

MMDA 1.0

MODEL MINING DEVELOPMENT AGREEMENT



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A Template for Negotiation and Drafting

28 March, 2011

NOTE:

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A USER'S GUIDE TO MMDA 1.0 WHAT THE MMDA 1.0 IS

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

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

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

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

WHAT THE MMDA 1.0 IS NOT

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

The MMDA 1.0 is Not A Substitute for a Mining Code

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

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

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

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

The MMDA 1.0 Is Not an Exploration Agreement

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

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

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

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

The MMDA 1.0 Is not a Community Level Agreement

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

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

The MMDA 1.0 Is Not a Substitute for Informed Negotiation

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

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

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

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MINE DEVELOPMENT AGREEMENT

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

The Parties to this Agreement are:

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

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

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

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

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

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

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

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

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

1.0 Definitions and Interpretation

1.1 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

² International Finance Corporation, Performance Standard 7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Parent Company" means _____

"Parties" means the Company and the State.

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

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

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

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

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

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

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

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

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

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

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

1.3 Existing Rights

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

TENURE

2.0 Development of Mining Area

2.1 Term of this Agreement

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

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

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

EXAMPLE 1

Subject to the terms of this Agreement, this Agreement shall remain in force for a period equal to the term of the large scale mining licences and for such further period as the large scale mining licences may be renewed from time to time provided that, where Company, at the expiry of the initial period on 31 March 20xx, applies to Government for the renewal of any of the large scale mining licences and:

- 1. Government rejects the application for renewal; or
- 2. Any of such large scale mining licences are renewed in a manner other than in accordance with Company's application for renewal under [LAW].

EXAMPLE 2

The term of this Agreement is ___ years beginning on the Effective Date, and for such additional period, if any, for which this Agreement shall be extended or renewed.

EXAMPLE 3

The Term of this Agreement shall commence on the Effective Date and will continue until the earliest of:

- (i) The expiration of the [GOVERNMENTAL ENTITY] Election Term if [GOVERNMENTAL ENTITY] shall have elected to participate in the Downstream Company in accordance with Section 2.3(iv);
- (ii) The termination of this Agreement pursuant to its other terms;
- (iii) Solely with respect to the applicable Joint Enterprise, the entering into a JEA by the Parties or their respective Affiliates, or
- (iv) The termination of the Exploration Agreement without entering into a [Mineral] Lease by the Parties or their respective Affiliates.

EXAMPLE 4

Term. The term of this Agreement shall be for twenty (20) years from the Effective Date and for so long thereafter as Products are produced from the Properties on a continuous basis, and thereafter until all materials, supplies, equipment and infrastructure have been salvaged and disposed of,

any required Environmental Compliance is completed and accepted and the Participants have agreed to a final accounting, unless the Business is earlier terminated as herein provided. For purposes hereof, Products shall be deemed to be produced from the Properties on a "continuous basis" so long as production in commercial quantities is not halted for more than _____ (____) consecutive days.

2.1.1 Grant of Mine Development Rights

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

- (a) Have priority in the exercise of its rights under this Agreement, to the extent necessary for Mining Operations, over any other permit, concession, grant or any other activity of whatever nature granted or issued in the Mining Area before or after the date of this Agreement, including, but not limited to timber concession, reforestation activity, plantation, or exploration of oil and gas and other hydro-carbon products, gravel, sand and metals, or any mineral of any kind whatsoever;
- (b) Make all necessary excavations to mine the mineral deposits and, subject to submission of updated Documents if necessary, to re-work mine tailings and dumped materials;
- (c) Construct all plant, machinery, buildings, workshops, pipelines and other production facilities which are necessary or convenient for Mining Operations;
- (d) Adjust production schedules, operating rates and manpower levels as necessary and prudent to respond to temporary operating conditions according to Good Industry Practice;
- (e) Stockpile products or dump any waste products of mining or mineral processing operations, including tailings;
- (f) Take and use water from waterways, wells and bores, to lay water pipes, to make water races and ponds, dams and reservoirs, and to divert and use any water necessary for the Project;
- (g) Construct and maintain all transportation and telecommunication facilities and conveniences and such other areas as specified in the Feasibility Study to be necessary or convenient to construct and operate the Project;
- (h) [reserved];
- (i) Cut and utilize timber, and quarry stone, sand, gravel and other construction materials, for use in construction and operation of the Project, free of charge and within the Mining Area, to the extent reasonably needed for the Project (but not for any other purpose, including resale);
- (j) Construct and maintain houses, buildings, amenities and incidental facilities for the use of the Company, its contractors, agents and their employees and their immediate families;
- (k) Conduct all other Mining Operations as are necessary or convenient to carry out the Company's rights and obligations under this Agreement and engage in all other activities as are reasonably necessary or convenient to carry out the Project consistent with Good Industry Practice; and
- (l) Market, sell and export Minerals within the State and internationally, at market prices.

