



# **Queensland Nickel Agreement Act 1970**

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Queensland

# Queensland Nickel Agreement Act 1970

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# Queensland Nickel Agreement Act 1970

**An Act with respect to an agreement between the State of the one part and Metals Exploration Queensland Pty. Ltd. and Freeport Queensland Nickel, Incorporated of the other part and for purposes incidental thereto and consequent thereon**

## **1 Short title**

This Act may be cited as the *Queensland Nickel Agreement Act 1970*.

## **2 Execution of agreement authorised**

The Premier is hereby authorised to make, for and on behalf of the State, with Metals Exploration Queensland Pty. Ltd., a company incorporated in the State and having its registered office at the offices of Spry Walker & Co., 127 Eagle Street, Brisbane, in the said State and Freeport Queensland Nickel, Incorporated, a company incorporated in the State of Delaware in the United States of America and registered as a foreign company in the State and having its registered office at the offices of Tullwil Agencies Pty. Ltd., 316 Adelaide Street, Brisbane in the said State (herein with their and each of their successors and permitted assigns called the “**companies**”) 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 proclamation was published in the gazette on 16 January 1971 at p 120.

#### **4 Change of agreement by further agreement**

- (1) The agreement may be changed by a further agreement between the Minister and the companies.
- (2) The Minister may make a further agreement only if the proposed further agreement has been approved by regulation.
- (3) The Minister must notify the date of the making of the further agreement by gazette notice.

#### **5 Application of GST to rents after 30 June 2005**

- (1) This section applies to rent payable after 30 June 2005 under—
  - (a) this Act; or
  - (b) the agreement; or
  - (c) a lease granted 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 repealed *Greenvale Agreement Act Amendment Act 1974*;
  - (d) the repealed *Greenvale Agreement Act Amendment Act 1975*;

- (e) the *Queensland Nickel Agreement Act 1988* or the agreement mentioned in section 9 of that Act;

*Editor's note—*

*Queensland Nickel Agreement Act 1988*, section 9 (Authority to make agreement)

- (f) the *Mineral Resources Act 1989*.
- (4) A reference in this section to the agreement includes any amendment of the agreement.

## **6 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 and regulate the carrying out of the provisions of the agreement or any of them.
- (2) Any such proclamation or order in council may be revoked or altered by another proclamation or order in council which is not inconsistent with the agreement.
- (3) The *Acts Interpretation Act 1954*, section 28A applies to every such proclamation or order in council as if each such instrument were a regulation.

### **6A Declaration for Commonwealth Act**

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

## **7 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) For the purposes of subsection (1), a mention in the agreement of an order in council is taken to be a mention of a regulation.

## **8 Changed references for Corporations Act**

- (1) A reference in the agreement to a related company of the Companies or any of them within the meaning of *The Companies Act 1961 to 1964* is a reference to a related body corporate, under the Corporations Act, of the Companies or any of them.
- (2) Any other reference in the agreement to the Companies Act is to be read as a reference to the Corporations Act.

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## 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 197 between THE STATE OF QUEENSLAND of the one part and METALS EXPLORATION QUEENSLAND PTY. LTD. a company incorporated in the State of Queensland and having its registered office at the offices of Spry Walker & Co., 127 Eagle Street, Brisbane, in the said State and FREEPORT QUEENSLAND NICKEL, INCORPORATED, a company incorporated in the State of Delaware in the United States of America and registered as a foreign company in the State of Queensland and having its registered office at the offices of Tullwil Agencies Pty. Ltd., 316 Adelaide Street, Brisbane, in the said State, of the other part (hereinafter with their and each of their successors and permitted assigns referred to as “the Companies”):

WHEREAS Authority to Prospect No. 335 M was granted to Metals Exploration N. L. on the Fourteenth day of July, 1966, pursuant to the provisions of *The Mining Acts 1898 to 1965* and *The Mining on Private Land Acts 1909 to 1965* over an area in the county of Clarke, parish of Greenvale, therein described:

AND WHEREAS such Authority to Prospect has since been amended extended and assigned from time to time and is now registered in the names of the Companies and is granted over two areas, viz.—Area No. 1 of about 55 square miles in the county of Clarke, parishes of Eland and Greenvale and Area No. 2 of about 12 square miles in the county of Clarke, parishes of Berry Park, Edna and Eland:

AND WHEREAS extensive prospecting work has been carried out on the land described in the said Authority to Prospect and considerable sums of money expended thereon by the Companies:

AND WHEREAS deposits of lateritic nickel ore have been found to exist in a considerable part of the lands described in the said Authority to Prospect:

AND WHEREAS the Companies are willing to enter into a joint venture *inter se* to mine the said deposits and bring them into large scale production and to transport and treat the ore:

AND WHEREAS for such purpose it is necessary to construct works for the mining transport and treatment of large tonnages of ore including the construction of a railway from the Companies' mine at Greenvale to the Companies' treatment plant near Townsville and the provision of locomotives and rolling-stock therefor and the erection of a treatment plant near Townsville:

AND WHEREAS the Companies are prepared to provide and expend the large capital amount required for the Joint Venture and for that purpose to borrow moneys on the security of their assets:

AND WHEREAS the State is satisfied that a large capital expenditure is necessary to ensure that the said deposits are efficiently and economically developed and treated for export purposes for a lengthy period and that it is in the interests of the State that such deposits should be developed by large scale operations:

AND WHEREAS the Companies are technically capable of so developing the said deposits:

AND WHEREAS the State has determined to encourage such development in the manner hereinafter expressed:

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

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## PART I PRELIMINARY

NOW THEREFORE IT IS HEREBY AGREED as follows:—

1. This Agreement shall be divided into Parts as follows:—  
PART I—PRELIMINARY;  
PART II—PROSPECTING;  
PART III—SPECIAL MINERAL LEASES;  
PART IV—PROVISIONS RELATING TO THE CONSTRUCTION OF THE RAILWAY AND WORKS;  
PART V—PROVISIONS RELATING TO THE MAINTENANCE AND OPERATION OF THE RAILWAY;  
PART VI—WATER FOR AND IN CONNEXION WITH MINING AND TREATMENT OPERATIONS;  
PART VII—PROVISIONS RELATING TO LANDS;  
PART VIII—GENERAL.
  
2. In this Agreement unless inconsistent with the context or subject matter—  
“the Act” means the Act of Parliament of the State referred to in clause 3 of this Part;  
“the Special Mineral Leases” means the Special Mineral Leases to be granted under the provisions of Part III of this Agreement by the Minister for Mines and Main Roads for the State of Queensland;  
“the Land Acts” means the *Land Act* 1962–1968 and any Act in amendment thereof or in substitution therefor;  
“the Mining Acts” means *The Mining Acts* 1898 to 1967 and any Act in amendment thereof or in substitution therefor;  
“the Mining Regulations” means the regulations from time to time made and gazetted under the Mining Acts;  
“the Minister” means in relation to Parts I and VIII hereof the Premier and the Minister for State Development of

Queensland and in relation to each of the other Parts hereof the Minister designated in that Part;

“ore” means all ore mined from the Companies’ Mine at Greenvale pursuant to the Companies’ Special Mineral Leases;

“the Project” means—

- (a) the establishment of a mine and supporting facilities at Greenvale for the mining of the said deposits of ore;
- (b) the construction of the said line of railway in accordance with the provisions of Part IV of this Agreement;
- (c) the construction of a treatment plant near Townsville with a designed annual capacity for the production of approximately fifty million lbs. of nickel and two million five hundred thousand lbs. of cobalt derived from the treatment of approximately two million seven hundred thousand wet tons of ore mined at the Companies’ mine at Greenvale and transported over the said line of railway to such treatment plant; and
- (d) all works necessary for or incidental to the carrying out of the foregoing;

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

“the said line of railway” means the line of railway described in clauses 2, 3 and 4 of Part IV of this Agreement;

“the State” means the State of Queensland;

“ton” means a long ton of 2,240 pounds avoirdupois;

“the Treasurer” means the Treasurer of the State of Queensland;

“Tribunal” means the Tribunal as constituted by clause 5 of Part VIII of this Agreement;

“the Water Act” means the *Water Act 1926–1968* and any Act in amendment thereof or in substitution therefor;

“works” means and includes the mines as defined in the Mining Acts treatment plant, roads, pipelines, drains, dams,

diversion weirs, spillways, water races, water facilities, pumping and ancillary works, power lines, haulage ways, houses, buildings, machinery, engines, vehicles, apparatus, stock, chattels, airfields, matters and things required for the Project or otherwise for the purposes of this Agreement and the business of the Companies pursuant to this Agreement.

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

3. The making of this Agreement is authorized by the Parliament of the State of Queensland expressed in an Act entitled the *Greenvale Agreement Act 1970*. Upon the making of this Agreement the provisions thereof shall have the force of law as though enacted in the Act.
  
- 4.(1) The Companies will forthwith carry out and complete a final study of the feasibility of proceeding with the Project and if the study discloses to the satisfaction of the Companies that the Project is feasible having regard *inter alia* to the technical problems of treating the ore, the capital cost of the Project and the cost of mining, transporting and treating the ore, the availability of markets, and the availability of loan funds and other finance required for the Project, the Companies shall give written notice to the Minister of their desire to proceed with the Project and shall submit to the Treasurer—
  - (a) a report on such final study and the results thereof;
  - (b) evidence that the Companies have entered into long term contracts for the sale of nickel and cobalt products produced from ore mined at the Companies' mine at Greenvale and treated at the Companies' Treatment Plant near Townsville in the quantities hereinbefore stipulated;
  - (c) evidence that the Companies have secured the necessary moneys to finance the Project and/or have entered into binding commitments with one or more banks or lending institutions to obtain such moneys if necessary by way of loan;

- (d) copies of any loan agreements pursuant to the provisions of paragraph (c) of this clause, which copies shall be treated as confidential; and
  - (e) evidence that there will be available to the Companies technical information and assistance necessary for satisfactorily carrying out the Project.
- (2) If the Companies shall furnish the report supply the evidence and produce to the Treasurer the copies of loan agreements as provided in subclause (1) of this clause, and the Treasurer is satisfied therewith, then the Minister shall by notice to the Companies published in the Gazette declare that the Project is approved for assistance by the State in accordance with the provisions of this Agreement.
- (3) Upon the publication of such notice in the Gazette, then but not otherwise the Companies shall proceed with the Project as herein provided and the provisions of clauses 5, 6, 7 and 8 of this Part and the provisions of Parts III to VIII hereof (both inclusive) shall become operative.
- (4) If the Companies shall fail to give notice, or to furnish the report or supply the evidence or produce to the Treasurer the copies of loan agreements as provided in subclause (1) of this clause, or if the Treasurer is dissatisfied on reasonable grounds with such report evidence or loan agreements then the Minister may after giving the Companies a reasonable opportunity of remedying the matters in respect of which the Treasurer is dissatisfied, notify the Companies that the State has decided that the Project is not approved for assistance by the State and thereupon this Agreement shall be of no force and effect whatsoever and neither party shall have any claim against the other with respect to anything herein contained or implied.
5. The State agrees that it will unconditionally guarantee the repayment over a term of twenty years from the commencement of commercial operations of moneys borrowed by the Companies for the purposes of the Project not exceeding in the aggregate \$43,000,000, and the payment

of interest on the outstanding balance thereof from time to time at a rate not exceeding 8 per centum per annum.

