

MMDA 1.0

MODEL MINE DEVELOPMENT AGREEMENT



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MODEL MINE DEVELOPMENT AGREEMENT

A Template for Negotiation and Drafting

April 4, 2011

NOTE:

This document should not be used to create legal relationships. It is intended only as a template for negotiating and drafting a mine development agreement. The text is merely illustrative, and the examples are taken from existing mine development agreements without modification. Neither the text nor the examples are sanctioned for use in any specific agreement by the authors or the International Bar Association.

View the MMDA 1.0 and share your experience using this document at www.MMDAproject.org.

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A USER'S GUIDE TO MMDA 1.0

WHAT THE MMDA 1.0 IS

MMDA 1.0 is the product of almost two years of work by members of the Mining Law Committee of the International Bar Association. Despite its name, it is not an agreement, in the sense that one could print it out, insert names of parties, and sign it.

MMDA 1.0 is a collection of examples from existing mine development agreements and other materials that are designed to help negotiators and drafters by stimulating them to think about some of the difficult issues of legality, fairness, and balance presented by large foreign natural resource investment, particularly in developing countries. On one hand, MMDA 1.0 may be useful as an agenda for negotiating such an investment. On the other hand, MMDA 1.0 may be useful to the lawyers tasked with drafting an agreement for such an investment.

Good and effective agreements result when all parties understand and think clearly about the issues being negotiated. The purpose of MMDA 1.0 is therefore not to be an form agreement, but to stimulate negotiators and drafters to think clearly, and educate users about the issues. Out of that process, agreements may emerge.

MMDA 1.0 is based on the belief that mining investors, and countries, and civil society share some fundamental interests, and that all interests benefit from long term stability of investment conditions. Long-term stability comes when all interests benefit from an agreement, and when the agreement contributes to both business success and the sustainable development of the societies in which mines operate.



WHAT THE MMDA 1.0 *IS NOT*

It is important to understand what the MMDA 1.0 is not.

The MMDA 1.0 is Not A Substitute for a Mining Code

Many commentators on MMDA 1.0 have suggested that developing nations should move away from mining agreements and toward investment based on clear legal codes: mining codes, tax codes, environmental laws and other generally applicable legal dispositions that apply equally to all that come. Many of the drafters of MMDA 1.0 agree philosophically with this position.

However, agreements continue to be used in a number of jurisdictions. Indeed, some countries seem to be moving from code systems to contract arrangements.

There are also some jurisdictions where codes deal with some, but not all, of the necessary issues in a major mine development, and a contractual agreement may be needed to supplement the matters dealt with in legislation. Indeed, some commentators suggested that the expectations of what mining investment is supposed to bring to a country have increased so dramatically that many codes simply do not deal adequately with such issues as the desires of local communities, social aspects of closure, or dispute resolution, to name a few.

The MMDA 1.0 is not designed as a long-term alternative to mining codes. It is up to host countries what kind of investment regime to adopt, and for those who choose to operate through contracts, the MMDA 1.0 is designed as a tool to assist in negotiating and drafting such agreements.

The MMDA 1.0 Is Not an Exploration Agreement

Development of a mining project by necessity can only occur after a mineral deposit has been identified through exploration. The right to explore for mineral resources needs to be established by some form of legal arrangements, under a mining code, under regulations of some kind, or pursuant to an agreement.

The MMDA 1.0 is not an exploration phase agreement. The MMDA 1.0 is based on the assumption that sufficient exploration has already occurred consistent with applicable local law to identify a valuable deposit of minerals, and that the project is now entering into the development stage.

It may be very useful to have some form of study and better understanding of the legal arrangements under which exploration occurs. Some commentators suggested that if those exploration arrangements are well done, the stage is set for a successful mining development agreement.

Development of an exploration agreement is beyond the scope of the MMDA project. This project has focused on the development of a mining agreement, not an exploration agreement.

The MMDA 1.0 Is not a Community Level Agreement

There has been very considerable interest in community development agreements between mining companies and communities in the area of influence of mining projects. Whether these are called Community Sustainable Development Agreements, Impact and benefit Agreements or something else, they are increasingly frequent in project development.

MMDA 1.0 is focused instead on the agreement between the national government of the host country and the mining company. Some sections of MMDA 1.0 refer to community agreements, but MMDA 1.0 itself is not a community development agreement.

The MMDA 1.0 Is Not a Substitute for Informed Negotiation

Many of the concerns expressed about the clarity, quality and balance of mining agreements are at bottom concerns about imbalance of resources and capacity of the parties who negotiate the agreements. To some extent, comments also suggest that negotiation of effective mining development agreements is a very complex task that requires multidisciplinary help from accountants, tax specialists, mining lawyers, geologists and perhaps others. Some developing countries have difficulty fielding such negotiating teams and there is a feeling that they are therefore disadvantaged in negotiation.¹

To the extent the MMDA increases knowledge and understanding regarding mining development agreements, it may be of some modest use as a capacity building tool. But the MMDA itself does not pretend that it can redress these issues of capacity and balance.

¹ See 'Stakeholders Perceptions and Suggestions' prepared by the Responsible Mining Development Initiative, World Economic Forum, and released in Jan 2011. https://members.weforum.org/documents/ip/MM/AM11/RMDI_FinalReport_20-01-2011.pdf

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MINE DEVELOPMENT AGREEMENT

The Effective Date of this Agreement is [_____, 20__] or [the Day that legislation ratifying this Agreement first comes into effect] (“**Effective Date**”).

The Parties to this Agreement are:

First, _____ (the “**Company**”) which is a duly authorized and constituted corporation existing under the laws of _____ and qualified to do business in the State.

Second, the [nation of _____] [Province of _____] [state of _____] [territory of _____] (the “**State**”).

Whereas, the State owns all subsurface minerals in the State, and

Whereas, the Company desires to conduct Mining Operations in the Mining Area, and

Whereas, the Company has completed exploration activities in compliance with Applicable Law and is therefore entitled to obtain the right to develop, produce and sell Minerals within the Mining Area, and

Whereas, the Parties recognize that this Agreement is of fundamental public importance and that it is and by its nature ought to be freely and publicly available on request to any person requesting it; and

Whereas, the objective of this Agreement is to develop the Minerals in a manner to promote long term stability in the conditions of mining investment and contribute to the sustainable development of the State and its communities through a process in which the production and use of non-renewable natural resources takes place in an equitable framework; and

Whereas, the Parties to this Agreement believe that the Project can be developed, economically operated, and closed while protecting the natural environment of the State and the productivity of its ecosystems, and while managing adverse environmental impacts to eliminate, minimize, or mitigate them to acceptable levels, and compensating for any remaining impacts;

Now, therefore, in consideration of the mutual rights and obligations contained in this Agreement and other good and valuable consideration, the Parties agree as follows:

1.0 Definitions and Interpretation

1.1 Definitions

“Affiliate” means an entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the Company. For purposes of this definition, “control” means ownership of greater than 50% of the share capital of a company and/or the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise.

“Applicable Law” means the law of the State as further defined in Section 35.0.

“Central Bank” means the central bank of the State.

“Closure Plan” has the meaning assigned to that term in Section 26.0.

“Company” has the meaning set forth in the Preamble.

“Commercial Production” means production equal to [sixty percent (60.0%)] of the Project’s constructed initial annual design capacity as shown in the Feasibility Study, averaged over a continuous three-month period.

“Community Development Agreement” has the meaning assigned to that term in Section 22.1.

“Confidential Information” has the meaning assigned to that term in Section 30.2.

“Consultation” means an open, inclusive, and non-coercive process, conducted in the native language of the participants, for exchange of information, ideas and viewpoints about the potential benefits and impacts of the Project. Consultation shall strive to include, in socially and culturally acceptable forms, all social elements in the area affected by the subject matter under consideration, including both men and women. Where Indigenous or Tribal Populations are part of the Consultation, the Parties shall refer to international guidelines² as to the appropriate ways to proceed. Parties shall strive for full prior disclosure of relevant information in advance of any decisions to be taken as part of the Consultation.

“Date of Commencement of Commercial Production” means the first day of the calendar quarter after the calendar quarter in which Commercial Production first occurs.

“Day” means a calendar business day in the State.

“Debt” has the meaning assigned to that term in Section 8.2(a).

“Documents” has the meaning assigned to that term in Section 2.4.

“Effective Date” has the meaning set forth in the Preamble.

“Environmental Assessment” means a systematic study of the environmental character of the Mining Area to establishing a baseline of existing environmental conditions, and assessing the Project-related environmental effects and impacts in order to evaluate their significance.

² International Finance Corporation, Performance Standard 7.

“Environmental Management Plan” means the plan required to be produced and submitted to the State by the Company under Section 2.4.2.

“Equity” has the meaning assigned to that term in Section 8.2(b).

“Feasibility Study” means the study required to be produced and submitted to the State by the Company under Section 2.4.1.

“Financing Plan” means the plan required to be produced and submitted to the State by the Company under Section 2.4.4.

“Force Majeure” means any event or circumstance which a Party could not reasonably be expected to prevent or control, including among other things, wars, insurrections, civil disturbances, blockades, embargoes, strikes and other labour conflicts, riots, epidemics, earthquakes, storms, floods, or other adverse weather conditions, explosions, fire, lightning, acts of terrorism, or the unavailability or breakdown of materials or equipment.

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the international mining industry and includes but is not limited to the guidance provided, as applicable, by the International Council on Mining and Metals, by the IFC Performance Standards, and by ISO 14001 standards.

“State” has the meaning set forth in the Preamble.

“ICSID” has the meaning assigned to that term in Section 32.2.

“IFC Performance Standards” means the International Finance Corporation’s Performance Standards on Social and Environmental Sustainability.

“Independent Sole Expert” means an individual, an employee of an internationally recognized mining consulting firm competent on international mineral markets and prices, or an individual, or employee of an internationally recognised environmental and/or social consultancy firm, competent in the field of international mining operations, as appropriate, as the Parties may agree in writing, or failing such agreement within [____] days, as shall be appointed for this purpose on the application of either Party by the International Centre for Expertise in accordance with the provision for the appointment of experts under the Rules for Expertise of the International Chamber of Commerce.

“Indigenous or Tribal Populations” means those peoples identified as (i) indigenous or tribal peoples in accordance with the basic principles of the Convention Concerning Indigenous and Tribal Peoples in Independent Countries, ILO Convention 169, (ii) traditional owners of property, (iii) first nations, or (iv) [other culturally appropriate definition];

“Local Government” means [IDENTIFY RELEVANT LOCAL GOVERNMENT(S)].

“Minerals” means [IDENTIFY RELEVANT MINERALS TO BE MINED AND ASSOCIATED MINERALS].

“Mining Area” means the area specifically delineated in Annex A-1 of this Agreement.

“Mining Operation” means, subject to compliance with Applicable Law and this Agreement, all work related to the various phases in the mineral development process, including exploration, mineral deposit evaluation,

mine construction, mine development, mining, the reclamation or rehabilitation of and remediation of land, the extraction, beneficiation, transportation, handling, storage and marketing of a mineral substance extracted, the processing of mine tailings and all other activities necessary or convenient to carry out the Company's rights and obligations under this Agreement, but not including work performed for others.

"Notice" has the meaning assigned to that term in Section 34.0.

"Parent Company" means _____

"Parties" means the Company and the State.

"Party" means the Company or the State as the context requires.

"Project" means the development, production and reclamation of a Mining Operation under this Agreement, all Mining Operations undertaken in the Mining Area, and all activities in connection therewith, pursuant to and in accordance with this Agreement, including all facilities and infrastructure that are reasonable and necessary for the Project according to Good Industry Practice.

"Project Area" means the area specifically delineated in Annex A-2 of this Agreement as such area may be modified by the Environmental Impact Assessment and Environmental Management Plan and the Social Impact Assessment and Action Plan.

"Royalty Rate" has the meaning assigned that term in Section 4.1.

"Social Impact Assessment and Action Plan" means the plan required to be produced and submitted to the State by the Company under Section 2.4.3.

"Stability Period" means that period of time beginning on the Effective Date and ending on [the ____th anniversary of the Date of Commencement of Commercial Production][production of the quantity of commercial Minerals identified in the Feasibility Study][date of termination of this Agreement][the date of recovery of capital costs plus a rate of return identified in the Financing Plan].

"State Official" means anyone who is an elected, appointed or career official, or employee, of any central or local government, central or local government-owned or central or local government-controlled enterprise, company or organization, who is an individual acting for any such a central or local government, enterprise, company or organization, official of a political party or candidate for political office.

"Tax" means any levy imposed by the State under Applicable Law on income, goods and services, and the employment, health and welfare of persons.

"Tax Law" means Applicable Law of the State [but not the Local Government] pertaining to any Tax and any subsidiary and associated legislation or regulation.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) The singular includes the plural and vice-versa;
- (b) Headings do not affect the interpretation of this Agreement;
- (c) References to a part, clause, schedule, exhibit and annex refers to a part, clause, schedule, exhibit or annex of, in or to this Agreement;
- (d) A reference to this Agreement includes all schedules, exhibits and annexes to this Agreement;
- (e) A reference to an agreement, deed, instrument or other document includes the same as amended, notated, supplemented, or replaced from time to time;
- (f) A reference to a court is to a court of the State;
- (g) A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinated legislation issued under, that legislation or legislative provision;
- (h) A reference to a day, month or year is relevantly to a calendar day, calendar month or calendar year;
- (i) A reference to [COUNTRY CURRENCY], is to the lawful currency of the State;
- (j) The expressions “including”, “includes” and “include” have the meaning as if followed by “without limitation”;
- (k) No rule of construction is to apply to the disadvantage of a Party on the basis that that Party drafted the whole or any part of this Agreement; and
- (l) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

1.3 Existing Rights

The rights, obligations and liabilities of the Company and the State subsisting prior to the Effective Date under Applicable Law or permits, licenses or approvals issued thereunder, except as superseded herein, shall continue and bind both the Company and the State during the term of this Agreement.



TENURE

2.0 Development of Mining Area

2.1 Term of this Agreement

This Agreement takes effect on the Effective Date and shall remain effective for [25] years. So long as:

- (i) there remain commercial quantities of undeveloped Minerals in the Project Area at the end of such [25] year period,
- (ii) the Company is not in material default under this Agreement, and
- (iii) this Agreement has not been sooner terminated in accordance with its terms,

the Company shall have the option to renew this Agreement up to [FOUR] time(s), each for an additional period up to [10] years, on terms and conditions that the Parties may then agree upon to reflect then-existing and foreseeable conditions, *provided that* this Agreement (as previously renewed, if applicable) shall remain in effect during the period during which the parties are negotiating the terms of any such renewal.

2.1.1 Grant of Mine Development Rights

The State hereby grants to the Company full and complete access to the Mining Area subject to Applicable Law and the terms of this Agreement, including the rights to:

- (a) Have priority in the exercise of its rights under this Agreement, to the extent necessary for Mining Operations, over any other permit, concession, grant or any other activity of whatever nature granted or issued in the Mining Area before or after the date of this Agreement, including, but not limited to timber concession, reforestation activity, plantation, or exploration of oil and gas and other hydro-carbon products, gravel, sand and metals, or any mineral of any kind whatsoever;
- (b) Make all necessary excavations to mine the mineral deposits and, subject to submission of updated Documents if necessary, to re-work mine tailings and dumped materials;
- (c) Construct all plant, machinery, buildings, workshops, pipelines and other production facilities which are necessary or convenient for Mining Operations;
- (d) Adjust production schedules, operating rates and manpower levels as necessary and prudent to respond to temporary operating conditions according to Good Industry Practice;
- (e) Stockpile products or dump any waste products of mining or mineral processing operations, including tailings;
- (f) Take and use water from waterways, wells and bores, to lay water pipes, to make water races and ponds, dams and reservoirs, and to divert and use any water necessary for the Project;

- (g) Construct and maintain all transportation and telecommunication facilities and conveniences and such other areas as specified in the Feasibility Study to be necessary or convenient to construct and operate the Project;
- (h) [reserved];
- (i) Cut and utilize timber, and quarry stone, sand, gravel and other construction materials, for use in construction and operation of the Project, free of charge and within the Mining Area, to the extent reasonably needed for the Project (but not for any other purpose, including resale);
- (j) Construct and maintain houses, buildings, amenities and incidental facilities for the use of the Company, its contractors, agents and their employees and their immediate families;
- (k) Conduct all other Mining Operations as are necessary or convenient to carry out the Company's rights and obligations under this Agreement and engage in all other activities as are reasonably necessary or convenient to carry out the Project consistent with Good Industry Practice; and
- (l) Market, sell and export Minerals within the State and internationally, at market prices.