2.1.2 Grant of Access Rights

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

**Note that many of the Company's rights mentioned in the examples appear elsewhere in the MMDA.*

EXAMPLE 1

The Mining Lease shall grant to Company the exclusive right to mine and market minerals within the Mining Area, along with the right to engage in all activities reasonably necessary or convenient to mine such minerals.

EXAMPLE 2

The rights granted to Company by Mining Lease shall include the rights to do the following, subject to compliance with relevant laws, permits, and this Agreement:

- (a) Explore for, develop, mine, remove, leach in place, treat, produce, refine, ship and sell, using technologies and practices now known or which may exist in the future, for its own account subject to the provisions of this Agreement, all Minerals which are or may be found within Mining Area;
- (b) Construct and use excavations, openings, pits, shafts, ditches, and drainage ways;
- (c) Construct, erect, maintain, use, and at its election, remove, any and all buildings, structures, plants, machinery, equipment, railroads, roadways, pipelines, electrical power and communication lines and facilities, conveyors, stockpiles, waste piles, reservoirs, tailing impoundments and facilities, settling ponds, and all other improvements, property and fixtures for mining, removing, beneficiating, processing, concentrating, smelting, extracting, leaching (in place or otherwise), bio-leaching, autoclaving, refining and shipping of Minerals, or for any activities incidental thereto (whether or not now contemplated or known), or for any of the rights or privileges of Company under this Agreement;
- (d) Divert streams, remove lateral and subjacent supports, cave, subside, use, consume, or destroy the surface of Mining Area;
- (e) Deposit earth, rocks, waste, low-grade ore and materials onto the surface of Mining Area;
- (f) Drill wells for the water and lay and maintain all water lines as may be necessary or convenient for operation of the Mine;
- (g) Install high voltage electrical transmission and substation facilities as required for operation of the Mine, including towers, conductors, transformers, switches and other ancillary facilities;
- (h) Mine and use for Operations any sand, gravel, aggregate, clay, rock and soil located within the boundaries of Mining Area;
- (i) Use, without the payment of any royalty, fee or other charge, the Government's intellectual property;
- (j) Mine, remove and process ore, products and materials through or by means of shafts, openings or pits without limiting the possibility of Company enjoying other mining rights under any form in accordance with Mining Law;
- (k) Use the land within Mining Area, and any shafts, openings, wells, pits, roads, facilities, and improvements, for the mining, removing, beneficiating, processing, concentrating, smelting, extracting, leaching (in place or otherwise), bio-leaching, autoclaving, refining, shipping and disposal of ores and materials;
- (l) Receive from Government, under the commercially reasonable terms and conditions, any rights of way and easements that are necessary for the development of the Mine in accordance with Mining Law, with the purpose of: (i) transporting Minerals; (ii) transporting materials for consumption and raw materials, including hazardous items, such as cyanide and explosives; and (iii) transmitting electricity to the Mine; and
- (m) Perform, to the extent permitted by Mining Law and this Agreement, any other activities necessary or convenient to carry out the Project and Company's obligations under this Agreement.

EXAMPLE 3

The Licensee shall have the continuing right:

- (i) To undertake any legal actions relating to the rights given to it by a License and this Agreement; and
- (ii) Subject to issuance of a Mining License, to construct, operate and maintain production and social facilities on the License Area required for normal Mining Activities, including roads, communications and power, as well as to use common facilities and communications both inside and outside of the License Area in accordance with the duly established procedure; and to establish on the License Area Licensee's private satellite communications system to and from [name of host country] for purposes of both Exploration Activities and Mining Activities, subject to Licensee obtaining required licenses from the relevant Government authorities; and
- (iii) To import all equipment, machinery, vehicles, supplies, and spare parts required for Exploration Activities and Mining Activities on the License Area and export such equipment, machinery, vehicles, and spare parts, subject to relevant Laws; and
- (iv) To use the exclusive right to perform Mining Activities within the License Area and to receive the Mining License in accordance with Section 6.2 (*Mining License*); and
- (v) To establish branches, representative offices, and such other offices, provided the requirements of the legislation of the Government are fulfilled; and
- (vi) Subject to relevant Law and Section 9.4 (*Employment Preferences*), to hire and fire its employees as it may require, and Licensee shall have the right to employ foreign nationals for technical, specialized and advisory positions; to require its employees to work overtime and to work nights and holidays; and
- (vii) To obtain visas required for its personnel, Contractors, and consultants (collectively "Licensee's Staff"); to obtain, with the support of the Licensing Authority, all working permits and any other authorizations required for Licensee's Staff by the Government, its agencies, or authorized representatives.

