Queensland

ANNO SEPTIMO DECIMO

ELIZABETHAE SECUNDAE REGINAE

No. 55 of 1968

An Act with respect to an Agreement between the State of Queensland of the one part and Utah Development Company and Mitsubishi Development Pty. Ltd. of the other part and for purposes incidental thereto and consequent thereon

[ASSENTED TO 24TH DECEMBER, 1968]

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:—

1. Short title. This Act may be cited as the *Central Queensland Coal Associates Agreement Act* 1968.

2. Execution of Agreement authorised. The Premier of Queensland is hereby authorised to make, for and on behalf of the State of Queensland, with Utah Development Company, a company registered in the State of Queensland, and having its registered office at Fourth Floor, Canegrowers' Building, 190–194 Edward Street, Brisbane, in the said State and Mitsubishi Development Pty. Ltd., a company registered in the said State and having its registered office at Eighth Floor, Commercial Union House, 349–353 Queen Street, Brisbane, in the said State (herein with their and each of their successors and permitted assigns referred to as " the Companies ") the Agreement, a copy of which is set out in the Schedule to this Act (herein referred to as " the Agreement ").

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

The Governor in Council shall by Proclamation notify the date of the making of the Agreement.

4. Variation of Agreement. The Agreement may be varied pursuant to agreement between the Premier of Queensland and the Companies with the approval of the Governor in Council by Order in Council and no provision of the Agreement shall be varied nor shall the powers and rights of the Companies under the Agreement be derogated from except in such manner.

Any purported alteration of the Agreement not made and approved in such manner shall be void and of no legal effect whatsoever.

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

5. Proclamations and Orders in Council. (1) Any Proclamation or Order in Council provided for in this Act or in the Agreement may be made by the Governor in Council and, in addition, the Governor in Council may from time to time make all such Proclamations and Orders in Council not inconsistent with the Agreement as he shall think necessary or expedient to provide for, enable and regulate the carrying out of the provisions of the Agreement or any of them.

(2) Any such Proclamation or Order in Council may be revoked or altered by another Proclamation or Order in Council which is not inconsistent with the Agreement.

(3) Every such Proclamation and Order in Council shall—

(a) be published in the Gazette;

(b) upon publication in the Gazette be judicially noticed and such publication shall be conclusive evidence of the matters contained therein;

(c) be laid before the Legislative Assembly within fourteen sitting days after such publication if the Legislative Assembly is in session, and if not, then within fourteen 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 fourteen 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.

THE SCHEDULE

AN AGREEMENT made the day of One thousand nine hundred and sixty BETWEEN THE STATE OF QUEENSLAND of the one part AND UTAH DEVELOPMENT COMPANY a company registered in the State of Queensland and having its registered office at Fourth Floor, Canegrowers' Building, 190–194 Edward Street, Brisbane in that State AND MITSUBISHI DEVELOPMENT PTY. LTD. a company registered in the said State and having its registered office at Eighth Floor, Commercial Union House, 349–353 Queen Street, Brisbane aforesaid of the other part (hereinafter with their and each of their successors and permitted assigns referred to as " the Companies "):

WHEREAS Authority to Prospect for Coal No. 6C was granted to Utah Development Company on the eleventh day of December 1964 pursuant to the provisions of *The Coal Mining Acts* 1925 *to* 1964 over an area of about 2444 square miles in the Counties of Cairns, Grosvenor, Humboldt, Killarney, Leura, Roper, Talbot, Drake and Hillalong;

AND WHEREAS a Proclamation was issued on the twenty-second day of October 1964 pursuant to the powers contained in *The Coal Mining Acts* 1925 *to* 1964 notifying, proclaiming and declaring that the area above referred to shall not be open to license or lease under those Acts;

AND WHEREAS such Authority to Prospect and such Proclamation have been amended from time to time;

AND WHEREAS on the thirty-first day of October 1966 with the approval of the Honourable the Minister for Mines and Main Roads of the State of Queensland Utah Development Company assigned a fifteen per centum (15%) interest in part of the area above referred to, to Mitsubishi (Australia) Pty. Limited;

AND WHEREAS MITSUBISHI (AUSTRALIA) PTY. LIMITED has assigned its said interest to MITSUBISHI DEVELOPMENT PTY. LTD.;

AND WHEREAS extensive prospecting and development work has been carried out on the land described in such Authority to Prospect and Proclamation and considerable sums of money expended thereon;

AND WHEREAS deposits of coal have been found to exist in a considerable part of the lands described in the aforesaid Authority to Prospect and Proclamation north of latitude twenty-three degrees (23°) south and the Companies desire to bring the said deposits into large scale production for export purposes and also to continue to search for further deposits of coal;

AND WHEREAS for such purpose it is necessary to construct works for the mining, treatment and shipment of large tonnages of coal;

AND WHEREAS the Companies are prepared to provide and expend the large capital amount required for these and associated purposes;

AND WHEREAS the State has agreed to construct and maintain a railway hereinafter referred to and the Companies have agreed to lodge with the State certain moneys by way of Security Deposit refundable to the Companies upon the Companies' offering for transportation over the railway certain annual tonnages of coal for such period and at such freight rates as are more particularly hereinafter set forth;

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

AND WHEREAS it is therefore desirable that in consideration of the Companies' entering into obligations on their part hereinafter set out the Companies should be granted the rights, titles and privileges hereinafter mentioned.

PART I—PRELIMINARY

NOW THEREFORE IT IS HEREBY AGREED as follows:—

1. This Agreement shall be divided into Parts as follows:—

PART I—PRELIMINARY;

PART II—PROSPECTING FOR COAL;

PART III—SPECIAL COAL MINING LEASES;

PART IV—PROVISIONS RELATING TO RAILWAY AND WORKS;

PART V—PROVISIONS RELATING TO HARBOUR AND WORKS;

PART VI—PROVISIONS RELATING TO LOCAL GOVERNMENT;

PART VII—WATER FOR AND IN CONNECTION WITH MINING OPERATIONS;

PART VIII—PROVISIONS RELATING TO LANDS (INCLUDING BRIGALOW LANDS);

PART IX—GENERAL.

2. In this Agreement unless inconsistent with the context or subject matter:—

"The Act" means the Act of Parliament of the State referred to in Clause 3 of this Part;

"The Authority to Prospect" means the Authority to Prospect for coal to be granted to the Companies in accordance with the provisions of Clause 2 of Part II of this Agreement;

"Authority to Prospect No. 6C" means Authority to Prospect No. 6C granted under the provisions of *The Coal Mining Acts* 1925 *to* 1964 by the Minister for Mines and Main Roads for the State of Queensland;

"The Coalfield" means that part of the Franchise Lands whereon the Companies conduct their coal mining operations;

"The Coal Mining Acts" means *The Coal Mining Acts* 1925 *to* 1967 and any Act in amendment thereof or in substitution therefor and any other Act or Acts relating to coal mining;

"The Franchise Lands" means the lands described in the First Schedule to this Agreement;

"The Harbours Acts" means *The Harbours Acts* 1955 *to* 1968 and any Act in amendment thereof or in substitution therefor;

"The Land Acts" means *The Land Acts* 1962 *to* 1968 and any Act in amendment thereof or in substitution therefor;

"The Local Government Acts" means *The Local Government Acts* 1936 *to* 1968 and any Act in amendment thereof or in substitution therefor;

"The Minister" means the Premier of Queensland;

"The Railways Acts" means *The Railways Acts* 1914 *to* 1965 and any Act in amendment thereof or in substitution therefor;

"The State" means the State of Queensland;

"The Treasurer" means the Treasurer of the State of Queensland;

"Tribunal" means the Tribunal as constituted by Clause 6 of Part IX of this Agreement;

"The Water Acts" means *The Water Acts* 1926 *to* 1967 and any Act in amendment thereof or in substitution therefor;

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

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

Any reference to an Act or Acts shall include that Act or those Acts and any Act in amendment of or in substitution therefor.

3. The making of this Agreement is authorised by the Parliament of the State of Queensland expressed in an Act entitled the *Central Queensland Coal Associates Agreement Act* 1968. Upon the making of this Agreement the provisions thereof shall have the force of law as though enacted in the Act.

4. The State shall exempt from stamp duty or similar duty:—

(i) This Agreement;

(ii) Any contract entered into by the Companies for the purposes of this Agreement or any document ancillary to such contract or in implementation thereof where the other party to such contract or such document is the State, a State Corporation or State Instrumentality;

(iii) Any document in respect of the borrowing or lending of money overseas for the purposes hereof;

(iv) Any document relating to the transfer of the benefit hereof or any part hereof or any interest hereunder from Utah Development Company and/or Mitsubishi Development Pty. Ltd. to another Company or other Companies;

(v) Any document relating to the transfer of any interest in any property real or personal transferred or agreed to be transferred in connection with any such transfer;

(vi) Any copy of any of the aforesaid documents.

5. This Agreement may be varied pursuant to agreement between the Minister and the Companies 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 Companies hereunder be derogated from except in such manner.

6. (1) The Companies shall forthwith take all necessary action to obtain coal sale contracts for coal to be utilised by Japanese steel and/or chemical industries with purchasers in Japan for the sale of coal in the quantities contemplated by this Agreement.

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

(3) As soon as possible after complying with the provisions of sub-clauses (1) and (2) of this present Clause, the Companies shall—

(a) give notice to the Minister for Transport that they have entered into coal sales contracts as aforesaid;

(b) produce such contracts to the Minister for Transport; and

(c) supply to the Treasurer evidence satisfactory to him that they have entered into binding commitments to obtain funds as aforesaid.

(4) If the Companies fail to give notice or to produce such contracts or to supply the evidence to the Minister for Transport or the Treasurer as the case may be as provided by Sub-clause (3) of this Clause, then the Minister may notify the Companies that the State has decided that it will not construct the said line of railway as defined in Part IV of this Agreement 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.

7. The Companies and each of them may transfer the benefits and obligations of this Agreement in whole or in part (including their rights to or as the holder of any lease, license, easement, grant or other title) to Utah Construction & Mining Co. or a subsidiary company of Utah Construction & Mining Co. or a company jointly owned by the Companies as a matter of right. Mitsubishi Development Pty. Ltd. may likewise transfer such benefits to Mitsubishi Shoji Kaisha or a subsidiary company of Mitsubishi Shoji Kaisha as a matter of right. Any other transfer of benefits and obligations made hereunder to any other company or companies may be done only with the approval of the Governor in Council and on such terms and conditions as the Governor in Council may by Order in Council specify and in any such case the transferee may be made a party to this Agreement and this Agreement may be varied in accordance with Clause 5 of this Part.

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

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

PART II—PROSPECTING FOR COAL

1. In this Part and in Part III of this Agreement unless inconsistent with the context or subject matter:—

"coking coal" means coal that can be used in the manufacture of coke.

"The Initial Expiry Date" means the thirty-first day of December of the year two thousand and ten (2010).

"The Minister" means the Minister for Mines, Main Roads and Electricity of the State of Queensland.

"A Special Coal Mining Lease" means a Special Coal Mining Lease granted under the provisions of the Coal Mining Acts, pursuant to this Agreement, other than a Special Coal Mining Lease granted under the provisions of Clause 25 of Part III of this Agreement.

2. After the making of this Agreement and after the surrender of the Franchise Lands from Authority to Prospect No. 6C, the Minister shall forthwith issue to the Companies as tenants in common in the proportions of eighty-five per centum (85%) as to Utah Development Company and fifteen per centum (15%) as to Mitsubishi Development Pty. Ltd. an Authority to Prospect for coal over the Franchise Lands in the form and containing the conditions set out in the Second Schedule hereto. The Companies shall comply with the terms and conditions of such Authority to Prospect.

3. The provisions of the Coal Mining Acts except subsections (4) and (6) of Section 33F thereof and except as far as they are varied or modified by this Agreement shall apply to the Authority to Prospect for coal granted hereunder.

4. Before entering on any land pursuant to the Authority to Prospect, the Companies shall give to the owner, holder, trustee, occupier or person or authority having the care and management of such land, notice either personally or in such form and in such manner as the Minister shall approve, either generally or in a particular case.

An agent, servant or employee of the Companies entering upon land pursuant to the Authority to Prospect shall carry upon his person a written authorisation issued by the Companies in a form approved by the Minister and shall produce such authorisation when required by the owner, holder, trustee or occupier of such land.

The Companies shall not be required to apply for and obtain a permit to enter under *The Mining on Private Land Acts*, 1909 *to* 1965 in respect of private land before entering on such land under this Authority to Prospect.

The Companies shall conduct operations under the Authority to Prospect so as not to interfere with the existing use of the land covered by the Authority to Prospect to a greater extent than may be necessary. In the event of dispute, the Minister may determine the extent of such interference that is necessary.

The Companies shall make compensation in accordance with the Coal Mining Acts, *The Mining Acts* 1898 *to* 1967, and *The Mining on Private Land Acts* 1909 *to* 1965, to the owner of any private land or holder under the Crown of any Crown land or in case of either private land or Crown land any person in lawful occupation thereof in respect of all damage caused by the Companies to crops and improvements of such land including any permanent artificial water supply as a result of any operations carried out under the Authority to Prospect.

In respect of land comprised in a reserve, the Companies shall not under the Authority to Prospect disturb the surface of such land or do any act which affects or disturbs or is likely to affect or disturb the enjoyment of such surface by persons entitled thereto except in accordance with the consent of the Governor in Council first obtained. 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. The Governor in Council may restrict his consent to a part or parts of the reserve in question and may subject his consent to such conditions as he considers proper.

If the Companies under the Authority to Prospect disturb the surface of land in a reserve or do any act which affects or disturbs the enjoyment of such surface by persons entitled thereto contrary to the consent of the Governor in Council, the Companies shall pay compensation to the person or authority who has the care and management of such reserve and such compensation may be recovered by such person or authority as for a debt in a Court of competent jursidiction.

The provisions of Part IX of *The Mining Acts* 1898 *to* 1967 shall apply to the Authority to Prospect.

PART III—SPECIAL COAL MINING LEASES

1. (1) From time to time during the term of the Authority to Prospect the Companies may apply in writing to the Minister for a Special Coal Mining Lease over lands comprised in the Authority to Prospect at such time. Such application shall be accompanied by a proper description and plan of the lands to be included in such Special Coal Mining Lease. If such application is in accordance with the provisions of this Agreement, the Minister shall forthwith cause to be issued to the Companies a Special Coal Mining Lease over the lands so applied for.

(2) The initial term of a Special Coal Mining Lease shall commence on the date of the grant thereof and shall expire on the Initial Expiry Date.

(3) Subject to the provisions of Clause 6 of this Part, the Companies shall be entitled to occupy the lands to be comprised in a Special Coal Mining Lease and to exercise all the rights and powers to be granted thereunder as and from the date on which they become entitled to the grant of a Special Coal Mining Lease.

(4) If the Companies shall prove to the Minister's satisfaction that a right of access to, from and between the Special Coal Mining Leases is essential for the economical and proper working of such leases and that the Companies are unable to arrange by negotiation for such access, the Minister will use his best endeavours to secure such access for the Companies.

(5) The Companies may from time to time make application in writing to the Minister for the addition to the lands comprised in an existing Special Coal Mining Lease of further lands that are comprised in the Authority to Prospect at the time of such application. Such application shall be accompanied by a proper description and plan of the lands to be added. If such Special Coal Mining Lease when so varied shall be in accordance with the provisions of this Agreement and the lands to be added are not in substitution for lands mined and surrendered, the Minister shall cause such Special Coal Mining Lease to be varied accordingly.

(6) The Companies may from time to time make application in writing to the Minister for the surrender from a Special Coal Mining Lease of some or all of the lands then comprised in such Special Coal Mining Lease. Such application shall be accompanied by a proper description and plan of the lands to be surrendered. If the Companies have complied with all the provisions of this Agreement relating to such Special Coal Mining Lease and such Special Coal Mining Lease when so varied shall be in accordance with the provisions of the Agreement, the Minister shall cause such Special Coal Mining Lease to be varied as applied.

2. (1) The Companies shall not be entitled to hold more than four (4) Special Coal Mining Leases under this Agreement.

(2) The total area of all Special Coal Mining Leases held under this Agreement and issued under the provisions of the Coal Mining Acts shall not exceed one hundred and seventy-five (175) square miles.

(3) The land in a Special Coal Mining Lease shall be bounded by a polygon having no width less than one (1) mile and no length more than thirty (30) miles unless the Minister agrees otherwise.

(4) If from time to time it is necessary to use portion of the lands comprised in a Special Coal Mining Lease for provision of a public utility crossing of such lease (including roads, railways, pipelines and transmission lines), the Minister shall give to the Companies at least two (2) years' written notice of any such proposed use. The Minister and the Companies shall use their best endeavours to agree on the lands to be used by such crossing taking into consideration the interests of the State and of the Companies. Failing agreement, the lands to be so used shall be determined by the Tribunal. Thereupon such crossing may be constructed and used without interference from the Companies' operations. The Companies shall not be entitled to claim compensation from the State or any person whomsoever because of the exercise of such right to use such lands for such crossing on account of the value of coal that cannot be worked: provided that the Companies shall be entitled to compensation for any improvements that may be directly affected by such crossing.

