

THE INDEPENDENT STATE OF PAPUA NEW
GUINEA

- AND -

STANDARD MINING DEVELOPMENT
CONTRACT

DRAFT

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THIS Contract is dated the day of ..., 19... and is made between -

- (1) **THE INDEPENDENT STATE OF PAPUA NEW GUINEA** (hereinafter called the "State"); and
- (2) _____, a company incorporated in [.....] with its registered office at _____ (hereinafter called the "Company").
[Note: or list of companies hereinafter called "the Joint Venturers"]

WHEREAS

- A. Promising indications of commercial deposits of minerals have been discovered in the area of the Exploration Licence and the Company has (Joint Venturers have) applied for a Special Mining Lease.
- B. The State may exercise its right under the Exploration Licence to purchase a 30% interest in the mineral discovery in which case it may nominate Mineral Resources Development Company Pty Limited ("MRDC") or some other State Nominee company as the purchaser.
- C. Development of a commercial mining project in the area of the Exploration Licence will be of major economic significance to the people of Papua New Guinea.
- D. The State wishes, subject to the provisions of Recital H, to ensure that the development of any commercial mineral deposits will secure the maximum benefit for, and adequately contribute to the advancement and the social and economic welfare of the people of Papua New Guinea, including the people in the vicinity of the Company's (Joint Venturers') operations, in a manner consistent with their needs and the protection of the environment.
- E. The State wishes to encourage the development of the mining and processing operations and the optimisation of its natural resources upon terms and conditions which, it is anticipated at the time of the execution of this Contract, will secure maximum benefits for the people of Papua New Guinea and secure to the Company (Joint Venturers) and its (their) shareholders an appropriate return on investment commensurate with the risks involved.
- E. The State and the Company (Joint Venturers) have agreed on a number of matters which are set out in the Contract and which are to be an enduring arrangement of national interest and which are to be continuing legal and binding obligations of the State and the Company (Joint Venturers) (and their respective successors and permitted assigns) subject to alteration or termination only in the circumstances set forth within.

NOW IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

Clause 1 DEFINITIONS

In this Contract, unless the context otherwise requires -

“Approved Financial Plan” means the plan submitted by the Company (or a Joint Venturer) and approved by the Secretary responsible for financial matters in accordance with Clause 7, which upon approval will form part of the Approved Proposals for Development;

“Approved Finance” means debt financing which is-

- (a) within the scope of the Company’s (a Joint Venturer’s) Approved Financial Plan; and
- (b) on terms and conditions which have been approved by the Central Bank in accordance with Clause 8,

but does not include any part of the Equity of the Company (Joint Venturer);

"Approved Proposals for Development" means the proposals for development submitted by the Company (Joint Venturers) which have been approved by the Minister pursuant to Section 43 of the Mining Act, as such proposals may be modified, varied, amended or altered as permitted under this Contract;

“Approved Reduction of Capital” means:

- (a) where the Company (a Joint Venturer) is a single purpose company, a reduction in its Equity sanctioned to the extent required by the National Court in the case of a company incorporated in Papua New Guinea); or
- (b) where the Company (a Joint Venturer) is a multi-purpose company, a reduction in the Equity of its Branch,

where the reduction is made in accordance with Clause 8.10;

“Branch” means the facilities and other resources of a multi-purpose company (whether incorporated in Papua New Guinea or elsewhere) that are used, fully or partially, for the Project and the costs of which are identified in the Branch Accounts;

“Branch Accounts” means accounts prepared on a quarterly basis, and in accordance with generally accepted accounting principles, which relate solely to the Company’s (a Joint Venturer’s) expenditure on, revenue from and financing of, the Project and which clearly identify head office advances, and the respective balances thereof, as Equity or Approved Finance;

"Central Bank" means the Bank of Papua New Guinea created pursuant to the Central Banking Act (Chapter 138) and its successors;

"Contract" means this Contract as varied from time to time in accordance with the terms hereof;

"Commencement of Commercial Production" means the earlier of -

- (a) the day on which the aggregate quantity of ore extracted from the Mining Area and processed through the beneficiation plant reached () of the estimated first year's throughput as specified in the Approved Proposals for Development, or
- (b) the day on which the aggregate production of Mine Products from the beneficiation plant reached () ounces/ tonnes;

"Company" means the second party to this Contract and includes any permitted assigns or successors of the rights and obligations of the Company;

"Costs to Resume Operations" means one and two-tenths(1.2) times the costs (which includes the cost of new capital expenditures) required to resume Normal Operations plus one and two-tenths(1.2) times the sum of the Company's (Joint Venturers') estimate of:

- (a) royalties
- (b) Operating Costs, and
- (c) all other incidental costs,

necessary to continue Normal Operations for a further period of twelve months;

"Department" means the Department of Mineral Resources or such other department of the State as is for the time being responsible for mining matters;

"Effective Date" means the date on which this Contract was executed by the Parties, and in the event that it was executed by different Parties on different dates means the date on which it was executed by the Party who was the last Party to execute the same;

"Environmental Plan" means the environmental plan for the Project submitted under Section 4 (6) of the Environmental Planning Act (Chapter 370) and approved under that Act by the Minister responsible for environmental matters, which also forms part of the Approved Proposals for Development as such plan may be varied or amended as permitted under Clause 12;

"Equity" means:

- (a) where the Company (a Joint Venturer) is a single purpose company, its issued shares (to the extent that they are paid up), its issued preference shares (to the extent that they are paid up and have been designated at the time of their issue as "equity" in a notice to the Central Bank) and its undistributed accounting profits; and
- (b) where the Company (a Joint Venturer) is a multi-purpose company, non-interest bearing advances made by the head office to the Branch which are designated as "equity" or

“branch capital” in a notice to the Central Bank and entered in the Branch Accounts so designated;

“Exploration Licence” means Exploration Licence No.() granted pursuant to the Mining Act;

"Feasibility Study" means a study into the feasibility of the Project which forms part of the Approved Proposals for Development;

"Force Majeure" has the meaning given to that term in Clause 25.2;

“Foreign Currency Account” means an account denominated in a currency other than Kina and opened by the Company (a Joint Venturer) in accordance with the Foreign Exchange Regulations with a bank which may be (at the discretion of the Company (Joint Venturer) either in Papua New Guinea or outside Papua New Guinea;

"Foreign Exchange Regulations" means the regulations made pursuant to the Central Banking Act (Chapter 138);

“Income Tax Act” means the Income Tax Act 1959;

"Joint Venturers" means the second parties to this Contract and includes any permitted assigns or successors of the rights and obligations of any of them.

“Joint Venture Agreement” means the agreement between the Joint Venturers and such other parties as may acquire an interest in the Project relating to the way in which exploration or mining operations shall be conducted under this Contract;

“Land Act” means the Land Act 1996;

“Local Level Government means the (.....) Local Government Council;

“Manager” means the person from time to time appointed, with the consent of the State, by the Joint Venturers to conduct operations pursuant to the Joint Venture Agreement;

"Mine Products" means the ores or concentrates or other minerals produced from the Mining Area and all smelter and refinery products (produced in PNG) derived therefrom;

"Minister" means the person for the time being entitled to exercise the powers of the Minister under the Mining Act ;

“Mining Act” means the Mining Act 1992;

"Mining Area" prior to the time when the leases referred to in Clauses 3.1 and 3.2 are granted means the area of the Exploration Licence and thereafter means all areas included in the leases, easements, licences, rights and grants referred to in Clauses 3.1 and 3.2.

“Mining Equity Agreements” means the agreements under which MRDC will acquire their interests in the Project;

"Normal Operations" means the operation of the Project carried on in accordance with the Approved Proposals for Development;

"Operating Costs" for any period means the costs incurred by the Company (Joint Venturers) during Normal Operations excluding depreciation and other non-cash costs and financing charges.

"Parties" means the persons who are for the time being original parties to this Contract or parties added or substituted pursuant to Clause 21 and “Party” means any one of them;

"Project" means the mining and any processing development contemplated by this Contract and described in the Approved Proposals for Development;

“Project Assets” means:

- (a) the Special Mining Lease or Leases and any other leases issued pursuant to the Mining Act for Project purposes;
- (b) all other leases, rights, permits, licenses, grants, authorisations and approvals referred to in Clauses 3.1 and 3.2 which are required for the Project;
- (c) all plant, buildings, installations, infrastructure and other facilities located on the Special Mining Lease(s) or on any other lease from the State under the Mining Act or under the Land Act which are required for the Project (subject to the terms of such a lease); and
- (d) all other property (tangible or intangible) and assets in Papua New Guinea held by the Company (Joint Venturers) for the purposes of the Project (including ore in process and Mine Products produced by the Project);

“Provincial Government” means the () Provincial Government;

"Quarter; means -

- (a) January, February, and March; or
- (b) April, May and June; or
- (c) July, August and September; or
- (d) October, November and December;

“Related Corporation” means a related corporation as defined in Section 2 of the Companies Act 1997;

"Sole Expert" means a person appointed by agreement between any two or more Parties to resolve any difference of view or disagreement between them and in the event the Parties in dispute fail to agree on the person to be so appointed, such appointment shall be made by the

President of the Australian Institute of Arbitrators or his designate. For purposes of this Contract, the Sole Expert shall not be, or have been, an employee of the State or any authority or corporation of the State or of the Company (any Joint Venturer) or any of its associates as defined in the Income Tax Act;

"Special Mining Lease" means the special mining lease (or leases) and any renewals thereof, granted under the Mining Act to the Company (Joint Venturers) pursuant to Clause 3;

"Speculative Currency Transaction" means a transaction involving the purchase or sale of Papua New Guinea currency, the primary object of which is the making of a profit on the exchange of currency but does not include the taking out of forward cover in respect of anticipated purchases or sales of goods and services or loan obligations denominated or payable in foreign currency in accordance with the guidelines issued from time by the Central Bank;

"State" means the first party to this Contract and includes any authorised agent of the State;

"Test Date" means the last day of the Quarter following the Quarter during which the Effective Date occurs and thereafter 30 June and 31 December each year; and

"Training and Localisation Programme" means training and localisation programme prepared by the Company (Manager) pursuant to and in accordance with the Employment of Non-citizens Act (Chapter 374) and the guidelines for training plans, which also forms part of the Approved Proposals for Development, as such programme may be amended or altered as permitted under Clause 13.

Clause 2 **INTERPRETATION**

2.1 In this Contract, unless the context otherwise requires -

- (a) monetary references are references to Papua New Guinea currency unless otherwise specifically expressed;
- (b) the headings and subheadings do not affect the interpretation or construction;
- (c) reference to an Act includes the amendments to that Act for the time being in force and also to any Act passed in substitution therefor and any regulations for the time being in force thereunder;
- (d) words and expressions which have a certain meaning in the Foreign Exchange Regulations or the Income Tax Act, as the case may be, are used with the same meanings in this Contract;
- (e) words importing the singular include the plural and vice versa;
- (f) words importing any gender include the other gender;

- (g) references to a person include a partnership, firm or corporation and any instrumentality of the State; and
- (h) the recitals form part of this Contract.

2.2 Where any provision of this Contract constitutes an undertaking by one of the Parties to make a payment or to perform an act or to carry out an obligation or to assume a responsibility or liability or to grant a right, concession or advantage, that Party shall, by its execution, be deemed to have so agreed with the other Party accordingly.

(Note: Clause 2.3 to be included if contract is with a Joint Venture)

2.3 Any covenant or agreement on the part of the Joint Venturers made pursuant to this Contract (including any covenant or agreement made by all the Parties) shall, unless otherwise provided, or the context otherwise requires, be read and construed as a covenant or agreement by all of the Joint Venturers jointly and each of them severally. For the avoidance of doubt, the following obligations, to the extent that they arise from covenants or agreements of the Joint Venturers in this Contract, are several (and not joint and several) obligations of the Joint Venturers:

- (a) obligations to pay income tax or any other tax, duty, charge or impost payment (other than royalty **and/or mining levy**) which is not included in any joint venture budget or funded by cash calls on the Joint Venturers under the Joint Venture Agreement;
- (b) obligations under Clause 7 with respect to the submission of a financial plan and the maintenance of a debt to **Equity** ratio;
- (c) obligations under Clause 8 with regard to accounts, dividends, currency, reporting, and other matters;
- (d) obligations under Clause 9 with regard to sale or other disposition of Mine Products;
- (e) obligations under Clause **11** with regard to the Investment Promotion Authority certification;
- (f) obligations arising as a consequence of termination under Clause **20**, but not including:
 - (i) any obligation to pay monies under Clause **20.1(b)** which arises in respect of an obligation which is a joint and several obligation of the Joint Venturers; and
 - (ii) any obligations arising under Clause **20.1(e)**;
- (g) obligations under Clause **21** with regard to assignment; and

- (h) obligations with regard to arbitration under Clause 23, but not including an obligation arising out of arbitration proceedings which relate to an obligation or liability which is a joint and several obligation or liability of the Joint Venturers.

Clause 3: LEASES AND OTHER RIGHTS FOR MINING DEVELOPMENT

3.1 The State will -

- (a) on the Effective Date, grant to the Company (the Joint Venturers as tenants in common) the Special Mining Lease(s), in accordance with the form of lease annexed in Schedule I;
- (b) within two months of the application by the Company (Joint Venturers) or within two months of the Effective Date, whichever is later, grant to the Company (Joint Venturers as tenants in common) such of the following as may be reasonably required for the purpose of carrying out the Project:
 - (i) leases for mining purposes, special mining easements, leases, rights, permits, licences and grants pursuant to the Mining Act ;
 - (ii) leases, rights, permits, licences and grants pursuant to the Land Act ; and
 - (iii) leases, rights, permits, licence and grants pursuant to legislation other than the Mining Act and the Land Act.

3.2 If the Company (Joint Venturers) require(s) any lease, right, permit, licence, grant, authorisation or approval of the Provincial Government or Local-level Government, for the construction or operation of the Project in accordance with the Approved Proposals for Development, the Company (Joint Venturers), shall make application therefor to the responsible authorities within the Provincial Government or Local-level Government. Recognising that discretion and/or authority with respect to such matters rest with the Provincial Government or Local-level Government, the State shall nonetheless, at the request of the Company (Joint Venturers) to the extent the applicable law permits, use its good offices to assist in obtaining such lease, right, permit, licence, grant, authorisation or approval.

3.3 If, in accordance with Clause 28, the Company modifies or varies (Joint Venturers modify or vary) the Approved Proposals for Development and such modification or variation is approved or deemed approved by the State, the Company (Joint Venturers) may apply for and the State shall, within two months of the date of application, grant or cause to be granted to the Company (Joint Venturers) any additional special mining lease, leases, permits, licences, approvals or allow variations to any existing special mining lease, leases, permits, licences, or approvals required to give effect to any such modification or variation to the extent that they are reasonably required for the purpose of carrying out the Project.