The said term of twenty years shall run—

- (a) if commercial operations shall have commenced not later than the Thirtieth day of September, 1976, from the commencement of such commercial operations; or
- (b) if commercial operations shall not have commenced by the Thirtieth day of September, 1976, from the date of the first borrowing of such moneys.

During such term of twenty years, such guarantee shall be a continuing guarantee and shall not be affected by time or other indulgence being given to the Companies by the lender.

For the purposes of this clause commercial operation shall be deemed to have commenced on the date on which the plant and buildings at Greenvale, the said line of railway, the treatment plant near Townsville and all the other facilities necessary or expedient for the mining, transport, treatment, processing and sintering of the said deposits shall have been completed and shall have operated at an average of not less than 85 per centum of designed capacity for thirty consecutive days of operation.

6. The State shall exempt from stamp duty—

- (i) this Agreement;
- (ii) any contract entered into by the Companies for the purposes of this Agreement or any document ancillary to such contract or in implementation thereof where the other party to such contract or such document is the State, a State Corporation or State Instrumentality;
- (iii) any document including any mortgage or charge in respect of the borrowing, lending or securing of money for the purposes hereof;
- (iv) any document relating to the transfer of the benefit hereof or any part hereof or any interest hereunder from either or both of the Companies to any company which is a related company of the Companies or either of them

within the meaning of *The Companies Acts 1961 to 1964*;

- (v) any document relating to the transfer of any interest in any property real or personal transferred or agreed to be transferred in connexion with any such transfer;
  - (vi) any copy of any of the aforesaid documents.
7. This Agreement may be varied pursuant to agreement between the Minister and the Companies with the approval of the Governor in Council by Order in Council and no provision of this Agreement shall be varied nor shall the powers and rights of the Companies hereunder be derogated from except in such manner.
8. The Companies and each of them may, with the consent of the Governor in Council by Order in Council transfer the whole or any part of their respective rights and obligations under this Agreement and their respective interests in any Special Mineral Lease granted hereunder provided that if it is desired to transfer a controlling interest to a third party (other than a related company of either of the Companies within the meaning of *The Companies Acts 1961 to 1964*) the provisions of this Agreement relating to the payment of rent and the payment of royalty as set out in clauses 6 and 7 of Part III of this Agreement shall be subject to review. A transfer to another Company shall not be valid unless such Company has been duly registered under the laws relating to Companies in the State. If a transfer is made in pursuance of a foreclosure under a mortgage or other action by a secured creditor upon default by the Companies all contracts and agreements made and entered into by the Companies will stand firm and the interests of the mortgagees and of any person claiming under or through the mortgagees will be protected.

## **PART II                      PROSPECTING**

1. In this Part “Minister” means the Minister for Mines and Main Roads of Queensland.
2. The Minister shall forthwith issue to the Companies as tenants-in-common in equal shares an extension of Authority to Prospect No. 335 M in respect of the areas now included therein for a further period of one year from the expiration of the current period thereof but otherwise on the same terms and conditions.
3. The provisions of the Mining Acts except in so far as they are varied or modified by this Agreement or by the said Authority to Prospect shall apply to such extension.
4. Before entering on any land pursuant to the Authority to Prospect the Company shall give to the owner, holder, trustee, occupier or person or authority having the care and management of such land notice either personally or in such form and in such manner as the Minister shall approve either generally or in a particular case.
5. An agent, servant or employee of the Companies entering upon land pursuant to the Authority to Prospect shall carry upon his person a written authorization issued by the Companies in a form approved by the Minister and shall produce such authorization when required by the owner, holder, trustee or occupier of such land.
6. The Companies shall not be required to apply for and obtain a permit to enter under *The Mining on Private Land Acts 1909 to 1965* in respect of private land before entering on such land under the said Authority to Prospect.

7. The Companies shall conduct operations under the Authority to Prospect so as not to interfere with the existing use of the land covered by such Authority to Prospect to a greater extent than may be necessary.

In the event of dispute the Minister may determine the extent of such interference that is necessary.

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

In respect of land comprised in a reserve, the Companies shall not under the Authority to Prospect disturb the surface of such land or do any act which affects or disturbs or is likely to affect or disturb the enjoyment of such surface by persons entitled thereto except in accordance with the consent of the Governor in Council first obtained. In considering whether to grant or refuse such consent, the Governor in Council shall have regard to the views of the person or authority who has the care and management of the reserve in question but the grant or refusal of such consent shall remain in the discretion of the Governor in Council. The Governor in Council may restrict his consent to a part or parts of the reserve in question and may subject his consent to such conditions as he considers proper.

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

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## **PART III                      SPECIAL MINERAL LEASES**

1. In this Part “the Minister” means the Minister for Mines and Main Roads of Queensland.
  
- 2.(1) From time to time during the term of Authority to Prospect No. 335 M or any extension thereof and during the term of any other Authority to Prospect issued to the Companies in respect of any lands contiguous with the land comprised in Authority to Prospect No. 335 M the Companies may apply in writing to the Minister for Special Mineral Leases over the land comprised in Authority to Prospect No. 335 M and/or in such other Authority to Prospect as the case may be. Such applications shall be accompanied by proper descriptions and plans of the lands to be included in such Special Mineral Leases. If such applications are in accordance with the provisions of this Agreement, the Minister shall forthwith cause to be issued to the Companies Special Mineral Leases over the lands so applied for.
- (2) The period of any Special Mineral Lease granted hereunder shall be thirty-five years from the date of application therefor or such lesser period as the Companies may require.
- (3) If the Companies at least three months prior to the expiry date of any such lease satisfy the Minister that the Companies have duly performed and observed each and every of the conditions, covenants and stipulations of the lease and have duly performed and observed all provisions of this Agreement applicable to such lease and that the Companies are in lawful possession thereof, the Minister shall grant a renewal of the term of such lease to the Companies for such further period as the Companies may require but not exceeding twenty-one years on the same conditions and provisions as applied at the expiration of the original term except that the rent and royalty shall be the rent and royalty respectively provided by clauses 6 and 7 of this Part.

- (4) Every such renewal of lease shall remain subject to all then existing registered mortgages, encumbrances, liens and charges.
- (5) If the Companies shall prove to the Minister's satisfaction that a right of access to, from and between the Special Mineral Leases is essential for the economical and proper working of such leases and that the Companies are unable to arrange by negotiation for such access, the Minister will use his best endeavours to secure such access for the Companies.
- (6) The Companies may from time to time make application in writing to the Minister for the surrender from one of its Special Mineral Leases of some or all of the lands then comprised in such Special Mineral Lease.

Such application shall be accompanied by a proper description and plan of the lands to be surrendered if in fact all of the land comprised in such Special Mineral Lease is not to be surrendered.

If the Companies have as at the date of such application in the opinion of the Minister reasonably fulfilled all of the provisions of the Mining Acts with respect to such Special Mineral Lease and of the provisions of this Agreement on the part of the Companies to be observed and performed and if the Minister is satisfied that the rights of the State under this Agreement will not be prejudicially affected by such surrender, the Minister shall approve of such application to surrender by the Companies.

3. If from time to time it is necessary to use portion of the lands comprised in a Special Mineral Lease for provision of a public utility crossing of such lease (including roads, railways, pipelines and transmission lines) the Minister shall give to the Companies at least two years' written notice of any such proposed use. The Minister and the Companies shall use their best endeavours to agree on the lands to be used by such crossing taking into consideration the interests of the State and of the Companies. Failing agreement, the lands to be so used shall be determined by the Tribunal. Thereupon such crossing may be constructed and used without interference

from the Companies' operations. The Companies shall not be entitled to claim compensation from the State or any person whomsoever because of the exercise of such right to use such lands for such crossing on account of the value of mineral that cannot be worked: Provided that the Companies shall be entitled to compensation for any improvements that may be directly affected by such crossing.

4. Special Mineral Leases pursuant to clause 2 of this Part may be granted under this Part of this Agreement for any or all of the under-mentioned purposes, that is to say:—
  - (a) for mining and treating any mineral other than gold, coal and petroleum and for all purposes necessary, directly or indirectly, to effectually carry on such mining and treatment; or
  - (b) for erecting thereon any houses, buildings, plant and machinery for use directly or indirectly in connexion with such mining and treatment operations or with community welfare; or
  - (c) for residence thereon in connexion with any such purposes; or
  - (d) for cutting and constructing thereon water-races, pipelines, drains, dams, reservoirs, tramways, railways, haulage ways, roads, airfields and other improvements to be used in connexion with such mining, or
  - (e) for erecting thereon offices and other service or community facilities in connexion with such operations.
  
5. Every Special Mineral Lease shall be in the form and contain the conditions set out in the First Schedule to this Agreement with such modifications thereof as may be necessary to meet the circumstances of any particular case and may be charged or made security for the payment of moneys or the discharge of any liability by Memorandum of Mortgage registered at the Warden's office in the manner prescribed in the Mining Regulations.

- 6.(1) The Companies shall pay a rent for all land held by them under a Special Mineral Lease or under any application for a Special Mineral Lease at the rate of one dollar per acre per annum as presently prescribed by section 33 of the Mining Acts in respect of the term of the original lease.
  - (2) Upon the renewal of a Special Mineral Lease pursuant to subclause 3 of clause 2 of this Part the Companies shall pay such rent thereunder as shall be agreed upon between them and the Minister and failing such agreement a rent equivalent to that then prescribed by the Mining Acts.
  - (3) Such rent shall be paid annually in advance on or before the first day of January in each year.
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- 7.(1) The Companies shall pay royalty on all ore mined and shipped over the said line of railway or otherwise despatched from any land the subject of a Special Mineral Lease or an application for a Special Mineral Lease at the rate of ten cents per ton during the first period of ten years from the date of the first such shipment or despatch and at the rate of fifteen cents per ton during the next following period of ten years from such date. Thereafter the royalty to be paid by the Companies shall be as agreed upon between them and the Minister.
  - (2) Such royalty shall be paid monthly within thirty days of the close of each month.
  - (3) In respect of ore mined and so shipped royalty shall be paid on weights ascertained for rail freight purposes; in respect of ore otherwise despatched royalty shall be paid on weights ascertained in a manner approved by the Minister.
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8. Every Special Mineral Lease shall contain the following reservations, covenants and conditions, that is to say:—
    - (a) a reservation to the Crown in right of the State of all gold, coal and petroleum found in the land comprised in the lease. Such reservation shall include the right of the State to authorize persons to search for and mine gold, coal and petroleum subject to the prior rights of the Companies under such Special Mineral Lease;

- (b) a covenant by the Companies to pay rent and royalty at the rates and within the times provided herein;
  - (c) such other covenants as are stipulated in the Mining Acts which are not inconsistent with the provisions of this Agreement;
  - (d) a condition that for any breach of any of the covenants the Minister, upon giving prior notice in writing to the Companies and to each person shown on the register kept at the relevant Warden's office pursuant to the Mining Regulations as having any interest in the Special Mineral Lease, of his intention so to do may impose upon the Companies a fine not exceeding \$2,000 and on non-payment of any such fine within thirty days of the date of the imposition thereof may forfeit the Special Mineral Lease.
9. All surveys for the purpose of properly identifying any land included in or to be added to any Special Mineral Lease or any part of such lease to be surrendered or transferred at any time shall be carried out at the expense of the Companies by a surveyor authorized under *The Land Surveyors Acts 1908 to 1916*. All such surveys shall be effected in accordance with By-law Number 15 under the provisions of the abovementioned Acts.
10. The Companies shall within a period of four years from the granting of the first Special Mineral Lease install all such machinery and other works as are necessary for them to mine and despatch for transportation from such lease or leases not less than 1,000,000 tons of ore per annum and thereafter during the term of the said Special Mineral Lease shall produce and despatch no less than that quantity annually.
11. The Companies shall during the first three years from the granting of the first Special Mineral Lease expend not less than three million dollars in the effectual development of the mines in such lease or leases and thereafter shall expend not

less than five hundred thousand dollars annually in the working of such mines.