2.1.2 Grant of Access Rights

The State hereby grants to the Company full and complete access to the Project Area subject to Applicable Law and the terms of this Agreement, including the rights to Acquire, import, construct, install, and operate in the Project Area plant, equipment, railroads, roads, bridges, airports, ports, jetties, breakwaters, pipelines, power generation and transmission facilities, and any other infrastructures reasonably required for the operations.

2.2 Exclusivity

The rights granted to the Company herein to conduct Mining Operations are exclusive within the Mining Area and include the exclusive right to mine and market Minerals extracted from the Mining Area. The State undertakes not to grant any rights to prospect for or to mine minerals in the Mining Area or market minerals from the Mining Area to any third party during the term of this Agreement. The State shall undertake to prevent artisanal miners and other settlers from entering the Mining Area, but is not obligated to use force to do so.

2.3 Legal Title to Minerals

The State agrees that the Company will acquire property in and title to the Minerals from the State upon severance of the Minerals from the land in Mining Area.

2.4 Obligations Prior to Construction

Within [__] months of the Effective Date and prior to commencing construction of the Project, the Company shall submit the following documents to the State, as further described in this Agreement (collectively, the “Documents”):

- (a) Feasibility Study.
- (b) Environmental Assessment and Environmental Management Plan.
- (c) Social Impact Assessment and Action Plan.
- (d) Financing Plan.
- (e) Closure Plan, consistent with Section 26.1 of this Agreement;
- (f) In addition, the Documents shall be publicly available pursuant to Section 30.1 of this Agreement, subject to the provisions of Section 30.2.

2.4.1 Feasibility Study

The Company shall have a Feasibility Study prepared by (i) an independent third-party or (ii) by the Company and verified by an Independent Sole Expert, on the basis of sound engineering and economic principles in accordance with Good Industry Practice. The Feasibility Study shall include [elements as the Parties may agree, such as the following]:

- (a) An estimate of minable reserves in accordance with internationally accepted standards;
- (b) A market study for all of the Minerals to be produced in the Mining Area;
- (c) An evaluation of the known deposits within the boundaries of the Mining Area, as well as the Minerals which can be exploited in the Project facilities;
- (d) A description of the technology process to be used in each case, with the results of any laboratory or other tests designed to identify technologically appropriate methods for processing the ore or ores involved;
- (e) An initial mine plan indicating expected recovery rates;
- (f) A general description of requirements associated with obtaining required permits, including the estimated cost of compliance and implementation of the Environmental Management Plan;
- (g) A description and plans of the area of the Project facilities, including a list of the main structures, machinery and equipment to be used, specification of raw materials and services (including electrical requirements and water);
- (h) An organization chart and requirements for personnel;
- (i) Schedules to initiate construction and construction timetables;
- (j) A description and generalized plans for all infrastructure and associated facilities (such as power, communication, transportation, roads, and fresh and reclaimed water), including a list of main items, structures and raw materials, and an assessment of the potential for sharing such infrastructure with other users in ways that promote sustainable development of the communities in the Project Area;

- (k) Plans for electricity supply for Mining Operations, including reliability and cost of services that includes an assessment of the potential for sharing electrical supplies and infrastructure with other users in ways that promote sustainable development of the communities in the Project Area;
- (l) Plans for disposal of tailings from the ore processing plants and of waste rock and materials from Mining Operations;
- (m) A description of plans for any potential reprocessing of materials or tailings;
- (n) Estimates, accurate to within fifteen percent (15%), of capital costs and operation costs;
- (o) An economic evaluation and financial analysis (estimated rate of return of the investment and cash flow for the various phases of the exploitation), including probable future capital investments and comments on the financial viability of the exploitation;
- (p) To the fullest extent reasonably practicable, detailed proposals with respect to any beneficiation or further processing of Minerals proposed to be carried out by the Company within the State; and
- (q) The estimated Date of Commencement of Commercial Production.

2.4.2 Environmental Assessment and Environmental Management Plan

[NOTE: The objective of the Environmental Management Plan is to prevent any unnecessary and undue degradation of the environment by the Project; to protect public health and safety, particularly for communities in the Mining Area; to preserve water quantity and quality; to ensure that impacts within the Mining Area are contained in that area; to stabilize the site physically and chemically at the end of mining operations to prevent offsite impacts; and to ensure that the Mining Area may be safely and beneficially used by future generations.]

- (a) The Company shall have an Environmental Assessment prepared based on sound engineering and economic principles, and having regard to Good Industry Practice including IFC Performance Standard 1, establishing a baseline of environmental conditions existing at the Effective Date, and assessing the Project-related environmental effects and impacts.
- (b) The Company shall have an Environmental Management Plan prepared (which if prepared by the Company is verified by an independent environmental consulting firm recognized as having expertise in the international mining industry), based on the Environmental Assessment and sound engineering and economic principles, and having regard to Good Industry Practice including IFC Performance Standard 1. The Environmental Management Plan shall upon request by the State, be made publicly available in a language and in a form that is accessible to affected communities in the Project Area, and shall be placed in the document files identified in Section 30.1 of this Agreement. The Environmental Management Plan shall be and updated prior to any major change to the mine plan. The Environmental Management Plan shall include [elements as the Parties may agree, such as the following]:
 - (i) Measures that the Company intends to use to mitigate adverse consequences of further of the Project as described in the Feasibility Study;

- (ii) Plans for the management, remediation, rehabilitation and control of all environmental aspects of the Project, excluding all historic environmental matters that are not assumed by the Company, including
 - (A) A plan to avoid, minimise, mitigate, rehabilitate and offset, where appropriate, impacts on biological diversity within the Mining Area;
 - (B) A plan for preventing, minimising or mitigating adverse environmental impacts to rivers and other potable water and ensuring that such pollution does not cause unnecessary harm or destruction to human or animal life or fresh water fish or vegetation;
 - (C) Opportunities for the improved management and conservation of natural resources in the Project Area;
 - (D) A plan to avoid or minimize greenhouse gas air emissions (as defined by the IPCC) from the Project taking into account economically and commercially feasible technology;
 - (E) A plan to effectively manage soil resources to allow future use of the surface land consistent with the proposed post mining land use;
- (iii) A description of the actions to be taken during any periods of temporary closure or cessation of operations and for the closure activities to be performed should closure be required prior to the completion of the planned mine life;
- (iv) A plan for concurrent reclamation to the extent practicable;
- (v) A plan to restore all mined areas to a final landform that is safe, stable, and suitable for the proposed post mining land use.
- (vi) A plan regarding the intended post mining land use in the Project Area;
- (c) The Company shall comply with the environmental laws of the State in force at any time during the period of this Agreement [including any provincial and local laws], including laws relating to protection of water quality, air quality, quality of land, the preservation of living natural resources, the protection of biodiversity, and the disposal of hazardous and non-hazardous wastes. Subject to Section 33.2.2, a material failure to comply with environmental laws, the terms of environmental licenses or permits, or of the terms of all mitigation measures and restrictions contained in the Environmental Management Plan, as the same may be amended from time to time, constitutes a breach of this Agreement.

2.4.3 Social Impact Assessment and Action Plan

The Company shall have a Social Impact Assessment and Action Plan prepared with guidance from the IFC Performance Standards (and updated prior to any major change to the mine plan), which shall include [elements as the Parties may agree, such as the following] [the following elements and appropriate provisions for implementing the requirements of Sections 20.0, 21.0, 22.0, 23.0, 24.0, and 25.0 of this Agreement_____]:

- (a) Provisions to prevent or minimize the potential adverse impact of the Mining Operation on the individuals and communities resident in and around (i) the Project Area and (ii) areas affected by the

processing or transport of Minerals whether using Company owned infrastructure or infrastructure provided by the State or third parties;

- (b) Provisions to prevent or minimize unreasonable interference with the living conditions of the population lawfully settled within the Mining Area and surroundings, and to cause the Company's employees and contractors to respect the customs of the local populations;
- (c) Provisions to mitigate negative social impacts on the local community, including housing, sanitation and public health measures of any temporary or construction work force engaged by the Company.
- (d) Provisions (with guidance from IFC Performance Standard 5 as it may from time to time be amended, where the surface of the Mining Area is permanently or seasonally occupied, or resources in the Mining Area are integral to livelihoods or cultural practices of local persons, communities, or Indigenous or Tribal Populations other than artisanal or small scale miners) to:
 - (a) Avoid or minimize displacement of persons or involuntary resettlement wherever feasible.
 - (b) Make satisfactory arrangements for payment of fair and reasonable compensation for any prospective damage to any crops, buildings, trees or works therein;
 - (c) Compensate the holders for the use of the surface area, where the surface rights to any land within the Mining Area are held or owned by local or Indigenous or Tribal Populations as recognized by Applicable Law or relevant customary law, at a reasonable rate agreed by the holder and the Company;
 - (d) Recognize the rights of surface right owners and occupiers, the rights of Indigenous or Tribal Populations, or other community in the Project Area is located, to continue utilizing land within the Project Area for subsistence purposes, including grazing livestock, using water, cultivating crops, hunting game, and collecting fruits and fuel wood, *provided that* such subsistence use would not be unsafe and does not substantially interfere with Mining Operations;
 - (e) Provisions for developing a plan of resettlement if at any point a resettlement of the local population appears to be essential, having regard to the requirements of IFC Performance Standard 5, as the same may from time to time be amended, including provisions to:
 - (a) Conduct full Consultation with Local Governments and all persons who may be displaced or relocated, with the goal of developing a resettlement program to which they consent;
 - (b) Mitigate adverse social and economic impacts by ensuring that resettlement activities are implemented with appropriate disclosure of information and Consultation;
 - (c) Improve, replace or restore the livelihoods of displaced persons to ensure in all material respects the availability of means of livelihood adequate to maintain an appropriate quality of life in the community; and
 - (d) Improve, replace or restore living conditions among displaced persons through provision of adequate housing with security of tenure at resettlement sites.

- (f) A procedure where, if the surface of the Mining Area is occupied by artisanal miners or persons conducting small scale mining activity, the Company shall treat such persons as displaced persons and implement the resettlement under the foregoing provisions, *provided that* the Company shall not be liable to compensate or resettle any artisanal miners who first occupy the Mining Area after the Effective Date, including a procedure to ensure that information regarding the Effective Date is well documented and disseminated throughout the Mining Area in a culturally accepted manner and that the resettlement plan is developed in Consultation with those artisanal miners or persons conducting small scale mining activity; and
- (g) A plan for the transition of the Project Area to a post mining economy.

2.4.4 Financing Plan

The Company shall have a Financing Plan prepared which shall include such provisions as the Company may determine consistent with its commercial requirements and Good Industry Practice. The Company shall be responsible for raising all of the financing necessary to implement the Financing Plan for the Project.

2.4.5 Compliance with Law; Requested Changes by State

- (a) The State shall cause its appropriate agencies to review the Documents as promptly as reasonably possible after receipt and to provide comments thereon to the Company of any failure to conform to Applicable Law or to the terms of this Agreement. The Company shall correct any failures to conform to Applicable Law or to the terms of this Agreement, or shall submit the matter for resolution pursuant to Section 32.2. If the State does not provide comments of any failure of the Documents to conform to Applicable Law or to the terms of this Agreement within [ninety (90)/one hundred eighty (180)] Days after receipt of the Documents, the Documents shall be deemed to have satisfied the requirements of this Agreement, provided that the foregoing shall not relieve the Company of its obligation to comply with Applicable Law.
- (b) The State may provide Notice to the Company requesting such revisions of the Environmental Assessment, Environmental Management Plan, Social Impact Assessment and Action Plan, and Closure Plan as are reasonable to contribute to the efficient development of locally required infrastructure and to assist other national and local needs, *provided that* such requested revisions shall relate to the Project and shall be utilized by the Company in the Project Area, and provided further that such requested revisions shall not materially impact the economic returns of the Company:
 - (i) If the State provides Notice of such requested revisions within [ninety (90)/one hundred eighty (180)] Days after receipt of the Documents, the Company and the State shall meet within [thirty (30)] Days of the State's written notification to the Company as to any requested revisions so that the Parties may negotiate revisions to any of the Documents. The Parties shall establish a time frame within which to revise the Document, which time frame shall not exceed [ninety (90)] Days of the State's Notice to the Company as to the requested revisions. If the Parties are unable to reach agreement within [forty-five (45)] Days of the State's written notification to the Company as to the requested revisions, the matter may be referred by either Party for resolution pursuant to Section 32.0.

- (ii) If the State does not provide Notice of such requested revisions within [ninety (90)] Days after receipt of the Documents, the Documents shall be deemed to have satisfied the requirements of this Agreement.

2.5 Requirement to Obtain Permits

Where the Company is required under this Agreement or Applicable Law to obtain a permit, license or approval, the Company shall obtain the necessary permit, license or approval from the appropriate State agency (including the Local Government) prior to proceeding with or undertaking the activity authorized by the permit, license or approval.

2.6 Construction

- (a) Not more than 120 Days after the last to occur of (i) the Company's receipt of all permits required for construction of the Project and (ii) the Company's the first to occur of (A) approval of the Documents or (B) lapse of the comment period without comment, the Company shall submit to the State a detailed schedule for the performance of all planned activities during the construction period if such schedule is not included in the Feasibility Study. The State shall have the right to comment upon and request explanation of such schedule and any changes that occur in the schedule. The Company shall submit to the appropriate State agency, thereafter [on a quarterly basis], an updated schedule showing progress and any changes in the milestones or critical paths for the construction of the Project.
- (b) Within 180 Days after to the last to occur of (i) the Company's receipt of all permits required for construction of the Project and (ii) the Company's submittal of the Documents, the Company shall commence and diligently continue construction of the Project until its completion in accordance with the Feasibility Study and any non-material changes resulting from engineering and other studies conducted by the Company after completion of the Feasibility Study.

FINANCIAL

3.0 Annual Rental

[NOTE: Annual Rental payments are generally used to discourage speculative holding of land without exploration or development or to compensate for surface use. The amount is not typically a major component of fiscal revenue for the State. The amount of such payments are often provided by legislation or regulation, and may be payable to land owners or occupiers or Local Governments rather than the State.]

The Company shall pay to the State an annual rental fee of \$_____ per hectare of land included in the Mining Area [in accordance with Applicable Law]. Such payments shall be adjusted in accordance with [choose appropriate indicator]. Such rental payments shall be deductible expenses for income taxation purposes under Section 7.2.

4.0 Royalty

[NOTE: Royalty may or may not be provided for under Applicable Law. Any such Applicable Law should be considered in discussions between the State and Company, as variations may require legislative or ministerial approval or amendment. Where royalties may be negotiated by agreement, the State and Company should choose an appropriate Royalty Rate and type of Royalty clause for the Agreement and the type of Mineral deposit. Royalty payments should be viewed together with all other taxes and government payments, any State equity or ownership share in the Project required under Applicable Law, and social and community development payments and benefits, in order to evaluate the total sharing of benefits from mine development among the State, the Company and communities and Local Government. There is an extensive body of literature on mining royalties that the Parties can consult, including Otto et al, "Mining Royalties: A Global Study Of Their Impact On Investors, Government, And Civil Society" (IBRD/World Bank 2006).]