- 3.4 If the State considers it necessary, it may require that the Company (Joint Venturers) carry(ies) out, at its (their) own expense, a survey of areas of land over which it has (they have) made application for a lease or other grant under the Mining Act or the Land Act unless such a survey is required only on the basis of the grant, and not on the basis of the application. In the latter circumstances, the Company (Joint Venturers) will carry out such a survey only over the areas of land over which the State has offered to grant such lease or other grant.
- 3.5 The Company (Joint Venturers), after consultation with the State, shall negotiate a compensation agreement covering compensation or costs payable to landowners as a result of the use of the area of land covered by the Special Mining Lease and other necessary leases, licences, rights and grants, which compensation and costs shall be borne by the Company (Joint Venturers). If requested by the Company (Joint Venturers), the State shall use its good offices to assist the parties to conclude the negotiation of the compensation agreement on fair and reasonable terms. During the life of such a compensation agreement:
- (a) the Company (Joint Venturers) will, in a timely manner, report to the State any circumstances, happenings or events which might lead to disputes relating to compensation or the orderly implementation of the agreement; and
 - (b) the State will use its best endeavours to ensure that the institutions established for the management and resolution of land disputes will be able to carry out their duties so that any such disputes between the Company (Joint Venturers) and the landowners, or between the landowners themselves, will be settled in an orderly and expeditious fashion in accordance with such agreements and the applicable law.
- 3.6 The leases, licences, rights and grants referred to in Clauses 3.1 and 3.2, shall contain -
- (a) in the case of the Special Mining Lease, such terms and conditions in the form appearing in Schedule I; and
 - (b) in any other case, such terms and conditions as are fair and reasonable to the Company (Joint Venturers), which may include, where applicable, provisions that
 - (i) the Company (Joint Venturers) shall not, without the consent of the State, which consent shall not be unreasonably withheld, use the land for any purpose other than that for which it was granted;
 - (ii) the Company (Joint Venturers) shall construct or provide improvements substantially as specified in the Approved Proposals for Development or as otherwise agreed between the Company (Joint Venturers) and the State;

- (iii) the leases, rights, permits, licences and grants will terminate on the earlier of the termination of this Contract and the Special Mining Lease; and
 - (iv) the Company (Joint Venturers) shall use their best efforts to accommodate traditional land uses to the degree that such uses are consistent with efficient, safe mining practices and the Approved Proposals for Development.
- 3.7 The leases (other than the Special Mining Lease), rights, permits, licences, and grants to which the Company is (Joint Venturers are) entitled under this Clause will be drawn up in a form and on terms which will ensure that the land to which these leases, rights, permits, licences and grants relate may be used by the Company (Joint Venturers) in a manner which will enable it (them) to carry out the Project in accordance with the Approved Proposals for Development.

Clause 4: PROJECT IMPLEMENTATION

- 4.1 The Company, (Joint Venturers) using its (their) best efforts, shall, following the date on which the Special Mining Lease is granted or such later date as may result from the application of Clause **22, 23, 25 or 28**, -
- (a) construct, install and provide all such plant, equipment, prepared sites and facilities of the design and capacity specified in the Approved Proposals for Development, and
 - (b) commence Normal Operations.
- 4.2 Until the Commencement of Commercial Production, the Company (Joint Venturers through the Operator), shall supply on a quarterly basis a progress report to, and meet with, the Department.
- 4.3 The Company (the Joint Venturers through the Manager) shall maintain a liaison office in Port Moresby until the Commencement of Commercial Production and will, during the life of the Project, designate a representative located in Papua New Guinea who will be responsible for ensuring the implementation of the provisions of this Contract relating to supply and procurement.
- 4.4 The Company (Joint Venturers through the Manager) shall ensure that its (their) contractors and subcontractors are legally bound to comply with the provisions of this Contract insofar as such provisions are applicable to them.

4.5 Subject to:

- (a) the requirements of law and national security; and
- (b) compliance with procedures under the Migration Act (Chapter 16) and other laws of general application relating to the entry of non-citizens into Papua New Guinea and their employment within **the** country;

the State covenants that it will expeditiously approve the job descriptions for expatriate workers in accordance with the Training and Localisation Programme and grant permits and multiple-entry visas, as required, for the entry and re-entry of expatriate workers (and their dependants) whose job descriptions have been approved.

Clause 5 **INFRASTRUCTURE FACILITIES**

5.1 In this Clause, "Works and Facilities" means any of the installations and infrastructure specified in the Approved Proposals for Development for use of the Company (Joint Venturers) and which are capable of being used by the State but shall not include:

- (a) administrative buildings and buildings and other improvements allocated for the accommodation of the Company's (Joint Venturers') employees and their families;
- (b) installations and infrastructure directly used in the mining and processing of ore;
- (c) roads (other than existing public access routes) constructed for and on behalf of the Company (Joint Venturers) and situated within the Mining Area.

5.2 Within sixty days of the Effective Date, the State may, by notice to the Company (Joint Venturers), elect to provide the costs, or part thereof, of any Works and Facilities. The State may further elect to recoup such costs by the payment to the State of a charge which shall be agreed between the State and the Company (Joint Venturers). Such charges will allow for the recoupment over a reasonable period of the amount so expended in providing the said cost by the State together with a reasonable return thereon. Such return will be determined having regard to the State's expected risk in outlaying the funds for the Works and Facilities and the cost of borrowing such funds as are required. If the amount of such charge cannot be agreed, it shall be determined by a Sole Expert.

5.3 At any time after the Commencement of Commercial Production, but subject to Clause 5.4, the State may, by notice, require the Company (Joint Venturers) to transfer to the State its (their) ownership of any Works and Facilities. As soon as practicable after such notice, the Company (Joint Venturers) shall do all things necessary to transfer to the State its (their) title to the Works and Facilities. Upon vesting title in the State, the Company (Joint Venturers) shall cease to have any liability or risk in respect of these Works and Facilities except so far as it continues (they continue) to manage them. The Company

(Joint Venturers) shall at all times have first priority of use of such Works and Facilities and that the State's ownership shall not unreasonably interfere with the use of such Works and Facilities by the Company (Joint Venturers).

5.4 Where the State requires the Company (Joint Venturers) to transfer to it any Works and Facilities as provided in Clause 5.3:

(a) upon transfer of title, the State shall pay to the Company (Joint Venturers) a purchase price equal to the then residual value after tax depreciation of its (their) interest in the Works and Facilities. The purchase price shall be paid in annual instalments commencing at the end of the financial year in which title was transferred, and shall be equal to the sum of the annual amounts of depreciation that the Company (each Joint Venturer) could have claimed as a deduction allowable under the Income Tax Act. The State shall ensure that the annual instalment payment is a capital receipt and will not constitute assessable income under the Income Tax Act; and

(b) for so long as the State makes the payments under Clause 5.4 (a), the Company (Joint Venturers) shall pay to the State on the day of the receipt of an annual instalment under Clause 5.4 (a) a facilities user charge equal to such instalment. The State shall ensure that the facilities user charge will constitute a deemed outgoing pursuant to Section 68 of the Income Tax Act.

5.5 If, at any time, the State acquires or provides any Works and Facilities or part thereof under this Contract, the State may either:

(a) require the Company (Joint Venturers) at its (their) own cost to manage and maintain those Works and Facilities to a reasonable standard provided that the State shall pay its equitable proportion of such costs; or

(b) assume responsibility for maintaining such Works and Facilities to a reasonable standard and shall charge the Company (Joint Venturers) a maintenance charge to cover an equitable proportion of the costs of maintenance and the direct costs of operating such Works and Facilities.

In either case the equitable proportion shall be determined on the basis of the proportionate use of the Works and Facilities by the Company (Joint Venturers) and other users. If the equitable proportion cannot be agreed it shall be determined by a Sole Expert.

5.6 Where the State has provided or acquired Works and Facilities pursuant to this Contract and fails to properly maintain same, the Company (Joint Venturers) may, without prejudice to any other rights it (they) may have, after giving no less than ten days' notice to the State, carry out such work as is necessary to bring such Works and Facilities up to the proper standard required for the purposes of the Project and set off the expense incurred against the maintenance charge payable under Clause 5.5 (b). The Company

(Joint Venturers) may carry out such work immediately in the case of emergency, giving notice to the State thereafter.

5.7 If:

- (a) the Approved Proposals for Development provides for the Project electric power supply facilities to generate electric power in excess of the Project's needs in order to meet local rural requirement; or
- (b) subsequent to the Approved Proposals for Development, the Company (Joint Venturers) decides (decide) that the Project electric power supply capacity exceeds the needs of the Project at any time;

and the Electricity Commission makes an Order under Section 31 of the Electricity Commission Act (Chapter 78) permitting the sale of electricity to other users, the Company (Joint Venturers) shall sell to the appropriate governmental agency such excess electricity produced by the facilities for resale and distribution to rural electrical loads. The Company (Joint Venturers) shall under no circumstances be required to increase the capacity of its electric power supply facilities or transmission facilities beyond that required by the Approved Proposals for Development to meet the needs of any other users or to construct or maintain any off-site grid or distribution system. The price of electricity to be purchased by the appropriate governmental agency shall be negotiated between the Company (Joint Venturers) and such governmental agency and shall be subject to the approval of the Electricity Commission. The approved price and formula for future adjustments will be included in the Order issued by the Electricity Commission.

5.8 The State shall ensure that Telikom PNG provides data-quality international telecommunication facilities for the Project in accordance with the Approved Proposals for Development. The State shall, through Telikom PNG or other responsible agency, charge the Company (Joint Venturers) for the supply of telecommunication services either at the tariff rate specified in the Approved Proposals for Development or such reasonable commercial rate as is agreed to between Telikom PNG and the Company (Joint Venturers), whichever is the higher.

5.9 Third parties will be permitted by the Company (Joint Venturers) to use the Works and Facilities which it (they) own(s), operate(s) and maintain(s), but only if such use will not adversely affect the Company's (Joint Venturers') use or intended use thereof. Such Works and Facilities will continue to be managed by the Company (Joint Venturers) and the Company (Joint Venturers) will have the priority use thereof over all other users. The Company (Joint Venturers) may charge a reasonable fee to allow third parties to use the Works and Facilities. Third parties will also be permitted to use any of the Works and Facilities vested in the State but managed and maintained by the Company (Joint Venturers) under Clause 5.5(a) (but only if such use will not adversely affect the Company's (Joint Venturers') use or intended use thereof) and in those circumstances the

costs will be shared in accordance with Clause 5.5 and the Company (Joint Venturers) shall not charge the third parties any fee for use.

- 5.10 Except as otherwise provided in this Clause, nothing in this Clause shall take effect to divest the Company (Joint Venturers) of its (their) title to or interest in any property or to require the Company (Joint Venturers) to transfer same to the State.

Clause 6: RATES AND DUTIES

6.1 Subject to:

- (a) any requirement of defence and the safety of the public and quarantine;
- (b) the obligations of the State pursuant to multilateral international agreements to which the State is a party;
- (c) any general, non-discriminatory determination by the National Executive Council of the State notice of which has been given to the Company (Joint Venturers) that the import of goods from a particular place or the export of Mine Products to a particular place is not permitted; and
- (d) Clause **14**;

the State shall ensure that the Company (Joint Venturers), and the agents and contractors of the Company (Joint Venturers) shall have the right to acquire, import into and move within Papua New Guinea and use any plant, machinery, equipment, temporary buildings and structures, vehicles, explosives, fuels, reagents, supplies and any other assets:

- (e) required for the construction, installation, provision, expansion, maintenance or operation of any of the facilities required for the Project; or
- (f) otherwise required for the purposes of the Project;

and to export from Papua New Guinea -

- (g) subject to Clause **20.1(c)**, any plant, machinery, equipment, temporary buildings and structures, vehicles, explosives, fuels, reagents, supplies, and any other asset imported into Papua New Guinea for the construction, installation, provision, expansion, maintenance or operation of any of the facilities required for the Project; and
- (h) subject to Clause 9.1, the Mine Products resulting from the operation of the Project.

- 6.2 The State covenants to reimburse the Company (Joint Venturers) for any rate, tax, charge, due, duty, tariff or other levy except royalty, mining levy or other tax of similar

nature payable by the Company (Joint Venturer) applied by the State, any province or local-level government applied to, or payable by, the Company (Joint Venturers) in respect of the export from Papua New Guinea by the Company (Joint Venturers) of Mine Products.

- 6.3 Except the mining levy imposed by the State, the State covenants to reimburse the Company (Joint Venturers):
- (a) for any payment made by it (them) in connection with the Project on account of any rate, tax, rent, charge, due, duty, tariff or other levy by the State, any province or local-level government; and
 - (b) for any costs incurred by it (them) to the extent that such costs arise as a result of any law, statute, regulation or enactment of the State, any province or local-level government,

to the extent that any of the above discriminates specifically against the Company (Joint Venturers) in respect of this Contract.

6.4 Any amount owed to the Company (Joint Venturers) in respect of reimbursement pursuant to Clause 6.2 or 6.3 shall be paid by the State not later than one (1) year following the making of the payment in respect of which reimbursement is being made.

6.5 The State shall ensure that any import duty imposed on the import by the Company (Joint Venturer) or its (their) agent of any plant, machinery, equipment, temporary buildings and structures, vehicles, explosives, fuels, re-agents, supplies or other assets, any of which, at the time when such duty is sought to be imposed -

- (a) is imported solely for the purpose of the Project; and
- (b) is specifically, or has been generally, certified by the head of the Department responsible for mining matters, to have a specialised application and is specifically designed for technical use in mining operations,

shall not be in excess of the average rate of duty from time to time payable on the importation into Papua New Guinea of the () items attached as Schedule II to this Contract. For the purpose of this Clause, import duty means the aggregate of any import duty, levy or tax **imposed in relation to import of goods for the Project.**

Clause 7 **FINANCING OF THE PROJECT**

7.1 **Submission of Financial Plan**

The Company (Each Joint Venturer) shall submit to the State and the Central Bank its financial plan for financing (its participation in) the Project. The financial plans will:

- (a) set out in full detail the manner in which the Company (Joint Venturer) intends to finance the total cost of (the cost of its participation in) the Project through to Commencement of Commercial Production, including a reasonable provision for working capital to maintain Normal Operations;
- (b) identify capital to be used by the Company (Joint Venturer) for this purpose as Equity and/ or debt, as the case may be, and the ratio of debt to Equity which will not exceed 3:1;
- (c) identify sources of the proposed debt finance and the terms and conditions of such debt finance, including in particular the cost of funds (identifying all fees, charges and commissions as well as interest rates or interest margins);
- (d) describe the security to be provided for the financing; and
- (e) identify the Company's (Joint Venturer's) need for Foreign Currency Accounts.

7.2 Consideration and Approval of Financial Plan

The State shall ensure that its department responsible for financial matters and the Central Bank give expeditious consideration to the financial plan and requests for any further information required from the Company (Joint Venturer). The State may by notice to the Company (Joint Venturer) request a revised financial plan if the one submitted by the Company (Joint Venturer) does not comply with the provisions of the Contract or otherwise does not commercially or economically satisfy the State or the Central Bank. Within one (1) month after the date of receipt of the financial plan from the Company (Joint Venturer), the State shall notify the Company (the Joint Venturer) whether or not it has been approved by the Secretary responsible for financial matters. If it has not been approved, but the Company (Joint Venturer) is of the view that it provides for the financing of (its participation) in the Project in a manner which is commercially and economically reasonable, the Company (Joint Venturer) may require the decision to be reviewed jointly by the Secretary for the department responsible for financial matters and the Governor of the Central Bank and a recommendation to be made to the Minister responsible for financial matters for a binding decision, within a further period of one (1) month.