- 12.** The Companies shall furnish to the Minister a written report giving full particulars of all work carried out upon all Special Mineral Leases granted pursuant to clause 2 of this Part and of expenditure thereon during each six-monthly period ending the 30th June and the 31st December of the currency of such Special Mineral Leases and shall deliver such report to the Minister within one month of the end of such six-monthly period.
- 13.** The Companies shall conduct all operations under the Special Mineral Leases in accordance with good mining practices as practised in Queensland for the time being and shall not damage more than is reasonably necessary the State's resources including gold, coal, petroleum, flora and fauna and shall take all steps necessary to restore and leave the surface of the mined areas in a condition satisfactory to the Minister so that—

  - (a) there shall be no abnormal batters or contours;
  - (b) there shall be a minimum of interference with the natural drainage system except and unless where it is found beneficial to use any mined area for the storage of water;
  - (c) there shall not arise any pollution of any drainage system which is dangerous or injurious to health.
- 14.** The Companies shall take competent advice as to what steps are possible to promote regeneration of vegetation and shall progressively promote such regeneration to the satisfaction of the Minister.
- 15.** Roads, stock routes, streams and watercourses are not to be interfered with under any Special Mineral Lease granted pursuant to the provisions hereof except in accordance with an

application made by the Companies to the Minister and approved by the Minister in writing after having had regard to recommendations obtained from Departments administering roads, stock routes, streams and watercourses.

- 16.** The Companies shall in respect of the surface of any land comprised in any of its Special Mineral Leases of which they are or are deemed to be in possession permit persons so authorised by the Minister to depasture stock thereon provided that such depasturing of stock shall not interfere with the rights of the Companies under their Special Mineral Lease or Special Mineral Leases.
- 17.** The State shall have the right to carry out investigations including drilling in any Special Mineral Lease granted pursuant to the provisions hereof to ascertain the nature and extent of the mineral and other resources of the land, but not so as to interfere with, hamper or restrict any operations or proposed operations by the Companies.
- 18.** If although the Companies have not carried out the whole of their obligations under clauses 10 and 11 of this Part, the Minister is nevertheless satisfied that the delay in carrying out the whole of such obligations has occurred through circumstances for which the Companies cannot justly be held responsible, then the Minister may extend the time for carrying out such obligations for such period as he considers reasonable.
- 19.** The provisions of the Mining Acts except as far as they are varied or modified or are inconsistent with this Agreement shall apply to this Agreement and to any Special Mineral Lease granted hereunder:

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



annum. The minimal requirements of the Commissioner for the construction of lines of railway in the State are as set out in the Second Schedule to this Agreement.

4. No portion of an existing line of railway of the Commissioner shall be incorporated in the said line of railway. Subject thereto the location and route of the said line of railway, estimated by the State and the Companies to be about 140 miles in length, will be generally as shown on the map in the Third Schedule to this Agreement. Such location route and estimated length are based on existing preliminary engineering surveys and studies made by or on behalf of the Companies. Any material change in the location and route from that shown on such map shall be as agreed upon between the Minister and the Companies and failing such agreement then the location of the route shall be as determined by the Minister after giving due consideration to such factors as economy of construction and sound engineering principles.
  
5. The Companies shall, as soon as may be, submit to the Minister particulars of the proposed route (including all relevant surveys) for the said line of railway. If the Minister approves or determines the route he shall give notice in writing to the Companies of this and thereupon—
  - (a) The Commissioner shall, as soon as may be, and in any event not later than three months from the date that the Companies shall advise him of the final alignment and width of earthworks and details of any land required for crossings, sidings, access or any other purposes in respect of any section of the said line of railway acquire (by treaty or compulsorily) all land necessary to construct that section of the said line of railway and to provide reasonable access thereto and immediately upon the land vesting in the Commissioner, he shall give to the Companies exclusive possession thereof to enable them to construct the said line of railway; and
  - (b) the Companies shall take all necessary action with respect to the completion of detailed designs,

engineering planning studies and surveys and the preparation of invitations for tenders and other matters which will permit the construction of the said line of railway to commence at the earliest practical date and will submit the same as promptly as may be to the Commissioner for approval and the Commissioner shall deal with the material so submitted for approval as promptly as may be.

- 6.(1) Subject to subclauses (2), (3) and (4) of this clause the Companies shall have the right to let contracts for all or part of the engineering and construction of the said line of railway.
  - (2) Tenders shall be invited only from a panel of such contractors as are mutually agreed upon between the Commissioner and the Companies.
  - (3) The Companies shall before issuing an invitation for tenders relating to the construction of any part of the said line of railway obtain the approval of the Commissioner to the terms of the invitation and the specifications and the general and special conditions of contract.
  - (4) The Companies may accept any tender submitted by an approved contractor which is in conformity with the tender documents, provided they are satisfied that the tenderer is capable of satisfactory performance of the contract for which such tender is made having due regard to the date for completion of the said line of railway as specified in subclause (1) of clause 11 of this Part and shall supply the Commissioner with a photostat copy of such documents.
7. The conditions attaching to the origin of goods or materials to be purchased and components of the work to be fabricated or manufactured for use in or in connexion with a contract of the nature referred to in clause 6 of this Part shall be those normally adopted by the Commissioner in contracts of a similar nature:

Provided that the Commissioner shall agree with the Companies to modify such conditions if he is satisfied that

any such goods, materials or components shall not be procurable within a reasonable time having regard to the planned completion date for the said line of railway.

- 8.(1) All materials used in the said line of railway, all construction work, and all maintenance of the line prior to acceptance shall be subject to inspection by the Commissioner. When the Commissioner is satisfied that the said line of railway has been completed in accordance with the plans and specifications approved by him as aforesaid and has been maintained to that standard and the Companies and the Commissioner are agreed that the said line of railway be placed in operation the Commissioner by notice to the Companies shall accept the said line of railway and thereupon subject to subclauses (2) and (3) of this clause, the Companies shall be relieved of further obligation or liability in respect thereof.
- (2) The Companies shall at the date of such placing in operation the said line of railway, pay to the Commissioner the sum of \$100,000 to be held by the Commissioner and expended by him in restoring to a proper order and condition the said line of railway if in the period of twelve months immediately following such date as aforesaid there should occur in the said line of railway defects of construction, being defects of a nature not attributable to the use of the said line of railway as contemplated by the parties to this Agreement.
- (3) If the cost of such restoration as mentioned in subclause (2) of this clause is greater than the amount deposited by the Companies, the Companies shall pay to the Commissioner any such deficiency and if such cost is less than such sum the Commissioner shall refund to the Companies the balance of such amount held by him at the expiration of such period of twelve months.
9. The Commissioner and the Minister shall have the right to consult with the Companies as to all matters relating to the foregoing and the Companies shall supply to the Minister such information as he may from time to time require
-

concerning the progress of construction of the said line of railway and the expenditure incurred thereon.

- 10.**(1) The Companies shall reimburse the Commissioner for all costs, not being administrative overheads, reasonably incurred by him—
- (a) in reviewing the location of the route;
  - (b) in the acquisition of any land easements or rights of way for the construction and operation of the said line of railway, including surveys and other costs associated with such acquisition;
  - (c) in the determination of the adequacy of the design;
  - (d) in reviewing drawings, specifications, contract documents and tenders;
  - (e) in the general supervision and inspection of work during construction to ascertain that the approved design, drawings and specifications are being implemented;
  - (f) in making laboratory and field tests independent of the Companies for the determination of the quality of materials and of work;
  - (g) in making detailed progressive inspections of the completed work for final acceptance and checking record drawings of the work as built;
  - (h) in employing the services of consulting engineers to carry out any of the foregoing work on his behalf.
- (2) For the purposes of the preceding subclause the Commissioner may by his duly appointed servants or agents enter upon any land or premises of the Companies or their agents or independent contractors to inspect the works or any part or parts thereof or any materials or components for such works.
- 11.**(1) Subject to the provisions of this Part the State shall use its best endeavours to assist the Companies to have the said line of

railway completed and placed in operation not later than the First day of October, 1973.

- (2) On and after the date upon which the said line of railway shall have been completed and placed in operation as provided in subclause (1) of this clause, all the right title and interest of the Companies and of each of them in such railway including the line of railway, earthworks, bridges, culverts, tunnels, signalling equipment and all other property whatsoever shall be vested in the Commissioner absolutely.
12. For the purposes of constructing the said line of railway the Commissioner may authorize the Companies to exercise for such purposes all the powers and authorities of the Commissioner set out in sections 37 and 40 of the Railways Acts as though the said line of railway was a railway as defined in section 5 of the said Acts.

## **PART V**

### **PROVISIONS RELATING TO THE MAINTENANCE AND OPERATION OF THE RAILWAY**

1. In this Part unless the context otherwise requires the several terms following shall have the meanings respectively assigned to them:—
- “the Commissioner” means the Commissioner for Railways being the corporation constituted under the Railways Acts;
- “the date of first shipment” means the first day of the month next following the month in which ore in regular shipments commences to be transported over the said line of railway;
- “the Minister” means the Minister for Transport of Queensland;
- “offer for transport” means the offer by the Companies of a reasonable amount of ore in stockpile ready for shipment,

coupled with proof to the satisfaction of the Minister of the Companies' ability to produce for transport such ore in the tonnages required to meet the Companies' nominated six-monthly tonnage in terms of subclause (l) of clause 7 of this Part;

“reasonably regular flow of ore shipments” means the rate at which ore is to be offered for transport determined as set forth in subclause (3) of clause 7 of this Part;

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

“year” means the period of twelve months next ensuing after the date of first shipment and each successive period of twelve months thereafter.

2. The Commissioner shall with the approval of the Companies equip the said line of railway with such locomotives, rolling stock and other facilities and equipment as may be necessary or desirable to transport over the said line of railway an annual tonnage of two million seven hundred thousand tons of ore and shall maintain the said line of railway and the said locomotives rolling stock and other facilities and equipment in good order condition and repair replacing or renewing all such items as shall in accordance with good railway practice require replacement or renewal and shall operate the said line of railway and all locomotives rolling stock and other facilities and equipment in such manner as will enable the State adequately to carry out its obligations hereunder to transport ore from the Companies' Mine at Greenvale to their Treatment Plant near Townsville on a continuous and uninterrupted basis and the obligations hereunder to maintain and operate the said line of railway and to transport ore as aforesaid shall continue so long as the Companies' Mine at Greenvale shall continue to produce ore in commercial quantities for treatment near Townsville. The Companies shall give the Commissioner not less than twelve months' notice of the date when they intend to cease production of ore in commercial quantities for treatment near Townsville.