The details of royalty calculation may not be provided in Applicable Law and the Agreement may be used to supply appropriate details of the royalty for the type of Mineral deposit, the likely economics of developing the deposit and other fact-specific circumstances. Different royalty types may be appropriate for different Minerals. Examples of different royalty types and variations are included below, and, as with all provisions in the MMDA, are intended to be illustrative rather than recommending a specific approach or alternative.]

4.1 Calculation of Royalty

- (a) The Company shall pay to the State a royalty at the rate of [_x%_] (the "**Royalty Rate**") on all Minerals produced, saved and sold or otherwise disposed of from the Mining Area. Royalty shall be calculated as follows:

Alternative #1: Profit-based Royalty

[NOTE: The profits-based royalty is the most sensitive to changes in Mineral prices during the life of the Project and differences in the economics of ore bodies (for example, large vs. small deposits, high vs. low grade, access to existing infrastructure (power, transportation) vs. need to build infrastructure. It allows the Parties to share these risks and benefits. However, a profits-based royalty will be low or non-existent during

the initial recovery of the investment in the mine and periods of capital expansion. It is also more difficult for the State to calculate and collect than value-based royalties.]

- (i) The Royalty shall be the Royalty rate multiplied by the Net Profits derived from all Minerals produced, saved and sold or otherwise disposed of from the Mining Area.
- (ii) “**Net Profits**” means the amount by which Revenues exceed Costs.
- (iii) The amount by which Costs exceed Revenues for any prior calendar quarter or quarters shall be recovered in determining Net Profits for any succeeding period, until all such losses have been recovered.
- (iv) “**Revenues**” will mean the total proceeds and other compensation received by the Company from the sale or other disposition of Minerals.
- (v) “**Costs**” will mean all expenditures incurred by or on behalf of the Company on or in connection with the Mining Area, the Project Area or the Project, and related to the exploration, development, and placing of the Mining Area into Commercial Production, and all operating, mining, milling, smelting, refining, marketing and transportation costs, including, without limitation:
 - (A) costs and the expenses incurred by the Company in exploring for, mining, extracting, removing, and transporting Minerals;
 - (B) costs and expenses incurred by the Company in milling, processing and refining Minerals in its own facilities or the facilities of third parties;
 - (C) costs and expenses of exploration and discovery of the Minerals and costs and expenses of any additional exploration conducted in the Mining Area during the term of this Agreement;
 - (D) costs and expenses of developing the Mining Area for Commercial Production, including, without limitation, costs and expenses relating to geological, geochemical and geophysical studies, prefeasibility and feasibility studies, development drilling, sampling and assaying, mine design and development, rail, road and other transportation, port or water infrastructure development, and costs and expenses of any additional development, expansion or refurbishment of any such facilities or equipment conducted in the Mining Area, Project Area or for the benefit of the Project during the term of this Agreement;
 - (E) taxes and payments of any kind to the State under this Agreement or Applicable Law, taxes or royalties payable with respect to severance, removal, sale, or disposition of Minerals to any Local Government or community other than the State, private party royalties reasonably related to the exploration and development of the Property, and taxes and payments of any kind paid to any governmental authority in any foreign jurisdiction relating to any smelting, refining, or other processing of Minerals that occurs after export of such Minerals from the State;
 - (F) all direct and indirect costs and expenditures required for the purchase, installation or construction of buildings, machinery and equipment;
 - (G) interest on money borrowed by the Company for exploration, development, and placing of the Mining Area into Commercial Production;

- (H) general and administrative costs and expenses properly allocable to the administration of this Agreement and the Mining Area and Project Area;
- (I) an allowance for depreciation and amortization for mining, processing, and other capital equipment and machinery;
- (J) an allowance for future costs and expenses anticipated to be incurred by the Company in environmental compliance, including reclamation, of the Mining Area and Project Area, and costs for social and community development in connection with the Project (whether incurred or expended within or outside of the Mining Area or Project Area), in accordance with this Agreement and Applicable Law; and
- (K) other costs of implementing and complying with this Agreement and not enumerated above.

Alternative #2: Value-based Royalty (Gross value)

[NOTE: A value-based royalty based on gross value of the Minerals does not allow deduction of any costs and is payable regardless of the profitability of mining. It is the least sensitive type of royalty to changes in Mineral prices during the life of the Project and profitability of operations over high and low points in the economic cycle. It can result in suspension of operations when prices are low and non-recovery of marginal resources. It may, however provide a more regular revenue stream to the State. A gross value-based royalty is also more simple to administer.]

- (a) The Royalty shall be the Royalty Rate multiplied by the Gross Market Value for all Minerals produced, saved and sold or otherwise disposed of from the Mining Area.
- (b) “**Arms-Length Transaction**” means a contract or agreement that has been arrived at in the marketplace between independent, non-affiliated persons with opposing economic interests regarding that contract. For a transaction to remain arms-length for Royalty purposes, it must be arms-length during the entire period for which Royalty is determined under this Section.
- (c) “**Gross Market Value**” has the following meaning:
 - (A) If the Company causes refined Minerals to be produced from the Mining Area meeting the applicable specifications for the relevant market described below, “Gross Market Value” shall mean, for the applicable Mineral, the Quarterly Average of
 - (I) the official cash settlement price for refined copper or nickel, as published daily by the London Metals Exchange,
 - (II) the applicable price for platinum, palladium or other platinum group metals, as published daily by the London Platinum and Palladium Market,
 - (III) the daily London Bullion Market Association P.M. Gold Fix, for refined gold, and
 - (IV) the daily London Bullion Market Association P.M. Silver Fix, for refined silver;

- (B) If the Company sells raw ore or doré or concentrates produced from the Mining Area in an in an Arms-Length Transaction, the sales value receivable at the mine gate, without discounts, commissions or deductions of any kind; and
- (C) If the Company sells raw ore or doré or concentrates produced from the Mining Area in an in a transaction that is not an Arms-Length Transaction, or uses, consumes or otherwise disposes of such intermediate Mineral products without sale, the fair market value of such raw ore, doré or concentrates at the mine gate.
- (d) **“Quarterly Average”** means the average of the applicable price under Subsection (iii)(A) above multiplied by the number of days in the applicable quarter.

Alternative #3: Value-based Royalty (Net value)

[NOTE: A value-based royalty based on net value of the Minerals permits deduction of certain costs incurred in producing and selling Minerals. One type of net value royalty used for metallic minerals is the “net smelter return” royalty, which permits deduction of certain processing costs such as smelting and refining, but does not permit deduction of mining costs and other costs that would be deductible under a net profits royalty.]

- (i) The Royalty shall be the Royalty rate multiplied by the Net Smelter Returns for all Minerals and mineral products produced, saved and sold or otherwise disposed of from the Mining Area.
 - (A) **“Net Smelter Returns”** means the Gross Market Value less, but only to the extent actually incurred or paid by Company, the following (and only the following, without duplication):
 - (I) Smelter or refinery costs and charges, including assaying and sampling costs, umpire charges and penalty substance charges, if any, incurred upon smelting or refining Minerals and mineral products. If smelting or refining is carried out in facilities owned or controlled, in whole or in part by the Company, or by an affiliate of the Company, charges and penalties for such operations shall mean the amount the Company would have incurred in an Arms-Length Transaction; and
 - (II) Costs and charges, if any, for transportation (including related storage and insurance costs) from the mine, mill, processing or refining facility in the Mining Area to the place where the Minerals and mineral products are sold or disposed of; plus charges and costs, if any, for transportation (including related storage and insurance costs) of Minerals and mineral products to any mill, processing or refining facility outside the Mining Area and from there to the places where such minerals and mineral products are sold or disposed of; and
 - (III) taxes or royalties payable with respect to severance, removal, sale, or disposition of Minerals to any Local Government or community other than the State (but private party royalties shall not be deductible).
 - (B) **“Gross Market Value”** has the following meaning: *[See definition in Gross Value royalty alternative]*



Alternative #4: Unit-based Royalty

[NOTE: This type of Royalty may be appropriate for certain industrial minerals or minerals sold in bulk, but is generally not appropriate for most other minerals. Consideration should be given to indexing this type of royalty for inflation given the extended term of the Agreement.]

MINERAL	ROYALTY RATE [●] per ton

[Note: Example optional provision to adjust unit-based Royalty for inflation:

The Royalty rate for each Mineral shall be adjusted annually every ____ years after the Date of Commencement of Commercial Production at the commencement of such year. The Royalty rate shall be adjusted up or down based upon the variation in the **[choose appropriate index, for example: Producers Price Index, Industrial Commodities, of the United States Department of Labor, Bureau of Statistics.]** (the “**Adjustment Index**”). For the purposes of such adjustment, the “**Base Index**” shall be calculated by ascertaining the arithmetic average of the Adjustment Index for each quarter during the calendar year preceding the Date of Commencement of Commercial Production. The first adjustment for the variation in said index shall be made effective **[specify date]**, using the arithmetic average of the Adjustment Index for each quarter during the calendar year preceding such date of adjustment, and the variation in such index from the Base Index shall thereafter be calculated annually in the same manner (the “**Variation Index**”). To determine the Royalty rate for any calendar year beginning **[specify date]**, the Variation Index for such year shall be divided by the Base Index and the resulting quotient multiplied by the Royalty Rate for each Mineral.]

Additional Variation: Sliding Scale Royalty Rate based on Profitability of Operations

[NOTE: If the Parties desire to increase the State’s share of royalty during times of high commodity prices when the Company is recognizing higher profits from the Project, the Royalty Rate can be increased and decreased automatically (without changing the royalty calculation) based on increases price of the Mineral, or based on the company’s profitability.

The following example of a sliding scale Royalty Rate (which would be inserted as Section 4.1(b) of the Agreement) is based on the approach recently used in Ghana. It uses a floor royalty rate and a capped royalty rate, with a sliding royalty rate between the floor and the cap depending on the ratio of the Company’s costs to its revenues. The royalty rate and the operating ratio percentages will vary depending on the type of Mineral deposit and the type of royalty (profits-based, value-based, etc.), and the “value” of Minerals would be defined consistently with the type of royalty for which the sliding scale is used.]

(a) Variation of Royalty Rate

- (i) The Royalty Rate payable under this Agreement shall be based on the profitability of Mining Operations, adjusted annually after the end of the Company's financial year and effective as of the commencement of the Company's next financial year.
- (ii) Such profitability shall be determined by the application of the "**Operating Ratio**," being the ratio as expressed in terms of percentage which the Operating Margin bears to the [value of Minerals produced, saved and sold from the Mining Area.] during such financial year.
- (iii) The following Royalty Rates shall apply in accordance with the applicable Operating Ratios:

OPERATING RATIO	ROYALTY RATE
(i) where the Operating Ratio is [x]% or less	[A]%
(ii) where the Operating Ratio is more than [x]% but less than [y]%	[A]% plus 0.225 of every 1% by which the operating ratio exceeds [x]%
(iii) where the Operating Ratio is [y]% or more	[B]%

- (iv) The "**Operating Margin**" of Mining Operations shall be determined by deducting the Operational Cost from the [value of Minerals produced, saved and sold from the Mining Area.]
- (v) "**Operational Cost**" in relation to any financial year of the Company means:
 - (A) the current expenditure wholly and exclusively incurred by the Company during that financial year for the purpose of mining, transporting, processing and sale of minerals from the Mining Area; provided that such current expenditure shall not include –
 - (I) any royalty payable under this Agreement;
 - (II) any income tax or other tax on the Company's profit, whether imposed in the State or elsewhere;
 - (III) any expenditure incurred in respect of the management and control of the Company which is not directly related to the operations of mining, transportation, processing, sale or other disposal of Minerals from the Mining Area; and
 - (B) capital allowances for that financial year deductible under this Agreement and applicable Tax Law.

Comment on “Windfall Profits” or Resources Rent Taxes

Some countries have proposed or adopted an additional tax, sometimes described as a “windfall profits” tax, that applies whenever a certain threshold of profitability is reached. Others impose a “resource rent” tax intended to compensate the State for the value of mineral resources in the ground, which applies after recovery of all costs and a specified rate of return on the project. Some of the arguments made in favor of such taxes include the non-renewable nature of mineral deposits, the differences in quality of mineral deposits (size of deposit, grade, access to existing infrastructure, etc.) and the corresponding “right” of the State to recover a greater share from higher quality (more profitable) deposits where a primary determinant of profitability is the quality of the deposit “provided” by the State. Arguments against “windfall profits” and “resource rent” taxes include the difficulty of calculation and the negative impact such taxes have on exploration and development of mineral deposits, since the opportunity to obtain a “windfall” (discovery of a high quality mineral deposit) provides considerable incentive to explore for and develop mineral deposits, including more marginal deposits, for the benefit of the State. Such taxes have generated considerable controversy in a number of countries.

“Windfall profits” and “resource rent” taxes are too detailed and varied in their approach to include as an alternative, but examples are available. Australia has recently proposed a “mineral resource rent tax” on significant producers of certain minerals, which applies when profits exceed a certain specified rate. An additional profits tax formerly imposed in the Philippines (described as the “Additional Government Share”) is contained in the Department of Natural Resources of the Philippines Department Administrative Order (DAO) 99-56, “Guidelines Establishing the Fiscal Regime of FTAA’s” (Dec. 27, 1999), which can be accessed online at <http://www.denr.gov.ph/policy/1999/minesdao99-56.pdf>.

4.2 Royalty on other mineral materials

- (a) If mineral materials other than those defined as “Minerals” in Section 1.1 are produced from the Mining Area, the Company shall pay a royalty on all such mineral materials produced, saved and sold or otherwise disposed of from the Mining Area. The royalty rate, amount of product and value for such royalty shall be as provided by Applicable Law, or in the absence of Applicable law shall be agreed between the State and the Company. The value of such mineral materials shall be based on the international fair market value of such mineral materials, determined, in the absence of published international market prices for such mineral materials, in such manner as agreed by the Parties.
- (b) Royalties shall not be payable or paid on stone, sand, gravel or other construction materials produced in the Mining Area and used internally by the Company in construction of any of its facilities or infrastructure for the Project.

4.3 Production Statement

- (a) The Company must submit to the State a production statement in accordance with Applicable Law, and if not so provided then not later than [30] days after the end of the calendar quarter in which the Date of Commencement of Commercial Production occurs and thereafter not later than thirty [30] Days after the end of each subsequent calendar quarter during the term of this Agreement. The production statement must be prepared in accordance with Applicable Law, if any, and Good Industry Practice, containing the following particulars:
 - (a) The quantity and quality of Minerals produced and sold;
 - (b) The size of Minerals stocks held at the beginning of the calendar quarter;
 - (c) The size of Minerals stocks held at the end of the calendar quarter;
 - (d) The calculation of the royalty due on such Minerals produced and sold, in accordance with Section 4.1 and, if applicable, Section 4.2.
- (b) The State may give Notice specifying other particulars relating to Project operations necessary for calculation of the royalty be included in the production statement and the Company must comply with any such reasonable request.

4.4 Payment of Royalty

- (a) The final Royalty payable under this Agreement must be paid no later than [45] Days after the last day of the month in which final settlement is made by the purchaser of the Minerals produced and sold or otherwise disposed of by the Company.
- (b) A provisional royalty payment based on provisional settlements shall be paid [45] days after the last day of the month in which the Minerals are produced and sold.

4.5 Disputes regarding Royalty Payments

- (a) The Parties agree to submit any dispute arising out of or in connection with calculation of the royalty under this Agreement to an Independent Sole Expert under Section 32.1(b). Any additional amount payable to the State or any overpayment refundable to the Company, as determined by the Independent Sole Expert, shall be paid no later than [30] Days after the written decision of the Independent Sole Expert is delivered. All royalty payments will be considered final and in full satisfaction of all obligations of the Company, unless the State gives the Company written notice describing and setting forth a specific objection to the determination thereof within [12] months after of receipt by the Royalty Holder of a production statement under Section 4.3.

