



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

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## Reprint note

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Queensland

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

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

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

## Part 1 Preliminary

### 1 Short title

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

### 2 Construction and collective title

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

### 4 Execution of agreement authorised

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*).

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

- (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.

*Editor's note—*

The railway agreement was made on 13 May 1965 (see proc pubd gaz 22 May 1965 p 528).

## **6 Variation of railway agreement**

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

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

- (1) The commissioner for railways, the corporation constituted under the *Railways Act 1914*, shall have and may exercise all

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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

### 8 Execution of amending agreement authorised

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*).

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

- (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.

*Editor's note—*

The amending agreement was made on 13 May 1965 (see proc pubd gaz 22 May 1965 p 528).

## **Part 4**    **Proclamations and orders in council**

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

- (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 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.



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# Schedule 1

## section 4

*Editor's note—*

Consistent with the provisions of the Act, this schedule only contains the proposed agreement authorised to be entered into by the Act as originally enacted. It does not purport to be either the agreement actually entered into or that agreement as amended from time to time.

AN AGREEMENT made the                      day of                      , 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;

NOW THEREFORE subject as hereinafter provided IT IS HEREBY AGREED 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 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 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.
- 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.

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- (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 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 Thirteen million seven hundred and fifty thousand pounds (£13,750,000) 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 Seven million four hundred thousand pounds (£7,400,000) 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 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<br>1st April | Refund of<br>Security Deposit<br>£ |
|------------------------------|------------------------------------|
| 1968.....                    | 586,000                            |
| 1969.....                    | 616,000                            |
| 1970.....                    | 648,000                            |
| 1971.....                    | 680,000                            |
| 1972.....                    | 715,000                            |
| 1973.....                    | 751,000                            |
| 1974.....                    | 789,000                            |
| 1975.....                    | 829,000                            |
| 1976.....                    | 871,000                            |
| 1977.....                    | 915,000                            |
| Total.....                   | <u>£7,400,000</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.

- (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 neither the Company nor the Trustee specified in subclause (7) of clause 13 shall 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 and neither the Company nor the Trustee specified in subclause (7) of clause 13 shall 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 neither the Company nor the Trustee specified in subclause (7) of clause 13 shall 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 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 to the Trustee specified in

subclause (7) of this present clause, 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 upon the request in writing of Mellon National Bank and Trust Company of Pittsburgh, Pennsylvania, U.S.A. the Trustee under a Trust Indenture between the Company and the said Trustee, shall make any such payment as aforesaid to any Bank in the State of Queensland designated by such Trustee for the account of such Trustee and the receipt of such Trustee or Bank as aforesaid shall be to the State and the Treasurer a good and sufficient discharge 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 a Bank in Brisbane nominated by the Trustee referred to in subclause (7) of clause 13 for the account of the Trustee 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 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     | 29s. per ton  |
| 1,375,000 | 1,650,000     | 28s. per ton  |
| 1,650,000 | 1,750,000     | 27s. 6d. per ton  |
| 1,750,000 | —             | As mutually agreed upon between the State and the Company at a rate not exceeding 27s. 6d. 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 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

## Schedule 1

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<br>Rate<br>Per Ton<br>Applicable<br>to<br>Contract<br>Coal |           |
|---------------------|-----------------------------|--|-----------|
| (Tons)              | (Tons)                      | <i>s.</i>  | <i>d.</i> |
| 1,000,000 . . . . . | 1,499,999 per annum . . . . | 30   | 0         |
| 1,500,000           | 1,599,999 per annum . . . . | 29   | 9         |
| 1,600,000           | 1,699,999 per annum         | 29   | 4         |
| 1,700,000           | 1,799,999 per annum         | 28   | 8         |
| 1,800,000           | 1,899,999 per annum         | 27   | 11        |
| 1,900,000           | 1,999,999 per annum         | 27   | 3         |
| 2,000,000           | 2,099,999 per annum         | 26   | 5         |
| 2,100,000           | 2,199,999 per annum         | 25   | 6         |
| 2,200,000           | 2,299,999 per annum         | 24   | 7         |
| 2,300,000           | 2,399,999 per annum         | 23   | 8         |
| 2,400,000           | 2,499,999 per annum         | 22   | 9         |
| 2,500,000           | 2,599,999 per annum         | 22   | 0         |
| 2,600,000           | 2,699,999 per annum         | 21   | 6         |
| 2,700,000           | 2,799,999 per annum         | 21   | 0         |
| 2,800,000           | 2,899,999 per annum         | 20   | 6         |
| 2,900,000           | 2,999,999 per annum         | 19   | 10        |

(Under One million (1,000,000) tons per annum the Company shall pay the applicable freight rates as prescribed by “*The Railways Acts, 1914 to 1964,*” 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 19s. 5d. 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;

- (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 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 an 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 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 11.1 pence 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.
- (5) The Treasurer upon the request in writing of Mellon National Bank and Trust Company of Pittsburgh, Pennsylvania, U.S.A., the Trustee under a Trust Indenture between the Company and the said Trustee, shall make payment of any such rebate as aforesaid to any Bank in the State of Queensland designated by such Trustee for the account of such trustee and the receipt of such trustee or Bank as aforesaid shall be to the State and the Treasurer a good and sufficient discharge for any such payment.
- 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;
- (ii) applicable freight rate under clause 17; or
- (iii) freight rebate under clause 20.

