Queensland

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ELIZABETHAE SECUNDAE REGINAE

No. 92 of 1988

An Act to amend the Greenvale Agreement Act 1970-1975 in certain particulars, to authorize the making of an agreement to amend and supplement the agreement referred to in that Act and to repeal the Greenvale Agreement Acts 1977, 1978 and 1980

[ASSENTED TO 1ST DECEMBER, 1988]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Queensland Nickel Agreement Act 1988.*

2. Commencement. (1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act shall commence on a date appointed by Proclamation.

3. Arrangement. This Act is arranged as follows:—

PART I—PRELIMINARY (ss. 1-3);
PART II—AMENDMENT OF GREENVALE AGREEMENT ACT (ss. 4-8);
PART III—AUTHORIZATION OF AGREEMENT (ss. 9-10);
PART IV—REPEAL OF ACTS (s. 11);
SCHEDULE 1.

PART II—AMENDMENT OF GREENVALE AGREEMENT ACT

4. Amendment of title. (1) The *Greenvale Agreement Act 1970* is amended in section 1 by omitting the word "Greenvale" and substituting the words "Queensland Nickel".

(2) A reference in any Act passed before the commencement of this section or in any instrument or other document made before the commencement of this section to the *Greenvale Agreement Act 1970* or to that Act as amended to any year specified in the reference shall be construed as a reference to the *Queensland Nickel Agreement Act 1970* or, as the case may be, that Act as amended to the year so specified.

This subsection applies without prejudice to the operation of the *Acts Interpretation Act 1954-1985.*

5. Citation. (1) In this Part the *Greenvale Agreement Act 1970-1975* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Queensland Nickel Agreement Act 1970-1988.*

6. Amendment of s. 4. Variation of Agreement. Section 4 of the Principal Act is amended in subsection (2)—

(a) by omitting the first paragraph and substituting the following paragraph:—

"(2) Any attempt to alter the Agreement otherwise than under the authority or with the approval prescribed by subsection (1) shall be void and of no effect whatever.";

(b) by omitting from the second paragraph the words ", pursuant to section 6 (4) of this Act,".

7. Repeal of s. 5. Treasurer may guarantee certain loans. (1) The Principal Act is amended by repealing section 5.

(2) Upon the repeal of section 5 of the Principal Act every right, interest, obligation or liability existing immediately before the repeal arising, directly or indirectly, because of a guarantee, given by the Treasurer of Queensland on behalf of the State pursuant to that section, shall thereby be extinguished and any cause of action or remedy existing immediately before the repeal in respect of any such right, interest, obligation or liability shall thereby cease to exist.

8. Amendment of s. 6. Proclamations and Orders in Council. Section 6 of the Principal Act is amended by omitting subsections (3) and (4) and substituting the following subsection:—

"(3) Section 28A of the *Acts Interpretation Act 1954-1985* applies to every such Proclamation or Order in Council as if each such instrument were a regulation.".

PART III—AUTHORIZATION OF AGREEMENT

9. Authority to make agreement. (1) The Premier of Queensland is authorized to make, for and on behalf of the State of Queensland, an agreement in, or substantially in, the terms set out in Schedule 1 (in this Act referred to as "the Agreement") between the State of Queensland, of the one part, and the parties referred to in Schedule 1, of the other part.

(2) The date of the making of the Agreement shall be notified by Proclamation.

10. Executed agreement to have force of law. Upon the making of the Agreement the provisions thereof shall have the force of law as if the Agreement were an enactment of this Act.

PART IV—REPEAL OF ACTS

11. Repeal. Each of the Acts specified in this section is repealed—

Greenvale Agreement Act 1977;

Greenvale Agreement Act 1978;

Greenvale Agreement Act 1980.