5.0 Customs Duties

5.1 Customs Duties

- (a) Subject to Section 21.0, the Company shall be permitted to import into the State free of all customs duties, levies, tariffs, and similar or related charges, all the supplies, goods, materials, fuel, machinery, equipment and consumer goods necessary to properly carry out the Project in its own name or in the name of its sub-contractors or other persons acting on its or their behalf, *provided that* all such imports are wholly and exclusively destined for use in the Company's activities hereunder and are imported into the State in the name of or consigned to the Company.
- (b) The State shall provide procedures to expedite the admission, clearance, and verification of use by the State's authorized customs, foreign investment authority, or mining authority representatives, as applicable, of all imports by the Company.
- (c) The Company, its purchasers and transporters will have the right to export freely and at any time the quantities of Minerals produced from the Mining Area free of Taxes and/or duties. For greater certainty, this is subject to Section 4.0, Royalties.
- (d) The Company, its sub-contractors and persons acting on its or their behalf may re-export, free of levies and export duties, goods imported in accordance with this Agreement when they are no longer necessary for the Project or for the purposes of repair.
- (e) Other than levies and import duties as provided for in this Agreement, the Company, its sub-contractors and persons importing on its or their behalf will not be subject to any other payment in this respect of the importation of goods, supplies, materials, fuel, equipment and consumer goods.
- (f) Foreign personnel assigned to work in the State on behalf of the Company or its sub-contractors, and their families, shall be permitted to import and re-export their personal effects into and from the State free of customs duties.
- (g) The State may maintain a minimal customs fee for the inspection of imported goods for safety, health and other reasons. Such fees shall not exceed ___% of the value of imports.

5.2 Reimbursement of Import Duties

If items on which no customs duties or levies are paid are not re-exported or totally consumed within [three (3)] years after importation, and are afterwards sold, exchanged or transferred in the State (except to the State), the Company shall pay to the State the customs import duties and levies on the then fair market value of those items within thirty (30) Days of the date of sale, exchanged or transfer. The Company shall submit to the State quarterly reports on the fair market value and actual transfer price of asset dispositions on assets which benefited from reduced or zero import duties.

6.0 Insurance

At all times during the Term, the Company will maintain, and cause its contractors and subcontractors to maintain, with financially sound and reputable insurers, insurance with respect to the Project against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is consistent with Good Industry Practice. If at any time the Company fails to purchase and maintain in full force and effect any and all insurances required under this Agreement, the State may, at its sole discretion, purchase and maintain such insurance, and all reasonable amounts incurred by the State therefor shall be reimbursed by the Company.

7.0 Taxation

[NOTE: *The Taxation provisions in the Applicable Law will be the starting point for discussions between the Parties and those provisions may require legislative approval or amendment. The provisions set out below may be considered in circumstances where the Applicable Law allows the negotiating parties to modify or establish special taxation issues in an agreement or thru legislative approval or amendment.*]

7.1 Taxation - General

- (a) The Company shall be subject to all fiscal legislation from time to time in force in the State except where (i) it is exempted wholly or partly from the application of the provisions of a particular Applicable Law pursuant to a validly granted authority under any Applicable Law; or (ii) as otherwise set out in this Agreement.
- (b) As soon as practicable after the annual financial statements of the Company are available for each calendar year, but not later than the first calendar quarter of the following calendar year, the Company shall submit to the State an investment report using a format consistent with Good Industry Practice.
- (c) Each year's financial statements shall be accompanied by a certificate of the chief financial officer of the Company to the effect that during the year then ended the Company was in compliance with the requirements of this Agreement and the Tax Law.
- (d) Each year's financial statements shall be accompanied by a listing of all transactions with Affiliates of the Company reflected in such financial statements, identifying the amount of the transaction, the Affiliate involved, and the nature of the transaction. Transactions of the same type with the same entity that are individually immaterial may be aggregated rather than separately listed. The Company shall maintain contemporaneous documentation of each such transaction with any such Affiliate evidencing the pricing of the transaction, including all documentation required by the Tax Law or any regulations issued thereunder.
- (e) Each year's financial statements shall be accompanied by certificate of the chief financial officer of the Company to the effect that (i) with respect to goods or services covered by any pricing agreement in effect between Company and any Affiliate of the Company during the relevant period, the Company's transfer prices during such year were computed in accordance with the requirements of such pricing agreement and (ii) with respect to goods or services sold or provided in a transaction between the Company and an Affiliate of the Company which are not covered by such pricing agreement, the prices thereof imposed during the relevant period were computed in accordance with the Tax Law.

7.2 Income Tax

- (a) The Company must pay corporate income tax in accordance with the Tax Law for companies resident in the State; *provided that*:
 - (a) The Company income tax rate applied to the Company's taxable income is the effective rate that applies generally to all companies conducting business in the State (including the effect of any Tax rebates or subsidies) or [X %], whichever is the lesser;
 - (b) The Company income tax rate on dividends paid by the Company to non-resident companies is [__x__];
 - (c) The Company income tax rate on interest paid by the Company to non-resident companies is [X %], other than on interest paid to any multi-lateral agency funding the Project which is exempt from income tax under the Tax Law; and
 - (d) The additional deductions allowable under this Agreement must be deductible in computing income chargeable to Tax.
- (b) The State confirms that:
 - (a) All dividends paid by the Company to a non-resident shareholder will not be considered as the State income to that shareholder;
 - (b) All interest paid by the Company to a non-resident lender will not be considered as the State income to that lender;
 - (c) Any income that the Company, lender or shareholder earns in the State on the deposit of interest or dividends is subject to the Tax Law;
 - (d) Realized foreign exchange gains are income and realized foreign exchange losses are deductible in calculating the Company's chargeable income; and
 - (e) Income derived from money retained outside the State is the State-sourced income. Tax paid on that income in a foreign jurisdiction may be credited in computing income chargeable to Tax.

7.3 Deductions in the Computation of Company Income Tax

The Company may, in calculating income chargeable to Tax in any Tax year, deduct the following costs and expenses:

- (a) All royalties and other Taxes and duties payable under the Tax Law or this Agreement to the State, to any Local Government, or under a Community Development Agreement [and payments made pursuant to Section 2.4.3];
- (b) All exploration expenditures, development expenditure and general and administrative expenditure incurred by the Company or on its behalf, including local exploration costs incurred in seeking further resources within the Mining Area or 5 kilometres of its perimeter;

- (c) Expenditure (including payments made on borrowed or equity funds) incurred by the Company that is reasonable and necessary according to Good Industry Practice for
 - (a) Mining Operations (including those associated with negotiating this Agreement);
 - (b) Planning, financing, constructing, developing and insuring the Project;
 - (c) Managing, maintaining, de-commissioning and rehabilitating the Project;
 - (d) Mining, processing, refining, marketing, selling and transporting Minerals produced from Mining Area; and
 - (e) All amounts allowable for deduction in calculating chargeable income under Applicable Law,
- (d) Interest incurred on loans and other financing arrangements entered into in accordance with the Financing Plan;
- (e) Depreciation of plant and equipment capital costs incurred by the Company in constructing, developing and commissioning the Project up to the Date of Commencement of Commercial Production in full in the Tax year incurred with unlimited loss carry forward;
- (f) Depreciation of plant, equipment and further development costs, including decommissioning expenses, acquired or incurred after the Date of Commencement of Commercial Production at the rates set out in the Applicable Law;
- (g) Depreciation on any capital items including buildings, plant, equipment, Project infrastructure and lease improvements acquired for the Project, less the proceeds from the sale of those items in the Tax year, must be multiplied by x/y where:

x = the mean of the average of the monthly published buying and selling rates of the State currency against [US] currency during the Tax year for which the calculation is being made (expressed in terms of the State dollars per [US] dollar);

y = the mean of the monthly published buying and selling rates of the State currency against [US] currency during the Tax year when the money for the capital item was outlaid (expressed in terms of the State currency per [US] dollars); and

x/y is never less than 1

and where:

“monthly published buying and selling rates” means the buying and selling rate on the last business day of each month published by the Central Bank of the State, or such other buying and selling rates as may be published and recognized by the State as the official buying and selling rates.

For the purposes of this paragraph, depreciation may only be deducted for Tax purposes to the extent it does not cause income chargeable to Tax to become negative. Where it cannot be so deducted, it must be carried forward to the next future Tax year according to this Agreement;

- (h) Expenditure incurred by the Company in preparing the application for any permit;
- (i) Provision for rehabilitation costs in the Tax year in which the cost is incurred. Reclamation and rehabilitation costs must be debited to the provision for rehabilitation in the Tax year in which the reclamation and rehabilitation cost is incurred and not further claimed as an income Tax deduction unless the provision for rehabilitation is insufficient to satisfy that cost. Any losses or shortfall due to the provision for rehabilitation being insufficient may be carried back for a period of no more than [10 YEARS];
- (j) [The State shall exempt the Company from incurring any Taxes related to the payments to local communities under Community Development Agreements;] and
- (k) Any other rate, Tax charge, due, duty, tariff, or other levy paid or payable to the State or a Local Government.

7.4 Value-Added Taxes and Project Activities

- (a) Prior to the Date of Commencement of Commercial Production, no goods and services tax, or any other value-added tax of general application, shall be levied or imposed on the following items to the extent that such items are purchased from third parties or related parties in the State or imported into the State by or on behalf of the Company for the purposes of the Project and are reasonable and necessary in accordance with Good Industry Practice to carry out the Project:
 - (a) All capital items, and supplies and consumables including fuel, exclusively and necessarily required for the Project; and
 - (b) Construction, mining and milling plant, machinery and equipment exclusively and necessarily required for the Project, *provided that* goods and services Tax or any other value-added Tax is payable in accordance with the Tax Law on all imported food items, alcohol, cigarettes, clothing (other than special protective clothing), shoes (other than special protective shoes), household appliances and utensils, and personal vehicles and effects.
- (b) After the Date of Commencement of Commercial Production, all imported items are subject to goods and services tax, or any other value-added tax of general application, on a non-discriminatory basis in accordance with Applicable Law.
- (c) If imported items purchased by or on behalf of the Company on which no goods and services tax or any other value-added tax is paid in accordance with this Section are not re-exported or totally consumed within the period of the first three (3) years after importation) and are thereafter sold, exchanged or transferred in the State, the Company shall be liable to pay goods and services tax or any other value-added tax, to the extent not previously paid, on the then fair market value of such items.
- (d) [Sale of minerals produced for export shall be treated as zero-rated and therefore input GST/VAT on exported minerals]

7.5 Property Taxes

The State will ensure that:

- (a) The Company will be subject to the real property taxes that are generally in effect only on a non-discriminatory basis; and
- (b) Real property held by the Company will be valued without taking into account Minerals or improvements on or under the land.

7.6 Taxes on Expatriate Employees

- (a) Prior to the Date of Commencement of Commercial Production, the State must exempt from any applicable Taxes on the State - sourced income derived by all expatriate employees of the Company engaged in developing the Project under this Agreement and such employees are not, during such period, entitled to any allowances under the Tax Law.
- (b) After the Date of Commencement of Commercial Production, all expatriate employees of the Company and its contractors subcontractors and agents, engaged in Mining Operations under this Agreement are subject to any applicable Taxes that are generally in effect in the the State, but only on their the State - sourced income from those operations, on a non-discriminatory basis, and whether or not paid in the State.

7.7 Taxes on Non-Resident Contractors

- (a) Prior to the Date of Commencement of Commercial Production, the State must exempt all expatriate contractors from any applicable income tax on their fees derived from Project operations under this Agreement and such contractors are not, during such period, entitled to any allowances under the Tax Law.
- (b) After the Date of Commencement of Commercial Production, the Company must withhold from the gross payments made by it to non-the State resident contractors for services performed by those contractors and their subcontractors in the State withholding tax in accordance with Applicable Law.

7.8 Withholding Tax Obligations

Save as otherwise expressly provided in this Agreement, the Company shall comply with all Applicable Law in effect from time to time, and taking into account any relevant Tax treaty, requiring the withholding of Taxes.

7.9 Provisions Relating to Other Taxes and Levies

The State and any Local Government undertake that no Tax, duty, fee or other impost shall be imposed on the Company in respect of the Project or on income derived from the Project or on entities employed in the Project or in respect of any property held or thing acquired in furthering the Project or for any purpose authorized or contemplated by this Agreement other than:

- (a) Royalty in accordance with the provisions of this Agreement;



- (b) Subject to the provisions of this Agreement, customs duties and levies at the applicable rates pursuant to Applicable Law;
- (c) Sales tax and capital gains tax under the tax Law;
- (d) Subject to the provisions of this Agreement, income tax pursuant to Applicable Law;
- (e) Subject to the provisions of this Agreement, value-added tax, or goods and services tax pursuant to the Tax Law;
- (f) Property taxes in accordance with the provisions of this Agreement;
- (g) Taxes, duties, fees or other imposts for specific services rendered on request or to the public or commercial enterprises generally, registration fees, license fees and any other Tax, duty, fee or other impost of a minor nature and generally applicable to businesses in the State and the generally applicable rent due in respect of any land rights granted or assigned to the Company;
- (h) Local Government rates or Taxes not in excess of those generally applicable in the State; and
- (i) Stamp duties, registration fees, license fees and any other Tax, duty, fee or other impost of a minor nature and generally applicable to businesses in the State.

7.10 Local Government Taxes and Levies

- (a) The State undertakes not to give power to any Local Government to make laws imposing, altering or extending any Tax, duty or fee on the Project, or on the Company, except where power to do so has already been given under Applicable Law as at the Effective Date of this Agreement: in such case, (i) this Agreement shall not preclude any Local Government from passing a law or regulation raising or altering taxes or duties that it has the right to impose in accordance with the Applicable Law, provided that such raising or alteration applies in a non-discriminatory manner, and (ii) the Company shall have the right to appeal those changes under the Applicable Law including relevant administrative procedures.
- (b) If a Local Government purports to pass a law contrary to this Agreement, or makes it impossible for any Party to perform or receive the benefits of this Agreement, or imposes, alters or extends any Tax, duty or fee in breach of this Section, the State undertakes to move to disallow the imposition of such Local Government law, or to give credit to the Company against Taxes due for amounts paid under such Local Government law.

8.0 Financing

8.1 Security Interest

- (a) The Company shall have the right, with the prior consent of the State, which consent shall not be unreasonably withheld or delayed, to mortgage, pledge, lien, charge, assign, hypothecate or otherwise encumber all or part of its interest under this Agreement for the purpose of raising, from one or more third parties, financing for Mining Operations and other obligations under this Agreement. As a condition to receiving consent,

the mortgagee must agree upon foreclosure to operate the Project and infrastructure in accordance with the requirements of this Agreement, and transfer the mortgaged property only to a transferee that commits to operate in accordance with the requirements of this Agreement.

- (b) The State agrees that in the event of default by the Company that any such person holding such mortgage, charge or other encumbrance shall be entitled either to conduct operations on the same terms and conditions as the Company under this Agreement or, with the prior consent of the State, which consent shall not be unreasonably withheld or delayed, to exercise any power of sale granted by any such mortgage, charge or other encumbrance so long as any purchaser at such sale commits to fulfil the obligations of the Company under this Agreement.
- (c) Any restrictions on transfers of rights under this Agreement or mining license shall also apply to transferees under mortgage foreclosure.

8.2 Debt-Equity Ratio

The ratio of the Company's debt to equity must not at any time exceed [__/__].

