” (hereinafter in this Agreement referred to as “the Act”) and which said Agreement is hereinafter referred to as “the Principal Agreement” the Company agreed *inter alia* to construct and maintain a railway in accordance with the provisions of Part IV of the Principal Agreement;

AND WHEREAS in compliance with the requirements of clause 5 of the Principal Agreement the Company established to the satisfaction of the Minister (as appears by notification published in the *Gazette* on the nineteenth day of January 1963) that it had a nominal capital of not less than \$16,000,000 and that it had issued capital of not less than \$4,000,000 and a further sum of not less than \$4,000,000 available to it to expend on the obligations imposed on it under the Principal Agreement;

AND WHEREAS by Proclamation made the seventeenth day of January 1963 and published in the *Gazette* on the nineteenth day of

---

<sup>4</sup> The operative provisions of the agreement that amend the text of the Thiess Peabody Coal Pty. Ltd. Agreement 1962 (the “**principal agreement**”) are not reprinted in this reprint. They are included in the reprint of the principal agreement which is bound with, and appears at the back of, this reprint.

SCHEDULE 2 (continued)

January 1963 it was notified that the Principal Agreement was made on the nineteenth day of December 1962;

AND WHEREAS the Principal Agreement is presently in full force and effect;

AND WHEREAS by Special Resolution passed on the fifth day of February 1963 notice whereof was registered by the Registrar of Companies on the fifteenth day of February 1963 the name of the Company was changed to THIESS PEABODY MITSUI COAL PTY. LTD.;

AND WHEREAS the parties hereto have agreed to amend the Principal Agreement as hereinafter provided and to enter into the Railway Agreement which provides that the State shall construct and maintain such railway hereinbefore referred to in the place and stead of the Company and that the Company shall lodge with the State certain moneys by way of Security Deposit refundable to the Company only upon the terms and conditions in that behalf contained in the said Railway Agreement.

NOW THEREFORE subject as hereinafter provided IT IS HEREBY AGREED by and between the parties hereto that the Principal Agreement shall be varied in manner hereinafter set out:—

**1.** The terms used in this Agreement shall have the same meaning as in the Principal Agreement as amended by this Agreement.

**2.(1)** This Agreement is conditional upon the execution by the parties hereto of the Railway Agreement (as hereinafter defined) and shall have no force or effect until the Railway Agreement is executed.

**(2)** This Agreement is further conditional upon the giving by the Minister of notice in writing to the Company under the Railway Agreement that the State will proceed with the construction of the short line railway as defined therein.

**3.(1)** If under the provisions of subclause (2) of clause 6 of the Railway Agreement the Minister shall notify the Company that the State has decided

SCHEDULE 2 (continued)

that it will not construct the short line railway this Agreement shall thereupon be of no force and effect whatsoever and neither party shall have any claim against the other with respect to anything herein contained or herein implied and the amendments to the Principal Agreement made by this Agreement shall not take effect.

(2) Forthwith upon the giving of the notice to the company by the Minister under the Railway Agreement as provided in subclause (1) of clause 6 of that Agreement the Minister shall deliver up to the Company the Bond lodged with the Minister by the Company as the security required to be so lodged by it under the provisions of clause 34 of the Principal Agreement.

4. Subject to clause 3, the operation of the provisions of Part IV of the Principal Agreement being clauses 32 to 49 both inclusive is hereby suspended and shall not be reinstated in the Principal Agreement otherwise than in accordance with the provisions of clause 12 of this Agreement;

PROVIDED ALWAYS that unless and until the Company shall have entered into an Agreement with the Gladstone Harbour Board in terms satisfactory to the Company for the lease to the Company of land for the provision of Harbour facilities adequate and suitable for the purposes of the Railway Agreement and the Principal Agreement the provisions of clause 37 of the Principal Agreement shall continue in full force and effect and notwithstanding anything to the contrary in this Agreement contained the Company may obtain a Special Coal Mining Lease under the provisions of the Principal Agreement for the purpose of such Harbour facilities and other works required by the Company and the provisions of the Principal Agreement shall continue to apply in respect of any such Special Coal Mining Lease; AND PROVIDED FURTHER that immediately upon the execution of the Agreement for Lease between the said Gladstone Harbour Board and the Company as hereinbefore in this clause referred to the provisions of the said clause 37 of the Principal Agreement shall thereupon be suspended in manner firstly in this clause provided.

SCHEDULE 2 (continued)

**12.** If the Company shall exercise the option conferred on the Company under the provisions of clause 28 of the Railway Agreement the provisions of the Principal Agreement subject to the modifications made by paragraphs (a), (b), (c) and (d) hereinafter appearing shall be restored to their former full force and effect—

- (a) the gauge of the railway may at the option of the Company be three feet six inches (3' 6") and not four feet eight and one-half inches (4' 8<sup>1</sup>/<sub>2</sub>") as provided by subclause (1) of clause 45 of the Principal Agreement;
- (b) the company shall immediately relodge with the Minister the security required to be lodged by it under the provisions of clause 34 of the Principal Agreement which said security was refunded to the company under the provisions of subclause (2) of clause 3 of this Agreement;
- (c) the amendment made by paragraphs (i), (ii) and (v) of clause 5 of this Agreement shall remain in full force and effect; and
- (d) the Company shall be granted such extension of time for the completion of the construction of the railway provided by subclause (5) of clause 33 of the Principal Agreement as in the circumstances the State and the Company shall mutually agree.

**15.** The amendments made to the Principal Agreement by clauses 6 and 8 of this Amending Agreement shall operate on and from the First day of April, 1968. Forthwith after the said First day of April, 1968 the Company shall pay to the State the additional rent payable for the unexpired part of the year ending on the Thirty-first day of December, 1968.

**16.** This Agreement shall not be liable to stamp duty under the provisions of "*The Stamp Acts, 1894 to 1964.*"

SCHEDULE 2 (continued)

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their respective representatives thereunto duly authorised, as of the day and year first above written.

SIGNED by THE HONOURABLE RONALD ERNEST CAMM, the Minister for Mines and Main Roads of Queensland, for and on behalf of the said State in the presence of GORDON E. CHALK

}

THE COMMON SEAL OF THIESS PEABODY MITSUI COAL PTY. LTD. was hereunto affixed by the authority of a resolution of the Board of Directors in the presence of

}

Thiess

Director.

Secretary.



## ENDNOTES

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

*Thiess Peabody Mitsui Coal Pty. Ltd.  
Agreements Act 1965*

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### 3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

### 4 List of legislation

**Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965 No. 22**

date of assent 27 April 1965

commenced on date of assent

### 5 List of annotations

**Division of Act into Parts**

s 3 om R1 (see RA s 36)

### 6 Table of changed citations and remade laws

TABLE OF CHANGED CITATIONS AND REMADE LAWS

under the Reprints Act 1992 ss 21A and 22

Old	New	Reference provision
Railways Act 1914	Transport Infrastructure Act 1994	Transport Infrastructure Act 1994 s 249

## 7 **Table of obsolete and redundant provisions**

### TABLE OF OBSOLETE AND REDUNDANT PROVISIONS under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
references to provisions of law inclusive	Acts Interpretation Act 1954 s 35D
references to Queensland implied	Acts Interpretation Act 1954 s 35

## 8 **Table of renumbered provisions**

### TABLE OF RENUMBERED PROVISIONS under the Reprints Act 1992 s 43

Previous	Renumbered as
5, 1st sentence . . . . .	5(1)
5, 2nd sentence . . . . .	5(2)
6, 1st sentence . . . . .	6(1)
6, 2nd sentence . . . . .	6(2)
6, 3rd sentence . . . . .	6(3)
7, 1st sentence . . . . .	7(1)
7, 2nd sentence . . . . .	7(2)
9, 1st sentence . . . . .	9(1)
9, 2nd sentence . . . . .	9(2)
10(3)(i) . . . . .	10(3)(a)
10(3)(ii) . . . . .	10(3)(b)
10(3)(iii) . . . . .	10(3)(c)



Queensland



*Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965*

# **THIESS PEABODY MITSUI COAL PTY. LTD. RAILWAY AGREEMENT AMENDING AGREEMENT 1966**

**Reprinted as in force on 5 July 1996  
(agreement not varied up to this date)**

**Reprint No. 1**

**This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
Warning—This reprint is not an authorised copy**

# **Information about this reprint**

This agreement is reprinted as at 5 July 1996.

**See endnotes for information about when provisions commenced.**

**Queensland**



**THIESS PEABODY MITSUI COAL PTY.  
LTD. RAILWAY AGREEMENT  
AMENDING AGREEMENT 1966**

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**THIESS PEABODY MITSUI COAL PTY. LTD.  
RAILWAY AGREEMENT AMENDING  
AGREEMENT 1966**

[This is a reprint of the Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement Amending Agreement 1966 set out in the schedule to the order in council published in the gazette 1966 p 940.]

AN AGREEMENT<sup>1</sup> made the fifth day of May One thousand nine hundred and sixty-six BETWEEN THE STATE OF QUEENSLAND of the one part (hereinafter called “the State”) AND THIESS PEABODY MITSUI COAL PTY. LTD. a Company duly incorporated in the State of Queensland and having its registered office at care of Messieurs Thynne & Macartney, Solicitors, M.L.C. Building, Adelaide and Edward Streets, Brisbane in the said State (hereinafter called “the Company”) of the other part:

WHEREAS by an Agreement made the thirteenth day of May 1965 in the form set out in and authorised by the First Schedule to “The Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act of 1965” (which said Agreement is hereinafter called “the Railway Agreement”) the State and the Company agreed upon the terms and conditions for the construction and maintenance of the short line railway (as therein defined) and upon certain other matters connected therewith as are in the said Railway Agreement more particularly set out;

AND WHEREAS consequent upon the introduction in Australia of decimal currency pursuant to the Currency Act 1965 of the Commonwealth

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<sup>1</sup> The operative provisions of the agreement that amend the text of the Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement 1965 (the “**railway agreement**”) are not reprinted in this reprint. They are included in the reprint of the railway agreement which is bound with, and appears at the back of, this reprint.

*Thiess Peabody Mitsui Coal Pty. Ltd. Railway  
Agreement Amending Agreement 1966*

---

of Australia, the State enacted an Act entitled “The Decimal Currency Act of 1965”;

AND WHEREAS in the Railway Agreement amounts of money have been expressed in the currency superseded by decimal currency (which first mentioned currency and decimal currency are hereinafter respectively referred to as “the old currency” and “the new currency”);

AND WHEREAS in certain instances the amounts of money so expressed in the Railway Agreement in the old currency are not capable of being expressed in exactly corresponding amounts of money in the new currency;

AND WHEREAS the State and the Company pursuant to the power in that behalf contained in Clause 3 of the Railway Agreement have as a consequence agreed to vary the Railway Agreement in the manner hereinafter appearing:

NOW THEREFORE IT IS HEREBY AGREED by and between the State and the Company as follows:—

(2) Except as hereinbefore in this Agreement provided, wherever an amount of money is expressed in the old currency in the Railway Agreement such amount of money shall be read as though it were expressed in the equivalent amount of money in the new currency.

(3) Subject only to the variations in this Agreement contained, the Railway Agreement shall remain in full force and effect and shall be read and construed and be enforceable accordingly.

(4) This agreement shall not be liable to stamp duty under the provisions of “The Stamp Acts, 1894 to 1965.”

*Thiess Peabody Mitsui Coal Pty. Ltd. Railway  
Agreement Amending Agreement 1966*

---

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their respective representatives thereunto duly authorised as of the day and year first above written.

SIGNED by THE HONOURABLE  
WILLIAM EDWARD KNOX the  
Minister for Transport of Queensland  
for and on behalf of the said State in  
the presence of—B. W. GIRARD,  
J.P.

}

WILLIAM E.  
KNOX.

THE COMMON SEAL of THIESS  
PEABODY MITSUI COAL PTY.  
LTD. was hereunto affixed by the  
authority of a resolution of the Board  
of Directors in the presence of—K.  
M. HOGAN, Assist/Secretary.

}

L. C. THIESS,  
Director.  
B. W. GIRARD,  
Secretary.

## ENDNOTES

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement Amending Agreement 1966 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

agr	=	agreement	prev	=	previous
AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
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ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

## **4 List of legislation**

### **Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement Amending Agreement 1966 (o in c pubd gaz 18 June 1966 p 940)**

commenced on date of publication

agr made 5 May 1966

approved by the Governor in Council 16 June 1966

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Queensland



*Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965*

# **THIESS PEABODY MITSUI COAL PTY. LTD. RAILWAY AGREEMENT AMENDING AGREEMENT 1974**

**Reprinted as in force on 5 July 1996  
(agreement not varied up to this date)**

**Reprint No. 1**

**This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
Warning—This reprint is not an authorised copy**

# **Information about this reprint**

This agreement is reprinted as at 5 July 1996.

**See endnotes for information about when provisions commenced.**



**Queensland**



**THIESS PEABODY MITSUI COAL PTY.  
LTD. RAILWAY AGREEMENT  
AMENDING AGREEMENT 1974**

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**THIESS PEABODY MITSUI COAL PTY. LTD.  
RAILWAY AGREEMENT AMENDING  
AGREEMENT 1974**

[This is a reprint of the Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement Amending Agreement 1974 set out in the schedule to the order in council published in the gazette 6 July 1974 p 1392.]

AN AGREEMENT<sup>1</sup> made the 25th day of July One thousand nine hundred and seventy-four BETWEEN the Honourable KEITH WILLIAM HOOPER Minister for Transport of Queensland the Minister for the time being administering the Railways Act 1914–1972 for and on behalf of the State of Queensland (hereinafter called “the Minister”) of the one part and THIESS PEABODY MITSUI COAL PTY. LTD. a Company duly incorporated in the State of Queensland and having its registered office at care of Messieurs Thynne and Macartney S.G.I.O. Building Turbot and Albert Streets Brisbane in the said State (hereinafter with its successors and permitted assigns called “the Company”) of the other part

WHEREAS by an Agreement made the Thirteenth day of May 1965 in the form set out in and authorised by the First Schedule to “The Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act of 1965” (which said Agreement was therein and is hereinafter referred to as “the Railway Agreement”) the State of Queensland and the Company agreed upon certain matters therein set out

AND WHEREAS it is provided by Section 6 of “The Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act of 1965” that the Railway

---

<sup>1</sup> The operative provisions of the agreement that amend the text of the Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement 1965 (the “**railway agreement**”) are not reprinted in this reprint. They are included in the reprint of the railway agreement which is bound with, and appears at the back of, this reprint.

*Thiess Peabody Mitsui Coal Pty. Ltd. Railway  
Agreement Amending Agreement 1974*

---

Agreement may be varied pursuant to agreement between the Minister for the time being administering the Railways Act 1914–1972 and the Company with the approval of the Governor in Council by Order in Council

AND WHEREAS it has been agreed between the Minister and the Company that subject to the approval of the Governor in Council by Order in Council the Railway Agreement shall be varied as hereinafter provided

AND WHEREAS by Order in Council dated the 4th day of July 1974 the Governor in Council approved the variation of the Railway Agreement by the making of this Agreement

NOW THEREFORE IT IS HEREBY AGREED by and between the Minister and the Company that the Railway Agreement be varied as follows:—

*Thiess Peabody Mitsui Coal Pty. Ltd. Railway  
Agreement Amending Agreement 1974*

---

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written

SIGNED by the Honourable Keith William Hooper Minister for Transport of the State of Queensland for and on behalf of the said State in the presence of }

THE COMMON SEAL OF THIESS PEABODY MITSUI COAL PTY. LTD. was hereunto affixed by the authority of a resolution of the Board of Directors in the presence of }

Director.

Secretary.

## ENDNOTES

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### 2 Date to which amendments incorporated

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### 3 Key

#### Key to abbreviations in list of legislation and annotations

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def	=	definition	pt	=	part
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exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

## **4 List of legislation**

**Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement Amending  
Agreement 1974 (o in c pubd gaz 6 July 1974 p 1392)**

commenced on date of publication

agr made 25 July 1974

approved by the Governor in Council 4 July 1974

© State of Queensland 1996





Queensland



*Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965*

# **THIESS PEABODY MITSUI COAL PTY. LTD. RAILWAY AGREEMENT AMENDING AGREEMENT 1975**

**Reprinted as in force on 5 July 1996  
(agreement not varied up to this date)**

**Reprint No. 1**

**This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
Warning—This reprint is not an authorised copy**

# **Information about this reprint**

This agreement is reprinted as at 5 July 1996.

**See endnotes for information about when provisions commenced.**

**Queensland**



**THIESS PEABODY MITSUI COAL PTY.  
LTD. RAILWAY AGREEMENT  
AMENDING AGREEMENT 1975**

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## **THIESS PEABODY MITSUI COAL PTY. LTD. RAILWAY AGREEMENT AMENDING AGREEMENT 1975**

[This is a reprint of the Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement Amending Agreement 1975 set out in the schedule to the order in council published in the gazette 15 November 1975 p 1084.]

AN AGREEMENT<sup>1</sup> made the twenty-third day of December One thousand nine hundred and seventy-five BETWEEN THE STATE OF QUEENSLAND (hereinafter called “the State”) of the one part AND THIESS PEABODY MITSUI COAL PTY. LTD. a Company duly incorporated in the State of Queensland and having its registered office at care of Messieurs Thynne and Macartney S.G.I.O. Building, Turbot and Albert Streets Brisbane in the said State (hereinafter with its successors and permitted assigns called “the Company”) of the other part.

WHEREAS by an Agreement made the Thirteenth day of May 1965 in the form set out in and authorised by the First Schedule to “The Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act of 1965” (which said Agreement was therein and is hereinafter referred to as “the Railway Agreement”) the State and the Company agreed upon certain matters therein set out.

AND WHEREAS it is provided by section 6 of “The Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act of 1965” that the Railway Agreement may be varied pursuant to agreement between the Minister for the time being administering the Railways Act 1914–1974 and the Company with the approval of the Governor in Council by Order in Council

AND WHEREAS it has been agreed between the Minister for Transport

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<sup>1</sup> The operative provisions of the agreement that amend the text of the Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement 1965 (the “**railway agreement**”) are not reprinted in this reprint. They are included in the reprint of the railway agreement which is bound with, and appears at the back of, this reprint.