- 3.(1) The State and the Companies are agreed that on present estimates and prices the aggregate amount of capital required for the equipping of the said line of railway with locomotives rolling stock and all other necessary facilities and equipment to transport an annual tonnage of two million seven hundred thousand tons of ore is approximately six million one hundred thousand dollars. The Commissioner shall consult with the Companies as to the quantity, type and design of such locomotives rolling stock facilities and equipment so that they will be suitable and available for the operations of the Commissioner and the Companies. The State undertakes to acquire progressively after such consultation with the Companies, such locomotives rolling stock facilities and equipment necessary to meet this commitment.
- (2) The Companies hereby undertake and agree with the State that when so requested by the Treasurer they will lodge with the Treasurer progressively by way of deposit against future freight charges such sums of money at such times as the State shall so require provided that the moneys so requested by the Treasurer shall not at any time exceed the aggregate of the moneys then paid or due to be paid by the State in respect of the acquisition of locomotives rolling stock other facilities and equipment required for the said line of railway. The total amount of all moneys so deposited is hereinafter called the "Freight Deposit". The State shall be at liberty to apply such Freight Deposit as it may apply any other railway income.
- (3) The Treasurer shall consult and co-operate with the Companies in scheduling payments required to be made by the Companies by way of Freight Deposit as aforesaid which shall be paid by way of instalment on dates to be specified by the Treasurer on not less than sixty days' notice and at intervals of not less than one month.
- (4) When by reason of the default of the Companies in providing a reasonably regular flow of ore shipments, the Commissioner is required to pay to his employees (howsoever employed by him in the transport of ore over the said line of railway) in obedience to relative Industrial Commission Awards, wages and allowances on the basis of a guaranteed week or fortnight and such amount of wages and allowances is in excess of the

amount of wages and allowances that would be payable to such employees under such Industrial Commission Awards for actual time worked by them during such week or fortnight in the transport of such ore as aforesaid, then and in any such case the Companies shall pay to the Commissioner the amount of such excess.

4. On and from the date of first shipment, the Commissioner shall transport for the Companies by means of the said line of railway such ore as shall be offered for shipment by the Companies up to the carrying capacity to which the said line of railway is progressively equipped as set out in subclause (1) of clause 3 of this Part. The commitment of the State to transport such ore at such progressive rate is based on a reasonably regular flow of ore shipments by the Companies and if the Companies shall fail to maintain such flow, the commitment of the State shall be reduced in accordance with such failure by the Companies.
  
5. The State shall give all shipments offered by the Companies for transportation by means of the said line of railway priority over any and all other shipments by means of such line of railway and shall not permit any such last mentioned shipments to interfere with or delay such shipments of ore by the Companies. The State and the Companies are agreed that the said line of railway will be constructed for use primarily and principally for the transport of ore obtained from the Companies' Mine at Greenvale to the Companies' Treatment Plant near Townsville.

## **FREIGHT CHARGES**

- 6.(1) The freight per tonne payable in any one year of the period of 20 years following the date of first shipment shall be the sum of—

- (a)—
- (i) during the period of 10 years commencing on the date of first shipment, an amount calculated by dividing \$1,500,000 by the tonnage carried during the year in question or 2,300,000 whichever is the greater, and subtracting 10 cents from the result; or
  - (ii) after the termination of the period of 10 years commencing on the date of first shipment, an amount calculated by dividing \$3,000,000 by the tonnage carried during the year in question or 2,300,000, whichever is the greater, and subtracting 15 cents from the result; and
- (b) an amount determined according to the tonnage carried during the year in question from the following table:—

Annual Tonnage	Cents per ton
2,000,000 to 2,049,999	98.0
2,050,000 to 2,099,999	97.5
2,100,000 to 2,149,999	96.9
2,150,000 to 2,199,999	96.3
2,200,000 to 2,249,999	95.8
2,250,000 to 2,299,999	95.2
2,300,000 to 2,349,999	94.7
2,350,000 to 2,399,999	94.1
2,400,000 to 2,449,999	93.6
2,450,000 to 2,499,999	93.2
2,500,000 to 2,549,999	92.7
2,550,000 to 2,599,999	92.3

<b>Annual Tonnage</b>	<b>Cents per ton</b>
2,600,000 to 2,649,999	91.8
2,650,000 to 2,699,999	91.3
2,700,000 to 2,749,999	90.8
2,750,000 to 2,799,999	90.4
2,800,000 to 2,849,999	89.9
2,850,000 to 2,899,999	89.4
2,900,000 to 2,949,999	88.9
2,950,000 to 3,000,000	88.4

If the annual tonnage is less than 2,000,000 tons as a result of the Companies failing to offer for transport ore aggregating such tonnage, then the Companies and the State shall consult and agree on the amount to be determined under this paragraph (b), such amount to be equal to the sum of the operating and maintenance costs and all other costs incurred by the Commissioner and occasioned by the Companies shipping such reduced tonnage, such amount to be converted to a "per ton" basis and, if the whole of the freight deposit lodged with the Treasurer pursuant to subclause (2) of clause 3 of this Part has not been offset against freight charges payable by the Companies, the amount of 20.5 cents per ton:

Provided that the freight rate on tonnage carried for the Companies prior to the date of first shipment shall be as negotiated between the Commissioner and the Companies.

- (2) The amounts per ton calculated in pursuance of paragraph (a) of subclause (1) of this clause and the amounts per ton included in the table in paragraph (b) of subclause (1) of this clause shall be subject to escalation. Escalation of the said amounts shall be negotiated between the Minister and the Companies, taking into account such factors as changes in

wage rates, material and supply costs and the price of nickel. Such negotiations shall commence forthwith upon the giving of written notice by either party to the other and shall be concluded no later than two months thereafter. The newly negotiated escalated rate shall have effect from the date the variation of any of such factors took effect. Failing agreement, the following formulae for escalation of each charge shall apply—

- (i) The amounts per ton calculated in pursuance of paragraph (a) of subclause (1) of this clause shall be escalated on the basis of the formula—

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

where—

$X$  = the amount per ton calculated in pursuance of paragraph (a) of subclause (1) of this clause;

$X_1$  = the amount to be ascertained inclusive of escalation;

$N$  = nickel price at Fifth day of November, 1970, viz. the ruling price per ton of nickel metal on the world market which price is for the time being agreed to be the price per ton calculated from the price from time to time quoted by International Nickel Company Limited for four inch square electrolytic nickel cathodes, F. O. B., Port Colborne, Canada, at Fifth day of November, 1970;

$N_1$  = corresponding nickel price at the date formula is to be applied:

Provided that, where  $N_1 - N$  is a negative factor, no escalation shall be taken into account.

- (ii) The amounts included in the table in paragraph (b) of subclause (1) of this clause shall be escalated on the basis of the formula—

$$Y_1 = Y + (Y - 20.5\text{cents}) \left( 0.75 \frac{(w_1 - w)}{w} + 0.17 \frac{(s_1 - s)}{s} + 0.08 \frac{(d_1 - d)}{d} \right)$$

where—

$Y$  = the amount included in the table in paragraph (b) of subclause (1) of this clause;

$Y_1$  = the amount to be ascertained inclusive of escalation;

$w$  = average hourly wage at First day of August, 1970;

$w_1$  = average hourly wage at date formula is to be applied;

$s$  = price of heavy steel rail per ton C.I.F.E. Brisbane at First day of August, 1970;

$s_1$  = corresponding price at date formula is to be applied;

$d$  = price paid by Commissioner for distillate at First day of August, 1970;

$d_1$  = corresponding price at date formula is to be applied.

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

- (a) the hourly rates for typical classifications of employees in the various sections of the said line of railway, namely running, locomotive and rollingstock maintenance, track maintenance and station staff, shall be averaged. The number of such rates taken for each such section shall be roughly in accordance with the section's proportion of the total wages paid for the said line of railway;
- (b) the hourly wage rate for each classification selected shall include all allowances, penalty rates and loadings actually paid, including the parity prescribed by the State Industrial Commission for the district of the State through which the said line of railway is constructed. The parties to this Agreement expressly agree and declare that the allowances taken into account for the purpose of this formula shall include the allowance made to train crews for operation of triple header diesel

trains since the freight rates are based partly on the use of triple header diesel trains for the transport of ore; and

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

Whenever these formulae are applied, the escalated freight rates shall operate from the date upon which the variation of any of the relevant factors took effect.

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

- (3) When the whole of the freight deposit lodged with the Treasurer pursuant to subclause (2) of clause 3 of this Part has been offset against freight payable by the Companies, the freight per ton calculated in pursuance of subclause (1) of this clause after allowing for escalation in pursuance of subclause (2) of this clause shall be decreased by 20.5 cents.
- (4) For any subsequent period after the expiration of 20 years from the date of first shipment, the freight per ton payable shall be as negotiated between the Minister and the Companies.
- (5) For the purpose of calculating the freight rate per ton of ore payable in respect of any year (but for no other purpose) ore offered for transport by the Companies within the estimated tonnage advised by the Companies pursuant to subclause (1) of clause 7 of this Part in respect of each of the two six-monthly periods constituting that year, shall be deemed to have been hauled in that year notwithstanding the failure of the State to haul the whole of the ore so offered for transport in that year.
- (6) The foregoing freight charges have been determined upon the premise that the mileage of the said line of railway will be one hundred and forty miles. If the actual mileage of the said line

of railway is greater or less than such estimated mileage whether because of change of route, any extension thereof or for any other reason whatsoever, then in such case, such freight rates shall be varied to take into account the effect of the longer or shorter haul occasioned by such variation in mileage, and the turn-round time, on operating and maintenance costs.

- 7.(1) The Companies shall at least one calendar month prior to the date of first shipment and thereafter at regular six-monthly intervals advise the Commissioner in writing of the estimated tonnage of ore (not exceeding 50 per centum of the annual carrying capacity of the said line of railway at the date of such advice) they will offer for shipment over the said line of railway in the six-monthly period in respect of which such notice is so given. Subject to the said limitation relating to such carrying capacity the Companies may increase such estimated tonnage during such period by giving at least thirty days' notice in writing of such increase to the Commissioner.
- (2) The freight rates set forth in clause 6 of this Part are based on rail transportation services supplied on the basis of a six-day week and a reasonably regular flow of ore shipments offered by the Companies. The State shall not claim additional payments or an increase in such freight rates on account of such transportation services rendered to the Companies on holidays or on Sundays for the State's convenience or in order to fulfil its obligations to transport ore in the quantities referred to in subclause (1) of this clause. If shipments of ore shall be required on a holiday or Sunday for the convenience of the Companies as aforesaid or by reason of the Companies' failure to maintain a reasonably regular flow of ore shipments or to load or unload at the hourly rate specified in subclause (4) of this clause the Companies shall pay to the State the actual increase in cost to the State resulting from all such shipments.
- (3) For the purposes of this present clause the term "increase in cost" shall mean the excess cost to the Commissioner for transportation services so rendered to the Companies as compared with the cost of such services when rendered at

standard rates on any week-day Monday to Friday and the term “reasonably regular flow of ore shipments” shall mean that the Companies in each week of any six-monthly period referred to in subclause (1) of this clause shall offer for shipment over the said line of railway ore of a tonnage varying by not more than 5 per centum from one twenty-sixth of the Companies’ estimated tonnage for that six-monthly period.