EXAMPLE 4

11.2. Rights of the Contractor:

- (a) To conduct Mining Operations within the confines of its Contract/Mining Area in accordance with the terms and conditions hereof and without interfering with the rights of other Contractors/Lessees/Operators/Permittees/Permit Holders;
- (b) Possession of the Contract Area, with full right of ingress and egress and the right to occupy the same, subject to surface and easement rights;
- (c) To use and have access to all declassified geological, geophysical, drilling, production and other data relevant to the mining operations;
- (d) To sell, assign, transfer, convey or otherwise dispose of all its rights, interests and obligations under the Agreement subject to the approval of the Government;
- (e) To employ or bring into the Country foreign technical and specialized personnel, including the immediate members of their families as may be required in the operations of the Contractor, subject to applicable laws and regulations: Provided, That if the employment connection of such foreign persons with the Contractor ceases, the applicable laws and regulations on immigration shall apply to them. Every time foreign technologies are utilized and where alien executives are employed, an effective program of training understudies shall be undertaken. The alien employment shall be limited to technologies requiring highly specialized training and experience subject to the required approval under existing laws, rules and regulations;
- (f) To enjoy easement rights and use of timber, water and other natural resources in the Contract Area subject to pertinent laws, rules and regulations and the rights of third parties;
- (g) Repatriation of capital and remittance of profits, dividends and interest on loans, subject to existing laws and [bank] rules and regulations; and
- (h) To import when necessary all equipment, spare parts and raw materials required in the operations in accordance with existing laws and regulations.

EXAMPLE 5

The Contractor shall have the following rights:

- (a) The exclusive right to conduct Mining Operations in the Contract Area in accordance with the terms and conditions hereof, the Act, IRR and other pertinent laws, rules and regulations, and to determine the timing, nature, extent and location of Exploration, Mine Development, construction, and the mining and treatment process to be utilized in the Mining Operations.
- (b) Of possession of the Contract Area, with full rights of ingress and egress and the right to occupy the same, including the right to enter private lands and concession areas to conduct Mining Operations, subject to prior notice and to payment of compensation for damage caused by such operations, in accordance with Section [x] of the Act and Sections [xx] of the IRR.
- (c) Subject to payment of just compensation in accordance with Section [x] of the Act and Section [x] of the IRR, to build, construct or install infrastructure and facilities on lands owned, operated or leased by other persons when necessary for purposes of more convenient Mining Operations.
- (d) To use and have access to all declassified geological, geophysical, drilling, production and other information held by the Government or any

agency or enterprise thereof, now or, in the future, relative to the Contract Area.

- (e) To sell, assign, transfer, convey, encumber and create security interests, or otherwise dispose of all its rights, interests and obligations under the Agreement, subject to the approval of the Government to the extent required under Clause 18.13.
- (f) Subject to Clause 15.1, Section XV of this Agreement and applicable laws, rules and regulations, to employ or bring into the [Country] foreign technical specialized personnel (including the immediate members of their families) as may be required in the operations of the Contractor.
- (g) To enjoy, subject to pertinent laws, rules and regulations and any prior valid existing rights of third parties, easement rights and use of timber, water and other natural resources in the Contract Area, including, but not limited to:
 - (i) The right to extract, use and remove from the Contract Area, in accordance with Section [x] of the Act, sand and gravel and other loose unconsolidated materials without the need of a separate permit, provided that Contractor shall use such materials exclusively for Mining Operations and shall make no commercial disposition of the same, and Contractor shall submit to the Director/Regional Director monthly reports of the quantity of such materials extracted;
 - (ii) Subject to applicable forestry laws, rules and regulations, the right to cut trees or timber within the Contract Area as may be necessary for Mining Operations, provided that if the Contract Area is covered by existing timber concessions as of the Effective Date, the volume of timber needed and the manner of cutting and removal thereof shall be determined by the Regional Director, upon consultation with the Contractor, the timber concessionaire or permittee and the Forest Management Bureau of the Department; provided further, that in case of disagreement between the Contract and the timber concessionaire, the matter shall be submitted to the Secretary whose decision shall be final; and
 - (iii) Water rights for Mining Operations upon approval of application with the appropriate government agency in accordance with existing water laws, rules and regulations promulgated thereunder, provided that water rights already granted or vested through long use, recognized and acknowledged by local customs, laws, and decisions of courts shall not be impaired, and further provided that the Government reserves the right to regulate water rights and the reasonable and equitable distribution of water supply so as to prevent the monopoly of the use thereof.
- (h) Subject to existing laws, rules and regulations, and payment of Government Share as provided in Section IX hereof, to repatriate capital and remit profits, dividends and interest and principal of loans from third parties of affiliate of Contractor, including the rights to:
 - (i) Repatriate the capital investment actually brought into the country in foreign exchange or other assets and registered with the [bank];
 - (ii) Convert into foreign exchange and remit abroad any excess balances of their [local currency] earnings from Mineral production and sales over and above the working current balances they require;
 - (iii) Convert foreign exchange into [Country] currency for all purposes in connection with its Mining Operations at rates prevailing at the time of remittance no less favorable to Contractor than those available to any other purchaser of such currency; and
 - (iv) Convert into foreign exchange and remit abroad sums received for expropriated or requisitioned property under Clauses 13.2(k) and 13.2(l). The Government shall make all of the foregoing rights with respect to exchange of foreign currency available to Contractor on the most favorable terms and conditions available to [Country] citizens or entities and other foreign citizens or entities under the laws of the [Country].
- (i) Subject to existing laws, rules and regulations of the [bank] and Monetary Board policies, to purchase, sell, use and retain, any acceptable foreign currency or currencies it may determine; to open, maintain and use accounts in foreign banks and financial institutions, local banks and financial institutions, or both, for such purposes, from which payment may be made to financiers, suppliers and subcontractors, employees and expatriates, and for other expenses of Mining Operations; and to deposit into and withdraw freely from the above described foreign and local accounts, in local or foreign currency, the proceeds of any debt or equity financing, proceeds from the sale of Minerals and mineral products, and any other cash from, or required for, Mining Operations;
- (j) Subject to existing laws, rules and regulations, the Contractor shall have the right to import into the [Country] all equipment, machinery and spare parts required by Contractor for Mining Operations, and to export the same when no longer needed for Mining Operations; Provided that machinery, equipment and spare parts are of comparable price and quality are not manufactured domestically, are actually needed and will be used exclusively by the Contractor in its Mining Operations, and are covered by shipping documents in the name of the Contractor to whom the shipment will be delivered direct by the customs authorities.