*Thiess Peabody Mitsui Coal Pty. Ltd. Railway  
Agreement Amending Agreement 1975*

---

of Queensland the Minister for the time being administering the Railways Act 1914–1974 and the Company that subject to the approval of the Governor in Council by Order in Council the Railway Agreement shall be varied as hereinafter provided

AND WHEREAS by Order in Council dated the thirteenth day of November 1975 the Governor in Council approved the variation of the Railway Agreement by the making of this Agreement.

NOW THEREFORE IT IS HEREBY AGREED by and between the State and the Company that the Railway Agreement be varied as follows:—

*Thiess Peabody Mitsui Coal Pty. Ltd. Railway  
Agreement Amending Agreement 1975*

---

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

SIGNED by the Honourable Keith  
W. Hooper Minister for Transport of  
the State of Queensland for and on  
behalf of the said State in the presence  
of

}

The Common Seal of THIESS  
PEABODY MITSUI COAL PTY.  
LTD. was hereunto affixed by the  
authority of a resolution of the Board  
of Directors in the presence of

}

Director  
Secretary

## ENDNOTES

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement Amending Agreement 1975 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

agr	=	agreement	prev	=	previous
AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered



## **4 List of legislation**

**Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement Amending  
Agreement 1975 (o in c pubd gaz 15 November 1975 p 1084)**  
commenced on date of publication  
agr made 23 December 1975  
approved by the Governor in Council 13 November 1975



Queensland



*Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965*

# **THIESS PEABODY MITSUI COAL PTY. LTD. RAILWAY AGREEMENT AMENDING AGREEMENT 1985**

**Reprinted as in force on 5 July 1996  
(agreement not varied up to this date)**

**Reprint No. 1**

**This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
Warning—This reprint is not an authorised copy**

# Information about this reprint

This agreement is reprinted as at 5 July 1996.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (pt 4, div 2)
- update references (pt 4, div 3)
- express gender specific provisions in a way consistent with current drafting practice (s 24)
- use expressions consistent with current drafting practice (s 29)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 39)
- omit unnecessary referential words (s 41).

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in the reprint, including—**
  - **table of changed citations and remade laws**
  - **table of obsolete and redundant provisions.**

**Queensland**



**THIESS PEABODY MITSUI COAL PTY.  
LTD. RAILWAY AGREEMENT  
AMENDING AGREEMENT 1985**

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**THIESS PEABODY MITSUI COAL PTY. LTD.  
RAILWAY AGREEMENT AMENDING  
AGREEMENT 1985**

[This is a reprint of the Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement Amending Agreement 1985 set out in the order in council published in the gazette 20 April 1985 pp 2220–21.]

WHEREAS by the *Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965* (the “**Act**”) it is amongst other things enacted that the agreement (the “**railway agreement**”) a copy of which is set out in schedule 1 to the Act may be varied pursuant to agreement between the Minister for the time being administering the *Transport Infrastructure Act 1994* and Thiess Peabody Mitsui Coal Pty. Ltd. with the approval of the Governor in Council by order in council:

And whereas the railway agreement was varied in accordance with section 6 of the Act by further agreements made between the Minister for Transport of the State (the “**Minister**”) for and on behalf of the State and Thiess Peabody Mitsui Coal Pty. Ltd. (the “**company**”) dated 5 May 1966 25 July 1974 and 23 December 1975:

And whereas the company has requested that the railway agreement be varied further to the extent and in the manner set out in the schedule hereto:

And whereas the Minister has agreed to such further variation:

Now, therefore, His Excellency the Governor acting by and with the advice of the Executive Council and in pursuance of the provisions of the Act and all other powers the Governor thereunto enabling, doth hereby approve of the said Minister making with the company the further agreement set out in the schedule hereto further varying the railway agreement.

*Thiess Peabody Mitsui Coal Pty. Ltd. Railway  
Agreement Amending Agreement 1985*

---

AN AGREEMENT<sup>1</sup> made the Seventh day of June One thousand nine hundred and eighty-five BETWEEN THE STATE OF QUEENSLAND (hereinafter called “the State”) of the one part AND THIESS DAMPIER MITSUI COAL PTY. LTD. a Company duly incorporated in the State of Queensland and having its registered office at 22nd Floor, T. & G. Building, Cnr. Queen and Albert Streets, Brisbane in the said State (hereinafter with its successors and permitted assigns called “the Company”) of the other part.

WHEREAS by an Agreement made the Thirteenth day of May 1965 in the form set out in and authorised by the First Schedule to “The Thiess Peabody Mitsui Pty. Ltd. Agreements Act of 1965” (which said Agreement was therein and is hereinafter referred to as “the Railway Agreement”) the State and the Company agreed upon certain matters therein set out.

AND WHEREAS it is provided by Section 6 of “The Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act of 1965” that the Railway Agreement may be varied pursuant to agreement between the Minister for the time being administering the Railways Act 1914-1982 and the Company with the approval of the Governor in Council by Order in Council.

AND WHEREAS the Railway Agreement was varied in accordance with the provisions of the Act by further Agreements made between the Minister for Transport of the State of Queensland for and on behalf of the State and the Company (then known as Thiess Peabody Mitsui Coal Pty. Ltd.) dated the Fifth day of May 1966 the Twenty-Fifth day of July 1974 and Twenty-Third day of December 1975.

AND WHEREAS it has been agreed between the Minister for Transport of Queensland the Minister for the time being administering the Railways Act 1914-1982 and the Company that subject to the approval of the Governor in Council by Order in Council the Railway Agreement shall be further varied as hereinafter provided.

AND WHEREAS by Order in Council dated the eighteenth day of

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<sup>1</sup> The operative provisions of the agreement that amend the text of the Thiess Peabody Mitsui Pty. Ltd. Railway Agreement 1965 (the “**railway agreement**”) are not reprinted in this reprint. They are included in the reprint of the railway agreement which is bound with, and appears at the back of, this reprint.



*Thiess Peabody Mitsui Coal Pty. Ltd. Railway  
Agreement Amending Agreement 1985*

---

April, 1985 the Governor in Council approved the further variation of the Railway Agreement by the making of this Agreement.

NOW THEREFORE IT IS HEREBY AGREED by and between the State and the Company that the Railway Agreement be further varied as follows:—

*Thiess Peabody Mitsui Coal Pty. Ltd. Railway  
Agreement Amending Agreement 1985*

---

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first hereinbefore written.

SIGNED by the Honourable  
Minister for Transport of the State of  
Queensland for and on behalf of the  
said State in the presence of

}

The Common Seal of THIESS  
DAMPIER MITSUI COAL PTY.  
LTD. was hereunto affixed by the  
authority of a resolution of the Board  
of Directors in the presence of

}

Director  
Secretary

By Order of the Commissioner for Railways.

## ENDNOTES

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement Amending Agreement 1985 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

*Thiess Peabody Mitsui Coal Pty. Ltd. Railway  
Agreement Amending Agreement 1985*

---

### 3 Key

**Key to abbreviations in list of legislation and annotations**

agr	=	agreement	prev	=	previous
AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

### 4 List of legislation

**Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement Amending Agreement 1975 (o in c pubd gaz 20 April 1985 pp 2220–21)**  
 commenced on date of publication  
 agr made 7 June 1985  
 approved by the Governor in Council 18 April 1985

### 5 Table of changed citations and remade laws

TABLE OF CHANGED CITATIONS AND REMADE LAWS  
 under the Reprints Act 1992 ss 21A and 22

Old	New	Reference provision
Railways Act 1914	Transport Infrastructure Act 1994	Transport Infrastructure Act 1994 s 249

## **6 Table of obsolete and redundant provisions**

### TABLE OF OBSOLETE AND REDUNDANT PROVISIONS under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
references to Queensland implied	Acts Interpretation Act 1954 s 35



Queensland



*Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*

# **THIESS PEABODY COAL PTY. LTD. AGREEMENT 1962**

**Reprinted as in force on 5 July 1996  
(includes amendments up to up to 1965 Agreement)**

**Reprint No. 1**

**This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
Warning—This reprint is not an authorised copy**

# Information about this reprint

This agreement is reprinted as at 5 July 1996. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use standard punctuation consistent with current drafting practice (s 27)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current drafting practice (s 35).

**Also see endnotes for information about when provisions commenced.**



Queensland



**THIESS PEABODY COAL PTY. LTD.  
AGREEMENT 1962**

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## **THIESS PEABODY COAL PTY. LTD. AGREEMENT 1962**

[This is a reprint of the Thiess Peabody Coal Pty. Ltd. Agreement 1962 set out in the schedule to the Thiess Peabody Coal Pty. Ltd. Agreement Act 1962 as amended by the agreements listed in the endnotes.]

### **PART I—PRELIMINARY**

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:—

1. This Agreement<sup>1</sup> shall be divided into Parts as follows:—

Part I—Preliminary—Clauses 1 to 6;

Part II—Prospecting for Coal—Clauses 7 to 17;

Part III—Special Coal Mining Leases—Clauses 18 to 31;

Part IV—Provisions relating to Railway and Works—Clauses 32 to 49;

Part V—General—Clauses 50 to 58.

#### **Interpretation**

2. In this Agreement unless the context otherwise requires the general terms following shall have the meanings respectively assigned to them:—

“**the Act**” means the Act of Parliament of the State referred to in clause 3 hereof.

“**the Coalfield**” means the lands described in the First Schedule to this Agreement as amended from time to time in terms of clause 8 hereof.

“**the Coal Mining Acts**” means “*The Coal Mining Acts, 1925 to 1964,*” and any Act in amendment thereof or in substitution therefor and any other Act or Acts relating to Coal Mining.

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<sup>1</sup> The nonoperative provisions of the agreement are not reprinted in this reprint. They are reprinted as part of the reprint of the *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962* which is reprinted with this reprint.

*Thiess Peabody Coal Pty. Ltd. Agreement 1962*

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**“the Commissioner”** means the Commissioner for Railways.

**“the Company”** means Thiess Peabody Mitsui Coal Pty. Ltd. its successors and permitted assigns.

**“Crown Land”** means all land in Queensland except land which is for the time being—

- (a) lawfully granted or contracted to be granted in fee-simple by the Crown; or
- (b) subject to any lease or license lawfully granted by the Crown provided that land held under an occupation license shall be deemed to be Crown Land;

The term includes land reserved for or dedicated to public purposes (including specifically all timber and camping reserves or reserves for aboriginals) other than land in fee-simple.

**“the Minister”** means the Minister for Development, Mines, Main Roads and Electricity or other Minister of the Crown for the time being charged with the administration of the Act.

**“Railway Acts”** means and includes *“The Railway Acts, 1914 to 1961,”* and any other Act or Acts relating to the Railways of the Commissioner for Railways.

**“the Railway Agreement”** means the Agreement between the State of Queensland and the Company in the form set out and authorised by the First Schedule to *“The Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act of 1965”*.

**“the State”** means the State of Queensland.

**“ton”** means a long ton of two thousand two hundred and forty (2,240) pounds avoirdupois.

**“Tribunal”** means the Tribunal as constituted by clause 55 hereof.

**“Works”** means and includes the mines (as defined in the Coal Mining Acts) treatment plant port jetties wharves harbour works roads pipelines drains dams diversion weirs spillways water facilities pumping and ancillary works power lines haulage ways houses buildings machinery engines vehicles apparatus stock chattels matters and things required for the purpose of this Agreement and the business of the Company pursuant to this Agreement.

The singular includes the plural and the plural includes the singular.

Any reference to an Act or Acts shall include that Act or those Acts and any Act amending or in substitution for the same.

### **When Agreement shall have the force of law**

3. The making of this Agreement is authorised by the Parliament of the State of Queensland expressed in an Act entitled "*The Thiess Peabody Coal Pty. Ltd. Agreement Act of 1962.*" Upon the making of this Agreement the provisions thereof shall have the force of law as though enacted in the Act.

This Agreement shall not be liable to stamp duty under "*The Stamp Acts, 1894 to 1961.*"

### **Variation of Agreement**

4. This Agreement may be varied pursuant to agreement between the Minister and the Company with the approval of the Governor in Council by Order in Council and no provision of this Agreement shall be varied nor shall the powers and rights of the Company hereunder be derogated from except in such manner.

### **Commencement of Agreement**

5. This Agreement shall have no force or effect unless on or before the thirty-first day of December 1962, the Company establishes to the satisfaction of the Minister that it has a nominal capital of not less than Sixteen million dollars and that it has issued capital of not less than Four million dollars and that on or before the thirty-first day of December, 1962, a further sum of not less than four million dollars will be available to the Company to expend on the obligations imposed on it under this Agreement.

### **Transfer of benefits and obligations of Agreement**

6. The Company may transfer the benefits and obligations of this Agreement, in whole or in part, to any other Company or Companies only with the approval of the Governor in Council and on such terms and conditions as the Governor in Council may by Order in Council specify and

in any such case the transferee may be made a party to this Agreement and this Agreement may be varied in accordance with clause 4 hereof.

Such approval shall not be given unless it is established to the satisfaction of the Minister that such transferee is capable of carrying out the obligations so transferred and has sufficient capital available for the purpose:

Provided that no transfer to another Company shall be valid unless or until such Company has been duly registered under the laws relating to companies in the State.

## **PART II—PROSPECTING FOR COAL**

### **Exclusive Right to Prospect for Coal**

7. During the currency of this part of this Agreement the Company shall have the exclusive right to prospect for coal in and on the Coalfield and shall not be required to apply for or obtain a Coal Mining License or Coal Mining Licenses under the Coal Mining Acts.

### **Surrender of Portion of the Lands described in the First Schedule**

8.(1) The Company shall have the right to surrender from the benefits of this Part of this Agreement on the thirty-first day of December in each year such area or areas of the Coalfield as it may designate provided that—

- (a) by the thirty-first day of December next following the expiration of three years of the term of this Part of this Agreement, the Company shall surrender from the benefits of this Agreement an area or areas totalling not less than one-quarter of the area of the Coalfield remaining after deducting therefrom any area then included in any Special Coal Mining Lease granted in manner hereinafter provided; and
- (b) by each thirty-first day of December at each of two three-yearly intervals thereafter the Company shall surrender from the benefits of this Agreement an area or areas totalling not less than one-quarter of the area of the Coalfield as then described after



deducting therefrom any area then included in any Special Coal Mining Lease granted in manner hereinafter provided.

(2) If the Company at any time neglects or refuses to surrender the area which it is required to surrender the Minister shall determine the boundaries of an area of one-quarter of the Coalfield as then described after deducting therefrom any area then included in any Special Coal Mining Lease granted in manner hereinafter provided and shall give notice in writing to the Company and the area so determined by the Minister shall then be deemed to be surrendered from the Coalfield.

### **Variation of Lands described in the First Schedule**

9. Upon surrender at any time by the Company for any reason of any part of the lands described in the Coalfield, or upon determination by the Minister in pursuance of clause 8(2) hereof of any area, the Governor in Council shall issue a Proclamation varying the lands described in the First Schedule or as varied by a previous Proclamation, as the case may be, and specifying the description of the lands thereafter remaining in such First Schedule, and upon publication in the *Gazette* of such Proclamation, the First Schedule shall be deemed to be amended accordingly.

### **Term of Part II of Agreement**

10. The term of this Second Part of this Agreement shall be eighteen years from the date of this Agreement.

### **Company to Prospect and Survey**

11. The Company will continuously conduct such boring and other tests as are necessary to determine the site or sites extent and area of deposits of coal in the Coalfield.

### **Submission of results of Prospecting**

12. Not later than sixty days after each thirty-first day of December occurring within the currency of this Agreement, the Company shall furnish to the Minister full information of all prospecting work carried out during the year ending on the thirty-first day of December last past. This

information shall include details of all investigations surveys borings pittings and other testing carried out and the results thereof including in particular plans showing the location and depths of all borings with available details of reduced levels and details of the chemical composition of the coal in each such boring or pitting known to the Company and a determination and description of the areas considered by the Company to contain coal of economic grade with estimated tonnages thereof. The Company shall also furnish to the Minister not later than sixty days after each thirty-first day of December a statement of all moneys expended during the year ended on that thirty-first day of December on prospecting for coal on the Coalfield under the various headings of expenditure.

### **Reports to be Confidential**

**13.** Save as is otherwise hereinafter in this clause provided information and reports furnished by the Company to the Minister in pursuance of the provisions of clause 12 hereof, shall unless otherwise agreed by the Company, be treated as confidential by the Minister and his officers; information and reports supplied in respect of areas that have been surrendered under the provisions of this Agreement may be used as the Minister, in his sole discretion, sees fit.

### **Expenditure on Prospecting for Coal**

**14.** During the term of this Part of this Agreement the Company shall expend the following sums of money in prospecting for coal on the Coalfield as distinct from the production treatment or transportation of coal:—

During the period of the first three years of the term—Not less than \$300 000;

During the period of the second three years of the term—Not less than \$200 000;

During the period of the third three years of the term—Not less than \$150 000;

During the period of the fourth three years of the term—Not less than \$50 000:

Provided that if the Company at the expiration of the first six years of the term satisfies the Minister that it has expended a total amount exceeding \$700 000, the amount of expenditure to be required to be made by the Company during the remainder of the term in such prospecting shall be at the rate of \$200 per annum on each square mile in the Coalfield:

Provided further that upon the surrender of all land comprised within the Coalfield pursuant to clause 8 hereof, the Company shall have no further obligation under this clause.

### **Conditions to apply to Prospecting**

**15.** In respect of any land which is private land within the meaning of "*The Mining on Private Land Acts, 1909 to 1956*," the surface of which is at any time included in the Coalfield the Company shall give written notice to the owner or occupier of such private land, but shall not be required to apply for or acquire a Permit to Enter in respect of any land within the Coalfield. The Company, before entering upon any private land, shall notify the Under Secretary, Department of Mines, Brisbane, of the lands to be entered and shall deposit with him the sum of Ten dollars for each square mile of such land and any sums so deposited shall be dealt with in the same manner as sums deposited under section twelve (2) of "*The Mining on Private Land Acts, 1909 to 1956*."