SCHEDULE 1 [s. 9]

AN AGREEMENT made the day of 1988 between THE STATE OF QUEENSLAND, MEQ NICKEL PTY. LTD. (formerly Metals Exploration Queensland Pty. Ltd.), a company incorporated in the State of Queensland and having its registered office at Level 5, 46 Edward Street, Brisbane in the said State (hereinafter referred to as "MEQ"), GREENVALE QUEENSLAND NICKEL, INC. (formerly Freeport Queensland Nickel, Incorporated), a company incorporated in the State of Delaware in the United States of America and registered as a foreign company in the State of Queensland and having its registered office at Level 5, 46 Edward Street, Brisbane in the said State (hereinafter referred to as "GQN") and NICKEL RESOURCES NORTH QUEENSLAND PTY. LIMITED for and on behalf of NICKEL RESOURCES NORTH QUEENSLAND PTY. LIMITED and another, a limited partnership formed under the laws of the State of Queensland and having its principal places of business at Level 32, Riverside Centre, 123 Eagle Street, Brisbane and at Yabulu in the said State (which limited partnership is hereinafter referred to as "NRNQ") (MEQ, GQN and NRNQ are below, with their and each of their successors and permitted assigns, collectively referred to as "the Companies").

WHEREAS:

(i) MEQ and GQN on the 17th day of December, 1970 entered into an Agreement with the State of Queensland relating to the exploitation of certain deposits of lateritic nickel ore in Queensland and the transport and treatment of such ore (which Agreement as varied by further Agreements made between the State of Queensland of the one part and MEQ and GQN of the other part and dated the 11th day of November, 1971, the 9th day of May, 1974, the 29th day of July, 1974, the 25th day of September, 1974 and the 29th day of August, 1975 is hereinafter referred to as "the Principal Agreement");

(ii) The Principal Agreement was authorized by the *Queensland Nickel Agreement Act 1970-1988* (hereinafter referred to as "the Principal Act");

(iii) Each of MEQ and GQN holds a fifty per centum (50%) interest in the operations carried on pursuant to the Principal Agreement;

(iv) Subject to the retention by GQN of such right title and interest in the Principal Agreement as is provided herein, GQN is desirous of transferring on the date hereof its fifty per centum interest in the benefits and obligations under each of the Principal Agreement and Special Mineral Lease No. 630 granted pursuant thereto to MEQ;

(v) MEQ is desirous of transferring on the date hereof a twelve and one-half per centum (12.5%) interest in the benefits and obligations under each of the Principal Agreement and Special Mineral Lease No. 630 granted pursuant thereto to NRNQ;

(vi) It is desired that NRNQ be made a party to the Principal Agreement and that the Principal Agreement be varied in regard to certain matters;

(vii) Section 4 (1) of the Principal Act provides, *inter alia*, that the Principal Agreement may be varied pursuant to agreement between the Premier of Queensland and the Companies under the authority of any Act;

(viii) The making of this Agreement is authorized by the Parliament of the State of Queensland expressed in an Act entitled the *Queensland Nickel Agreement Act 1988*;

(ix) In consideration of the foregoing recitals the parties hereto desire to vary the Principal Agreement in the manner hereinafter set forth.

NOW IT IS HEREBY AGREED as follows:

AMENDMENTS TO PRINCIPAL AGREEMENT

1. **Part I** of the Principal Agreement is amended by—

(a) deleting clauses 5, 5A and 5B;

(b) deleting the words "either or both" in paragraph (iv) of clause 6 thereof and substituting in their place the word "any" and by deleting the words "either of them" in that paragraph and substituting the words "any of them"; and

(c) inserting the words "under the authority of any Act or" after the words "and the Companies" in clause 7;

2. **Part II** of the Principal Agreement is amended by—

(a) deleting from clause 1 the words "Minister for Mines and Main Roads of Queensland" and substituting "Minister of the Crown for the time being charged with the administration of the laws with respect to mining"; and

(b) deleting from clause 7 the following sentence:—"In considering whether to grant or refuse such consent, the Governor in Council shall have regard to the views of the person or authority who has the care and management of the reserve in question but the grant or refusal of such consent shall remain in the discretion of the Governor in Council." and substituting the following sentence: "In considering whether to recommend the grant or refusal of such consent, the Minister shall have regard to the views of the person or authority who has the care and management of the reserve in question."