From the date of approval of the Mining Project Feasibility Study until the end of the Recovery Period and/or within a period of five (5) years from the date of acquisition of such machinery, equipment and spare parts, the Contractor may not sell, transfer, or dispose of such machinery, equipment and spare parts within the [Country] without the prior approval of the Director and payment of any taxes due the Government that were previously exempted; Provided, that should the Contractor sell, transfer or dispose of such machinery, equipment and spare parts within the [Country] without the prior consent of the Director within the prescribed period, it shall pay twice the amount of the tax exemption granted; Provided further, that the Director may allow the sale, transfer, or disposition of the said items within the [Country] within the prescribed period without payment of previously granted tax and duty exemptions under terms and conditions to be formulated by the Bureau; Provided finally, that any sale, transfer or disposition made after the prescribed period shall not require prior approval of the Director but notice thereof shall be made within ten (10) days from the sale, transfer or disposition thereof.

- (k) To be free from expropriation by the Government of the rights granted under this Agreement or the property represented by investments or

loans or of the property used in Mining Operations except for public use or in the interest of national welfare or defence and then only upon payment of just compensation.

- (l) To be free from requisition of the rights granted under this Agreement, the property represented by the investment or of the property of the enterprise except in case of war or national emergency and only for the duration thereof. Just compensation shall be determined and paid either at the time or immediately after cessation of the state of war or national emergency.
- (m) To maintain all books of accounts and records in accordance with generally accepted accounting standards, principles and procedures. The Contractor may use U.S. Dollars as the basis for calculating the Government Share as provided for in Section IX hereof.
- (n) To receive and to make payments for goods and services utilized in Mining Operations, including payments to employees and subcontractors, whether [Country] citizens or expatriates, in accordance with the applicable laws of the [Country] regarding payments in foreign currency.
- (o) To transport from the Contract Area to any place of export, and to export from the [Country], any and all Minerals and mineral products in accordance with Chapter [x] of the Act and pertinent rules and regulations.

2.2 Exclusivity

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

EXAMPLE 1

Effective as of the Effective Date, the Government grants the Concessionaire the exclusive right to use the Initial Concession Area in accordance with the terms of this Agreement.

EXAMPLE 2

Section 1.3

1.3 Exclusive Right of the Contractor. The Contractor is hereby granted the exclusive rights to explore, mine, utilize, process, refine, market, transport, export and dispose of Minerals and mineral products and by-products that may be derived or produced from the Contract Area, subject to such permitting requirements that may be applicable under pertinent laws, rules and regulations. The Contractor shall not, by virtue of this Agreement, acquire any title to lands within the Contract Area: Provided, that it may do so by any mode of acquisition provided by the laws of the [Country].

EXAMPLE 3

Section 13.2

13.2 Rights of the Contractor. The Contractor shall have the following rights:

- (a) The exclusive right to conduct Mining Operations in the Contract Area in accordance with the terms and conditions hereof, the Act, IRR and other pertinent laws, rules and regulations, and to determine the timing, nature, extent and location of Exploration, Mine Development, construction, and the mining and treatment process to be utilized in the Mining Operations.

2.3 Legal Title to Minerals

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

EXAMPLE 1

Licensee shall obtain title to the Minerals upon their extraction.

2.4 Obligations Prior to Construction

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

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

EXAMPLE 1

The Company undertakes to conduct all activities hereunder in the manner and subject to the conditions of Article 2 of this Agreement and to continue such activities, *beginning with* General Survey, Exploration, and Feasibility Study *to* Construction Periods of this Agreement without interruption. Subject to Article 23 and Article 26, such activities may be interrupted or suspended with the concurrence of the Department. Any such interruption or suspension shall not affect the mutual rights and obligations of the Parties hereto under this Agreement.