7.3 Maintenance of Debt: Equity Ratio

The Company (Each Joint Venturer) shall ensure that, on each successive Test Date, the outstanding balance of its Approved Finance (converted into Kina from the currency of drawdown at the mid-rate quoted for the currency by Westpac Bank-PNG-Limited at 11:00 am on the date of each drawdown) does not exceed seventy five percent (75%) of the sum of-

- (a) (the Joint Venturer's share of) Allowable Exploration Expenditure, Allowable Capital Expenditure and expenditure on any plant or article in respect of which an

election has been made under Section 163AW of the Income Tax Act incurred by the Company (Joint Venturer) on the Project;

- (b) (the Joint Venturer's share of) any net trade debt owing to the Company (Joint Venturers) in the ordinary course of business in respect of operations under the Project; and
- (c) (the Joint Venturer's share of) the value of the un-invoiced inventory of the Company (Joint Venturers) held in the ordinary course of business in respect of operations under the Project.

Expenditure by the Company (Joint Venturer) on the Project, that falls outside the scope of Approved Finance as permitted by this subclause, will be financed by Equity.

**A. DRAFT FOR A SINGLE PURPOSE PNG COMPANY THAT IS (a) A PROJECT
COMPANY or (b) A JOINT VENTURER**

Clause 8 CURRENCY AND EXCHANGE CONTROL

8.1 In this Clause 8:

"Accounting Profits" means the Company's (a Joint Venturer's) book profits, calculated in accordance with generally accepted accounting principles and arrived at after deduction of:

- (a) in relation to each Year of Income, the Income Tax and Additional Profits Tax which have been paid or will be payable by the Company (Joint Venturer) on its income from the Project for that year; or
- (b) in relation to an interim period prior to the finalisation of the annual accounts, the Income Tax and Additional Profits Tax which would be payable by the Company (Joint Venturer) in respect of the income from the Project derived by the Company (Joint Venturer) during that period on the basis that the Company (Joint Venturer) continued to derive income during the whole of the year of income of which the period forms a part, at the same daily average rate as in that period;

"Approved Dividends" means dividends of the Company (Joint Venturer) which have been approved by the Central Bank pursuant to Clause 8.4(a); and

"Distributable Profits" means in relation to any date of determination, the sum of the Company's (a Joint Venturer's) current year's undistributed Accounting Profits plus its retained earnings as of that date.

8.2 In accordance with the provisions of this Clause 8, the Company (Joint Venturer) shall have the right to maintain Foreign Currency Accounts. Such accounts may be held in the name of the Company (Joint Venturer). These funds shall be shown on the Foreign Currency Account (s) as either Short-term Money Market Instruments or Short – term Foreign Securities and having a term of not more than three (3) months. The Company (Joint Venturer) shall provide overnight opening and closing investment account balances to the Central Bank together with the working account (s) statement (s) monthly , pursuant to Clause 8.8.

8.3 (a) Within the scope of the Approved Financial Plan and the required 3:1 debt to Equity ratio, the State shall procure all the necessary authorities and approvals for the following arrangements to be treated as Approved Finance:

(i) loans to be used exclusively for the purpose of financing the Project or Normal Operations, which are on terms no less favourable to the Company (Joint Venturer) than those generally available from banks and financial institutions lending to similar mining projects in terms of risk and location, and any refinancing of such loans on similar or more favourable terms; and

(ii) issues of redeemable preference shares at par to finance major capital expenditure on the Project, which is within the Approved Proposals for Development, where the dividend rate on such shares is no more than the market rate of interest at that time for secured loans to the Project and other projects comparable to the Project in terms of risk and location.

(b) If at any time after the Commencement of Commercial Production the Company (Joint Venturer) wishes to make an issue of redeemable preference shares at par where:

(i) the dividend rate on such shares is no more than the market rate of interest at that time for secured loans to the Project and other projects comparable to the Project in terms of risk and location; and

(ii) the aggregate amount for which such shares are issued is within the amount to be financed by Approved Finance,

the State shall procure all necessary authorities and approvals required in connection with the issue by the Company (Joint Venturer) of such redeemable preference shares and all necessary authorities and approvals for the aggregate issue price of such shares to be treated as Approved Finance for the purposes of this Clause 8.

- (c) The Company (Joint Venturer) shall not at any time give notice to the Central Bank designating the redeemable preference shares referred to in paragraphs (a) or (b) above as Equity.
 - (d) Preference shares constituting Equity of the Company (Joint Venturer) once designated as such shall not at any time thereafter be converted into, or deemed to be, Approved Finance.
 - (e) Within thirty (30) days of each Test Date the Company (Joint Venturer) shall submit to the Central Bank:
 - (i) a statement showing the Kina balance of Approved Finance as of the preceding Test Date (if any);
 - (ii) a schedule of drawdowns and repayments of Approved Finance made prior to the Test Date and after the preceding Test Date (if any), detailing the foreign currency and Kina equivalent amount and date of each drawdown and repayment; and
 - (iii) cumulative figures for each of the categories of expenditure described in Clause 7.3 certified by a duly authorised officer of the Company (Joint Venturer) as having been derived in accordance with the last audited profit and loss statement.
- 8.4 (a) Before paying any dividend to a shareholder outside Papua New Guinea, the Company (Joint Venturer) shall present to the Central Bank a full set of audited profit and loss statements and balance sheet with accompanying notes which :
- (i) have been certified by a duly authorised officer of the Company (Joint Venturer) as having been prepared in accordance with generally accepted accounting principles; and
 - (ii) show that there are Distributable Profits in respect of which, or in respect of part of which, the dividends are to be declared.
- (b) Within a period of two (2) weeks the Central Bank may, if on reasonable grounds it is not satisfied that there are Distributable Profits out of which the dividend is to be paid, require the Company (Joint Venturer) to submit an audited profit and loss statement showing that there are sufficient Distributable Profits.
- 8.5 (a) A dividend of the Company (Joint Venturer) payable to a shareholder resident outside Papua New Guinea which is :

- (i) one of a series of dividends declared not more frequently than once each Quarter; and
 - (ii) payable directly or indirectly out of Distributable Profits in respect of which, or in respect of part of which, that dividend has been declared and cleared for taxation purposes and relevant Dividend Withholding Tax has been remitted to the Internal Revenue Commission, shall be approved by the Central Bank.
- (b) Approval pursuant to Clause 8.5(a) shall be given by the Central Bank within thirty (30) days from the date on which the statements referred to in Clause 8.4(a) were submitted or, in a case where the Central Bank has required an audited profit and loss statement, within thirty (30) days from the date on which the Central Bank has received an audited profit and loss statement showing that there are sufficient Distributable Profits.

8.6 Subject to the authority procured pursuant to Clause 8.2 the Company (Joint Venturer) may retain in foreign currency outside Papua New Guinea in its Foreign Currency Accounts :

- (a) the amount of any funds received or transferred in foreign currency pursuant to Approved Finance and Equity in respect of :
 - (i) commitments in foreign currency to persons resident outside Papua New Guinea for the supply of goods, and services for the Project (including capital goods, insurance premiums and obligations due to non-resident employees and consultants); and
 - (ii) any other payment approved by the Central Bank; and
- (b) proceeds of the sale by the Company (Joint Venturer) of Mine Products exported overseas, and its share of the settlement of insurance claims received in foreign currency, in an aggregate amount (subject to Clause 8.8) not to exceed the sum of the amounts due or to become due during the ensuing three (3) months, or such longer period(s) (for example, but not limited to, the case of foreign currency received under Clause 15.3 and the re-instatement of Project Assets may take longer than three (3) months) as may be approved by the Central Bank, in respect of -
 - (i) the discharge of obligations, arising out of Approved Finance, designated in a currency other than Kina, but only to the extent that Approved Finance did not, at the last Test Date, exceed the proportion of expenditure referred to in Clause 7.3;
 - (ii) commitments in foreign currency to persons resident outside Papua New Guinea for the supply of goods and services for the Project

(including capital goods, insurance premiums and obligations due to non-resident employees and consultants);

- (iii) subject to remittance of Dividend Withholding Tax to the Internal Revenue Commission the amount of Approved Dividends declared by the Company (Joint Venturer) in accordance with Clause 8.5 and payable to shareholders resident outside Papua New Guinea where such dividends relate to profits derived from the Project;
- (iv) payments made by the Company (Joint Venturer) for the purpose of effecting an Approved Reduction of Capital; and
- (v) any other payment approved by the Central Bank.

8.7 When at any time after the first sale of Mine Products:

- (a) the amount of foreign currency held by the Company (Joint Venturer) in its Foreign Currency Accounts under Clause 8.6 is as a result of any circumstances that the Company (Joint Venturer) could claim as Force Majeure under Clause 24, insufficient (before taking into account payment of Approved Dividends), to meet its obligations of the type referred to in Clause 8.6(b)(i) and (ii); and
- (b) the Company (Joint Venturer) has surplus funds held in Papua New Guinea in Kina,

the Company (Joint Venturer) may, with the prior approval of the Central Bank, purchase foreign currency with those surplus Kina funds and remit it overseas to meet its obligations of the type referred to in Clause 8.6(b)(i) and (ii) as they fall due, until foreign currency is again available for this purpose under Clause 8.6.

8.8 The Company (Joint Venturer) shall submit to the Central Bank :

- (a) within fifteen (15) days of the end of each Quarter -
 - (i) a report on the foreign currency which it has retained in its Foreign Currency Accounts under this Clause 8 during the Quarter, if any, accounting for funds retained pursuant to Clause 8.6 by identifying the purposes in the categories (a)(i) and (ii) and (b)(i) to (v) for which the foreign currency is being retained and disbursed; and
 - (ii) a report certified by a duly authorised officer of the drawdown, transfer or subscription of Approved Finance and any collateral obligation pertaining thereto during that Quarter and the outstanding balances at the end of the Quarter; and

- (iii) a forecast of the foreign currency which it expects to retain in its Foreign Currency Accounts under this Clause 8 during the ensuing Quarter, if any: and
- (b) within five (5) months of the end of each year of income audited accounts showing the amount of Distributable Profits for the year of income and the balance of Approved Finance at the end of the year of income.

Without limiting the generality of this Clause 8.8 (a), the report to the Central Bank for each reporting period under this Clause 8 shall show actual cash inflows and outflows from the approved Foreign Currency Accounts for each calendar month midway into the following calendar month. Such Accounts' report must be duly completed and in line with the Central Bank's requirements under Central Banking (Foreign Exchange and Gold) Regulations, Chapter 138. If the Company (Joint Venturer) fails to comply with these requirements the Company (Joint Venturer) may be required to close the foreign currency accounts and convert to Kina and remit such funds to the Company's (Joint Venturer's) Kina account in PNG.

- 8.9 (a) Except as provided in Clause 8.6 the Company (Joint Venturer) shall convert all its foreign currency earnings from the Project into Kina and remit the proceeds to Papua New Guinea to a bank account in the name of the Company (Joint Venturer) for its use or to an account in Papua New Guinea pledged to or held in the name of an agent or trustee for the Company (Joint Venturer) and/or lenders of Approved Finance.
- (b) After the commencement of Normal Operations, any Mine Products exported from Papua New Guinea which remain unsold for a period of three (3) months from the time of export shall, unless otherwise agreed by the Central Bank, be deemed to have been sold by the Company (Joint Venturer) on the next business day after the expiry of the three month period. The deemed proceeds of sale will be calculated in US dollars, using the relevant world market price on that business day.

Upon being served with a notice from the Central Bank containing these calculations, the Company (Joint Venturer) shall immediately convert into Kina an amount of foreign currency equal to the deemed proceeds of sale and remit the amount to a bank account in Papua New Guinea in the name of the Company (Joint Venturer) for its use.

- 8.10 (a) After the date upon which all Approved Finance has been repaid the Company (Joint Venturer) may request from the Central Bank agreement on a schedule providing, for a reduction in Equity of the Company (Joint Venturer), which separates Equity provided in Kina and Equity provided in a currency other than Kina. Such a schedule will be agreed within twelve (12) months, or such shorter period as the Central Bank may specify, of this request and will, for

the purposes of effecting the reduction in Equity, authorise payments to be made over a period being not less than three (3) years and covering, so far as practicable, the estimated period during which the Project will continue, provided that no such payment will be authorised in respect of any period during which the Company (Joint Venturer) is holding unremitted Distributable Profits other than earnings of the current Quarter.

- (b) Where a schedule has been agreed under (a) the Company (Joint Venturer) may, to the extent that the Equity to be reduced was supplied in a currency other than Kina, purchase foreign currency with funds held in Kina for the purpose of making payments required in foreign currency in order to give effect to the Approved Reduction of Capital.

8.11 Subject to the Central Banking (Foreign Exchange and Gold) Regulations, Chapter 138, where any right or assurance given to the Company (Joint Venturer) under this Clause 8 requires the Central Bank: -

- (a) to approve or authorise any act, matter or thing; or
- (b) to grant authority under the Foreign Exchange Regulations for its exercise or performance,

and the Company (Joint Venturer) has supplied any necessary information to the Central Bank and otherwise met the conditions of this Clause 8, the State shall, upon request from the Company (Joint Venturer) ensure by policy directions to the Central Bank or otherwise that such approval is given or such authority is granted.

8.12 The Company (Joint Venturer) shall not use any provisions of this Clause 8 or any authority or approval given by the Central Bank or by an authorized dealer under the Foreign Exchange Regulations to engage in Speculative Currency Transactions.

B DRAFT FOR A MULTI-PURPOSE PNG COMPANY

Clause 8 CURRENCY AND EXCHANGE CONTROL

8.1 In this Clause 8:

"Accounting Profits" means the Branch's book profits, calculated in accordance with generally accepted accounting principles and arrived at after deduction of:

- (a) in relation to each Year of Income, the Income Tax and Additional Profits Tax which have been paid or will be payable by the Company (Joint Venturer) on its income from the Project for that year; or

(b) in relation to an interim period prior to the finalisation of the annual accounts, the Income Tax and Additional Profits Tax which would be payable by the Company (Joint Venturer) in respect of the income from the Project derived by the Company (Joint Venturer) during that period on the basis that the Company (Joint Venturer) continued to derive income during the whole of the year of income of which the period forms a part, at the same daily average rate as in that period;

"Approved Dividends" means dividends of the Company (Joint Venturer) declared in respect of Branch Profits and approved by the Central Bank pursuant to Clause 8.4(a);

"Branch Profits" means in relation to any date of determination, the sum of the Branch's current year's undistributed Accounting Profits plus its retained earnings as of that date; and

"Distributable Profits" means in relation to any date of determination, the sum of the Company's (a Joint Venturer's) current year's undistributed Accounting Profits plus its retained earnings as of that date.