3. **Part V** of the Principal Agreement is amended as follows:—

Metrification

(a) In the following clauses, the imperial measurements set out in the second column shall be replaced by the metric measurements set out in the third column.

Clause Number	Imperial Measurement	Metric Measurement
2	"two million seven hundred thousand tons"	"2,743,327 tonnes"
3 (1)	"two million seven hundred thousand tons"	"2,743,327 tonnes"
7 (4) (a)	"1000 tons"	"1,016 tonnes"
7 (4) (a)	"2000 tons"	"2,032 tonnes"
8	"20.5 cents per ton"	"20.1762 cents per tonne"
8	"per ton"	"per tonne"

Substantive Amendments

(b) Clause 6 is deleted and the following clause is substituted:—

"6 (1) The freight per tonne of ore payable in each year of the period of 20 years following the date of first shipment shall (subject to escalation as hereinafter provided in sub-clause (2) of this clause) be the sum of—

(a)—

(i) during the period of 10 years commencing on the date of first shipment, an amount calculated by dividing $1,500,000 by the tonnage carried during the year in question or 2,336,908 tonnes (whichever is the greater) and subtracting 9.8421 cents from the result; or

(ii) after the termination of the period 10 years commencing on the date of first shipment, an amount calculated by dividing $3,000,000 by the tonnage carried during the year in question or 2,336,908 tonnes (whichever is the greater) and subtracting 14.7631 cents from the result;

plus

(b) an amount determined according to the tonnage shipped by the Commissioner during the year in question from the following table:—

Yearly Tonnage	Cents per tonne
1,300,000 to 2,082,895	94.4838
2,082,896 to 2,133,697	93.9917
2,133,698 to 2,184,500	93.4012
2,184,501 to 2,235,302	92.8107
2,235,303 to 2,286,105	92.3186

Yearly Tonnage	Cents per tonne
2,286,106 to 2,336,907	91.7280
2,336,908 to 2,387,709	91.2359
2,387,710 to 2,438,512	90.6454
2,438,513 to 2,489,314	90.1533
2,489,315 to 2,540,116	89.7596
2,540,117 to 2,590,919	89.2675
2,590,920 to 2,641,721	88.8738
2,641,722 to 2,692,523	88.3817
2,692,524 to 2,743,326	87.8896
2,743,327 to 2,794,128	87.3975
2,794,129 to 2,844,930	87.0039
2,844,931 to 2,895,733	86.5118
2,895,734 to 2,946,535	86.0197
2,946,536 to 2,997,337	85.5275
2,997,338 to 3,048,141	85.0354

PROVIDED THAT:

(i) If the yearly tonnage is less than 1,300,000 tonnes then the Companies and the Commissioner shall consult in a bona fide way in relation to the carriage of such low tonnages and endeavour to agree on an amount per tonne to apply under this paragraph (b) which amount would take into account the additional costs per tonne that are occasioned by the carriage of tonnages below 1,300,000 tonnes per annum. If no agreement is reached within 21 days, then the Commissioner shall determine an amount per tonne to apply under this paragraph (b), such amount to be equal to—

A. the amount shown in the above table for the tonnage range 1,300,000 to 2,082,895 tonnes per annum as escalated in accordance with sub-clause 6 (2); plus

B. the amount as assessed by the Commissioner by which the cost per tonne as assessed by the Commissioner to ship the tonnage shipped in the relevant year (such cost to be the sum of the operating and maintenance costs and all other costs incurred by the Commissioner and occasioned by the Companies' shipping such reduced tonnage, converted to a "per tonne"basis) exceeds the cost per tonne as assessed by the Commissioner to ship a tonnage in that year of 1,300,000 tonnes (such cost to be the sum of the operating and maintenance costs and all other costs which in his assessment

would be incurred by the Commissioner shipping such tonnage, converted to a "per tonne"basis).

(ii) If the tonnage of ore shipped by the Commissioner in any year is more than 3,048,141 tonnes, then the tonnage of ore in excess of 3,048,141 tonnes shall be shipped at a rate to be mutually agreed between the Commissioner and the Companies and failing agreement, shall be such rate as the Commissioner in his absolute discretion shall determine.