EXAMPLE 2

An application further to develop the Ore Body shall be made in accordance with Section [x] of the Act and shall include or be accompanied by:

2.1.1 A comprehensive statement of the mineral deposits delineated in the relevant Mining Area including details of all known minerals proved, estimated or inferred, ore reserves and anticipated mining conditions;

2.1.2 A proposed programme of mining operations covering the period from commencement of the Ore Body Extension Project to mine closure and site rehabilitation, including a forecast of capital investment, the estimated recovery rate of ore and mineral products, and the proposed treatment and disposal of ore and minerals recovered;

2.1.3 Company's environmental plan for the period from commencement of Ore Body Extension Project to mine closure and site rehabilitation, including its proposals for the prevention of pollution, the treatment of wastes, the protection and reclamation of land and water resources, and for eliminating or minimising the adverse effects on the environment of its mining operations;

2.1.4 Details of expected infrastructure requirements including electrical power requirements;

2.1.5 Company's proposals with respect to the employment and training of citizens of Country and, if necessary, an amendment to the Employment and Training Plan;

2.1.6 In the event that Company considers (by reference to the then prevailing facts and circumstances) that, notwithstanding the automatic extension to the Stability Period that would occur pursuant to Clause 0, it will not have a reasonable opportunity to achieve the Real Hurdle Rate of Return over the remainder of the life of mine (as extended) and wishes to request Government to grant a further extension to the Stability Period (in excess of that provided for in Clause 0), supporting documentation in sufficient detail to substantiate such request (including, without limitation, a calculation of Company proposed Real Hurdle Rate of Return), for the purposes of Clause 2.1.27; and

2.1.7 A description of any conditions the approval of which by Government is a precondition to Company's application and willingness to implement the Ore Body Extension Project (including a condition relating to any further extension to the Stability Period as described in Clause 2.1.6, if such further extension is a condition (and not merely a request)).

2.4.1 Feasibility Study

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

- (a) An estimate of minable reserves in accordance with internationally accepted standards;
- (b) A market study for all of the Minerals to be produced in the Mining Area;
- (c) An evaluation of the known deposits within the boundaries of the Mining Area, as well as the Minerals which can be exploited in the Project facilities;
- (d) A description of the technology process to be used in each case, with the results of any laboratory or other tests designed to identify technologically appropriate methods for processing the ore or ores involved;
- (e) An initial mine plan indicating expected recovery rates;
- (f) A general description of requirements associated with obtaining required permits, including the estimated cost of compliance and implementation of the Environmental Management Plan;
- (g) A description and plans of the area of the Project facilities, including a list of the main structures, machinery and equipment to be used, specification of raw materials and services (including electrical requirements and water);
- (h) An organization chart and requirements for personnel;
- (i) Schedules to initiate construction and construction timetables;
- (j) A description and generalized plans for all infrastructure and associated facilities (such as power, communication, transportation, roads, and fresh and reclaimed water), including a list of main items, structures and raw materials, and an assessment of the potential for sharing such infrastructure with other users in ways that promote sustainable development of the communities in the Project Area;
- (k) Plans for electricity supply for Mining Operations, including reliability and cost of services that includes an assessment of the potential for sharing electrical supplies and infrastructure with other users in ways that promote sustainable development of the communities in the Project Area;
- (l) Plans for disposal of tailings from the ore processing plants and of waste rock and materials from Mining Operations;
- (m) A description of plans for any potential reprocessing of materials or tailings;
- (n) Estimates, accurate to within fifteen percent (15%), of capital costs and operation costs;
- (o) An economic evaluation and financial analysis (estimated rate of return of the investment and cash flow for the various phases of the exploitation), including probable future capital investments and

comments on the financial viability of the exploitation;

- (p) To the fullest extent reasonably practicable, detailed proposals with respect to any beneficiation or further processing of Minerals proposed to be carried out by the Company within the State; and
- (q) The estimated Date of Commencement of Commercial Production.

EXAMPLE 1

If the Licensee reports to the Licensing Authority that there is a discovery, a Feasibility Study Work Program and budget shall be prepared and submitted to the Licensing Authority for review and comment. The Feasibility Study shall be prepared on the basis of sound engineering and economic principles in accordance with generally accepted international mining industry practice.

EXAMPLE 2

“*Feasibility Study*” shall mean a comprehensive description of the construction, development, mining, processing, and marketing plan for a [Mineral] mine to exploit [Mineral] within the Project Area in such form and substance as would reasonably be required by the board of directors of [IRCO] and [GOVERNMENTAL ENTITY], respectively, in making an investment decision to place such a mine into production. The Feasibility Study shall include the confirmation of [Mineral] reserves by the conduct of detailed drilling works, hydrological and geotechnical works, environmental studies, and, if deemed necessary by [IRCO], the mining of one or more bulk samples of mineralization for metallurgical studies which may require the construction of one or more shafts, the construction of an incline, or works associated with a trial mine. The Feasibility Study shall contain estimates of both capital and operating costs and shall analyze how to proceed with mining operations to economically and commercially extract [Mineral], identify the optimum structure for the mining venture/entity, and include reference to relevant marketing and financial aspects.