8.2 In accordance with the provisions of this Clause 8, the Company (Joint Venturer) shall have the right to maintain Foreign Currency Accounts to be used exclusively for the activities of the Branch in relation to the Project. Such accounts may be held in the name of the Company (Joint Venturer) or in the name of an agent or trustee for the Company (Joint Venturer) and/or lenders of Approved Finance. Funds in such accounts may be invested in such liquid or marketable financial instruments (other than in instruments of the Company (Joint Venturer) or its Related Corporations) as the Company may elect and the earnings on such financial instruments shall be treated for the purpose of this Clause as if they were earnings from the sale of Mine Products for export from Papua New Guinea. In respect of any Foreign Currency Accounts in Papua New Guinea the State shall ensure that the Company (Joint Venturer) is not subject to any order under Section 11 of the Foreign Exchange Regulations.

;

8.3 (a) Within the scope of the Approved Financial Plan and the required 3:1 debt to Equity ratio, the State shall procure all the necessary authorities and approvals as Approved Finance, advances from the head office to the Branch (other than Branch Capital) to be used exclusively for the purpose of financing the Project or Normal Operations, which are on terms no less favourable to the Branch than those generally available from banks and financial institutions lending to similar mining projects in terms of risk and location; and

(b) Within thirty (30) days of each Test Date the Company (Joint Venturer) shall submit to the Central Bank;

(i) a statement showing the Kina balance of Approved Finance as of the preceding Test Date (if any);

- (ii) a schedule of advances entered in the Branch Accounts in respect of Approved Finance, and debits made in the Branch Accounts in respect of repayments thereof, made prior to the Test Date and after the preceding Test Date (if any), detailing the foreign currency and Kina equivalent amount and date of each advance and debit; and
- (iv) cumulative figures for each of the categories of expenditure described in Clause 7.3, certified by a duly authorised officer of the Company (Joint Venturer) as having been derived in accordance with the last audited profit and loss statement for the Branch.

8.4 (a) If the Company (Joint Venturer) wishes to make a debit in the Branch Accounts against Branch Profits it shall present to the Central Bank profit and loss statements for the Branch which:

- (i) have been certified by a duly authorised officer of the Company (Joint Venturer) as having been prepared in accordance with generally accepted accounting principles; and
- (ii) show that there are Branch Profits in respect of which, or in respect of part of which, the debit is to be made.

(b) The Company (Joint Venturer) shall make a debit in the Branch Accounts, against the Branch Profits, of an amount equal to the Branch Profits as accepted under (d).

(c) Before paying any dividend in respect of Branch Profits to a shareholder outside Papua New Guinea, the Company (Joint Venturer) shall present to the Central Bank profit and loss statements which :

- (i) have been certified by a duly authorised officer of the Company (Joint Venturer) as having been prepared in accordance with generally accepted accounting principles; and
- (ii) show that there are Distributable Profits in respect of which, or in respect of part of which, the dividends are to be declared.

(d) Within a period of two (2) weeks the Central Bank may, if on reasonable grounds it is not satisfied that there are Branch Profits or Distributable Profits out of which the dividend is to be paid, require the Company (Joint Venturer) to submit an audited profit and loss statements for the Branch and the Company (Joint Venturer) showing that there are sufficient Branch and Distributable Profits.

8.5 (a) A dividend of the Company (Joint Venturer), in respect of Branch Profits, payable to a shareholder resident outside Papua New Guinea which is :

(i) one of a series of dividends declared not more frequently than once each Quarter; and

(ii) payable directly or indirectly out of that part of Distributable Profits that are Branch Profits in respect of which, or in respect of part of which, that dividend has been declared, shall be approved by the Central Bank.

(b) Approval pursuant to Clause 8.5(a) shall be given by the Central Bank within thirty (30) days from the date on which the statements referred to in Clause 8.4(a) and (c) were submitted or, in a case where the Central Bank has required an audited profit and loss statement, within thirty (30) days from the date on which the Central Bank has received audited profit and loss statement showing that there are sufficient Branch and Distributable Profits.

8.6 The Company (Joint Venturer) may retain in foreign currency outside Papua New Guinea in its Foreign Currency Accounts:

(a) the amount of any funds received or transferred in foreign currency pursuant to Approved Finance and Branch Capital in respect of -

(i) commitments in foreign currency to persons resident outside Papua New Guinea for the supply of goods, and services for the Project (including capital goods, insurance premiums and obligations due to non-resident employees and consultants); and

(ii) any other payment approved by the Central Bank; and

(b) proceeds of the sale by the Company (Joint Venturer) of Mine Products exported overseas, and its share of the settlement of insurance claims received in foreign currency, in an aggregate amount (subject to Clause 8.8) not to exceed the sum of the amounts due or to become due during the ensuing three (3) months, or such longer period(s) (for example, but not limited to, the case of foreign currency received under Clause 16.3 and the re-instatement of Project Assets may take longer than three (3) months) as may be approved by the Central Bank, in respect of -

(i) the discharge of obligations arising out of Approved Finance as being designated in a currency other than Kina, but only to the extent that Approved Finance did not, at the last Test Date, exceed the proportion of expenditure referred to in Clause 7.3;

(ii) commitments in foreign currency to persons resident outside Papua New Guinea for the supply of goods and services for the Project

- (including capital goods, insurance premiums and obligations due to non-resident employees and consultants);
- (iii) the forecast amount of Approved Dividends declared by the Company (Joint Venturer) in accordance with Clause 8.5 and payable to shareholders resident outside Papua New Guinea where such dividends relate to profits derived from the Project;
- (iv) payments made by the Company (Joint Venturer) for the purpose of effecting an Approved Reduction of Capital; and
- (v) any other payment approved by the Central Bank.

8.7 When at any time after the first sale of Mine Products:

- (a) the amount of foreign currency held by the Company (Joint Venturer) in its Foreign Currency Accounts under Clause 8.6 is as a result of any circumstances that the Company (Joint Venturer) could claim as Force Majeure under Clause 25, insufficient (before taking into account payment of Approved Dividends), to meet its obligations of the type referred to in Clause 8.6(b)(i) and (ii); and
- (b) the Company (Joint Venturer) has surplus funds held in Papua New Guinea in Kina,

the Company (Joint Venturer) may, with the approval of the Central Bank, purchase foreign currency with those surplus Kina funds and remit it overseas to meet its obligations of the type referred to in Clause 8.6(b)(i) and (ii) as they fall due, until foreign currency is again available for this purpose under Clause 8.6.

8.8 The Company (Joint Venturer) shall submit to the Central Bank :

- (a) within fifteen (15) days of the end of each Quarter -
 - (i) a report on the foreign currency which it has retained in its Foreign Currency Accounts under this Clause 8 during the Quarter, if any, accounting for funds retained pursuant to Clause 8.6 by identifying the purposes in the categories (a)(i) and (ii) and (b)(i) to (v) for which the foreign currency is being retained and disbursed; and
 - (ii) a report certified by a duly authorised officer of the advances and debits pertaining to Approved Finance and any collateral obligation pertaining thereto during that Quarter and the outstanding balances at the end of the Quarter; and

(v) a forecast of the foreign currency which it expects to retain in its Foreign Currency Accounts under this Clause 8 during the ensuing Quarter, if any; and

(b) within five (5) months of the end of each year of income audited accounts showing the amount of Distributable Profits for the year of income and the balance of Approved Finance at the end of the year of income.

8.9 (a) Except as provided in Clause 8.6 the Company (Joint Venturer) shall convert all its foreign currency earnings from the Project into Kina and remit the proceeds to Papua New Guinea to a bank account in the name of the Company (Joint Venturer) for the use of the Branch or to an account in Papua New Guinea pledged to or held in the name of an agent or trustee for the Company (Joint Venturer) for the use of the Branch and/or lenders of Approved Finance.

(b) After the commencement of Normal Operations, any Mine Products exported from Papua New Guinea which remain unsold for a period of three (3) months from the time of export shall, unless otherwise agreed by the Central Bank, be deemed to have been sold by the Company (Joint Venturer) on the next business day after the expiry of the three month period. The deemed proceeds of sale will be calculated in US dollars, using the relevant world market price on that business day.

Upon being served with a notice from the Central Bank containing these calculations, the Company (Joint Venturer) shall immediately convert into Kina an amount of foreign currency equal to the deemed proceeds of sale and remit the amount to a bank account in Papua New Guinea in the name of the Company (Joint Venturer) for the use of the Branch.

8.10 (a) After the date upon which all Approved Finance has been repaid the Company (Joint Venturer) may request from the Central Bank agreement on a schedule providing for a reduction of Branch Capital which separates Branch Capital supplied in Kina and Branch Capital in a currency other than Kina. Such a schedule will be agreed within twelve (12) months, or such shorter period as the Central Bank may specify, of this request and will, for the purposes of effecting the reduction of Branch Capital, authorise payments to be made over a period being not less than three (3) years and covering, so far as practicable, the estimated period during which the Project will continue, provided that no such payment will be authorised in respect of any period during which the Company (Joint Venturer) is holding unremitted Branch Profits other than earnings of the current Quarter.

(b) Pursuant to the schedule agreed under (a), the Company (Joint Venturer) will make a debit in the Branch Accounts against Branch Capital, effecting a Kina transfer for the Branch Capital scheduled in Kina and otherwise required in Kina, and may, to the extent that Branch Capital was supplied in currency

other than Kina, purchase foreign currency, with funds held in Kina, for the purpose of making payments required in foreign currency, in order to give effect to the Approved Reduction of Capital.

8.11 The Company (Joint Venturer), in relation to the Project, shall not be subject to any legislative or regulatory action of the State in regard to foreign exchange, and control thereof.;

(a) which is less favourable than the general application of legislative and regulatory action which applies to persons dealing with foreign exchange in Papua New Guinea; and

(b) which, in particular, prevents the Company (Joint Venturer) from buying and selling Kina, in accordance with the Foreign Exchange Regulations and this Clause 8, and at rates of exchange as favourable as those available to other commercial buyers and sellers of that currency in similar sized transactions.

8.12 Where any right or assurance given to the Company (Joint Venturer) under this Clause 8 requires the Central Bank -

(a) to approve or authorise any act, matter or thing; or

(b) to grant authority under the Foreign Exchange Regulations for its exercise or performance,

and the Company (Joint Venturer) has supplied any necessary information to the Central Bank and otherwise met the conditions of this Clause 8, the State shall, upon request from the Company (Joint Venturer) ensure by policy directions to the Central Bank or otherwise that such approval is given or such authority is granted.

8.13 The Company (Joint Venturer) shall not use any provisions of this Clause 8 or any authority or approval given by the Central Bank or by an authorized dealer under the Foreign Exchange Regulations to engage in Speculative Currency Transactions. If the Company (Joint Venturer) is in breach of this Clause 8.13, it shall pay to the State as liquidated damages an amount equal to the amount of any net after tax profit or gain which the Company (Joint Venturer) makes on the Speculative Currency Transaction and any cost incurred by the State in establishing that the transaction was a Speculative Currency Transaction.

**C DRAFT FOR A FOREIGN COMPANY THAT IS (a) A SINGLE PURPOSE
COMPANY or (b) A MULTI-PURPOSE COMPANY**

Clause 8 CURRENCY AND FINANCING

8.1 In this Clause 8:

"Accounting Profits" means the Branch's book profits, calculated in Kina in accordance with generally accepted accounting principles and arrived at after deduction of:

- (a) in relation to each Year of Income, the Income Tax and Additional Profits Tax which have been paid or will be payable by the Company (Joint Venturer) on its income from the Project for that year; or
- (b) in relation to an interim period prior to the finalisation of the annual accounts, the Income Tax and Additional Profits Tax which would be payable by the Company (Joint Venturer) in respect of the income from the Project derived by the Company (Joint Venturer) during that period on the basis that the Company (Joint Venturer) continued to derive income during the whole of the year of income of which the period forms a part, at the same daily average rate as in that period;

"Approved Debit" means a debit entered in the Branch Accounts as approved by the Central Bank pursuant to Clause 8.5 and, subject to Clause 8.7, which can be transferred from the Foreign Currency Account at the Company's (Joint Venturer's) discretion; and

"Branch Profits" means, in relation to any date of determination, the sum of the Branch's current year's undistributed Accounting Profits plus its retained earnings as of that date.

8.2 In accordance with the provisions of this Clause 8, the Company (Joint Venturer) shall have the right to maintain Foreign Currency Accounts to be used exclusively for the activities of the Branch in relation to the Project. Such accounts may be held in the name of the Company (Joint Venturer) or in the name of an agent or trustee for the Company (Joint Venturer) and/or lenders of Approved Finance. Funds in such accounts may be invested in such liquid or marketable financial instruments (other than in instruments of the Company (Joint Venturer) or its Related Corporations) as the Company (Joint Venturer) may elect and the earnings on such financial instruments shall be treated for the purpose of this Clause as if they were earnings from the sale of Mine Products for export from Papua New Guinea. In respect of any Foreign Currency Accounts in Papua New Guinea the State shall ensure that the Company (Joint Venturer) is not subject to any order under Section 11 of the Foreign Exchange Regulations.

8.3 (a) Within the scope of the Approved Financial Plan and required 3:1 debt to Equity ratio, the State shall procure all the necessary authorities and approvals

as Approved Finance, advances, from the head office to the Branch (other than Branch Capital) to be used exclusively for the purpose of financing the Project or Normal Operations, which are on terms no less favourable to the Branch than those generally available from banks and financial institutions lending to similar mining projects in terms of risk and location; and

(b) Within thirty (30) days of each Test Date the Company (Joint Venturer) shall submit to the Central Bank:

(i) a statement showing the Kina balance of the Approved Finance as of the preceding Test Date (if any);

(ii) a schedule of advances entered in the Branch Accounts in respect of Approved Finance, and debits made in the Branch Accounts in respect of repayments thereof, made prior to the Test Date and after the preceding Test Date (if any), detailing the foreign currency and Kina equivalent amount and date of each advance and debit; and

cumulative figures for each of the categories of expenditure described in Clause 7.3, certified by a duly authorised officer of the Company (Joint Venturer) as having been derived in accordance with the last audited profit and loss statement for the Branch.

8.4 (a) If the Company (Joint Venturer) wishes to make a debit in the Branch Accounts against Branch Profits it shall present to the Central Bank profit and loss statements for the Branch which:

(i) have been certified by a duly authorised officer of the Company (Joint Venturer) as having been prepared in accordance with generally accepted accounting principles; and

(ii) show that there are Branch Profits in respect of which, or in respect of part of which, the debit is to be made.

(b) Within a period of two (2) weeks the Central Bank may, if on reasonable grounds it is not satisfied that there are Branch Profits out of which the debit can be made, require the Joint Venturer to submit an audited profit and loss statement for the Branch showing that there are sufficient Branch Profits.

8.5 (a) A debit made in the Branch Accounts against Branch Profits which is :

(i) one of a series of debits against Branch Profits made not more frequently than once each Quarter; and

(ii) payable directly or indirectly out of Branch Profits in respect of which, or in respect of part of which, that debit is to be made,

shall be approved by the Central Bank as an Approved Debit.