- (4) (a) The Companies shall install loading equipment at the Companies’ Mine at Greenvale and unloading equipment at their Treatment Plant near Townsville which sets of equipment shall be respectively capable of loading ore at an effective rate of 1,000 tons per hour and unloading ore at an effective rate of 2,000 tons per hour. When due to the Companies’ default a train of the Commissioner shall be delayed for a period in excess of that required to load it to its full capacity or unload such train at such effective rate as aforesaid the Companies shall pay to the Commissioner a demurrage charge of \$28.95 for each hour and *pro rata* for each part of an hour during which the delay shall continue.

(b) Such demurrage charge shall be subject to escalation during the currency of this Agreement by negotiation but if mutual agreement cannot be obtained as to the amount of escalation then such escalation shall be based in accordance with the following formula. Such demurrage charge shall be based upon costs existing at the First day of August, 1970, and shall be subject to escalation as hereinbefore expressed from such date.

#### FORMULA FOR ESCALATION OF DEMURRAGE CHARGE

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

where—

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

W = the percentage increase in  $w_1$  in the formula in the table in clause 6 of this Part from the First day of August, 1970, or

since the previous adjustment was made to the demurrage charge as the case may be;

D = the percentage increase in  $d_1$  in the formula in the table in clause 6 of this Part from the First day of August, 1970, or since the previous adjustment was made to the demurrage charge as the case may be.

8. Monthly accounts for freight payable pursuant to the provisions of clause 6 of this Part and increases in cost, if any, pursuant to subclause (4) of clause 3 and subclause (2) of clause 7 of this Part shall be rendered by the Commissioner to the Companies as soon as possible after the end of each month. The rate shall be determined by converting the quantity of ore shipped from the commencement of the year to an annual basis. The rate shall be re-adjusted each quarter and amended accounts rendered for preceding months. Out of the freight deposit lodged with the Treasurer pursuant to subclause (2) of clause 3 of this Part, an amount of 20.5 cents per ton shall be offset against the freight payable by the Companies until such time as the whole of the freight deposit has been so offset. The Companies shall not be entitled to any refund of the freight deposit other than by way of offsets against the freight payable by them at the aforementioned rate per ton. The account for freight on ore hauled for the Companies in any month, including increases in cost referred to above, and amended accounts for previous months less the amount of the Freight Deposit which is to be offset against freight payable by the Companies as aforesaid shall be paid in cash not later than the end of the month in which such accounts are rendered.
9. The freight rates for shipment of goods other than ore shipped by the Companies over the said line of railway shall be the same as the then applicable rate to the Companies for ore provided that such shipments—
  - (a) may be transported in ore transportation equipment or other equipment supplied by the Companies or

purchased by the Commissioner with moneys advanced by the Companies;

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

The rates for goods not meeting these requirements shall be as negotiated between the Companies and the Commissioner.

- 10.** If after the construction of the said line of railway has been completed the State shall transport thereover for any other person or persons ores or goods of any description in tonnages in excess of 100,000 tons annually then and in such case the State and the Companies shall re-negotiate the freight charges set out in clause 6 of this Part.

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

- (a) for ore—the actual cost of mining, producing, preparing, and loading ore in cars at the Mine site; and  
(b) for other cargo—the actual cost thereof to the Companies.

- (2) For the purposes of this present clause the words "Commissioner's risk" shall mean that the Commissioner takes upon himself with respect to such ore or other cargo so transported by him the ordinary liability of a carrier subject in all respects to the provisions of the Railways Acts and to the by-laws made thereunder:

Provided always however that the State shall exercise all reasonable efforts to salvage and convey to the Companies' treatment plant near Townsville any ores spilled as a result of accident in transport: Provided also that the Commissioner shall not be liable for the loss of ore dust by wind or water action during transport over the said line of railway.

**12.** In the event that at any time the Companies shall—

- (a) abandon, terminate or permanently cease their mining operations at their Greenvale Mine, of which, failure by the Companies for a period of twenty-four consecutive months to ship any ore over the said line of railway shall be *prima facie* evidence; or
- (b) be wound up under the provisions of *The Companies Acts 1961 to 1964* otherwise than for the purpose of reconstruction, re-organisation, amalgamation or merger; or
- (c) admit to or notify the Minister in writing on behalf of the State that they have terminated, abandoned or ended or intend to terminate, abandon or end their use of the said line of railway as contemplated by this Agreement or their mining operations pursuant to Part III of this Agreement,

then this Part of this Agreement shall be of no further force or effect and all Freight Deposit moneys except those currently available to the Companies for application against freight charges in accordance with clause 8 of this Part shall be forfeited to Her Majesty and the Companies shall not have any claim in respect thereof.

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

- (a) the State shall fail to transport for the Companies' ore offered for shipment by the Companies in terms of this Agreement; or
- (b) the Companies shall fail to offer for transport ore in terms of this Agreement,

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

- (2) Neither the State nor the Companies shall be excused for any such failure by it or them as aforesaid because such failure has

resulted from an Act of God, force majeure, floods, storms, tempests, war, riots, civil commotions, strikes, lockouts, shortage of labour, transport, power or essential materials, breakdown of plant, or any other cause whatsoever.

## **PART VI**

# **WATER FOR AND IN CONNEXION WITH MINING AND TREATMENT OPERATIONS**

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

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

“the Minister”—means the Minister for Conservation, Marine and Aboriginal Affairs of Queensland.

## **BURDEKIN AREA**

2. The provisions of clause 3 of this Part shall apply only to the water to be used by the Companies at their Greenvale Mine, attendant town and ancillary establishments.
- 3.(1) Subject always to the right of persons residing or travelling in the vicinity of any natural source to take water therefrom for their reasonable domestic and stock requirements, the Companies shall have the right as hereinafter in this clause provided to obtain water from those sections of streams defined in the Fourth Schedule to this Agreement (hereinafter in this Part referred to as “the defined sections”) and the right

to use or otherwise dispose of water so obtained for the mine, attendant town and ancillary establishments referred to in clause 2 of this Part.

- (2) The Companies shall be entitled to divert from the defined sections an annual quantity of not more than 400 acre feet.
- (3) For the purposes of obtaining and conveying to and throughout the Special Mineral Leases and other lands howsoever held by the Companies at their Greenvale Mine the water to which they are entitled under the provisions of this clause, the Companies shall have the right—
  - (a) to drill wells and bores and to build weirs and other works to provide water storage and to conserve the flow thereof within the defined sections;
  - (b) to construct maintain and operate within the defined sections pipelines, reservoirs, pumping stations and other works.
- (4) At any time when there is flow into any such water storage or along any of the defined sections there shall be passed downstream an amount of flow sufficient to meet riparian rights to downstream landholders and of any licence or requirement for other use authorized by the Commissioner or the actual flow, whichever is the lesser. Such amount shall be released through any storage by means of appropriate outlet works. Subject to the provisions of this clause the amount of any flow to be passed through the storage or down the stream shall be fixed by the Commissioner.
- (5) The Companies shall not draw from the defined sections (including any such water storage) on any one day a total quantity of water exceeding 400,000 gallons.
- (6) Plans specifications and proposed storage capacity of any structures or works to be built by the Companies within the defined sections shall be subject to examination and approval of the Commissioner and the Companies shall be required to construct maintain and operate such structures to the satisfaction of the Commissioner.
- (7) The Companies shall have the right to collect and store in any such water storage so constructed by them on any of the

defined sections a quantity of water sufficient after allowing for losses during storage to ensure the availability at a constant daily rate of diversion of the annual quantities which the Companies are entitled under this Agreement to obtain from that stream.

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

- (8) The Companies shall have the right of appeal to the Land Court in respect of any decision by the Commissioner granting any future licence for diversion and/or storage of water from any river or stream above any storage provided by or for the Companies within the catchment areas of the defined sections. Such appeal shall be instituted and determined in accordance with the provisions contained in that behalf by section 12 of the Water Act.
- (9) The State shall ensure that any rights granted to any other person and any operations conducted by the State or by any other person within the catchment areas of the defined sections shall be so limited or controlled by the exercise of powers pursuant to the Water Act that the quantity of water to which the Companies are entitled under this Part of this Agreement is not thereby diminished.
- (10) Subject to the provisions of the Water Act and the *Acquisition of Land Act 1967–1969* for the purposes of investigating the availability of water and of constructing operating and maintaining any works authorised by this Part of this Agreement, the State shall assist the Companies in gaining access with all necessary men transport materials and equipment to any river stream or source within the catchment areas of the defined sections from which the Companies have the right to obtain water and the Companies shall reimburse to the State the compensation costs and other incidental expenses (if any) payable by the State in consequence of any such assistance.

- (11) The Companies shall not be under any liability to any person by reason of the fact that any land lawfully held by that person has been or is likely to be inundated as the result of works carried out by the Companies or required to be occupied by any pumping stations, weirs, storage basins, pipelines, roads or other requirements in pursuance of their rights under the provisions of this clause but the State shall as necessary resume any such land under the provisions of the *Acquisition of Land Act 1967–1969* and/or the Land Acts and such provisions shall apply and extend accordingly and the Companies shall reimburse to the State the compensation (if any) costs and other incidental expenses payable by the State in consequence of any such resumption.

## TOWNSVILLE AREA

4. The provisions of clause 5 of this Part shall apply only to water to be used by the Companies at their Treatment Plant near Townsville.
- 5.(1) Subject to the provisions of subclause (2) of this clause the Companies shall have the right to sink bores and wells and to obtain water from sub-surface sources for their Treatment Plant near Townsville up to an annual quantity of 1,900 million gallons per year and at a maximum rate of 5 million gallons per day from all bores and wells established by the Companies from within the catchment areas of streams flowing into Halifax Bay from and including Stony Creek near Deeragun to and including Christmas Creek near Kurukan (hereinafter in this Part called “the said catchment areas”).
- (2) If the Companies desire to establish a bore or well on land howsoever owned by any person within such catchment areas the Companies shall arrange to lease or purchase from such person such land whereon such bore or well is to be established together with any further area of land which may be required for ancillary works or access by the Companies.

If the Companies are unable to arrange such lease or to effect such purchase, the State shall take action to resume the land so required and the Companies shall reimburse the State for any compensation to be paid to any person arising from such resumption together with any costs incurred by the State in connexion therewith.

- (3) If the Companies desire to obtain water supplies from sources of sub-surface supply within the said catchment areas the Minister may recommend to the Governor in Council that the said catchment areas or any appropriate part thereof shall be declared an Area to which the provisions of Part VII of the Water Act shall apply in relation to sub-artesian wells.
- (4) Following a declaration by the Governor in Council as referred to in subclause (3) of this clause, when the Commissioner issues a licence for a sub-artesian bore to be drilled after the date of such declaration within the said catchment areas whether such sub-artesian bore is to be drilled by the Companies or another person (including the State) he shall ensure that the conditions of such licence shall be such that the supply of water available from any existing sub-artesian bores shall not in his opinion be unduly diminished.