For the purposes of this Section:

- (a) **“Debt”** shall mean the aggregate, on a consolidated basis, of all outstanding obligations (whether present or future, or actual or contingent, including reclamation obligations from the operation of the mine itself) for the payment or repayment of moneys which have been borrowed or raised (including money raised by acceptances or leasing) incurred by the Company or any subsidiaries; and
- (b) **“Equity”** shall mean the sum of the issued paid up ordinary shares of the Company (including any share premium account) plus (or minus) the Company's retained earnings (or accumulated deficit).

8.3 Foreign Currency Remittance and Availability

- (a) Except in the case of generally applicable exchange controls imposed on a non-discriminatory basis during a limited time period of genuine fiscal emergency, the State confirms that interest, dividends and all other payments for goods and services are freely remittable from the State and that if foreign currency is required to make such payments, in addition to that available from foreign currency accounts authorized under this Agreement, foreign currency will be made available to make such payments up to the amount of foreign currency payments made by the Company to the State and converted into the State currency.
- (b) The Company has the right to establish, maintain and hold funds in bank accounts in [COUNTRY] currency] and in US Dollars in the State in as well as bank accounts in foreign currency located outside the State.
- (c) The Company has the right to freely repatriate abroad without any barriers and to and freely dispose of all proceeds (including by way of dividend or other form of distribution) received within the State from the sale, exchange or export of Minerals, and any other payments (including loan principal and interest) to be made abroad.
- (d) Any obligation originally stated in the State currency shall be converted to US Dollars at the prevailing market rate of exchange.

- (e) For purposes of determining compliance by the Company of required payments in the State currency under Applicable Law (including without limitation any Law determining minimum wages), the amount of any payment by the Company made in US Dollars shall be converted to the State currency at the prevailing market rate of exchange as of the date of payment.
- (f) The Company shall have the right to remit and receive in US Dollars all payments of dividends, interest, finance charges, principal, management fees and other property payable items arising from, as a result of, or related to the operations of the Project.
- (g) All remittances and receipts of such payments shall be free of any penalties in connection with such remittances or receipts, any required total or partial surrender, exchange or confiscation of US Dollars received to be remitted, and any other direct or indirect restriction on such remittances or receipts.
- (h) The Parties acknowledge that the Company may:
 - (a) Obtain, hold, deal with and disburse funds in such manner, currencies and places as it, in its absolute discretion, determines;
 - (b) Freely import into the State funds necessary to properly carry out the Project;
 - (c) Remit foreign currency accruing to or earned by it outside the State into the State;
 - (d) Remit proceeds (in currency or otherwise) and repatriate capital (in cash or assets) outside the State; and
- (i) Amounts received and expenditure made in [*COUNTRY CURRENCY*] or in US Dollars shall be converted from [*COUNTRY CURRENCY*] into US Dollars or from US Dollars into [*COUNTRY CURRENCY*] on the basis of prevailing market rates for the month in which the relevant transaction occurred.
- (j) Amounts received and expenditure made in currencies other than US Dollars or [*COUNTRY CURRENCY*] must be converted into US Dollars or [*COUNTRY CURRENCY*] on the basis of the monthly average of prevailing market rates for the month in which the relevant transaction occurred.

8.4 Role of State in Financing

- (a) The State shall cooperate with the Financing Plan, but is not obliged to provide any funds or credits, issue guarantees or otherwise become liable directly or indirectly for any financing of the Project.
- (b) The State shall facilitate the financing arrangements set out in the Financing Plan by the timely grant of requisite approvals to the creation, registration and assignment of the Project securities given to lenders as required under the approved Financing Plan.
- (c) The State must use its best efforts to assist the Company to obtain financing for the Project, including entering into agreements and providing formal documents that the lenders reasonably require. The State must promptly consider requests for approvals concerning the financing and must not unreasonably withhold or delay those approvals.

8.5 State Guarantees

- (a) The Company's and its Affiliates' capital, property and assets shall not be expropriated except for public purposes or interest, and only in accordance with due process of law on a non-discriminatory basis, and with the condition of prompt, adequate and effective compensation by the State according to Applicable Law.
- (b) The State will protect the Company's and its Affiliates' capital, ownership of structural and movable property, together with all rights and interests of the Company including the rights of exclusivity set out in Section 2.2 on or in connection with the Mining Area, from nationalization, confiscation, liquidation, or requisition, unless in accordance with Applicable Law and in each case subject to reimbursement for all resulting losses and costs incurred by the Company. Such assets may not be seized, impounded, sequestered, or disposed of by the State, or any instrumentality of the State, any authorized representative of the State, or the Local Government except in accordance with Applicable Law and an order of a court of competent jurisdiction.
- (c) Neither the State nor any of its instrumentalities, agencies, authorized representatives, nor the Local Government, may interfere with the rights, interests, or activities of the Company on the Project Area or in any way connected with the Company, except where provided by the general Applicable Law or this Agreement.
- (d) The State, its instrumentalities, agencies, and authorized representatives shall provide the Company an investment regime as favorable as that granted to the State legal entities and individuals and foreign investors involved in similarly situated mining operations.
- (e) The State shall not do or cause to be done or permit any act, thing or omission whether legislative, executive or administrative which discriminates adversely and unfairly against the Company or the Project if it results, upon its application, in a deprivation of the full enjoyment of the rights granted or intended to be granted to the Company under this Agreement.

9.0 Financial Records and Statements, Accounting Standards and Currencies

9.1 Payments and Exchange Rates

- (a) Unless otherwise specified in this Agreement, payments to the State may be made in US dollars or other foreign currency which is freely convertible directly to the Central Bank for the account of the State.
- (b) The payment of the Company's direct obligations to the State for Taxes and duties shall be in [*COUNTRY CURRENCY*], unless the Parties otherwise agree. However, the Company shall make payments of sums it collects on behalf of the State, including but not limited to Taxes withheld from the salaries or wages of the employees of the Company and any other sums payable to other persons from which a portion is required by Applicable Law to be withheld or retained by the Company on behalf of the State, in currency in which such salaries or wages or such other payments are made.

- (c) It is the intention of the Parties that neither the State nor the Company should experience an exchange gain or loss at the expense of or to the benefit of the other. However, if there be any gain or loss from exchange of currency, it must be credited or charged to the accounts with the average monthly exchange rates calculated in accordance with this Section identified in the relevant accounting records or statements.

9.2 Financial Records and Financial Statements

- (a) The Company is responsible for maintaining accurate accounting records [US GAAP][IFRS][Good Industry Practice] in a currency agreed upon by the Parties, in order to comply with Applicable Law and this Agreement and to support all fiscal returns or any other accounting reports required by the State in relation to the Project.
- (b) The Company must keep in the State complete, accurate and up to date technical and commercial books and records of all Mining Operations under this Agreement, including those relating to all revenues, expenditures, Mineral production, shipment, sales or use of mineral production and products, all maps, geological, geophysical, mining, technical and other data, records and interpretations, Mineral analyses, samples and reports, connected with and arising from such Mining Operations.
- (c) The Company must supply and file such technical and commercial information, reports, returns and statements at such times and in such form as may be required by Applicable Law.
- (d) All books and records must be maintained and made available for inspection by an auditor appointed under and in accordance with this Agreement for six (6) years following the calendar year in which the books and records were created or, if longer, the relevant period required by Applicable Law.
- (e) The Company shall maintain all financial, employment, commercial and other books and records and comply with all other reporting and filing obligations under Applicable Law and shall conduct its activities in accordance with Applicable Law, Regulations and Directives.

RIGHTS AND OBLIGATIONS

10.0 Mutual Obligations

10.1 Information to Local Government

The State and the Company must keep Local Governments regularly informed about activities under this agreement.

10.2 Applicability of IFC Performance Standards and Equator Principles

Where Applicable Law and regulations on environmental and social impact assessment and management, and pollution prevention are less stringent than the IFC Performance Standards, the Company shall undertake its activities in a manner consistent with the IFC Performance Standards. To remove any doubt, the Company and the State recognise that the IFC Performance Standards outline processes to be followed enabling site-specific environmental compliance limits to be developed, where required.

10.3 Parties' Commitment to Protecting Human Rights

- (a) The Parties each commit themselves to the protection and promotion of the human rights of all individuals affected by the Project, as those rights are articulated in the United Nations' 1948 Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and Applicable Law.
- (b) In all dealings between Company security departments and the police, military, or other security organs of the State, the Parties pledge themselves to comply with Applicable Law and to respect the guidance set forth in the Voluntary Principles on Security and Human Rights.
- (c) The Company shall ensure that its operational policies reflect the responsibility to respect human rights and that the policies have the objectives of preventing, mitigating and remediating any potential or actual negative human rights impacts from Mining Operations.
- (d) A process to procure an independent assessment of the potential for human rights impacts from the presence and activities of the Project, and how the Company's policies, procedures, and practices affect the human rights of the population in the area of the Project, such process will be guided by the tenets of transparency, independence, and inclusivity, as defined by international standards.

10.4 Prevention of Corruption

10.4.1 Obligations of the Company

The Company, its officers, directors and employees acknowledge and agree that they are subject to the anti-bribery and anti-corruption provisions of Applicable Law and of the jurisdictions in which the Company is

organized or conducts business (collectively, “**Anticorruption Laws**”), and shall conduct their activities in the State in accordance with their obligations under the Anticorruption Laws.

10.4.2 Obligations of the State

The State acknowledges and agrees that State Officials at all levels of the State are subject to the Anticorruption Laws and shall conduct their activities in accordance with their obligations under the Anticorruption Laws.

10.4.3 Other Applicable Norms

The Parties acknowledge and agree that this Section and all payments made by the Company, or any of its contractors, subcontractors, officers or directors to State agencies or State Officials at any level shall be public information and made public in accord with the Extractive Industries Transparency Initiative criteria.

10.4.4 Understanding of the Parties

- (a) The Parties to this Agreement understand that:
 - (i) The offering, solicitation or acceptance of an offer, promise or gift of any pecuniary or other nature, including facilitation payments, whether directly or through intermediaries, to any private party or State Official, in order that the private party or a third party act or refrain from acting in relation to the performance of official duties to achieve any favour or to otherwise obtain any business advantage; and
 - (ii) Any acts complicit in any act described in this Section, including incitement, aiding and abetting, conspiracy to commit or authorization of such acts, are acts inconsistent with the Applicable Law, the Anticorruption Laws and this Agreement are acts subject to appropriate criminal and other enforcement and sanctions.
- (b) The State shall prosecute such activities in accordance with the Anticorruption Laws, shall seek enforcement action by the government of any foreign State where appropriate, and shall fully cooperate with any such action by a foreign government.

STATE RIGHTS

11.0 State Access to Project

The State shall have the right, at any reasonable time and upon [forty-eight (48)] hours Notice, to inspect the Mining Area at its sole cost and risk, and ensure that all Mining Operations are carried out in accordance with this Agreement and the provisions of Applicable Law.

12.0 Inspection of Books, Records and Information, Independent Audit

- (a) The State has the right to audit the Company's accounts, books and records maintained under this Agreement and Applicable Law for each calendar year within two (2) years from the end of each such calendar year. Any such audit will be at the State's sole cost and risk, performed by and through a technical inspector or an independent professionally qualified auditor, completed within twelve (12) months of its commencement, and conducted in a manner which will result in the minimum amount of inconvenience to the Company.
- (b) The State's inspector or auditor shall have the right in connection with such audit, to visit and inspect, during normal business hours on any Day, all sites, plants, facilities, warehouses and offices of the Company directly or indirectly serving its activities under this Agreement and to visit and question personnel associated with those activities in accordance with Applicable Law.
- (c) The State shall, and shall ensure that any inspector or auditor shall, use such information only for the purpose for which it was disclosed and not for any other purpose and shall keep confidential all information provided to it or any of its agents, advisors, representatives, officers, directors or employees by or on behalf of the Company or otherwise obtained by it or any of its agents, advisors, representatives, officers, directors or employees in connection with the audit which relates to the Company or the business of the Company.

STATE OBLIGATIONS

13.0 State Assurances and Obligations

13.1 Legislation to Approve Agreement

- (a) The State undertakes to use its best efforts to adopt any legislation necessary under Applicable Law to ratify this Agreement and to give effect to the exemptions from Applicable Law and Tax Law expressly provided in this Agreement.
- (b) Pending ratification of this Agreement, the Company may undertake additional reconnaissance or exploration activities within the Mining Area subject to compliance with all Applicable Law and rights and obligations of this Agreement.
- (c) Except as provided in this Agreement, the provisions of this Agreement shall not come into operation until the Effective Date.

13.2 Tax Stabilization Clause

- (a) “Stability Period” means that period of time beginning on the Effective Date and ending on the ____th anniversary of the [Date of Commencement of Commercial Production][production of the quantity of commercial Minerals identified in the Feasibility Study][date of termination of this Agreement][date of recovery of capital costs plus a rate of return identified in the Financing Plan].
- (b) During the Stability Period, the provisions of this Agreement shall control
- (c) If, during the Stability Period, a provision of the Tax Law in existence at the date of the State’s signature on this Agreement is changed or repealed, or new or increased fiscal impositions in the nature of a Tax or duty on the Company or a royalty or Tax on Minerals or on the production of Minerals are made by the State, except for changes expressly provided for in this Agreement, and as a result the Company is adversely and significantly financially affected or its liabilities are materially increased, the Parties must agree on a fair and reasonable method to compensate the Company for those changes or new fiscal impositions.
- (d) The State shall reimburse the Company as soon as is practicable (or at the State’s option, make offsetting changes in any law, statute, regulation or enactment applicable to the Company) to ensure the Company is fully and fairly compensated for any losses, costs or other adverse effects incurred by the Company by reason of a failure by the State to comply with the foregoing provision.

14.0 Fair and Economical Project Operation

The State shall not adopt any provision of Applicable Law that imposes a material financial burden or material other burden solely on the Company or any of its Affiliates, whether or not such provision specifically identifies the Company or any of its Affiliates as the target thereof, provided that this provision shall not apply to any Applicable Law reasonably intended to protect the safety, health, welfare or security of the State or citizens thereof or to fulfill the

State's international obligations. The Company shall be bound by all non-discriminatory changes in Applicable Law concerning health, safety, labour, the environment, and to address the proximate human rights impacts of Mining Operations, *provided that* the changes in social and environmental standards are reasonable and achievable under Good Industry Practice.

15.0 Permits

- (a) The State undertakes, so far as possible and in accordance with the terms of this Agreement and Applicable Law, to expeditiously provide all necessary approvals and assistance for the development and operation of the Project and as otherwise may be reasonably required by the Company in relation to the rights granted to it under this Agreement. The State shall establish simple and expedited procedures for the approval of all Permits required for the construction of the Project in a manner consistent with Applicable Law and so as not to be unreasonably withheld or delayed.
- (b) The State will ensure that Local Governments will not require the Company to apply for more than one business license under the Applicable Law, and will not charge more than one business license fee.

16.0 Expatriates

The State shall issue such permits as may be required to allow expatriates employed by the Company and their immediate family members freely to enter into, work and reside in the the State in connection with the operations of the Project, and to depart from the the State, so long as they conduct themselves in accordance with the Applicable Law.

17.0 Infrastructure

17.1 Availability of Existing Infrastructure

The Parties to this Agreement may, instead of providing for construction of new infrastructure needed for the Project, agree upon reasonable terms and conditions for use of existing infrastructure.

17.2 Access to Infrastructure

To the extent commercially feasible, the Company shall endeavour to plan and develop all forms of infrastructure (including the infrastructure for electrical energy, process water, potable water, communications, and roads and transportation) in ways that facilitates its shared use by others and its contribution to the sustainable social and economic development of the area in which it is located. The Company shall also endeavor to ensure that individuals from local communities are able to access Project infrastructure and services; those individuals will not be required to enter into a "user agreement" with the Company in relation to such access. All other users shall first enter into a user agreement with the Company. The State will not under the Applicable Law close any public or private road giving access to the Mining Area without first obtaining the written consent of Company, except when such closure is temporarily unavoidable as a result of emergency conditions threatening public safety.