(b) Approval pursuant to Clause 8.5(a) shall be given by the Central Bank within thirty (30) days from the date on which the statements referred to in Clause 8.4(a) were submitted or, in a case where the Central Bank has required an audited profit and loss statement, within thirty (30) days from the date on which the Central Bank has received an audited profit and loss statement for the Branch showing that there are sufficient Branch Profits.

8.6 The Company (Joint Venturer) may retain in foreign currency outside Papua New Guinea in its Foreign Currency Accounts :

(a) the amount of any funds received or transferred in foreign currency pursuant to Approved Finance and Branch Capital in respect of -

(i) commitments in foreign currency to persons resident outside Papua New Guinea for the supply of goods, and services for the Project (including capital goods, insurance premiums and obligations due to non-resident employees and consultants); and

(ii) any other payment approved by the Central Bank; and

(b) proceeds of the sale by the Company (Joint Venturer) of Mine Products exported overseas, and its share of the settlement of insurance claims received in foreign currency, in an aggregate amount (subject to Clause 8.8) not to exceed the sum of the amounts due or to become due during the ensuing three (3) months, or such longer period(s) (for example, but not limited to, the case of foreign currency received under Clause 16.3 and the re-instatement of Project Assets may take longer than three (3) months) as may be approved by the Central Bank, in respect of -

(i) the discharge of obligations arising out of Approved Finance as being designated in a currency other than Kina, did not, at the last Test Date, exceed the proportion of expenditure referred to in Clause 7.3;

(ii) commitments in foreign currency to persons resident outside Papua New Guinea for the supply of goods and services for the Project (including capital goods, insurance premiums and obligations due to non-resident employees and consultants);

(iii) the forecast amount of Approved Debts to be made by the Company (Joint Venturer) in accordance with Clauses 8.4 and 8.5;

(iv) payments made by the Company (Joint Venturer) for the purpose of effecting an Approved Reduction in Capital; and

(v) any other payment approved by the Central Bank.

8.7 When at any time after the first sale of Mine Products:

(a) the amount of foreign currency held by the Company (Joint Venturer) in its Foreign Currency Accounts under Clause 8.6 is as a result of any circumstances that the Company (Joint Venturer) could claim as Force Majeure under Clause 25, insufficient (before taking into account payment of Approved Debits), to meet its obligations of the type referred to in Clause 8.6(b)(i) and (ii); and

(b) the Company (Joint Venturer) has surplus funds held in Papua New Guinea in Kina,

the Company (Joint Venturer) may, with the approval of the Central bank, purchase foreign currency with those surplus Kina funds and remit it overseas to meet its obligations of the type referred to in Clause 8.6(b)(i) and (ii) as they fall due, until foreign currency is again available for this purpose under Clause 8.6.

8.8 The Company (Joint Venturer) shall submit to the Central Bank :

(a) within fifteen (15) days of the end of each Quarter -

(i) a report on the foreign currency which it has retained in its Foreign Currency Accounts under this Clause 8 during the Quarter, if any, accounting for funds retained pursuant to Clause 8.6 by identifying the purposes in the categories (a)(i) and (ii) and (b)(i) to (v) for which the foreign currency is being retained and disbursed; and

(ii) a report certified by a duly authorised officer of the advances and debits pertaining to Approved Finance and any collateral obligation pertaining thereto during that Quarter and the outstanding balances at the end of the Quarter; and

(iii) a forecast of the foreign currency which it expects to retain in its Foreign Currency Accounts under this Clause 7 during the ensuing Quarter, if any; and

(b) within five (5) months of the end of each year of income audited accounts showing the amount of Branch Profits for the year of income and the balance of Approved Finance at the end of the year of income.

8.9 (a) Except as provided in Clause 8.6 the Company (Joint Venturer) shall convert all its foreign currency earnings from the Project into Kina and remit the proceeds to Papua New Guinea to a bank account in the name of the Company

(Joint Venturer) for the use of the Branch or to an account in Papua New Guinea pledged to or held in the name of an agent or trustee for the Company (Joint Venturer) for the use of the Branch and/or lenders of Approved Finance.

- (b) After the commencement of Normal Operations, any Mine Products exported from Papua New Guinea which remain unsold for a period of three (3) months from the time of export shall, unless otherwise agreed by the Central Bank, be deemed to have been sold by the Company (Joint Venturer) on the next business day after the expiry of the three month period. The deemed proceeds of sale will be calculated in US dollars, using the relevant world market price on that business day.

Upon being served with a notice from the Central Bank containing these calculations, the Company (Joint Venturer) shall immediately convert into Kina an amount of foreign currency equal to the deemed proceeds of sale and remit the amount to a bank account in Papua New Guinea in the name of the Company (Joint Venturer) for the use of the Branch.

- 8.10 (a) After the date upon which all Approved Finance has been repaid the Company (Joint Venturer) may request from the Central Bank agreement on a schedule providing for a reduction of Branch Capital which separates Branch Capital supplied in Kina and Branch Capital in a currency other than Kina. Such a schedule will be agreed within twelve (12) months, or such shorter period as the Central Bank may specify, of this request and will, for the purposes of effecting the reduction of Branch Capital, authorise payments to be made over a period being not less than three (3) years and covering, so far as practicable, the estimated period during which the Project will continue, provided that no such payment will be authorised in respect of any period during which the Company (Joint Venturer) is holding unremitted Branch Profits other than earnings of the current Quarter.

- (b) Pursuant to the schedule agreed under (a), the Company (Joint Venturer) will make a debit in the Branch Accounts against Branch Capital, effecting a Kina transfer for the Branch Capital scheduled in Kina and otherwise required in Kina, and may, to the extent that Branch Capital was supplied in currency other than Kina, purchase foreign currency, with funds held in Kina, for the purpose of making payments required in foreign currency, in order to give effect to the Approved Reduction in Capital.

8.11 The Company (Joint Venturer) shall not be subject to any legislative or regulatory action of the State in regard to foreign exchange, and control thereof.:

- (a) which is less favourable than the general application of legislative and regulatory action which applies to persons dealing with foreign exchange in Papua New Guinea; and

(b) which, in particular, prevents the Company (Joint Venturer) from buying and selling Kina, in accordance with the Foreign Exchange Regulations and this Clause 8, and at rates of exchange as favourable as those available to other commercial buyers and sellers of that currency in similar sized transactions.

8.12 Where any right or assurance given to the Company (Joint Venturer) under this Clause 8 requires the Central Bank -

(a) to approve or authorise any act, matter or thing; or

(b) to grant authority under the Foreign Exchange Regulations for its exercise or performance,

and the Company (Joint Venturer) has supplied any necessary information to the Central Bank and otherwise met the conditions of this Clause 8, the State shall, upon request from the Company (Joint Venturer) ensure by policy directions to the Central Bank or otherwise that such approval is given or such authority is granted.

8.13 The Company (Joint Venturer) shall not use any provisions of this Clause 8 or any authority or approval given by the Central Bank or by an authorized dealer under the Foreign Exchange Regulations to engage in Speculative Currency Transactions. If the is in breach of this Clause 8.13, it shall pay to the State as liquidated damages an amount equal to the amount of any net after tax profit or gain which the Company (Joint Venturer) makes on the Speculative Currency Transaction and any cost incurred by the State in establishing that the transaction was a Speculative Currency Transaction.

Clause 9 **MARKETING AND OTHER CONTRACTS**

9.1 The Company (A Joint Venturer) may market without further reference to the State all Mine Products (its share of Mine Products) and shall have sole control and management of sale and delivery of such Mine Products, including the forward selling of all Mine Products, and shall assume all risks therefor, provided that -

(a) such marketing is consistent with the Approved Proposals for Development;

(b) the Company (Joint Venturer):

(i) sells the Mine Products (its share of Mine Products) on an arms' length basis subject only to normal deductions for shipping, smelting and refining, and other realisation costs; or

(ii) delivers Mine Products (its share of Mine Products) in repayment of loans which form part of Approved Finance.

- (c) the State has not notified the Company (Joint Venturer) that the export of the Mine Products (its share of Mine Products) to buyers in a specified jurisdiction could -
 - (i) breach an obligation the State arising under international law;
 - (ii) prejudice national security; or
 - (iii) prejudice the international relations of the State by the export of Mine Products to another country with which it has been declared by the State to be contrary to the interests of the State to be engaged in international trading.

9.2 If a refinery or smelter or other further downstream industry or other secondary or tertiary processing plant is established in Papua New Guinea which could utilise the Mine Products, the Company (each Joint Venturer) shall make available to that plant, for refining on behalf of the Company (each Joint Venturer) or for processing or refining on its own account at least one-third (1/3) of the Company's (each Joint Venturer's) share of Mine Products, or such lesser portion of the (Joint Venturer's share of) Mine Products as the refiner notifies the Company (each Joint Venturer) in writing, not less than 6 months before delivery to the refinery is required, provided that -

- (a) the Company (Joint Venturer) determines that the plant has demonstrated its ability to -
 - (i) produce internationally acceptable and marketable products; and
 - (ii) provide fully adequate security for Mine Products at all stages of production, storage and delivery;
- (b) the terms and conditions offered by the refiner are commercially competitive with those available from other international refiners or traders in all respects including, without limiting the generality thereof, in pricing (after taking account of freight differentials and currency of payment) and time of deliveries of refined product;
- (c) the contract between the Company (Joint Venturer) will be negotiated in good faith on an annual basis;
- (d) there is no interference with the Company's existing contracts entered into in good faith pursuant to Clause 9.1; and
- (e) this Clause 9.2 will not apply to the Company (a Joint Venturer) if it has established its own refinery or smelter or other secondary processing plant in Papua New Guinea for the purpose of processing the Mine Products.

- 9.3 The Company (each Joint Venturer) shall inform the State of each agreement concerning sales or processing of Mine Products, patent licensing, engineering, construction or management services which is not an agreement entered into on an arm's length basis. If, in the opinion of the State, such agreement is not on competitive commercial terms, the State may, within thirty (30) days of receipt of such an agreement, give notice to the Company (such Joint Venturer) of the terms which the State determines to be competitive commercial terms.

Upon receipt of the State's notice the Company (Joint Venturer) may -

- (a) terminate the agreement;
- (b) renegotiate the agreement using the terms determined by the State; or
- (c) refer the dispute, within thirty (30) days, to a Sole Expert for a determination as to what are competitive commercial terms in the circumstances.

Upon receipt of the expert's decision, which shall be binding on the Parties, the Company (the Manager and each Joint Venturer) shall renegotiate the agreement, if necessary, to embody those terms decided by the Sole Expert to be competitive commercial terms or terminate the agreement.

- 9.4 For purposes of this Clause 9, a sale is at arm's length or a transaction is on an arm's length basis where -

- (a) the buyer and the seller in negotiating the sale have sought to promote their own best interests in accordance with fair and honest business methods;
- (b) the consideration expressed in the agreement for sale is the only consideration for the sale;
- (c) the price and other terms of the sale have not been affected by, nor determined as a consequence of, any other agreement or any direct or indirect relationship (other than the relationship created by the agreement for sale between the sellers or shareholders of the seller, or a company in which the seller is a shareholder, and the buyer or shareholders of the buyer, or a company in which the buyer is a shareholder); and
- (d) neither the seller, nor any person or company connected with it through shareholding or otherwise, has any direct or indirect interest in the subsequent re-sale or disposal by the buyer of any of the products purchased pursuant to the agreement or sale.

- 9.5 At any time after the State has elected to participate in the Project (whether directly or through its nominee) under provisions of a Mining Equity Agreement, the State or its nominee, as the case may be, may require, by notice in writing, the Company (any or all of the Joint Venturers) to sell, on its behalf, its share of the Mine Products. The State

agrees to, or to procure its nominee, to reimburse out-of-pocket expenses incurred by the Company (Joint Venturer) in selling its share of the Mine Products and pay a mutually acceptable marketing fee.

Clause 10 **ACQUISITION OF STATE INTERESTS**

- 10.1 Further to recitals B, C, D, and E the State has an option but not the obligation to acquire at cost from the Company (Joint Venturers) 30% interest in the Project.
- 10.2 Such acquisition if any shall be effected under a Mining Equity Agreement or such other agreement pursuant to and consistent with the Option Agreement as defined under the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

Clause 11 **INVESTMENT PROMOTION AUTHORITY CERTIFICATION**

The Company (Each Joint Venturer) shall apply to be certified under the Investment Promotion Act 1992 in respect of its activities contemplated by or required to be carried out under the Approved Proposal For Development. The State shall ensure that the Company (each Joint Venturer) is issued with a certificate, in which any conditions are consistent with this Contract and the Approved Proposal for Development, in accordance with its application for the duration of the Project or for any period until the Company ceases to have an interest in the Project (whichever is shorter).

Clause 12 **ENVIRONMENTAL MANAGEMENT AND PROTECTION**

- 12.1 The Company (Joint Venturers) shall comply in all material respects with the Environmental Plan.
- 12.2 The Environmental Plan may be varied by the Company (Joint Venturers) pursuant to the Environmental Planning Act (Chapter 370) and as provided for in Clause 28. Where pursuant to Clause 28.2 any variation of the Environmental Plan requires the approval of the State, the Company (Joint Venturers) shall submit such variation to the Minister responsible for environmental matters.
- 12.3 Subject to Clause 12.5, the Minister responsible for environmental matters may, on behalf of the State, initiate amendment to the Environmental Plan if:
 - (a) at any time the conduct of Normal Operations in accordance with the Environmental Plan for whatever reason poses a material danger to public health and safety; or

- (b) the conduct of Normal Operations results in significant damage to the ecology of the area which was not contemplated in the Environmental Plan; or
 - (c) the environmental impact of Normal Operations shall prove substantially more adverse than anticipated in the Environmental Plan; or
 - (d) technological procedures or improvements thereof shall have become available and economic subsequent to the Effective Date and, if applied to the operations of the Project, could materially mitigate the environmental impact of Normal Operations.
- 12.4 In the event that there is a dispute in respect of any amendment initiated by the Minister responsible for environmental matters on behalf of the State in any of the circumstances set out in Clause 12.3, the dispute shall be referred to arbitration under Clause 23 and the amendment shall not become effective unless and until it is upheld by the resulting arbitration award.
- 12.5 During the period for which any Approved Finance is outstanding, the State shall ensure that the Minister responsible for environmental matters does not initiate any amendments to the Environmental Plan in the circumstances set out in Clause 12.3(d) which make the cost to the Company (Joint Venturers) of carrying out the Project materially greater except that the Company (Joint Venturers) shall take progressive measures to utilise technological procedures or improvements for reducing environment risks for the benefit of future generations.
- 12.6 The Company (Joint Venturers) shall not be subject to any laws and regulations relating to the environment that are in their general application less favourable to the Company (Joint Venturers) than the laws and regulations relating to the environment which apply to all other persons engaged in natural resource projects in Papua New Guinea nor will the laws and regulations relating to environment in Papua New Guinea be applied to the Company (Joint Venturers) in a manner less favourable to the manner in which they are generally applied to others to whom they are applicable.
- 12.7 Where the Environmental Plan has been varied or amended under this Clause, the Environmental Plan varied or amended accordingly shall be deemed to have been approved by the State.