23.(1) 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.

- 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 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 one shilling (1s. 0d.) 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 One thousand pounds (£1,000) 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 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.
- 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—

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- (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.

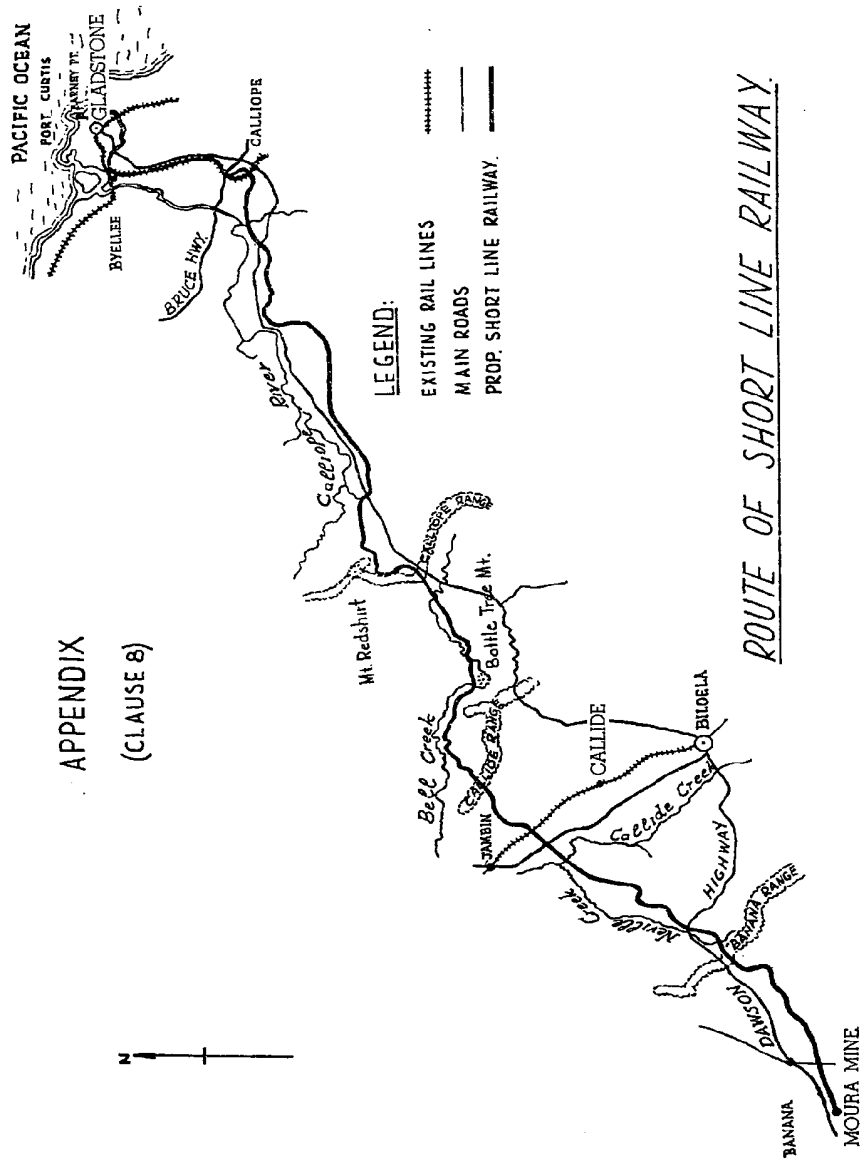
- (2) Neither the State nor the Company shall be excused for any such failure by it as aforesaid because such failure has resulted from an act of God, force majeure, floods, storms, tempests, war, riots, civil commotions, strikes, lockouts, shortage of labour transport power or essential materials, break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

IN WITNESS WHEREOF

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## Schedule 2

### section 8

*Editor's note—*

Consistent with the provisions of the Act, this schedule only contains the proposed agreement authorised to be entered into by the Act as originally enacted. It does not purport to be either the agreement actually entered into or that agreement as amended from time to time.

AN AGREEMENT made the                      day of                      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 £8,000,000 and that it had issued capital of not less than £2,000,000 and a further sum of not less than £2,000,000 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 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 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.