(2) The amounts per tonne calculated pursuant to paragraph (a) of sub-clause 6 (1) and the respective amounts per tonne set forth in the table in paragraph (b) of sub-clause 6 (1) shall each be subject to escalation. From the date on which this sub-clause (2) comes into operation (it being agreed that there are no claims by the Companies or the Commissioner in respect of the operation of the escalation provisions in respect of the period prior to that date) the following escalation provisions shall apply in respect of each respective monthly account for freight payable pursuant to this Agreement:

(i) The amounts per tonne calculated pursuant to paragraph (a) of sub-clause 6 (1) shall be escalated in respect of each month on the basis of the formula—

$$X_1 = X + X \left(\frac{N_1 - N}{N} \right)$$

Where—

X = the amount per tonne calculated in pursuance of paragraph (a) of sub-clause 6 (1);

X_1 = the amount per tonne to be ascertained inclusive of escalation;

N = $1.12; and

N_1 = the Moving Quarterly Average Effective Net Project Price for the month in respect of which the formula is to be applied, calculated as set out below,

PROVIDED THAT, where X_1 would otherwise be lower than X, no escalation or diminution shall be taken into account.

$$N_1 = \frac{A + B}{C}$$

Where—

A = the sum of the Australian dollar equivalents of the value of each Final Invoice (after deducting any final discounts shown on such Final Invoice and allowable to purchasers pursuant to the Companies' nickel sales contracts), for the sale of nickel, issued by or on behalf of the Companies during the month for which an account is to be rendered by the Commissioner and the two immediately preceding months;

B = the sum of the Australian dollar equivalents of each cash settlement associated with the closing out of contracts entered into by or on behalf of the Companies for the forward sale of nickel on the London Metals Exchange which contracts (whenever entered into) are closed out during the month for which the account is to be rendered by the Commissioner and the two immediately preceding months; and

C = the total mass in pounds of contained nickel sold by or on behalf of the Companies, in respect of which sales Final Invoices were issued during the month for which an account is to be rendered by the Commissioner and the two immediately preceding months;

PROVIDED THAT:

(a) in A and C, "Final Invoice"means an invoice which is neither a preliminary invoice nor an invoice which has been or which the Companies demonstrate will be replaced by a further invoice in respect of the same underlying shipment of product, it being the intention that the aggregate of the Final Invoices for a period shall, as nearly as practicable, reflect the Companies' aggregate net revenue from sales of nickel in that period;

(b) if a Final Invoice is replaced by a further invoice, the value of N_1 shall be

recalculated on the basis of the further invoice and the amount payable or paid in respect of rail freight shall be adjusted accordingly;

(c) B shall not include the cash settlement of any hedging contract that is entered into prior to the date of the agreement whereby this paragraph is inserted;

(d) in relation to A, the Australian dollar equivalent of the value of a Final Invoice shall be calculated on the basis of the monthly average rate of exchange (ascertained in accordance with paragraph (f)) for the month in which the Final Invoice is issued;

(e) in relation to B, the Australian dollar equivalent of the value of a cash settlement shall—

(i) be a positive amount in the event that the Companies are entitled to receive (from their broker or the London Metals Exchange) the cash settlement amount;

(ii) be a negative amount in the event that the Companies are liable to pay (to their broker or the London Metals Exchange) the cash settlement amount; and

(iii) be calculated on the basis of the monthly average rate of exchange (ascertained in accordance with paragraph (f)) for the month during which the contracts are closed out;

(f) the Australian dollar equivalent of an amount expressed in another currency shall be calculated on the basis of the monthly average of—

(i) in the case of an amount expressed in United States dollars, the Hedge Settlement Rates published in the Australian Financial Review for the relevant month and, in the event that such Rates should cease to be so published, the Companies and the Commissioner shall negotiate and use their best endeavours to agree upon an alternative daily rate of exchange for this purpose and if no agreement is reached within 14 days of the first

request by a party for negotiations, the rate shall be such rate of exchange (being the mean of buying and selling rates quoted by a bank carrying on banking business in Australia for large commercial transactions) as is selected by the Commissioner; and