Clause 13 **TRAINING AND LOCALISATION**

- 13.1 The Company (Joint Venturers) will comply with the Training and Localisation Programme and priority in employment will be given in the following order, firstly to the residents of the () District, then to other () Province residents, and then to residents of Papua New Guinea.
- 13.2 (a) The Company (Joint Venturers) may, with the consent of the State (which consent shall not be unreasonably withheld), amend or alter the Training and

Localisation Programme with a view to securing the maximum training of and benefits to Papua New Guineans from the Project. If the Programme is disrupted by circumstances or events (whether or not they constitute Force Majeure under Clause 25.2) which make it difficult or impossible for the Company (Joint Venturers) -

- (i) to comply with its (their) obligations under the Programme; or
- (ii) to operate the mine site in accordance with the standard as outlined in the Mining (Safety) Act, (Chapter 195A);

the Company (Joint Venturers) may give notice of alternative or revised plans to the part of the programme affected.

- (b) Should the Company (Joint Venturers) give notice pursuant to paragraph (a) the State shall within thirty (30) days either -
 - (i) approve those alternative or revised plans, or
 - (ii) meet with the Company (Joint Venturers) to discuss and agree upon the alternative or revised plans.

12.3 If the discussions under Clause 13.2 (b) do not lead to the State's approval of alternative or revised plans and the Company (Joint Venturers) consider the State's decision to be unreasonable, the Company (Joint Venturers) may within sixty (60) days, elect to refer the matter to arbitration. In reaching a decision the arbitrator shall judge the reasonableness of the State's decision.

13.4 The State shall give such advice to the Company (Joint Venturers) as is reasonably required in the development and implementation of the Training and Localisation Programme and in the recruitment of Papua New Guinean staff.

Clause 14 SUPPLY AND PROCUREMENT

14.1 The Company (Joint Venturer) shall, on an annual basis, identify and invite registration of businesses in Papua New Guinea, particularly in the [] Province and the area of the Project, which are capable of supplying materials, equipment and services to the Project, but pre-qualification and registration does not provide assurance to a business that it will be invited to tender or be awarded any contract.

- 14.2 (a) When calling for tenders from contractors and suppliers, the Company (Joint Venturers) shall include Papua New Guinean contractors and suppliers where -
 - (i) the contractors have proven ability in performing work of a similar nature and size to that required for the Project, within the specified time period; and

(ii) the suppliers are established and recognised suppliers of materials and equipment who have marketed or distributed such materials and equipment and who have applied in writing to be registered with the Company (Joint Venturers).

(b) The Company (Joint Venturers) shall ensure that its contractors are bound by obligations comparable to those set out in Paragraph (a) when the contractors call for tenders from sub-contractors.

14.3 The supply of materials, equipment and services may be tendered for and procured internationally provided that where such materials, equipment and services are procurable within Papua New Guinea from businesses pre-qualified and registered pursuant to Clause 14.1 and meet the requirements of Clause 14.2, such businesses shall be given a reasonable opportunity to tender and if a tender submission from such business -

(a) meets the specifications of the invitation to tender,

(b) is competitive in cost with international sources, and

(c) meets the delivery requirements of the Project,

then such materials, equipment and services shall be procured from sources within Papua New Guinea with preference being given to businesses firstly from the () District, then from other parts of the () Province and then from other parts of Papua New Guinea. With respect to all tendered contractors and suppliers, whether Papua New Guinean or otherwise, the final determination to award a particular contract shall be made by the Company (Joint Venturers).

14.4 In assessing the tenders from local contractors and suppliers, the Company (Joint Venturers) will consider the extra costs it (they) would incur if it was (they were) to grant the contract to a foreign supplier or contractor. These extra costs shall include, but are not necessarily restricted to, wharfage costs, shipping costs, stevedoring costs, customs clearance costs, customs duties, and demurrage charges.

Clause 15 LOCAL BUSINESS DEVELOPMENT

The Company (Joint Venturers), in consultation and cooperation with the State and the Provincial Government, will-

(a) comply with and carry out the Business Development Plan outlined in the Approved Proposals for Development; and

(b) conduct an annual review of progress being made on the implementation of the Business Development Plan and make such variations to it as required by

changing circumstances and are agreed by the Minister responsible for trade and industry matters.

Clause 16 **INSURANCE**

- 16.1 From the commencement of construction, the Company (Joint Venturers) shall ensure that those aspects of the Project that are normally insured in accordance with the practice of the mining industry are insured and commercially insurable at a reasonable cost are insured and the State shall be advised of the policy or policies in place.
- 16.2 For all matters which involve Papua New Guinea risks, the Company (Joint Venturers) shall obtain and maintain its (their) insurance from Papua New Guinea insurers or through Papua New Guinea insurance brokers, as required by the Insurance Act 1995, except to the extent that:
- (a) adequate insurance from companies having financial capacity to meet any claims is not obtainable from or through such insurance brokers; or
 - (b) the agreements relating to Approved Finance require otherwise.

If paragraph (a) or (b) applies, the State shall grant or procure the grant by the relevant government agency of an exemption from the requirement of the Insurance Act 1995 to obtain and maintain certain insurance in Papua New Guinea subject to any tax, duty or levy as required by legislation or regulation.

- 16.3 The Company (Joint Venturers) shall, unless the insurance policies or loan agreements state otherwise or the State otherwise agrees, use any amount paid to it pursuant to any damage or destruction provisions in any contract of insurance to reinstate the Project Assets (except for Mine Products) in respect of which such amount was paid, provided that the Company (Joint Venturer) shall not be required to repair or restore any portion of the Project Assets:
- (a) that, prior to the damage or destruction, had been obsolete or were of no material value to the operation of the Project; or
 - (b) where the Company (Joint Venturers), following a review of the facts with the State, has notified the State that in its (their) judgement the cost of doing so is not justified by the incremental economic benefit which the Project will derive therefrom. In the event that the State notifies the Company (Joint Venturers) within thirty (30) days of receipt of such notice that it disagrees with such judgement, the matter shall be referred for determination to a Sole Expert.

Clause 17 **PATENT AND TECHNOLOGY RIGHTS**

All know-how within the meaning of section 163N of the Income Tax Act developed within the Project shall remain the property of the Company (Joint Venturers). If the Company applies for, takes out and retains (Joint Venturers apply for, take out and retain) patent or other technology rights or registrations to protect all or any portion of the know-how, the State shall have a royalty free right to use such protected know-how on and in respect of the Project.

Clause 18 **SUSPENSION OF OPERATIONS**

- 18.1 After consultation with the State and on giving the State not less than thirty (30) days notice, the Company (Joint Venturers) may elect to suspend production if, in the three (3) months immediately preceding the date of the notice, the Company's (Joint Venturers') revenues from the Project are less than the sum of royalties and Operating Costs. As soon as possible after giving notice under this Clause, the Company (Joint Venturers) shall submit a report giving details of revenue, royalties and Operating Costs of the Project for the period of three (3) months aforesaid giving the reasons why, in its (their) opinion, it is necessary to cease production.
- 18.2 Where pursuant to the Clause 18.1 the Company has (Joint Venturers have) elected to suspend production it (they) shall maintain, subject to fair wear and tear, the Project Assets so as to prevent significant deterioration until Normal Operations are resumed.
- 18.3 No later than twelve (12) months from the date on which the Company (Joint Venturers) suspended production pursuant to Clause 18.1 and thereafter at no longer than twelve (12) month intervals until Normal Operations are resumed, the Company (Joint Venturers) shall submit a further report showing its (their) projection of the Costs to Resume Operations and of revenue for the same period.
- 18.4 If a report submitted pursuant to Clause 18.3 shows the Company's (Joint Venturers') projection of revenue from the Project for the succeeding twelve (12) month period is greater than its (their) projection of Costs to Resume Operations for the said twelve (12) month period if Normal Operations were to be resumed, then the Company (Joint Venturers) shall promptly take such measures necessary to ensure that Normal Operations are resumed within a reasonable time period.
- 18.5 Where production has been suspended for a continuous period of not less than three (3) years, the Minister may direct the Company (Joint Venturers) to resume Normal Operations if he is of the reasonable opinion that the State's projection of Costs to Resume Operations is less than the State's projection of revenue from the Project for the same period. The Minister will provide the Company (Joint Venturers) with a copy of the State's projections of costs and revenues.
- 18.6 If the Company (Joint Venturers) disagree with the Minister's direction pursuant to Clause 18.5, it (they) may elect to submit the State's and the Company's (Joint Venturers') projections of revenue and Costs to Resume Operations to a Sole Expert for his opinion.

- 18.7 Where projections made by the State and the Company (Joint Venturers) have been referred pursuant to Clause 18.6, the Sole Expert shall determine what projections would be reasonable to make in respect of the twelve (12) month period under review and the opinion of the Sole Expert shall be binding on the Parties so that in the event that the Sole Expert accepts the projections of the Company (Joint Venturers) or is otherwise of the opinion that if Normal Operations were resumed the Company's (Joint Venturers') revenue from the Project would be less than Costs to Resume Operations in respect of the twelve (12) month period, the direction given by the Minister pursuant to Clause 18.5 shall be deemed to have been withdrawn.
- 18.8 Where pursuant to Clause 18.5 the Minister has directed the Company (Joint Venturers) to resume Normal Operations and that direction has not been or is not deemed to have been withdrawn, the Company (Joint Venturers), if it does (they do) not promptly take such measures to ensure that Normal Operations are resumed within a reasonable time period, shall be deemed to have abandoned the Project for the purpose of Clause 19.2(c) provided however, that where projections of revenue and Costs to Resume Operations have, pursuant to Clause 18.6, been referred to a Sole Expert, the time period shall run from the date the Sole Expert gave his opinion on the projections.
- 18.9 Nothing in this Clause 18 shall be deemed to limit the right of the Company (Joint Venturers) to suspend or limit production:
- (a) as part of Normal Operations (e.g. for engineering, maintenance or other technical reasons); or
 - (b) when it is permitted to do so for reasons of Force Majeure pursuant to Clause 25.

Clause 19 **TERMINATION**

- 19.1 The Company (Joint Venturers) may terminate this Contract at any time after the Commencement of Commercial Production by giving twelve (12) months' notice to the State.
- 19.2 The State may terminate this Contract by notice to the Company (each of the Joint Venturers) if:
- (a) the Special Mining Lease expires by effluxion of time and is not renewed;
 - (b) the Special Mining Lease is surrendered under the Mining Act other than for the purpose of the Company (Joint Venturers) being issued a renewal or extension thereof or being issued a new Special Mining Lease in respect of the Project; or
 - (c) the Company (Joint Venturers) shall have abandoned the Project (within the meaning of Clause 18.8) and not resumed it within a period of sixty (60) days after notice is given by the State to the Company (each of the Joint Venturers).

19.3 In the event that:

- (a) the Company is a single purpose PNG project company and is in material default in the performance of the obligations of the Company set forth in Clauses 4.1, 7.3, 8.9, 9.1(c), 9.2, 12.1, 13.1, 15, or 18, or the Company fails to treat as binding and comply with any award made in an arbitration pursuant to Clause 23 in respect of those aforesaid obligations; or
- (b) the Parties, other than the State, are Joint Venturers and
 - (i) they are in material default of any of the joint and several obligations set forth in Clauses 4.1, 12.1, 13.1, 15 or 18, or fail to treat as binding and comply with any award made in an arbitration pursuant to Clause 23 in respect of any of those aforesaid obligations; or
 - (ii) any Joint Venturer is in material default of any of the several obligations set forth in 7.3 if the Joint Venturer is a single purpose PNG company], 8.9, 9.1(c) or 9.2, or fail to treat as binding and comply with any award made in an arbitration pursuant to Clause 23 in respect any of those aforesaid obligations;

the State may give notice of such a default or failure (hereinafter in this Clause called the “Default Notice”):

- (c) in the case of the situation to which (a) or (b)(i) above applies, to the Company (each of the Joint Venturers), which shall specify the default or failure alleged. The State shall at the same time give a copy of the Default Notice to each lender to any of the Company (Joint Venturers) under any Approved Finance, and each mortgagee under any mortgage or charge of any of the Project Assets, where the name and address of that lender, mortgagee or chargee has previously been notified to the State; or
- (d) in the case of the situation to which (b)(ii) above applies, to the Joint Venturer, which shall specify the default or failure alleged. The State shall at the same time give a copy of the Default Notice to each lender to the Joint Venturer under any Approved Finance, and each mortgagee under any mortgage or charge of any of the Project Assets, where the name and address of that lender, mortgagee or chargee has previously been notified to the State.

19.4 If within a period of one hundred and eighty (180) days following a Default Notice (or such longer period as may be fixed by an arbitration award where the subject matter of the Default Notice is submitted to arbitration under Clause 19.5) either:

- (a) the default or failure specified in the Default Notice has not been remedied (or active steps have not been commenced and continued to remedy the default or failure if it is not capable of speedy remedy); or

- (b) compensation is not paid in respect thereof (in the case of a default or failure not capable of remedy but where payment of compensation would be adequate recompense to the State),

then, subject to Clauses 19.5 and 19.6, the State may :

- (c) in the case of the situation to which Clause 19.3(a) or (b)(i) applies, by notice (hereinafter in this Clause called a "Termination Notice") to the Company (each of the Joint Venturers) (which shall be copied to each lender, mortgagee or chargee who was given a copy of the Default Notice) bring about the termination of the Contract on a date which is not less than one (1) month thereafter (hereinafter in this Clause called the "Termination Date"). The State shall ensure that the Minister does not make a decision to forfeit the Special Mining Lease, and that no other action is taken by or on behalf of the State to terminate the Special Mining Lease or any other leases granted under the Mining Act for the purposes of the Project, before the Termination Date; or
- (d) in the case of the situation to which Clause 19.3(b)(ii) applies, by notice (hereinafter in this Clause called an "Assignment Notice") to the defaulting Joint Venturer ("Defaulting Venturer") (which shall be copied to each lender, mortgagee or chargee who was given a copy of the Default Notice) will require the Defaulting Venturer, unconditionally and without consideration and free from encumbrances, to assign its entire undivided interest in the Project Assets to the other Joint Venturers in undivided proportionate shares in proportion to their undivided interest in the Project Assets, on a date which is not less than one (1) month thereafter (hereinafter in this Clause called the "Assignment Date").

19.5 If the Company (Joint Venturer(s)) or the State contest:

- (a) the grounds for the issue of the Default Notice; or
- (b) whether the default or failure has been remedied; or
- (c) the adequacy of any compensation paid pursuant to Clause 19.4(b),

the matter shall be submitted for arbitration pursuant to Clause 23. If the arbitrator finds (in the case of paragraph (a)) that adequate grounds exist for issue of the Default Notice, he shall fix a period during which the Company (Joint Venturer(s)) must comply with Clause 19.4(a) or (b) and the amount of compensation payable (if applicable). If the arbitrator finds (in the case of paragraph (b)) in favour of the State, he shall fix a period during which the Company (Joint Venturer(s)) must remedy the default or failure. If the arbitrator finds (in the case of (c)) in favour of the State, he shall fix the amount of compensation payable and the period for its payment.