### **Provisions of Coal Mining Acts to apply to Prospecting**

**16.** The work carried out in prospecting under the provisions of this Part of this Agreement shall be subject to the provisions of the Coal Mining Acts so far as the same apply.

### **Rental for Prospecting Rights**

**17.** The Company shall pay a rent for all land held under this Part of this Agreement for the purpose of prospecting for coal at the rate of one dollar (\$1.00) per acre per annum.

Such rental shall be payable in advance and shall be calculated so as not to include any area included in any Special Coal Mining Lease granted pursuant to this Agreement.

## **PART III—SPECIAL COAL MINING LEASES**

### **Grant of Special Coal Mining Leases**

**18.** The Governor in Council shall grant to the Company a Special Coal Mining Lease or Special Coal Mining Leases of any area or areas of land within the Coalfield which may be specified in writing by the Company. A Special Coal Mining Lease may be granted in any shape approved by the Minister and may include two or more which are not contiguous.

Any Special Coal Mining Lease granted may include all or any portion of the area of any Coal Mining Leases or applications for Coal Mining Leases now held by the Company. The area of any Special Coal Mining Lease which is at the time of application therefor included within the Coalfield shall be added to or reduced at any time upon request of the Company accompanied by a proper description and plan of the area, and of any addition or deduction proposed.

The Company may surrender any Coal Mining Lease already held by it or any portion thereof or application therefor already made by the Company upon such conditions as the Minister may think fit for the purpose that the area or portion of the area of land comprised therein may be included in any Special Coal Mining Lease granted under the provisions of this clause.

### **Purposes of Special Coal Mining Lease**

**19.(1)** Special Coal Mining Leases pursuant to clause 18 hereof may be granted under this Part of this Agreement for any or all of the undermentioned purposes, that is to say—

- (a) for mining for coal, and for all purposes necessary directly or indirectly to effectually carry on mining for coal and treatment of such coal therein or thereon, or
- (b) for erecting thereon any houses, buildings, plant and machinery for use directly or indirectly in connection with such mining or treatment operations, or
- (c) for residence thereon in connection with any such purposes, or
- (d) for cutting and constructing thereon water-races, pipelines, drains, dams, reservoirs, tramways, railways, haulage ways and roads to

be used in connection with such mining, or

- (e) for pumping, raising or obtaining water therefrom to be used in connection with the mining, treatment and transportation of coal and for purposes connected directly or indirectly therewith.

### **Form of Special Coal Mining Leases**

20. Every Special Coal Mining Lease shall be in the form and contain the conditions set out in the Second Schedule hereto with such modifications thereof as may be necessary to meet the circumstances of any particular case.

### **Conditions to apply to Special Coal Mining Lease comprising Private Land**

21. In respect of any land which is private land within the meaning of “*The Mining on Private Land Acts, 1909 to 1956*,” which is desired to be included at any time in a Special Coal Mining Lease, the Company shall fully comply with the provisions of those Acts relating to compensation for deprivation of the possession of such surface or of any part of such surface, as is required, and for damage to such surface or to any part thereof or for damage to improvements thereon, but shall not be required to apply for or acquire a Permit to Enter in respect of any such land within the Coalfield.

### **Rent of Special Coal Mining Lease**

22. The Company shall pay a rent for all land held by it under a Special Coal Mining Lease or under any application for a Special Coal Mining Lease at the rate presently prescribed by subsection (4) of section 11 of “*The Coal Mining Acts, 1925 to 1964*.”

Such rent shall be paid annually in advance on or before the thirty-first day of December in each year.

### **Term of Special Coal Mining Lease**

23. The term of a Special Coal Mining Lease granted hereunder shall be for such term not exceeding twenty-one years as the Company may require

and shall be renewable for further terms each not exceeding twenty-one years, as the Company may require:

Provided that should the Company at least three months prior to the expiry date of the lease satisfy the Minister that the Company has duly performed and observed each and every the conditions, covenants and stipulations of the lease and has duly performed and observed all provisions of this Agreement applicable to such lease, and that the Company is in lawful possession thereof, the Minister shall grant a renewal of the term of such lease (hereinafter referred to as the first renewal) to the Company for a further period not exceeding twenty-one years on the same conditions and provisions as set out in this Agreement as applied at the expiration of the original term, except that the rent shall be such rent as shall then be payable for Coal Mining Leases under the Coal Mining Acts.

Provided also that the Minister, on the completion of the period of such first renewal and any other renewal and on being satisfied, as in the case of the application for such first renewal, shall in like manner grant a further renewal or renewals of such lease for a period or periods, as the case may be, not exceeding, in respect of each such renewal, twenty-one years, as the Company may require.

Every such renewal of lease shall remain subject to all existing mortgages encumbrances liens and charges.

### **Covenants, &c., of Special Coal Mining Leases**

**24.** Every Special Coal Mining Lease shall contain the following reservations, covenants and conditions, that is to say:—

- (i) A reservation of all gold and all minerals other than coal found in the land comprised in the lease;
- (ii) A covenant by the Company to pay rent and royalty at the rates and within the times provided herein;
- (iii) Such other covenants as are stipulated in the Coal Mining Acts and are applicable;
- (iv) A condition that for any breach of any of the covenants the Minister may impose upon the Company a fine not exceeding Two thousand dollars and on non-payment of any such fine may forfeit the Special Coal Mining Lease.

**Royalty on Coal Won**

**25.** The Company shall pay royalty on all coal won by it from any land the subject of a Special Coal Mining Lease or an application for a Special Coal Mining Lease at the rate of ten cents per ton.

Such royalty shall be payable monthly within thirty days of the close of each month.

For the purpose of ascertaining the royalty to be paid all coal will be weighed except that if coal is shipped without weighing royalty shall be paid on weights ascertained on ship draught surveys.

Not later than the tenth day of each month in each year the Company will forward to the Department of Mines at Brisbane a return in such form as is required by the Minister showing the following particulars in respect of the preceding month:—

- (a) The amount of coal sold by the Company;
- (b) The amount of coal used by the Company;
- (c) Such other particulars as the Minister may require.

The Company shall forthwith pay to the Department of Mines the amount due as royalty on coal for the preceding month.

Any person thereunto authorised by the Minister may inspect the records of coal sold or used by the Company for the purpose of checking the amount of the royalty to be paid by the Company and for that purpose make copies thereof or extracts therefrom.

**Surveys**

**26.** The Company shall arrange upon request by the Minister, at its own expense, for all necessary surveys of the boundaries of the Coalfield or of any Special Coal Mining Lease or of any area to be added to or excluded therefrom and shall supply the Minister with all necessary data so all such surveys may be checked and certified by the proper authorities.

**Coal Produced to be Sold for Export only Except where otherwise Provided**

**27.** Coal produced from any Special Coal Mining Lease granted pursuant

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to this Agreement shall be the property of the Company and may be used by the Company for its own requirements; but subject as hereinafter provided shall be sold only for use outside the State of Queensland: PROVIDED THAT if the Minister at any time by notice in writing requests or authorises the Company to negotiate for the supply and sale of coal to any person within Queensland who is unable to obtain adequate supplies of coal suitable for his purposes on terms satisfactory to him the Company shall negotiate for the making of such an Agreement and if such Agreement be made and the same be approved by the Minister the Company shall then be at liberty to supply coal to such person for use within the State of Queensland: PROVIDED FURTHER that if such Agreement be not arrived at within a time considered reasonable by the Minister the Governor in Council may by Order in Council declare that such person being a new consumer or prospective consumer of coking coal requires supplies of such coal that he is unable to obtain adequate supplies of similar coal on reasonable terms elsewhere and that it is reasonable that the Company should be required to supply coal to that person; and thereupon the following provisions shall have effect:—

(1) The Minister may by notice in writing to the Company require the Company to supply coal on the terms and conditions and to the extent specified in the notice.

(2) Reasonable notice shall be given to the Company having regard to the Company's existing contracts and to any additional capital expenditure or plant which may be required to effect such supply.

(3) The price of such coal shall be such as is fixed by the Queensland Coal Board or any other price fixing authority on reference by the Minister, or if there be no such Board or Authority, by the Tribunal.

(4) If the Company shall fail so to supply coal to such person the Minister may require the Company to surrender from the Special Coal Mining Lease granted to the Company a sufficient area of land to enable coal to be mined to meet the requirements of such person.

(5) The area so to be surrendered—

- (a) shall not include any area which is then being used by the Company as a substantial source of coal and as far as practicable shall be as far removed as possible from the existing works of the Company;



- (b) shall not contain more than one-third of the proven coal of economic grade within the Coalfield nor more than one-third of the proven coal within the Coalfield capable of being won by open-cut methods;
- (c) shall not be such as to deprive the Company of coal from its Coal Mining Leases to an extent which would prevent the Company from supplying coal in sufficient quantity and over a sufficient period to enable it to secure the refund of its Security Deposit moneys under the provisions of the Railway Agreement and to fulfil its obligations under the then subsisting coal supply contracts with Mitsui & Co. Ltd. of Tokyo.

(6) The area so to be surrendered if not agreed upon between the Minister and the Company may be specified by the Minister and excised from the area of the Special Coal Mining Lease.

(7) Any dispute other than as to price arising under this clause may at the instance of the Minister or the Company be referred to the Tribunal for decision.

### **Labour and Expenditure required on Special Coal Mining Leases**

28. The Company shall install on its Special Coal Mining Lease or Leases granted or applied for under the provisions hereof all such machinery and other works as are necessary for it to produce and despatch for transportation from its Moura coal mines to the Town or Port of Gladstone over the short line railway (as defined in the Railway Agreement) not less than Three million (3,000,000) tons of coal in each and every year of the ten year period commencing on the First day of April 1968: PROVIDED ALWAYS that if the Company shall request the State to take the action stipulated in clause 25 of the Railway Agreement the Company HEREBY UNDERTAKES that it will install all such additional machinery and other works necessary for the production and despatch for transportation from its Moura coal mines to the Town or Port of Gladstone over the short line railway not less than Five million (5,000,000) tons of coal annually thereafter.

**Construction or Provision of Works**

**29.(1)** The Company will without unnecessary delay—

- (a) construct or provide on its Special Coal Mining Lease or Leases granted under the provisions of this Agreement all such plant machinery and other works as are necessary to excavate coal by large scale operations; and
- (b) construct all such works as are necessary for—
  - (i) the crushing screening grading and treatment of coal; and
  - (ii) the economic and expeditious loading of coal into railway wagons after such treatment as aforesaid.

**(2)** The said works shall be of adequate capacity to handle all coal which the Company is required to produce and despatch under the provisions of this Agreement and shall be soundly constructed for the purpose for which they are required and shall possess adequate factors of safety and the system of handling the coal shall be such as to be technically sound safe and suitable.

**(3)** The said works shall be constructed so as to comply with all such requirements as are reasonably stipulated by the Minister for ensuring that the said works comply with the provisions of this clause.

If any dispute shall arise between the Minister and the Company under the provisions of this subclause such dispute shall be determined by the Tribunal hereinafter constituted.

**Coal Mining Acts to apply to Special Coal Mining Leases**

**30.** The provisions of the Coal Mining Acts except as far as they are varied or modified by this Agreement shall apply to any Special Coal Mining Lease granted hereunder:

Provided that should the Company have carried out the terms of this Agreement the sections of the Coal Mining Acts relating to labour and expenditure shall not apply to any Special Coal Mining Lease granted hereunder:

Provided further that notwithstanding the provisions of section twenty-one (1) of the Coal Mining Acts the Company shall be deemed to be

in possession of whatever area of the surface of the land it may require from time to time for purposes connected with mining operations or any Special Coal Mining Lease granted hereunder as the Company shall describe and notify to the Minister.

### **Rehabilitation of Surface after Mining, &c.**

**31.** The Company in any operations for the mining of coal undertaken by it under the provisions of this Agreement which involve disturbance of the surface by open-cut mining shall observe the following conditions:—

- (a) Grading shall be carried out to reduce peaks and ridges to rolling topography where adjacent to or within 300 feet from any dedicated or declared roads in general public use. On such areas the Company shall work any ridges by striking off the same to a width of at least 10 feet at the top and any peaks shall be graded at the top to a minimum of 15 feet;
- (b) The Company shall construct earth dams in final cuts of all operations where lakes may be formed, if necessary, to impound water, provided the formation of the said lakes will not interfere with any underground or other mining operations or damage adjoining property;
- (c) Where acid forming materials present in the exposed face of a mineral seam which has been mined are not covered by impounded water the Company shall cover the same to a depth of not less than two feet with earth or spoil material;
- (d) The Company shall submit to the Minister as soon as practicable after the thirty-first day of December in each year a map in a form approved by the Minister showing clearly the land upon which the Company has conducted open-cut mining during each year and has completed mining operations thereon and showing the number of acres of affected land.

The Company shall determine the manner of regeneration of the different parts of the affected land and shall clearly show the same by appropriate designation on the map. In making such determination the Company shall take competent advice as to what steps are possible (including the additional extent, if necessary, to which peaks and ridges may be struck off and

valleys filled in) to encourage and promote regeneration of vegetation and shall proceed to promote such regeneration. The Minister may approve or disapprove of any such determination. In the event of any difference the matter may be referred to the Tribunal by either party;

- (e) All reclamation provided for hereunder shall be carried to completion by the Company with all reasonable diligence and shall be completed within three years of the cessation of mining except that—
  - (i) no planting of any kind shall be required to be made on any affected land used or proposed to be used by the Company for the deposit or disposal of refuse or within depressed haulage roads or final cuts or any other area where pools or lakes may be formed or final cuts or any other area where pools or lakes may be formed by rainfall or drainage run off of adjoining land; and
  - (ii) no planting of any kind shall be required on any affected land so long as the chemical and physical characteristics of the soil of the affected land are toxic, deficient in plant nutrients or composed of sand, gravel, shale or stone to such an extent as to seriously affect plant growth. Where natural weathering and leaching of any of such affected land over a period of ten years after the end of the year in which open-cut mining was completed thereon fails to remove the toxic and physical characteristics adversely affecting plant growth or at any time within such ten-year period the Minister determines any of such affected land is and during the remainder of the said ten-year period will be unplatable, the Company shall be relieved of all obligations under the provisions of this clause with respect to such affected land;
- (f) The Company shall cause a minimum of interference with the natural drainage system except and unless where it is found expedient to use the affected area for storage of water;
- (g) The Company shall use its best endeavours to avoid any pollution of any drainage system which is dangerous or injurious to public interests.

If the Company does not proceed with regeneration of the affected land in a manner satisfactory to the Minister within the times set forth in this clause or within such further time as the Minister may in his discretion grant, the Minister may regenerate the affected land to his satisfaction and may recover the cost thereof from the Company in any court of competent jurisdiction.

In this clause unless the context otherwise requires the general terms following shall have the meanings respectively assigned to them:—

**“overburden”** means all earth and other materials which lie above natural deposits of coal and also means such earth and other materials disturbed from their natural state in the process of open-cut mining.

**“open-cut mining”** means the mining of coal by removing the overburden lying above the natural deposits thereof, and mining directly from the natural deposits thereby exposed.

**“affected land”** means the area of land from which the overburden shall have been removed or upon which overburden has been deposited or both.

**“refuse”** means all waste material directly connected with the cleaning and preparation of substances mined by open-cut mining.

**“ridge”** means a lengthened elevation of overburden created in the open-cut mining process.

**“peak”** means a projecting point of overburden created in the open-cut mining process.

## **PART IV—PROVISIONS RELATING TO RAILWAY AND WORKS**

### **Survey of Route for Railway**

**32.** The Company will as soon as may be practicable survey the route of the proposed railway from the Coalfield or from the neighbourhood of the Coalfield to the Port.

**Power to Company to make Railway**

**33.(1)** Subject to the provisions of this Agreement the Company may and shall construct and maintain a railway commencing at or in the neighbourhood of Moura and then proceeding to the Port (with such branch lines as may be necessary) in accordance with plans, sections and books of reference to be deposited in the office of the Minister.

**(2)** The said railway shall be capable of transporting not less than 2,000,000 tons of coal per annum from the mines to the Port.

**(3)** As soon as possible after the completion of the survey in accordance with clause 32 hereof the Company shall deposit with the Minister a plan of the survey for the approval of the Minister and shall supply to the Minister sufficient information to enable the Minister to give general approval of the route of the railway with such modifications (if any) as are agreed upon between the Minister and the Company.

**(4)** After so obtaining the approval of the Minister the Company shall deposit with the Minister plans, sections and books of reference as hereinafter provided.

**(5)** The Company shall complete the construction of the railway in all respects in accordance with the provisions of this Agreement within seven years from the date of this Agreement.

**(6)** The Company shall commence the construction of the railway in adequate time to ensure its completion within the time specified in subclause (5) hereof.

**(7)** After commencing construction of the railway as aforesaid the Company shall proceed with construction with due expedition so as to ensure its completion within the time aforesaid.

**Company to Give Security**

**34.(1)** The Company shall within three months after the date of this Agreement lodge with the Minister security for the due and proper construction of the railway to the amount of two hundred thousand dollars.

**(2)** (a) The security may be in the form of cash deposit banker's cheque or bank draft payable to the Treasurer of the State of Queensland Commonwealth Treasury Bonds or Inscribed Stock guarantee indemnity or

bond in a form approved by the Crown Solicitor for the State by a bank, bonding or insurance company approved by the Crown Solicitor or any other security approved by the Crown Solicitor or partly in one form and partly in another form or other forms. The Crown Solicitor may at any time upon application by the Company, through the Minister, approve of the substitution for any security held by this clause of other security in such form as may be approved by the Crown Solicitor.

(b) If a deposit is in such form as will require exchange to be paid in Brisbane in the said State, then such exchange shall when necessary be added to the amount thereof.

(c) If the security is in the form of Inscribed Stock or other security not transferable by delivery it shall be accompanied by a duly executed and stamped transfer of such stock or security to the Treasurer.

(d) When the deposit is in cash it shall be placed in an interest bearing bank Trust Account in the name of the Treasurer to be operated on only in accord with the terms of this Agreement.

(e) Interest, if any, accruing on the security deposit shall be made available to the Company when collected by the Treasurer.