18.0 State Obligations Re: Local Governments and Landowners

- (a) The State shall cooperate with the Company in verifying that Indigenous or Tribal Populations with claims to the surface of the Mining Area are in fact the rightful owners or occupiers thereof. Past permanent or seasonal occupation or use of the Mining Area by Indigenous or Tribal Populations shall create a presumption of rightful occupation.
- (b) The State shall cooperate with the Company in keeping the Local Government, traditional or other landowners or occupants and Indigenous or Tribal Populations regularly informed about activities under this Agreement and Consult with them regularly about activities or planned activities under this Agreement.
- (c) The State shall, in accordance with Applicable Law, respect and enforce agreements made between the Company, Local Government, traditional or other landowners or occupants and Indigenous and Tribal Populations.
- (d) The State shall cooperate with the Company and Local Government to resolve disputes between the Company and Local Government.
- (e) Financial benefits to be received by a Local Government from payments made by the Company to the State under Applicable Law or under this Agreement shall be provided to the Local Government without added cost to the Company. The State shall provide an annual report to the Company and the Local Government on such funds provided by the State to the Local Government. The State shall comply with any agreement with the Company or the Local Government as to revenue sharing, and failure to comply therewith is a breach of the obligations of the State under this Agreement.

COMPANY RIGHTS

19.0 Company Rights

19.1 Affiliated Company Transactions

Sales, leases, licenses and other transfers of goods and services between the Company and its Affiliates shall be at an arm's-length fee basis negotiated between the Parties in substantial accordance with the substantive principles and guidelines set forth in the *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* published by the Organization for Economic Cooperation and Development or subsequent substantive guidelines having a similar purpose agreed to by the Parties.

Any discounts or commissions allowed in transactions between the Company and its Affiliates shall be no greater than the prevailing rate so that such discounts or commissions will not reduce the net proceeds below those which it would have received if the parties had not been Affiliates. Upon request of the State, the Company shall provide to the State documentation of the prices, discounts and commissions, and a copy of all contracts and other relevant documentation related to transactions with Affiliates.

19.2 Company Hiring Decisions

Subject to Section 24.0, the Company may at all times choose its employees and shall be free to employ such persons who are not citizens of the State as are required for the efficient conduct of the Project. Where Applicable Law stipulates minimum technical qualifications or minimum levels of competence for any technical post, the State undertakes to recognize equivalent technical qualifications or certificates of competency held by persons who are not citizens of the State, *provided that* such qualifications and/ or certificates of competency shall have been issued by a recognized institution or statutory authority in any other country employing standards comparable to those in Applicable Law. The Company shall also conduct a program to acquaint all expatriate employees and contractors with Applicable Law and customs of the State.

19.3 Security

The Company shall have the right in keeping with the provisions of Applicable Law, to directly or indirectly or under contract with other persons, establish and maintain its own security force for the purpose of protecting its staff or maintaining security within the Mining Area, with power both (i) of detention (any detained person to be handed over to the appropriate State authorities as soon as practicable), and (ii) exclusion from the Mining Area and such other parts of the Project Area as may be properly restricted for safety or security reasons. Any such security force will be subject to Applicable Law at all times but shall not have the power of interrogation. The Company shall ensure and monitor that the security force at all times will conduct itself in accordance with Applicable Law (including all Laws relating to apprehension and detention and human rights) and the Voluntary Principles on Security and Human Rights.

COMPANY OBLIGATIONS

20.0 Development Obligations

- (a) The Company must exercise its rights and obligations under this Agreement according to the terms hereof, the Documents, and consistent with Good Industry Practice and Applicable Law.
- (b) The Company shall use its best efforts to construct and provide the required facilities and carry out the Project with due diligence, efficiency and economy, up to the Date of Commencement of Commercial Production.
- (c) The Company shall use commercially reasonable efforts to optimize the recovery of Minerals and to produce and market Minerals removed from the Mining Area at rates contemplated by the Feasibility Study any subsequent feasibility study or any mine plan. All operations shall be conducted consistent with Good Industry Practice and Applicable Law.
- (d) The Company may not make any material changes to operations detailed in the Feasibility Study unless it first submits those changes to the State for comment following the same procedure set forth above for obtaining State comments on the Feasibility Study.

21.0 Use of Local Goods and Services

The Company shall, when purchasing goods and services required with respect to Mining Operations, give first preference, at comparable quality, delivery schedule and price, to goods produced in the State and services provided by the State citizens or businesses, subject to technical acceptability and availability of the relevant goods and services in the State.

22.0 Local Community Development

22.1 Community Development Agreement

Within thirty (30) Days after the Effective Date of this Agreement, the Company shall enter into Consultation and negotiations with the objective of concluding one or more community development agreements as described in this Section or agreements with communities impacted by the Project, to promote sustainable development and enhance the general welfare and quality of life of inhabitants, as well as to recognize and respect the rights, customs, traditions and religion of the affected persons (each, a “**Community Development Agreement**”). It is the objective of each of the Parties hereto that the Mining Operations shall be carried out in a manner that is consistent with the continuing economic and social viability of centers of population that have formed and which may form as a result of such operations during the term of this Agreement. Upon request of the State at any time the Company shall consult with the State and with the community mutually to establish plans and programs for the implementation of this objective and thereafter the Company shall cooperate with the State with regards to its effort concerning the realization of such plans and programs.

Each Community Development Agreement shall be subject to Applicable Law, and shall;

- (a) Address both how local communities can take advantage of the development opportunities presented by the Project, and how the Project's adverse impacts can be mitigated;
- (b) Serve as the agreement that specifies how the Company's obligation to spend funds for local development shall be met;
- (c) Address environmental, social, and economic conditions during mining and after mine closure, and the eventual transition from a mining economy to a post-mining economy in the Project Area as may be agreed upon among the Parties to such Community Development Agreement; and
- (d) Be based on the objectives listed in Annex B.

22.2 Relationship of This Agreement to Community Development Agreement

[Where an inconsistency occurs between a provision in the Community Development Agreement and the terms or conditions of this Agreement, the provision in the Community Development Agreement shall prevail unless this Agreement specifically states that the provision in this Agreement shall prevail.] [A final written and reasoned decision of a duly constituted court or arbitral panel declaring a material breach of the Community Development Agreement by the Company, shall constitute a breach of this Agreement.] [A breach of the Community Development Agreement shall be governed by the terms thereof.] [See comments for discussion of issue.]

22.3 Local Business Development Plan

The Company resolves to cooperate with the State in carrying out the State's responsibilities by developing a local business development program to promote economic development and growth in the area of communities impacted by the Project. Such a program would be modified from time to time to fit the existing circumstances related to the particular operating phase (development, construction and operation) in the life of the Project. The program would be based on the objectives listed in Annex C.

23.0 Community Health

The Company resolves to cooperate with the State in carrying out the State's responsibilities to provide subsidized health education, medical treatment, care and attention at acceptable standards to all inhabitants of the communities affected by the Project consistent with the national health policy of the State set out in Applicable Law, and to maintain an adequate and properly staffed dispensary or hospital headed by a resident medical doctor. However, nothing in this Agreement shall relieve the State from any obligations under Applicable Law to provide adequate and accessible health care to communities affected by the Project.

24.0 Employment and Training of Local Citizens

24.1 Minimum Employment Levels

In selecting employees to carry out its Mining Operations under this Agreement the Company shall give preference to qualified and competent the State executives, officers, engineers, consultants, technicians and skilled and semi-skilled labour.

24.2 Investment in Skills of Local Work Force

The Company shall develop and implement an annual training plan with the objectives to:

- (a) Organize training of its employees to upgrade employees' skills and provide further practical experience;
- (b) Train employees in line with the Company's short and mid-term human resource plans; and
- (c) Upgrade selected employees' qualifications by enrolling them in studies inside or outside the State on a contractual basis to further upgrade their professional qualifications.

24.3 Labour Training and Capacity Enhancement

The Company shall develop and implement a comprehensive training program for the State personnel in the State and in other countries, if necessary, and carry out such program for training and education in order to meet the requirement for various classifications of skilled and semi-skilled full time employment for the Project.

24.4 Management Training and Capacity Enhancement

The Company shall develop and implement training for the State personnel in the State and in other countries, if necessary, in order to qualify them for technical, administrative and managerial positions, with the objectives to:

- (a) Establishing and operating a vocational and training institute to provide vocational, technical and advanced training programs in the community;
- (b) Furnishing on-the-job counterpart training, not only in the State but to the extent reasonably feasible in the offices of the Company in the State, in order that the beneficiaries may receive training in the overseas aspects of the Company's shipping, marketing and accounting functions;
- (c) Providing scholarships for inhabitants of affected communities to pursue studies, including advanced studies in the the State or abroad; and
- (d) Enhancing such training and educational opportunities as already exist in the vicinity of the local community.

25.0 Labour Standards

25.1 Labour Standards

- (a) The Company shall adhere to provisions of Applicable Law on labour.
- (b) The Company, its affiliates, contractors and subcontractors shall observe guidance provided by Good Industry Practice, as well as internationally recognized labour standards in relation to all International Labour Organization agreements to which the State is a Party, and shall respect as provided therein the right of its employees to organize.
- (c) The Company, its Affiliates, contractors and subcontractors shall not utilize forced labour, nor shall the Company, its affiliates, contractors and subcontractors utilize child labour, as outlined in the International Finance Corporation Policy Statement on Forced Labour and Harmful Child Labour of March 1998.
- (d) The Company shall adopt a health and safety management system similar to ANZI Z10 or OHSAS 18001.
- (e) The Company shall not engage in or support discrimination in hiring, remuneration, access to training, promotion, termination, or retirement based on race, national or social origin, caste, birth, religion, disability, gender, sexual orientation, family responsibilities, marital status, union membership, political opinions, or age.

25.2 Health & Safety

- (a) The Company shall observe Good Industry Practice for the protection of the general health and safety of its employees and of all other persons contracted by the Company having legal access to the area covered by this Agreement.
- (b) The Company shall install and utilize such recognized modern safety devices and observe such recognized modern safety precautions as are provided and observed under Good Industry Practice. The Company shall maintain in a safe and sound condition for the duration of this Agreement all infrastructure and equipment constructed or acquired in connection with the Project and required for ongoing operations.
- (c) The Company shall train its employees in accordance with generally accepted health and safety procedures and practices.
- (d) The Company shall construct, maintain, and operate health programs and facilities to serve its employees which programs and facilities shall install, maintain and use modern health devices and equipment and shall practice modern health procedures and precautions in accordance with accepted international medical standards. Any Company-supplied housing shall be built to a standard that provides suitable living environments adequate for health and well being, and which meet applicable sanitation standards.

26.0 Mining Closure/Post-Closure Obligations

26.1 Closure Plan and Closure Obligations

- (a) The Company shall prepare and deliver a closure plan to the State pursuant to Section 2.4(e) of this Agreement (“**Closure Plan**”). The Closure Plan shall address the anticipated environmental, social and economic state of the Project Area during the next five-year period of Mining Operations, and shall be prepared in Consultation with communities in the Project Area. It shall be consistent with any Community Development Agreements, and prepared consistent with guidance provided by the Planning for Integrated Mine Closure Toolkit and related guidance published by the International Council on Mining and Metals. The Closure Plan shall be updated through the same process by which it was prepared each time that there is a substantial change in Project operations. In the event that no such updated Closure Plan has been submitted for five (5) years, the Company shall deliver an updated Closure Plan on the sixth anniversary of the last such submission.
- (b) The Company shall, after Consultation with communities in the areas affected by Mining Operations, deliver to the State a proposed final Closure Plan not later than twelve months before the planned end of the Commercial Production. After review and comment by of the State (with or without modification), the Company shall deliver the final Closure Plan to the State by the planned end of Commercial Production. The final Closure Plan may be amended by agreement between the Parties, during the performance of closure activities, at the request of the Company or the State, subject to any approval required by Applicable Law.
- (c) After cessation of Commercial Production, the Company shall continue to perform the required environmental management of the Project Area as set forth in the Environmental Management Plan and the final Closure Plan.
- (d) After cessation of Commercial Production, the Company shall provide to the State every 180 Days (or such alternative period as may be agreed by the Parties from time to time) a report explaining progress in the implementation of the final Closure Plan.
- (e) Upon completion of the final Closure Plan, the State shall inspect the Mining Area and provide the Company with Notice as to whether the Company has completed closure in accordance with the final Closure Plan.

26.2 Guarantees for Closure Expenses

The Company shall within ninety (90) Days of the Effective Date, provide a mine closure guarantee to the State. The purpose of this mine closure guarantee is to ensure the completion of the Company’s Closure Plan.

- (a) The mine closure guarantee shall be in an amount calculated to be necessary to implement the Closure Plan should the Company fail to implement the Closure Plan during the five-year period covered by the then current Closure Plan. The amount of the guarantee shall be updated any time the Closure Plan is updated, or with the five-year update of the Closure Plan under Section 26.1, so that it continues to be sufficient to ensure that all steps in the Closure Plan can be completed in a satisfactory manner should the Company fail to implement the Closure Plan.

- (b) The mine closure guarantee shall consist of financial assurance in the form required by Applicable Law.
- (c) During the life of the Project, if there is any substantive change in the Mining Operation, or there is any other event that means that the amount of the mine closure guarantee is no longer an accurate estimate of the amount necessary to implement the Closure Plan should the Company fail to implement it, the amount of the guarantee shall be recalculated, and increased or decreased accordingly, and any additional payment or repayment shall be promptly made.
- (d) The State shall return to the Company the full sum of the Company's mine closure guarantee within [X] Days following verification by the State that the Company has fulfilled all the obligations of the final Closure Plan. The State is permitted to inspect the Mining Area prior to approval to confirm the obligations in the Closure Plan have been fulfilled. Upon return of the Company's guarantee, the State must itemize the sum of any amount withheld from the returned guarantee due to any alleged lack of compliance with the Closure Plan.
- (e) The State may use any mine guarantee monies and any investment returns on such mine closure guarantee monies only for the purposes of implementing the Closure Plan should the Company fail to implement it, and for no other purpose.

26.3 Post-Closure Monitoring

The Company shall in Consultation with local community leaders, develop and implement a post-closure monitoring committee, with the mandate to supervise the monitoring of geophysical stability, water quality, and rehabilitation of contaminated sites and restoration of land for post-closure use. The post-closure monitoring shall take place for a period after the cessation of Commercial Production, the length of which shall be agreed in the Closure Plan.

27.0 Rights of Citizens of the State

27.1 Company Grievance Mechanism

- (a) The Company shall, at its own expense, promptly respond to communities' concerns related to the Mining Project as outlined in paragraph 23 of IFC Performance Standard 1.
- (b) Where not established under a community development agreement, the Company will establish a grievance mechanism to receive and facilitate resolution of the affected communities' concerns and grievances about the Company's environmental and social performance. The grievance mechanism should be proportionate to the risks and adverse impacts of the Project. The grievance mechanism should be established in Consultation with the communities who are anticipated to use it, through an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, at no cost to the affected communities and without retribution. The mechanism should not impede access to judicial or administrative remedies. The Company shall inform the affected communities about the mechanism in the course of its community engagement process.

27.2 Forum for Claims and Disputes Involving Natural Citizens of the State

A natural citizen of the State who has a claim or dispute regarding the Project may submit such claim or dispute for resolution under Applicable Law, or under an applicable customary law dispute resolution mechanism recognized under Applicable Law. The Company consents to the jurisdiction of local institutions for these purposes.