(ii) in the case of an amount expressed in any other currency, the rate of exchange (being the mean of buying and selling rates quoted by a bank carrying on banking business in Australia for large commercial transactions) as is selected by the Commissioner;

(g) within 14 days of the end of each calendar month, the Companies shall calculate the value of N_1 and provide to the Commissioner their calculation together with such details of the calculation and other supporting information and documentation as the Commissioner may reasonably require in order to verify the calculation (such information and documentation to be kept confidential) and the Commissioner may commission an audit of the Companies' records for the purpose of verifying the calculation;

(h) the Companies' auditor shall provide a certificate within 45 days of the end of each financial year setting out independent evaluations of N_1 for each of the months during the preceding financial year;

(i) the Commissioner may at any time also commission audits of the Companies' records solely for the purpose of verifying the value of N_1 provided to him by the Companies for any preceding month;

(j) the value of N_1 calculated by the Companies for the month in respect of which the formula is to be applied shall be the value of N_1 unless and until an audit conducted pursuant to paragraph (g), (h) or (i) concludes that the value should be an other amount, in which case that other amount is the value of N_1 and the amount payable or paid in respect of rail freight shall be adjusted accordingly;

(k) in the event of any difference between the value of N_1 as determined pursuant

to an audit commissioned by the Companies and the value of N_1 as determined pursuant to an audit commissioned by the Commissioner, the latter shall prevail;

(l) an auditor shall have access to such records of the Companies and be provided with such information as he or she may reasonably require in order to conduct the audit; and

(m) whenever there is an adjustment to rail freight pursuant to paragraphs (b) or (j), interest shall be payable on the amount of the adjustment from the date the relevant account was payable (in the case of an adjustment in favour of the Commissioner) or from the date the relevant account is paid (in the case of an adjustment in favour of the Companies) up to the date the adjustment is made, at the prime interest rate for the time being charged by a bank nominated by the Commissioner on overdraft accounts of large corporate borrowers in excess of $100,000 or, if there is no such rate at the time, such other rate as is specified by the nominated bank as being the rate charged by it at that time for loans to large corporate borrowers.

(ii) The respective amounts per tonne in the table in paragraph (b) of sub-clause 6 (1) shall be escalated by the Commissioner in accordance with the following formula as and when the Commissioner becomes aware of any variation in the relevant factors therein and the Commissioner shall notify the Companies of the amount of such escalation. The said amounts escalated in accordance with the formula shall operate on each occasion from the date upon which the variation of the relevant factor took effect.

$$Y1 = Y + (Y - 20.1762 \text{ cents}) \left(0.75 \frac{(wl - w)}{W} + 0.17 \frac{(sl - s)}{s} + 0.08 \frac{(dl - d)}{d} \right)$$

Where—

Y = the amount per tonne determined in accordance with the table in paragraph (b) of sub-clause 6 (1);

Y1 = the amount per tonne to be ascertained inclusive of escalation;

w = average hourly wage paid by the Commissioner at lst August, 1970;

wl = average hourly wage paid by the Commissioner at the date the formula is to be applied;

s = price of heavy steel rail per tonne at lst August, 1970 as specified by the Commissioner;

sl = price of heavy steel rail referred to in "s" above at the date the formula is to be applied;

d = price per litre paid by the Commissioner for distillate at lst August, 1970;

dl = price per litre paid by the Commissioner for distillate at the date the formula is to be applied.

In determining the average hourly wage rate paid by the Commissioner for the purpose of such formula, the following conditions shall apply:—

(a) the hourly wage rates for typical classifications of employees in the various sections of the said line of railway, namely running, locomotive and rollingstock maintenance, track maintenance and station staff, shall be averaged. The number of such rates taken for each such section shall be as near as practicable in accordance with the section's proportion of the total wages paid for the said line of railway;

(b) the hourly wage rate for each classification selected shall include all allowances, penalty rates and loadings actually paid, including the parity prescribed by the State Industrial Commission for the district of the State through which the said line of railway is constructed. The parties to this Agreement expressly agree and declare that the allowances taken into account for the purpose of this formula shall include the allowance made to train crews for operation of multiple header diesel trains since the freight rates are based partly on the use of multiple header diesel trains for the shipment of ore; and

(c) the costs to the Commissioner of any variations in relevant industrial award terms and conditions other than hourly wage rates shall be calculated by the Commissioner and expressed as a cost per hour to the Commissioner and such costs shall be deemed to be variations in hourly wage rates and shall be taken into account in calculation of freight rates under the formula.