The State shall not serve a Termination Notice or Assignment Notice, as the case may be, while arbitration between the State and the Company (Joint Venturer(s)) under this

subclause is in progress and any Termination Notice or Assignment Notice already served will be suspended immediately upon the commencement of such arbitration for the duration of any such arbitration. If the arbitrator finds in favour of the Company (Joint Venturer(s)) or within the period fixed by the arbitrator the default or failure is substantially remedied or the compensation is paid, the State shall not serve a Termination Notice or Assignment Notice and shall withdraw any Termination Notice or Assignment Notice already served.

- 19.6 If at any time following a Default Notice but prior to the Termination Date or Assignment Date, as the case may be, a receiver or manager or other administrator acting on behalf of lenders who jointly or severally have provided Approved Finance to the Company (all or any of the Joint Venturers) secured by a mortgage or charge, is appointed in respect of the relevant portion of the Project Assets and his administration covers or is extended to cover an undivided interest (in aggregate) in the Special Mining Lease of more than fifty (50) per cent, or he otherwise demonstrates to the satisfaction of the Minister that he has the power to procure the remedy of the default or failure or the payment of compensation in respect thereof, the State shall not give a Termination Notice or Assignment Notice, and any Termination Notice or Assignment Notice already served will be suspended, until the expiry of one (1) year after the date on which the Default Notice is given or one hundred and eighty (180) days after the determination (by award or otherwise) of any arbitration under Clause 19.5, whichever is later. Within this period, the receiver or manager or other administrator may either:
- (a) remedy the default or failure which gave rise to the Default Notice or pay compensation in respect thereof in accordance with Clause 19.4; or
 - (b) (subject to the requirements of the Joint Venture Agreement and the Mining Act) sell or otherwise dispose of the relevant interest in the Project Assets to any other person approved by the Minister (such approval not to be unreasonably withheld) on condition that such person shall within this period remedy the default or failure which gave rise to the Default Notice or pay compensation in respect thereof in accordance with Clause 19.4.

If in either case the relevant default or failure is substantially remedied or compensation is paid in respect thereof, the State shall not serve a Termination Notice or Assignment Notice following upon that Default Notice and any such Termination Notice or Assignment Notice which has been suspended will be deemed to be withdrawn.

- 19.7 The extra period permitted under Clause 19.6 to a receiver or manager or other administrator prior to the Termination Date or Assignment Date shall be subject to compliance with the condition that during that extra period the receiver or manager or other administrator shall:
- (a) comply with this Contract and the Mining Act; and

- (b) use such powers as are available to it to ensure that the Project Assets are maintained, subject to fair wear and tear, so as to prevent significant deterioration of such assets.

If during such period a receiver or manager or other administrator sells the relevant portion of Project Assets, the obligations of paragraphs (a) and (b) above shall cease to apply to the receiver, manager or other administrator.

- 19.8 Following an Assignment Notice, the Defaulting Venturer shall do all things necessary to effect the assignment of the Defaulting Venturer's entire interest in the Project Assets to the other Joint Venturers by or on the Assignment Date. The Defaulting Venturer will be discharged from any further liability in respect of any obligation under this Contract which accrues from the date that assignment has been effected but without prejudice to pre-existing rights accrued to the State against the Defaulting Venturer.

In the case where the Defaulting Venturer expresses in writing an inability to meet, or fails to meet, the Assignment Date deadline then the Minister may by notice declare a later Assignment Date. If in the Minister's reasonable opinion there are no extenuating circumstances whereby the Assignment Date should be changed, then at any time after the Assignment Date the Minister shall exercise a power of attorney hereby given in respect of doing all things and executing all documents necessary, directly or indirectly, to effect the assignment of the Defaulting Venturer's undivided interest in the Project to the remaining Joint Venturers.

Clause 20 **CONSEQUENCES OF TERMINATION**

20.1 If this Contract is terminated -

- (a) the Company (Joint Venturers) will surrender to the State the Special Mining Lease and every other tenement which forms part of the Project Assets but without prejudice to the liability of any of the Parties in respect of any antecedent breach or default under this Contract or in respect of any indemnity given;
- (b) each Party shall forthwith pay to the other Party all monies that may be owing to the other Party hereunder;
- (c) the State shall have the option to purchase (subject to any encumbrances thereon), exercisable by notice to the Company (Joint Venturers) within thirty (30) days following termination of this Contract all or any portion of the Project Assets not surrendered pursuant to paragraph (a) above at a price equivalent to the lesser of the then residual value of such assets after tax depreciation or the fair market value of such assets, which fair market value is to be determined by agreement between the Parties but failing such agreement by a Sole Expert;
- (d) the Company (Joint Venturers) shall have the right, within the one (1) year period following the thirty (30) day notice period referred to in Clause 20.1 (c):

- (i) to assign or otherwise dispose of all or any portion of the remaining Project Assets to any person; or
 - (ii) to remove and recover from the Mining Area and export from Papua New Guinea, unless otherwise specified in the Approved Proposal for Development, any of the remaining Project Assets on the condition that such removal does not cause irreparable damage to major assets which are not removed from the Mining Area; and
- (e) the Company (Joint Venturers) shall leave the Mining Area in a safe and stable condition to the reasonable satisfaction of an inspector under the Mining (Safety) Act (Chapter 195A), having regard to natural conditions in the area and applying generally accepted standards of good mining practice, provided that the Company (Joint Venturers) shall not be required to alter the physical condition of the mine, the tailings disposal site, or other Project facilities beyond the requirements of the Environmental Plan.
- 20.2 Upon expiry of the one (1) year period referred to in Clause 20.1(d), all Project Assets which remain on the Mining Area shall become the property of the State without any cost to the State or any liability for the State to pay compensation therefor.
- 20.3 Clauses 20.1, 20.2 and 23 shall continue in force notwithstanding the termination of the rest of this Contract.

Clause 21 **ASSIGNMENT**

- 21.1 The Company (a Joint Venturer) may, with the consent of the Minister, assign its entire interest or an undivided proportionate share of its interest in:-
- (a) the Project Assets ; and
 - (b) its rights and obligations under this Contract.

The State covenants that the consent of the Minister to an assignment will not be unreasonably withheld. The consent of the Minister will not be required where Clauses 21.4 or 21.5 apply.

- 21.2 If the Company (a Joint Venturer) assigns -
- (a) its entire interest in the Project Assets and its rights and obligations under this Contract, then upon the assignee giving the State the undertaking referred to in Clause 21.3, the Company (Joint Venturer) shall be discharged from any further liability in respect of any obligation which accrues due after the date of that assignment without prejudice to pre-existing rights accrued to the State against the Company (Joint Venturer); or

- (b) an undivided proportionate share of its interest in the Project Assets and its rights and obligations under this Contract, then upon the assignee giving the State the undertaking referred to in Clause 21.3 -
 - (i) the obligations under this Contract assumed by the assignee and the continuing obligations under this Contract of the Company (Joint Venturer) shall be the joint and several obligations, or the several obligations of the Company (Joint Venturer) and the assignee;
 - (ii) the Company (Joint Venturer, if it is then the Operator) shall, during the period that it retains ownership of an undivided proportionate interest in the Project Assets and in all of its rights and obligations under this Contract, be the Operator and no change in the Operator shall take place without the consent in writing of the State (which consent shall not be unreasonably withheld); and
 - (iii) every agreement made between the Company (Joint Venturer) and any assignee shall be consistent with this Contract and a copy thereof will be furnished to the State as soon as it has been executed.

21.3 Where an assignment takes effect pursuant to Clause 21.1 -

- (a) the Company (Joint Venturer) shall enter into a Contract with the assignee wherein the assignee -
 - (i) agrees to become a party to this Contract; and
 - (ii) undertake to assume, observe and comply with all obligations of the Company (Joint Venturer); and
- (b) the assignee shall be a permitted assignee and have the same rights of assignment as the Company (Joint Venturer) under this Contract.

21.4 Notwithstanding the foregoing provisions of this Clause 21, but subject to generally applicable legal requirements for the creation, perfection and enforcement of security interests -

- (a) the Company (each Joint Venturer) may mortgage, charge by way of fixed or floating charge or otherwise assign or encumber by way of security its entire interest or an undivided proportionate share of its interest in the Project Assets, this Contract, its Mine Products, its rights under any sales agreements for Mine Products, its proceeds from the sale of Mine Products (including such proceeds in any of the accounts referred in Clause 8) and any of its other assets and its uncalled capital (and premiums) to secure its Approved Finance ; and
- (b) subject to Clause 21.5, any mortgagee, chargee or other secured party under any mortgage, charge or other security given by a Joint Venturer pursuant to this

subclause may exercise all rights of sale and other rights included in any instrument of mortgage or charge given by it under any Approved Finance provided it first gives to the State thirty (30) days notice of its intention to exercise any rights of sale and five (5) days notice in all other cases.

The State shall ensure that all statutory approvals required in Papua New Guinea are given for each mortgage, charge or other security to be given or granted by a Joint Venturer pursuant to this subclause.

21.5 No mortgagee or chargee or other secured party that acquires by assignment or otherwise any rights of the Company (a Joint Venturer) under this Contract shall have any greater rights than the Company (a Joint Venturer) hereunder, and its exercise of those rights shall be subject to all of the terms, conditions and requirements of this Contract. The rights of any such mortgagee, chargee, or secured party to sell the Company's (a Joint Venturer's) interest in the Project or any of the Project Assets shall not be exercisable:

(a) unless the whole or part of the Company's (Joint Venturer's) undivided interest in the Project and the Project Assets which are mortgaged, charged or otherwise subject to a security interest is sold as a going concern (or with such exceptions as the State may agree) to a purchaser to which the State does not reasonably object on grounds of:-

(i) national security or national foreign policy; or

(ii) insufficient financial standing to perform the obligations that the purchaser will be assuming as the Company (a Joint Venturer under this Contract,

within thirty (30) days of being notified of the identity of such purchaser and being given information sufficient for the State to assess the financial standing of the purchaser; or

(b) if the State has within the thirty (30) day period of notice under Clause 21.4 given notice to the mortgagee, chargee, or other secured party that it will purchase the whole or part of the Company's (a Joint Venturer's) interest in all of the Project Assets which the mortgagee, chargee or other secured party wishes to sell at a price which is equivalent to -

(i) the highest price which a bona fide purchaser who is at arms' length from the Company (Joint Venturer) its shareholder and the mortgagee, chargee or other secured party has offered to pay for that interest ; or

(ii) if there is no such offer, at a total price equal to the fair market value of the same to be determined by agreement between the parties but failing such agreement to be determined by a Sole Expert,

and settles the purchase by making full payment of the price at the principal address of the mortgagee, chargee, or other secured party and in the currency denominated in the Approved Finance between the mortgagee, chargee or other secured party and the Company (defaulting Joint Venturer) within ninety (90) days after notification to the State of such place for payment and designated currency or otherwise on terms agreed with the mortgagee, chargee or other secured party .

This Contract may not be terminated by the State during the time that the fair market value is being determined by a Sole Expert pursuant to paragraph (b)(ii) above.

- 21.6 The State agrees to consent, and to ensure that all required statutory approvals are given, to the assignment of this Contract and all or any of the Project Assets or of an undivided interest therein, to the person that purchases from a mortgagee, chargee, or other secured party in accordance with the requirements of Clause 21.5. Any such purchaser shall be required to comply with the requirements of Clause 21.3.

Clause 22 **EXTENSIONS TO TIME**

- 22.1 Notwithstanding any provision of this Contract, the Parties by agreement between the persons responsible for giving Notices under Clause 30, may from time to time extend any period referred to in this Contract for such period, or substitute for any date referred to in this Contract such later date, as they think fit.
- 22.2 If the Company (a Joint Venturer) is prevented or hindered by any circumstances or event of a kind set out in Clause 25 or by an arbitration under Clause 23 from undertaking all or any of its obligations hereunder or exercising any right granted, the period of time allowed for the performance of that obligation or exercise of that right and all periods of time thereafter allowed for the performance of obligations or exercise of rights which are dependent upon the first mentioned obligation or right, shall be extended by a period equal to the period during which such prevention or hindrance continues or during the period from the time when the question, dispute or difference arose until the time of its settlement by agreement, its determination by the Sole Expert or by arbitration, as the case may be.
- 22.3 Where any period is, or is deemed to be, extended or any later date substituted for an earlier date under this Clause, that extended or substituted period or date shall be deemed to constitute the period or date referred to in this Contract (notwithstanding that at the time of such extension or substitution such period may have expired or such date may have passed).

Clause 23 **ARBITRATION**

- 23.1 For purposes of this Clause, "Dispute" means any dispute, disagreement, controversy or claim arising out of or relating to this Contract, or the interpretation or performance of

provisions of this Contract or the breach, termination or validity thereof, which the Parties are unable to resolve by mutual agreement within a reasonable time. It does not include any difference of view or disagreement which, pursuant to provisions of this Contract, has been submitted for determination of a Sole Expert.

- 23.2 Any Dispute between the State and the Company (any one or more of the Joint Venturers) shall be settled by arbitration under the Arbitration Rules, as at present in force, of the United Nations Commission on International Trade Law (hereinafter in this Clause called the "UNCITRAL Arbitration Rules"), subject to such modifications as the parties to the Dispute may agree in writing at the time.
- 23.3 For the purposes of the arbitration of any Dispute under the UNCITRAL Arbitration Rules:
- (a) the appointing authority shall be the Chairman of the Administrative Council of the International Centre for the Settlement of Investment Disputes;
 - (b) an agreed appointee shall be appointed as a single arbitrator, but if within thirty (30) days of the receipt by the respondent of the notice of arbitration the parties have not agreed on a single arbitrator, the number of arbitrators shall be three;
 - (c) the place of arbitration shall be Sydney, Australia (in which case the International Arbitration Act 1974 of the Commonwealth of Australia and the UNCITRAL Model Law on International Commercial Arbitration as adopted thereunder will apply to the arbitration) or such other place as the parties to the Dispute may agree; and
 - (d) the language to be used in the arbitral proceedings shall be English.
- 23.4 An award in arbitration proceedings under this Clause shall be binding on the parties to the Dispute and judgement thereon may be entered in any court having jurisdiction for the purpose.
- 23.5 The State hereby irrevocably waives any claim to immunity -
- (a) in respect of proceedings on the merits of the claim which is the subject of such arbitration;
 - (b) in respect of proceedings to enforce any such award including, without limitation, immunity from service of process and from the jurisdiction of the Court; and
 - (c) in respect of execution of any such award against the property of the State, being property of the State held for commercial purposes.
- 23.6 Unless otherwise agreed or provided, the cost of any arbitration procedure will be borne -

- (a) equally by the two parties to the Dispute where it has been referred jointly by them; or
 - (b) otherwise, by the unsuccessful party in accordance with the UNCITRAL Arbitration Rules.
- 23.7 Nothing in this Clause shall apply to any Dispute between the State and its nominee and where the Joint Venturers are jointly parties to a Dispute with the State, for purposes of this Clause and notwithstanding anything in the Joint Venture Agreement, the nominee shall be deemed not to be a party to that Dispute.
- 23.8 Where a Dispute has been referred to arbitration pursuant to this Clause, neither Party shall be entitled to exercise any rights or election arising in consequence of any alleged default by the other arising out of the subject matter of the Dispute until the Dispute has been resolved by the decision of the arbitrators.
- 23.9 Notwithstanding that the arbitration of any Dispute may be held outside Papua New Guinea, it is acknowledged that the reference of disputes to arbitration under this Clause is a submission to arbitration by an agreement which is governed by Papua New Guinea law and therefore the Arbitration Act (Chapter 46) applies for the purposes of enforcement of any resulting award in Papua New Guinea.
- 23.10 Where any difference of view or disagreement between any two or more of the Parties is, pursuant to any other provision of this Contract, submitted for determination of a Sole Expert, the Sole Expert shall act as an expert and not as an arbitrator, and accordingly the foregoing provisions of this Clause do not apply. A determination by a Sole Expert shall be binding on the Parties. Unless otherwise agreed, the cost of submitting any such matter to a Sole Expert will be borne:
- (a) if one Party calls for the matter to be determined by the Sole Expert and loses, by that Party;
 - (b) if one Party calls for the matter to be determined by the Sole Expert and wins, equally by all Parties to the determination; and
 - (c) if a number of Parties jointly submit the matter to be determined by the Sole Expert, equally by all of them.