EXAMPLE 3

The application for a Mining Lease must be accompanied by a Feasibility Study which must include the following:

- (a) A description and plan of the area over which Mining Lease is sought;
- (b) A description of the mineral deposit with a comprehensive report including details of the grade and quantity of the proven, probable ore reserves and the anticipated mining conditions, with comments on possible ore reserves;
- (c) A technological report on mining and ore treatment possibilities;
- (d) A proposed mining plan, including:
 - (i) The proposed Date of Commencement of Commercial Production;
 - (ii) The anticipated facilities, scale of operations and production capacity;
 - (iii) The anticipated processing plan and estimated overall recovery of ore and mineral products; and
 - (iv) The anticipated marketing arrangements for the sale of the mineral products;
- (e) An environmental impact statement based on a scope of work previously agreed on with the Minister;
- (f) A detailed program for reclaiming and rehabilitating lands disturbed by the Project and for the minimising, controlling and jointly monitoring the effects of mining on air, land, and water, based on previously agreed environmental standards. The program and standards must:
 - (i) Be according to good international mining industry practice;
 - (ii) Reasonably anticipate damage to air, land water, persons, vegetation and marine and animal life;
 - (iii) Appropriately recognise the costs and benefits of environmental protection in relation to the benefits of the Project; and
 - (iv) Reasonably recognise the effect the Project must necessarily have on the environment.
- (g) A reasonably detailed forecast of capital investment, operating costs and sales revenues and the anticipated financing plan;
- (h) The period for which Mining Lease is required;
- (i) A report on the anticipated employment requirements for the Project and a program for employing and training [Country] citizens, specifying for each year:
 - (i) The anticipated number of citizens involved;

- (ii) The scope of the training courses; and
- (iii) The anticipated costs;
- (j) a report of the Project's anticipated requirements for goods produced for services that may be obtained within [Country] and Mining Company's intention as to services that may be obtained with the [Country];
- (k) Details of the anticipated infrastructure plan and the land areas necessary for such infrastructure; and
- (l) The key Ancillary Authorisations required by Parent Company and Mining Company to fully implement the Project.

The Government, the Provincial Government and the Central Bank must keep the Feasibility Study confidential as required by this agreement.

EXAMPLE 4

Feasibility Study

- (a) The Concessionaire shall, at its own expense, file with the Minister a feasibility study setting forth a plan for efficient and economic Operations (other than Exploration) in a Proposed Production Area ("Feasibility Study"), prepared by an internationally recognized mine engineering consulting firm not affiliated with the Concessionaire or any of its principal direct or indirect shareholders substantially complying with Sections 5.2 (b) through 5.7 and in accordance with applicable Law and International Standards.
- (b) The Feasibility Study shall include an Environmental Impact Assessment Study Report ("EIA") and an Environmental Management Plan ("EMP") complying with Section 5.3 and applicable Law, as filed by the Concessionaire with the EPA.
- (c) The Feasibility Study shall include a Social Impact Assessment ("SIA") and Social Action Plan ("SAP") complying with Section 5.4 and applicable Law.
- (d) The Feasibility Study shall include a skills and technology development plan (an "STDP") complying with Section 5.5 and any applicable Law.