(3) When the whole of the freight deposit lodged with the Treasurer pursuant to sub-clause 3 (2) has been offset against

freight payable by the Companies, the freight per tonne calculated in pursuance of sub-clause 6 (1) after allowing for escalation in pursuance of sub-clause 6 (2) shall be decreased by 20.1762 cents.

(4) For any subsequent period after the expiration of 20 years from the date of first shipment, the freight per tonne payable shall be as negotiated between the Minister and the Companies.

(5) For the purpose of calculating the freight rate per tonne of ore payable in respect of any year (but for no other purpose) ore offered for transport by the Companies within the estimated tonnage advised by the Companies pursuant to sub-clause (1) of clause 7 of this Part in respect of each of the two six-monthly periods constituting that year, shall be deemed to have been hauled in that year notwithstanding the failure of the Commissioner to haul the whole of the ore so offered for transport in that year.

(c) Clause 10 is deleted and the following clause is substituted:—

"10 (1) For the purposes of calculating freight payable to the Commissioner the weight of ore shipped in each rail wagon shall be the difference between the gross weight of the wagon as determined by weighing over an electronic weighbridge installed at the Companies' mine at Greenvale and operated by or for the Commissioner and the average tare of the class of wagons of which that wagon is one.

(2) The weighbridge shall be maintained, operated and inspected at the cost of the Commissioner in accordance with the provisions of the *Weights and Measures Act 1951-1983* and any Regulations made thereunder. A copy of each calibration test result shall be supplied to the Companies.

(3) Notwithstanding sub-clause 10 (2), the Companies shall have the right to request a calibration test at any time. If the Companies request calibration tests at intervals considered by the Commissioner to be unreasonable then the Companies shall meet the costs of any such test that establishes that at the time of the test the weighbridge was calibrated to within tolerances permitted by the Act and Regulations referred to in sub-clause 10 (2).

(4) The weighbridge shall be deemed to have malfunctioned if the weighbridge reading for any wagon is more than 10 tonnes above or below its nominated gross weight PROVIDED THAT if the weighbridge reading for any wagon is more than 10 tonnes below its nominated gross weight, the weighbridge reading for such wagon shall be accepted where there is notification on the consignment note or weighbridge tape that such wagon has been partly loaded or where in the reasonable opinion of the Commissioner the weighbridge reading for such wagon is a valid reading. In the event of any such malfunction of the weighbridge or any other cause whatsoever which in the reasonable opinion of the Commissioner results in the weight of any loaded wagon

being incorrectly stated in the weighbridge reading, the average net weight of ore conveyed in those wagons of the appropriate class of wagon for which the weighbridge readings were accepted during the month which is two months prior to the month in which the malfunction or other cause occurred shall for the purposes of this Agreement be deemed to be the weight of ore shipped in such wagon at the time of such malfunction or at the time such other cause occurred.

(5) In the case of GN and GNB rail wagons, unless the Commissioner otherwise consents in writing, the Companies shall ensure that the maximum gross weight per wagon shall not exceed 81.0 tonnes PROVIDED THAT no more than six wagons may be loaded in excess of 81.0 tonnes but not exceeding 82.0 tonnes. Unless the Commissioner otherwise consents in writing, the Companies shall ensure that the maximum gross weight per bogie in the case of GN or GNB rail wagons shall in no event exceed 42.0 tonnes. Unless the Commissioner otherwise consents in writing, the Companies shall ensure that the maximum gross weight per GON wagon shall in no event exceed 71.0 tonnes. Any delays which occur to trains because of the need to adjust overloaded wagons to conform with the above prescribed limits shall be taken into account in determining whether a demurrage charge is payable by the Companies pursuant to sub-clause 7 (4).