3. Special Coal Mining Leases pursuant to Clause 1 of this Part may be granted under this Part of this Agreement for any or all of the undermentioned purposes, that is to say:—

(a) for mining for coal, and for all purposes necessary directly or indirectly to effectually carry on mining for coal and treatment of such coal (including the production of by-products therefrom) therein or thereon; or

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

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

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

(e) for erecting thereon offices and other service facilities in connection with such operations.

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

5. (1) For so long as the Companies comply with the provisions of this Agreement, they may mine from the lands in the Special Coal Mining Leases and export from the State up to one hundred and fifty (150) million tons of coking coal, and an additional quantity of up to one hundred and fifty (150) million tons provided that such additional quantity does not exceed thirty per centum (30%) of the recoverable reserves of coking coal in the Franchise Lands.

The Companies may not mine from the Special Coal Mining Leases and export more than such quantity of coal or mine from the said lands coal for any other purpose unless so authorised by the Governor in Council by Order in Council published in the Government Gazette.

The Governor in Council by Order in Council may, on application by the Companies from time to time, dispense with the requirements to establish such reserves and may, taking into account the energy reserves of the State, permit the Companies to mine from Special Coal Mining Leases under the same terms and conditions as set forth in this Agreement for the purpose of exporting from the State such further quantities of coking coal in addition to the said quantities under this Sub-clause:

Provided that the Parliament of the State may disallow any such Order in Council within a period of fourteen (14) sitting days but any such disallowance shall not prejudice the rights of the Companies under this Sub-clause.

(2) For the purpose of Sub-clause (1) hereof, the recoverable coking coal reserves shall be determined by the Companies, subject to confirmation by the Minister, in accordance with calculations based on core drill holes placed not more than one mile apart and each hole shall have a core recovery of not less than ninety per centum (90%) in the coal seam, and shall have intersected a coal seam meeting the following minimum criteria:

Coal occurring at a depth of not more than one thousand (1,000) feet below the surface having a swelling index after washing of not less than four (4) and an ash content after washing of not more than nine and one-half per centum (9½%), a projected wash plant yield or weight recovery of at least fifty per centum (50%), and a seam thickness of at least five (5) feet.

In determining coal recoverability in mining it shall be accepted that opencut mining will be assumed to apply to a vertical depth below the surface of two hundred (200) feet and opencut mine recovery will be ninety per centum (90%), and underground mining will be assumed to apply at vertical depths below the surface of more than two hundred (200) feet and underground mine recovery will be fifty per centum (50%):

Provided that the total recoverable coking coal reserves as calculated in accordance with the above minimum criteria shall have an average sulphur content of not more than eighty-five hundredths per centum (0·85%) and an average phosphorus content of not more than five hundredths per centum (0·05%) for each seam serving as the basis for the above calculations.

(3) For the purpose of establishing the reserves as provided for by Sub-clause (1) hereof, the Companies may at any time and from time to time during the period of the Authority to Prospect and without any further authority enter upon and drill for coal within the lands described in the First Schedule and excluded therefrom in accordance with the provisions of Clause 2 of the Authority to Prospect, subject however to all the terms, conditions, provisions and stipulations of such Authority to Prospect but with no right to apply for and or obtain any Lease of any part thereof. All information obtained in respect of such drilling may be used as the Minister shall see fit.

6. (1) The grant of a Special Coal Mining Lease does not give the Companies the right to use or disturb the surface of the land comprised in such Special Coal Mining Lease except as provided in this Clause.

(2) In an application for a Special Coal Mining Lease, the Companies shall designate the surface thereof required by the Companies for the purposes of such lease. Such application shall be accompanied by a proper description and plan of the lands over which such surface rights are required.

In like manner, the Companies may from time to time apply to the Minister for surface rights over additional lands comprised in such Special Coal Mining Lease.

(3) In respect of any land which is private land within the meaning of *The Mining on Private Land Acts* 1909 *to* 1965, which is desired to be included at any time in a Special Coal Mining Lease, the Companies shall fully comply with the provisions of such Acts relating to compensation for deprivation of the possession of such surface or of any part of such surface as is required and for damage to such surface or to any part thereof or damage to improvements thereon but shall not be required to apply for or acquire a permit to enter in respect of any such land within the Special Coal Mining Lease.

(4) In respect of land comprised in a reserve the Companies shall not under the Special Coal Mining Lease disturb the surface of such land (unless the Companies are already possessed of surface rights in relation thereto) or do any act which affects or disturbs or is likely to affect or disturb the enjoyment of such surface by persons entitled thereto except in accordance with a consent of the Governor in Council first obtained. In considering whether to grant or refuse a 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. The Governor in Council may restrict his consent to a part or parts of the reserve in question and may subject his consent to such conditions as he deems proper.

If the Companies under a Special Coal Mining Lease disturb the surface of land comprised in a reserve or do any act which affects or disturbs the enjoyment of such surface by persons entitled thereto except in accordance with the consent of the Governor in Council, the Companies shall pay compensation to the person or authority who has the care or management of such reserve in respect of damage so caused and such compensation may be recovered by such person or authority as for a debt in a Court of competent jursidiction.

(5) If the Companies wish to use or disturb the surface of Crown land (other than a reserve) comprised in a Special Coal Mining Lease, the Companies shall give one (1) month's notice thereof to the holder or occupier of such lands including the Crown where such lands are not the subject of any tenure and shall compensate such holder or occupier for any damage suffered by him as a result of such use and disturbance of the surface. The Companies shall also make provision satisfactory to the Minister for rights-of-way over such surface for the purpose of moving stock and for other agricultural or grazing purposes. Upon the Minister being satisfied that the Companies reasonably require such surface for the purpose of this Agreement and that the holder or occupier of such land has been properly notified and compensated and that satisfactory provision has been made for rights-of-way, then the Minister shall cause the grant of such surface rights to be noted on the Special Coal Mining Lease. The Companies shall not interfere with any rights-of-way except in accordance with a proposal approved by the Minister in writing.

(6) If the Companies wish to use or disturb the surface of any Crown land subject to the Brigalow Scheme as provided in Part VIII of this Agreement, the Companies shall compensate the State as provided in such Part.

7. (1) The Companies shall until the Initial Expiry Date pay a rent for all land held by them under a Special Coal Mining Lease or under any application for a Special Coal Mining Lease at the rate of one dollar ($1) per acre per annum as presently prescribed by subsection (4) of section 11 of the Coal Mining Acts.

(2) Upon each renewal of a Special Coal Mining Lease pursuant to Clause 8 of this Part, the Companies shall pay such rent thereunder as shall be agreed upon between them and the Minister and failing such agreement a rent equivalent to that as then prescribed by the Coal Mining Acts.

(3) Such rent shall be paid annually in advance on or before the first day of January in each year.

8. (1) The period of a Special Coal Mining Lease granted hereunder shall be from the date of application therefor for such period as the Companies may require or until the Initial Expiry Date, whichever shall first occur and shall be renewable for two further periods each not exceeding twenty-one (21) years as the Companies may require.

(2) If the Companies at least three (3) months prior to the Initial Expiry Date of the lease satisfy the Minister that the Companies have duly performed and observed each and every of the conditions, covenants, and stipulations of the lease and have duly performed and observed all

provisions of this Agreement applicable to such lease and that the Companies are in lawful possession thereof, the Minister shall grant a renewal of the term of such lease to the Companies for such further period as the Companies may require but not exceeding twenty-one (21) years on the same conditions and provisions as applied at the expiration of the original term except that the rent and royalty shall be that rent and royalty as is respectively provided by Clauses 7 and 10 of this Part.

(3) The provisions of the preceding Sub-clause (2) shall apply *mutatis mutandis* to a further renewal of the term of the lease referred to therein for such further period as the Companies may require but not exceeding twenty-one (21) years.

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

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

(a) A reservation to the Crown in the right of the State of all petroleum, gold and all minerals other than coal found in the land comprised in the lease. Such reservation shall include the right of the State to authorise persons to search for and mine petroleum gold and all minerals other than coal, subject to the prior rights of the Companies under such Special Coal Mining Lease;

(b) A covenant by the Companies to pay rent and royalty at the rates and within the times provided herein;

(c) Such other covenants as are stipulated in the Coal Mining Acts which are not inconsistent with the provisions of this Agreement;

(d) A condition that for any breach of any of the covenants the Minister may impose upon the Companies a fine not exceeding two thousand dollars ($2,000) and on non-payment of any such fine within thirty (30) days of the date of the imposition thereof may forfeit the Special Coal Mining Lease.

10. (1) The Companies shall until the Initial Expiry Date pay royalty on all coal won and shipped over the said line of railway as defined in Part IV of this Agreement or otherwise despatched or consumed from any land the subject of a Special Coal Mining Lease or an application for a Special Coal Mining Lease at the rate of five cents ($0.05) per ton. After the Initial Expiry Date the royalty to be paid by the Companies shall be as agreed upon between them and the Minister and failing such agreement a royalty equivalent to the lesser of those contained in the Coal Mining Acts or the levels fixed by the Tribunal which levels shall be fixed having regard to competitive economic factors in the industry including costs of transport.

(2) Such royalty shall be payable monthly within thirty (30) days of the close of each month.

(3) For the purpose of ascertaining the royalty to be paid, all coal won and so shipped or otherwise despatched or consumed shall be weighed in a manner approved by the Minister except that if coal is shipped without weighing royalty shall be paid on weights ascertained for rail freight purposes.

(4) Not later than the tenth day of each month in each year the Companies shall forward to the Minister at Brisbane a return in such form as is required by the Minister showing the following particulars in respect of the preceding month:—

(a) The amount of coal so shipped or otherwise despatched by the Companies;

(b) The amount of coal consumed;

(c) Such other particulars as the Minister may require for the purpose of determining the royalty.

(5) A person thereunto authorised by the Minister may inspect the records of coal so shipped or otherwise despatched or consumed for the purpose of checking the amount of the royalty to be paid by the Companies and for that purpose may make copies thereof or extracts therefrom.

In addition to the powers contained in section 32 of the Coal Mining Acts an officer authorised under such section may make copies of such books and accounts or extracts therefrom for any of the purposes of such section.

11. All surveys for the purpose of properly identifying any land included in or to be added to any Special Coal Mining Lease, or any part of such lease to be surrendered or transferred at any time shall be carried out, at the expense of the Companies, by a surveyor authorised under *The Land Surveyors Acts* 1908 *to* 1916. All such surveys shall be effected in accordance with By-Law Number 15 under the provisions of the abovementioned Acts.

12. Coal produced in accordance with this Agreement from any Special Coal Mining Lease granted pursuant to this Agreement shall be the property of the Companies. The Companies may use coal for their own requirements under this Agreement but any other use thereof shall require to be authorised by the Governor in Council as provided in Sub-clause (1) of Clause 5 of this Part.

13. (1) The Companies shall within a period of two (2) years from the date of first shipment as that term is defined in Part IV of this Agreement instal all such machinery and other works as are necessary for them to produce and despatch for transportation from their coal mines not less than four million (4,000,000) tons of coking coal annually.

(2) The Companies shall, after a period of four (4) years from the granting of the first Special Coal Mining Lease, expend not less than twenty thousand dollars ($20,000) per annum for each square mile of area comprised in their Special Coal Mining Lease or Special Coal Mining Leases from time to time on or in connection with working the lease or leases and on other projects approved by the Minister from time to time.

(3) Subject to the Coal Mining Acts, the said works shall be of adequate capacity to handle all coking coal which the Companies are required to produce and despatch under the provisions of this Agreement and shall be soundly constructed for the purpose for which they are

required and shall possess adequate factors of safety and the system of handling such coal shall be such as to be technically sound, safe and suitable. The said works shall be constructed so as to comply with all such requirements for ensuring that the said works comply with the provisions of this Clause.

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

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

15. Should the mining of coking coal necessitate the mining of other coal, then the Companies may mine such other coal. If the tonnage of such other coal exceeds ten percentum (10%) of the coal to be mined in that place, then the Companies shall give to the Minister at least one (1) year's notice in writing of their intention so to do or such lesser period as the Minister agrees. Should the Minister so require by giving at least one (1) year's notice thereof in writing to the Companies, the Companies shall deliver such other coal to the Minister for use in State power stations. If the Minister so requires, the Companies shall stockpile such other coal on the Special Coal Mining Lease in suitable manner and at suitable places, or otherwise as agreed between the Companies and the Minister.

Upon the Companies delivering such other coal to the Minister into such stockpile or otherwise, the Minister shall pay the Companies all reasonable costs of so extracting and delivering such other coal. Such costs shall include the costs of extracting and delivering such other coal to the Minister, taking into account in the computation of such costs any required capital investment for the production of such other coal, less the costs that would have been incurred in sending such other coal to waste.

Nothing in this Clause shall prevent the Companies and the Minister from entering into a long-term contract for the supply of coal thereunder on terms and conditions other than those specified in this Clause.

16. If the Minister so notifies the Companies in writing, the Companies shall make available to the Minister washery reject coal and other coal discarded during beneficiation or any portion thereof for use in State power stations. Such coal shall be placed by the Companies into a suitable stockpile in the vicinity of the wash plant or other beneficiation plant. Upon the Minister taking delivery of such coal from such stockpile, the Minister shall pay the Companies all reasonable costs incurred by the Companies in so stockpiling the coal less the cost that would have been incurred in otherwise disposing of such coal. Such payment shall be exclusive of the costs of mining, beneficiation and overheads except such costs as would not have been incurred if it were not for such notification.

Nothing in this Clause shall prevent the Companies and the Minister from entering into a long-term contract for the supply of coal thereunder on terms and conditions other than those specified herein.

17. The covenants contained in Clause 13 of this Part regarding work to be performed and works and expenditures required shall not apply if and to the extent that the Companies are prevented from performing them by circumstances beyond their control such as act of God, force majeure, floods, storms, tempests, war, riots, civil commotion, strikes, lockouts, shortages of labour transport power or essential materials, breakdown of plant or inability in the opinion of the Governor in Council to sell profitably the coal.

18. The State shall have the right to carry out investigations including drilling in any Special Coal Mining Lease granted pursuant to the provisions hereof to ascertain the nature and extent of the mineral and other resources of the land including coal.

19. The Companies shall in respect of the surface of any land comprised in any of its Special Coal Mining Leases of which they are or are deemed to be in possession permit persons so authorised by the Minister to depasture stock thereon provided that such depasturing of stock shall not interfere with the rights of the Companies under their Special Coal Mining Lease or Special Coal Mining Leases.

20. Before damaging the surface of any part of a Special Coal Mining Lease granted pursuant to the provisions hereof by mining the Companies shall deliver to the Minister a sum calculated at the rate of fifty dollars ($50) per acre of the area of such part. Upon surrender of the Special Coal Mining Lease so far as it relates to such part such sum shall be dealt with as follows:—

(a) The whole of such sum shall be refunded to the Companies if the surface has been restored to not less than its former value for purposes connected with grazing;

(b) None of such sum shall be refunded to the Companies if the surface is of no value for purposes connected with grazing; or

(c) A proportionate amount of such sum shall be refunded to the Companies in other cases based on the value of the land for purposes connected with grazing as compared with its former value for such purposes.

21. Roads, stock routes, streams and water courses are not to be interfered with under any Special Coal Mining Lease granted pursuant to the provisions hereof except in accordance with an application made by the Companies to the Minister and approved by the Minister in writing after having had regard to recommendations obtained from Departments administering roads, stock routes, streams and water courses.

22. The Companies shall conduct all operations under the Authority to Prospect and the Special Coal Mining Leases in accordance with good mining practices as practised in Queensland for the time being and shall not damage more than is reasonably necessary, the State's resources, including petroleum, coal, other minerals, the surface of the land, flora and fauna.

23. When required by the Governor in Council, the Companies shall supply coal to specified consumers in Queensland within reasonable time and at reasonable price or shall surrender from the Special Coal Mining Leases lands containing coal deposits sufficient and suitable in the opinion of the Governor in Council to supply such consumers provided that the Companies shall not be required to surrender lands reasonably required for mining in accordance with Clause 5 of this Part.

24. The Companies shall comply with any reasonable request made upon them by the Minister concerning the place or manner (or place and manner) of mining coal under this Agreement when such request concerns and affects the production or quality of coal for use in a State power station; provided however that if the cost of producing coal of a quality and quantity contracted to be supplied by the Companies to any person exceeds the cost the Companies would otherwise incur in mining such coal in the place or manner intended by the Companies but for such request, then the Companies shall not be required to comply with such request unless and until the Minister agrees to pay to the Companies such increase in cost.

25. In addition to the Special Coal Mining Leases to be granted to the Companies in accordance with Clause 1 of this Part, the Companies may apply for not more than three (3) Special Coal Mining Leases under the Coal Mining Acts of lands within reasonable proximity to the Special Coal Mining Leases granted in accordance with Clause 1 of this Part, for the following purposes:—

(a) For plant and equipment for treatment of coal (including the production of by-products therefrom);

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

(c) For erecting thereon offices and other service facilities in connection with such operations.

The total area of such Special Coal Mining Leases shall be not more than six hundred and forty (640) acres. Each such lease may be of any shape approved by the Minister, but shall be otherwise in accordance with the Coal Mining Acts. The Companies shall have the surface rights to the whole of the land comprised in any such Special Coal Mining Lease.

Any such lease shall not include lands comprised in a National Park as defined in the *Forestry Acts* 1959–1968 or held at the time of such application by any other person under an Authority to Prospect for coal or Coal Mining License or Coal Mining Lease granted under the Coal Mining Acts or application therefor or other license or lease to prospect for or mine coal granted by the State, or Mining Lease granted under *The Mining Acts* 1898 *to* 1967 or Petroleum Lease granted under *The Petroleum Acts* 1923 *to* 1967:

Provided that such application is in accordance with the provisions of this Clause and is otherwise in accordance with the Coal Mining Acts the Minister shall cause such Special Coal Mining lease to be issued to the Companies.

PART IV—PROVISIONS RELATING TO RAILWAY AND WORKS.

1. In this Part unless the context otherwise requires the several terms following shall have the meanings respectively assigned to them:—

" the Commissioner " means the Commissioner for Railways the Corporation constituted under *The Railways Acts* 1914 *to* 1965;

" the date of first shipment "—the first day of the month next following the month in which contract coal in regular shipments as determined by the Commissioner commences to be transported over the said line of railway;

" the Minister " means the Minister for Transport;

" Offer for transport "—the offer by the Companies of a reasonable amount of contract coal in stockpile ready for shipment, coupled with proof to the satisfaction of the Minister of the Companies' ability to produce for transport such coal in the tonnages required to meet the Companies' nominated six-monthly tonnage in terms of Sub-clause (1) of Clause 14 of this Part;

" Reasonably regular flow of coal shipments " means the rate at which contract coal is to be offered for transport determined as set forth in Sub-clause (3) of Clause 14 of this Part;

" said line of railway " means the line of railway described in Clauses 4, 5 and 6 of this Part;

" ton " means a long ton of two thousand two hundred and forty (2,240) pounds avoirdupois;

" to ship " (with its derivatives) means to transport by rail over the said line of railway;

" Year "—the period of twelve (12) months next ensuing after the date of first shipment and each successive period of twelve (12) months thereafter.

For the purposes of this Agreement coal transported by the Commissioner by means of the said line of railway for the Companies shall be divided into classes as follows:—

(i) " contract coal " which shall mean all coal shipped from the Companies' coal mines at Goonyella to the Port selected by the Companies pursuant to Sub-clause (1) of Clause 4 of this Part by means of the said line of railway; and

(ii) " other coal " which shall be coal (if any) which is not contract coal.

2. (1) The State shall forthwith upon the giving of notice under Sub-clause (3) of Clause 6 of Part I of this Agreement take all necessary action still remaining 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 said line of railway commencing at the earliest practicable date.

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

3. (1) If the Companies shall give the notice and supply the evidence as provided by Clause 6 of Part I of this Agreement then the Minister shall give notice in writing to the Companies that the State will proceed with the engineering and construction of the said line of railway under and in pursuance of this Agreement.

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

(3) The notice required to be given by the Minister under the provisions of Sub-clause (1) of this Clause or Clause 6 of Part I of this Agreement shall be published in the Gazette.

4. (1) The State shall, through the Commissioner, construct and maintain the said line of railway commencing at the Companies' Goonyella coal mine and then proceeding to and terminating at the Port selected by the Companies.

(2) The Companies shall lodge with the Treasurer the Security Deposit moneys more particularly described in Clause 8 of this Part and the State shall thereupon be at liberty to apply such Security Deposit moneys towards the costs of the construction of the said line of railway and of the purchase of locomotives, rolling stock and other necessary equipment required by the Commissioner to construct operate and maintain the said line of railway in order to transport thereover contract coal on behalf of the Companies according to the terms of this Agreement. All such locomotives, rolling stock and equipment so purchased by the State shall forthwith upon such purchase vest in the Commissioner absolutely.

5. No portion of an existing line of railway of the Commissioner shall be incorporated in the said line of railway and subject thereto the location and route of the said line of railway estimated by the State and the Companies to be one hundred and forty-two (142) miles in length will be generally as shown on the map in the Fourth Schedule to this Agreement. Such location route and estimated length are based on existing preliminary engineering surveys and studies made by or on behalf of the Companies 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 Companies and failing such agreement then the location of the route shall be as determined by the Minister after giving due consideration to such factors as the economy of construction and sound engineering principles as reflected by the recommendations of the Commissioner's engineering consultants and the specifications of the Commissioner.

6. The said line of railway shall consist of a track of three feet six inches (3′ 6″) gauge with a ruling grade of 1 in 100 against the load 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. Sufficient of the locomotives and rolling stock shall be available as and when required by the Commissioner during the course of construction of the said line of railway. The said line of railway shall be progressively equipped with such additional locomotives and rolling stock as may be required to transport thereover

two million (2,000,000) tons of contract coal during the first year and four million (4,000,000) tons during the second year. The Commissioner shall consult with the Companies as to the quantity, type and design of such locomotives and rolling stock so that such locomotives and rolling stock will be suitable and available for the operations of the Commissioner and the Companies. If the Companies 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 said line of railway from four million (4,000,000) tons of coal to five million (5,000,000) tons of coal per annum. If the Companies give notice that they wish to transport more than five million (5,000,000) tons annually of contract coal and the Minister demonstrates the necessity to provide additional locomotives, rolling stock and other facilities and equipment, the Minister agrees to negotiate with the Companies with a view to reaching agreement in respect of the provision of such additional locomotives rolling stock and other facilities and equipment necessary to meet the Companies' requirements.

In the event that the Companies give notice that they wish to transport other coal from points in the Coalfield other than Goonyella the Minister agrees to negotiate with the Companies with a view to reaching agreement in respect of the provision of such locomotives rolling stock and other facilities and equipment necessary to provide such transport.

Such negotiations shall be based on the principle that such other coal is to be transported partly over the said line of railway and partly over other lines of railway which will require to be constructed operated and maintained in accordance with the principles contained in this Agreement. The freight rates to be paid by the Companies for the transport of contract coal and such other coal over all such lines of railway shall be determined by the Minister after due consideration has been given amongst other factors to the total tonnage of contract coal and other coal required to be transported from the Companies' several mines over the said line of railway or portion thereof and all such other lines of railway.

7. (1) The Companies shall have the right to consult with the State as to all matters relating to the construction of the said line of railway including the acceptance of tenders and the State shall obtain the prior approval of the Companies 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 Companies 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 having due regard to the date of completion of the said line of railway as specified in Sub-clause (2) of this Clause.

(2) Subject to the provision of Clause 12 of this Part the State shall use its best endeavours to cause the said line of railway to be completed and placed in operation not later than the thirty-first day of March One thousand nine hundred and seventy-one.

8. (1) The State and the Companies are agreed that the aggregate amount of new capital moneys required for the construction of the said line of railway to carry a yearly tonnage thereover of five million (5,000,000) tons together with locomotives rolling stock and all other necessary facilities and other equipment to transport an annual tonnage of four million (4,000,000) tons (inclusive of interest during construction)

is approximately thirty-six million dollars ($36,000,000). The parties are similarly agreed that for the first year of operation of the said line of railway when an annual capacity of two million (2,000,000) tons only is required such new capital and interest would be approximately thirty-four million dollars ($34,000,000).

(2) The Companies hereby undertake and agree with the State that when so requested by the Treasurer progressively as the said line of railway is constructed and as the locomotives and rolling stock and other necessary equipment are being constructed and delivered they will lodge with the Treasurer by way of Security Deposit for the due performance by the Companies of their obligations and undertakings under this Agreement such sums of money at such times as the State shall so require to the total sum required to defray the actual cost of the various capital expenditures and interest incurred in carrying out the construction of the said line of railway and providing the locomotives rolling stock and other necessary equipment referred to in Sub-clause (1) of this Clause. The amount of Security Deposit required to be lodged by the Companies to defray such actual cost expenditure and interest in order to construct the said line of railway to an annual carrying capacity of five million (5,000,000) tons and equip the said line of railway with locomotives and rolling stock to an annual carrying capacity of two million (2,000,000) tons shall be lodged before the date of first shipment. Such amount of Security Deposit is hereinafter in this Clause called " the initial Security Deposit moneys ". The additional Security Deposit moneys required to increase the annual carrying capacity to four million (4,000,000) tons shall be lodged before the commencement of the second year.

(3) The obligation of the State to provide the additional locomotives rolling stock and equipment to increase the capacity of the said line of railway to five million (5,000,000) tons of coal per annum as set out in Clause 6 of this Part shall be subject to the undertaking of the Companies to furnish additional Security Deposit moneys equal to the cost of the additional locomotives rolling stock and equipment required presently estimated at two million dollars ($2,000,000). The conditions contained in this part relating to Security Deposit moneys shall apply *mutatis mutandis* to such additional Security Deposit moneys.

(4) Subject to the provisions of Clause 9 of this Part the State shall pay to the Companies interest at the rate of five and one-quarter per centum (5¼%) per annum on the initial Security Deposit moneys so lodged with it pursuant to Sub-clause (2) of this Clause as from the date of first shipment and on the additional Security Deposit moneys required to increase the annual carrying capacity to four million (4,000,000) tons as from the commencement of the second year. The Companies shall be entitled to capitalise interest half-yearly at the said rate of five and one-quarter per centum (5¼%) per annum on the initial Security Deposit moneys lodged by them with the State as from the date of their actual lodgment with the State up to the said date of first shipment and on such additional Security Deposit moneys from the date of their lodgment to the commencement of the second year. All interest so capitalised shall be deemed to be Security Deposit moneys for all purposes of this Agreement. The interest on the Security Deposit moneys shall be calculated on half-yearly rests.

(5) The Treasurer shall consult and co-operate with the Companies in scheduling payments required to be made by the Companies by way of Security Deposit moneys as aforesaid which shall be paid by way of instalments on dates to be specified by the Treasurer on not less than fifteen (15) days' notice, and at intervals of not less than one (1) month.

(6) During the period of twelve and one-half (12½) years commencing on the date of first shipment the initial Security Deposit moneys lodged by the Companies with the Treasurer as hereinbefore in this Clause provided and interest thereon shall subject to the provisions of this Clause and Clauses 9 and 10 of this Part be refunded to the Companies by equal half-yearly instalments comprising the Security Deposit moneys and interest thereon as calculated pursuant to Sub-clause (4) of this Clause and similarly the additional Security Deposit moneys shall be refunded by equal half-yearly instalments over the period of eleven and one-half (11½) years from the commencement of the second year. The half-yearly instalment of refund and interest of the initial Security Deposit moneys shall be calculated by applying the factor ·05505495 to the total of such Security Deposit moneys. Similarly the half-yearly instalment of refund and interest on the additional Security Deposit moneys required to bring the carrying capacity of the said line of railway up to four million (4,000,000) tons per annum shall be calculated by applying the factor ·05846746 to the total of the additional Security Deposit moneys.

9. (1) The provisions hereinafter in this Clause set out shall apply with respect to the refund of Security Deposit moneys by the State to the Companies and to the payment of interest on the Security Deposit as referred to in the immediately preceding Clause.

(2) If contract coal of a total tonnage of two million five hundred thousand (2,500,000) tons or more is shipped by the Companies during any year of the period of twelve and one-half (12½) years commencing on the date of first shipment the State shall refund and pay to the Companies the full amounts of Security Deposit moneys and interest payable for that particular year in accordance with Clause 8 of this Part.

(3) If in any year contract coal of a total tonnage of less than two million five hundred thousand (2,500,000) tons but five hundred thousand (500,000) tons or more in the first year, one million (1,000,000) tons or more in the second year and one million five hundred thousand (1,500,000) tons or more in any subsequent year is shipped by the Companies during the said twelve and one-half (12½) years period referred to in the preceding Sub-clause (any such year is hereinafter in this Clause referred to as "shortfall tonnage year") the State shall refund and pay to the Companies the proportion of the amounts of Security Deposit moneys and interest payable for that particular year in accordance with Clause 8 of this Part as determined by the following formula:—

> The proportion of a full instalment of Security Deposit refund and interest shall be four per centum (4%) at five hundred thousand (500,000) tons, rising by two and one-half per centum (2½%) for every complete amount of fifty thousand (50,000) tons in excess of five hundred thousand (500,000) tons to a maximum of one hundred per centum (100%).

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 Sub-clause (which said difference of such amounts is hereinafter in this Clause referred to as "the retained moneys") shall be held by the State and may become payable to the

Companies only in relation to tonnages of contract coal shipped in subsequent years in excess of two million five hundred thousand (2,500,000) tons per annum subject to the following conditions:—

(a) If in any year of the period of twenty (20) years commencing on the date of first shipment the total tonnage of contract coal shipped by the Companies over the said line of railway is estimated to be in excess of two million five hundred thousand (2,500,000) tons, the Companies shall be entitled to apply to the State for a refund of retained moneys based on such excess tonnage. The Companies shall supply to the State such estimates of tonnage and other particulars as will enable any refund of retained moneys applied for to be paid at the normal dates for refund of Security Deposit during the year, the first payment being tentatively assessed and paid subject to adjustment on the final payment for the year. The State shall—

(i) refund to the Companies the amount of the retained moneys in respect of such shortfall tonnage year if the excess tonnage so added to the tonnage for such shortfall tonnage year amounts to two million five hundred thousand (2,500,000) tons or more;

(ii) where such combined tonnage is less than two million five hundred thousand (2,500,000) tons refund to the Companies the difference between the amount of the Security Deposit and interest actually refunded and paid to the Companies in such shortfall tonnage year and the amount of Security Deposit and interest that would have been refunded and paid to the Companies under this Sub-clause if the tonnage actually shipped by the Companies had been such combined tonnage; or

(iii) where such combined tonnage is in excess of two million five hundred thousand (2,500,000) tons credit the Companies with any tonnage of coal in excess of two million five hundred thousand (2,500,000) tons, so that such excess tonnage might be applied within such period of twenty (20) years as aforesaid by the Companies to a shortfall tonnage occurring in any other prior shortfall tonnage year.

Where the excess tonnage has not been sufficient to entitle the Companies to a full refund of retained moneys in respect of a shortfall tonnage year then excess tonnage in a subsequent year of the said period of twenty (20) years may be applied to the balance of such tonnage upon and subject to the same principles as are contained in this Sub-clause.

(b) The retained moneys shall not bear any interest whilst they shall be so retained by the State.

(c) After the expiration of the said period of twenty (20) years any retained moneys shall be forfeited to Her Majesty and the Companies shall not have any claim in respect of them.

(4) If contract coal of a total tonnage of less than five hundred thousand (500,000) tons in the first year, less than one million (1,000,000) tons in the second year and less than one million five hundred thousand (1,500,000) tons during any subsequent year of the said twelve and one-half (12½) years period referred to in Sub-clause (2) of this Clause is

offered for transport the whole of the said amounts of Security Deposit moneys and interest for that year shall be forfeited to Her Majesty and the Companies shall not have any claim in respect thereof.

(5) In the event that at any time the Companies shall—

(a) abandon, terminate or permanently cease their mining operations at their coal mines, of which, failure by the Companies for a period of twenty-four (24) consecutive months to ship any coal over the said line of railway shall be prima facie evidence; or

(b) be wound up under the provisions of the Companies Acts of the State of Queensland otherwise than for the purpose of reconstruction, re-organisation, amalgamation or merger; or

(c) admit to or notify the Minister in writing on behalf of the State that they have terminated, abandoned or ended or intend to terminate, abandon or end their use of the said line of railway as contemplated by this Agreement or their mining operations pursuant to Part III of this Agreement,

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

(6) The provisions of this Clause with respect to the refund of Security Deposit moneys and to the payment of interest shall apply *mutatis mutandis* to the last six (6) months of the said period of twelve and one-half (12½) years referred to in Sub-clause (2) of this Clause and to the first six (6) months of the succeeding period.

10. (1) Each payment of Security Deposit moneys and interest pursuant to Clauses 8 and 9 of this Part shall in the first instance be tentatively assessed and paid and shall be subject to adjustment on the final payment for the year.

(2) If at the time of any payment of Security Deposit moneys and interest pursuant to Clause 8 of this Part the Companies have shipped contract coal proportional to the quantity specified in Sub-clause (2) of Clause 9 of this Part 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 Sub-clause (2) 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 and interest pursuant to Clause 8 of this Part the Companies have shipped contract coal proportional to the quantities that would entitle the Companies to either a partial payment of Security Deposit and interest or upon application to a refund of retained moneys as specified in Sub-clause (3) of Clause 9 of this Part and if in the judgment of the Commissioner such coal will continue to be so shipped for the whole year at such rate, the payment of Security Deposit moneys and interest or the refund of retained moneys shall be made in accordance with the said Sub-clause (3) 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 and interest pursuant to Clause 8 of this Part the Companies have failed to ship contract coal proportional in any year to the quantity specified in

Sub-clause (4) of Clause 9 of this Part for that year and if in the judgment of the Commissioner the Companies will not so ship contract coal for the whole year in excess of such quantity 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 twelve and one-half (12½) years period commencing on the date of first shipment that the State has refunded and paid to the Companies any portion of the Security Deposit moneys and interest thereon in excess of those to which the Companies are entitled under and pursuant to the provisions of Sub-clauses (2), (3) and (4) of Clause 9 of this Part the Companies shall immediately on being notified to such effect by the State, refund to the State all moneys and interest so over-paid. If the Companies fail 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 Companies.

(6) If any such over-payment by way of refund of Security Deposit moneys or payments of interest are not recovered by the State under the provisions of Sub-clause (5) of this Clause then the moneys so over-paid shall be and become a debt due and owing by the Companies to Her Majesty and may be recovered by the State in any Court of competent jurisdiction.

11. (1) If for any reason the said line of railway is not completed and placed in operation as contemplated by this Agreement, or if construction of the said line of railway by the State shall be abandoned, or if this Agreement shall be terminated, cancelled or rescinded by any act or default 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 said line of railway or the acquisition of the necessary locomotives, rolling stock, and other equipment required for the adequate operation thereof, then, after the expiration of a period of ninety (90) days after such failure, abandonment, termination, cancellation, rescission or default in performance, the State shall be deemed for the purposes of this Clause to be in default.

(2) Where the State is in default as defined in Sub-clause (1) of this Clause and the Companies do not propose to construct, or complete the construction of, and operate and maintain the said line of railway as hereinafter provided, the Companies shall give to the State notice to that effect and shall thereafter have no right to so construct or complete the construction of or to operate and maintain the said line of railway. Thereupon the aggregate amount of all Security Deposit moneys theretofore paid by the Companies pursuant to the provisions of this Agreement together with all costs of the Companies incurred in raising such moneys shall forthwith become due and payable by the State to the Companies and may be recovered accordingly.

(3) Where the State is in default as defined in Sub-clause (1) of this Clause then the Companies, in lieu of exercising the remedy specified in Sub-clause (2) of this Clause, may—

(a) if the State has not commenced to construct the said line of railway—construct, operate and maintain the said line of railway or another line of railway for transport of coal for the purposes of this Agreement; or

(b) if the State has commenced but not completed construction of the said line of railway—complete the construction of, operate and maintain the said line of railway.

In either such case as specified in this Sub-clause the State and the Companies undertake to negotiate the necessary arrangements for the taking over by the Companies of any assets associated with the said line of railway, the continuation of contracts and obligations entered into by the State and such other matters as are necessary for those purposes. The State and the Companies shall, by amendment to this Agreement, take all steps necessary to ensure that the Companies are given the necessary permits, licenses, powers of resumption and other rights needed for the construction, maintenance and operation of any such line of railway as is mentioned in this Sub-clause. Failing agreement on any of the foregoing matters, the matter in dispute may be referred to the Tribunal which shall be empowered to make such order in the matter as to it seems just and equitable between the parties.

12. For the purpose of Clause 11 of this Part the failure of the State to complete the said line of railway and place such line of railway in operation by the thirty-first day of March One thousand nine hundred and seventy-one shall not be deemed to be a default, but nothing herein contained shall otherwise relieve or be construed to otherwise relieve the State of any of its obligations under this Agreement.

13. (1) On and from the date of first shipment, the Commissioner shall transport for the Companies by means of the said line of railway such contract coal as shall be offered for shipment by the Companies up to the carrying capacity to which the said line of railway is progressively equipped as set out in Clause 6 of this Part. The commitment of the State to transport such coal at such progressive rate is based on a reasonably regular flow of coal shipments by the Companies and if the Companies shall fail to maintain such flow, the commitment of the State shall be reduced in accordance with such failure by the Companies. The freight rates to be paid by the Companies for the transportation of contract coal during the period of twelve and one-half (12½) years commencing on such date as hereinbefore in this Clause provided shall be on a sliding scale set out hereunder whereby such rates shall decline as tonnage is increased:—

TONNAGE OF CONTRACT COAL

	Overall Rate per Ton applicable to Contract Coal $
On annual tonnages of:—	
Under 1,500,000	2.58
1,500,000 to 2,749,999	2.45
2,750,000 to 2,999,999	2.31
3,000,000 to 3,249,999	2.16
3,250,000 to 3,499,999	2.07
3,500,000 to 3,749,999	1.98
3,750,000 to 3,999,999	1.90

On annual tonnages of four million (4,000,000) tons or more the freight rates to be paid by the Companies shall be one dollar eighty cents ($1.80) per ton for tonnages up to four million two hundred and forty-nine thousand nine hundred and ninety-nine (4,249,999) tons and for tonnages in excess of that figure shall be as mutually agreed between the State and the Companies but failing such agreement shall be determined by the Minister provided that in either case the rate shall not exceed one dollar eighty cents ($1.80) per ton.

(2) Notwithstanding the rate stated in Sub-clause (1) of this Clause for tonnages below one million five hundred thousand (1,500,000) tons per annum it is agreed that if the quantity of contract coal shipped in the first year is five hundred thousand (500,000) tons or more and in the second year is one million (1,000,000) tons or more but in both cases is less than two million five hundred thousand (2,500,000) tons the rate to be charged on such coal in each of such years shall be the rate applicable to a tonnage of two million five hundred thousand (2,500,000) tons at the time of shipment.

(3) The foregoing rates are based upon the total capital cost (including capitalisation of interest upon the total amount of the Security Deposit lodged by the Companies with the State in accordance with Clause 8 of this Part) for the construction and equipping of the said line of railway with locomotives rolling stock and equipment capable of transporting four million (4,000,000) tons per annum being a sum estimated at thirty-six million dollars ($36,000,000). Should the actual capital cost for the estimated distance of the said line of railway of one hundred and forty-two (142) miles and with the ruling grade of 1 in 100 against the load be higher or lower than the estimated sum such rates as are tabulated above shall be varied so as to reflect the effect of such greater or lesser capital cost. The freight rates tabulated in Sub-clause (1) of this Clause have been determined upon the premise that the mileage of the said line of railway will be one hundred and forty-two (142) miles. If the actual mileage of the said line of railway is greater or less than such estimated mileage whether because of change of route, any extension thereof or for any other reason whatsoever, then in any such case, such freight rates shall be varied in accordance with the same basic principles as were adopted by the parties in determining such freight rates having regard to the following matters:—

(a) The effect thereof on both capital and operating costs:

(b) The variation in the anticipated net return to the State from such freight rates by a similar proportion to that as the actual mileage bears to the estimated mileage; and

(c) The longer or shorter haul occasioned by such variation in mileage, the ruling grade and the turn-round time.

(4) The rates referred to in Sub-clauses (1) (2) and (3) of this Clause shall be subject to escalation for movements in costs since the first day of July, 1966. Escalation of the freight rates herein shall be negotiated between the Minister and the Companies, taking into consideration such factors as changes in wage rates, material and supply costs and the profitability and overall economics of operation of the said line of railway. Such negotiations shall commence forthwith upon the giving of notice by either party and shall be concluded no later than two (2) months

thereafter. The newly negotiated escalated rate shall have effect from the date the variation of any of such factors took effect. Failing agreement the following formula shall be applied:—

FORMULA FOR ESCALATION OF FREIGHT RATES

$$F_1 = F + \cdot 45F \left\{ \cdot 7 \frac{(w_1 - w)}{w} + \cdot 23 \frac{(s_1 - s)}{s} + \cdot 07 \frac{(d_1 - d)}{d} \right\}$$

where F_1 = freight rate to be applied

F = freight rate prescribed in Agreement

w_1 = average hourly wage rate at date formula is being applied

w = average hourly wage rate at first July 1966

s_1 = price of heavy steel rails per ton C.I.F.E. Brisbane at date formula is being applied

s = corresponding price of steel rails at first July 1966

d_1 = price paid by the Commissioner for distillate at date formula is being applied

d = corresponding price of distillate at first July 1966

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

(a) the hourly rates for typical classifications of employees in the various sections of the said line of railway, namely running, loco maintenance, track maintenance, station staff, shall be averaged. The number of such rates taken for each such section shall be roughly 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 triple header diesel trains since the freight rates are based on the use of triple header diesel trains for the transport of contract coal; and

(c) alterations made by the Industrial Commission in Award terms and conditions shall be deemed to be variations in wage rates which shall be taken into account in calculation of freight rates under this formula.

Whenever this formula is applied the escalated freight rates shall operate from the date upon which the variation of any of the relevant factors took effect.

Any freight rate differentials resulting from negotiated escalation being either greater or less than would have resulted from a strict application of the above formula shall be maintained as a constant addition to or subtraction from any future freight rates determined by the strict application of such formula.

(5) If in any year of the period of twenty (20) years commencing on the date of first shipment the contract coal shipped by the Companies over the said line of railway exceeds a tonnage of two and one-half million (2,500,000) tons, and the Companies make application to the State under the provisions of Sub-clause (3) of Clause 9 of this Part for a refund of retained moneys as defined in such Sub-clause then the following provisions shall apply in determining the freight rates for such year:—

(a) the tonnage for such year shall be divided into two categories, namely:—

(i) a tonnage of two million five hundred thousand (2,500,000) tons; and

(ii) a tonnage in excess of that specified in paragraph (i) (hereinafter in this Sub-clause referred to as "excess tonnage");

Provided however that where the tonnage which the Companies are entitled on any such application to use for the purpose of securing a refund of retained moneys is less than the excess tonnage then such excess tonnage shall be reduced accordingly and the tonnage in category (i) shall be increased by a like amount;

(b) the freight rate to be applied to the tonnage in category (i) shall be in accordance with Sub-clauses (1), (2), (3) and (4) of this Clause;

(c) the freight rate to be applied to excess tonnage shall be the rate applicable (without the reduction of twenty per centum (20%) referred to in Sub-clause (1) of Clause 21 of this Part) at the time of shipment to a tonnage of two million five hundred thousand (2,500,000) tons per annum;

(d) the Companies shall supply to the State such estimates of tonnage and other particulars as will enable the freight charges to be calculated in accordance with paragraphs (b) and (c) of this Sub-clause;

(e) after expiration of the said period of twenty (20) years, the Companies' right to make an application as provided by Clause 9 of this Part shall no longer apply.

14. (1) The Companies shall at least one (1) calendar month prior to the date of first shipment and thereafter at regular six-monthly intervals, advise the Commissioner in writing of the estimated tonnage of contract coal (not exceeding fifty per centum (50%) of the annual carrying capacity to which the said line of railway is equipped) they will offer for shipment over the said line of railway in the six-monthly period in respect of which such notice is so given. Subject to such limitation relating to line capacity, the Companies may increase such estimated tonnage during such period by giving at least thirty (30) days' notice in writing of such increase to the Commissioner.

(2) The freight rates set forth in Clause 13 of this Part 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 Companies. The State shall not claim additional payments or an increase in such freight rates on account of such transportation services rendered to

the Companies on holidays or on Sundays for the State's convenience or in order to fulfiil its obligations to transport coal in the quantities specified in the said Clause 13. If shipments of coal shall be required on a holiday or Sunday for the convenience of the Companies as aforesaid or by reason of the Companies' failure to maintain a reasonably regular flow of coal shipments, or to load or unload at the said hourly rate specified in Sub-clause (5) of this Clause the Companies shall pay to the State the actual increase in cost to the State resulting from all such shipments.

(3) 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 Companies as compared with the cost of such services when rendered at standard rates on any week-day Monday to Friday, and the term "reasonably regular flow of coal shipments" shall mean that the Companies in each week of any six-monthly period referred to in Sub-clause (1) of this Clause, shall offer for shipment over the said line of railway, contract coal of a tonnage varying by not more than five per centum (5%) from one twenty-sixth (1/26th) of the Companies' estimated tonnage for that six-monthly period.

(4) When by reason of the default of the Companies in providing a reasonably regular flow of coal shipments, the Commissioner is required to pay to his employees (howsoever employed by him in the transport of contract coal over the said line of railway) in obedience to relative Industrial Commission Awards, wages and allowances on the basis of a guaranteed eighty (80) hour per fortnight and such amount of wages and allowances is in excess of the amount of wages and allowances that would be payable to such employees under such Industrial Commission Awards for actual time worked by them during such fortnight in the transport of such coal as aforesaid, then and in any such case the Companies shall pay to the Commissioner the amount of such excess.

(5) (a) The Companies shall install loading equipment at the Companies' mines and unloading equipment at the Port which sets of equipment shall be respectively capable of loading or unloading coal at an effective rate of one thousand five hundred (1,500) tons per hour.

When due to the Companies' default a train of the Commissioner shall be delayed for a period in excess of that required to load it to its full capacity or unload such train at such effective rate as aforesaid, the Companies shall pay to the Commissioner the following demurrage charge for each hour and *pro rata* for each part of an hour during which such delay shall continue—

(i) Where such delay occurs at the Companies' mines, a sum of twenty-eight dollars ninety-five cents ($28.95).

(ii) Where such delay occurs at the Port, seventeen dollars twenty-five cents ($17.25).

(b) Such demurrage charge shall be subject to escalation during the currency of this Agreement by negotiation, but if mutual agreement cannot be obtained as to the amount of escalation, then such escalation shall be based in accordance with the formula appearing in the Table to this present paragraph (b). Such demurrage charge shall be based upon costs existing at the first day of July, 1968 and shall be subject to escalation as hereinbefore expressed from such date.

TABLE

FORMULA FOR ESCALATION OF DEMURRAGE CHARGE

$$C = \frac{4W + D}{5}$$

where C = the percentage increase to be applied to the demurrage charge

W = the percentage increase in w_1 in the formula in Clause 13 of this Part from the first day of July, 1968, or since the previous adjustment was made to the demurrage charge as the case may be.

D = the percentage increase in d_1 in the formula in Clause 13 of this Part from the first day of July, 1968, or since the previous adjustment was made to the demurrage charge as the case may be.

15. (1) Monthly accounts for freight payable pursuant to the provisions of Clauses 13 and 21 of this Part and increases in cost (if any) payable pursuant to Clause 14 of this Part shall be rendered by the Commissioner to the Companies 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 Companies 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 Companies under the provisions of Clause 13 of this Part and the applicable refund of the Security Deposit moneys and payment of interest thereon to be made by the State under Clauses 8, 9 and 10 of this Part and the rebates to be made under Clause 16 of this Part there shall be added to the actual tonnage of contract coal shipped and transported for the Companies in any such year all tonnage of contract coal which the Companies would have been able to offer for transport during such year but for any failure or refusal by 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 14 of this Part.

16. (1) If the tonnage of contract coal shipped by the Companies in any year of the twelve and one-half ($12\frac{1}{2}$) years period commencing on the date of first shipment 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 Companies in respect of that year.

(2) If the tonnage of contract coal shipped by the Companies in any such year as aforesaid is one million five hundred thousand (1,500,000) tons or more the State shall grant the Companies a rebate of twelve cents (12c) per ton on all contract coal so shipped in such year up to an aggregate of four million (4,000,000) tons.

(3) Notwithstanding the provisions of Sub-clauses (1) and (2) of this Clause should the Companies ship in the first year contract coal amounting to five hundred thousand (500,000) tons or more and in the second year contract coal amounting to one million (1,000,000) tons or more the State shall grant the Companies a rebate of twelve cents (12c) per ton on all such contract coal so shipped.

(4) If the tonnage of contract coal shipped by the Companies in any year of the twelve and one half (12½) years period as aforesaid exceeds four million (4,000,000) tons the State shall in addition to the rebate provided in Sub-clause (2) of this Clause in respect of the first four million (4,000,000) tons, grant the Companies such rebate on the tonnage in excess of four million (4,000,000) tons as the parties shall mutually agree, but failing such agreement then as determined by the Minister.

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

18. (1) The freight rates for shipments of goods other than coal shipped by the Companies over the said line of railway shall be the same as the then applicable rate to the Companies for contract coal provided that such shipments—

(a) may be transported in coal transportation equipment; and

(b) are directly or indirectly required for use in connection with the Companies' coal mining operations or purposes related thereto.

The rates for goods not meeting these requirements shall be as prescribed by *The Railways Acts* 1914 *to* 1965 and the By-laws made thereunder.

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

(a) Security Deposit moneys refund under Clause 9 of this Part:

(b) applicable freight rate under Clause 13 of this Part: or

(c) freight rebate under Clause 16 of this Part.

19. (1) Unless the parties otherwise agree the State shall not transport coal, coke, or other coal by-products for any person other than the Companies over the said line of railway for less than a freight rate of one and one-quarter (1¼) times the freight rate which would have been paid hereunder by the Companies for an equivalent tonnage to that transported for such other person converted to a ton-mile basis.

(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 Sub-clause (1) of this 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 said line of railway shall not prevent him from fulfilling his obligations to transport coal for the Companies as herein in this Agreement provided.

(3) Notwithstanding anything contained in Sub-clauses (1) and (2) of this Clause, the State and the Companies EXPRESSLY AGREE AND DECLARE that if after the construction of the said line of railway has been completed, another Company or person shall request the State to transport thereover coal, coke or other coal by-products, in tonnages in excess of five hundred thousand (500,000) tons annually, THEN and in such case, the State and the Companies shall re-negotiate the freight charges set out in Clause 13 of this Part.

20. (1) The State shall accept all shipments of coal or other cargo from the Companies for transport over the said line of railway at "Commissioner's risk." The agreed basis for reimbursement to the Companies for damage to or loss of shipments shall be—

(a) for coal, the actual cost of mining, producing, preparing and loading coal in cars at the mine site; and

(b) for other cargo, the actual cost thereof to the Companies.

(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* 1965 and to the By-laws made thereunder.

21. (1) After the termination of the twelve and one-half (12½) years period commencing on the date of first shipment the State shall continue to provide the Companies with rail transportation for the shipment of contract coal over the said line of railway for an additional period of twenty-nine and one-half (29½) years and the methods of determining freight rates by negotiation or failing agreement by the application of the formula in accordance with Clause 13 of this Part shall continue to apply PROVIDED HOWEVER that the scale of freight rates shall be reduced by an amount equivalent to twenty per centum (20%) of the freight rates actually applicable as at the end of such twelve and one-half (12½) years period. The amount represented for each tonnage class in the freight scale by this twenty per centum (20%) reduction shall be maintained as a constant deduction from the rate calculated from the formula for that class on any occasion after the termination of such period upon which the formula is applied in a manner similar to the differentials referred to in Sub-clause (4) of Clause 13 of this Part. Notwithstanding anything contained or implied in this present Sub-clause such reduction of twenty per centum (20%) shall have no application for the purposes of paragraph (c) of Sub-clause (5) of Clause 13 of this Part respecting the determination of freight charges as are in that lastmentioned Sub-clause contained.

(2) After the initial expiry date as that term is defined in Part II of this Agreement and subject to the Companies exercising their option for renewal of their Special Coal Mining Leases as provided by Clause 8 of Part III of this Agreement the State shall continue to provide the Companies with rail transportation for the shipment of contract coal over the said line of railway for the extended period of twenty-one (21) years and the methods of determining freight rates by negotiation or by the application of the formula in accordance with Clause 13 of this Part shall continue to apply and such freight rates shall be subject to the

same reduction applied in the same manner as is set out in Sub-clause (1) of this Clause PROVIDED HOWEVER that the freight rates applying at the initial expiry date as aforesaid shall be adjusted so as to take into full account the difference between the capital cost of locomotives and rolling stock applying at the date of first shipment and such capital cost at such initial expiry date as aforesaid.

The provisions of this present Sub-clause shall apply *mutatis mutandis* to the determination of freight rates to be paid by the Companies to the State for the transport of contract coal over the said line of railway if at the termination of such extended period of twenty-one (21) years the Companies shall exercise their option for a further and final renewal of such Special Coal Mining Leases for a further period of twenty-one (21) years as provided by Clause 8 of Part III of this Agreement.

(3) The provisions of Clause 14 of this Part shall apply to shipments of contract coal over the said line of railway during any additional period provided for in the immediately preceding two Sub-clauses of this Clause.

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

(a) the State shall fail to complete and place in operation the said line of railway as hereinbefore provided or to transport for the Companies the contract coal offered for shipment by the Companies in terms of this Agreement; or

(b) the Companies shall fail to offer for transport contract coal in terms of this Agreement,

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

(2) Neither the State nor the Companies shall be excused for any such failure by it or them 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, breakdown of plant, or any other cause whatsoever.

PART V—PROVISIONS RELATING TO HARBOUR AND WORKS

1. As and when requested by the Companies the State shall take action pursuant to the provisions of the Harbours Acts to—

(a) Define the limits of the harbour delineated on the Plan set out in the Fifth Schedule to this Agreement;

(b) Assign a name to that harbour; and

(c) Constitute a Harbour Board for that harbour which Board may be the Corporation of the Treasurer of Queensland being the corporation sole specified in section eleven of the Harbours Acts.

In defining the limits of the harbour as hereinbefore provided the Governor in Council may make such alterations in the limits delineated on the said Plan as he shall deem necessary.

2. (1) Subject to the provisions of the Harbours Acts, the State as and when requested by the Companies shall arrange for the Harbour Board constituted as provided in Clause 1 of this Part to—

(a) survey and construct the harbour and the necessary harbour works requested by the Companies subject, at all times, to the prior approval of the Treasurer to such works; and

(b) control, administer, manage, operate, maintain, use and regulate the use of such harbour and harbour works.

(2) The Treasurer shall in granting the approval specified in this Sub-clause and the Harbour Board shall in carrying out such arrangements thereunder, have due regard to the orderly development of the harbour and the need to design the harbour and the harbour works so as not to prejudice any future harbour works which may be necessary to serve either the Companies or any other user.

(3) The provisions of this Clause 2 shall not apply to any further harbour construction or further harbour works constructed by the Harbour Board for general use or for use by some user or users other than the Companies, and no such further harbour construction or further harbour works shall prejudice the operation of the Companies under this Agreement.

3. Notwithstanding the provisions of Clause 2 of this Part, any wharf or jetty or any plant or facility for the storage, handling, unloading and loading of coal required by the Companies for their exclusive use shall be provided by the Companies solely at their cost and no responsibility shall rest with the Harbour Board in respect of the provision thereof. Subject to the provisions of the Harbours Acts the Companies shall have the right to survey and construct the said works and also subject to the provisions of such Acts the right to control, administer, manage, operate, maintain and use such works and also shall have the rights referred to in Clauses 10, 11 and 12 of this Part.

4. The State undertakes that it will over a period of four (4) years commencing on the first day of July, One thousand nine hundred and sixty-nine, arrange for the Harbour Board constituted as provided by Clause 1 of this Part to borrow by the sale of debentures, bonds, or inscribed stock, sums of money equal to the lesser of two million dollars ($2,000,000) or the cost of such harbour and harbour works towards the cost of such harbour and harbour works as are the responsibility of such Harbour Board. The cost of such harbour and harbour works in excess of two million dollars ($2,000,000) shall be progressively lodged by the Companies with the Harbour Board by way of security deposit as hereinafter provided.

5. Any such security deposit lodged as required pursuant to Clause 4 of this Part shall be lodged by the Companies upon such terms and conditions as shall be agreed upon between the Companies and the Harbour Board and approved by the Governor in Council. Such security deposit together with interest thereon shall be repayable to the Companies only upon the due shipment in each year of the minimum quantity of coal to be specified in the agreement to be entered into between the Companies and the Harbour Board as aforesaid in order

to secure the refund of such security deposit in full and upon due observance of the other terms and conditions of such agreement. Such agreement shall provide for the due forfeiture of any instalment of security deposit together with interest due in any year in which the quantity of coal shipped through the harbour is less than five hundred thousand (500,000) tons after the first full year of shipment unless the shortfall on such coal shipped is caused by factors outside the control of the Companies. Any such agreement shall further provide conditions appropriate to the circumstances including provisions relating to retention of security deposit moneys, subsequent deferred repayments of retained security deposit moneys, repayments of total security deposit over a period of not less than twelve and one-half (12½) years and not more than twenty (20) years and forfeiture after a period of twenty (20) years.

6. The State will arrange with the Harbour Board for the making of By-laws relating to harbour dues. The amount of such dues shall be fixed from time to time by such By-laws and such By-laws shall provide for minimum payments by the Companies and any other substantial user or users in each financial year and the times at which such payments shall be made. The total amount of such minimum payments shall be sufficient to enable the Harbour Board to meet the expenditure hereinafter specified in this Clause. The Harbour Board shall prepare a budget for each financial year in pursuance of the provisions of the Harbours Acts and the only harbour dues levied in each financial year shall be those sufficient for the Harbour Board to meet the expenditure estimated to be incurred in such year in respect of:—

(a) interest and redemption of any loan liability incurred by the Harbour Board;

(b) repayment of any instalment of security deposit and interest thereon payable under the agreement specified in Clause 5 of this Part;

(c) control, administration, management, operation, maintenance, use, regulation of the use of, replacement and improvement of the harbour and the harbour works;

(d) any surplus or deficit carried forward from the previous year; and

(e) such reasonable provisions for future contingencies and for proper reserves as shall be approved by the Treasurer.

The allocation of the harbour dues levied pursuant to this Sub-clause on the various users of the harbour shall be made on a fair and reasonable basis having regard to the relative costs and the factors referred to in Sub-clause (2) of Clause 7 of this Part.

7. (1) The use of such harbour by any other user or users shall be subject to the prior approval of the Treasurer and without such prior approval no such use shall be permitted by the Harbour Board. In considering any application for approval of use by any other user or users the Treasurer shall ensure that—

(a) no undue competition is occasioned to any other Port in Queensland having regard to the fact that such harbour is established primarily for the export coal trade and not for general shipping and trade purposes; and

(b) no such other use shall unduly delay or interfere with the shipments of the Companies' coal through the harbour.

(2) The said harbour and harbour works shall be available for public use on such terms and conditions as may be authorised by the Harbour Board. Such public use shall not unduly delay or interfere with the shipments of the Companies' coal through the harbour. In authorising terms and conditions applicable to another substantial user or other substantial users of the harbour whether for shipment of coal or otherwise the Harbour Board shall take into consideration but shall not be limited to the following factors:—

(a) that such other user or users should proportionately share by way of harbour dues or other equitable means the costs (including the costs of operation, management and maintenance) of existing facilities to be used by such other user or users;

(b) that where existing facilities require to be extended to meet the requirements of such other user or users and such extended facilities would not be needed or used by the Companies, any extra costs (including the costs of operation, management and maintenance) involved should not be a charge on the Companies;

(c) the necessity to ensure that the ability to repay any security deposit contributed by the Companies to the Harbour Board or to service the capital debts of that Board is not impaired by the failure to fairly charge costs (including the costs of operation, management and maintenance) proportionately to the various users of the harbour or by the Board incurring substantial capital commitments for another user or users without taking proper security from such user or users for the servicing of such commitments.

8. Subject to the provisions of this Agreement, the provisions of the Harbours Acts shall apply to the harbour and the Harbour Board but in so far as there shall be any conflict between the provisions of this Agreement and of those Acts or any other Act relating thereto the provisions of this Agreement shall be paramount.

9. Not later than the date on which the Companies shall commence to use the harbour the State shall provide and maintain a harbour master and all necessary pilot services for ships using the harbour. Such provision may be made on a part-time basis having regard to the volume of work involved.

10. (1) The Companies will endeavour to acquire by agreement with the owners all rights including easements required by the Companies in respect of land (other than Crown lands) for the purposes of this Part of this Agreement for the site or sites of wharves and jetties or any plants or facility for the storage, handling, unloading and loading of coal.

(2) If the Companies shall satisfy the State that they have been unable to acquire under reasonable terms and conditions the land or easement in land specified in Sub-clause (1) of this Clause and that such land or easement in land is reasonably required by the Companies for the purposes of this Agreement, the Governor in Council may direct that such land or easement shall and may be resumed and acquired by the Co-ordinator-General of Public Works from the owners thereof or the

persons having any interest therein under the provisions of *The Acquisition of Land Act of* 1967 to the same extent as if the works were works authorised by the Governor in Council under the provisions of *The State Development and Public Works Organisation Acts* 1938 *to* 1964 to be carried out by the Co-ordinator-General of Public Works and the provisions of both such Acts shall apply and extend accordingly. Any lands taken shall vest in the Crown and any easements taken shall be in the name and for the benefit of the Companies. All the purchase money and compensation payable in respect of lands or easements so acquired together with all expenses incurred by the Co-ordinator-General of Public Works in effecting such resumption or acquisition shall forthwith be paid by the Companies to the Co-ordinator-General of Public Works. Before resuming or acquiring such lands or easements as aforesaid the Co-ordinator-General of Public Works may require the Companies to deposit with him such moneys or such securities as are in his opinion sufficient to ensure the payment by the Companies of sums to be paid by the Companies as aforesaid.

(3) Subject as hereinafter provided, the Companies shall be entitled to a lease at a peppercorn rental and pursuant to the provisions of the Land Acts and/or the Harbours Acts of any land acquired by the Co-ordinator-General of Public Works as hereinbefore provided. The term of years of any such lease shall be in consonance with the term of years of this Agreement.

11. (1) If the Companies shall satisfy the State that they reasonably require any Crown land above high water mark (other than that acquired pursuant to the provisions of Clause 10 of this Part) for the purposes of this Part of this Agreement, the Companies shall be entitled to a lease of such land pursuant to the provisions of the Land Acts and/or the Harbours Acts.

(2) Any such lease shall be granted in the first place as a short term lease and shall be convertible to a further lease with a term of years in consonance with the term of years of the Special Coal Mining Leases to be granted to the Companies pursuant to Part III of this Agreement once the Companies have constructed on the said land to the satisfaction of the Treasurer adequate plant or facilities for the storage, handling, unloading and loading of coal and for purposes incidental thereto.

(3) Pursuant to the provisions of the Harbours Acts, the Companies shall be entitled to a lease or license over any land situated below high water mark which they satisfy the State they reasonably require for the purposes of building any wharf or jetty or for the erection or operation and maintenance of any plant or facility for the loading of coal. The term of such lease or license shall be in consonance with the terms of years of the Special Coal Mining Leases to be granted to the Companies pursuant to Part III of this Agreement.

(4) The Companies shall repay to the Crown all expenditures incurred by the Crown in removing or altering any improvements on Crown lands to enable such lands to be occupied by the Companies.

12. Subject to the provisions of the Harbours Acts and this Agreement, the Companies shall have the right to—

(a) construct, manage, operate, maintain and use any stockpile area, wharves and jetties, plant and coal handling and coal unloading and loading facilities erected by them on land held by them under lease or license as hereinbefore provided;

(b) manage and operate the loading of coal carrying vessels which enter the harbour for purposes of loading coal from the coal mines of the Companies and the loading and unloading of any equipment and supplies for the purposes of this Agreement; and

(c) provide and operate tug services for vessels used in the carriage of coal produced by the Companies under this Agreement.

PART VI—PROVISIONS RELATING TO LOCAL GOVERNMENT

1. In this Part the term " Minister " means the Minister for Local Government and Conservation.

2. (1) The Companies shall be at liberty to apply to the Minister that where reasonably practicable land in respect of which any Special Lease, Special Coal Mining Lease, Miner's Homestead Lease or any other tenure whatsoever to be granted to the Companies from time to time under the provisions of the relevant Acts and of this Agreement and any Town to be constructed by the Companies to service any such Leases, or other tenure, may be included in the one Local Authority Area.

(2) The provisions of Sections 4 and 5 of the Local Government Acts shall apply to such proposed alteration to the boundaries of a Local Authority Area. The Minister may recommend to the Governor in Council that such application by the Companies be granted and that an Order in Council be issued altering the boundaries of the Local Authority Areas accordingly.

(3) Such Order in Council may make provision for the apportionment of assets and like matters provided for in paragraph (ii) of Sub-section (2) of Section 5 of the Local Government Acts as between the Local Authorities to be affected by such Order in Council, and shall take effect as from the first day of July next ensuing after the date thereof.

(4) That part of the Local Authority Area comprising such Leases or other tenures of the Companies as hereinbefore referred to shall constitute a Division (not being a division for electoral purposes only) of the Local Authority Area in question and the provisions of the Local Government Acts shall apply and extend to such Division accordingly.

PART VII—WATER FOR AND IN CONNECTION WITH MINING OPERATIONS

1. In this Part unless the context otherwise requires, the several terms following shall have the meanings respectively assigned to them:—

" The Commissioner "—The Commissioner of Irrigation and Water Supply under and within the meaning of *The Irrigation and Water Supply Commission Acts* 1946 *to* 1949;

" The Minister "—The Minister for Local Government and Conservation.

2. (1) Subject always to the right of persons residing or travelling in the vicinity of any natural source to take water therefrom for their reasonable domestic and stock requirements, the Companies shall have the right as hereinafter in this Part provided to obtain water from any river, stream or other source within the catchment area of the Isaacs River excluding the catchment of the Connors River and its tributaries (hereinafter in this Part referred to as " the catchment area ") and the

right to use, or otherwise dispose of water so obtained for any purpose of or directly or indirectly in connection with operations under this Agreement or under any lease or other right granted hereunder (including the supply of water to any Town).

(2) The Companies shall from time to time notify the Minister (but in any event within a period of seven (7) years from the passing of the Act) the annual quantity of water which they will require from such river stream and other sources within the catchment area to be used in connection with mining purposes, the total of which shall not exceed eight thousand (8,000) acre feet allocated as follows:—

(a) a maximum of four thousand (4,000) acre feet from surface or underground sources or from storage facilities located within such part of the catchment area as is situated north of the Peak Downs Highway; and

(b) a maximum of four thousand (4,000) acre feet from surface or underground sources located within such part of the catchment area as is situated between the Peak Downs Highway and the junction of the Isaacs and the Mackenzie Rivers;

and the Companies shall thereafter have the right to obtain from such river, stream and other sources within the catchment area the annual quantity so notified in respect of such river, stream or other sources. In the event of the Companies negotiating with the Commissioner contractual rights to the supply of water from the Broken River or the Mackenzie River the annual quantities of water to which the Companies are entitled under this Agreement may be reduced by the quantity of water secured by the Companies under such contractual rights.

(3) For the purposes of obtaining and conveying to and throughout the Special Coal Mining Leases, other lands howsoever held by the Companies and Towns the water to which they are entitled under this Clause the Companies shall have within the catchment area the right:—

(a) to build dams, weirs, reservoirs and protection and other works on rivers and streams and to regulate the flow thereof:

Provided that the Companies shall when so required by the Minister construct such fishways as the Minister may in any case deem necessary;

And provided further that the Minister may require the Companies to construct appropriate outlet works in any structure to permit adequate supplies of water to be passed downstream through any storage facilities at any time when inflow occurs and the level of the storage is below spillway crest level;

(b) to use the beds of any such rivers or streams to convey water from any storage to a point of diversion; and

(c) to construct maintain and operate pipelines, aqueducts, channels, pumping stations and other works.

(4) At any time when there is flow into any storage there shall be passed an amount of flow sufficient to meet riparian rights to downstream landholders plus any license or requirement for other use authorised by the Commissioner or the actual inflow, whichever is the lesser, such amount to be released through the storage by means of appropriate outlet works. Subject to the provisions of this Clause the amount of any inflow to be passed through the storage shall be fixed by the Commissioner.

The extent of rights to downstream use from any storage determined by the Commissioner shall be:—

(a) in respect of that part of the catchment area upstream of the Peak Downs Highway—

(i) for storage on any tributary of the Isaacs River, the rights along that tributary downstream to its junction with the Isaacs River; and

(ii) for storage on the Isaacs River the rights along that River downstream to the Peak Downs Highway;

(b) in respect of the catchment area downstream of the Peak Downs Highway—

(i) for storage on any tributary of the Isaacs River, the rights along that tributary downstream to its junction with the Isaacs River;

(ii) for storage on the Isaacs River the rights along that River between that storage and the junction of the Isaacs and Mackenzie Rivers.

(5) The Companies shall not without the approval of the Minister draw from such river, stream or other sources within the catchment area on any one (1) day a total quantity of water, which water may be released from any storage constructed by the Companies, natural flow, or partly released from such storage and partly natural flow exceeding—

(a) six million (6,000,000) gallons per day from that part of the catchment area north of the Peak Downs Highway; and

(b) six million (6,000,000) gallons per day from that part of the catchment area south of the Peak Downs Highway:

Provided that the actual daily rate of diversion of natural flow shall be controlled to allow for the requirements of downstream use determined by the Commissioner from time to time as provided for in this Clause.

(6) At all times when water is being released down a river or stream channel from a storage constructed by or for the Companies for their use, the Companies shall have the right to divert the full quantity which it is estimated has reached the point of diversion.

(7) Plans, specifications and proposed storage capacity of any structures to be built by the Companies shall be subject to examination and approval of the Minister or the Commissioner and the Companies shall be required to construct maintain and operate such structures to the satisfaction of the Commissioner.

(8) In the event that the Companies wish to proceed with the construction of storage on the catchment area, the State reserves the right to negotiate with the Companies an arrangement whereby a larger storage, if feasible, may be built by the State on the basis that the Companies contribute a capital sum bearing such proportion to the capital cost of the larger structure as the proportion of safe annual yield required by the Companies is to the proportion of the safe annual yield from the larger structure.

(9) Subject to Sub-clause (6) of this Clause, the Companies shall have the right to collect and store in any dam or weir constructed by them on any river or stream within the catchment area a quantity of water sufficient after allowing for losses during storage and during conveyance

to the point of diversion to ensure the availability at a constant daily rate of diversion of the annual quantities which the Companies are entitled under this Agreement to obtain from that river or stream.

In determining the amount of water required to be stored in the dam to ensure the daily rate of diversion required by the Companies, allowance must be made for water which may be diverted or used by upstream landholders for stock, domestic and house garden purposes and any other use authorised by the Commissioner, and also the downstream requirements as set out in Sub-clause (4) of this Clause.

(10) The Companies shall have the right of appeal to the Land Court in respect of any decision by the Commissioner granting any future license for diversion and/or storage of water from any river or stream above any storage provided by or for the Companies or between any storage and point or points of diversion by the Companies within the catchment area. Any such appeal shall be instituted and determined in accordance with the provisions contained in that behalf by Section 12 of the Water Acts.

(11) The State shall ensure that any rights granted to any other person and any operations conducted by the State or by any other person within the catchment area shall be so limited or controlled by the exercise of powers pursuant to the Water Acts that the quantity of water to which the Companies are entitled under this Part of this Agreement is not thereby diminished.

(12) Subject to the Water Acts and *The Acquisition of Land Act of* 1967, for the purposes of investigating the availability of water and of constructing operating and maintaining any works authorised by this Part of this Agreement, the State shall assist the Companies in gaining access with all necessary men transport materials and equipment to any river, stream or source within the catchment area from which the Companies have the right to obtain water and the Companies shall reimburse to the State the compensation, costs and other incidental expenses (if any), payable by the State in consequence of any such assistance.

(13) The Companies shall not be under any liability to any person by reason of the fact that any land lawfully held by that person has been or is likely to be inundated as the result of works carried out by the Companies or required to be occupied by any artesian or sub-artesian bores or wells, pumping stations, dams, storage basins, pipelines, roads or other requirements, in pursuance of their rights hereunder but the State shall as necessary resume any such land and the provisions of *The Acquisition of Land Act of* 1967 and/or the Land Acts shall apply and extend accordingly and the Companies shall reimburse to the State the compensation (if any) costs and other incidental expenses payable by the State in consequence of any such resumption.

3. (1) The Companies shall have the right to sink bores and wells and to obtain water from sub-surface sources either artesian or sub-artesian within the catchment area.

(2) If a bore sunk by the Companies within the catchment area provides a supply of water flowing at the surface, it shall be an artesian bore and the Companies shall take the necessary action under the Water Acts to obtain a license therefor.

The conditions of any such license may include—

(a) requiring an outer string of casing of specified length to be inserted and pressure cemented, and control of flow by a valve;

(b) reticulation of supply by pipeline;

(c) the reasonable stipulation of the daily and/or annual flow permitted to be drawn from the bore.

(3) When the Commissioner issues a license for an artesian bore within the catchment area whether such bore has been drilled by the Companies or another person (including the State), he shall ensure that the conditions of such license shall be such that the supply of water available from any existing bores shall not be unduly diminished.

(4) If the Companies desire to obtain water supplies from sources of sub-artesian supply within the catchment area, the Minister may recommend to the Governor in Council that the catchment area or any appropriate part of it shall be declared an area in which the provisions of Part VII of the Water Acts shall operate in relation to sub-artesian wells.

(5) Following a declaration referred to in Sub-clause (4) of this Clause, when the Commissioner issues a license for a sub-artesian bore within the catchment area whether such bore has been drilled by the Companies or another person (including the State) he shall ensure that the conditions of such license shall be such that the supply of water available from any existing sub-artesian bores shall not be unduly diminished.

4. (1) The Companies shall in respect to each calendar year provide the Minister with the following particulars of their use of surface water and/or underground water from bores or wells sunk by them:—

(a) the quantity of water obtained each month from any river or stream and from other sources;

(b) the quantity of water withdrawn or released from any storage each month; and

(c) the location depth and stratigraphic details of each of the bores and wells sunk pursuant to the provisions of this Part of this Agreement the results of any test conducted by them of the yield and quality of water therefrom and the quantity of water obtained therefrom each half-year.

(2) If the Companies shall neglect or refuse to perform or observe all or any of the provisions of this Part and on the part of the Companies to be performed or observed the Companies shall be liable to a penalty not exceeding one thousand dollars ($1,000) for each or any such breach of which notice has been served on the Companies by the Commissioner and a further daily penalty not exceeding five hundred dollars ($500) so long as any such breach continues after notice thereof.

(3) In addition to the powers of the Commissioner under the Water Acts, if the Commissioner is of the opinion that the Companies are at any time taking a greater quantity of water from any river, stream or other source within the catchment area than such quantity or quantities as the Companies are permitted to take under this Part of this Agreement then notwithstanding any other remedy which may be available to the Commissioner he may take such action as he deems necessary to prevent

the Companies so doing including rendering equipment used by the Companies inoperative but without damaging the equipment for the purpose of taking water.

5. Any surplus or waste water discharged by the Companies into any river or stream within the catchment area shall revert to the State without payment to the Companies.

6. The Companies shall have the right to discharge into the rivers and streams within the catchment area drainage from any plant works and facilities of the Companies and from any residential area and the Companies shall ensure that any such discharge by them shall not be dangerous or injurious to public health. Any such discharge shall not (unless specifically authorised by the Minister for a particular purpose) render the natural water in the river or stream less fit for human consumption or consumption by stock or for marine life, shall not cause harmful pollution of waters and shall not contain harmful solids. The Minister may from time to time direct the Companies to make known to such persons as shall be specified by him and the Companies shall so make known the nature of the effluent discharged or to be discharged.

7. Subject to the provisions of this Agreement, the provisions of the Water Acts shall apply but in so far as there shall be any conflict between the powers of this Agreement and of those Acts or any other Act relating thereto the provisions of this Agreement shall be paramount.

PART VIII—PROVISIONS RELATING TO LANDS (INCLUDING BRIGALOW LANDS)

1. In this Part the term "the Minister" means the Minister for Lands or other Minister of the Crown for the time being charged with the administration of the Land Acts.

2. The Companies will endeavour to acquire by agreement with the owners all rights including easements required by the Companies in respect of land for the purposes of this Agreement.

3. If the Companies shall satisfy the State that they have been unable to acquire under reasonable terms and conditions the land or easement in land specified in Clause 2 of this Part and that such land or easement in land is reasonably required by the Companies for the purposes of this Agreement, such land or easement shall be acquired or resumed by the State from the owners thereof or the persons having any interest therein under the provisions of *The Acquisition of Land Act of* 1967 and/or the Land Acts to the same extent as if the purposes for which the land is required were a purpose set out in the Second Schedule to *The Acquisition of Land Act of* 1967 and the provisions of both such Acts shall apply and extend accordingly. Any lands taken shall vest in the Crown and any easements taken shall be in the name and for the benefit of the Companies. All the purchase money and compensation payable in respect of lands or easements so acquired together with all expenses incurred by the Minister in effecting such resumption or acquisition shall forthwith be paid by the Companies to the Minister. Before resuming or acquiring such lands or easements as aforesaid the Minister may require the Companies to deposit with him such moneys or such securities as are in his opinion sufficient to ensure the payment by the Companies of sums to be paid by the Companies as aforesaid.

4. The State shall in respect of any land so resumed or acquired by the Minister at the request of the Companies in accordance with Clause 3 of this Part grant to the Companies such special lease or special leases or leases of whatsoever tenure and on such terms and conditions as the Companies shall be lawfully entitled to having regard to the purposes for which the said lease or leases is or are required. The rent of such lease or leases shall be fixed by the Minister, who in fixing such rental shall have regard to expenditure made by the Companies in payment of purchase money and compensations in respect of the land to be leased.

5. Subject to Clauses 2 and 3 of this Part, the State shall, as and when required by the Companies, in respect of any land situated within the Franchise Lands or the catchment area referred to in Part VII of this Agreement which, in the opinion of the Minister is reasonably required for any of the following purposes:—

(i) town site or town sites; or

(ii) cutting and constructing thereon water-races, pipelines, drains, dams, reservoirs, tramways, railways, haulage ways, roads and other improvements required and to be used for the purposes of this Agreement; or

(iii) pumping, raising or obtaining water to be used in connection with mining, treatment and transportation of coal and/or by-products and for purposes connected directly or indirectly therewith,

grant to the Companies such Special Lease or Special Leases or other tenure, license or permit which may be appropriate to the particular purpose, and on such terms and conditions as the Companies shall be lawfully entitled to, having regard to the purposes for which the said land is required. The rent under such lease or license or fee under such permit shall be fixed by the Minister.

6. The term of any Special Lease or other tenure granted to the Companies under this Part shall be co-extensive with the term of a Special Coal Mining Lease granted to the Companies in accordance with the provisions of Part III of this Agreement.

7. With respect to any land which has been acquired or is in process of acquisition by the State for the purposes of *The Brigalow and Other Lands Development Acts*, 1962 *to* 1967 and which said land is included within the Franchise Lands and which land is not held from the Crown under lease or is not the subject of an Agreement or offer for lease and in respect of which a Special Coal Mining Lease or Special Coal Mining Leases may be granted to the Companies, the Companies shall compensate the State for the following:—

(a) any injurious affection caused to other lands of the Crown arising at the time of and as a direct result of such grant,

(*b*) the value of any improvements, developmental works and other outlays which the State has incurred or is committed to incur in connection with the said land for the purposes of *The Brigalow and Other Lands Development Acts*, 1962 *to* 1967 and which by the action of the Companies is precluded from being utilized in accordance with the provisions of such Acts,

(c) any expenditure incurred by the State by way of interest charges on outlays made by the State in respect of land, developmental works and improvements, the disposal of which under *The Brigalow and Other Lands Development Acts* 1962 *to* 1967 is delayed by this Agreement irrespective of whether or not a Special Coal Mining Lease is granted to the Companies.

The amount of compensation to be paid to the State by the Companies shall be such sum as shall be notified by the Minister to the Companies and shall become due and payable upon notification by the Minister but the Companies may agree with the Minister that it be paid in equal annual instalments over a period not exceeding five (5) years with interest calculated at the rate of five and one-half per centum (5½%) per annum calculated on half yearly rests upon the amount of such compensation from time to time remaining unpaid.

PART IX—GENERAL

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

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

(2) Nothing in this Agreement shall prevent the acquisition of any of the lands of the Companies by the Minister administering *The Acquisition of Land Act of* 1967 subject to the payment of compensation including severance as provided by law.

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

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

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

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

4. Subject to the provisions of the Land Acts nothing herein contained shall prevent the Companies or either of them from acquiring and holding land in freehold or upon any other form of tenure or any mining tenure or any other right, license, privilege or concession whatsoever.

5. (1) If the Companies—

(a) within such time as is specified or if no time is specified then within such time as the Governor in Council (or on reference to the Tribunal in manner hereinafter provided, the Tribunal) shall consider reasonable fail, neglect or refuse to arrange, carry out, or undertake any of the provisions required of them under the Authority to Prospect for Coal referred to in Part II of this Agreement or of any Condition contained in any Special Coal Mining Lease granted to them pursuant to Part III of this Agreement;

(b) fail, neglect or refuse to pay to the State at the time or times when the same shall respectively become payable any sum of money payable by way of rent or royalty or otherwise in pursuance of this Agreement;

(c) within such time as the Governor in Council (or on reference to the Tribunal in manner hereinafter provided, the Tribunal) shall consider reasonable fail, neglect or refuse to carry out the surveys specified in Clause 3 of the Second Schedule to this Agreement;

(d) fail, neglect or refuse to commence or continue the construction of the works without unnecessary delay;

(e) fail, neglect, or refuse to comply with the provisions of Clause 13 of Part III of this Agreement;

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

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

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

(a) The Companies shall be granted, if the Companies so apply, a Special Coal Mining Lease or Special Coal Mining Leases under the provisions of the Coal Mining Acts of the area then comprised in their Special Coal Mining Leases or at the Companies' option any part thereof provided that the Companies shall remain entitled to the possession of whatever area of the surface within such coal mining lease in respect of which compensation has been paid or is payable by the Companies;

(b) where any land vested in the Crown and granted to and held by the Companies under a Special Coal Mining Lease pursuant to the provisions of Part III of this Agreement was previously held by the Companies for an estate in fee simple, a title in fee simple shall be granted to the Companies on request made by the Companies not later than twelve (12) months after such determination.

(4) Twelve (12) months after the determination of this Agreement in pursuance of the provisions of this Clause all works remaining on any land formerly included in any Special Coal Mining Lease granted to and held by the Companies under the provisions of Part III of this Agreement shall be absolutely forfeited to the Crown unless the Companies have been granted either a title to that land in fee simple or a lease pursuant to this Agreement.

(5) In relation to this Agreement other than Part IV thereof the Companies shall not be held to be in default under the provisions of this Clause or to have failed to carry out any obligation under this Agreement if such default or failure is caused by act of God, force majeure, floods, storms, tempests, war, riots, civil commotions, strikes, lockouts, shortage of labour transport power or essential materials, breakdown of plant, inability in the opinion of the Governor in Council to sell profitably the coal or any other cause whatsoever beyond the control of the Companies.

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

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

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

(2) The Tribunal shall consist of either:

(a) a Judge of the Supreme Court of Queensland appointed by the Governor in Council; or

(b) a barrister of not less than seven (7) years' standing appointed by the Governor in Council upon the recommendation of the Chief Justice of Queensland.

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

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

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

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

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

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

(9) The Tribunal shall be deemed to be a commission within the meaning of *The Commissions of Inquiry Acts* 1950 *to* 1954 and the provisions of such Acts shall apply to the Tribunal and all the proceedings thereof.

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

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

7. (1) In case any question difference or dispute shall arise between the State and the Companies concerning any clause or anything contained in this Agreement or the meaning or construction of any matter or thing in any way connected with this Agreement or the rights, duties or liabilities of either the State or the Companies under or in pursuance of the provisions of this Agreement including any question whether the Companies are in default under any provision of this Agreement save and except any matter or thing which under the provisions of this Agreement—

(a) is in the discretion of the Governor in Council;

(b) is required to be agreed upon between the State and the Companies;

(c) is expressed to be determined by a Minister the Commissioner for Railways or the Commissioner for Irrigation and Water Supply or other person specifically named in this Agreement as the determining authority;

or if any matter whatsoever is by this Agreement required to be referred to the Tribunal then and in every such case such question, difference or dispute, matter or thing shall be referred to the Tribunal the constitution of which is herein provided.

(2) In case any question, difference or disputes shall arise between a Crown corporation, a Crown instrumentality, a Local Authority or Harbour Board and the Companies concerning any matter or thing arising out of the provisions of this Agreement within or affecting the area of the Local Authority or Harbour Board save and except any matter or thing which under the provisions of this Agreement—

(a) is in the discretion of the Governor in Council;

(b) is required to be agreed upon between the State and the Companies; or

(c) is expressed to be determined by a Minister the Commissioner for Railways or the Commissioner for Irrigation and Water Supply or other person specifically named in this Agreement as the determining authority;

then and in every such case such question difference or dispute may upon request made to the Minister by a Crown corporation, Crown instrumentality, a Local Authority, Harbour Board or the Companies be referred to the Tribunal the constitution of which is hereinbefore provided.

8. The State shall provide and maintain educational facilities and police for any Town to be constructed by the Companies at the site of the Companies' coalmine, on the same basis as that on which it normally provides such facilities for a town of similar size. Where the Local Authority within whose Area such Town is situated provides services to such Town the ordinary loan-subsidy scheme for capital work in force within the State shall apply.

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

10. 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 any Minister (as the case may be) if signed by the Minister and forwarded by

prepaid post to the Companies at their registered offices in the State and by the Companies if signed on behalf of the Companies by the managing director, a director, president, vice president, general manager, secretary or attorney or solicitor of the Companies or either of them 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.

11. Nothing in this Agreement contained or implied shall constitute a partnership between the State and the Companies or either of them or between the Companies. Any liability of the Companies under this Agreement or any lease or license granted pursuant to the provisions of this Agreement is several and proportional to their respective interests recorded in any such lease or license and in respect of the Agreement is eighty-five per centum (85%) as to Utah Development Company and fifteen per centum (15%) as to Mitsubishi Development Pty. Ltd.

12. The State shall grant any lease or license pursuant to the provisions of this Agreement to the Companies as tenants in common in the proportions specified by the Companies in the application for any such lease or license: Provided that if any such lease or license is granted without any application therefor or if any such application does not specify the proportions then the grant shall be made to the Companies in the proportions of eighty-five per centum (85%) as to Utah Development Company and fifteen per centum (15%) to Mitsubishi Development Pty. Ltd.

13. The lands the subject of any Crown grant, lease or license granted to the Companies under this Agreement shall be and remain zoned for use and otherwise protected during the currency of this Agreement so that the operations of the Companies hereunder may be undertaken and carried out thereon without any interference or interruption by any municipal or Shire Council or by any other government or semi-governmental authority of the State or by any person on the ground that such operations are contrary to any zoning by-law or regulation of any such municipal or Shire Council or other authority.

THE FIRST SCHEDULE

AREA No. 1

COUNTIES: Cairns, Grosvenor, Killarney, Roper and Talbot

AREA: About 1,274 square miles

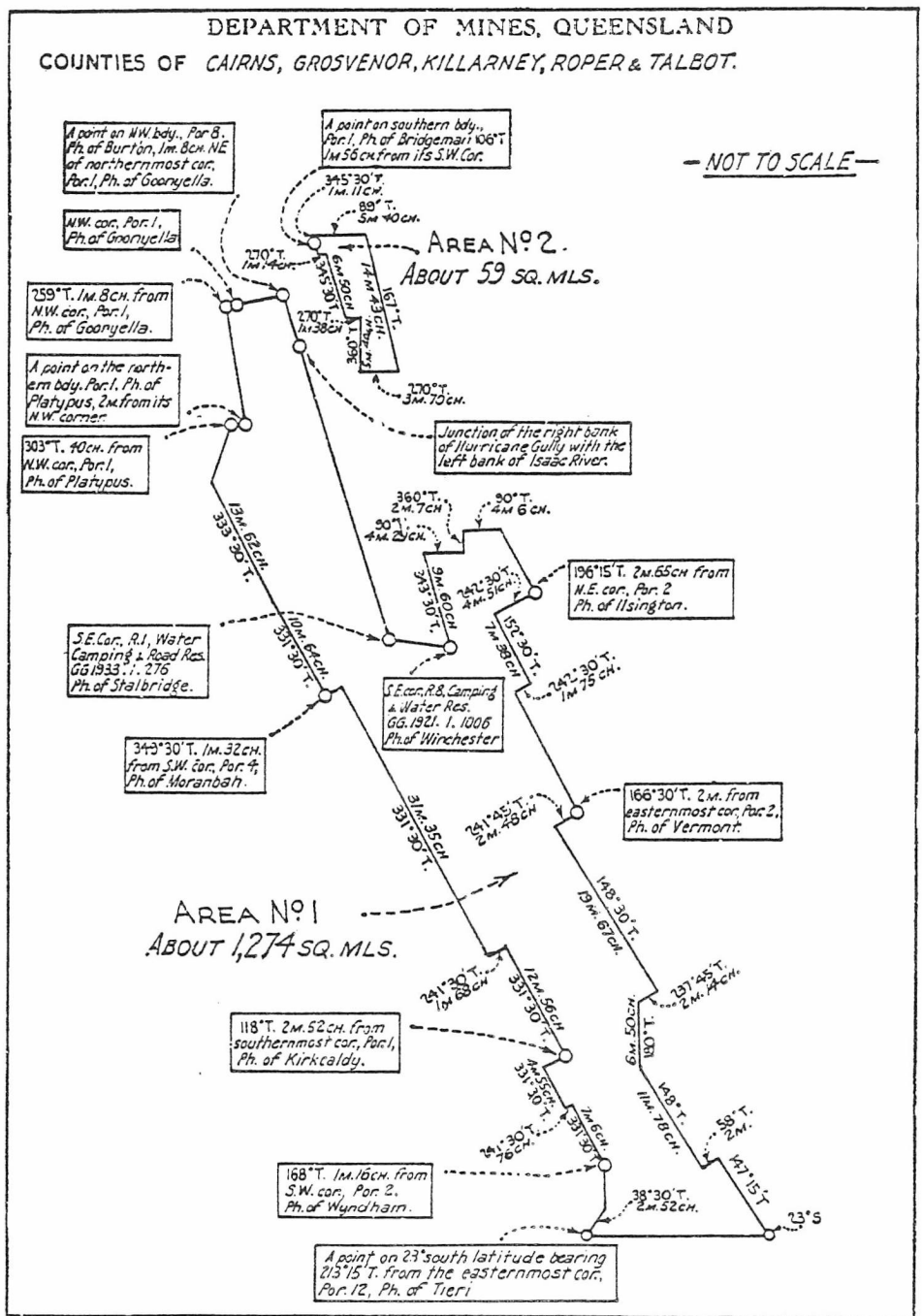
All the lands within the State and within the boundaries shown by the diagram marked Area No. 1 on Plan No. AC81 (a copy of which is attached) held at the Department of Mines, Brisbane, but exclusive of lands in National Parks as defined in the *Forestry Act* 1959–1968 and lands referred to in the second proviso to sub-section (3) of section 21A of *The Mining on Private Land Acts* 1909 *to* 1965 and lands held on 23rd December, 1967, under all mining tenements and holdings under the Coal Mining Acts (other than the lands to which Authority to Prospect No. 6C relates).

AREA No. 2

COUNTY: Grosvenor

AREA: About 59 square miles

All the lands within the State and within the boundaries shown by the diagram marked Area No. 2 on Plan No. AC81 (a copy of which is attached) held at the Department of Mines, Brisbane, but exclusive of lands in National Parks as defined in the *Forestry Act* 1959–1968 and lands referred to in the second proviso to sub-section (3) of section 21A of *The Mining on Private Land Acts* 1909 *to* 1965 and lands held on 23rd December, 1967, under all mining tenements and holdings under the Coal Mining Acts (other than the lands to which Authority to Prospect No. 6C relates).


DEPARTMENT OF MINES, QUEENSLAND
COUNTIES OF CAIRNS, GROSVENOR, KILLARNEY, ROPER & TALBOT.
— NOT TO SCALE —
A point on W.W. bdy., Por 8, Ph. of Burton, 1m. 8ch. NE of northernmost cor., Por. 1, Ph. of Goonyella.
A point on southern bdy., Por. 1, Ph. of Bridgemari 106°T 1m 56ch. from its S.W. Cor.
345°30'T. 1m. 11ch.
89°T. 5m 40ch.
N.W. cor., Por. 1, Ph. of Goonyella
AREA No 2.
ABOUT 59 SQ. MLS.
270°T. 1m. 14ch.
345°30'T. 6m 50ch.
17m 45ch.
167°T.
270°T. 1m 38ch
360°T. 3m 45ch.
259°T. 1m. 8ch. from N.W. cor., Por. 1, Ph. of Goonyella.
270°T. 3m. 75ch.
A point on the northern bdy. Por. 1. Ph. of Platypus, 2m. from its N.W. corner
Junction of the right bank of Hurricane Gully with the left bank of Isaac River.
303°T. 40ch. from N.W. cor., Por. 1, Ph. of Platypus.
360°T. 2m. 7ch
90°T. 4m 6ch.
90°T. 4m 2ch.
13m. 62ch. 333°30'T.
9m. 60ch. 343°30'T.
242°30'T. 4m. 51ch.
196°15'T. 2m. 65ch from N.E. cor., Por. 2 Ph. of Ilsington.
152°30'T. 7m 38ch
242°30'T. 1m 75ch.
S.E. Cor., R.1, Water Camping & Road Res. GG 1933 : 1. 276 Ph. of Stalbridge.
10m. 64ch. 331°30'T.
S.E. cor. R.8, Camping & Water Res. GG. 1921. 1. 1006 Ph. of Winchester
343°30'T. 1m. 32ch. from S.W. cor., Por. 4, Ph. of Moranbah.
241°45'T. 2m. 78ch
166°30'T. 2m. from easternmost cor. Por. 2, Ph. of Vermont.
31m. 35ch 331°30'T.
148°30'T. 19m. 67ch.
AREA No 1
ABOUT 1,274 SQ. MLS.
241°30'T. 1m 68ch
12m. 56ch 331°30'T.
237°45'T. 2m. 14ch.
6m. 50ch.
T. 088
118°T. 2m. 52ch. from southernmost cor., Por. 1, Ph. of Kirkcaldy.
4m. 54ch. 331°30'T.
148°T. 11m. 78ch.
59°T. 2m.
241°30'T. 76ch.
2m 6ch 331°30'T.
147°15'T.
168°T. 1m. 16ch. from S.W. cor., Por. 2, Ph. of Wyndham.
38°30'T. 2m. 32ch.
23°S
A point on 23° south latitude bearing 213°15'T. from the easternmost cor., Por. 12, Ph. of Tieri
The actual boundaries on the ground shall be those marked by an authorised surveyor in accordance with this diagram and the requirements of the Authority to Prospect. The boundaries are shown in relation to the points marked O.
'T indicates initial true bearing
15. 11. 68
Draftsman in Charge
WARDENS Bowen, Clermont & Mackay.
Locality: Bowen Basin.
REFERENCE 4 MILES 61, 70 & 71
PLAN No AC. 81.

THE SECOND SCHEDULE

No. C

THE COAL MINING ACTS 1925 to 1967

THE CENTRAL QUEENSLAND COAL ASSOCIATES AGREEMENT ACT 1968

AUTHORITY TO PROSPECT

WHEREAS pursuant to the provisions of the Agreement made in pursuance of the *Central Queensland Coal Associates Agreement Act* 1968 this Authority to Prospect for coal on the lands hereinafter described has been authorised and WHEREAS by Proclamation issued under the provisions of *The Coal Mining Acts* 1925 *to* 1967 (hereinafter referred to as " the Acts ") an area comprising such lands was declared as not to be open to license or lease:

NOW, THEREFORE, I, The Honourable Ronald Ernest Camm, Minister for Mines, Main Roads and Electricity for the STATE OF QUEENSLAND (hereinafter with his successors in office referred to as " the Minister ") by virtue of the powers and authority in me vested under the Acts HEREBY GRANT to Utah Development Company and to Mitsubishi Development Pty. Ltd. as tenants in common in the proportions of eighty-five one hundredths and of fifteen one hundredths respectively (hereinafter with their and each of their respective successors and permitted assigns referred to as " the Holder ") an Authority to Prospect for coal on the lands more particularly described in the Schedule hereto, exclusive of all areas of surface containing stacked tailings, sands, mullock, slag and similar materials, for the term hereinafter specified upon and subject to the provisions of the Acts as modified by the said Agreement and to the following terms, conditions, provisions and stipulations:—

1. PERIOD: The period of this Authority to Prospect shall be five (5) years from the first day of January, 1969.

2. AREA: Approximately 1,333 square miles as described in the Schedule hereto.

Notwithstanding anything herein contained the area of the lands comprised in this Authority to Prospect shall be reduced by each of the following dates in this Clause to not more than the area shown against that date:—

Date	Area
1-1-1970	1,070 square miles
1-1-1971	810 square miles
1-1-1972	550 square miles
1-1-1973	290 square miles

The Holder shall before each of the above dates in this clause by notice in writing to the Minister specify the lands to be excluded by that date in accordance with this Clause. In default of the Holder so specifying then the Minister shall specify such lands.

3. MARKING OF BOUNDARY: If any doubt or dispute should arise as to the position of all or any portion or portions of the boundary or boundaries of the lands comprised within this Authority to Prospect (hereinafter called " the boundary ") or if it appears to the Minister to be desirable in the public interest then the Minister may require the Holder to survey and mark the boundary and thereupon the Holder shall do so at his own expense.

Should he so desire the Holder may at any time during the term of this Authority to Prospect survey and mark the boundary.

When the boundary has been surveyed and marked and the boundary as so marked has been accepted as correct by all holders of Authorities to Prospect whose interests are affected by such marking of the boundary and by the Minister then the boundary as so marked shall be deemed to be the boundary of the lands comprised within this Authority to Prospect.

Failing acceptance as aforesaid then the Minister may determine the location of the boundary in relation to the marks and thereupon the boundary as so determined shall be deemed to be the boundary of the lands comprised within this Authority to Prospect.

4. SURVEY OF BOUNDARY: The survey of the boundary shall be made by a surveyor registered under *The Land Surveyors Acts* 1908 *to* 1916.

The survey and the marking of the boundary shall be made in accordance with the Acts and *The Land Surveyors Acts* 1908 *to* 1916. Where the Minister considers that no appropriate or clear directions are given under either of the Acts in this Clause referred to then the survey and marking shall be as the Minister may direct.

The Holder shall lodge with the Minister a plan, field notes and computations of the survey all certified as correct by the surveyor who made the survey.

5. RIGHT TO PROSPECT: The Holder shall during the term of this Authority to Prospect have the right to (a) prospect the said lands including topographical, geological and geophysical examinations aerial and contour surveys drilling and shaft sinking as may from time to time in the opinion of the Holder be appropriate for the purpose of determining the existence or otherwise of coal and its extent and nature in the said lands, and (b) take not more than four (4) bulk samples each of not more than 10,000 tons of coal. This Authority to Prospect shall not confer any right of ownership to the said coal upon the Holder.

6. DEPOSIT: The Holder before the date hereof shall deposit with the Minister a sum of five thousand dollars ($5,000.00), (the receipt of which sum is hereby acknowledged) to be held by the Minister as a guarantee that the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Holder to be performed or observed will be performed or observed by the Holder.

Subject to the performance and observance by the Holder of the provisions of the Acts and the terms, conditions, provisions and stipulations of this Authority to Prospect on the part of the Holder to be performed or observed, such deposit shall be refunded to the Holder upon the expiration or prior determination (other than by cancellation as hereinafter provided) of this Authority to Prospect.

7. RENTAL: The Holder shall pay to the Minister before each of the dates tabulated below in this clause the sum in Australian currency set opposite such date as rental for the lands subject to this Authority to Prospect:—

Date	Rental
1-1-1969	$8,531
1-1-1970	$6,848
1-1-1971	$5,184
1-1-1972	$3,520
1-1-1973	$1,856

8. EXISTING RIGHTS: Subject to the provisions of the Acts this Authority to Prospect shall be subject and without prejudice to all rights, powers, privileges and property of all and every person and corporation under or in respect of any Crown grant, Certificate of Title, lease, claim or mining tenement or of any Authority to Prospect granted to any person under the provisions of *The Petroleum Acts* 1923 *to* 1967 and *The Mining Acts* 1898 *to* 1967 now or at any time during the term of this Authority to Prospect existing in respect of any part of the said lands, and shall be in accordance with the franchise agreement with the Holder.

9. WORK AND EXPENDITURE: During the said term the Holder shall continuously conduct the special investigation described in clause 5 hereof, and such other special investigations as the Minister may approve in writing, and shall bona fide expend or cause to be expended in such special investigations not less than one million dollars ($1,000,000). Provided that the minimum expenditure for any one year of such period shall not be less than one hundred thousand dollars ($100,000).

10. GUARANTEE: When required by the Minister, the Holder shall, in respect of any year referred to in clause 9 hereof, lodge with the Minister a security or provide a surety acceptable to the Minister for the minimum amount required to be expended during such year. If at the end of such year the Minister is of the opinion that the Holder has not fulfilled the conditions of the Authority to Prospect in respect of work and expenditure on the Authority to Prospect during such year, the Minister may at his sole discretion forfeit the security or such part thereof as shall be determined by the Minister as being the amount required to satisfy the obligations of the Holder or may require the surety to pay to the Minister a sum equal to such amount. Any moneys so forfeited or required to be paid by a surety shall be paid to Consolidated Revenue.

11. REPORTS:

(1) Within three (3) months after the end of each six-monthly period of the term of this Authority to Prospect, the Holder shall furnish to the Minister a written report accompanied by relevant maps, sections, charts and other data giving full particulars of the information obtained from all operations carried out in connection with the special investigations described in Clauses 5 and 9 hereof and a further written report setting out detailed information of the expenditure incurred in each of the phases of such special investigations during such six-monthly period. The Minister may by notice in writing to the Holder dispense with any of the requirements of this Sub-clause (1).

(2) Within six (6) months after the expiration or prior determination of the term of the Authority to Prospect the Holder shall furnish to the Minister a written report accompanied by relevant maps, sections, charts and other data giving full particulars of the information obtained from all operations carried out in connection with the special investigations described in Clauses 5 and 9 hereof during the term of this Authority to Prospect.

(3) In respect of every area excluded from the lands the subject of this Authority to Prospect in accordance with Clause 2 hereof the Holder shall, within six (6) months after such area has been so excluded, furnish to the Minister a written report or reports accompanied by relevant maps, sections, charts and other data giving full particulars of the information obtained from all operations carried out in such excluded area in connection with the special investigations described in Clauses 5 and 9 hereof during the term of this Authority to Prospect in respect of such excluded area. Every such report may be used as the Minister sees fit.

(4) The Minister may from time to time during the term of this Authority to Prospect and at any time prior to the refund to the Holder of the sum deposited with the Minister in accordance with Clause 6 hereof by notice in writing to the Holder require the Holder to furnish him with such further information regarding the operations carried out and expenditure incurred in connection with the special investigations described in Clauses 5 and 9 hereof as he may set forth in such notice and the Holder shall furnish such further information to the Minister within six (6) months of the date of such notice.

(5) Unless otherwise approved by the Minister, all reports required under this clause shall be in the English Language, shall give the information required in a clear manner and shall be presented in a form suitable for permanent record.

(6) The Minister may institute any investigation on geological aspects when and how he so desires.

12. PROTECTION OF ROADS, RAILWAYS, TELEPHONE AND POWER TRANSMISSION LINES AND CABLES, RADIO AND TELEVISION MASTS AND PIPELINES: This Authority to Prospect shall not be taken to authorise interference with any road, railway, telephone or power transmission line or cable or radio or television mast or pipeline, which shall not be affected in any way by operations performed by virtue of this Authority to Prospect.

13. PROTECTION OF NAVIGATION, HARBOUR OR OTHER WORKS AND FISHING GROUNDS: The Holder shall not interfere with any navigation, harbour or other works, or damage fishing grounds, in the exercise of his rights under this Authority to Prospect.

14. FORESTS AND NATIONAL PARKS: The Holder shall not enter on any State Forest or Timber Reserve or National Park or Scenic Area set apart under the *Forestry Act* 1959–1968 for any of the purposes of this Authority to Prospect without the prior written consent of the Conservator of Forests and then only under the conditions fixed by the Conservator of Forests.

15. ABORIGINAL RESERVES: The Holder shall not enter on any Aboriginal Reserve set apart under *The Aborigines' and Torres Strait Islanders' Affairs Acts* 1965 *to* 1967 for any of the purposes of this Authority to Prospect without the prior written consent of the Director of Aboriginal and Island Affairs and then only under the conditions fixed by the Director of Aboriginal and Island Affairs.

16. ENTRY ON LAND: Entry on land shall be made by the Holder in conformity with the provisions of the said Agreement.

17. AUTHORITY TO BE PRODUCED: When entering on land under this Authority the provisions of the said Agreement shall be complied with.

18. ABORIGINAL ARTIFACTS AND HISTORICAL SITES: The Holder shall not damage or interfere with aboriginal artifacts or historical sites without the written permission of the Minister and shall notify the Minister of any such artifacts or sites that the Holder may discover so that they may be properly preserved.

19. RIGHT TO ACQUIRE MINING LEASES: The right of the Holder to acquire Special Coal Mining Leases shall be in accordance with the Acts as modified by the said Agreement.

20. TRANSFER: The Holder shall not, except with the written approval of the Minister first had and obtained, assign, transfer, mortgage or charge this Authority to Prospect, or create an interest of any description whatsoever over or with respect to the said Authority to Prospect.

21. APPLICATION OF THE COAL MINING ACTS: If and so far as the Acts or any future amendments or modifications thereof shall not extend or apply to the works or operations of the Holder on the lands comprised within this Authority to Prospect the Holder shall perform and observe all and every the provisions of the Acts or any future amendments or modifications thereof in and about all works and operations of the Holder hereunder in the same manner and to the same extent as if such works and operations of the Holder were mines and mining within the meaning of the Acts.

22. CONTINUANCE OF EXISTING PROCLAMATION: The lands described in the Schedule hereto and proclaimed as aforesaid as not to be open to license or lease (except such portion or portions thereof as shall be excluded from the operations of this Authority to Prospect in manner herein provided) shall continue during the term of this Authority to Prospect to be so declared as not to be open to license or lease.

23. CANCELLATION ON DEFAULT: Subject to the said Agreement if at any time the Holder shall make default in the performance or observance of any of the provisions of the Acts or of any term, condition, provision or stipulation herein contained and on the part of the Holder to be performed or observed and shall fail to remedy such breach or default within three (3) months after written notice by the Minister has been delivered or sent by post to the Holder at his registered office or principal place of business in Queensland calling upon the Holder to

remedy such breach or default or if the Holder (being a company) shall be wound up or if an effective resolution is passed for its winding up (not being in any case a winding up for the purpose of reconstruction or amalgamation) or if the Holder shall assign transfer mortgage charge or create an interest in this Authority to Prospect or attempt to do so without the written consent of the Minister first had and obtained, the Minister may immediately thereupon cancel and determine this Authority to Prospect whereupon any balance of deposit then held by the Minister shall be absolutely forfeited to the Crown. Notice of such cancellation shall be sent by post to the Holder at his registered office or principal place of business in Queensland and shall be deemed to have been received by the Holder at the time when such notice would in the ordinary course of post have been received by the Holder and the fact that any such notice shall not have been received by the Holder shall not invalidate or affect such cancellation.

24. SURRENDER: If the Holder shall have performed and observed all of the provisions of the Acts and of the said Agreement and all of the terms, conditions, provisions and stipulations herein contained and on the part of the Holder to be performed or observed, the Holder may at any time by notice in writing to the Minister of his intention so to do surrender forthwith this Authority to Prospect and thereupon all the Holder's obligations under this Authority to Prospect shall cease and be at an end except that the obligations of the Holder under Clauses 7, 9 and 11 hereof and the rights of the Minister under Clause 10 hereof for the period referred to in Clause 9 hereof during which such notice is given shall not be affected in whole or in part thereby. Any balance of deposit then held pursuant to Clause 6 hereof shall be refunded by the Minister to the Holder when the Holder has complied with Clauses 7, 9 and 11 hereof.

SCHEDULE

Dated at Brisbane

THE THIRD SCHEDULE

QUEENSLAND

SPECIAL COAL-MINING LEASE

No.

Vol.

Fol.

Warden's District

County

Parishes

Area Acres Roods Perches

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

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS in conformity with the provisions of Acts of Parliament of Our State of Queensland called *The Coal Mining Acts* 1925 *to* 1967, *The Mining Acts* 1898 *to* 1967, *The Petroleum Acts* 1923 *to* 1967, *The Mining on Private Land Acts* 1909 *to* 1965 and the *Central Queensland Coal Associates Agreement Act* 1968 Utah Development Company and Mitsubishi Development Pty. Ltd. of Our said State made application to Us for a Lease of the Lands in Our said State described in the Second Schedule hereinafter written for the purpose of mining for Coal AND WHEREAS WE have consented to grant a Lease of the said Land for the purposes aforesaid for the term hereinafter mentioned at the Yearly Rent of dollars cents subject to the Royalties and under and subject to the covenants terms and conditions hereinafter mentioned and to the terms conditions exceptions reservations and provisoes in the said Acts and the Regulations made thereunder and in any other Acts affecting the same NOW KNOW YE that in consideration of the premises and of the sum of dollars cents paid to the Treasurer for the time being of Our said State before the issue hereof as and for the rent of the said Land to the Thirty-first day of December A.D. AND ALSO in consideration of the Yearly Rent Royalties covenants provisoes and agreements hereinafter reserved and contained on the part of the aforesaid Utah Development Company and Mitsubishi Development Pty. Ltd. their and each of their successors and permitted assigns to be paid observed and performed WE DO HEREBY for Us Our Heirs and Successors demise and lease unto the said Utah Development Company and Mitsubishi Development Pty. Ltd. as Tenants in Common in the proportions of eighty-five one hundredths and of fifteen one hundredths respectively, their and each of their successors and permitted assigns (hereinafter called " the Lessee ") all those lands more particularly described in the Second Schedule hereinafter written for the purpose of mining for Coal, saving reserving and excepting always unto Us Our Heirs and Successors and unto the Minister for Mines, Main Roads and Electricity of our said State (hereinafter called " The Minister ") and to any and every person or

persons hereinafter appointed by him in that behalf free liberty at all times during the continuance of this demise to enter into and upon the Land hereby demised and all Mines and Works therein or thereon in order to view and examine the condition thereof and for that purpose to make use of all or any railways tramways or roads or every and all machinery upon the said Land or belonging to the said Mines and also to use or make any levels drifts or passages requisite for the purpose of any such inspection TO HAVE AND TO HOLD the said Land and Mines and all and singular other the premises hereinbefore mentioned and hereby demised with the appurtenances unto the said Lessee for the full term of forty-two (42) years from the first day of January 1969 which said term shall be renewable for further periods and upon such terms as are expressed in the said the *Central Queensland Coal Associates Agreement Act* 1968 reserving saving and excepting unto Us Our Heirs and Successors all gold petroleum and helium found in association with petroleum also all minerals other than coal found in the Land herein demised YIELDING AND PAYING unto US Our Heirs and Successors in each and every year during the continuance of this Lease in advance prior to the first day of January into the hands of the Minister in Brisbane in Our said State the Yearly Rent of dollars cents AND in addition thereto ALSO YIELDING AND PAYING unto Us Our Heirs and Successors during the said term Royalties at the rates set forth in the Agreement referred to in the *Central Queensland Coal Associates Agreement Act* 1968 such Royalties to be paid to Our said Minister at Brisbane aforesaid by monthly payments on the fourth day of every month in each and every year during the said term AND WE DO HEREBY ALSO RESERVE unto Us Our Heirs and Successors and to such persons as shall from time to time be duly authorised by Us in that behalf during the term of the said Lease the free right and privilege of access including ingress egress and regress into upon over and out of the said Land for the purpose of searching for and for the operations of obtaining gold, petroleum and helium found in association with petroleum also all minerals other than coal in any part of the said Land PROVIDED ALWAYS and these Presents are upon the conditions following that is to say—Upon condition that the said Lessee shall well and truly pay or cause to be paid unto Us Our Heirs and Successors the Rent and Royalties hereby reserved when and as the same shall become payable in the manner hereinbefore appointed for that purpose AND FOR the better enabling the amount of the said Royalty due and payable from time to time to be ascertained shall on each and every of the days hereinbefore appointed for the payment of the same deliver to Our said Minister at Brisbane aforesaid a return as provided in the said Agreement duly verified by a Statutory Declaration by the Manager AND ALSO that the said Lessee do and shall use the said Land continuously and bona fide for the purposes for which the same is demised as aforesaid and in accordance with the said Acts and Regulations and for no other purposes AND ALSO that the said Lessee shall not assign underlet or part with the possession of the Land hereby demised or any part thereof except in accordance with the said Agreement AND ALSO that the said Lessee shall not give or enter into unless with the previous consent of the Minister any agreement or license or any power authority or arrangement whatsoever by virtue of which any person as against such Lessee or the successors or assigns of such Lessee is entitled to mine for coal on or under the land comprised in this Lease AND ALSO do and shall during the continuance of this demise work the said lands

as provided in the said Agreement AND ALSO shall permit and suffer all or any person or persons appointed by the Minister for the time being of Our said State in that behalf and the Warden for the time being within whose jurisdiction the Land hereby demised are situate at all proper and reasonable times during the continuance of this demise and whether the Mines are working or not without any interruption or disturbance from the Lessee its agents, servants or workmen or any of them to enter into and upon the said Mines and all works and buildings connected therewith or any part thereof to view and examine the condition thereof and whether the said Mine or Mines is or are worked bona fide for the purposes aforesaid and for that purpose to use all and every the tramways railways roads or ways and all or any of the machinery and works in and upon the said Land AND ALSO shall observe such further special conditions as are particularly described in the First Schedule hereinafter written AND these Presents are upon this further condition that for any breach of any of the covenants herein contained the Minister may impose upon the Lessee a fine not exceeding two thousand dollars ($2,000) and on non-payment of any such fine may forfeit the Lease as provided in the said Agreement PROVIDED ALWAYS that if the Lessee mine upon the said Land for minerals other than in association or combination with the mineral hereinbefore specified unless authorised to do so by a miner's right or mining lease this Lease shall be liable to forfeiture AND upon any forfeiture of this Lease or in case the term hereby granted shall have expired possession of the Land hereby demised shall and may be taken on Our behalf in the manner prescribed by Section 27 of *The Coal Mining Acts* 1925 *to* 1967 AND also upon any forfeiture or other determination of the said Lease the provisions of the said Agreement shall apply.

FIRST SCHEDULE

The conditions of the within Special Coal Mining Lease shall be those set out in the Agreement, the Schedule to the *Central Queensland Coal Associates Agreement Act* 1968.

SECOND SCHEDULE

IN TESTIMONY WHEREOF, We have caused this Our Lease to be Sealed with the Seal of Our said State.

WITNESS Our Trusty and Well-beloved His Excellency the Honourable Governor in and over the State of Queensland and its Dependencies, in the Commonwealth of Australia, at Government House, Brisbane, in Queensland aforesaid, this day of in the year of Our Reign and in the year of Our Lord One thousand nine hundred and

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