EXAMPLE 5

FEASIBILITY STUDIES PERIOD

1. The Feasibility Studies Period with respect to any Exploration Area shall commence on the date the Company submits the written request to the Department under [RELEVANT SECTION OF THIS AGREEMENT] with respect to such Exploration Area and shall end upon the commencement of the Construction Period with respect to such Exploration Area as hereinafter provided.
2. As soon as the Feasibility Studies Period has begun with respect to any Exploration Area, the Company shall commence studies to determine the feasibility of commercially developing the deposit or deposits of Minerals within such Exploration Area. The Company will be allowed a period of twelve months to complete such studies and to select and delineate and determine the size of one or more New Mining Areas. Each such New Mining Area shall include at least one deposit with respect to which the Company plans to commence construction and Mining operations. The Department may, for one of the reasons specified in [RELEVANT SECTION OF THIS AGREEMENT], object to the area proposed as a New Mining Area within three months of the Company's designation of such New Mining Area. The Government and the Company agree to consult in good faith in an attempt to overcome any such objections. If after a period of three months from the date of notification of such objection by the Government there has been no resolution, [dispute resolution procedures apply]. In the event that the objection by the Department to any area designated by the Company as a New Mining Area is upheld, and thereafter during the term of this Agreement it is determined that Mining is permissible within such area, the Company shall have the right to carry on such Mining in preference to any other Person.
3. After the completion of the Feasibility Studies with respect to a New Mining Area within an Exploration Area, the Company shall submit a Feasibility Study Report in the form set out in [RELEVANT SECTION OF THIS AGREEMENT], which shall contain calculations and reasons for the technical and economical feasibility of conducting Mining operations within such New Mining Area, supported by data, as specified in [RELEVANT SECTION OF THIS AGREEMENT], calculations, drawings, maps and other information relevant to the decision whether or not to proceed with such Mining operations. The Feasibility Study with respect to any New Mining Area shall include the then intended capacity of each Mining and Processing operation within such New Mining Area and any further evaluation work or further Exploration then deemed to be required. If the Company considers that the data required and other necessary matters are not sufficiently available to come to a final decision within the initial Feasibility Studies Period with respect to any Exploration Area or if the Department has raised objections with respect to any proposed New Mining Area within such Exploration Area as set out above, the Company may seek the approval of the Government to the extension for twelve months of such Feasibility Studies Period, provided that such request for extension of the Feasibility Studies Period is submitted to the Government no later than the eighth anniversary of the date of the signing of this Agreement.
4. At any time during the Feasibility Studies Period with respect to any New Mining Area, the Company may submit a written application to the Department that it desires to proceed with the construction of a Mine within such New Mining Area and facilities to be used by the Company in its operation thereof. The Department shall be deemed to have approved any such application if it does not, in writing, object to the same within three months of receipt of such application. After approval of such application, the Company shall promptly commence and with reasonable diligence execute to completion the design of the Mine and related facilities. Upon completion of such design, the Company shall submit the design and Mining Plan to the Department for approval, together with an estimate of the cost of such Mine and related facilities

and a time schedule for the construction thereof. Such time schedule shall, to the extent economically and practically feasible, provide for completing the construction of such Mine and related facilities within thirty-six months after the approval of the design, Mining plan and time schedule. Within three months after submission of the design, Mining plan and time schedule, the Department shall notify the Company of its approval thereof or its disapproval thereof, for one of the reasons specified in [RELEVANT SECTION OF THIS AGREEMENT]. In the event of disapproval, the Department shall notify the Company of the cause for disapproval and the Government and the Company shall consult in a good faith attempt to remove the cause for such disapproval. If after a period of three months from the notification of such disapproval there has been no resolution of the matter, then either party may proceed to resolve the matter in accordance with [RELEVANT SECTION OF THIS AGREEMENT]. If within three months of any such submission, the Company has not received any objection in writing, the Company may consider that such submission has been approved.

5. The Feasibility Study Report as described in [RELEVANT SECTION OF THIS AGREEMENT] with respect to a New Mining Area shall include environmental impact studies into the effects on the Environment of the operations of the Enterprise within such New Mining Area and shall be prepared in accordance with the terms of reference set out in [RELEVANT SECTION OF THIS AGREEMENT]. Such studies may be carried out in consultation with appropriately qualified independent consultants retained by the Company and approved by the Government in accordance with the rules and procedures then in force in [HOST COUNTRY].
6. The quarterly reports provided pursuant to [RELEVANT SECTION OF THIS AGREEMENT] will include data as to the progress and results of and costs incurred in respect to the investigation and studies carried on during the Feasibility Studies Periods with respect to the various Exploration Areas.
7. With respect to any Exploration Area as to which no Feasibility Study Report has therefore to been submitted pursuant to [RELEVANT SECTION OF THIS AGREEMENT], the Company shall submit to the Government a final report stating the results of and the costs incurred in respect of the investigations and studies thereof and the Company's analysis of and its conclusions in respect of those results.
8. All reports and information supplied to the Government under this Article shall be subject to [the Agreement's confidentiality provisions].

2.4.2 Environmental Assessment and Environmental Management Plan

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

- (a) The Company shall have an Environmental Assessment prepared based on sound engineering and economic principles, and having regard to Good Industry Practice including IFC Performance Standard 1, establishing a baseline of environmental conditions existing at the Effective Date, and assessing the Project-related environmental effects and impacts.
- (b) The Company shall have an Environmental Management Plan prepared (which if prepared by the Company is verified by an independent environmental consulting firm recognized as having expertise in the international mining industry), based on the Environmental Assessment and sound engineering and economic principles, and having regard to Good Industry Practice including IFC Performance Standard 1. The Environmental Management Plan shall upon request by the State, be made publicly available in a language and in a form that is accessible to affected communities in the Project Area, and shall be placed in the document files identified in Section 30.1 of this Agreement. The Environmental Management Plan shall be and updated prior to any major change to the mine plan. The Environmental Management Plan shall include [elements as the Parties may agree, such as the following]:
 - (i) Measures that the Company intends to use to mitigate adverse consequences of further of the Project as described in the Feasibility Study;
 - (ii) Plans for the management, remediation, rehabilitation and control of all environmental aspects of the Project, excluding all historic environmental matters that are not assumed by the Company, including
 - (A) A plan to avoid, minimise, mitigate, rehabilitate and offset, where appropriate, impacts on biological diversity within the Mining Area;
 - (B) A plan for preventing, minimising or mitigating adverse environmental impacts to rivers and other potable water and ensuring that such pollution does not cause unnecessary harm or destruction to human or animal life or fresh water fish or vegetation;
 - (C) Opportunities for the improved management and conservation of natural resources in the Project Area;
 - (D) A plan to avoid or minimize greenhouse gas air emissions (as defined by the IPCC) from the Project taking into account economically and commercially feasible technology;
 - (E) A plan to effectively manage soil resources to allow future use of the surface land consistent with the proposed post mining land use;
 - (iii) A description of the actions to be taken during any periods of temporary closure or cessation of