(6) The tare of wagons used in the shipping of ore pursuant to this Agreement shall be checked by the Commissioner at regular intervals in accordance with good railway practice as determined by him. For the purpose of assessing the freight due to the Commissioner, the average of the marked tare of the respective class of wagons used for the shipment of ore as determined annually by the Commissioner shall be used.

(7) The date on which the loading/weighing of each shipment of ore shipped by the Commissioner pursuant hereto is completed shall, for the purposes hereof, be deemed to be the date on which such shipment of ore was shipped on the said line of railway."

(d) In clause 12 delete the words "this Part of this Agreement shall be of no force or effect"and substitute the words "the obligations of the Commissioner to ship any further ore shall cease".

(e) In clause 13(2) add the words "nor the Commissioner"after the words "the State".

4. **Part VI** of the Principal Agreement is amended by deleting clauses 4 and 5 and substituting the following clauses:—

"4. The provisions of clause 5 of this Part apply only to water contained in sub-surface sources in the catchment areas of streams flowing into Halifax Bay from and including Stony Creek near Deeragun to and including Christmas Creek near Kurukan (hereinafter in this Part called "the said catchment areas").

5. (1) Subject to subclause (2) of this clause the Companies shall have the right to sink bores and wells and to obtain water from all sub-surface sources in the said catchment areas for their Treatment Plant near Townsville up to a maximum annual quantity of 8638 megalitres and at a maximum rate of 24 megalitres per day. The right to sink bores and wells and to obtain water from sub-surface sources relates to the whole of the said catchment areas and is not confined to any particular location.

If in the opinion of the Commissioner, the quantity of water available from sub-surface sources in the said catchment areas exceeds the quantity allocated to all bore owners in the said catchment areas, the Commissioner may allocate to the Companies an additional volume under the provisions of Part VII of the *Water Act 1926-1968* (or that Act as amended and in force for the time being) of up to 2962 megalitres, over and above the Companies' annual entitlement under this clause of 8638 megalitres.

The additional volume of such water allocated to the Companies shall be subject to the Commissioner's powers under the *Water Act 1926-1968* (or that Act as amended and in force for the time being) to prescribe the time during which water may be taken during any period or the volume of water which may be taken during any year or such other period of time as may be specified.

(2) The provisions of Part VII of the *Water Act 1926-1968* (or that Act as amended and in force for the time being), which relates to artesian and sub-artesian wells will apply in relation to all bores and wells established and to be established by the Companies.

(3) The power of the Commissioner to issue or renew licences to other than the Companies under the provisions of Part VII of the *Water Act 1926-1968* (or that Act as amended and in force for the time being) with a view to granting an entitlement to take water from sub-surface sources in the said catchment areas is not limited by any right granted to the Companies. In issuing or renewing any licence the Commissioner shall ensure, in keeping with best hydrogeologic practice, that the conditions of the licence are such that a supply of water available at the time of such issue or renewal from any existing sub-artesian bores or wells shall not, in his opinion, be unduly diminished.

It is acknowledged that the quantity of water actually obtained annually from sub-surface sources in the said catchment areas by any particular bore owner may vary. A diminution in the quantity of water actually obtained by any particular bore owner at any time shall not necessarily be determinative of a supply being unduly diminished.

Within a period of six months after the passing of the *Queensland Nickel Agreement Act 1988* the Commissioner and the Companies shall confer and agree on appropriate guidelines

for determination and resolution of questions regarding undue diminution. Their intention is to determine guidelines based on the hydrogeology of the said catchment areas and the manner in which technical aspects will be given due weight and consideration in the settlement of any question, difference or dispute concerning undue diminution.

Prior to such agreement on guidelines the Commissioner shall consult with the Companies before granting any licence.

(4) Where the Companies seek to establish a sub-artesian bore or well on land in the said catchment areas owned by another person and are unable to acquire a suitable right from that person to establish and operate the bore or well and to enter upon and occupy such of the land as is reasonably required by the Companies for that purpose or for any ancillary works, the State shall cause action to be taken with a view to resuming the land so required.