**(3)** Subject to these conditions, the Treasurer at the direction of the Minister shall account to the Company for and make available to the Company the security as follows:—

(a) When the Company shall have complied with the provisions of clause 33(3) hereof by depositing with the Minister a plan of the survey and supplying to the Minister the information thereby required, an amount of \$40,000;

(b) When the whole of the railway has been completed and ready for traffic as provided in clause 45 hereof, the remaining balance of the security.

**(4)** If the Company shall fail to lodge security within the time specified in subclause (2) of this clause, the Company shall be deemed to be in default under the provisions of this Agreement and the Minister may give to the Company notice in writing requiring the Company to remedy such default within such further time as may be specified in the notice. If the Company shall fail, neglect or refuse to comply with the provisions of such notice as is so specified, the Governor in Council may by notice in writing to the

Company, determine this Agreement.

(5) If any security furnished under this clause shall become unacceptable to the Minister or the Crown Solicitor or if any surety shall fail to furnish reports as to his financial condition, from time to time, as requested by the Minister, the Company shall within thirty days of demand furnish such additional or alternative security as may be required by the Minister or the Crown Solicitor from time to time for the construction of the railway up to an amount equal to the amount of the security.

(6) If the Company has not completed the construction of the railway in the manner and within the time provided in clause 33 hereof or before the expiration of such extended time as may be granted under the provisions of this Agreement, the Company shall be deemed to be in default under the provisions of this Agreement and the Minister may give to the Company notice in writing requiring the Company to remedy such default within such reasonable time as may be specified in the notice. If the Company shall fail, neglect or refuse to comply with the provisions of such notice within such time as is so specified, then the said security or so much thereof as remains in the hands of the Treasurer shall be liable to be absolutely forfeited to Her Majesty as and for liquidated damages and not by way of a penalty and that amount shall be a genuine pre-estimate of the damage suffered and recoverable by the Crown.

(7) (a) In the event of any default on the part of the Company, the Treasurer may convert into money any security and the proceeds shall be deemed to be a cash deposit under this clause.

(b) The Treasurer shall not be liable for any loss resulting from the conversion of any security deposited into money in accordance with this subclause, or resulting from the decrease in value of any security held by him.

### **Plans of Route of Railway and Sites for Works to be deposited**

**35.(1)** The Company may have levels taken and surveys made of the country and lands through which the railway is to be constructed, and shall prepare a plan of the railway and of the lands through which it is to pass, and also a book of reference in which shall be set forth the names of the owners of the said lands, so far as can with reasonable diligence be ascertained, with a description of the said lands, showing the bearings of the



railway and the nature and quality of cultivation, the state of the enclosures (if any) and the quantity of such land required for the purposes of the railway and the works.

(2) If it is proposed to construct such railway along, over or across any public reserve or road, such plans, sections and books of reference shall also contain particulars of the levels, and specify the several areas required to be taken for the purposes of the railway.

(3) Copies of the plans, sections and books of reference of the proposed railway and of the other works required by this Agreement together with a map and description showing the route of the proposed railway and the site or sites of the works shall from time to time be prepared by the Company and deposited with the Minister for approval.

### **Minister to notify Approval of Route and Sites**

36. The plans, sections and books of reference of the railway and the site or sites of other works required by this Agreement (or part or parts thereof) may be approved by the Minister from time to time with such modifications (if any) as are agreed upon by the Minister and the Company and the Minister shall notify such approval to the Company in writing.

### **Company to endeavour to acquire Rights Required**

37.(1) The Company will endeavour to acquire by agreement with the owners all rights required by the Company in respect of land (other than Crown lands) for the purposes of this Agreement for the route of the railway and for the site or sites of other works or for easements.

(2) The Company shall be entitled to use and occupy all Crown lands required for the works. All such lands (other than lands required only for temporary occupation) shall be vested in the Crown and granted to and held by the Company under and pursuant to the provisions of this Agreement.

(3) The Company shall repay to the Minister all expenditure incurred by the Crown in removing or altering any improvements on Crown lands to enable such lands to be occupied by the Company. The term "Crown lands" where used in this subclause shall not extend to—

(a) lands resumed by the Crown under the provisions of

subclause (4) hereof; or

- (b) lands occupied by or reserved to the Commissioner for Railways except with the express approval in writing of the Minister.

(4) All lands other than Crown lands and all easements which are required for the works shall and may be resumed and acquired by the Co-ordinator-General of Public Works from the owners thereof or the persons having any interest therein under the provisions of “*The State Development and Public Works Organisation Acts, 1938 to 1958,*” to the same extent as if the works were works authorised by the Governor in Council under those Acts to be carried out by the Co-ordinator-General, and the provisions of such Acts shall apply and extend accordingly except that any lands taken shall vest in the Crown and any easements taken shall be in the name and for the benefit of the Company but subject to the provisions of this Agreement. All the purchase money and compensation payable in respect of lands or easements so acquired together with all expenses incurred by the Co-ordinator-General in effecting such resumption or acquisition shall forthwith be paid by the Company to the Co-ordinator-General and upon such payment the lands resumed or acquired shall be vested in the Crown and granted to and held by the Company under and pursuant to the provisions of this Agreement. Before resuming or acquiring such lands or easements as aforesaid the Co-ordinator-General may require the Company to deposit with him such moneys or such securities as are in his opinion sufficient to ensure the payment by the Company of sums to be paid by the Company as aforesaid.

(5) All lands referred to in this clause shall be vested in the Crown and granted to and held by the Company by Special Coal Mining Leases under and subject to the provisions of this Agreement.

(6) The provisions of Part III of this Agreement shall apply to any Special Coal Mining Lease granted under this Part except that—

- (a) the Company shall be entitled to the possession of the whole of the surface hereof;
- (b) the Company shall not be entitled to tenant rights in respect of any erections fixtures or improvements whatsoever erected upon the land and held by the Company under Special Coal Mining Leases granted under this clause for the purposes of the railway and without in any way detracting from the generality of the

foregoing, the Company shall not be entitled to remove any such erections, fixtures or improvements at the expiration or determination of any such Special Coal Mining Lease or Leases nor shall the Company be entitled to compensation in respect thereof upon such expiration or determination provided that nothing in this subclause shall prevent the Company at any time during the currency of any Special Coal Mining Lease from removing, altering and/or replacing any such erections, fixtures or improvements thereon for the maintenance thereof or for the more efficient working or operation of the business hereunder.

(7) Every Lease granted under this Part shall be in the form and contain the conditions set out in the Second Schedule hereto with such modifications thereof as may be necessary to meet the circumstances of any particular case.

(8) In respect of land vested in the Crown and granted to and held by the Company under Special Coal Mining Lease pursuant to the provisions of this Agreement for any works, where the same was previously held for an estate in fee-simple a title in fee-simple shall be granted to the Company on request and in any other case the Company shall on request be granted a non-competitive perpetual lease without limitation of area under the provisions of "*The Land Acts, 1910 to 1961*":

Provided that in respect of land used for the railway the grant of a title in fee-simple or of a non-competitive perpetual lease shall be in the discretion of the Governor in Council.

### **Purchase of Railway**

**38.(1)** (a) The Governor in Council shall have the right to acquire the whole of the railway as a going concern with its equipment, rolling stock and/or plant of every description on the expiration of 42 years from the date of this Agreement and on the expiration of any subsequent term of 21 years upon the giving of not less than three years' notice in writing requiring the Company to sell and thereupon the Company shall sell the railway or part thereof specified in the notice to the Crown.

(b) The purchase price to be paid by the Crown to the Company in such case shall be the then value of the said railway and/or the said equipment, rolling stock or plant but in no case shall exceed one and one-tenth times the

cost thereof as certified to by the Auditor-General.

(2) (a) On the determination of this Agreement for any cause whatsoever, the Governor in Council shall have the right to purchase all or any part of the equipment, rolling stock and/or plant of the railway.

(b) The purchase price to be paid by the Crown to the Company in such case shall be the then value of the same.

(3) Nothing contained in this Agreement shall prevent the Governor in Council from acquiring the said railway and/or the said equipment, rolling stock and plant or any of it at any time under the laws of the State upon the Company being compensated for the property so acquired.

(4) In the case of any difference under the provisions of this clause the difference shall be determined by the Tribunal hereinafter constituted.

(5) Whenever such sale is made to the Crown, the railway and/or the said equipment, rolling stock and plant shall vest in the Commissioner as fully and effectually to all purposes as if the same had been transferred and conveyed to him by the owners but the Commissioner may if he thinks fit, demand a transfer or conveyance thereof, and the owners shall thereupon execute the same.

(6) If the Governor in Council shall acquire the said railway, the Governor in Council may enter into a contract with the Company to carry coal for the Company to the Port on fair terms.

### **Power of Company in relation to Railway**

**39.(1)** Subject to such restrictions as the Governor in Council may from time to time impose the Company shall have and may from time to time exercise in respect of the railway all the powers and authorities which the Commissioner for Railways may exercise under the provisions of sections thirty-seven and forty of the Railways Acts but in the exercise of such powers the Company shall do as little damage as may be and all persons interested in any land taken, used, injured or prejudicially affected may recover from the Company all damage by them sustained by reason of the exercise of such powers.

(2) The Company shall have the same obligations to provide and maintain accommodation works as the Commissioner is required to provide and maintain under the provisions of section seventy-three of the

Railways Acts and the provisions of such section shall *mutatis mutandis* apply.

(3) The Company shall have the same power of making by-laws with the approval of the Governor in Council as the Commissioner for Railways possesses and the provisions of sections one hundred and thirty-three to one hundred and thirty-five of the Railways Acts shall *mutatis mutandis* apply.

### **Width of Land to be Taken**

40. Lands to be taken and used for the railway shall not exceed 150 links in width except where a greater width is necessary for one or more of the following purposes:—

- (a) Affording an approach to the railway;
- (b) Affording room for rolling stock to cross, turn or pass;
- (c) Raising embankments to cross valleys or low ground;
- (d) Cutting through high ground;
- (e) Erecting temporary or permanent machinery, stations or other structures or buildings;
- (f) Sidings, shunting yards and railway yards;
- (g) Excavating, removing or depositing earth or other materials;
- (h) Any other purposes connected with the construction or working of the railway.

### **Land for Railway Not Subject to Rates**

41. Land acquired or used for the purposes of the railway shall be exempt from rating under the provisions of “*The Local Government Acts, 1936 to 1961,*” but this exemption shall not extend—

- (a) to any land or so much of any land acquired or used or purporting to be acquired or used for the purposes of the railway as could not be taken and used for the railway under clause 40 of this Agreement;
- (b) to any land leased or let to any person or corporation by the Company;

- (c) to any land used for the purposes of providing houses or other residential accommodation for persons employed by the Company in or in connection with the construction, maintenance or operation of the railway;
- (d) to any land used for or in connection with the receipt, despatch, delivery, handling, or storage of goods carried or to be carried by the railway for the purposes of an object of the Company other than the prospecting for, or the winning of coal, or the treatment or carriage of coal won, in or on the Coalfield; or
- (e) to any land acquired or used for the purpose of any other works or other business of the Company.

### **Substituted Roads**

**42.** The following provisions shall be applicable to cases where the railway is constructed across or traverses any road or tramway:—

(1) If it is found necessary to cross, cut through, raise, lower or use any part of any road so as to render it extraordinarily inconvenient for public traffic the Company shall before the commencement of any such operation cause a sufficient substituted road to be made. Any person who suffers special damage by reason of the failure of the Company to cause such substituted road to be made before it interferes with an existing road may recover the amount of such damage from the Company with costs by action in any Court of competent jurisdiction. If the said road could be restored compatibly with the use of the railway it shall with reasonable expedition be restored to a substantial condition. If it cannot be restored compatibly with the use of the railway the Company shall with reasonable expedition cause a sufficient substituted road to be put into a permanently substantial condition equally convenient as the former road or as near thereto as circumstances permit. The question of the sufficiency of such substituted road shall in case of dispute be determined by the Governor in Council.

(2) Notwithstanding anything contained in the Local Government Acts where a road of less width than 66 feet is interfered with a substituted road need not be of greater but shall not (except in the case of a railway crossing over and above such road by means of a bridge or other structure or in the case of such road being taken over the railway by means of a bridge or other structure) be of less width than the road so interfered with.

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(3) With the consent of the Minister but not otherwise in any case a road parallel and contiguous to any part of the railway may be lessened to not less than 33 feet in width or may be made of a width of not less than 33 feet.

(4) If the railway crosses a road other than on the level or if a road crosses the railway other than on the level the Company shall provide a suitable bridge or subway or other structure to the satisfaction of the Commissioner of Main Roads in respect of roads proclaimed under “*The Main Roads Acts, 1920 to 1962,*” and to the satisfaction of the Minister in the case of other roads.

(5) Where it is expedient to alter the levels of any road for the purpose of the construction of the railway the Company shall pay all reasonable expenses incurred in connection therewith unless otherwise agreed upon. The owner of any land prejudicially affected by such alterations of the level of any road within any city or town the level of which has been fixed under the Local Government Acts shall be entitled to recover from the Company all damages sustained by him by reason of such alteration.

(6) The Company shall maintain in good order and repair the railway on a road and if within a city or town the surface of the roadway between the rails and for the space of 36 inches outside each rail. The character of the maintenance shall be in keeping with the road on which the railway has been constructed.

(7) The Company shall at once repair any damage occasioned to any sewer, drain, gas or water main or works for the supply of electricity during the construction or maintenance of any railway on a road.

(8) If the Company deem it necessary that any road or part thereof should be closed it shall deposit in the office of the Local Authority having jurisdiction over such road a map and description of the road or part thereof proposed to be closed and shall notify in the *Queensland Government Gazette* that such map and description are there open for inspection and that any person interested may make an objection to such closure by forwarding to the Company within 30 days after such publication a notice of objection. All such objections shall be duly considered by the Company and it may cause an inquiry to be held into the matter of any such objection. Before any such closure is authorised the Company shall report to the Minister on the proposed closure and any objections thereto and the objectors shall be heard by the Minister if they so desire. Thereupon the Governor in Council may

by Order in Council close such road or part thereof.

(9) If it is found necessary to cross or traverse any tramway the Company shall effect such crossing so as not to impede the efficient working of such tramway and shall to the extent necessary cause a sufficient substituted tramway to be made. The owner of any such tramway who suffers damage by reason of the construction of such crossing or of the substitution of such tramway shall be entitled to recover from the Company all damages sustained by him thereby. The sufficiency of such crossing or of such substituted tramway shall in case of dispute be determined by the Governor in Council.

### **Railway crossing Commissioner's Lands**

43. (a) If it shall be necessary for the railway to cross or traverse any of the railways of the Commissioner such crossings or traversings and the signalling arrangements in connection therewith shall be constructed and operated to the satisfaction of the Commissioner so as not to impede the safe working of the railways of the Commissioner and so as not unnecessarily to obstruct the working thereof. The cost of maintaining and working such crossings or traversings and the signalling arrangements in connection therewith to the satisfaction of the Commissioner shall be borne by the Company. The Commissioner may agree with the Company to reconstruct at the expense of the Company any part of his railways and to make any temporary deviation thereof to facilitate construction of the railway of the Company. Any additional expense which the Commissioner may at any time be required to incur in operating his railway by reason of the existence and operation of the railway of the Company shall be borne by the Company. If any dispute shall arise between the Company and the Commissioner under the provisions of this clause the question shall be determined by the Governor in Council.

(b) The Governor in Council at the request of the Company may authorise the Company either temporarily or permanently to use such land of the Commissioner as it may require for the purpose of its railway on such terms and conditions as the Governor in Council may fix.

(c) The Company shall at the cost and expense of the Company if and whenever required by the Commissioner so to do by reason of any diversion or regrading or other rearrangement whatsoever of any part of the



Commissioner's railway system crossed or traversed by the railway or of the Commissioner's railway system on any lands of the Commissioner used by the Company under the provisions of this clause reconstruct alter or take up to the satisfaction of the Commissioner any traversing or crossings or other works constructed on the lands of the Commissioner under the provisions of this clause. If such work is not carried out by the Company after reasonable notice by the Commissioner, the Commissioner may carry out such work and recover the cost thereof from the Company in any Court of competent jurisdiction.

(d) Should the Company fail (after having been given reasonable notice of the requirements of the Commissioner) to construct or maintain any such traversings, crossings or other works to the satisfaction of the Commissioner, the Commissioner may carry out such construction and maintenance at the expense of the Company and may recover the cost of such in any Court of competent jurisdiction.

(e) If at any time the railway is abandoned or ceases to be operated then any crossings or traversing or other works of the Company constructed on the Commissioner's lands under the provisions of this agreement may be dismantled removed or taken up by the Commissioner and the Commissioner's railway system and land restored to their former state and the Commissioner may recover the cost of so doing from the Company. Any material so dismantled removed or taken up by the Commissioner remaining in the possession of the Commissioner at the expiration of twelve months shall vest in the Crown.

The Company hereby agrees that it will indemnify and save harmless the Commissioner from and against all actions, proceedings, claims, demands, costs, losses, damage and expense not being occasioned by the wilful act or the neglect of the Commissioner his servants or agents which may be brought against or made upon the Commissioner or which the Commissioner may pay, sustain or be put to by reason of or in consequence of or in connection with the exercise or attempted exercise by the Company or any other person of the rights or privileges granted under this clause and (without limiting the generality of any of the provisions hereinbefore made) by reason of or in connection with the construction, installation, maintenance, use, occupation and taking up by the Company of the said crossings or traversings and every part thereof (including any replacement thereof) or of the use of the Commissioner's lands or any part thereof and whether in respect of any loss of life of or of injury or damage

to any person (including any agent or servant of the Company) or property including any property of the Commissioner or of the Company: And the Company doth hereby release and discharge the Commissioner from any such action, proceeding, claim, demand, cost, loss, damage or expense which but for the provisions hereof might be brought against or made upon the Commissioner by the Company: Provided however but without prejudice to the provisions of this paragraph the Commissioner will use his best endeavours to ensure that the Company is advised in writing without undue delay of any actions, proceedings, claims or demands as aforesaid.

### **Mining under Railway**

**44.(1)** It shall not be lawful to carry on any mining operations whatever under any land used for the purposes of the railway unless the consent in writing of the Company or of the Minister has been obtained.

**(2)** It shall not be lawful for the owner, lessee or occupier of any mines or minerals lying under or near the railway or land used for the purposes of the railway to make any tunnel or excavation which might render such railway or land unsafe to use for railway purposes or to work any mine so as to endanger the railway or interfere with the stability thereof.

**(3)** The Minister at the request of the Company shall from time to time authorise some competent person to make such examination and enquiries as are necessary to ascertain whether the provisions of the last preceding subclause are complied with and every person so authorised by the Minister may at all reasonable times by day and night enter, inspect, examine and make a survey of any mine and every part thereof but so as not to impede or obstruct unnecessarily the working of the mine.

**(4)** If it appears that any such mine has been or is being or is likely to be worked so as to endanger the railway or interfere with the stability thereof the Company in addition to any other remedy may require the owner, lessee or occupier thereof to construct such works and adopt such means as are necessary for making safe such railway and preventing injury thereto and if such owner, lessee or occupier shall not forthwith so do the Company may itself construct such works and adopt such means as are necessary for making safe the railway and preventing injury thereto and recover the expense of so doing from such owner, lessee or occupier by action in any Court of competent jurisdiction.

(5) Before authorising the Company to use for the purposes of the railway any land on which mining operations are carried on the Minister may require the Company to pay compensation to such amount as is determined by the Minister to any person who in the opinion of the Minister may be prejudicially affected by the provisions of this clause.

### **Construction of Railway**

45.(1) The gauge of the railway shall be four feet eight and one-half inches or such other gauge as is agreed upon between the Minister and the Company.

(2) The railway and all engines and rolling stock shall be soundly constructed for the purposes for which it and they are required and shall possess adequate factors of safety and the system of working the railway shall be such as to be technically sound, safe and suitable.

(3) The Company will from time to time construct such extensions and deviations of the railway and such branch railways as may be necessary for the purposes of the business of the Company pursuant to the provisions of this Agreement and the provisions of this Agreement and the term "railway" shall extend to and include every such deviation, extension or branch railway.

(4) In operating the railway the Company will comply with all statutory provisions for the time being in force relating to safety.

(5) The Commissioner for Railways and the Company may at any time mutually agree that the Commissioner shall work the railway either in connection with any Government railway or not and use thereon any rolling stock the property of the Commissioner; and thereupon subject to such agreement the Commissioner shall have the same control over the railway as if it were vested in him.

(6) The Company may construct, use and employ on the railway locomotive engines or other motive power and rolling stock to be drawn and propelled thereby and also machinery, appliances and plant of every kind and may use for the operation thereof any kind of fuel.

(7) Before the railway or any part thereof is deemed to be completed and ready for traffic the Minister shall direct that it be inspected at the expense of the Company by a competent engineer appointed by the Minister who shall

certify to the Minister whether in his opinion the railway has been constructed wholly in accordance with the provisions of this Agreement and is safe and fit for traffic and the Minister shall inform the Company accordingly.

(8) Any person acting under the authority of the Minister, shall at all times during the construction of the railway and after its completion be allowed to inspect the railway without let or hindrance and at the expense of the Company and on his report that the railway or any portion thereof is unsafe, the Minister may by order prohibit the continuance of traffic thereupon until the railway is safe and fit for traffic; and if the Company disobeys such order the Minister may impose upon the Company a fine not exceeding two thousand dollars for each and every day during which such disobedience continues, such sum to be recovered by complaint before any Warden.

(9) If any dispute shall arise between the Minister and the Company under subclause seven or eight hereof, the dispute shall be determined by the Tribunal hereinafter constituted.

(10) The Company may with the consent of the Minister, substitute an approved system of chutes, conveyor belts, aerial ropeways, pipelines or other such methods of conveyance for the whole or any portion of the railway.

### **Damages in respect of Grass Fires**

46. In any action brought against the Company to recover damages or compensation in respect of loss or injury by reason of the burning of the grass or other property of any owner or occupier of land alleged to have been occasioned by sparks from any railway engine or from some act or default of any employee for whose act or default the Company is liable the court or jury shall not find or assess nor shall judgment be given or entered for the plaintiff for any sum of money exceeding Four thousand dollars; moreover the plaintiff in any such case shall not be entitled to recover any sum of money whatever unless he proves that on his part he has adopted all such measures and precautions for the prevention of fire on and the spread of fire into and upon the land whereof he is owner or occupier as are prescribed by by-laws with the approval of the Governor in Council whether generally or relating to any particular locality, place or

circumstances. The Company shall take all proper precautions by burning off or poisoning grass and other means to prevent fire on lands used for the purposes of the railway.

### **Conveyance of persons and materials**

**47.** Whilst it is intended that the railway should primarily be used for the haulage of coal the Company may use the railway for the carriage of:—

- (a) Employees of the Company and their families;
- (b) Persons associated with or having business dealings with the Company;
- (c) Employees of persons or Companies associated with or having business dealings with the Company and their families;
- (d) Goods belonging to or consigned to or by the Company or otherwise required by the operations of the Company in mining, treating and transporting coal under the provisions of this Agreement.

The Company may make such charges (if any) for the carriage of such persons and goods as are fixed by the by-laws issued by the Company or as are from time to time approved by the Governor in Council.

The Company may also use the railway for the carriage of any other person or goods provided that (except as is hereafter provided) no charge shall be made for such carriage unless in any particular case the Governor in Council approves of the making of a charge, and further that the Governor in Council may restrict or prohibit the carriage of any such persons or goods or classes of persons or goods.

### **Working of Railway**

**48.** The railway shall not be used for the public carriage of passengers or goods except in accordance with the provisions of any agreement which may be entered into between the Company and the Minister with the approval of the Governor in Council. Any such agreement shall contain the following provisions or provisions to the like effect:—

- (a) The charges to be made by the Company for the carriage of passengers and goods shall be such as are from time to time

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agreed upon between the Company and the Minister but failing agreement shall be determined by the Governor in Council.

- (b) The liability of the Company shall not exceed the liability of a common carrier and the Company shall at all times be entitled to the benefits and privileges to which a common carrier shall be entitled;
- (c) Subject as herein provided—
  - (i) all charges for the carriage of passengers and goods shall be at all times charged equally to all persons and at the same rate in respect of all traffic of the same description;
  - (ii) the Company shall not afford or give any undue or unreasonable preference or advantage to any particular person in any respect whatsoever nor shall the Company subject any particular person to any undue or unnecessary prejudice or disadvantage in any respect whatsoever;
  - (iii) no reduction or advance in any charges shall be made either directly or indirectly in favour of or against any particular Company or person using or travelling upon the railway;
  - (iv) subject as aforesaid the Company may make contracts with any person for the carriage of any passengers or goods upon the railway at such rates as are agreed upon between the Company and such person:

PROVIDED ALWAYS HOWEVER THAT—

- (i) the Company shall not be required to carry any passengers or goods to such an extent or at such times or in such manner as might impede or interfere with the efficient and speedy working of the railway for the carriage of the Company's own goods;
- (ii) the Company shall not be required to carry coal or other goods competitive with the coal or other goods produced or sold by the Company except upon terms which will reasonably protect the Company against the competition of such coal or other goods;
- (iii) the Company may make lesser or greater charges for the carriage of passengers or goods referred to in clause 47

hereof or any of them;

- (iv) the Company may carry any passengers or goods without charge;
  - (v) if any dispute shall arise between the Company and the Minister under the provisions of subclause (i) or subclause (ii) of this proviso such dispute shall be referred to the Tribunal for decision;
  - (vi) if the Company shall commit any breach of the provisions of subclause (i) or subclause (ii) of this proviso any person aggrieved by such breach may pursue his remedy against the Company in respect of such breach in any court of competent jurisdiction;
- (d) Accidents shall be reported to the Minister and enquired into by the Company in the same manner as accidents are reported and enquired into by the Minister under the provisions of the Railways Acts and the Governor in Council may direct a formal investigation in the same manner as under the provisions of the Railways Acts and the provisions of sections one hundred and twenty-seven, one hundred and twenty-eight, one hundred and twenty-nine, and one hundred and forty-three of the Railways Acts shall have application accordingly.

### **Use of Railway by Commissioner**

**49.** If at any time the Company is not making use of the railway for the purposes of this Agreement the Minister may request the Governor in Council to direct the Commissioner to take possession of the railway and to work it either with the Company's rolling stock or the Commissioner's or both on such terms as the Governor in Council may determine.

## **PART V—GENERAL**

### **Interpretation of Agreement**

**50.** This Agreement shall be interpreted according to the laws for the time being in force in the State.

### **Sale, &c., of Lands or Works**

**51.(1)** The Company may sell, lease or otherwise dispose or make use of any works which are not for the time being required for carrying on the business of the Company pursuant to the provisions of this Agreement.

**(2)** Nothing in this Agreement shall prevent the acquisition of any of the lands of the Company by the Co-ordinator-General of Public Works, the Commissioner for Railways or the Commissioner of Main Roads subject to the payment of compensation including severance as provided by law.

**(3)** If any land vested in the Crown and granted to and held by the Company under Special Coal Mining Lease pursuant to Part IV of this Agreement is not required by the Company the Company may sell the same and such land shall thereupon be excluded from that Lease. Where the land was previously held for an estate in fee-simple a title in fee-simple shall be granted. In any other case, the land shall be held under a non-competitive perpetual lease without limitation of area under "*The Land Acts, 1910 to 1961.*"

Where any such land is not required by the Company for the time being the Company may, with the consent of the Minister, sublet the same.

### **Power to Mortgage**

**52.** The Company shall be at liberty at all times to borrow money on the security of its works and no mortgage, mortgage debenture or other instrument constituting a mortgage or charge on the lands, works or other property or any part thereof shall require the consent of the Minister or of the Governor in Council.

No mortgage, mortgage debenture or other instrument shall remain a charge on any Special Coal Mining Lease in the event of the determination of this Agreement.



Every mortgage, mortgage debenture or other instrument constituting a mortgage or charge on any Special Coal Mining Lease or the works or any part thereof shall contain the express provision or a provision to the like effect that no mortgagee shall have any greater right to sell or dispose of such Special Coal Mining Lease or works of the Company without the consent of the Governor in Council than the Company itself possesses under the provisions of this Agreement.

No mortgage, mortgage debenture or other instrument shall constitute a mortgage or charge on any Special Coal Mining Lease or the works or any part thereof unless it contains the foregoing express provision or provisions to the like effect.

### **Company may Acquire Land**

**53.** Nothing herein contained shall prevent the Company from acquiring and holding land in freehold or upon any other form of tenure or any mining tenure or any other right, license, privilege or concession whatsoever.

### **Default by Company**

**54.(1)** If the Company—

- (a) within such time as is specified or if no time is specified then within such time as the Governor in Council (or on reference to the Tribunal in manner hereinafter provided the Tribunal) shall consider reasonable fails, neglects or refuses to arrange, carry out, make or undertake any of the borings or other tests specified in clause 11 of this Agreement;
- (b) fails, neglects or refuses to make available to the Minister the reports or results of the borings, pittings and other testing and such other information specified in clause 12 of this Agreement;
- (c) fails, neglects or refuses to expend within the times respectively specified in clause 14 of this Agreement each of the respective amounts in that clause specified;
- (d) fails, neglects or refuses to pay to the State at the time or times when the same shall respectively become payable any sum of

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money payable by way of rent or royalty or otherwise in pursuance of this Agreement;

- (e) within such time as the Governor in Council (or on reference to the Tribunal in manner hereinbefore provided the Tribunal) shall consider reasonable fails, neglects or refuses to carry out the surveys specified in clause 26 of this Agreement;
- (f) fails, neglects or refuses to commence or continue the construction of the works without unnecessary delay;

the Company shall be deemed to be in default under the provisions of this Agreement and in any such case the Minister may give to the Company notice in writing requiring the Company to remedy such default within such reasonable time as may be specified in the notice.

(2) If the Company shall fail, neglect or refuse to comply with the provisions of such notice within such time as is so specified or within such extended time as may be granted by the Minister or the Tribunal the Governor in Council may by notice in writing to the Company determine this Agreement and thereupon subject as hereinafter provided the Company shall forfeit to the Crown freed from all mortgages, encumbrances and charges all lands vested in the Crown and howsoever granted to or held by the Company pursuant to this Agreement and the same shall vest in the Crown accordingly and the rights of the Company under this Agreement shall thereupon cease and determine.

(3) Upon determination of this Agreement in pursuance of the provisions of this clause and subject to the payment by the Company of all moneys then owing by the Company by way of rent, royalty, penalty or otherwise in pursuance of this Agreement—

- (a) the Company shall be granted, if the Company so applies, a Coal Mining Lease or Coal Mining Leases under the provisions of the Coal Mining Acts of the area then comprised in its Special Coal Mining Leases or any part thereof provided that the Company shall remain entitled to the possession of whatever area of the surface within such coal mining lease in respect of which compensation has been paid or is payable by the Company;
- (b) where any land vested in the Crown and granted to and held by the Company under a Special Coal Mining Lease pursuant to the provisions of this Agreement was previously held for an estate in

fee-simple a title in fee-simple shall be granted to the Company on request made by the Company not later than twelve months after such determination.

(4) Subject always to clause 37(6) hereof, twelve months after the determination of this Agreement in pursuance of the provisions of this clause all works remaining on any land formerly included in any Special Coal Mining Lease shall be absolutely forfeited to the Crown unless the Company has been granted either a title to that land in fee-simple or a lease pursuant to this Agreement.

(5) The Company shall not be held to be in default under the provisions of this clause or to have failed to carry out any obligations under this Agreement if such default or failure is caused by act of God, force majeure, floods, storms, tempests, war, riots, civil commotions, strikes, lockouts, shortage of labour, transport, power or essential materials, break down of plant, inability in the opinion of the Governor in Council to sell or otherwise dispose of coal or any other cause whatsoever beyond the control of the Company.

(6) The failure of the Company to raise the required capital shall not constitute an excuse to the Company for non-compliance with any of the provisions of this Agreement and such failure shall not prevent the Minister from giving to the Company notice as aforesaid or prevent the Governor in Council from determining this Agreement as aforesaid.

(7) Where by this Agreement any period of time is fixed during which the Company is required to do any act, matter or thing (including the expenditure of any sum of money) the Governor in Council upon being satisfied that the Company has been prevented or delayed by any of the aforesaid causes from doing that act, matter or thing (or making that expenditure) shall grant to the Company such extended time to do that act, matter or thing (or make that expenditure) as he shall consider equal to the period of the prevention or delay and the Company shall do that act, matter or thing (or make that expenditure) within such extended time so granted by the Governor in Council:

Provided that nothing herein contained shall require the Governor in Council to grant any extension of time which would have the effect of delaying the completion of the construction of the railway by more than three (3) years.

### **Constitution of Tribunal**

**55.(1)** The Governor in Council shall from time to time as required constitute a Tribunal to decide and determine all matters which by this Agreement are required to be or may be referred to the Tribunal for its decision.

**(2)** The Tribunal shall consist of either—

- (a) a Judge of the Supreme Court of Queensland appointed by the Governor in Council; or
- (b) a barrister of not less than ten years' standing appointed by the Governor in Council upon the recommendation of the Chief Justice of Queensland.

**(3)** The Tribunal may be assisted by assessors who shall make such recommendation to the Tribunal as they or any of them shall think fit.

**(4)** Upon each reference to the Tribunal such assessors shall be appointed to assist the Tribunal as are agreed upon between the Minister and the Company. The Tribunal may appoint any assessor or assessors.

**(5)** The Tribunal after hearing the representations of all parties interested and considering the recommendations (if any) of the assessors will make such recommendation and report to the Minister as is proper or such Order as is just.

**(6)** Every such Order of the Tribunal shall subject to review as hereinafter provided remain in force for such period as is fixed by the Order and every such Order shall be published in the *Queensland Government Gazette* and shall be binding upon all persons and shall have the force of law.

**(7)** The Minister may of his own volition and shall when required by the Company refer to the Tribunal any matter requiring decision under the provisions of this Agreement.

**(8)** The Minister may at any time of his own volition or at the request of the Company refer to the Tribunal for consideration and report to the Minister any matter relating to the undertaking of the Company or otherwise arising under the provisions of this Agreement and the Tribunal shall make such report to the Minister as it thinks proper.

**(9)** The Tribunal shall be deemed to be a commission within the meaning

of “*The Commissions of Inquiry Acts, 1950 to 1954,*” and the provisions of such Acts shall apply to the Tribunal and all the proceedings thereof.

(10) Every party to proceedings before the Tribunal shall unless the Tribunal otherwise directs pay his or its own costs. The Tribunal may order that any party to any proceedings pay (whether by way of a lump sum or otherwise) the whole or such part as the Tribunal may think fit of the costs of and incidental to those proceedings incurred by any other party thereto or any costs incurred by the Tribunal including the remuneration of any assessor or assessors.

In case of difference as to the amount (other than a lump sum) of any costs directed to be paid as aforesaid such costs shall be taxed by a taxing officer of the Supreme Court of Queensland as if the proceedings before the Tribunal had been proceedings in the Supreme Court. A direction or decision of the Tribunal in so far as it relates to costs may be enforced in the same manner as a judgment or order of the Supreme Court.

### **Reference to Tribunal**

56. (a) In case any question, difference or dispute shall arise between the State and the Company concerning any clause or anything contained in this Agreement or the meaning or construction of any matter or thing in any way connected with this Agreement or the rights, duties or liabilities of either the State or the Company under or in pursuance of the provisions of this Agreement (including any question whether the Company is in default under any provision of this Agreement) save and except any matter or thing which under the provisions of this Agreement is in the discretion of the Governor in Council or is required to be agreed upon between the State and the Company or if any matter whatsoever is by this Agreement required to be referred to the Tribunal then and in every such case such question, difference or dispute, matter or thing shall be referred to the Tribunal the constitution of which is herein provided.