Clause 24 **LAW APPLICABLE**

This Contract shall be governed by and construed in accordance with the law of the Independent State of Papua New Guinea and such rules of the international law that are freely adopted by applicable in PNG pursuant to its National Constitution.

Clause 25 **FORCE MAJEURE**

25.1 Any failure on the part of a Party hereto to comply with any of the terms, conditions and provisions of this Contract (except any obligation of a Party to make payment of money to the other Party) shall not be grounds for termination or give the other Party hereto any claim for damages insofar as such arises from Force Majeure, if the first-mentioned Party-

- (a) has taken all appropriate precautions, due care and reasonable alternative measures with the objective of avoiding such failure and of carrying out its obligations under this Contract; and
- (b) has given notice to the other Party of the occurrence of Force Majeure on becoming aware of such an event.

The first-mentioned Party shall take all reasonable measures to overcome the Force Majeure and to fulfil terms and conditions of this Contract with the minimum of delay (provided that no Party has an obligation to settle a labour dispute or to test the constitutionality of any legislation or law) and shall give notice to the other Party on the restoration of normal conditions.

25.2 For the purposes of this Contract, Force Majeure shall include war, insurrection, civil disturbances, terrorism, sabotage, blockades, riot, embargoes, strikes and other labour conflicts, land disputes, epidemics, volcanic eruptions, earthquakes, cyclones, floods, tidal waves, explosions, fires, lightning, governmental restrictions or unavailability of materials or equipment and any other event which the party claiming force majeure could not reasonably be expected to prevent or control, and in the case of the Company (Joint Venturers) shall include any delay or failure by the State to give any consent or approval required under this Contract or under any applicable law.

Clause 26 **INDEMNITY**

26.1 Except as otherwise provided in this Contract, the Company (Joint Venturers) shall indemnify and hold harmless the State against all claims made by or on behalf of any third party in respect of injury, loss or damage resulting from work carried out or goods or services supplied by the Company (Joint Venturers) pursuant to this Contract provided, however, that such indemnity shall not apply to the extent, if any, that such injury, loss or damage resulted from wrongful acts or omissions of the State.

26.2 In the absence of negligence of the Company (Joint Venturers), its (their) servants or agents, the Company (Joint Venturers) shall not be liable to indemnify and save harmless the State pursuant to Clause 26.1 except where injury, loss or damage was caused to a third party by work carried out or goods or services supplied by the Company (Joint

Venturers) of a kind or in circumstances in respect of which the law of Papua New Guinea imposes liability for injury, loss or damage without proof of negligence.

- 26.3 If any claim, demand, or writ, in respect of the liability referred to in this Clause 26, is brought or alleged against the State, in respect of which indemnity is to be sought from the Company (Joint Venturers), the State shall forthwith notify the Company (Joint Venturers) and the Company (Joint Venturers) shall have the option to assume the defense thereof. Unless the Company (Joint Venturers) fail to assume such defense, they will not be liable to the State for any legal or other expenses subsequently incurred by the State in connection with such defense. The State agrees to provide reasonable co-operation to the Company (Joint Venturers) and their legal advisers in the defense of such alleged liability. The Company (Joint Venturers) shall not be liable to indemnify the State for any settlement of any such action effected without the written consent of the Company (Joint Venturers). The compliance by the State with this Clause 26 shall be a condition precedent to any liability of the Company (Joint Venturers) under such clause.

Clause 27 **NON-DISCRIMINATION**

The State shall treat the investments and activities of the Company (Joint Venturers) in Papua New Guinea pursuant to this Contract on a basis no less favourable than that accorded to investments and activities associated with investments of other foreign owned or controlled companies in Papua New Guinea under any bilateral investment protection treaty between the State and any other country, and accordingly, if under any such treaty companies receive the benefit of any undertakings by the State relating to expropriation and nationalisation and compensation therefor the Company (Joint Venturers) will be treated as though those undertakings were extended to it (them).]

[Clause 27 NON-DISCRIMINATION

The State shall treat the investments and activities of the Company (Joint Venturers) in Papua New Guinea pursuant to this Contract on a basis no less favourable than that accorded to investments that come under the () Bilateral Investment Protection Treaty, including the conditions relating to expropriation and nationalisation and compensation therefor. In the case where the country of residence of the majority of the shareholders has a bilateral investment protection treaty with Papua New Guinea then the Company (Joint Venturers) may elect, prior to the execution of this document, to be under that treaty, and so it will be noted in this Clause.]

Clause 28 **VARIATION**

- 28.1 The Parties may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Contract, the Approved Proposals for Development, the Special Mining Lease, Leases for Mining Purposes, Mining Easements and all other leases, licences, rights or grants granted or any programme, proposal or plan

approved for the purpose of this Contract to more efficiently or satisfactorily implement or facilitate the objectives of this Contract.

- 28.2 (a) Subject to Clauses 12.2 and 12.3 in respect of the Environmental Plan and Clause 13.2 in respect of the Training and Localisation Programme, Modifications to the Approved Proposals for Development may at any time during the life of the Project be made by the Company (Joint Venturers) without reference to the State unless by making any such Modification the Company (Joint Venturers) would cease to be in substantial compliance with the Approved Proposals for Development.
- (b) If the Company (Joint Venturers) wish to make a Modification to the Approved Proposals for Development which falls outside the scope of Clause 28.2(a) the Company (Joint Venturers) shall notify the State in writing of the Modification which it wishes (they wish) to make, and unless the State within **thirty (30)** days informs the Company (Joint Venturers) by notice in writing that the Modification is one on which further consultation between the State and the Company (Joint Venturers) is required the Modification will be deemed to have been approved by the State and the Approved Proposals for Development shall stand amended accordingly.
- (c) In the event that the State pursuant to Clause 28.2(b) informs the Company (Joint Venturers) that a Modification to the Approved Proposals for Development requires further consultation between the State and the Company (Joint Venturers) the Modification shall not take effect unless it has been approved by the State, provided, however, that;
- (i) the State undertakes that its approval of any such Modification will not be unreasonably withheld; and
- (ii) the State will be deemed to have approved any such Modification if either :-
- (A) the State, within thirty (30) days from the date on which notice was given to the Company (Joint Venturers) pursuant to Clause 28.2(b), has not informed the Company (Joint Venturers) that it declines to approve the proposed Modification; or
- (B) a refusal by the State to approve a Modification has been referred to arbitration under Clause 23 and the arbitrator has (or arbitrators have) made an award finding that the refusal of the State to approve the Modification is unreasonable.

- (d) Where pursuant to Clause 28.2(c) a Modification has been approved or is deemed to have been approved by the State the Approved Proposals for Development shall stand amended accordingly.

28.3 For the purpose of this Clause :-

- (a) "the Approved Proposals for Development" includes in relation to the Company (each Joint Venturer) its Approved Financial Plan and for a Modification of an Approved Financial Plan references in Clause 28.2 to the "Joint Venturers" shall be read as the Joint Venturer whose Approved Financial Plan is being modified.
- (b) "Modification" includes variation or amendment or any alteration by deletion or addition.
- (c) The approval by the State of any Modification of the Approved Proposals for Development in respect of Clauses 7, 12, 13 and 15, shall be signified in writing by the minister responsible for, respectively, finance matters, environmental matters, labour matters and industry matters. In any other case approval by the State of a Modification of the Approved Proposals for Development shall be signified by any instrument under the hand of the Minister.

Clause 29 **CONSULTATION**

- 29.1 (a) A Committee shall be formed, comprising one member each from the Department, local landowners, the Company (Joint Venturers) and the Provincial Government and chaired by a representative of the department responsible for labour matters, which shall monitor the implementation of the Training and Localisation Programme.
- (b) This Committee shall operate during the term of this Contract and the Company (Joint Venturers) shall furnish it with quarterly reports outlining the progress of the Training and Localisation Programme, problems encountered, positions filled and the number of Papua New Guineans employed (including from the particular province and local area).
- 29.2 (a) A Committee shall be formed, comprising one member each from the Department, the Provincial Government, local landowners and the Company (Joint Venturers) and chaired by a representative of the department responsible for commerce and industry matters, which shall monitor the supply and procurement of goods and services to the Project.
- (b) The Committee shall operate during the term of this Contract and the Company (Joint Venturers) shall furnish it with quarterly reports conforming in form and content to that agreed for major project operators in the minerals sector. The reporting format and content and any revisions thereto shall be mutually agreed to achieve the following objectives:

- (i) to provide the information necessary to evaluate the economic impact of procurement of goods and services for the Project;
- (ii) to enable the monitoring of the Papua New Guinean content of goods and services procured for the Project;
- (iii) to assist in the identification of industries which could be established in Papua New Guinea to supply the Project; and
- (iv) to provide suitable and reliable statistics to be used by the State.

29.3 A Committee shall be formed, comprising one member each from the Department, the Provincial Government, local landowners and the Company (Joint Venturers) and chaired by the representative of the department responsible for environmental matters, which shall review environmental matters concerning the Project.

29.4 All of the above Committees will meet quarterly on the same dates and in the same location () and prior to their meetings will receive from the Company (Joint Venturers) an update of the Project.

Clause 30 **NOTICES**

- 30.1 (a) Any notice, consent, demand, approval or other communication (a "Notice") required or permitted to be given shall be deemed to have been given if -
- (i) in the case of a Notice given by the State other than a Notice given pursuant to Clause 11, such Notice is signed on behalf of the State by either the Minister or the Secretary of the Department, as their respective responsibilities require; or
 - (ii) in the case of a Notice to be given by the Company (Joint Venturers), such Notice is signed by a duly authorised representative of the Company (Joint Venturers or Joint Venturer as the case may be).
- (b) Each such Notice shall, as elected by the Party giving such notice, be personally delivered or transmitted by telex or facsimile to the other Party at the address in Papua New Guinea as given below.

A Notice to the State -

The Secretary
Department of Mineral Resources,

KONEDOBU, PNG
Fax No: (675) 3213701

A Notice to the Company (Joint Venturers) -

- 30.2 Except as otherwise specified herein, all Notices shall be deemed to have been duly given on the earlier of -
- (a) the date of receipt if delivered personally;
 - (b) the next business day after the date of transmission with confirmed answerback if transmitted by telex; and
 - (c) two (2) business days after the time recorded on the transmitting machine if transmitted by facsimile, unless -
 - (i) within those two (2) business days the intended recipient has informed the sender that the transmission was received in an incomplete or garbled form and is able subsequently to produce the transmission evidencing the fact; or
 - (ii) the transmission result report of the sender indicates a faulty or incomplete transmission.

Any Party may change its address by Notice to the other Party(ies) in accordance with the provisions of this Clause. All Notices and all documents or instruments delivered in connection with this transaction shall be in the English language.

- 30.3 Where the Company is (Joint Venturers are) required to submit any plans, proposals or other material for the approval of the State, the date of submission shall be deemed to be the date on which the State received the said plans, proposals or other materials.

Clause 31 **WAIVER**

The failure of any Party to enforce at any time any of the provisions of this Contract 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.

Clause 32 **SEVERABILITY**

The provisions of this Contract shall be separate and severable each from the other to the extent that if any provision or any portion of any provision is deemed to be inoperative then the remainder of this Contract shall remain binding upon and enforceable by the Parties. Nothing herein shall preclude one Party from requesting any other Party to renegotiate any provision of this Contract .

Clause 33 **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 this Contract.

Clause 34 **COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which executed shall be deemed to be an original, and such counterparts shall together constitute one contract.

Clause 35 **REPRESENTATIONS AND WARRANTIES**

35.1 Representations and Warranties by Each party

Each of the Parties represents and warrants that:

- (a) it has the capacity to enter into and perform its obligations under this contract and that all corporate and other internal actions required to authorise it to enter into and perform its obligations under this Contract have been or will be properly taken;
- (b) its execution, delivery and performance of this Contract have been duly authorised by all required actions of its governing authority or owners and do not and will not:
 - (i) violate any law, rule, regulation, order or decree applicable to it; or
 - (ii) violate its constitution or organisational documents;

- (c) this Contract is a legal and binding obligation of the Party, enforceable against that Party in accordance with its terms, except to the extent enforceability is modified by bankruptcy, reorganisation and other similar laws affecting the rights of creditors generally and by general principles of equity; and
- (d) it will not breach any other agreement or arrangement by entering into or performing its obligations under this Contract and this Contract when signed will have been duly executed by it and will be valid and binding upon it in accordance with its terms.

35.2 Representations and Warranties by the Company/Joint Venturers

The Company [Each Joint Venturer] represents and warrants that:

- a) it is duly organised, validly existing and in good standing under the laws of [];
- b) it has the corporate power to carry out the Project and achieve Commencement of Commercial Production; and
- c) it has carried out a thorough examination of the economic feasibility of the Project and of its projected costs and revenues based on fair and reasonable assumptions and projections.

35.3 No Other Representations and Warranties

Except as set out in Clause 35.1 and 35.2 or expressly stated elsewhere in this Contract, no representation, inducement or warranty was, prior to the execution of this Contract, given or made by any one of the Parties with the intent of inducing any other party to enter into this Contract, and any representations, inducements or warranties that may have been so given are hereby denied and negated.

IN WITNESS WHEREOF this Contract has been duly executed by the Parties on the -----day of..... 1998.

SIGNED for and on behalf of the)
INDEPENDENT STATE OF PAPUA NEW GUINEA)
 By the Governor General [] acting with and in accordance)
)
 With the advice of the National Executive Council)
 In the presence of:)

.....
 Witness

Name (printed):

THE COMMON SEAL of.....)
Was affixed by authority of the Board of Directors)
in the presence of, and the sealing)
Is attested by:)

.....
Director:
Name (printed):

.....

Secretary
Name (printed):