OTHER TERMS AND CONDITIONS

28.0 Obligations of Contractors and Subcontractors

28.1 Applicability of Obligations to Contractors and Their Subcontractors

- (a) Any agreement between the Company and contractors or subcontractors shall contain appropriate terms by which the contractor or subcontractor shall acknowledge the terms of this Agreement to the extent applicable to the activities undertaken by the contractor and its subcontractors.
- (b) The Company shall ensure that its supervision and management of its contractors and their subcontractors is sufficient to inform it of when ever the practices of its contractors or their subcontractor may place them, or the Company, at risk of violating this Agreement.
- (c) Nothing in this contract shall exempt the Company from any and all obligations under this Agreement despite the delegation of such obligations to a contractor or its subcontractors.

28.2 Applicability of Obligations to Parent Company, and Affiliates

The Company shall ensure that its Affiliates to the extent reasonable and appropriate under Applicable Law, comply with the terms of this Agreement as if they were party to it.

29.0 Assignment

29.1 Affiliated Company Assignment

The Company shall have the right to assign all (but not less than all) its rights and interest under this Agreement to an Affiliate subject to notification to the State, *provided that* the Affiliate acknowledges and agrees to assume all of the obligations of the Company under this Agreement, has the capacity to perform those obligations, and that the Parent Company guarantee the obligations of the Affiliate to the same extent of the guarantee provided by the Parent Company on behalf of the Company.

29.2 Third Party Assignment

The Company shall have the right, with the prior written approval by the State, which approval shall not be unreasonably withheld or delayed, to freely assign all its rights and interest under this Agreement to a third party, *provided that* third party acknowledges and agrees to assume all of the obligations of the Company under this Agreement, and has the capacity to perform those obligations. Nothing in this Section shall grant the State any right to approve any arrangement by the Company for the financing of the Project, the creation of security interests or the transfer or assignment of interests in this Agreement or in respect of the Project in connection with such financing.

29.3 Capacity of Successors and Assigns

No assignment of any or all of the Company's rights hereunder shall be made, and none shall be effective, if the assignee lacks the technical, financial and managerial capacity to honour the obligations in this Agreement.

29.4 Release

On any effective assignment of this Agreement to a third party approved by the State, the Company and the Parent Company shall be released from liabilities under this Agreement to the extent assumed by the third party.

29.5 No Assignment by State

The State shall not transfer or assign its rights or obligations in this Agreement or create or permit to be created any encumbrance or claim on its rights in this Agreement.

30.0 Availability of Information

30.1 This Contract a Public Document

- (a) This Agreement and the Documents required to be submitted under Section 2.4, by any past and present Parties is a public document, and shall be open to free inspection by members of the public at the appropriate State office and at the files designated in the following subsection (e), and at the Company's office in the State during normal office hours.
- (b) There shall be a presumption that any information regarding this Agreement, or the activities taken under this Agreement is public, other than Confidential Information.
- (c) All reports and submissions by the Company to the State, and all responses by the State, are freely available on request to the State or the Company, *provided that* Confidential Information may be redacted prior to disclosure.
- (d) The Company shall maintain document files to facilitate public access to this Agreement and the Documents, and informed participation in all Consultation required by this Agreement. These files shall contain this Agreement, the Documents, all adopted updates and amendments thereto, and information on payments and reporting under Section 30.0 of this Agreement. These files shall be maintained at the following locations and shall be open to all members of the public during normal business hours:

- (e) On payment of a reasonable fee prescribed by the State, any member of the Public shall be entitled to obtain a copy of this Agreement from the appropriate State office or at the Company's offices listed above.

30.2 Certain Information Confidential

- (a) Confidential Information shall be retained by the State and the Company in strictest confidence and shall not be disclosed to any third party without the express prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, provided that the Company's consent shall be deemed given if not withheld in writing within 24 hours after the State notifies the Company in writing of an emergency situation where disclosure is required to protect the health, safety, and security of the citizens
- (b) **"Confidential Information"** shall mean:
 - (a) Information that is by law confidential under Applicable Law;
 - (b) Personnel matters, health records of individual employees, or other documents in which employees or others have a reasonable expectation of privacy and other matters that involve the privacy of individuals;
 - (c) Confidential technical or proprietary information regarding equipment, process innovations, or business secrets;
 - (d) Confidential legal matters, including advice from attorneys;
 - (e) The Company's intellectual property related to the Project, including geological information and mineral reserves;
 - (f) Information (other than Confidential Information) obtained in the course of an audit as set forth in Section 11.0 above;
 - (g) Information disclosed to the other Party to this Agreement designated as "Confidential" by Notice to the other Party at the time of its initial disclosure to such Party, provided that such designation shall be deemed to be a representation that the disclosing Party has reasonably determined after review of such information that maintaining the confidentiality of such information is necessary to protect business secrets or proprietary information .
- (c) The term "Confidential Information" does not mean or include information that:
 - (a) becomes publicly available without wrongful disclosure;
 - (b) was obtained by a Party from a Third Party who is not known by the obtaining Party to be under any obligation of confidentiality with respect to such information;
 - (c) is required to be disclosed by Applicable Law, by any law to which the Company or its Affiliates is subject, by any court proceeding or arbitral award, or by any applicable rule of a stock exchange;
 - (d) is disclosed to Affiliates, professional advisers, potential providers of finance, bona fide potential purchasers; or
 - (e) Confidential Information specifically related to any part of the Mining Area that is relinquished from the provisions of this Agreement.

- (d) The Company and the State shall implement the Extractive Industries Transparency Initiative (EITI) and, where appropriate, the Company shall contribute to the State's implementation of the EITI by becoming an EITI supporting company.
- (a) The Company and the State shall each comply with requirements of the Extractive Industries Transparency Initiative with respect to all payments and reporting to be made by either of them pursuant to this Agreement. Breach by one Party of these provisions shall not excuse compliance by the other Party.

31.0 Force Majeure; Suspension of Operations for Market Conditions

31.1 Obligations of Party in Event of Force Majeure

If a Party is prevented from complying with this Agreement, in whole or in part, by an event or circumstance of Force Majeure, it shall give written Notice to the other Party as soon as practicable after its occurrence (specifying the nature of the event or circumstance, what is required to remedy the event or circumstance – if remedy is possible, the estimated time to cure or overcome the event or circumstance, and the obligations that cannot be properly or timely performed on account of the event or circumstance) and the obligations of that Party other than the payment of money due, the performance of which are prevented by the Force Majeure event or circumstance shall be suspended during the continuance of such Force Majeure.

31.2 Extension of Agreement

The term of this Agreement shall be automatically extended for the period of the Force Majeure.

31.3 Negotiation in Event of Force Majeure

If an obligation is suspended by reason of Force Majeure for more than [one (1) year], the Parties shall enter into good faith negotiations to revise the terms of this Agreement to reflect the changes circumstances, *provided that* this Agreement shall remain in effect during the period during which the parties are negotiating the terms of any such revision, *provided that* nothing in this Agreement shall require the Company to settle any strike or other labour dispute otherwise than on terms acceptable to it, or to contest the validity or enforceability of any law, regulation, order, determination, or other legal proceeding.

31.4 Suspension of Operations for Market Conditions

Where the Company proposes to reduce or suspend Mining Operations due to market conditions, the Company shall notify the State thirty (30) Days in advance giving reasons for the proposed suspension, and the State, upon determining that the reason for suspension is reasonable, shall approve the suspension for up to six (6) months in the first instance, and for a further period not exceeding twelve (12) months. The State may terminate this Agreement if the Company suspends all Mining Operations for more than thirty-six (36) months. In such case, the Project shall be considered as not remaining in Commercial Production at the expiration of the 36th month in which Mining Operations are suspended.

In the event of temporary closure or a cessation of Mining Operations, the Company shall be responsible for performing any and all environmental management of the Mining Area as set forth in the Environmental Management Plan. Should the State terminate this Agreement as a result of a suspension of Mining Operations, the Company shall be required, following the approval of the State, to implement the Closure Plan, and the Company shall, upon Notice from the State and within [thirty (30) Days], adjust the amount of the mine closure guarantee required under this Agreement.

32.0 Cooperation, Dispute Resolution and Arbitration

32.1 Cooperation

The Parties agree to provide Notice to each other of any controversy or dispute, and thereafter:

- (a) To seek amicable resolution of any disputes concerning the interpretation or application of this Agreement;
- (b) To submit any controversy or dispute relating exclusively to technical matters to an Independent Sole Expert within ten (10) Days after a Party provides Notice to the other of a dispute not resolved amicably. The decision of such Independent Sole Expert must be rendered within 30 Days. Such decision shall be final, and not subject to appeal. In case of disagreement as to the technical nature of the difference or dispute or in case of disagreement between Parties over the choice of the Independent Sole Expert, the controversy or dispute will be submitted to arbitration in accordance with the provisions of this Agreement. The Independent Sole Expert shall act on the following basis:
 - (a) The Independent Sole Expert shall act as expert and not as arbitrator;
 - (b) The items or items in dispute shall be notified to the Independent Sole Expert in writing by the Parties within ten (10) Days of the Independent Sole Expert's appointment;
 - (c) The Independent Sole Expert shall decide the procedure to be followed in the determination;
 - (d) The determination of the Independent Sole Expert shall (in the absence of manifest error) be final and binding on the Parties; and
 - (e) The costs of the determination, including fees and expenses of the Independent Sole Expert, shall be borne equally between the Parties.

32.2 Arbitration

All disputes, controversies or claims arising out of or related to this Agreement, or the breach thereof, shall be submitted to the International Center for Settlement of Investment Disputes ("ICSID").

- (a) The State and the Company hereby consent to submit to ICSID any dispute arising out of or related to this agreement for settlement by conciliation followed, if the dispute remains unresolved within ninety (90) Days of the communication of the report of the Conciliation Commission to the parties, by arbitration pursuant to the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States (hereinafter the "ICSID Convention").

- (b) The State irrevocably waives any claim to state or sovereign immunity:
 - (i) In respect to proceedings on the merits of any claim which is the subject matter of the arbitration;
 - (ii) In respect of proceedings to recognise or to enforce or to execute any arbitration award including, without limitation, immunity from service of process and from the jurisdiction of any court; and
 - (iii) In respect of the execution of any such award against the assets or property of the State assets held by the State for commercial purposes or otherwise.
- (c) For purposes of the ICSID Convention and of this Agreement:
 - (i) the Parties expressly stipulate that the transaction to which this Agreement relates is an investment;
 - (ii) **either** [it is hereby stipulated by the Parties that the investor is a national of [name of an ICSID Contracting State] **or** [the Parties agree that, although the Company is a national of the State, it is controlled by nationals of [name(s) of other ICSID Contracting State(s)] and shall be treated as a national of said State[s] for the purposes of the ICSID Convention.
- (d) Any arbitral tribunal constituted pursuant to this Agreement shall consist of three arbitrators, one appointed by each party, and an arbitrator, who shall be Chairman of the Administrative Council of the tribunal, appointed by agreement of the parties or, failing such agreement, by the President of ICSID.
- (e) If ICSID declares itself not to be competent shall be settled in accordance with the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with such Rules. The arbitration shall be held in London, England U.K., in the English language. The arbitral award shall be in writing, and shall be final and binding on the Parties. Judgment on the award rendered may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance for the award and an order of enforcement, as the case may be.
- (f) Unless this Agreement has already been repudiated or terminated, the Parties shall continue to observe and perform all the obligations contained in, and may exercise their rights under, this Agreement notwithstanding the reference of any dispute to arbitration. No Party shall be entitled to exercise any rights or election arising in consequence of any alleged default by any other arising out of the subject matter of the dispute until the dispute has been resolved by arbitration or by agreement of the Parties as the case may be.

33.0 Surrender and Termination

33.1 Surrender

- (a) The Company may surrender its rights under this Agreement by Notice to the State signed by an authorized Company representative on:
 - (a) Sixty (60) Days Notice under this Agreement at any time before the Date of Commencement of Commercial Production; and

- (b) Six months' Notice under this Agreement after the Date of Commencement of Commercial Production.
- (b) Once an effective surrender is made, the Company shall have no obligations and liabilities under this Agreement except as specifically provided herein to the contrary.
- (c) The Company shall remain liable for all obligations accrued before the effective date of the surrender and also for the obligations that must be fulfilled after termination, except for the Project completion and the cost and payment obligations specified in this Agreement.

33.2 Termination by the State

33.2.1 Termination on Certain Events.

The State may terminate this Agreement, without prejudice to any other rights that the State may have, if any of the following events occur:

- (a) Subject to the Section 31.0 of this Agreement, the Date of Commencement of Commercial Production does not occur on or before the end of the [__ x__] month following the Effective Date;
- (b) The Company fails to make a payment when due and then fails to make said payment within sixty (60) Days after the State gives a Notice of the failure to make said payment;
- (c) The Company dissolves, liquidates, becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors, petitions or applies to any tribunal for the appointment of a trustee or receiver for itself, or commences any proceedings concerning itself under a law concerning bankruptcy, or insolvency other than for the purposes of corporate reorganisation;
- (d) Parent Company dissolves or liquidates (other than for the purposes of corporate reorganisation) or becomes unable to perform its obligations under this Agreement and does not provide a financially responsible third party to accept those obligations with the consent of the State, which consent must not be unreasonably withheld or delayed.

33.2.2 Termination on Breach.

- (a) The State may provide Notice to the Company of a material breach of, or a failure to comply with or observe, a fundamental provision of this Agreement. If the Company fails or neglects to either (i) diligently and consistently pursue a course of action that is reasonably intended to remedy that breach or failure within sixty (60) Days (or a longer period as is reasonable in the circumstances) after the State gives a Notice requiring that the breach be remedied or the provision be complied with or observed, or (ii) challenge the State's assertion of breach under Section 32.0 of this Agreement, the State may terminate this Agreement.

33.3 Termination by the Company

The Company may terminate this Agreement without prejudice to any other rights it may have if the State

commits a material breach of a fundamental provision of this Agreement and fails or neglects to diligently and consistently pursue a course of action that is reasonably intended to remedy that breach within sixty (60) Days (or a longer period as is reasonable in the circumstances) after the Company gives Notice requiring that the breach be remedied.

33.4 Retention of Assets on Surrender, Expiration or Termination by the State

- (a) On the expiration of this Agreement, its termination by the State, or the surrender of this Agreement by the Company, the State has the option (subject to the rights of third parties, if any) to acquire any or all other property of the Company not otherwise required by the Company for mining operations at the lesser of net depreciated book value for income Tax purposes, or at fair market value, whichever is the lesser.
- (b) The State must exercise this option within sixty (60) Days of expiration, termination or surrender. After this time expires, the Company may sell to third parties any property which the State has not exercised its option to acquire, with exception of any infrastructure of public or community use, such as, but not limited to: roads, accesses, bridges, highways and in general any construction different to the mining facilities that can contribute to the development of the surrounding communities.
- (c) The State may require the Company to remove any property not acquired by the State or otherwise comply with the environmental rehabilitation plan for the Mining Area.
- (d) Any property not removed within twelve (12) months from the date of expiration, surrender or termination, shall be deemed to be owned by the State without charge.

33.5 Retention of Books and Records

No books and records of the Company may be removed from the State on the expiration, surrender or termination of this Agreement for a period of [__ years] without the prior consent of the State, except that the Company may obtain copies of the books and records of the Project and hold these outside the State.

33.6 Access following Expiration or Termination

On the expiration of this Agreement, its termination by the State, or the surrender of this Agreement by the Company, the Company shall have the rights to access and use the Project Area for as long as the Company reasonably determines access is necessary to permit it to exercise, fulfil, or discharge its accrued rights and obligations under this Agreement.