(b) In case any question, difference or dispute shall arise between a Local Authority and the Company concerning any matter or thing in any way connected with the undertaking of the Company or arising out of the operations of the Company under the provisions of this Agreement within or affecting the area of the Local Authority save and except any matter or thing which under the provisions of this Agreement is in the discretion of

the Governor in Council or is required to be agreed upon between the State and the Company then and in every such case such question difference or dispute may upon request made to the Minister by either the Local Authority or the Company be referred to the Tribunal the constitution of which is hereinafter provided.

### **State not to impair Rights of Company**

57. Subject to the due observance by the Company of its obligations under this Agreement and subject also in the case of any leases, licenses or rights granted or extended under or in pursuance of the provisions of this Agreement to the due observance and performance by the Company of the covenants and agreements on its part therein contained or thereby implied and of the respective Acts under which they are granted (except as modified by this Agreement) the State shall ensure that during the currency of this Agreement and as to any such leases, licenses or rights during the term thereof respectively the rights of the Company under this Agreement and under such leases, licenses or rights as the case may be shall not in any way through any Act of the State be impaired, disturbed or prejudicially affected.

### **Giving of Notice**

58. Any notice, consent, requirement or 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 or the Governor in Council or the Minister (as the case may be) if signed by the Minister and forwarded by prepaid post to the Company at its registered office in the State and by the Company if signed on behalf of the Company by the managing director, a director, general manager, secretary or attorney or solicitor of the Company and forwarded by prepaid post to the Minister at his office in Brisbane in the said State and any such notice, consent, requirement 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.

**FIRST SCHEDULE**

*Counties of Dawson and Ferguson, parishes of Banana, Benleith, Capayan, Fairview, Kianga, Moura and Woolthorpe*

Nett area about 119 square miles

All the lands comprised within the boundaries as shown on Mines Department Plan No. AC269 held at the Department of Mines, Brisbane, and a copy of which may be sighted in the Warden's Office, Mount Morgan.

**SECOND SCHEDULE**

**QUEENSLAND**

No.

**“THE THIESS PEABODY COAL PTY. LTD.  
AGREEMENT ACT OF 1962”**

**SPECIAL COAL MINING LEASE**

County

Parish

Date of Lease



ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Australia, and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

**TO ALL TO WHOM THESE PRESENTS SHALL  
COME, GREETING:**

WHEREAS, in conformity with the provisions of “*The Thiess Peabody Coal Pty. Ltd. Agreement Act of 1962,*” and of Part III of an Agreement dated \_\_\_\_\_ made between Our State of Queensland and THIESS PEABODY MITSUI COAL PTY. LTD. a Company duly incorporated and registered in Our said State which Agreement was authorised by the said Act the said Company is now entitled to a Lease of the Land in Our said State described in the Schedule hereinafter written for the purposes hereinafter set forth at the Yearly Rent hereinafter reserved under and subject to the covenants terms and conditions hereinafter mentioned: NOW KNOW YE that in consideration of the premises and of the Yearly Rent covenants provisoes and agreements hereinafter reserved and contained on the part of the said THIESS PEABODY MITSUI COAL PTY. LTD. its successors and permitted assigns to be paid observed and performed WE DO HEREBY for Us Our



## SECOND SCHEDULE (continued)

Heirs and Successors demise and lease unto the said THIESS PEABODY MITSUI COAL PTY. LTD. its successors and permitted assigns the same being hereinafter designated the Lessee ALL THAT Parcel of Land described in the Schedule hereinafter written and for all or any of the following purposes:—

1.2 (a) For mining and/or all purposes necessary directly or indirectly to effectually carry on mining for coal and treatment of such coal therein or thereon;

(b) For erecting thereon any houses, buildings, plant and machinery for use directly or indirectly in connection with such mining or treatment operations;

(c) For residence thereon in connection with any such purposes;

(d) For cutting and constructing thereon water-races, pipelines, drains, dams, reservoirs, tramways, railways, haulage ways and roads to be used in connection with such mining; and

(e) For pumping, raising or obtaining water therefrom to be used in connection with the mining, treatment and transportation of coal and for purposes connected directly or indirectly therewith.

TO HAVE AND TO HOLD the said land and all and singular other the premises hereinbefore mentioned and hereby demised with the appurtenances unto the Lessee for the full term of \_\_\_\_\_ years from \_\_\_\_\_ which said term shall be renewable on the Lessee's application made at any time at least three months prior to the expiry of the then current term of this Lease for such further term as the Company may require not exceeding twenty-one years upon the same terms and conditions including the right of renewal except that the rent shall be such rent as shall then be payable for Coal Mining Leases under "*The Coal Mining Acts, 1925 to 1964,*" or any Act passed in amendment thereof or substitution therefor, saving and excepting unto Us Our Heirs and Successors all gold and minerals other than coal (the term "minerals" to have the same meaning as in "*The Mining on Private Land Acts, 1909 to*

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<sup>2</sup> For leases granted under Part III.

## SECOND SCHEDULE (continued)

1956”) and all petroleum (the term “petroleum” to have the same meaning as in “*The Petroleum Acts, 1923 to 1962*”) and helium found in association with petroleum found in the said land: AND ALSO reserving unto Us Our Heirs and Successors and to such persons as shall from time to time be duly authorised by Us in that behalf during the term of this Lease or any renewal thereof the free right and privilege of access including ingress egress and regress into upon over and out of the said land for the purpose of searching for and/or the operations of obtaining any gold mineral (other than coal) or petroleum and helium found in association with petroleum Yielding and Paying unto Us Our Heirs and Successors during the continuance of this Lease in advance on or before the thirty-first day of December in each year into the hands of Our Treasurer for the time being at the Treasury in Brisbane in Our said State the Yearly Rental at the rate presently prescribed by subsection (4) of section 11 of “*The Coal Mining Acts, 1925 to 1964*” AND ALSO paying royalty within Thirty days at the close of each month at the rate of Ten cents (10c) per ton of coal won from the said land.

PROVIDED ALWAYS and these presents are upon the conditions following, that is to say:—

- (i) That the Lessee shall well and truly pay or cause to be paid unto Us Our Heirs and Successors the rent and royalty hereby reserved when and as the same shall become payable in manner hereinbefore appointed for that purpose;
- (ii) That the Lessee shall use the said land continuously and *bona fide* for the purposes for which the same is demised as aforesaid;
- (iii) That the Lessee shall not assign underlet or part with possession of the said land or any part thereof otherwise than in accordance with the provisions of clauses 6, 51 or 52 of the said Agreement;
- (iv) If default is made by the Lessee in the payment of rent the Lease shall at Our option be forfeited but the Lessee may defeat forfeiture by payment of the rent within ninety days of the due date with the addition of a sum by way of penalty equal to interest thereon at the rate of Twenty dollars per centum per annum or such lesser penalty as the Minister may fix but unless the whole

## SECOND SCHEDULE (continued)

of the rent together with the penalty is paid within ninety days from the due date the Lease shall at Our option without any enquiry or other process be forfeited: Provided that the Minister may waive the forfeiture and reinstate the Lease on payment of the arrears of rent due with accrued penalty;

- (v) If the Lessee commits any breach of or fails to observe any of the conditions set out above in the Lease other than as to payment of rent the Minister may give to the Lessee notice in writing requiring the Lessee to make good and rectify such default within such reasonable time as is specified in the notice; and if the Lessee shall fail to comply with the provisions of such notice within such time as is so specified or within such extended time as may be granted by the Minister, the Minister may impose upon the Lessee a fine not exceeding Two thousand dollars, and on non-payment of any such fine this Lease shall at Our option be forfeited it being expressly agreed and declared however that if the Lessee disputes that it is so in default the question whether or not the Lessee is so in default shall be determined by the Tribunal constituted by the said Agreement and the time specified in such notice shall not run until the question is so determined: AND upon the Lease being so forfeited the lands comprised therein shall revert to Us and the rights of the Lessee under this Lease shall thereupon cease and determine:

PROVIDED ALSO that the Minister may waive the forfeiture and reinstate the Lease upon such condition as the Governor in Council may determine;

- (vi)<sup>3</sup> That upon any forfeiture or other determination of this Lease, the Lessee shall have the right subject to payment of all moneys then owing by the Lessee by way of rent, royalty, penalty or otherwise—
- (a) to apply for and have granted a Coal Mining Lease or Coal Mining Leases under the provisions of “*The Coal Mining*

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<sup>3</sup> For leases under Part III.

## SECOND SCHEDULE (continued)

*Acts, 1925 to 1964*” of any part of the said land subject to such mortgages, encumbrances and charges as were immediately prior thereto in existence over the forfeited lands of which the land comprised in such lastmentioned Lease or Leases forms part; provided that the Lessee shall remain entitled to the possession of whatever area of the surface within such Coal Mining Lease or Coal Mining Leases in respect of which compensation has been paid or is payable by the Lessee pursuant to the said Agreement;

- (b) where the same or any part thereof was previously held in an estate in fee-simple, to the grant of a title in fee-simple upon request made by the Company not later than twelve months after such forfeiture or determination;
- (vii) Twelve months after the forfeiture or other determination of this Lease all works remaining on any land formerly included in this Lease shall be absolutely forfeited to the Crown unless the Lessee has been granted a title to that land in fee-simple or a Lease pursuant to the said Agreement;
- (viii) That the Lessee shall permit and suffer all or any person or persons appointed by the Minister for the time being of Our said State in that behalf at all proper and reasonable times during the continuance of this demise and whether the mines or works are working or not without any interruption or disturbance from the Lessee its agents, servants or workmen or any of them to enter into and upon the said land and all works thereon to view and examine the condition thereof and whether the mines or works are worked *bona fide* for the purposes aforesaid and for that purpose to use all and every such works;
- (ix) The Lessee shall not be deemed to have failed to carry out any of its obligations under this Lease if such failure is occasioned by act of God, force majeure, floods, storms, tempests, war, riots, civil commotions, strikes, lock-outs, shortage of labour, transport, power or essential materials, breakdown of plant, inability in the opinion of the Governor in Council to sell or otherwise dispose of coal, or any other cause whatsoever beyond the control of the

## SECOND SCHEDULE (continued)

Lessee;

- (x) In the event of the determination of the said Agreement under the provisions of clause 54(2) thereof, this Lease shall thereupon determine:

PROVIDED LASTLY and notwithstanding anything hereinbefore contained IT IS HEREBY AGREED AND DECLARED that the Lessee may surrender this Lease in respect of the whole or any part of the said land at any time upon giving to the Minister written notice of its intention so to do. In case of a surrender as to part only of the said land the rent hereby reserved shall abate by an amount which bears the same proportion to the said rent as the area of land surrendered bears to the area of the said land.

In these presents the expression "Minister" shall have the same meaning as in clause 1 of the said Agreement.

## ENDNOTES

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 5 July 1996. Future amendments of the Thiess Peabody Coal Pty. Ltd. Agreement 1962 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

agr	=	agreement	pres	=	present
AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
agr	=	agreement	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
			unnum	=	unnumbered

## 4 List of legislation

### **Thiess Peabody Coal Pty. Ltd. Agreement 1962 (Thiess Peabody Coal Pty. Ltd. Agreement Act 1962 sch)**

date of assent of Act 12 November 1962

agr made 19 December 1962 (see proc pubd gaz 19 January 1963 p 201)

as amended by—

#### **proclamation published gazette—**

8 March 1969 pp 800–1

commenced on date of publication

#### **order in council published gazette—**

22 April 1972 p 1763

commenced on date of publication

#### **proclamation published gazette—**

25 May 1974 p 633

commenced on date of publication

#### **order in council published gazette—**

9 November 1974 pp 928–9—“1974 Agr”

agr made 25 October 1974

approved by Governor in Council 7 November 1974

### **Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965 No. 22 s 8 sch 2—“1965 Agr”**

date of assent of Act 27 April 1965

1965 Agr ss 6, 8 commenced 1 April 1968 (see 1965 Agr s 15)

agr made 13 May 1965 (see proc pubd gaz 22 May 1965 p 528)

## 5 List of annotations

**Note—sterling currency references have been substituted by decimal currency references throughout this agreement as required by the Decimal Currency Act 1965 No. 61 s 7.**

### **Interpretation**

- s 2
- def “**Port**” om 1965 Agr s 5(iii)
  - def “**Railway**” om 1965 Agr s 5(iii)
  - def “**the Coal Mining Acts**” sub 1965 Agr s 5(i)
  - def “**the Company**” sub 1965 Agr s 5(ii)
  - def “**the Railway Agreement**” ins 1965 Agr s 5(iv)
  - def “**ton**” ins 1965 Agr s 5(v)
  - def “**Works**” amd 1965 Agr s 5(vi)

### **Surrender of Portion of the Lands described in the First Schedule**

- s 8
- amd o in c pubd gaz 22 April 1972 p 1763

**Term of Part II of Agreement**

**s 10** amd 1974 Agr

**Rental for Prospecting Rights**

**s 17** amd 1965 Agr s 6

**Purposes of Special Coal Mining Lease**

**s 19** amd 1965 Agr s 7

**Rent of Special Coal Mining Lease**

**s 22** sub 1965 Agr s 8(1)

**Term of Special Coal Mining Lease**

**s 23** amd 1965 Agr s 8(2)

**Royalty on Coal Won**

**s 25** amd 1965 Agr s 9

**Coal Produced to be Sold for Export only Except where otherwise Provided**

**s 27** amd 1965 Agr s 10

**Labour and Expenditure required on Special Coal Mining Leases**

**s 28** sub 1965 Agr s 11

**Default by Company**

**s 54** amd 1965 Agr s 13

**Schedule 1**

sub proc pubd gaz 8 March 1969 pp 800–1; 25 May 1974 p 633

**Schedule 2**

amd 1965 Agr s 14



Queensland



*Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965*

# **THIESS PEABODY MITSUI COAL PTY. LTD. RAILWAY AGREEMENT 1965**

**Reprinted as in force on 5 July 1996  
(includes amendments up to 1985 Agreement)**

**Reprint No. 1**

This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
Warning—This reprint is not an authorised copy

# Information about this reprint

This agreement is reprinted as at 5 July 1996. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use standard punctuation consistent with current drafting practice (s 27)
- use aspects of format and printing style consistent with current drafting practice (s 35).

**Also see endnotes for information about when provisions commenced.**

**Queensland**



**THIESS PEABODY MITSUI COAL PTY.  
LTD. RAILWAY AGREEMENT 1965**

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## **THIESS PEABODY MITSUI COAL PTY. LTD. RAILWAY AGREEMENT 1965**

[This is a reprint of the Thiess Peabody Mitsui Coal Pty. Ltd Railway Agreement 1965 set out in the first schedule to the Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965 as amended by the agreements listed in the endnotes.]

NOW THEREFORE subject as hereinafter provided IT IS HEREBY AGREED<sup>1</sup> by and between the parties hereto as follows:—

1. Unless the context otherwise requires the several terms following shall have the meanings respectively assigned to them:—

“**the Act**” means the Act of Parliament of the State of Queensland referred to in clause 2.

“**the Amending Agreement**” means the amending agreement between the State of Queensland and the Company in the form set out in the Second Schedule to the Act.

“**the Commissioner**” means the Commissioner for Railways, the Corporation constituted under “*The Railway Acts, 1914 to 1964*”.

“**the Minister**” means the Minister for Transport or other Minister of the Crown for the time being charged with the administration of the Act.

“**the Principal Agreement**” means the Agreement made the nineteenth day of December One thousand nine hundred and sixty-two between the parties hereto (the Company being therein referred to as “Thiess

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<sup>1</sup> The nonoperative provisions and certain operative provision that do not make textual amendments to the agreement are not reprinted in this reprint. They are reprinted as part of the reprint of the *Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965*, the *Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement Amending Agreement 1966*, the *Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement Amending Agreement 1974*, the *Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement Amending Agreement 1975* and the *Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement Amending Agreement 1985*, which are bound with this reprint.

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Peabody Coal Pty. Ltd.”) in the form set out in the Schedule to “*The Thiess Peabody Coal Pty. Ltd. Agreement Act of 1962*”.

“**Short line railway**” means the line of railway described in clauses 7, 8 and 9.

“**the State**” means the State of Queensland.

“**ton**” means a long ton of two thousand two hundred and forty (2,240) pounds avoirdupois.

“**the Treasurer**” means the Treasurer of the State of Queensland.

and

“**Tribunal**” means the tribunal as constituted by clause 55 of the Principal Agreement.

For the purposes of this Agreement coal transported by the Commissioner by means of the short line railway for the Company or any subsidiary owned or controlled by the Company shall be divided into classes as follows:—

- (i) “contract coal” which shall mean all coal transported from the Company’s Moura coal mines to the Town or Port of Gladstone by means of the short line railway and, at the Commissioner’s option on and after 1st April, 1968, over the existing Moura-Gladstone line of railway; and
- (ii) “other coal” which shall be coal (if any) which is not contract coal.

The singular includes the plural and the plural includes the singular. Any reference to an Act or Acts shall include that Act or those Acts and any Act amending or in substitution therefor.

2. The making of this Agreement is authorised by the Parliament of the State of Queensland expressed in an Act entitled “*The Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act of 1965*”. Upon the making of this Agreement the provisions thereof shall have the force of law as though incorporated in the Act.

This Agreement and any document for the purpose of implementing this Agreement and in particular any security or other document made or

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executed by the Company in connection with the borrowing in the United States of America by the Company of moneys for the purpose of providing the Security Deposit hereinafter referred to shall not be liable to stamp duty under “*The Stamp Acts, 1894 to 1964*”.

**3.** This Agreement may be varied pursuant to agreement between the Minister and the Company with the approval of the Governor in Council by Order in Council and no provision of this Agreement shall be varied nor shall the powers and rights of the Company hereunder be derogated from except in such manner.

**4.(1)** The State shall forthwith take all necessary action with respect to engineering, planning, studies and surveys and the preparation of invitations for tenders and other matters which will permit the construction of the short line railway commencing at the earliest practicable date.

**(2)** The Company shall have the right to consult with the State as to all matters relating to the foregoing.

**5.(1)** The Company shall forthwith take all necessary action to obtain a coal supply contract with Mitsui & Co. Ltd. of Tokyo for the supply of coal in the quantities contemplated by this Agreement in form satisfactory to the Company.