5. Clause 2 of the Principal Agreement is amended—
  - (i) by deleting therefrom the definition “the Coal Mining Acts” and inserting in lieu thereof the following definition:—

“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;”;
  - (ii) by deleting therefrom the definition “the Company” and inserting in lieu thereof the following definition:—

“the Company” means Thiess Peabody Mitsui Coal Pty. Ltd. its successors and permitted assigns;”;
  - (iii) by deleting therefrom the definitions “Port” and “Railway”;
  - (iv) by inserting therein after the definition “Railway Acts” the following definition:—

“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;”*”;
  - (v) by inserting therein after the definition “the State” the following definition:—

“ton” means a long ton of two thousand two hundred and forty (2,240) pounds avoirdupois;”;
  - (vi) by deleting from the definition “Works” the word “railway”.
6. Clause 17 of the Principal Agreement is amended by deleting from the first paragraph thereof the words and figures “Two pounds thirteen shillings and four pence (£2 13s. 4d.) per square mile per annum” and inserting in lieu thereof the words and figures “ten shillings (10s.) per acre per annum”.

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7. Clause 19 of the Principal Agreement is amended by deleting therefrom subclause (2).
- 8.(1) Clause 22 of the Principal Agreement is deleted and the following clause inserted in lieu thereof:—
- “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.”
- (2) Clause 23 of the Principal Agreement is amended by deleting therefrom the concluding words of the second paragraph reading as follows:—
- “except that the rent shall be an annual sum of £32 per square mile or such other rent as may then be payable for Coal Mining Leases under the Coal Mining Acts.”;
- and inserting in lieu thereof the following words:—
- “except that the rent shall be such rent as shall then be payable for Coal Mining Leases under the Coal Mining Acts.”
9. Clause 25 of the Principal Agreement is amended by deleting therefrom the first paragraph thereof being the paragraph commencing with the words “The Company shall pay royalty” and ending with the words “Three pence per ton.” and inserting in lieu thereof the following paragraph:—
- “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 Six pence per ton.”.
10. Clause 27 of the Principal Agreement is amended by deleting from paragraph (c) of subclause (5) thereof the words “amortise the railway” and by inserting in lieu thereof the following words:—
- “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”.

11. Clause 28 of the Principal Agreement is deleted and the following clause inserted in lieu thereof:—
- “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.”
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' 8½") 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.
- 13.** Clause 54 of the Principal Agreement is amended as follows:—
- (i) Paragraph (e) of subclause (1) thereof is amended by deleting therefrom the words and figures “clauses 26 and 32” and substituting therefor the word and figures “clause 26”;
  - (ii) Paragraph (f) of subclause (1) thereof is amended by deleting therefrom the words “and/or the railway”; and
  - (iii) by deleting paragraph (g) thereof.
- 14.** The Second Schedule to the Principal Agreement is amended as follows:—
- (i) The word and Roman figure “Part IV” appearing in the second line of the recital is deleted therefrom;
  - (ii) The words “Thiess Peabody Coal Pty. Ltd.” three times appearing in the said recital are deleted and the words “Thiess Peabody Mitsui Coal Pty. Ltd.” are inserted in lieu thereof;
  - (iii) The punctuation mark (semicolon) and the word “or” appearing at the end of the last line of paragraph (e) of clause 1 are deleted and a punctuation mark (full stop) inserted after the word “therewith”;
  - (iv) Clause 2 being the clause commencing with the words “For the purposes of” and ending with the words “defined in the Agreement” is deleted;
  - (v) The habendum clause is amended:—
    - (a) by deleting from the ninth, tenth and eleventh lines thereof the words “except that the rent shall be an

annual sum of £32 per square mile or such other rent as shall then be payable for Coal Mining Leases under “*The Coal Mining Acts, 1925 to 1952,*” ” and inserting in lieu thereof the following:—

“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”;

- (b) by deleting from the fifteenth and sixteenth lines thereof the words and figures “ “*The Petroleum Acts, 1923 to 1958*” ” and inserting in lieu thereof the words and figures “ “*The Petroleum Acts, 1923 to 1962*” ”;
  - (c) by deleting from the twenty-eighth line thereof the words “following Yearly Rentals or sums that is to say:—” and inserting in lieu thereof the words “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 Six pence (6d.) per ton of coal won from the said land.”; and
  - (d) by deleting therefrom paragraphs (a), (b), (c) and (d);
  - (vi) By deleting from clause (a) of paragraph (vi) of the provisos to such habendum clause the words and figures “ “*The Coal Mining Acts, 1925 to 1952*” ” and inserting in lieu thereof the words and figures “ “*The Coal Mining Acts, 1925 to 1964*” ”; and
  - (vii) By deleting paragraph (vii) of the said provisos and by renumbering paragraphs (viii), (ix), (x) and (xi) as (vii), (viii), (ix) and (x) respectively.
- 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.*"

IN WITNESS WHEREOF