33.7 Obligations Following Expiration, Surrender or Termination

- (a) On the expiration, surrender or termination of this Agreement by the State under this Agreement, the Company must:
 - (a) Make the Mining Area safe to the reasonable satisfaction of the State so as to prevent injury to persons, livestock or other property, and to prevent offsite damage;

- (b) Comply with the Environmental Management Plan or the Closure Plan as required to avoid imminent damage to the environment; and
 - (c) Otherwise comply with Applicable Law.
- (b) If the State intends to carry out mining operations subsequently in the Mining Area, it must provide Notice within thirty (30) Days of the expiration, surrender or termination date to the Company, and the Company may not take any action inconsistent with that Notice, subject to its rights and obligations under this Agreement and Applicable Law.

34.0 Notices

34.1 General

All notices to be made or given by a Party hereunder (each, a “**Notice**”) shall be in writing and delivered:

To [STATE]:

To [COMPANY]:

34.2 Change of Address

A Party may change its address by Notice to the other Party.

34.3 Delivery Methods

All Notices shall be given:

- (a) By personal delivery (including courier), which shall be deemed to have been delivered on the day on which it shall have been delivered to an apparently responsible person at the address listed in Section 34.1;
- (b) By registered mail, charges prepaid; or
- (c) By electronic transmission, signed by the sender and marked for the attention of the person identified above, with a hard copy mailed to the address above.

34.4 Effective Time of Delivery

All Notices shall be effective and shall be deemed received on the date of personal delivery or delivery by registered mail at the address of the addressee established pursuant to this Agreement, if delivered during normal business hours on any Day, and if not delivered during normal business hours, on the next business Day following delivery. A Notice given by electronic transmission shall be deemed received on the next business Day following the date of transmission.

35.0 Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State, including international treaties and bilateral investment treaties to which the State is a party (collectively, “Applicable Law”).

36.0 Periodic Review

36.1 Modification and Review

This Agreement shall upon written request of a Party, be subject to periodic review once every five (5) years after the Effective Date for the purpose of good faith discussions to consider any proposed modification(s) to this Agreement as may be necessary or desirable in the light of any substantial changes in circumstances that may have occurred during the previous five (5) years, or experience gained in that period. The Parties agree always to be open to discussing any matter which may help maximize the positive development benefits of the Project, or minimize its undesirable impacts. Nothing herein shall preclude a Party from requesting the other Party to initiate discussions regarding any provision herein, *provided that* this Agreement shall remain in effect during the period during which the parties are conducting such discussions.

37.0 Ancillary Provisions

37.1 Entire Agreement

This Agreement and the documents referred to within, contain the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings as between the Parties except where noted herein. All annexes [and schedules and exhibits] to this Agreement are incorporated by reference and form part of this Agreement.

37.2 Survival of Certain Provisions

Notwithstanding termination of this Agreement by either Party or for any reason, including a termination due to a finding that this Agreement or a portion thereof is void, invalid, or unenforceable, Sections [X, Y and Z] shall survive such termination and shall remain effective as to any matters which are the subject of this Agreement or which arise out of, in relation to or in connection with this Agreement. Moreover, any such termination shall be without prejudice to rights, duties and obligations that have accrued prior to termination and, notwithstanding such termination, such provisions of this Agreement as are reasonably necessary for the full

enjoyment and enforcement of such rights, duties and obligations shall survive such termination for the period necessary.

37.3 Amendment

This Agreement shall not be amended, modified, or supplemented except by an instrument in writing signed by the Parties. Any purported amendment, modification or supplement of this Agreement not in writing signed by the Parties shall be null and void.

37.4 Severability

The provisions of this Agreement shall be separate and severable each from the other to the extent that if any portion or any one provision or portion thereof is held to be inoperative or unenforceable in any jurisdiction then the remainder of this Agreement shall remain binding upon and enforceable by the Parties hereto in that jurisdiction and shall be construed as if the Agreement had been executed without such inoperative or unenforceable provision or portion thereof, *provided that* the provision or portion so severed shall not materially affect the remainder of this Agreement.

37.5 Limitations on Waiver

The failure of any Party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of the provision or any part thereof or the right of any Party thereafter to enforce each and every part of the provision in respect of any subsequent default or breach.

- (a) The rights of each party under this Agreement:
 - (a) may be exercised as often as necessary;
 - (b) shall be the exclusive and sole remedies of the Parties with respect to any breach, default, or Notice of termination under this Agreement or any dispute relating thereto or otherwise relating to this Agreement or its subject matter; and
 - (c) may be waived only in writing and specifically.
- (b) Delay in exercising or non-exercise of any such right is not a waiver of that right.

37.6 Indemnification by Company and by the State

37.6.1 Indemnification for Breach of Agreement

Any breach by a Party to this Agreement of any obligation provided for in this Agreement, shall entitle the Party aggrieved by the breach to be indemnified by the defaulting Party in an amount equal to the damage suffered by the aggrieved Party. Any Party, in the event of such breach, may retain as a set-off any amounts it owes to the Party in breach of Taxes and Duties or for any other purpose, including any amounts collected or withheld from third parties for the other Party pursuant to any Applicable Law or agreement.

37.6.2 Indemnification of the State by Company

The Company shall at all times indemnify and hold harmless the State and its officers and agents from all claims and liabilities for death or injury to persons or damage to property from any cause whatsoever arising out of Mining Operations to the extent that the same arises from its failure to comply with any Applicable Law to which it is subject or the terms of this Agreement.

37.7 Conflicts of Interest

[Covered by Section 10.4]

37.8 Governing Language

This Agreement will be provided and executed in the [*DESIGNATED LANGUAGE*] and English languages, with each Party retaining one copy in each language and the Parties agree that in the event of any legal dispute in the interpretation of this Agreement, the [*DESIGNATED LANGUAGE*] version shall prevail.

37.9 Further Acts

The Parties shall execute such documents and do and perform such acts that lie within their power and are necessary to give full effect to, and to give each other the full benefit of, this Agreement.

37.10 Duplicate Originals

This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one original.

37.11 Representations and Warranties

Each Party warrants to each other Party that at the date of this Agreement it has full power and lawful authority to execute and deliver this Agreement and to perform its obligations under this Agreement. Except as expressly stated in this Agreement, no representation, inducement or warranty was, prior to the execution of this Agreement, given or made by one of the Parties hereto with the intent of inducing the other Party to enter into this Agreement, and any representations, inducements or warranties that may have been so given are hereby denied and negated.

38.0 Good Faith

The Parties to this Agreement shall have a simple obligation to act in good faith in all matters related to this Agreement.

[SIGNATURE PAGES FOLLOW]

ANNEX A

ANNEX A-1

Mining Area

[Insert Legal Description of Mining Area, using appropriate parameters (UTM coordinates or the like), including maps]

ANNEX A-2

Project Area

[Insert Legal Description of Project Area, using appropriate parameters (UTM coordinates or the like), including maps to include roads, ports, infrastructure, physical area to be impacted by Mining Operation, etc.]

ANNEX B

Community Development Agreement Objectives

In furtherance of the objectives in 26.1, the provisions of the Community Development Agreement (“CDA”) shall include but not be limited to the following:

- (a) The person, persons, board, committee, foundation, trust, forum, body or other entity registered or incorporated under the laws of the State which shall manage the CDA;
- (b) The duly elected person or body that represents each affected community for the purposes of the CDA;
- (c) The means by which members of any affected community will participate in the community’s CDA related decision-making processes;
- (d) The means by which the interests of women, minority or marginalized groups within the community will be represented in the community’s CDA related decision-making processes and implementation;
- (e) The goals and objectives of the CDA, including an objective to improve the Human Development Index of the affected community by certain agreed measures;
- (f) The obligations of the Company to the affected community including but not limited to:
 - (a) Undertakings with respect to the social and economic contributions that the project will make to the sustainability of the community;
 - (b) Assistance in creating self-sustaining, income-generating activities, such as but not limited to, production of goods and services needed by the mine and the community;
 - (c) Consultation with the community in the planning of mine closure measures that seek to prepare the community for the eventual closure of the mining operations;
- (g) The obligations of the affected community to the Company;
- (h) The means by which the CDA shall be reviewed by the Company and the affected community every five (5) calendar years, and the commitment to be bound by the current CDA in the event that any modifications to the CDA sought by one Party cannot be mutually agreed with the other Party;
- (i) The consultative and monitoring frameworks between the Company and the affected community, and the means by which the community may participate in the planning, implementation, management, measurement (including indicators) and monitoring of activities carried out under the CDA;
- (j) The language(s) to be used in the preparation of reports, plans, and other written matters required under the CDA;
- (k) The means by which any funds made available under the CDA are to be disbursed, for what purposes they may be disbursed, what accounts must be kept and by whom, and reporting and auditing requirements;
- (l) The mechanisms under local laws and customs whereby the affected community (including members of the

affected community) and the Company may lodge a grievance with each other, *provided that* where no such mechanism exists or is inadequate or less stringent, the grievance mechanism under paragraph 23 of IFC Performance Standard 1 shall be adopted;

- (m) A statement to the effect that both the Company and the affected community or communities agree that any dispute regarding the CDA shall in the first instance be resolved by consultation between the holder and the affected community representative(s);
- (n) The dispute resolution mechanism to be used when consultation between the holder and the affected community representative(s) fails, which shall be the most effective of any mechanism agreed by the Parties, or as stipulated in this CDA, or as provided under the paragraph 23 of IFC Performance Standard 1.
- (o) The applicable law;
- (p) Reasons and procedure for declaring Force Majeure;
- (q) Duration of the CDA;
- (r) Termination of the CDA;
- (s) Transfer of all CDA rights and obligations to any party to whom the Company transfers its mining right;
- (t) How notifications to respective Parties shall be done;
- (u) Location where the CDA may be accessed by members of the community; and
- (v) The CDA signatories, and witnesses where applicable.
- (w) A breach by the Company of the terms of the CDA shall be considered to be a breach of this CDA, and the State shall be entitled to terminate the CDA upon the failure of the Company to diligently and consistently pursue a course of action that is reasonably intended to remedy the breach within sixty (60) Days of being notified in writing by the community of the breach.
- (x) The Company shall provide an annual payment of [X AMOUNT] which shall be deposited into a segregated Central Bank account to be managed and disbursed for the benefit of the State communities affected by the Project, as provided in the Community Development Agreement or Agreements. The first annual payment shall be made to the State on the Effective Date and each subsequent payment shall be made on the anniversary date of the Effective Date:

A development committee shall be appointed by or selected in accordance with procedures established by the State in Consultation with the Local Government, which procedures may be stated in any Community Development Agreement with local communities or Indigenous and Tribal Peoples. Such committee shall develop an annual budget in Consultation with the State and the Company, and the State shall make disbursements from the segregated Central Bank account in which such funds are deposited in accordance with such budget, the instructions of the committee, and any applicable Community Development Agreement

The budget and disbursements by the State shall be public and shall be subject to the same audit procedures provided for expenditures by the State and as may be further provided by Applicable Law.

Periodic reports and audit reports shall be made available to the Company and to the public.

The State shall provide a credit to the Company for payments to the local community Central Bank account referenced in this Section.

Regional Development Council

Where appropriate in addition to or in lieu of a CDA,

- (a) The State will establish a Regional Development Council (the “**Council**”) and shall lead its activities.
- (b) The Council will be governed by a board, which shall include representatives of the State, local governance organizations, private sector entities, civil society organizations and donor and international financial institutions with activities directed towards the affected region.
- (c) The Company will be a member of the Council’s governing board, and shall support the Council and its activities.
- (d) The Council will assist the State in the following areas in terms of preparation, financing, organizing and implementation of the local and regional development strategy, plans and budgets:
 - (i) Support to local and regional development and encouraging transparent and responsible governance;
 - (ii) Coordination of in-migration influx;
 - (iii) Resolving matters of urban planning and development, including power, roads, water supply, heating and sewerage;
 - (iv) Organization of formal and non-formal education, including English language and vocational training;
 - (v) Focus on human health care, construction of diagnostic centers, cultural facilities, sport facilities, improvement of veterinary services; and
 - (vi) Support to capacity building for Local Governments and civil society.
- (e) In addition to the above, the Company will support socio-economic development policies and activities undertaken by Local Government and will develop partnerships to ensure that sustainable benefits from the Project reach the State people, including people in affected region.
- (f) The Company shall conduct all of its local and regional socio-economic development programs and activities based on principles of transparency, accountability and public participation.
- (g) The Company shall continue to prepare, conduct, implement, update on an appropriate basis, and make public socio-economic baseline studies, socio-economic impact assessments, socio-economic risk analyses, as well as multi-year community plans, community relations management systems, policies, procedures and guidelines, and Closure Plans, all of which shall be produced with community participation and input and be consistent with Good Industry Practice.
- (h) The Company shall give priority focus to those citizens and groups directly and indirectly impacted by the Project, as determined by socio-economic and environmental impact assessments and other relevant documents

and, for this purpose, the Company shall regularly engage with and support the public and local stakeholders in the affected region.

- (i) The Company shall establish cooperation agreements with local administrative organizations in accordance with Applicable Law and these agreements may include the establishment of local development and participation funds, local participation committees and local environmental monitoring committees.
- (j) The Company will consult with Local Government to provide appropriate compensation upon resettlement of herder families located on the Mining Area who are directly impacted by the Project.
- (k) The Company shall make as a priority training, recruiting and employing citizens of local communities in the affected region.
- (l) The Company shall support special business development programs to assist in starting and growing local businesses so they can supply the Project, as well as the expansion and diversification of the State business partners so that they are not fully dependent on the Project.
- (m) The Company shall continue to actively build and maintain productive working relationships, based on principles of transparency, accountability, accuracy, trust, respect and mutual interests, with non-governmental organizations, civic groups, civil councils and other stakeholders.

Community Development Foundation

The Company shall provide an annual payment of [X AMOUNT] to a Community Development Foundation established as part of the Community Development Plan, which shall be managed and disbursed, in efforts to promote local and regional development, or health education and welfare in the communities affected by the Project. The governing body of the Community Development Foundation shall include members of communities affected by the Project. The annual budget and disbursements from the Community Development Foundation shall be public and shall be subject to audit procedures provided for by Applicable Law and the terms of the agreement. Periodic reports and audit reports shall be made available to the Company, to the State, and to the public.

Acceptance of Obligations of Prior Owners

Unless specifically waived by the affected communities in writing, the obligations of the Parties under a CDA or any agreement made between affected communities and any assignor or predecessor-in-title of the Company shall be binding on affected communities and the Company and shall be enforceable by the Parties or their assignees or successors-in-title. No assignment of the Company's interest under this agreement shall be effective until the assignee has acknowledged and agreed to be bound by such obligations.

ANNEX C

Local Business Development Plan

The Company will make reasonable efforts to work with local banks to encourage their participation in the financing of the working capital requirements of local contractors and suppliers.

A listing of local suppliers for consumables and capital items will be maintained at the Company offices during each phase of the Project as noted above. The listing would give particular emphasis to businesses directly or indirectly majority owned by the State citizens.

Suppliers would be encouraged to register for inclusion in the listing, and would be given the opportunity to tender during the procurement process on a non-discriminatory basis.

A listing of local contractors for services required by the Project will be maintained at the Company's offices. The listing would give particular emphasis to contractors directly or indirectly majority owned by the State citizens. Contractors would be encouraged to register for inclusion in the listing, and would be given the opportunity to tender during the procurement process on a non-discriminatory basis.

A quarterly posting will be made at the Company's offices in the State to provide information to potential suppliers and contractors of potential goods and services requirements for the Project on a quarterly basis.

A listing of bids currently being considered would be maintained at the Company's offices for review by contractors and suppliers. The same such listing would also be published in local newspapers in the affected region, thereby giving suppliers and contractors the earliest possible notification of tenders.

A meeting shall be convened semi-annually by the Company to which will be invited relevant political and chamber of commerce organizations including but not limited to representatives of the State and the Local Government. The meeting will concern itself with measures taken by the Company to implement proposals for local business development contained herein, the Company's compliance with this agreement and additional avenues to encourage local business participation in the Project



MMDA 1.0
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