**(2)** The Company shall as soon as possible take all necessary action to effect binding commitments with one or more banks or lending institutions to obtain by way of loan, funds sufficient to provide the Security Deposit moneys to be lodged with the State in accordance with the provisions of this Agreement.

**(3)** As soon as possible after complying with the provisions of subclauses (1) and (2) of this present clause and in any event prior to the Fifteenth day of May One thousand nine hundred and sixty-five, the Company shall give notice to the Minister that it has entered into a coal supply contract with Mitsui & Co. Ltd. in form satisfactory to the Company as aforesaid and shall supply to the Minister satisfactory evidence that it has entered into binding commitments to obtain by way of loan, funds as aforesaid.

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**6.(1)** If the Company shall give the notice and supply the evidence to the Minister as provided by clause 5 then the Minister shall give notice in writing to the Company that the state will proceed with the construction of the short line railway under and in pursuance of this Agreement.

**(2)** If the Company shall fail to give the notice or to supply the evidence to the Minister as provided by clause 5, then the Minister may notify the Company that the State has decided that it will not construct the short line railway and thereupon this Agreement shall be of no force and effect whatsoever and neither party shall have any claim against the other with respect to anything herein contained or implied.

**(3)** The notice required to be given by the Minister under the provisions of subclause (1) or subclause (2) of the present clause shall be published in the *Gazette*.

**7.(1)** The State shall, through the Commissioner, construct and maintain the short line railway commencing at the Company's Moura coal mines in the said State and then proceeding to and terminating at the Company's property at Barney's Point in the town of Gladstone.

**(2)** The Company shall lodge with the Treasurer the Security Deposit moneys more particularly described in subclause (2) of clause 11.

**8.** The location and route of the short line railway will be generally as shown on the map attached hereto as the Appendix. Such location and route are based on existing preliminary engineering surveys and studies made by or on behalf of the Company and may be changed if further studies to be made by the Commissioner show such changes to be desirable. Any material change in the location and route from that shown on such map shall be as agreed upon between the Minister and the Company.

**9.** The short line railway shall consist of a track of three feet six inches (3' 6") gauge and shall be built to the specifications of the Commissioner (with such departures therefrom as the Minister may approve) and shall be so designed and constructed as to handle locomotives and rolling stock which will be capable of transporting thereover at least Five million (5,000,000) tons of coal per annum. The short line railway shall be initially



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equipped with locomotives and rolling stock capable of transporting thereover Three million (3,000,000) tons of coal per annum. The Commissioner shall consult with the Company as to the quantity, type and design of such locomotives and rolling stock so that such locomotives and rolling stock will be suitable for the operations of the Commissioner and the Company.

**10.(1)** The Company shall have the right to consult with the State as to all matters relating to the construction of the short line railway including the acceptance of tenders and the State shall obtain the prior approval of the Company to all tenders before acceptance thereof: Provided always that in the absence of such approval within fourteen (14) days after having been referred to the Company the Commissioner may nevertheless accept any tender if he is satisfied that the tenderer is the lowest tenderer capable of satisfactory performance of the contract for which such tender is to be accepted.

**(2)** Subject to the provisions of clause 15 the State shall cause the short line railway to be completed and placed in operation not later than the Thirty-first day of March One thousand nine hundred and sixty-eight.

**11.(1)** The State and the Company are agreed that the aggregate amount of new capital required for the construction and equipping of the short line railway (inclusive of interest during construction and the cost of raising the necessary moneys) is approximately Twenty-seven million five hundred thousand dollars (\$27,500,000) Australian currency.

**(2)** The Company hereby undertakes and agrees with the State that when so requested by the Treasurer progressively as the short line railway is constructed it will lodge with the Treasurer by way of Security Deposit for the due performance by the Company of its obligations and undertakings under this Agreement such sums of money at such times as the State shall so require to a total of Fourteen million eight hundred thousand dollars (\$14,800,000) Australian currency.

**(3)** The Treasurer shall consult and co-operate with the Company in scheduling payments required to be made by the Company by way of Security Deposit moneys as aforesaid which shall be paid by way of not

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more than five (5) instalments of not less than the Australian equivalent of Three million U.S. Dollars (U.S. \$3,000,000) on dates to be specified by the Treasurer on not less than fifteen (15) days' notice.

(4) The Security Deposit moneys lodged by the Company as hereinbefore provided shall be invested by the Treasurer in Commonwealth Inscribed Stock redeemable on the Fifteenth day of September, One thousand nine hundred and seventy-four and the Fifteenth day of September One thousand nine hundred and eighty-five bearing interest at the rate of five per centum (5%) per annum on the 15th March and 15th September of each year which stock the State shall make available for such purposes at par whereupon the stock shall be held in trust by the Treasurer for the Company pursuant to the terms of this Agreement.

During the period of ten (10) years commencing on the First day of April 1968 the Security Deposit moneys lodged by the Company with the Treasurer as hereinbefore in this clause provided shall subject to the provisions of clauses 12 and 13 be refunded to the Company by the State in the following annual amounts which shall be divided into quarterly payments to be agreed upon between the Treasurer and the Company:

Year Commencing 1st April	Refund of Security Deposits \$
1968 .....	1,172,000
1969 .....	1,232,000
1970 .....	1,296,000
1971 .....	1,360,000
1972 .....	1,430,000
1973 .....	1,502,000
1974 .....	1,578,000
1975 .....	1,658,000
1976 .....	1,742,000
1977 .....	<u>1,830,000</u>
Total .....	<u>\$14,800,000</u>

As the Security Deposit moneys are refunded or forfeited pursuant to the terms of this Agreement, equivalent amounts of the said stock at par shall be released from the said trust.

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(5) Subject to the provisions of clauses 12 and 13 the interest payable on the fifteenth day of March and the fifteenth day of September in each year on the stock so held in trust shall be paid by the Treasurer to the Company forthwith as it is received by the Treasurer. The Treasurer shall also pay to the Company the interest received on stock released from the trust since the previous payment in respect of the period for which it was so held in trust.

12. The following provisions shall apply with respect to the refund of Security Deposit moneys by the State to the Company and to the payment of interest on the Security Deposit as referred to in the immediately preceding clause 11—

- (1) If contract coal of a total tonnage of Two million (2,000,000) tons or more is shipped by the Company during any year of the ten (10) year period commencing on the First day of April 1968 the State shall refund and pay to the Company the full amounts of Security Deposit moneys and interest payable for that particular year in accordance with clause 11.
- (2) If contract coal of a total tonnage of One million five hundred thousand (1,500,000) tons or more but less than Two million (2,000,000) tons is shipped by the Company during any year of the said ten (10) year period referred to in the immediately preceding subclause the State shall refund and pay to the Company such proportion of the amounts of Security Deposit moneys and interest payable for that particular year in accordance with clause 11, as the total tonnage of such contract coal bears to Two million (2,000,000) tons. The difference between the said amounts of Security Deposit moneys and interest thereon payable for that particular year and the amount of such proportionate refund and/or payment as determined in accordance with the provisions of this subclause shall be forfeited to Her Majesty and the Company shall not have any claim in respect thereof.
- (3) If contract coal of a total tonnage less than One million five hundred thousand (1,500,000) tons is shipped by the Company during any year of the said ten (10) year period referred to in subclause (1) the whole of the said amounts of Security Deposit moneys and interest for that year shall be forfeited to Her Majesty

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and the Company shall not have any claim in respect thereof.

- (4) In the event that at any time after the First day of April 1968 the Company shall—
- (i) abandon, terminate or permanently cease its mining operations at its Moura coal mines, of which, failure by the Company for a period of twenty-four (24) consecutive months to ship any coal over the short line railway shall be *prima facie* evidence; or
  - (ii) be wound up under the provisions of the Companies Acts of the State of Queensland otherwise than for the purpose of reconstruction; or
  - (iii) admit or notify the Minister in writing on behalf of the State that it has terminated, abandoned or ended or intends to terminate, abandon or end its use of the short line railway as contemplated by this Agreement or its mining operations pursuant to the Principal Agreement,

then all Security Deposit moneys and interest then held in trust for the Company, except those currently payable to the Company, shall be forfeited to Her Majesty and the Company shall not have any claim in respect thereof.

**13.(1)** Each payment of Security Deposit moneys or interest pursuant to clause 11 shall in the first instance be tentatively assessed and paid and shall be subject to adjustment on the occasion of each subsequent payment and to final adjustment on the final payment for the year.

(2) If at the time of any payment of Security Deposit moneys or interest pursuant to clause 11 the Company has shipped contract coal proportional to the quantity specified in subclause (1) of clause 12 or if in the judgment of the Commissioner such coal to be so shipped for the whole year will be of such quantity the full payment of Security Deposit moneys and interest shall be made in accordance with the provisions of the said subclause (1) and any necessary adjustments shall be made in respect of any preceding payment.

(3) If at the time of any payment of Security Deposit moneys or interest

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pursuant to clause 11 the Company has shipped contract coal proportional to the quantity specified in subclause (2) of clause 12 and if in the judgment of the Commissioner such coal to be so shipped for the whole year will not be in excess of such quantity, the payment of Security Deposit moneys and interest shall be made in accordance with the said subclause (2) and any necessary adjustments shall be made in respect of any preceding payment.

(4) If at the time of any payment of Security Deposit moneys or interest pursuant to clause 11 the Company has failed to ship contract coal proportional to the quantity of One million five hundred thousand (1,500,000) tons as specified in subclause (3) of clause 12 and if in the judgment of the Commissioner the Company will not so ship contract coal for the whole year in excess of One million five hundred thousand (1,500,000) tons no payment of Security Deposit moneys or interest shall be made.

(5) If by reason of any such payments of Security Deposit moneys or interest it shall be ascertained at the end of any year of the ten (10) year period commencing on the First day of April 1968 that the State has refunded and paid to the Company any portion of the Security Deposit moneys and interest thereon in excess of those to which the Company is entitled under and pursuant to the provisions of subclauses (1), (2) and (3) of clause 12 the Company shall immediately on being notified to such effect by the State, refund to the State all moneys and interest so over-paid. If the Company fails within thirty (30) days of the date of the giving of any such notice as in the last sentence referred to, to repay to the State all the moneys so over-paid, the State shall be at liberty to deduct the amount thereof from future refunds of Security Deposit moneys or payments of interest from time to time falling due and payable by the State to the Company, or, in the alternative, to release from the trust created for the Security Deposit moneys pursuant to clause 11, sufficient Stock to recoup the State for such over-payment of Security Deposit moneys and interest.

(6) If any such over-payment by way of refund of Security Deposit moneys or payments of interest occurs in the final year of such period of ten (10) years as aforesaid then the moneys so over-paid shall be and become a debt due and owing by the Company to Her Majesty and may be recovered by the State in any Court of competent jurisdiction.

(7) The Treasurer shall make any such payment as aforesaid to Bank of

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New South Wales at its Principal Office from time to time for the State of Queensland or to such other place as such Bank may from time to time notify for credit of the account of the company and the receipt of such Bank shall be a good and sufficient discharge to the State and the Treasurer for any such payment.

**14.** If for any reason the short line railway is not completed and placed in operation as contemplated by this Agreement, or if construction of the short line railway by the State shall be abandoned, or if this Agreement shall be terminated, cancelled or rescinded by any act or fault on the part of the State, or if the State shall default in the performance of any of its obligations hereunder relating to the construction of the short line railway or the acquisition of the necessary locomotives, rolling stock, and other equipment required for the adequate operation thereof, then and in any such event the State shall after the expiration of a period of ninety (90) days after such failure, abandonment, determination, cancellation rescission or default as aforesaid or after the earlier service by the Company on the Treasurer of notice that the Company will not exercise the option conferred on the Company pursuant to the provisions of clause 28 forthwith pay to the Bank specified in sub-clause (7) of Clause 13 the aggregate amount of all Security Deposit moneys theretofore paid by the Company pursuant to the provisions of this Agreement together with all costs of the Company incurred in obtaining the loans from which such moneys were paid so as to indemnify and hold the Company harmless against monetary loss or losses arising out of the lodgment of Security Deposit moneys by the Company during the construction period.

**15.** For the purpose of clause 14 the failure of the State to complete the short line railway and place such railway in operation by the First day of April 1968 shall not be deemed to be a default if the State shall establish that the short line railway can and will be completed and placed in operation within a reasonable time after that date, but nothing herein contained shall otherwise relieve or be construed to otherwise relieve the State of any of its obligations under this Agreement.

**16.** The State shall on and from the date hereof and until the Thirty-first

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day of March, 1968 make available to the Company increased capacity for the transportation of coal over the Commissioner's existing Moura-Gladstone line of railway and shall transport coal from the Company's Moura coal mines to the Port of Gladstone in annual quantities up to such amount and at such rates as are shown in the following tables:—

**QUANTITY**

From	To	Tons
April 1, 1965 . . . . .	March 31, 1966 . . . . .	1,375,000
April 1, 1966 . . . . .	March 31, 1967 . . . . .	1,650,000
April 1, 1967 . . . . .	March 31, 1968 . . . . .	1,750,000

**RATES**

Tons		Rates
Over	Not Exceeding	
	1,000,000	The applicable freight rates as prescribed by " <i>The Railways Acts, 1914 to 1964,</i> " and the By-laws gazetted thereunder
1,000,000	1,375,000	\$2.90 per ton
1,375,000	1,650,000	\$2.80 per ton
1,650,000	1,750,000	\$2.75 per ton
1,750,000	—	As mutually agreed upon between the State and the Company at a rate not exceeding \$2.75 per ton

The short line railway or any part thereof and any locomotives or rolling stock acquired for use thereon pursuant to this Agreement may be utilised by the State to carry out its obligations under this present clause.

**17.(1)** On and from the First day of April 1968, the Commissioner shall transport for the Company by means of the short line railway such contract

*Thiess Peabody Mitsui Coal Pty. Ltd. Railway  
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coal as shall be offered for shipment by the Company up to a maximum of Three million (3,000,000) tons per annum. The commitment of the State to transport such coal at the rate of Three million (3,000,000) tons per annum is based on a reasonably regular flow of coal shipments by the Company and if the Company shall fail to maintain such flow, the commitment of the State shall be reduced in accordance with such failure by the Company. The freight rates to be paid by the Company for the transportation of contract coal during the period of ten (10) years commencing on such date as hereinbefore in this clause provided shall be on a sliding scale whereby such rates shall decline as tonnage is increased and the State guarantees that such rates shall be the following:—

**TONNAGE OF CONTRACT COAL**

From	To and Including	Overall Rate Per Ton Applicable to Contract Coal
(Tons)	(Tons)	\$
1,000,000 . . . . .	1,499,999 per annum . . . . .	3.00
1,500,000 . . . . .	1,599,999 per annum . . . . .	2.975
1,600,000 . . . . .	1,699,999 per annum . . . . .	2.93333
1,700,000 . . . . .	1,799,999 per annum . . . . .	2.86667
1,800,000 . . . . .	1,899,999 per annum . . . . .	2.79167
1,900,000 . . . . .	1,999,999 per annum . . . . .	2.725
2,000,000 . . . . .	2,099,999 per annum . . . . .	2.64167
2,100,000 . . . . .	2,199,999 per annum . . . . .	2.55
2,200,000 . . . . .	2,299,999 per annum . . . . .	2.45833
2,300,000 . . . . .	2,399,999 per annum . . . . .	2.36667
2,400,000 . . . . .	2,499,999 per annum . . . . .	2.275
2,500,000 . . . . .	2,599,999 per annum . . . . .	2.20
2,600,000 . . . . .	2,699,999 per annum . . . . .	2.15
2,700,000 . . . . .	2,799,999 per annum . . . . .	2.10
2,800,000 . . . . .	2,899,999 per annum . . . . .	2.05
2,900,000 . . . . .	2,999,999 per annum . . . . .	1.98333

(Under One million (1,000,000) tons per annum the Company



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shall pay the applicable freight rates as prescribed by “*The Railways Acts, 1914 to 1965,*” and the By-laws gazetted thereunder.

At or exceeding Three million (3,000,000) tons per annum the freight rates to be paid by the Company shall be as mutually agreed between the State and the Company at a rate not exceeding \$1.94167 per ton).

(2) The foregoing rates (other than for tonnage under One million (1,000,000) tons per annum) shall be subject to escalation by negotiation. If mutual agreement cannot be obtained as to the amount of escalation, then escalation shall be based upon variations in the basic wage for males as determined by the Full Bench of the Industrial Conciliation and Arbitration Commission of Queensland (or such succeeding basic wage fixing authority which might take its place) in effect as at the date of the execution of this Agreement and the percentage by which such freight rates are to be varied shall be one-quarter of the percentage increase or decrease in the said basic wage.

(3) The Company shall have the right to require the Commissioner from time to time to enter into contracts for the shipment of other coal to the Town or Port of Gladstone partly on the short line railway and partly on other railway lines owned or operated by the Commissioner but subject always to—

- (a) the total tonnage of contract and other coal not exceeding Three million (3,000,000) tons (or such greater tonnage as is specified in clause 25) in any one year; and
- (b) the carrying capacity of such other railway lines being adequate for the purpose.

The freight rates applicable to other coal shall be such freight rates as may be agreed between the Minister and the Company. The incremental principle which is the basis of the freight rate structure set out in subclause (1) of this clause shall be observed in reaching such agreement, having due regard to—

- (i) the quantity of contract coal then being shipped and likely to be shipped;
- (ii) the quantity of other coal likely to be shipped and the distance such other coal is likely to be so shipped;

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- (iii) what capital expenditure (if any) is likely to be incurred by the Commissioner to enable such other coal to be shipped; and
- (iv) the relativity of shipping, loading and haulage conditions for other coal as compared to contract coal.

The parties recognise that the State is under no obligation to calculate a freight rate per ton mile from the scale set out in subclause (1) of this clause and to apply such freight rate per ton mile to the tonnage of other coal.

(4) On and from the First day of April, 1968, the Commissioner may at any time, at his option, transport contract coal by any alternative route but so that the rate per ton shall not exceed the rate per ton payable if the coal had been hauled over the short line railway pursuant to the provisions of subclause (1) of this clause.