The Companies shall reimburse the State—

(a) for compensation to be paid in connection with such resumption; and

(b) for costs incurred by the State in connection with such resumption.

(5) To the extent that the Companies are not able to take water from sub-surface sources in the said catchment areas adequate to their need, the Companies are entitled to negotiate with the Townsville/Thuringowa Water Supply Board for the supply of water to them as major consumers within the operational area of that Board. The Commissioner shall use his best endeavours to facilitate such negotiation."

5. **Part VIII** of the Principal Agreement is amended by deleting clause 11 and substituting the following in its place:—

"11. Nothing in this Agreement contained or implied shall constitute a partnership between the State and the Companies or any of them. Any right or liability of the Companies under this Agreement or any lease or licence granted pursuant to the provisions of this Agreement is several and proportional to their respective interests being, at the date of the agreement authorized by the *Queensland Nickel Agreement Act 1988*, eighty-seven and one-half per centum (87.5%) as to MEQ Nickel Pty. Ltd. and twelve and one-half per centum (12.5%) as to Nickel Resources North Queensland Pty. Limited for and on behalf of Nickel Resources North Queensland Pty. Limited and another, a limited partnership.".

OTHER CLAUSES

6. This Agreement (apart from clause 3) shall come into force on the date on which it is made. Clause 3 shall come into force on the first day of the third calendar month immediately following the date of this Agreement.

7. NRNQ agrees to be bound by the provisions of the Principal Agreement, as amended by this Agreement, as if it had been a party to it.

8. The parties acknowledge that GQN shall retain such right title and interest, and be subject to such obligations, under the Principal Agreement as is necessary and appropriate by reason of its retention of ownership of an undivided interest in the treatment facilities referred to in paragraph (c) in the definition of "Project"in clause 2 of Part I of the Principal Agreement (which undivided interest is hereinafter referred to as "the Retained Property"). GQN shall not, without the consent in writing of MEQ and NRNQ, convey sell transfer assign dedicate dispose of vacate abandon forfeit sub-divide lease sub-lease let grant licences easements or profits a prendre over mortgage charge or otherwise encumber or part with possession of or deal with the whole or any part of the Retained Property, except in accordance with the provisions of any joint venture agreement to which GQN is a party. Any dealing with the Retained Property in contravention of this clause shall be of no force or effect. Save as aforesaid, the parties acknowledge that, save for the exemptions from stamp duty set out in clause 6 of Part I of the Principal Agreement, GQN shall have no further right, title or interest under the Principal Agreement and shall be free of any further obligations under the Principal Agreement. GQN acknowledges to and covenants with each of the other parties to this Agreement that the Principal Agreement may be varied by the other parties to this Agreement in accordance with clause 7 of Part I of the Principal Agreement and that no execution by or consent of GQN shall be necessary in respect of such variation.

9. These presents are supplemental to the Principal Agreement and subject only to such modifications as may be necessary to make the Principal Agreement consistent with these presents the Principal Agreement shall remain in full force and effect and shall be read and construed and be enforceable as if the terms of these presents were inserted in the Principal Agreement by way of addition to it.

10. The provisions of this Agreement shall have the force of law as though enacted in the *Queensland Nickel Agreement Act 1988.*

11. This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon the same instrument.

12. Each of the Attorneys executing this Agreement hereby respectively acknowledges that he has at the time of executing this Agreement no notice of the revocation of the power of attorney under the authority of which he executes this Agreement.

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

SIGNED by THE HONOURABLE MICHAEL JOHN AHERN, Premier of THE STATE OF QUEENSLAND, for and on behalf of the said State in the presence of:

SIGNED by a duly constituted Attorney of MEQ NICKEL PTY. LTD. in the presence of:

SIGNED by a duly constituted Attorney of GREENVALE QUEENSLAND NICKEL, INC. in the presence of:

THE COMMON SEAL of NICKEL RESOURCES NORTH QUEENSLAND PTY. LIMITED was hereunto affixed pursuant to a resolution of the Board of Directors and in the presence of: