



Thiess Peabody Coal Pty. Ltd. Agreement Act 1962

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Queensland

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Thiess Peabody Coal Pty. Ltd. Agreement Act 1962

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

1 Short title

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

2 Execution of agreement authorised

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

3 Executed agreement to have force of law

- (1) Upon the making of the agreement the provisions thereof shall have the force of law as though the agreement were an enactment of this Act.
- (2) The Governor in Council shall by proclamation notify the date of the making of the agreement.

Editor's note—

The agreement was made on 19 December 1962 (see proc pubd gaz 19 January 1963 p 201).

4 Variation of agreement

- (1) The agreement may be varied pursuant to agreement between the Minister for the time being administering this Act and the company with the approval of the Governor in Council by order in council and no provision of the agreement shall be varied nor the powers and rights of the company under the agreement be derogated from except in such manner.
- (2) Any purported alteration of the agreement not made and approved in such manner shall be void and of no legal effect whatsoever.
- (3) Unless and until the Legislative Assembly, pursuant to section 5(4), disallows by resolution an order in council approving a variation of the agreement made in such manner, the provisions of the agreement making such variation shall have the force of law as though such lastmentioned agreement were an enactment of this Act.

4A Application of GST to rents after 30 June 2005

- (1) This section applies to rent payable after 30 June 2005 under any coal mining lease or special coal mining lease under, or mentioned in, the agreement.
- (2) If the rent is for a supply for which GST is payable, the rent payable is the total of—
 - (a) the rent that would have been payable if the rent were not for a supply for which GST is payable; and
 - (b) 10% of the rent that would have been payable if the rent were not for a supply for which GST is payable.
- (3) Subsection (2) applies despite the following—
 - (a) sections 2 to 4;
 - (b) the agreement;
 - (c) the *Thiess Peabody Mitsui Coal Pty. Ltd. Agreements Act 1965* or the railway agreement mentioned in that Act;

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- (d) the repealed section 11 of the *Coal Mining Act 1925*, mentioned in the agreement;
 - (e) the repealed *Mining Act 1968*;
 - (f) the *Mineral Resources Act 1989*.
- (4) A reference in this section to the agreement includes any amendment of the agreement.

4B Termination of cl 18 of agreement

- (1) The following are terminated—
 - (a) clause 18 of the agreement;
 - (b) any rights the company has under that clause.
- (2) No amount, whether by way of compensation, reimbursement or otherwise is payable by the State to the company or any other person for or in connection with the enactment or operation of this section.
- (3) This section applies despite any other provision of this Act and any other Act or law.

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 the Governor in Council shall think necessary or expedient to provide for, enable or regulate the carrying out of the provisions of the agreement or any of them.
- (2) Any such proclamation or order in council may be revoked or altered by another proclamation or order in council which is not inconsistent with the agreement.
- (3) Every such proclamation and order in council shall—
 - (a) be published in the gazette;

- (b) upon publication in the gazette be judicially noticed and such publication shall be conclusive evidence of the matters contained therein;
 - (c) be laid before the Legislative Assembly within 14 sitting days after such publication if the Legislative Assembly is in session, and if not, then within 14 sitting days after the commencement of the next session.
- (4) If the Legislative Assembly passes a resolution of which notice has been given at any time within 14 sitting days after any such proclamation or order in council has been laid before it disallowing such proclamation or order in council or any part thereof, that proclamation or order in council or part shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further proclamation or order in council.

6 Declaration for Commonwealth Act

A special coal mining lease is declared not to be personal property under the *Personal Property Securities Act 2009* (Cwlth).

The Schedule

section 2

Editor's note—

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

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

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

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

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

WHEREAS for such purpose it is necessary to construct works for the winning, treatment and transport of large

2 Interpretation

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

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

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

“the Coal Mining Acts” means “*The Coal Mining Acts, 1925 to 1952*,” and any other Act or Acts relating to coal mining;

“the Commissioner” means the Commissioner for Railways;

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

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

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

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

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

“Port” means the port of Gladstone or any other port or harbour from which coal may be shipped by the Company;

“Railway” means any railway or tramway and any part or portion extension or branch of any railway or tramway constructed or worked pursuant to this Agreement and vested in the Company. The term where necessary includes all lands

buildings structures works matters and conveniences connected therewith or appurtenant thereto;

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

“the State” means the State of Queensland;

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

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

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

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

3 When Agreement shall have the force of law

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

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

4 Variation of Agreement

This Agreement may be varied pursuant to agreement between the Minister and the Company with the approval of the Governor in Council by Order in Council and no provision of this Agreement shall be varied nor shall the powers and

rights of the Company hereunder be derogated from except in such manner.

5 Commencement of Agreement

This Agreement shall have no force or effect unless on or before the day of 196 , the Company establishes to the satisfaction of the Minister that it has a nominal capital of not less than Eight million pounds and that it has issued capital of not less than Two million pounds and that on or before the thirty-first day of December, 1962, a further sum of not less than Two million pounds will be available to the Company to expend on the obligations imposed on it under this Agreement.

6 Transfer of benefits and obligations of Agreement

The Company may transfer the benefits and obligations of this Agreement, in whole or in part, to any other Company or Companies only with the approval of the Governor in Council and on such terms and conditions as the Governor in Council may by Order in Council specify and in any such case the transferee may be made a party to this Agreement and this Agreement may be varied in accordance with clause 4 hereof.

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

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

the Company and the area so determined by the Minister shall then be deemed to be surrendered from the Coalfield.

9 Variation of Lands described in the First Schedule

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

10 Term of Part II of Agreement

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

11 Company to Prospect and Survey

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

12 Submission of results of Prospecting

Not later than sixty days after each thirty-first day of December occurring within the currency of this Agreement, the Company shall furnish to the Minister full information of all prospecting work carried out during the year ending on the thirty-first day of December last past. This information shall include details of all investigations surveys borings pittings and other testing carried out and the results thereof including in particular plans showing the location and depths of all borings with available details of reduced levels and details of the chemical composition of the coal in each such boring or pitting known to the Company and a determination and

description of the areas considered by the Company to contain coal of economic grade with estimated tonnages thereof. The Company shall also furnish to the Minister not later than sixty days after each thirty-first day of December a statement of all moneys expended during the year ended on that thirty-first day of December on prospecting for coal on the Coalfield under the various headings of expenditure.

13 Reports to be Confidential

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

14 Expenditure on Prospecting for Coal

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

During the period of the first three years of the term—Not less than £150,000;

During the period of the second three years of the term—Not less than £200,000;

During the period of the third three years of the term—Not less than £75,000;

During the period of the fourth three years of the term—Not less than £25,000:

Provided that if the Company at the expiration of the first six years of the term satisfies the Minister that it has expended a total amount exceeding £350,000, the amount of expenditure to be required to be made by the Company during the

remainder of the term in such prospecting shall be at the rate of £100 per annum on each square mile in the Coalfield:

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

15 Conditions to apply to Prospecting

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

16 Provisions of Coal Mining Acts to apply to Prospecting

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

17 Rental for Prospecting Rights

The Company shall pay a rent for all land held under this Part of this Agreement for the purpose of prospecting for coal at the rate of Two pounds thirteen shillings and four pence (£2 13s. 4d.) per square mile per annum.

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

- (c) for residence thereon in connection with any such purposes, or
 - (d) for cutting and constructing thereon water-races, pipelines, drains, dams, reservoirs, tramways, railways, haulage ways and roads to be used in connection with such mining, or
 - (e) for pumping, raising or obtaining water therefrom to be used in connection with the mining, treatment and transportation of coal and for purposes connected directly or indirectly therewith.
- (2) Special Coal Mining Leases may also be granted under Part IV of this Agreement for the railway and other works in accordance with the provisions of clause 37 hereof.

20 Form of Special Coal Mining Leases

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

21 Conditions to apply to Special Coal Mining Lease comprising Private Land

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

22 Rent of Special Coal Mining Lease

The Company shall pay a rent for all land held under a Special Coal Mining Lease—

- (i) during the period of five years commencing on the first day of the month next following the granting of a Special Coal Mining Lease at the annual rate of £10 per square mile;
- (ii) during the next period of five years at the annual rate of £20 per square mile;
- (iii) thereafter at the annual rate of £32 per square mile.

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

23 Term of Special Coal Mining Lease

The term of a Special Coal Mining Lease granted hereunder shall be for such term not exceeding twenty-one years as the Company may require and shall be renewable for further terms each not exceeding twenty-one years, as the Company may require:

Provided that should the Company at least three months prior to the expiry date of the lease satisfy the Minister that the Company has duly performed and observed each and every the conditions, covenants and stipulations of the lease and has duly performed and observed all provisions of this Agreement applicable to such lease, and that the Company is in lawful possession thereof, the Minister shall grant a renewal of the term of such lease (hereinafter referred to as the first renewal) to the Company for a further period not exceeding twenty-one years on the same conditions and provisions as set out in this Agreement as applied at the expiration of the original term, except that the rent shall be an annual sum of £32 per square mile or such other rent as may then be payable for Coal Mining Leases under the Coal Mining Acts;

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

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

24 Covenants, &c., of Special Coal Mining Leases

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

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

25 Royalty on Coal Won

The Company shall pay royalty on coal won from any Special Coal Mining Lease at the following rates:—

For the first one million tons in any calendar year—Six pence per ton;

For each ton in excess of one million tons in any calendar year—Three pence per ton.

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

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

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

showing the following particulars in respect of the preceding month:—

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

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

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

26 Surveys

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

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

Coal produced from any Special Coal Mining Lease granted pursuant to this Agreement shall be the property of the Company and may be used by the Company for its own requirements; but subject as hereinafter provided shall be sold only for use outside the State of Queensland: PROVIDED THAT if the Minister at any time by notice in writing requests or authorises the Company to negotiate for the supply and sale of coal to any person within Queensland who is unable to obtain adequate supplies of coal suitable for his purposes on terms satisfactory to him the Company shall negotiate for the making of such an Agreement and if such Agreement be made and the same be approved by the Minister the Company shall then be at liberty to supply coal to such person for use within

the State of Queensland: PROVIDED FURTHER that if such Agreement be not arrived at within a time considered reasonable by the Minister the Governor in Council may by Order in Council declare that such person being a new consumer or prospective consumer of coking coal requires supplies of such coal that he is unable to obtain adequate supplies of similar coal on reasonable terms elsewhere and that it is reasonable that the Company should be required to supply coal to that person; and thereupon the following provisions shall have effect:—

- (1) The Minister may by notice in writing to the Company require the Company to supply coal on the terms and conditions and to the extent specified in the notice.
- (2) Reasonable notice shall be given to the Company having regard to the Company's existing contracts and to any additional capital expenditure or plant which may be required to effect such supply.
- (3) The price of such coal shall be such as is fixed by the Queensland Coal Board or any other price fixing authority on reference by the Minister, or if there be no such Board or Authority, by the Tribunal.
- (4) If the Company shall fail so to supply coal to such person the Minister may require the Company to surrender from the Special Coal Mining Lease granted to the Company a sufficient area of land to enable coal to be mined to meet the requirements of such person.
- (5) The area so to be surrendered—
 - (a) shall not include any area which is then being used by the Company as a substantial source of coal and as far as practicable shall be as far removed as possible from the existing works of the Company;
 - (b) shall not contain more than one-third of the proven coal of economic grade within the Coalfield nor more than one-third of the proven coal within the Coalfield capable of being won by open-cut methods;
 - (c) shall not be such as to deprive the Company of coal from its Coal Mining Leases to an extent which would

prevent the Company from supplying coal in sufficient quantity and over a sufficient period to amortise the railway.

- (6) The area so to be surrendered if not agreed upon between the Minister and the Company may be specified by the Minister and excised from the area of the Special Coal Mining Lease.
- (7) Any dispute other than as to price arising under this clause may at the instance of the Minister or the Company be referred to the Tribunal for decision.

28 Labour and Expenditure required on Special Coal Mining Leases

The Company shall install on its Special Coal Mining Lease or Leases granted under the provisions of this Agreement all such machinery and other works as are necessary to produce and despatch not less than five hundred thousand tons of coal in any one year and upon completion of the Railway, the Company shall ensure that all machinery and other works necessary are available to produce and despatch not less than two million tons of coal a year.

29 Construction or Provision of Works

- (1) The Company will without unnecessary delay—
 - (a) construct or provide on its Special Coal Mining Lease or Leases granted under the provisions of this Agreement all such plant machinery and other works as are necessary to excavate coal by large scale operations; and
 - (b) construct all such works as are necessary for—
 - (i) the crushing screening grading and treatment of coal; and
 - (ii) the economic and expeditious loading of coal into railway wagons after such treatment as aforesaid.
- (2) The said works shall be of adequate capacity to handle all coal which the Company is required to produce and despatch under the provisions of this Agreement and shall be soundly

constructed for the purpose for which they are required and shall possess adequate factors of safety and the system of handling the coal shall be such as to be technically sound safe and suitable.

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

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

30 Coal Mining Acts to apply to Special Coal Mining Leases

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

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

Provided further that notwithstanding the provisions of section twenty-one (1) of the Coal Mining Acts the Company shall be deemed to be in possession of whatever area of the surface of the land it may require from time to time for purposes connected with mining operations or any Special Coal Mining Lease granted hereunder as the Company shall describe and notify to the Minister.

31 Rehabilitation of Surface after Mining, &c.

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

- (a) Grading shall be carried out to reduce peaks and ridges to rolling topography where adjacent to or within 300 feet from any dedicated or declared roads in general

public use. On such areas the Company shall work any ridges by striking off the same to a width of at least 10 feet at the top and any peaks shall be graded at the top to a minimum of 15 feet;

- (b) The Company shall construct earth dams in final cuts of all operations where lakes may be formed, if necessary, to impound water, provided the formation of the said lakes will not interfere with any underground or other mining operations or damage adjoining property;
- (c) Where acid forming materials present in the exposed face of a mineral seam which has been mined are not covered by impounded water the Company shall cover the same to a depth of not less than two feet with earth or spoil material;
- (d) The Company shall submit to the Minister as soon as practicable after the thirty-first day of December in each year a map in a form approved by the Minister showing clearly the land upon which the Company has conducted open-cut mining during each year and has completed mining operations thereon and showing the number of acres of affected land.

The Company shall determine the manner of regeneration of the different parts of the affected land and shall clearly show the same by appropriate designation on the map. In making such determination the Company shall take competent advice as to what steps are possible (including the additional extent, if necessary, to which peaks and ridges may be struck off and valleys filled in) to encourage and promote regeneration of vegetation and shall proceed to promote such regeneration. The Minister may approve or disapprove of any such determination. In the event of any difference the matter may be referred to the Tribunal by either party;

- (e) All reclamation provided for hereunder shall be carried to completion by the Company with all reasonable diligence and shall be completed within three years of the cessation of mining except that—
 - (i) no planting of any kind shall be required to be made on any affected land used or proposed to be

used by the Company for the deposit or disposal of refuse or within depressed haulage roads or final cuts or any other area where pools or lakes may be formed or final cuts or any other area where pools or lakes may be formed by rainfall or drainage run off of adjoining land; and

- (ii) no planting of any kind shall be required on any affected land so long as the chemical and physical characteristics of the soil of the affected land are toxic, deficient in plant nutrients or composed of sand, gravel, shale or stone to such an extent as to seriously affect plant growth. Where natural weathering and leaching of any of such affected land over a period of ten years after the end of the year in which open-cut mining was completed thereon fails to remove the toxic and physical characteristics adversely affecting plant growth or at any time within such ten-year period the Minister determines any of such affected land is and during the remainder of the said ten-year period will be unplatable, the Company shall be relieved of all obligations under the provisions of this clause with respect to such affected land;
- (f) The Company shall cause a minimum of interference with the natural drainage system except and unless where it is found expedient to use the affected area for storage of water;
- (g) The Company shall use its best endeavours to avoid any pollution of any drainage system which is dangerous or injurious to public interests.

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

Port (with such branch lines as may be necessary) in accordance with plans, sections and books of reference to be deposited in the office of the Minister.

- (2) The said railway shall be capable of transporting not less than 2,000,000 tons of coal per annum from the mines to the Port.
- (3) As soon as possible after the completion of the survey in accordance with clause 32 hereof the Company shall deposit with the Minister a plan of the survey for the approval of the Minister and shall supply to the Minister sufficient information to enable the Minister to give general approval of the route of the railway with such modifications (if any) as are agreed upon between the Minister and the Company.
- (4) After so obtaining the approval of the Minister the Company shall deposit with the Minister plans, sections and books of reference as hereinafter provided.
- (5) The Company shall complete the construction of the railway in all respects in accordance with the provisions of this Agreement within seven years from the date of this Agreement.
- (6) The Company shall commence the construction of the railway in adequate time to ensure its completion within the time specified in subclause (5) hereof.
- (7) After commencing construction of the railway as aforesaid the Company shall proceed with construction with due expedition so as to ensure its completion within the time aforesaid.

34 Company to Give Security

- (1) The Company shall within three months after the date of this Agreement lodge with the Minister security for the due and proper construction of the railway to the amount of One hundred thousand pounds.
- (2)(a) The security may be in the form of cash deposit banker's cheque or bank draft payable to the Treasurer of the State of Queensland Commonwealth Treasury Bonds or Inscribed Stock guarantee indemnity or bond in a form approved by the Crown Solicitor for the State by a bank, bonding or insurance

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

- (b) If a deposit is in such form as will require exchange to be paid in Brisbane in the said State, then such exchange shall when necessary be added to the amount thereof.
 - (c) If the security is in the form of Inscribed Stock or other security not transferable by delivery it shall be accompanied by a duly executed and stamped transfer of such stock or security to the Treasurer.
 - (d) When the deposit is in cash it shall be placed in an interest bearing bank Trust Account in the name of the Treasurer to be operated on only in accord with the terms of this Agreement.
 - (e) Interest, if any, accruing on the security deposit shall be made available to the Company when collected by the Treasurer.
- (3) Subject to these conditions, the Treasurer at the direction of the Minister shall account to the Company for and make available to the Company the security as follows:—
- (a) When the Company shall have complied with the provisions of clause 33(3) hereof by depositing with the Minister a plan of the survey and supplying to the Minister the information thereby required, an amount of £20,000;
 - (b) When the whole of the railway has been completed and ready for traffic as provided in clause 45 hereof, the remaining balance of the security.
- (4) If the Company shall fail to lodge security within the time specified in subclause (2) of this clause, the Company shall be deemed to be in default under the provisions of this Agreement and the Minister may give to the Company notice in writing requiring the Company to remedy such default within such further time as may be specified in the notice. If the Company shall fail, neglect or refuse to comply with the

provisions of such notice as is so specified, the Governor in Council may by notice in writing to the Company, determine this Agreement.

- (5) If any security furnished under this clause shall become unacceptable to the Minister or the Crown Solicitor or if any surety shall fail to furnish reports as to his financial condition, from time to time, as requested by the Minister, the Company shall within thirty days of demand furnish such additional or alternative security as may be required by the Minister or the Crown Solicitor from time to time for the construction of the railway up to an amount equal to the amount of the security.
- (6) If the Company has not completed the construction of the railway in the manner and within the time provided in clause 33 hereof or before the expiration of such extended time as may be granted under the provisions of this Agreement, the Company shall be deemed to be in default under the provisions of this Agreement and the Minister may give to the Company notice in writing requiring the Company to remedy such default within such reasonable time as may be specified in the notice. If the Company shall fail, neglect or refuse to comply with the provisions of such notice within such time as is so specified, then the said security or so much thereof as remains in the hands of the Treasurer shall be liable to be absolutely forfeited to Her Majesty as and for liquidated damages and not by way of a penalty and that amount shall be a genuine pre-estimate of the damage suffered and recoverable by the Crown.
- (7)(a) In the event of any default on the part of the Company, the Treasurer may convert into money any security and the proceeds shall be deemed to be a cash deposit under this clause.
- (b) The Treasurer shall not be liable for any loss resulting from the conversion of any security deposited into money in accordance with this subclause, or resulting from the decrease in value of any security held by him.

35 Plans of Route of Railway and Sites for Works to be deposited

- (1) The Company may have levels taken and surveys made of the country and lands through which the railway is to be constructed, and shall prepare a plan of the railway and of the lands through which it is to pass, and also a book of reference in which shall be set forth the names of the owners of the said lands, so far as can with reasonable diligence be ascertained, with a description of the said lands, showing the bearings of the railway and the nature and quality of cultivation, the state of the enclosures (if any) and the quantity of such land required for the purposes of the railway and the works.
- (2) If it is proposed to construct such railway along, over or across any public reserve or road, such plans, sections and books of reference shall also contain particulars of the levels, and specify the several areas required to be taken for the purposes of the railway.
- (3) Copies of the plans, sections and books of reference of the proposed railway and of the other works required by this Agreement together with a map and description showing the route of the proposed railway and the site or sites of the works shall from time to time be prepared by the Company and deposited with the Minister for approval.

36 Minister to notify Approval of Route and Sites

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

37 Company to endeavour to acquire Rights Required

- (1) The Company will endeavour to acquire by agreement with the owners all rights required by the Company in respect of land (other than Crown lands) for the purposes of this

Agreement for the route of the railway and for the site or sites of other works or for easements.

- (2) The Company shall be entitled to use and occupy all Crown lands required for the works. All such lands (other than lands required only for temporary occupation) shall be vested in the Crown and granted to and held by the Company under and pursuant to the provisions of this Agreement.
- (3) The Company shall repay to the Minister all expenditure incurred by the Crown in removing or altering any improvements on Crown lands to enable such lands to be occupied by the Company. The term "Crown lands" where used in this subclause shall not extend to—
 - (a) lands resumed by the Crown under the provisions of subclause (4) hereof; or
 - (b) lands occupied by or reserved to the Commissioner for Railways except with the express approval in writing of the Minister.
- (4) All lands other than Crown lands and all easements which are required for the works shall and may be resumed and acquired by the Co-ordinator-General of Public Works from the owners thereof or the persons having any interest therein under the provisions of "*The State Development and Public Works Organisation Acts, 1938 to 1958,*" to the same extent as if the works were works authorised by the Governor in Council under those Acts to be carried out by the Co-ordinator-General, and the provisions of such Acts shall apply and extend accordingly except that any lands taken shall vest in the Crown and any easements taken shall be in the name and for the benefit of the Company but subject to the provisions of this Agreement. All the purchase money and compensation payable in respect of lands or easements so acquired together with all expenses incurred by the Co-ordinator-General in effecting such resumption or acquisition shall forthwith be paid by the Company to the Co-ordinator-General and upon such payment the lands resumed or acquired shall be vested in the Crown and granted to and held by the Company under and pursuant to the provisions of this Agreement. Before resuming or acquiring

such lands or easements as aforesaid the Co-ordinator-General may require the Company to deposit with him such moneys or such securities as are in his opinion sufficient to ensure the payment by the Company of sums to be paid by the Company as aforesaid.

- (5) All lands referred to in this clause shall be vested in the Crown and granted to and held by the Company by Special Coal Mining Leases under and subject to the provisions of this Agreement.
- (6) The provisions of Part III of this Agreement shall apply to any Special Coal Mining Lease granted under this Part except that—
 - (a) the Company shall be entitled to the possession of the whole of the surface hereof;
 - (b) the company shall not be entitled to tenant rights in respect of any erections fixtures or improvements whatsoever erected upon the land and held by the Company under Special Coal Mining Leases granted under this clause for the purposes of the railway and without in any way detracting from the generality of the foregoing, the Company shall not be entitled to remove any such erections, fixtures or improvements at the expiration or determination of any such Special Coal Mining Lease or Leases nor shall the Company be entitled to compensation in respect thereof upon such expiration or determination provided that nothing in this subclause shall prevent the Company at any time during the currency of any Special Coal Mining Lease from removing, altering and/or replacing any such erections, fixtures or improvements thereon for the maintenance thereof or for the more efficient working or operation of the business hereunder.
- (7) Every Lease granted under this Part shall be in the form and contain the conditions set out in the Second Schedule hereto with such modifications thereof as may be necessary to meet the circumstances of any particular case.
- (8) In respect of land vested in the Crown and granted to and held by the Company under Special Coal Mining Lease pursuant to

the provisions of this Agreement for any works, where the same was previously held for an estate in fee-simple a title in fee-simple shall be granted to the Company on request and in any other case the Company shall on request be granted a non-competitive perpetual lease without limitation of area under the provisions of "*The Land Acts, 1910 to 1961*":

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

38 Purchase of Railway

- (1)(a) The Governor in Council shall have the right to acquire the whole of the railway as a going concern with its equipment, rolling stock and/or plant of every description on the expiration of 42 years from the date of this Agreement and on the expiration of any subsequent term of 21 years upon the giving of not less than three years' notice in writing requiring the Company to sell and thereupon the Company shall sell the railway or part thereof specified in the notice to the Crown.
- (b) The purchase price to be paid by the Crown to the Company in such case shall be the then value of the said railway and/or the said equipment, rolling stock or plant but in no case shall exceed one and one-tenth times the cost thereof as certified to by the Auditor-General.
- (2)(a) On the determination of this Agreement for any cause whatsoever, the Governor in Council shall have the right to purchase all or any part of the equipment, rolling stock and/or plant of the railway.
- (b) The purchase price to be paid by the Crown to the Company in such case shall be the then value of the same.
- (3) Nothing contained in this Agreement shall prevent the Governor in Council from acquiring the said railway and/or the said equipment, rolling stock and plant or any of it at any time under the laws of the State upon the Company being compensated for the property so acquired.

- (4) In the case of any difference under the provisions of this clause the difference shall be determined by the Tribunal hereinafter constituted.
- (5) Whenever such sale is made to the Crown, the railway and/or the said equipment, rolling stock and plant shall vest in the Commissioner as fully and effectually to all purposes as if the same had been transferred and conveyed to him by the owners but the Commissioner may if he thinks fit, demand a transfer or conveyance thereof, and the owners shall thereupon execute the same.
- (6) If the Governor in Council shall acquire the said railway, the Governor in Council may enter into a contract with the Company to carry coal for the Company to the Port on fair terms.

39 Power of Company in relation to Railway

- (1) Subject to such restrictions as the Governor in Council may from time to time impose the Company shall have and may from time to time exercise in respect of the railway all the powers and authorities which the Commissioner for Railways may exercise under the provisions of sections thirty-seven and forty of the Railways Acts but in the exercise of such powers the Company shall do as little damage as may be and all persons interested in any land taken, used, injured or prejudicially affected may recover from the Company all damage by them sustained by reason of the exercise of such powers.
- (2) The Company shall have the same obligations to provide and maintain accommodation works as the Commissioner is required to provide and maintain under the provisions of section seventy-three of the Railways Acts and the provisions of such section shall *mutatis mutandis* apply.
- (3) The Company shall have the same power of making by-laws with the approval of the Governor in Council as the Commissioner for Railways possesses and the provisions of sections one hundred and thirty-three to one hundred and thirty-five of the Railways Acts shall *mutatis mutandis* apply.

40 Width of Land to be Taken

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

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

41 Land for Railway Not Subject to Rates

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

- (a) to any land or so much of any land acquired or used or purporting to be acquired or used for the purposes of the railway as could not be taken and used for the railway under clause 40 of this Agreement;
- (b) to any land leased or let to any person or corporation by the Company;
- (c) to any land used for the purposes of providing houses or other residential accommodation for persons employed by the Company in or in connection with the construction, maintenance or operation of the railway;
- (d) to any land used for or in connection with the receipt, despatch, delivery, handling, or storage of goods carried or to be carried by the railway for the purposes of an

object of the Company other than the prospecting for, or the winning of coal, or the treatment or carriage of coal won, in or on the Coalfield; or

- (e) to any land acquired or used for the purpose of any other works or other business of the Company.

42 Substituted Roads

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

- (1) If it is found necessary to cross, cut through, raise, lower or use any part of any road so as to render it extraordinarily inconvenient for public traffic the Company shall before the commencement of any such operation cause a sufficient substituted road to be made. Any person who suffers special damage by reason of the failure of the Company to cause such substituted road to be made before it interferes with an existing road may recover the amount of such damage from the Company with costs by action in any Court of competent jurisdiction. If the said road could be restored compatibly with the use of the railway it shall with reasonable expedition be restored to a substantial condition. If it cannot be restored compatibly with the use of the railway the Company shall with reasonable expedition cause a sufficient substituted road to be put into a permanently substantial condition equally convenient as the former road or as near thereto as circumstances permit. The question of the sufficiency of such substituted road shall in case of dispute be determined by the Governor in Council.
- (2) Notwithstanding anything contained in the Local Government Acts where a road of less width than 66 feet is interfered with a substituted road need not be of greater but shall not (except in the case of a railway crossing over and above such road by means of a bridge or other structure or in the case of such road being taken over the railway by means of a bridge or other structure) be of less width than the road so interfered with.
- (3) With the consent of the Minister but not otherwise in any case a road parallel and contiguous to any part of the railway may

be lessened to not less than 33 feet in width or may be made of a width of not less than 33 feet.

- (4) If the railway crosses a road other than on the level or if a road crosses the railway other than on the level the Company shall provide a suitable bridge or subway or other structure to the satisfaction of the Commissioner of Main Roads in respect of roads proclaimed under "*The Main Roads Acts, 1920 to 1962,*" and to the satisfaction of the Minister in the case of other roads.
- (5) Where it is expedient to alter the levels of any road for the purpose of the construction of the railway the Company shall pay all reasonable expenses incurred in connection therewith unless otherwise agreed upon. The owner of any land prejudicially affected by such alterations of the level of any road within any city or town the level of which has been fixed under the Local Government Acts shall be entitled to recover from the Company all damages sustained by him by reason of such alteration.
- (6) The Company shall maintain in good order and repair the railway on a road and if within a city or town the surface of the roadway between the rails and for the space of 36 inches outside each rail. The character of the maintenance shall be in keeping with the road on which the railway has been constructed.
- (7) The Company shall at once repair any damage occasioned to any sewer, drain, gas or water main or works for the supply of electricity during the construction or maintenance of any railway on a road.
- (8) If the Company deem it necessary that any road or part thereof should be closed it shall deposit in the office of the Local Authority having jurisdiction over such road a map and description of the road or part thereof proposed to be closed and shall notify in the *Queensland Government Gazette* that such map and description are there open for inspection and that any person interested may make an objection to such closure by forwarding to the Company within 30 days after such publication a notice of objection. All such objections shall be duly considered by the Company and it may cause an

inquiry to be held into the matter of any such objection. Before any such closure is authorised the Company shall report to the Minister on the proposed closure and any objections thereto and the objectors shall be heard by the Minister if they so desire. Thereupon the Governor in Council may by Order in Council close such road or part thereof.

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

43 Railway crossing Commissioner's Lands

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

- (b) The Governor in Council at the request of the Company may authorise the Company either temporarily or permanently to use such land of the Commissioner as it may require for the purpose of its railway on such terms and conditions as the Governor in Council may fix.
- (c) The Company shall at the cost and expense of the Company if and whenever required by the Commissioner so to do by reason of any diversion or regrading or other rearrangement whatsoever of any part of the Commissioner's railway system crossed or traversed by the railway or of the Commissioner's railway system on any lands of the Commissioner used by the Company under the provisions of this clause reconstruct alter or take up to the satisfaction of the Commissioner any traversing or crossings or other works constructed on the lands of the Commissioner under the provisions of this clause. If such work is not carried out by the Company after reasonable notice by the Commissioner, the Commissioner may carry out such work and recover the cost thereof from the Company in any Court of competent jurisdiction.
- (d) Should the Company fail (after having been given reasonable notice of the requirements of the Commissioner) to construct or maintain any such traversings, crossings or other works to the satisfaction of the Commissioner, the Commissioner may carry out such construction and maintenance at the expense of the Company and may recover the cost of such in any Court of competent jurisdiction.
- (e) If at any time the railway is abandoned or ceases to be operated then any crossings or traversing or other works of the Company constructed on the Commissioner's lands under the provisions of this agreement may be dismantled removed or taken up by the Commissioner and the Commissioner's railway system and land restored to their former state and the Commissioner may recover the cost of so doing from the Company. Any material so dismantled removed or taken up by the Commissioner remaining in the possession of the Commissioner at the expiration of twelve months shall vest in the Crown.

The Company hereby agrees that it will indemnify and save harmless the Commissioner from and against all actions,

proceedings, claims, demands, costs, losses, damage and expense not being occasioned by the wilful act or the neglect of the Commissioner his servants or agents which may be brought against or made upon the Commissioner or which the Commissioner may pay, sustain or be put to by reason of or in consequence of or in connection with the exercise or attempted exercise by the Company or any other person of the rights or privileges granted under this clause and (without limiting the generality of any of the provisions hereinbefore made) by reason of or in connection with the construction, installation, maintenance, use, occupation and taking up by the Company of the said crossings or traversings and every part thereof (including any replacement thereof) or of the use of the Commissioner's lands or any part thereof and whether in respect of any loss of life of or of injury or damage to any person (including any agent or servant of the Company) or property including any property of the Commissioner or of the Company: And the Company doth hereby release and discharge the Commissioner from any such action, proceeding, claim, demand, cost, loss, damage or expense which but for the provisions hereof might be brought against or made upon the Commissioner by the Company: Provided however but without prejudice to the provisions of this paragraph the Commissioner will use his best endeavours to ensure that the Company is advised in writing without undue delay of any actions, proceedings, claims or demands as aforesaid.

44 Mining under Railway

- (1) It shall not be lawful to carry on any mining operations whatever under any land used for the purposes of the railway unless the consent in writing of the Company or of the Minister has been obtained.
- (2) It shall not be lawful for the owner, lessee or occupier of any mines or minerals lying under or near the railway or land used for the purposes of the railway to make any tunnel or excavation which might render such railway or land unsafe to use for railway purposes or to work any mine so as to endanger the railway or interfere with the stability thereof.

- (3) The Minister at the request of the Company shall from time to time authorise some competent person to make such examination and enquiries as are necessary to ascertain whether the provisions of the last preceding subclause are complied with and every person so authorised by the Minister may at all reasonable times by day and night enter, inspect, examine and make a survey of any mine and every part thereof but so as not to impede or obstruct unnecessarily the working of the mine.
- (4) If it appears that any such mine has been or is being or is likely to be worked so as to endanger the railway or interfere with the stability thereof the Company in addition to any other remedy may require the owner, lessee or occupier thereof to construct such works and adopt such means as are necessary for making safe such railway and preventing injury thereto and if such owner, lessee or occupier shall not forthwith so do the Company may itself construct such works and adopt such means as are necessary for making safe the railway and preventing injury thereto and recover the expense of so doing from such owner, lessee or occupier by action in any Court of competent jurisdiction.
- (5) Before authorising the Company to use for the purposes of the railway any land on which mining operations are carried on the Minister may require the Company to pay compensation to such amount as is determined by the Minister to any person who in the opinion of the Minister may be prejudicially affected by the provisions of this clause.

45 Construction of Railway

- (1) The gauge of the railway shall be four feet eight and one-half inches or such other gauge as is agreed upon between the Minister and the Company.
- (2) The railway and all engines and rolling stock shall be soundly constructed for the purposes for which it and they are required and shall possess adequate factors of safety and the system of working the railway shall be such as to be technically sound, safe and suitable.

- (3) The Company will from time to time construct such extensions and deviations of the railway and such branch railways as may be necessary for the purposes of the business of the Company pursuant to the provisions of this Agreement and the provisions of this Agreement and the term “railway” shall extend to and include every such deviation, extension or branch railway.
- (4) In operating the railway the Company will comply with all statutory provisions for the time being in force relating to safety.
- (5) The Commissioner for Railways and the Company may at any time mutually agree that the Commissioner shall work the railway either in connection with any Government railway or not and use thereon any rolling stock the property of the Commissioner; and thereupon subject to such agreement the Commissioner shall have the same control over the railway as if it were vested in him.
- (6) The Company may construct, use and employ on the railway locomotive engines or other motive power and rolling stock to be drawn and propelled thereby and also machinery, appliances and plant of every kind and may use for the operation thereof any kind of fuel.
- (7) Before the railway or any part thereof is deemed to be completed and ready for traffic the Minister shall direct that it be inspected at the expense of the Company by a competent engineer appointed by the Minister who shall certify to the Minister whether in his opinion the railway has been constructed wholly in accordance with the provisions of this Agreement and is safe and fit for traffic and the Minister shall inform the Company accordingly.
- (8) Any person acting under the authority of the Minister, shall at all times during the construction of the railway and after its completion be allowed to inspect the railway without let or hindrance and at the expense of the Company and on his report that the railway or any portion thereof is unsafe, the Minister may by order prohibit the continuance of traffic thereupon until the railway is safe and fit for traffic; and if the Company disobeys such order the Minister may impose upon

the Company a fine not exceeding One thousand pounds for each and every day during which such disobedience continues, such sum to be recovered by complaint before any Warden.

- (9) If any dispute shall arise between the Minister and the Company under subclause seven or eight hereof, the dispute shall be determined by the Tribunal hereinafter constituted.
- (10) The Company may with the consent of the Minister, substitute an approved system of chutes, conveyor belts, aerial ropeways, pipelines or other such methods of conveyance for the whole or any portion of the railway.

46 Damages in respect of Grass Fires

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

47 Conveyance of persons and materials

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

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

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

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

48 Working of Railway

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

- (a) The charges to be made by the Company for the carriage of passengers and goods shall be such as are from time to time agreed upon between the Company and the Minister but failing agreement shall be determined by the Governor in Council.
- (b) The liability of the Company shall not exceed the liability of a common carrier and the Company shall at

all times be entitled to the benefits and privileges to which a common carrier shall be entitled;

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

PROVIDED ALWAYS HOWEVER THAT—

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

- (iii) the Company may make lesser or greater charges for the carriage of passengers or goods referred to in clause 47 hereof or any of them;
 - (iv) the Company may carry any passengers or goods without charge;
 - (v) if any dispute shall arise between the Company and the Minister under the provisions of subclause (i) or subclause (ii) of this proviso such dispute shall be referred to the Tribunal for decision;
 - (vi) if the Company shall commit any breach of the provisions of subclause (i) or subclause (ii) of this proviso any person aggrieved by such breach may pursue his remedy against the Company in respect of such breach in any court of competent jurisdiction;
- (d) Accidents shall be reported to the Minister and enquired into by the Company in the same manner as accidents are reported and enquired into by the Minister under the provisions of the Railways Acts and the Governor in Council may direct a formal investigation in the same manner as under the provisions of the Railways Acts and the provisions of sections one hundred and twenty-seven, one hundred and twenty-eight, one hundred and twenty-nine, and one hundred and forty-three of the Railways Acts shall have application accordingly.

49 Use of Railway by Commissioner

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

Part V General

50 Interpretation of Agreement

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

51 Sale, &c., of Lands or Works

- (1) The Company may sell, lease or otherwise dispose or make use of any works which are not for the time being required for carrying on the business of the Company pursuant to the provisions of this Agreement.
- (2) Nothing in this Agreement shall prevent the acquisition of any of the lands of the Company by the Co-ordinator-General of Public Works, the Commissioner for Railways or the Commissioner of Main Roads subject to the payment of compensation including severance as provided by law.
- (3) If any land vested in the Crown and granted to and held by the Company under Special Coal Mining Lease pursuant to Part IV of this Agreement is not required by the Company the Company may sell the same and such land shall thereupon be excluded from that Lease. Where the land was previously held for an estate in fee-simple a title in fee-simple shall be granted. In any other case, the land shall be held under a non-competitive perpetual lease without limitation of area under "*The Land Acts, 1910 to 1961.*"

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

52 Power to Mortgage

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

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

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

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

53 Company may Acquire Land

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

54 Default by Company

- (1) If the Company—
 - (a) within such time as is specified or if no time is specified then within such time as the Governor in Council (or on reference to the Tribunal in manner hereinafter provided the Tribunal) shall consider reasonable fails, neglects or refuses to arrange, carry out, make or undertake any of the borings or other tests specified in clause 11 of this Agreement;
 - (b) fails, neglects or refuses to make available to the Minister the reports or results of the borings, pittings and other testing and such other information specified in clause 12 of this Agreement;

- (c) fails, neglects or refuses to expend within the times respectively specified in clause 14 of this Agreement each of the respective amounts in that clause specified;
- (d) fails, neglects or refuses to pay to the State at the time or times when the same shall respectively become payable any sum of money payable by way of rent or royalty or otherwise in pursuance of this Agreement;
- (e) within such time as the Governor in Council (or on reference to the Tribunal in manner hereinbefore provided the Tribunal) shall consider reasonable fails, neglects or refuses to carry out the surveys specified in clauses 26 and 32 of this Agreement;
- (f) fails, neglects or refuses to commence or continue the construction of the works and/or the railway without unnecessary delay;
- (g) fails, neglects or refuses without reasonable cause to operate the railway

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

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

of rent, royalty, penalty or otherwise in pursuance of this Agreement—

- (a) the Company shall be granted, if the Company so applies, a Coal Mining Lease or Coal Mining Leases under the provisions of the Coal Mining Acts of the area then comprised in its Special Coal Mining Leases or any part thereof provided that the Company shall remain entitled to the possession of whatever area of the surface within such coal mining lease in respect of which compensation has been paid or is payable by the Company;
 - (b) where any land vested in the Crown and granted to and held by the Company under a Special Coal Mining Lease pursuant to the provisions of this Agreement was previously held for an estate in fee-simple a title in fee-simple shall be granted to the Company on request made by the Company not later than twelve months after such determination.
- (4) Subject always to clause 37(6) hereof, twelve months after the determination of this Agreement in pursuance of the provisions of this clause all works remaining on any land formerly included in any Special Coal Mining Lease shall be absolutely forfeited to the Crown unless the Company has been granted either a title to that land in fee-simple or a lease pursuant to this Agreement.
 - (5) The Company shall not be held to be in default under the provisions of this clause or to have failed to carry out any obligations under this Agreement if such default or failure is caused by act of God, force majeure, floods, storms, tempests, war, riots, civil commotions, strikes, lockouts, shortage of labour, transport, power or essential materials, break down of plant, inability in the opinion of the Governor in Council to sell or otherwise dispose of coal or any other cause whatsoever beyond the control of the Company.
 - (6) The failure of the Company to raise the required capital shall not constitute an excuse to the Company for non-compliance with any of the provisions of this Agreement and such failure shall not prevent the Minister from giving to the Company

notice as aforesaid or prevent the Governor in Council from determining this Agreement as aforesaid.

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

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

55 Constitution of Tribunal

- (1) The Governor in Council shall from time to time as required constitute a Tribunal to decide and determine all matters which by this Agreement are required to be or may be referred to the Tribunal for its decision.
- (2) The Tribunal shall consist of either—
- (a) a Judge of the Supreme Court of Queensland appointed by the Governor in Council; or
 - (b) a barrister of not less than ten years' standing appointed by the Governor in Council upon the recommendation of the Chief Justice of Queensland.
- (3) The Tribunal may be assisted by assessors who shall make such recommendation to the Tribunal as they or any of them shall think fit.
- (4) Upon each reference to the Tribunal such assessors shall be appointed to assist the Tribunal as are agreed upon between

the Minister and the Company. The Tribunal may appoint any assessor or assessors.

- (5) The Tribunal after hearing the representations of all parties interested and considering the recommendations (if any) of the assessors will make such recommendation and report to the Minister as is proper or such Order as is just.
- (6) Every such Order of the Tribunal shall subject to review as hereinafter provided remain in force for such period as is fixed by the Order and every such Order shall be published in the *Queensland Government Gazette* and shall be binding upon all persons and shall have the force of law.
- (7) The Minister may of his own volition and shall when required by the Company refer to the Tribunal any matter requiring decision under the provisions of this Agreement.
- (8) The Minister may at any time of his own volition or at the request of the Company refer to the Tribunal for consideration and report to the Minister any matter relating to the undertaking of the Company or otherwise arising under the provisions of this Agreement and the Tribunal shall make such report to the Minister as it thinks proper.
- (9) The Tribunal shall be deemed to be a commission within the meaning of "*The Commissions of Inquiry Acts, 1950 to 1954*," and the provisions of such Acts shall apply to the Tribunal and all the proceedings thereof.
- (10) Every party to proceedings before the Tribunal shall unless the Tribunal otherwise directs pay his or its own costs. The Tribunal may order that any party to any proceedings pay (whether by way of a lump sum or otherwise) the whole or such part as the Tribunal may think fit of the costs of and incidental to those proceedings incurred by any other party thereto or any costs incurred by the Tribunal including the remuneration of any assessor or assessors.

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

the Tribunal in so far as it relates to costs may be enforced in the same manner as a judgment or order of the Supreme Court.

56 Reference to Tribunal

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

57 State not to impair Rights of Company

Subject to the due observance by the Company of its obligations under this Agreement and subject also in the case

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

58 Giving of Notice

Any notice, consent, requirement or writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State or the Governor in Council or the Minister (as the case may be) if signed by the Minister and forwarded by prepaid post to the Company at its registered office in the State and by the Company if signed on behalf of the Company by the managing director, a director, general manager, secretary or attorney or solicitor of the Company and forwarded by prepaid post to the Minister at his office in Brisbane in the said State and any such notice, consent, requirement or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

First Schedule

Counties of Bauhinia, Dawson, Ferguson, and Kimberley, parishes of Banana, Benleith, Capayan, Cottenham, Fairview, Highworth, Kianga, Moura, Woolthorpe and Wright

PARTLY ON THE DAWSON GOLD AND MINERAL FIELD

Area, about 350 square miles

Commencing at the north-eastern corner of portion 140, parish of Benleith, and bounded thence on the north by a line westerly to the eastern boundary of portion 10, parish of Wright; thence on the west by a line southerly to the north-eastern corner of the western severance of portion 3, parish of Wright; by a line south-easterly to a point on the northern boundary of portion 2, parish of Fairview, about $1\frac{1}{2}$ miles from its north-eastern corner; by a line south-easterly to the south-western corner of portion 3, parish of Fairview; by a line south-easterly to the south-western corner of portion 3, parish of Capayan; by a line south-easterly to the northern-most corner of portion 35, parish of Moura; by a line southerly to a point on the northern boundary of portion 20, parish of Kianga, about $1\frac{1}{4}$ miles from its north-western corner by a line southerly to a point on the northern boundary of portion 2, parish of Highworth, about 2 miles from its northernmost corner; thence by a continuation of this line to the right bank of the Dawson River; by that right bank upwards to the south-western corner of portion 36, parish of Woolthorpe; by a line northerly to the north-western corner of portion 38, parish of Woolthorpe; thence easterly and northerly by portion 38, a line, portion 51, to the north-eastern corner of portion 51; by a line north-westerly to the north-eastern corner of portion 34, parish of Kianga; by a line northerly to the south-eastern corner of portion 7v, parish of Banana; by a line north-westerly to the north-western corner of portion 22v, parish of Banana; by a line north-westerly to

The Schedule

the north-western corner of the eastern severance of portion 134, parish of Benleith; thence on the north by a road westerly to the point of commencement.

Second Schedule

Queensland

No.

“The Thiess Peabody Coal Pty. Ltd. Agreement Act of 1962”

Special Coal Mining Lease

County	}	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.
Parish		
Date of Lease		

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

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

The Schedule

THAT Parcel of Land described in the Schedule hereinafter written and for all or any of the following purposes:—

- ¹1. (a) For mining and/or all purposes necessary directly or indirectly to effectually carry on mining for coal and treatment of such coal therein or thereon;
 - (b) For erecting thereon any houses, buildings, plant and machinery for use directly or indirectly in connection with such mining or treatment operations;
 - (c) For residence thereon in connection with any such purposes;
 - (d) For cutting and constructing thereon water-races, pipelines, drains, dams, reservoirs, tramways, railways, haulage ways and roads to be used in connection with such mining; and
 - (e) For pumping, raising or obtaining water therefrom to be used in connection with the mining, treatment and transportation of coal and for purposes connected directly or indirectly therewith; or
- *2. For the purposes of the railway and/or other works as defined in the Agreement.

TO HAVE AND TO HOLD the said land and all and singular other the premises hereinbefore mentioned and hereby demised with the appurtenances unto the Lessee for the full term of _____ years from _____ which said term shall be renewable on the Lessee's application made at any time at least three months prior to the expiry of the then current term of this Lease for such further term as the Company may require not exceeding twenty-one years upon the same terms and conditions including the right of renewal except that the rent shall be an annual sum of £32 per square mile or such other rent as shall then be payable for Coal Mining Leases under "*The Coal Mining Acts, 1925 to 1952*," saving and excepting unto Us Our Heirs and Successors all gold and minerals other than coal (the term "minerals" to have the same meaning as in "*The Mining on Private Land Acts, 1909 to 1956*") and all petroleum (the term "petroleum" to

1 For leases granted under Part III.

* For lease granted under Part IV.

have the same meaning as in “*The Petroleum Acts, 1923 to 1958*”) and helium found in association with petroleum found in the said land: AND ALSO reserving unto Us Our Heirs and Successors and to such persons as shall from time to time be duly authorised by Us in that behalf during the term of this Lease or any renewal thereof the free right and privilege of access including ingress egress and regress into upon over and out of the said land for the purpose of searching for and/or the operations of obtaining any gold mineral (other than coal) or petroleum and helium found in association with petroleum Yielding and Paying unto Us Our Heirs and Successors during the continuance of this Lease in advance on or before the thirty-first day of December in each year into the hands of Our Treasurer for the time being at the Treasury in Brisbane in Our said State the following Yearly Rentals or sums that is to say:—

- (a) During the period of five years commencing on the first day of January next following the granting of this Lease an annual sum of £10 per square mile;
- (b) During the next period of five years an annual sum of £20 per square mile;
- (c) Thereafter an annual sum of £32 per square mile;
- (d) And also paying royalty monthly within thirty days of the close of each month at the following rates:—

For the first one million tons in any calendar year—Six pence per ton;

For each ton in excess of one million tons in any calendar year—Three pence per ton.

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

- (i) That the Lessee shall well and truly pay or cause to be paid unto Us Our Heirs and Successors the rent and royalty hereby reserved when and as the same shall become payable in manner hereinbefore appointed for that purpose;

- (ii) That the Lessee shall use the said land continuously and *bona fide* for the purposes for which the same is demised as aforesaid;
- (iii) That the Lessee shall not assign underlet or part with possession of the said land or any part thereof otherwise than in accordance with the provisions of clauses 6, 51 or 52 of the said Agreement;
- (iv) If default is made by the Lessee in the payment of rent the Lease shall at Our option be forfeited but the Lessee may defeat forfeiture by payment of the rent within ninety days of the due date with the addition of a sum by way of penalty equal to interest thereon at the rate of Ten pounds per centum per annum or such lesser penalty as the Minister may fix but unless the whole of the rent together with the penalty is paid within ninety days from the due date the Lease shall at Our option without any enquiry or other process be forfeited: Provided that the Minister may waive the forfeiture and reinstate the Lease on payment of the arrears of rent due with accrued penalty;
- (v) If the Lessee commits any breach of or fails to observe any of the conditions set out above in the Lease other than as to payment of rent the Minister may give to the Lessee notice in writing requiring the Lessee to make good and rectify such default within such reasonable time as is specified in the notice; and if the Lessee shall fail to comply with the provisions of such notice within such time as is so specified or within such extended time as may be granted by the Minister, the Minister may impose upon the Lessee a fine not exceeding One thousand pounds, and on non-payment of any such fine this Lease shall at Our option be forfeited it being expressly agreed and declared however that if the Lessee disputes that it is so in default the question whether or not the Lessee is so in default shall be determined by the Tribunal constituted by the said Agreement and the time specified in such notice shall not run until the question is so determined: AND upon the Lease being so forfeited the lands comprised therein shall revert to Us and the

rights of the Lessee under this Lease shall thereupon cease and determine:

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

- ²(vi) That upon any forfeiture or other determination of this Lease, the Lessee shall have the right subject to payment of all moneys then owing by the Lessee by way of rent, royalty, penalty or otherwise—
- (a) to apply for and have granted a Coal Mining Lease or Coal Mining Leases under the provisions of “*The Coal Mining Acts, 1925 to 1952*” of any part of the said land subject to such mortgages, encumbrances and charges as were immediately prior thereto in existence over the forfeited lands of which the land comprised in such lastmentioned Lease or Leases forms part; provided that the Lessee shall remain entitled to the possession of whatever area of the surface within such Coal Mining Lease or Coal Mining Leases in respect of which compensation has been paid or is payable by the Lessee pursuant to the said Agreement;
 - (b) where the same or any part thereof was previously held in an estate in fee-simple, to the grant of a title in fee-simple upon request made by the Company not later than twelve months after such forfeiture or determination;
- *(vii) That upon any forfeiture or other determination of this Lease, the Lessee shall have the right subject to payment of all moneys then owing by the Lessee by way of rent, royalty, penalty or otherwise, where the same or any part thereof was previously held for an estate in fee-simple, to be granted a title in fee-simple on request made by the Lessee not later than twelve months after such forfeiture or other determination and in any other case where

2 For leases under Part III.

* For leases under Part IV.

compensation has been paid by the Lessee to a non-competitive perpetual lease without limitation of area under the provisions of “*The Land Acts, 1910 to 1961*”: Provided that in respect of land held for the railway under the said Agreement the grant of a title in fee-simple or of a non-competitive perpetual lease shall be in the discretion of the Governor in Council;

- (viii) Twelve months after the forfeiture or other determination of this Lease all works remaining on any land formerly included in this Lease shall be absolutely forfeited to the Crown unless the Lessee has been granted a title to that land in fee-simple or a Lease pursuant to the said Agreement;
- (ix) That the Lessee shall permit and suffer all or any person or persons appointed by the Minister for the time being of Our said State in that behalf at all proper and reasonable times during the continuance of this demise and whether the mines or works are working or not without any interruption or disturbance from the Lessee its agents, servants or workmen or any of them to enter into and upon the said land and all works thereon to view and examine the condition thereof and whether the mines or works are worked *bona fide* for the purposes aforesaid and for that purpose to use all and every such works;
- (x) The Lessee shall not be deemed to have failed to carry out any of its obligations under this Lease if such failure is occasioned by act of God, force majeure, floods, storms, tempests, war, riots, civil commotions, strikes, lock-outs, shortage of labour, transport, power or essential materials, breakdown of plant, inability in the opinion of the Governor in Council to sell or otherwise dispose of coal, or any other cause whatsoever beyond the control of the Lessee;
- (xi) In the event of the determination of the said Agreement under the provisions of clause 54(2) thereof, this Lease shall thereupon determine:

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

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

IN WITNESS WHEREOF

SCHEDULE