The provisions of this subclause notwithstanding, the Commissioner may issue licences to the owner of a sub-artesian bore existing at the time of the making by the Governor in Council of any such declaration and such licence shall incorporate the necessary conditions to enable such sub-artesian bore to be operated at a similar rate of use to that applying at the time of such declaration.

- (5) For water supply requirements of the Companies in excess of those actually obtained from sub-surface supplies as hereinbefore in this clause provided the Companies shall negotiate with the Townsville City Council to obtain from its water supply system the balance of their water requirements up to the total quantities permitted the Companies under subclause (1) of this clause.

## GENERAL CONDITIONS

- 6.(1) The Companies shall in respect of each calendar year provide the Commissioner with the following particulars of their use of surface water and/or underground water from bores or wells sunk by them pursuant to the provisions of clauses 3 and 5 of this Part, namely—
- (a) the quantity of water obtained each month from any of the defined sections and from other sources;
  - (b) the location depth and stratigraphic details of each of the bores and wells sunk in the said catchment areas pursuant to the provisions of this Part the results of any test conducted by them of the yield and quality of water therefrom and the quantity of water obtained therefrom each half-year.
- (2) If the Companies shall neglect or refuse to perform or observe all or any of the provisions of this Part and on the part of the Companies to be performed or observed the Companies shall be liable to a penalty not exceeding one thousand dollars for each or any such breach of which notice has been served on the Companies by the Commissioner and a further daily penalty not exceeding one hundred dollars so long as any such breach continues after notice thereof.
- (3) In addition to the powers of the Commissioner under the Water Act if the Commissioner is of the opinion that the Companies are at any time taking a greater quantity of water from any river stream or other source within the defined sections than such quantity or quantities as the Companies are permitted to take pursuant to this Agreement then notwithstanding any other remedy which may be available to the Commissioner he may take such action as he deems necessary to prevent the Companies from so doing including the rendering of equipment used by the Companies inoperative for the purpose of taking water but without damaging such equipment.

7. Any surplus or waste water discharged by the Companies into any river or stream within the defined sections shall revert to the State without payment to the Companies.
8. The Companies shall have the right to discharge into the rivers and streams within the defined sections drainage from any plant works and facilities of the Companies and from any residential area and the Companies shall ensure that any such discharge by them shall not be dangerous or injurious to public health. Any such discharge shall not render the natural water in the river or stream less fit for human consumption or consumption by stock or for marine life shall not cause harmful pollution of waters and shall not contain harmful solids. The Minister may from time to time direct the Companies to make known to such persons as shall be specified by him and the Companies shall so make known the nature of the effluent discharged or to be discharged.
9. If at any time during the term of this Agreement—
  - (a) the Companies' Special Mineral Lease shall be forfeited as a result of a breach of the conditions thereof by the Companies, or if the Companies shall voluntarily surrender such Special Mineral Lease then in any such case the rights to water granted to the Companies in the defined sections pursuant to clause 3 of this Part shall cease and any weir or other water storage constructed by the Companies in the defined sections shall vest in the Commissioner absolutely without payment of any compensation and the Commissioner shall be at liberty to allocate the quantities of water derived therefrom amongst other users;
  - (b) the Companies shall cease operations at their Treatment Plant near Townsville then the rights to water granted to the Companies in the said catchment areas pursuant to clause 5 of this Part shall cease and any bore or well constructed by the Companies in the said catchment areas shall vest in the Commissioner absolutely without payment of any compensation and the Commissioner

shall be at liberty to allocate the quantities of water derived therefrom amongst other users.

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

## **PART VII PROVISIONS RELATING TO LANDS**

1. In this Part the term “the Minister” means the Minister for Lands of Queensland.
2. The Companies will endeavour to acquire by agreement with the owners any land, easements, licences, and other rights in respect of land required by the Companies for the purposes of this Agreement.
3. If the Companies shall satisfy the State that they have been unable to acquire under reasonable terms and conditions any land (other than land required for the Companies’ Treatment Plant near Townsville), easement, licence, or other right in respect of land and that such land, easement, licence, or other right in respect of land is reasonably required by the Companies for the purposes of this Agreement, such land other than land held from the Crown under the Mining Acts, easement, licence, or other right in respect of land shall be acquired or resumed by the State from the owners of the relevant land or the persons having any interest therein under the provisions of the *Acquisition of Land Act 1967–1969* and/or the Land Acts to the same extent as if the purposes for which the same is required were a purpose set out in the

Second Schedule to the *Acquisition of Land Act 1967–1969* and the provisions of both such Acts shall apply and extend accordingly. Any lands so acquired or resumed shall vest in the Crown and any easements, licences, or other rights so acquired or resumed shall be in the name and for the benefit of the Companies. All the purchase money and compensation payable in respect of any land, easement, licence or other right so acquired or resumed together with all expenses incurred by the Minister in effecting such resumption or acquisition shall forthwith be paid by the Companies to the Minister. Before resuming or acquiring such lands or easements as aforesaid the Minister may require the Companies to deposit with him such moneys or such securities as are in his opinion sufficient to ensure the payment by the Companies of sums to be paid by the Companies as aforesaid.

4. The State shall in respect of any land so resumed or acquired by the Minister at the request of the Companies in accordance with clause 3 of this Part grant to the Companies such Special Lease or lease of whatsoever tenure and on such terms and conditions as shall be fair and reasonable having regard to the purpose for which the said Special Lease or lease is required. The rent payable under such Special Lease or lease shall be fixed by the Minister who in fixing such rent shall have regard to expenditure made by the Companies in payment of purchase money or compensation in respect of the land to be transferred or leased.
5. Subject to clauses 2 and 3 of this Part the State shall as and when required by the Companies in respect of any Crown land as defined by the Land Acts which in the opinion of the Minister is reasonably required for any of the following purposes:—
  - (i) a town site or town sites; or
  - (ii) cutting and constructing thereon water races, pipelines, drains, dams, reservoirs, tramways, railways, haulage ways, roads, airfields and other improvements required and to be used for the purposes of this Agreement; or

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

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

6. The term of any Special Lease or other tenure granted to the Companies under this Part shall be coextensive with the term of the Special Mineral Lease granted to the Companies in accordance with the provisions of Part III of this Agreement: Provided that if at any time during the term of this Agreement such Special Mineral Lease of the Companies shall be forfeited as a result of a breach of the conditions thereof by the Companies, or if the Companies shall voluntarily surrender such Special Mineral Lease then in any such case any Special Lease or other tenure granted to the Companies adjacent to the Companies' Mine at Greenvale pursuant to this Part may in the discretion of the Governor in Council be terminated and upon such termination the Companies shall not be entitled to claim any compensation whatsoever. Except as varied by this Part, all of the provisions of the Land Acts which are applicable to a Special Lease or other tenure under those Acts shall extend and apply to a Special Lease or other tenure granted to the Companies pursuant to this Part.

## **PART VIII                      GENERAL**

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

2. Notwithstanding any provisions of this Agreement or any Act—

No mortgage, mortgage debenture or other instrument constituting a mortgage or charge on the lands, leases, works or other property of the Companies or either of them or any part thereof or any transfer or assignment pursuant to a power of sale conferred by any such instrument shall require the approval, authority or consent of the Minister or the Governor in Council or any other person or authority.

A mortgagee in possession of the lands, leases, works or other property of the Companies or either of them or any part thereof or any receiver or receiver and manager of the Companies or either of them or any transferee or assignee thereof shall have all the rights and privileges of the Companies in relation to the said line of railway and may exercise the same upon the same terms and conditions as the Companies are entitled to exercise them pursuant to this Agreement.

3. Subject to the provisions of the Land Acts nothing herein contained shall prevent the Companies or either of them from acquiring and holding land in freehold or upon any other form of tenure or any mining tenure or any other right, licence, privilege or concession whatsoever.
4. Notwithstanding the provisions of any Act all rates taxes and similar charges imposed or levied by the State or any agency or instrumentality thereof or any local or other public authority upon the value of any lands of the Companies (whether of a freehold or leasehold nature) required for the purposes of the Project shall be assessed on the unimproved value thereof only and no such lands and no titles property or other assets of the Companies shall be subject to any rate tax or charge discriminating against them.

- 5.(1) The Governor in Council shall from time to time as required constitute a Tribunal to decide and determine all matters

which by this Agreement are required to be or may be referred to the Tribunal for its decision.

- (2) The Tribunal shall consist of either:—
  - (a) a Judge of the Supreme Court of Queensland appointed by the Governor in Council; or
  - (b) a barrister of not less than seven year's standing appointed by the Governor in Council upon the recommendation of the Chief Justice of Queensland.
- (3) The Tribunal may be assisted by assessors who shall make such recommendation to the Tribunal as they or any of them shall think fit.
- (4) Upon each reference to the Tribunal such assessors shall be appointed to assist the Tribunal as are agreed upon between the Minister and the Companies. The Tribunal may appoint any assessor or assessors.
- (5) The Tribunal after hearing the representations of all parties interested and considering the recommendations (if any) of the assessors will make such recommendation and report to the Minister as is proper or such Order as is just.
- (6) Every such Order of the Tribunal shall remain in force for such period as is fixed by the Order and every such Order shall be published in the Queensland Government Gazette and shall be binding upon all persons and shall have the force of law.
- (7) The Minister may of his own volition and shall when required by the Companies refer to the Tribunal any matter requiring decision under the provisions of this Agreement.
- (8) The Minister may at any time of his own volition and shall at the request of the Companies refer to the Tribunal for consideration and report to the Minister any matter relating to the undertaking of the Companies or otherwise arising under the provisions of this Agreement and the Tribunal shall make such report to the Minister as it thinks proper.
- (9) The Tribunal shall be deemed to be a commission within the meaning of *The Commissions of Inquiry Acts 1950 to 1954*

and the provisions of such Acts shall apply to the Tribunal and all the proceedings thereof.

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

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

- 6.(1) In case any question difference or dispute shall arise between the State and the Companies concerning any clause or anything contained in this Agreement or the meaning or construction of any matter or thing in any way connected with this Agreement or the rights, duties or liabilities of either the State or the Companies under or in pursuance of the provisions of this Agreement including any question whether either of the parties is in default under any provision of this Agreement save and except any matter or thing which under the provisions of this Agreement—
- (a) is in the discretion of the Governor in Council;
  - (b) is required to be agreed upon between the State and the Companies;
  - (c) is expressed to be determined by a Minister or the Commissioner for Railways or the Commissioner for Irrigation and Water Supply or other person specifically named in this Agreement as the determining authority,

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

- (2) In case any question, difference or dispute shall arise between a Crown corporation, a Crown instrumentality or a Local Authority and the Companies concerning any matter or thing arising out of the provisions of this Agreement within or affecting the area of the Local Authority save and except any matter or thing which under the provisions of this Agreement—
- (a) is in the discretion of the Governor in Council;
  - (b) is required to be agreed upon between the State and the Companies; or
  - (c) is expressed to be determined by a Minister or the Commissioner for Railways or the Commissioner for Irrigation and Water Supply or other person specifically named in this Agreement as the determining authority,

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

7. The State shall provide and maintain educational facilities and police for the Town to be constructed at the site of the Companies' mine on the same basis as that on which it normally supplies such facilities for a town of similar size and the Companies shall provide water and sewerage mains to the boundaries of the lands on which any school or police station provided by the State pursuant hereto is situated.
8. The State shall erect and maintain State Rental accommodation at Townsville pursuant to section 25c of *The State Housing Acts 1945 to 1966* for occupation by employees of the Companies and the employees' dependants on the basis

that for each unit of housing erected by the Companies up to a total of 75 units of housing the State will erect a unit of housing which shall be leased by the Companies. For this purpose the Companies shall enter into a Lease Agreement with the Queensland Housing Commission in the form approved by the Minister for Works and Housing under the said section 25c. Such Agreement shall, *inter alia*, provide—

- (a) for the purpose of the Agreement the term “employees of the Companies” shall include employees of both or either of the Companies and employees of any Management Company established by both or either of the Companies and the term “employment” shall have a corresponding meaning;
- (b) the Agreement shall be for an initial period of 20 years;
- (c) the Companies shall let the units of housing to their employees as homes for the employees and their dependants subject to the condition that the employee’s tenancy shall determine upon his ceasing to be an employee of the employer for any cause whatsoever including death of the employee;
- (d) that should the Commission after consultation with the Companies enter into a contract for the sale of any one of the units of housing to the employee in occupation thereof the Companies shall have no further responsibility in respect of that unit of housing;
- (e) the rent payable by the Companies to the Queensland Housing Commission shall be as determined from time to time by the Commission under the said State Housing Acts and the rent charged by the Companies to an employee shall not be more than the rent charged by the Commission to the Companies.

9. Any notice, consent, requirement or writing authorized or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State or the Governor in Council or any Minister (as the case may be) if signed by the Minister and forwarded by prepaid post to the Companies at their registered offices in the State from time to

time or at such other place as they may fix from time to time by written notice to the Minister and by the Companies if signed on behalf of the Companies by the managing director, a director, president, vice-president, general manager, secretary or attorney or solicitor of the Companies or either of them and forwarded by prepaid post to the Minister at his office in Brisbane in the said State and any such notice, consent, requirement or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

- 10.** The Special Mineral Leases, the land on which the treatment plant is erected and all other lands required for the purpose of the Project shall be and remain zoned for use and otherwise protected during the currency of this Agreement so that the operations of the Companies hereunder may be undertaken and carried out thereon without any interference or interruption by any municipal or shire council or by any other government or semi-governmental authority of the State or by any person on the ground that such operations are contrary to any zoning by-law or regulation of any such municipal or shire council or other authority.
- 11.** Nothing in this Agreement contained or implied shall constitute a partnership between the State and the Companies or either of them.

## THE FIRST SCHEDULE

### QUEENSLAND SPECIAL MINERAL LEASE

**No.**

**Vol.**

**Fol.**

Warden's District County Parishes Area Acres Roods Perches	}	ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Australia, and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith
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TO ALL TO WHOM THESE PRESENTS SHALL COME,  
GREETING:

WHEREAS in conformity with the provisions of Acts of Parliament of Our State of Queensland called *The Mining Acts 1898 to 1967* and *The Petroleum Acts 1923 to 1967* and *The Mining on Private Lands Acts 1909 to 1965* and the *Greenvale Agreement Act 1970* Metals Exploration Queensland Pty. Ltd. and Freeport Queensland Nickel, Incorporated of Our said State made application to Us for a Lease of the Land in Our said State described in the Second Schedule hereinafter written for the purpose of mining for all minerals other than gold, coal and petroleum and helium found in association with petroleum AND WHEREAS WE have consented to grant a Special Mineral lease of the said Land for the purposes aforesaid for the term hereinafter mentioned at the Yearly Rent of           dollars           cents and under and subject to the covenants terms and conditions hereinafter mentioned and to the terms conditions exceptions reservations and provisoes

in the said Acts and the Regulations made thereunder and in any other Acts affecting the same NOW KNOW YE that in consideration of the premises and of the sum of           dollars           cents paid to the Minister for the time being of Our said State before the issue hereof as and for the rent of the said Land to the Thirty-first day of December A.D.

AND ALSO in consideration of the Yearly Rent Royalties covenants provisoes and agreements hereinafter reserved and contained on the part of the said Metals Exploration Queensland Pty. Ltd. and Freeport Queensland Nickel, Incorporated, their and each of their successors and permitted assigns to be paid observed and performed WE DO HEREBY for Us Our Heirs and Successors demise and lease unto the said Metals Exploration Queensland Pty. Ltd. and Freeport Queensland Nickel, Incorporated as Tenants in Common in equal shares their and each of their successors and permitted assigns (hereinafter called "the Lessees") all those lands more particularly described in the Second Schedule hereinafter written for the purpose of mining for all minerals other than gold, coal and petroleum and helium found in association with petroleum saving reserving and excepting always unto Us Our Heirs and Successors and unto the Minister for Mines and Main Roads of Our said State (herein called "the Minister") and to any and every person or persons hereinafter appointed by him in that behalf free liberty at all times during the continuance of this demise to enter into and upon the Land hereby demised and all Mines and Works therein or thereon in order to view and examine the condition thereof and for that purpose to make use of all or any railways tramways or roads or every and all machinery upon the said Land or belonging to the said Mines and also to use or make any levels drifts or passages requisite for the purpose of any such inspection TO HAVE AND TO HOLD the said Land and Mines and all and singular other the premises hereinbefore mentioned and hereby demised with the appurtenances unto the said Lessees, for the full term of Thirty-five years from the First day of           A.D. which said term shall be renewable for a further period of Twenty-one years and upon such terms as are expressed in the

said *Greenvale Agreement Act 1970* reserving saving and excepting unto Us Our Heirs and Successors all gold, coal and petroleum and helium found in association with petroleum found in the Land herein demised YIELDING AND PAYING unto Us Our Heirs and Successors in each and every year during the continuance of this Lease in advance prior to the First day of January into the hands of the Minister in Brisbane in Our said State the Yearly Rent or Sum of                   dollars                   cents

AND in addition thereto also Yielding And Paying unto Us Our Heirs and Successors during the said term Royalties at the rates set forth in the Agreement referred to in the *Greenvale Agreement Act 1970* such Royalties to be paid to Our said Minister at Brisbane aforesaid by monthly payments within thirty days of the close of each month in each and every year during the said term AND WE DO HEREBY ALSO RESERVE unto Us Our Heirs and Successors and to such persons as shall from time to time be duly authorised by Us in that behalf during the term of the said Lease the free right and privilege of access including ingress egress and regress into upon over and out of the said Land for the purpose of searching for and for the operations of obtaining gold, coal, petroleum and helium found in association with petroleum in any part of the said Land PROVIDED ALWAYS and these Presents are upon the conditions following that is to say—Upon condition that the said Lessees shall well and truly pay or cause to be paid unto Us Our Heirs and Successors the rent and Royalties hereby reserved when and as the same shall become payable in the manner herein before appointed for that purpose AND ALSO that the said Lessees do and shall use the said Land continuously and bona fide for the purposes for which the same is demised as aforesaid and in accordance with the said Acts and Regulations and for no other purposes AND ALSO that the said Lessees shall not assign underlet or part with the possession of the Land hereby demised or any part thereof except in accordance with the said Agreement AND ALSO do and shall during the continuance of this

demise work the said Land as provided in the said Agreement AND ALSO shall permit and suffer all or any person or persons appointed by the Minister for the time being of Our said State in that behalf and the Warden for the time being within whose jurisdiction the Land hereby demised is situate at all proper and reasonable times during the continuance of this demise and whether the Mines are working or not without any interruption or disturbance from the Lessees their agents, servants or workmen or any of them to enter into and upon the said Mines and all works and buildings connected therewith or any part thereof to view and examine the condition thereof and whether the said Mine or Mines is or are worked bona fide for the purposes aforesaid and for that purpose to use all and every the tramways railways roads or ways and all or any of the machinery and works in and upon the said Land AND ALSO shall observe such further special conditions as are particularly described in the First Schedule hereinafter written AND these Presents are upon this further condition that for any breach of any of the covenants herein contained the Minister may impose upon the Lessees a fine not exceeding two thousand dollars and on non-payment of any such fine within a period of thirty days of the date of imposition thereof may forfeit the Lease as provided in the said Agreement PROVIDED ALWAYS that if the Lessees mine upon the said Land for gold, coal, petroleum and helium found in association with petroleum other than in association or combination with the minerals hereinbefore specified unless authorised to do so by a miners' right or gold or coal mining lease this Lease shall be liable to forfeiture AND upon any forfeiture of this Lease or in case the term hereby granted shall have expired possession of the Land hereby demised shall and may be taken on Our behalf in the manner prescribed by section 45 of *The Mining Acts 1898 to 1967* AND ALSO upon any forfeiture or other determination of the said Lease the provisions of the said Agreement shall apply.

## First Schedule

The conditions of the within Special Mineral Lease shall be those set out in the Agreement, the Schedule to the *Greenvale Agreement Act 1970*.

## Second Schedule

In Testimony whereof, We have caused this Our Lease to be Sealed with the Seal of Our said State.

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

## THE SECOND SCHEDULE

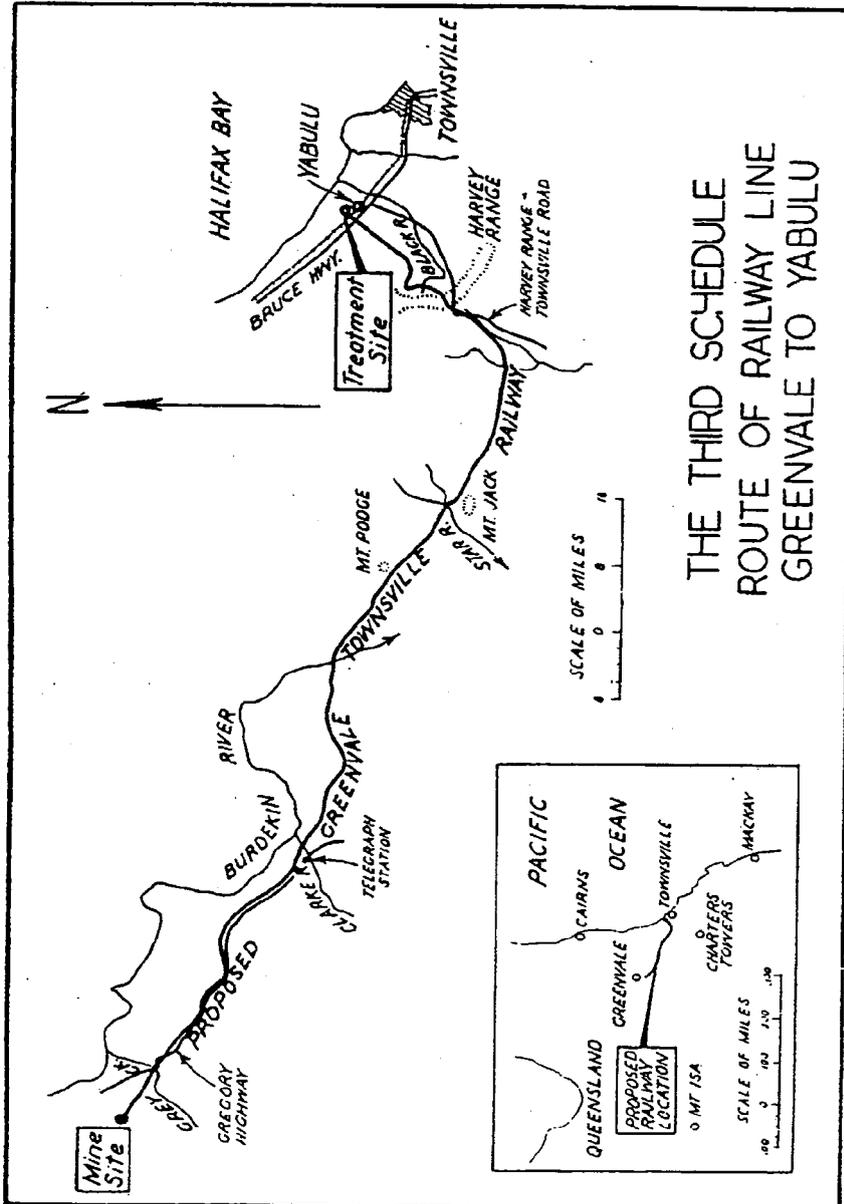
### MINIMAL REQUIREMENTS FOR CONSTRUCTION OF THE SAID LINE OF RAILWAY

1. ROADBED: Eighteen feet wide roadbed with adequate ditches and side slopes.
2. GRADING: Ruling grade—One per centum against the load.  
Two per centum against empty wagons.
3. CURVATURE: Minimum radius not less than fifteen chains.
4. SLEEPERS: Hardwood 9" x 6" x 7' and 2,660 per mile; On secondary trackage they shall be 9" x 4½" x 7' and 2,460 per mile.
5. RAILS: Australian standard ninety-four pound rails to the lineal yard welded to a minimum length of three hundred and sixty feet.
6. SLEEPER PLATES: Flat double shouldered type. Full sleeper plating on main lines, balloon and passing loops. Each sleeper plate fastened with 2 Type L6 Lockspikes. Sleeper plates are not required on secondary trackage.

7. **DOGSPIKES:** Each rail fastened by two square dogspikes to each sleeper.  $6\frac{1}{4}$ " x  $\frac{5}{8}$ " for main line, passing loops and balloon loops.  $5\frac{3}{8}$ " x  $\frac{5}{8}$ " for secondary trackage.
8. **RAIL ANCHORS:** Standard type and pattern of application as per Drawing 1671A dated Sixteenth day of September, 1970.
9. **BALLAST:** Ten inches of crushed rock under sleepers; twelve inches of crushed rock outside sleepers on curves, and ten inches on tangent track.
10. **BRIDGING:** Steel or concrete, design for Cooper's E. 50 loading.
11. **CULVERTS:** Corrugated metal or concrete, design for Cooper's E. 50 loading.
12. **COMMUNICATIONS AND CONTROL:** Telephone pole route of four wires from the Companies' Mine at Greenvale to the North Coast Line, suitably linked with the Townsville Control Board. Plug-in points shall be suitably located throughout the line. Operation shall be by Train Order for the tonnages at present proposed.
13. **TUNNELS:** Dimensions of tunnels shall be such that sufficient air space is available for the satisfactory operation of the locomotives.
14. **PASSING LOOPS:** Shall be constructed at suitable locations to cater for the operation of the said line of railway, and as well secondary loops to provide for the accommodation of maintenance staff and bad order wagons.

A balloon loop shall be provided at the Companies' Mine at Greenvale and at the Companies' Treatment Plant near Townsville and the latter to have provided a suitable connexion to the Commissioner's North Coast line of railway. The length of passing loops shall be such as to accommodate the ore train consist, with ten per centum length allowance for drift.

# THE THIRD SCHEDULE



## THE FOURTH SCHEDULE

<b>Stream</b>	<b>Defined Section</b>
Burdekin River .....	From the junction of Grey Creek upstream to the junction of Dry River.
Grey Creek.....	From its junction with the Burdekin River upstream to the South Western corner of Authority to Prospect 335M. on Grey Creek.

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

## 1 Index to endnotes

- 2 Key
- 3 Table of reprints
- 4 List of legislation
- 5 List of legislation for variation of agreement (see Act section 4)
- 6 List of annotations

## 2 Key

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

<b>Key</b>	<b>Explanation</b>	<b>Key</b>	<b>Explanation</b>
<b>AIA</b>	<b>= Acts Interpretation Act 1954</b>	<b>(prev)</b>	<b>= previously</b>
<b>amd</b>	<b>= amended</b>	<b>proc</b>	<b>= proclamation</b>
<b>amd</b>	<b>= amendment</b>	<b>prov</b>	<b>= provision</b>
<b>t</b>			
<b>ch</b>	<b>= chapter</b>	<b>pt</b>	<b>= part</b>
<b>def</b>	<b>= definition</b>	<b>pubd</b>	<b>= published</b>
<b>div</b>	<b>= division</b>	<b>R[X]</b>	<b>= Reprint No. [X]</b>
<b>exp</b>	<b>= expires/expired</b>	<b>RA</b>	<b>= Reprints Act 1992</b>
<b>gaz</b>	<b>= gazette</b>	<b>reloc</b>	<b>= relocated</b>
<b>hdg</b>	<b>= heading</b>	<b>renu</b>	<b>= renumbered</b>
		<b>m</b>	
<b>ins</b>	<b>= inserted</b>	<b>rep</b>	<b>= repealed</b>
<b>lap</b>	<b>= lapsed</b>	<b>(retro</b>	<b>= retrospectively</b>
		<b>)</b>	
<b>notf</b>	<b>= notified</b>	<b>rv</b>	<b>= revised version</b>
<b>d</b>			
<b>num</b>	<b>= numbered</b>	<b>s</b>	<b>= section</b>

<b>Key</b>	<b>Explanation</b>	<b>Key</b>	<b>Explanation</b>
<b>o in c</b>	= <b>order in council</b>	<b>sch</b>	= <b>schedule</b>
<b>om</b>	= <b>omitted</b>	<b>sdiv</b>	= <b>subdivision</b>
<b>orig</b>	= <b>original</b>	<b>SIA</b>	= <b>Statutory Instruments Act 1992</b>
<b>p</b>	= <b>page</b>	<b>SIR</b>	= <b>Statutory Instruments Regulation 2012</b>
<b>para</b>	= <b>paragraph</b>	<b>SL</b>	= <b>subordinate legislation</b>
<b>prec</b>	= <b>preceding</b>	<b>sub</b>	= <b>substituted</b>
<b>pres</b>	= <b>present</b>	<b>unnum</b>	= <b>unnumbered</b>
		<b>m</b>	
<b>prev</b>	= <b>previous</b>		

### 3 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the **Reprints Act 1992** used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3003 9601 or email [legislation.queries@oqpc.qld.gov.au](mailto:legislation.queries@oqpc.qld.gov.au).

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

<b>Reprint No.</b>	<b>Amendments to</b>	<b>Effective</b>	<b>Reprint date</b>
1	1993 Act No. 76	14 December 1993	11 July 1996

<b>Reprint No.</b>	<b>Amendments included</b>	<b>Effective</b>	<b>Notes</b>
2	2000 Act No. 20 2002 Act No. 15 2010 Act No. 44	30 January 2012	

## 4 List of legislation

### **Queensland Nickel Agreement Act 1970 No. 33 (prev Greenvale Agreement Act 1970)**

date of assent 16 December 1970

commenced on date of assent

agr made 17 December 1970 (see proc pubd gaz 16 January 1971 p 120)

amending legislation—

### **Greenvale Agreement Act Amendment Act 1971 No. 19**

date of assent 19 April 1971

commenced on date of assent

### **Greenvale Agreement Act Amendment Act 1974 No. 50**

date of assent 23 September 1974

commenced 24 September 1974 (proc pubd gaz 24 September 1974 p 311)

### **Greenvale Agreement Act Amendment Act 1975 No. 28**

date of assent 28 August 1975

commenced on date of assent

### **Queensland Nickel Agreement Act 1988 No. 92 pts 1–2**

date of assent 1 December 1988

ss 1–2 commenced on the date of assent

remaining provisions commenced 14 December 1988 (proc pubd gaz 10 December 1988 p 1690)

### **Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 ss 1–3 sch 1**

date of assent 14 December 1993

commenced on date of assent

### **GST and Related Matters Act 2000 No. 20 ss 1, 2(4), 29 sch 3**

date of assent 23 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(4))

### **Transport Legislation Amendment Act 2002 No. 15 ss 1, 2(2), pt 4**

date of assent 17 May 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 24 June 2002 (2002 SL No. 140)

### **Personal Property Securities (Ancillary Provisions) Act 2010 No. 44 ss 1–2, ch 4 pt 34**

date of assent 14 October 2010

ss 1–2 commenced on date of assent  
remaining provisions commenced 30 January 2012 (2011 SL No. 262)

## **5 List of legislation for variation of agreement (see Act section 4)**

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

6 November 1971 p 1078—(as amd by o in c pubd gaz 13 November 1971 p 1182)  
agr made 11 November 1971  
12 March 1974 pp 1015–7  
(om 1974 No. 50 s 6 (as from 12 March 1974 (see s 6)))

### **Greenvale Agreement Act Amendment Act 1974 No. 50**

date of assent 23 September 1974  
agr made 25 September 1974

### **Greenvale Agreement Act Amendment Act 1975 No. 28**

date of assent 28 August 1975  
agr made 29 August 1975

### **Queensland Nickel Agreement Act 1988 No. 92 pt 2**

date of assent 1 December 1988  
pt 2 commenced 14 December 1988 (see proc pubd gaz 10 December 1988 p 1690)  
agr made 14 December 1988

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

24 June 1989 pp 1812–3  
agr made 28 June 1989

### **Queensland Nickel Agreement Order 1992 SL No. 180**

pubd gaz 26 June 1992 pp 1932–1941  
commenced on date of publication  
agr made 30 June 1992

### **Queensland Nickel Agreement Order (No. 2) 1992 SL No. 280**

notfd gaz 11 September 1992 pp 102–3  
commenced on date of notification  
agr made 17 September 1992

### **Queensland Nickel Agreement Variation Regulation 1995 SL No. 26**

notfd gaz 17 February 1995  
commenced on date of notification

## **6 List of annotations**

### **Short title**

s 1 amd 1988 No. 92 s 4(1)

**Change of agreement by further agreement**

s 4 amd 1974 No. 50 s 3; 1988 No. 92 s 6  
sub 1993 No. 76 s 3 sch 1

**Application of GST to rents after 30 June 2005**

s 5 prev s 5 amd 1971 No. 19 s 2; 1974 No. 50 s 4; 1975 No. 28 s 2  
om 1988 No. 92 s 7(1)  
pres s 5 ins 2000 No. 20 s 29 sch 3

**Proclamations and orders in council**

s 6 amd 1988 No. 92 s 8

**Declaration for Commonwealth Act**

s 6A ins 2010 No. 44 s 148

**Regulation-making power**

s 7 ins 1993 No. 76 s 3 sch 1

**Changed references for Corporations Act**

s 8 ins 2002 No. 15 s 21

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