(5) On and from the First day of April 1968, and until otherwise agreed between the Commissioner and the Company, the Company shall not sell or dispose of the Company's existing railway line from the Company's Moura coal mines to the railway line of the Commissioner at Moura and the following provisions shall apply to such railway line of the Company:—

- (a) such railway line shall be maintained by the Commissioner in good order, repair and condition;
- (b) the Commissioner shall have the right to use such railway line for the transport of coal for the Company and for such other purposes as may be mutually agreed between the Company and the Commissioner; and
- (c) the State shall indemnify and hold the Company harmless against any loss to the Company arising out of any negligence of the Commissioner in respect of the preceding paragraphs (a) and (b).

**18.(1)** The rates set forth in clause 17 are based on rail transportation services supplied on the basis of a six day week and a reasonably regular flow of coal shipments offered by the Company. The State shall not claim additional payments or an increase in such rates on account of such transportation services rendered to the Company on holidays or on Sundays for the State's convenience or in order to fulfil its obligations to transport coal in the quantities specified in the said clause 17. If shipments of coal

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shall be required on a holiday or Sunday for the convenience of the Company or by reason of the Company's failure to maintain a reasonably regular flow of coal shipments, the Company shall pay to the State the actual increase in cost to the State resulting from such shipments. For the purposes of this present clause the term "increase in cost" shall mean the excess cost to the Commissioner for transportation services so rendered to the Company as compared with the cost of such services when rendered at standard rates on any week day Monday to Friday.

(2) The State shall make no additional charges to the Company for shunting.

**19.(1)** Monthly accounts for freight payable pursuant to the provisions of clause 17 and increases in cost (if any) payable pursuant to clause 18 hereof shall be rendered by the Commissioner to the Company as soon as possible after the end of each month and the rate shall be determined by converting the quantity of coal shipped from the commencement of the year to an annual basis. The rate shall be re-adjusted each quarter and amended accounts rendered for preceding months. The account for freight for all coal hauled for the Company in any month and amended accounts for previous months shall be paid not later than the end of the month in which such accounts are rendered.

(2) For the purpose of determining the applicable freight rates in any year to be paid by the Company under the provisions of clause 17 and the applicable refund of the Security Deposit moneys and payment of interest thereon to be made by the State under clause 12 and clause 13 and the rebates to be made under clause 20 there shall be added to the actual tonnage of contract coal shipped and transported for the Company (or any subsidiary owned or controlled by the Company) in any such year all tonnage of contract coal which the Company or any such subsidiary would have been able to offer for transportation during such year but for any failure or refusal of the Commissioner to carry such coal provided that such failure or refusal shall not have resulted from any unreasonable demand for transportation services as provided by clause 18.

**20.(1)** No rebate of freight charges tabulated in clause 17 shall be made by the State to the Company for coal transported pursuant to the provisions

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of clause 16 or for freight other than coal transported pursuant to the provisions of clause 22.

(2) If the tonnage of contract coal shipped by the Company in any year of the ten (10) year period commencing on the First day of April 1968 is less than One million five hundred thousand (1,500,000) tons no rebate of freight charges paid in respect thereof shall be made by the State to the Company in respect of that year.

(3) If the tonnage of contract coal shipped by the Company in any of such years as aforesaid is One million five hundred thousand (1,500,000) tons or more the State shall grant the Company a rebate of 9.1 cents per ton on all contract coal so shipped in such year up to an aggregate of Three million (3,000,000) tons.

(4) If the tonnage of contract coal shipped by the Company in any of such years as aforesaid exceeds Three million (3,000,000) tons, the State shall, in addition to the rebate provided in subclause (3) of this clause in respect of the first Three million (3,000,000) tons, grant the Company a rebate on such excess tonnage as the parties shall mutually agree.

21. The State shall give all shipments of coal offered by the Company for transportation by means of the short line railway priority over any and all other shipments by means of such railway and shall not permit any such lastmentioned shipments to interfere with or delay such shipments of coal by the Company.

22.(1) The freight rates for shipments other than coal shipped by the Company over the short line railway shall be the same as the then applicable rates to the Company for contract coal provided that such shipments—

- (i) may be transported in coal transportation equipment; and
- (ii) are directly or indirectly required for use in connection with the Company's coal mining operations or purposes related thereto.

(2) Tonnages of such shipments other than coal shall not be considered in the computation of—

- (i) Security Deposit moneys refund under clause 12;

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- (ii) applicable freight rate under clause 17; or
- (iii) freight rebate under clause 20.

**23.(1)** Subject to the exceptions hereinafter provided in subclauses (3) and (4) of this Clause the State shall not transport coal, coke, or other coal by-products for any person other than the Company or a subsidiary owned or controlled by the Company over the short line railway, for less than a freight rate computed as follows:

To the distance (including any line operated by the Commissioner) such coal, coke or other coal by-products is or are to be hauled for any such person shall be added one-half of the difference between the distance hauled for such person and the distance hauled for the Company and the aggregate distance so obtained shall be multiplied by the applicable per ton mile rate for contract coal.

**(2)** The Commissioner shall be at liberty to fix the freight rates to be charged for any other commodity without regard to the conditions imposed by subclause (1) of this present clause: PROVIDED HOWEVER that the Commissioner shall ensure that any contract entered into by him for the carriage of any other commodity involving the use of the short line railway shall not prevent him from fulfilling his obligations to transport coal for the Company as herein in this Agreement provided.

**(3)** The provisions of subclause (1) of this clause shall not apply to the transport of that coal from the Callide Mine of Thiess Bros. Pty. Ltd. for consumption at the alumina refinery of Queensland Alumina Limited at Gladstone up to an aggregate of one million (1,000,000) long tons in any period of twelve calendar months the first such period beginning on the first day of the month in which such coal in regular shipments as determined by the Commissioner commences to be transported. The exception made by this subclause (3) does not extend to any increased quantity in excess of the said one million (1,000,000) long tons. The Commissioner shall ensure that carriage of such coal shall not prevent him from fulfilling his obligations to transport coal for the Company as herein in this Agreement provided, and in particular shall not diminish the State's obligation to observe the priorities stated in Clause 21. The limited transport of coal for others described in this subclause (3) shall in no event cause the company to furnish any additional security deposit moneys, or to provide any funds for

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capital expenditures for the short line railway.

(4) Notwithstanding the provisions of subclauses (1) and (2) of this Clause, the State and the Company may, by mutual agreement in writing, exempt any person from such of those provisions as may be applicable at such time or times and on such terms and conditions as shall be agreed upon by the State and the Company.

**24.(1)** The State shall accept all shipments of coal or other cargo from the Company for transportation over the short line railway at “Commissioner’s risk”. The agreed basis for reimbursement to the Company for damage to or loss of shipments shall be—

- (i) for coal, the actual cost of mining, producing, preparing and loading coal in cars at the mine site; and
- (ii) for other cargo, the actual cost thereof to the Company.

(2) For the purposes of this present clause the words “Commissioner’s risk” shall mean that the Commissioner takes upon himself with respect to such coal or other cargo so transported by him the ordinary liability of a carrier subject in all respects to the provisions of “*The Railways Acts, 1914 to 1964,*” and to the By-laws gazetted thereunder.

**25.** If the Company shall so request, the State shall take such action as may be necessary to acquire additional locomotives and rolling stock as may be required to increase the capacity of the short line railway from Three million (3,000,000) tons of coal to Five million (5,000,000) tons of coal (or greater if acceptable to the State) per annum. The obligation of the State so to increase the capacity of the short line railway shall be subject to the undertaking of the Company to furnish additional Security Deposit moneys equivalent to six-tenths of the funds required to bring about such increased capacity. The conditions contained in this Agreement relating to the initial Security Deposit moneys shall apply *mutatis mutandis* to the additional Security Deposit moneys to be lodged by the Company for such purpose. In the event of an increase in the capacity of the short line railway pursuant to this present clause freight rates applicable to tonnage shipped by the Company over the short line railway in excess of Three million (3,000,000) tons per annum and all other terms and conditions of this

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Agreement affected by such increase shall be as mutually agreed upon by the State and the Company.

**26.** The State hereby acknowledges that the Company has prior to the commencement of this Agreement delivered to the State one hundred (100) Japanese manufactured coal waggons each of sixty-two (62) tons capacity. IT IS HEREBY AGREED AND DECLARED by and between the parties hereto that the State shall continue to rebate to the Company ten cents (10c) per ton on each ton of coal or contract coal transported for the Company as provided in the letter from the Minister for Transport of Queensland addressed to Messrs. Thiess Peabody Mitsui Coal Pty. Ltd. under date the twenty-first day of September 1964. All other terms and conditions expressed in such letter shall remain in full force and effect: PROVIDED HOWEVER that—

- (i) the abovementioned rebate shall be paid with respect to coal tonnage transported from the Company's Moura coal mines to the Town or Port of Gladstone over either the existing Moura-Gladstone Railway or the short line railway; and
- (ii) when the cost of such coal waggons has been completely amortised as in such letter provided, the Company shall sell to the State for the sum of Two thousand dollars (\$2,000) Australian currency all of the Company's right, title and interest in such coal waggons.

**27.** After the termination of the ten (10) year period commencing on the First day of April, 1968 the State shall continue to provide the Company with rail transportation for its shipment of contract coal over the short line railway for an additional period of ten (10) years at the applicable rates provided for in clause 17 reduced by twenty per centum (20%). The provisions of clause 18 shall apply to any such shipment.

**28.** In lieu of the repayments by the State specified in clause 14 of this Agreement the Company may, at its option, elect to build, construct or complete the construction of the short line railway at its own expense. Such option may be exercised by the Company by the giving of a notice in

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writing to the State within a period of ninety (90) days after the failure by the State to complete and place in operation or the abandonment, termination, cancellation, rescission or default by the State as in clause 14 recited. If the Company in the exercise of such option as aforesaid shall elect to proceed with the construction of the short line railway at its own expense—

- (1) The Company shall pay to the State within ninety (90) days of the date of expiry of the option period the total cost of the short line railway up to the date of any such failure, abandonment, termination, cancellation, rescission or default particularised in such notice as aforesaid, less—
  - (i) the aggregate amount of all payments theretofore made to the State as Security Deposit moneys; and
  - (ii) all amounts included in such cost which have not theretofore been paid by the State;
- (2) The State upon payment to it by the Company as provided by the immediately preceding subclause (1) of this clause shall forthwith assign, transfer and convey to the company—
  - (i) all estimates, surveys, studies, plans and other technical papers of whatsoever kind prepared by or for the State in connection with the construction or preparation for construction of the short line railway;
  - (ii) all contracts or commitments for the construction of the short line railway or for materials or equipment required for use in connection with the construction and operation thereof; and
  - (iii) all of the State's property theretofore purchased or acquired for use in the construction and operation of the short line railway but not the State's title to any land acquired for such construction and operation thereof; and
- (3) The provisions of this Agreement (other than those of this present clause) shall immediately upon the exercise by the Company of such option as aforesaid be of no further force or effect save and except as to any right or obligation accrued or incurred hereunder by either the State or the Company.



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**29.** Nothing in this Agreement contained or implied shall constitute a partnership between the State and the Company.

**30.(1)** IT IS HEREBY EXPRESSLY AGREED AND DECLARED by and between the parties hereto that if—

- (a) the State shall fail to complete and place in operation the short line railway not later than the Thirty-first day of March 1968 (subject however to the provisions of clause 15) or to transport for the Company the contract coal offered for shipment by the Company in terms of this Agreement; or
- (b) the Company shall fail to offer for transportation contract coal in terms of this Agreement,

then the appropriate remedy provided in this Agreement with respect to any such failure whether on the part of the State or the Company shall be the exclusive remedy available to the party not in default.

**(2)** Neither the State nor the Company shall be excused for any such failure by it as aforesaid because such failure has resulted from an act of God, force majeure, floods, storms, tempests, war, riots, civil commotions, strikes, lockouts, shortage of labour transport power or essential materials, break down of plant, or any other cause whatsoever.

**31.** This Agreement shall be interpreted according to the laws for the time being in force in the State of Queensland.

**32.** Any notice, consent, requirement or 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 or the Governor in Council or the Minister or the Treasurer or the Commissioner (as the case may be) if signed by the Minister and forwarded by prepaid post to the Company at its registered office in the State and by the Company if signed on behalf of the Company by the managing director, a director, general manager, secretary or attorney or solicitor of the Company and forwarded by prepaid post to the Minister at his office in Brisbane in the said State and any such notice, consent,

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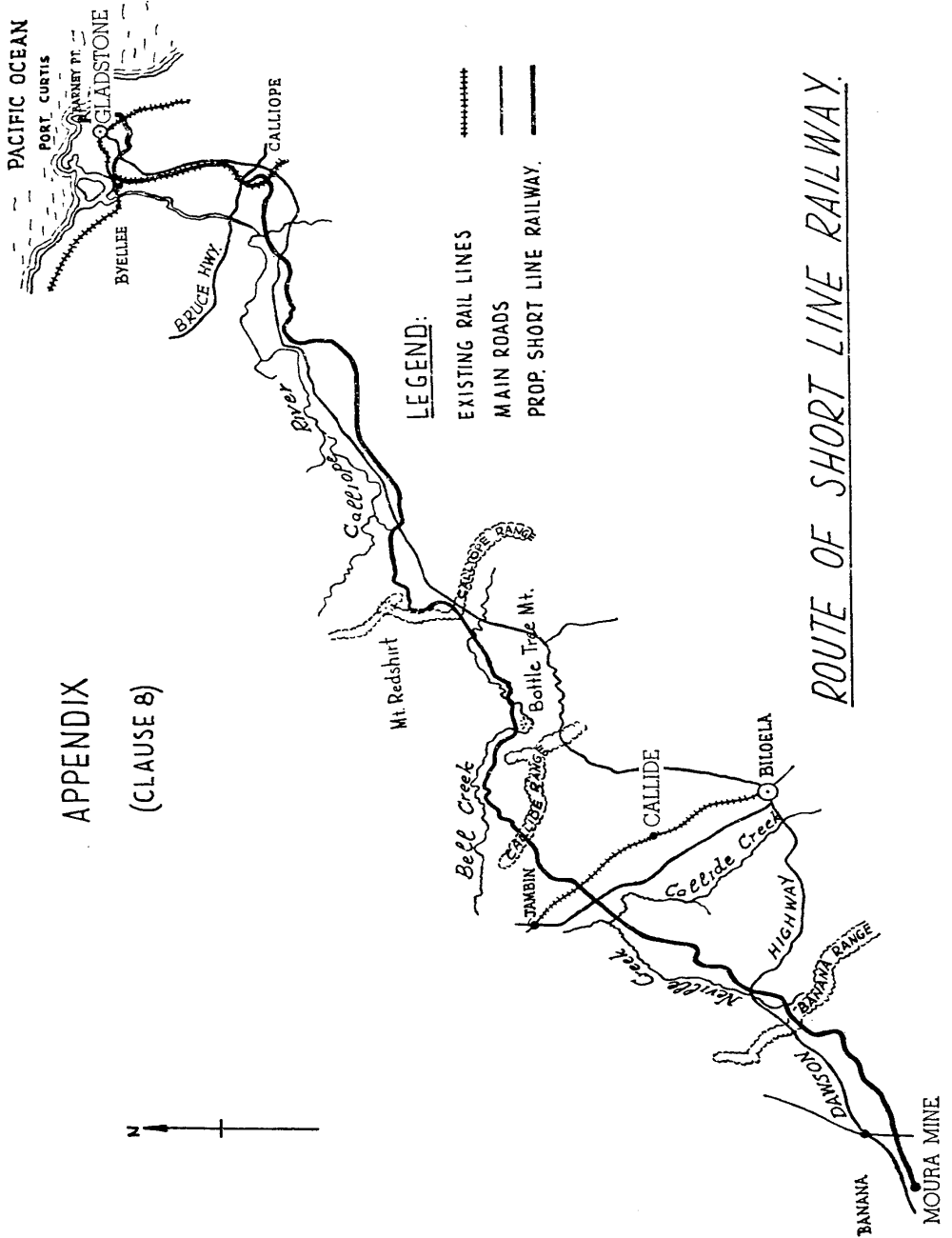
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requirement or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

**33.** In case any question, difference or dispute shall arise between the State or the Commissioner and the Company concerning any clause or anything contained in this Agreement or the meaning or construction of any matter or thing in any way connected with this Agreement or the rights, duties or liabilities of the State, Commissioner, or the Company under or in pursuance of the provisions of this Agreement (including any question whether they or any of them are or is in default under any provision of this Agreement) then and in every such case such question, difference or dispute, matter or thing shall be referred to the Tribunal whereupon the Tribunal shall have power to decide and determine any such reference.

APPENDIX

clause 8



APPENDIX (CLAUSE 8)

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 5 July 1996. Future amendments of the Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement 1965 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

agr	=	agreement	prev	=	previous
AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

## 4 List of legislation

### **Thiess Peabody Mitsui Coal Pty. Ltd. Railway Agreement 1965 (Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965 No. 22 sch 1)**

date of assent of Act 27 April 1965

agr made 13 May 1965 (see proc pubd gaz 22 May 1965 p 528)

as amended by—

#### **orders in council published gazette—**

18 June 1966 p 940—“1966 Agr”

agr made 5 May 1966

approved by Governor in Council 16 June 1966

6 July 1974 pp 1392–3—“1974 Agr”

agr made 25 July 1974

approved by Governor in Council 4 July 1974

15 November 1975 p 1084—“1975 Agr”

agr made 23 December 1975

approved by Governor in Council 13 November 1975

20 April 1985 pp 2220–21—“1985 Agr”

agr made 7 June 1985

approved by Governor in Council 18 April 1985

## 5 List of annotations

**Note—sterling currency references have been substituted by decimal currency references throughout this agreement as required by the Decimal Currency Act 1965 No. 61 s 7 and the 1966 Agr s 2.**

- s 12        amd 1974 Agr s 1
- s 13        amd 1974 Agr s 2
- s 14        amd 1974 Agr s 3
- s 17        amd 1966 Agr
- s 20        amd 1974 Agr s 4
- s 23        amd 1975 Agr; 1985 Agr