- operations and for the closure activities to be performed should closure be required prior to the completion of the planned mine life;
- (iv) A plan for concurrent reclamation to the extent practicable;
 - (v) A plan to restore all mined areas to a final landform that is safe, stable, and suitable for the proposed post mining land use.
 - (vi) A plan regarding the intended post mining land use in the Project Area;
 - (c) The Company shall comply with the environmental laws of the State in force at any time during the period of this Agreement [including any provincial and local laws], including laws relating to protection of water quality, air quality, quality of land, the preservation of living natural resources, the protection of biodiversity, and the disposal of hazardous and non-hazardous wastes. Subject to Section 33.2.2, a material failure to comply with environmental laws, the terms of environmental licenses or permits, or of the terms of all mitigation measures and restrictions contained in the Environmental Management Plan, as the same may be amended from time to time, constitutes a breach of this Agreement.

**See also MMDA environmental provisions and examples at 26.0 Mining Closure/Post-Closure Obligations.*

EXAMPLE 1

The Environmental Impact Assessment Study Report and the Environmental Management Plan.

- (a) The Concessionaire shall prepare an EIA and an EMP in accordance with the Bid Materials and in compliance with applicable requirements imposed by the EPA. The Concessionaire shall additionally prepare a supplemental EIA and a supplemental EMP in compliance with applicable requirements imposed by the EPA regarding any Proposed Production Area covered by an approved Work Plan.
- (b) Each EMP must include a closure management plan and a closure management budget designed to ensure that upon closure (i) the Mining Plant and Infrastructure shall not present any health or safety issues (including provision for the control of acid drainage and other long term environmental hazards) and (ii) the Production Area and the surroundings of any Mining Plant or Infrastructure not located in a Production Area shall be restored to productive use or reforested or where restoration is impractical, suitably remediated. The closure management plan must include a list and assessment of risk and any uncertainties associated with the preferred closure option, address the social aspects of closure and rehabilitation, and provide a process for participation by the community and management and monitoring. The closure management budget shall provide a realistic initial estimate of the expected closure cost, broken down by principal activities.
- (c) Each EMP must also set forth the means by which the Concessionaire proposes to ensure the availability of funds to finance its environmental restoration and remediation obligations Mining Law Sections [x] so that the cost of closure will be borne by the Concessionaire and not the public or the Government. If the Concessionaire does not agree in writing with the Government to a "pay-as-you-go" funding scheme, then a funding guarantee reasonably satisfactory to the Minister of Finance from a third party financial institution with a long-term credit rating of at least A (or its equivalent) from at least two internationally recognized credit-rating agencies with provision reasonably acceptable to the Minister of Finance and the Minister for redetermination of estimated closure costs at least triennially and adjustments in the amount of the funding guarantee will normally be acceptable. In the case of third party credit support, if the party supplying the funding guarantee no longer has a long-term credit rating of at least A (or its equivalent) from at least two internationally recognized credit-rating agencies, the funding guarantee must provide that if the Concessionaire does not within 90 days thereafter secure a substitute funding guarantee from another third party financial institution satisfying the requirements of this Section, the funding guarantee may be called upon for the maximum amount then available thereunder, subject to the requirement that such amount be deposited in a trust account from which it may be withdrawn only for the purposes of financing the Concessionaire's environmental restoration and remediation obligations.

EXAMPLE 2

Clause 11

Environmental Liabilities and Responsibilities

11.1 Environmental Baseline.

- (a) The Government Parties have treated the characterization of the site conditions and the environmental liabilities included in the Company Report as a preliminary baseline environmental assessment of the Mine (the "Environmental Assessment"). The analysis in the Company Report did not consider economic redevelopment of the [Mine] mining and processing facilities such as is contemplated by this Agreement. [Consulting Company] has been engaged to conduct a further characterization of site conditions that shall also form part of the Environmental Assessment, provided a report of this characterization is completed and delivered to [Mine] at least three (3) Months prior to the Project Notice Date.
- (b) [Mine] shall, in the course of performing its Evaluative Activities and preparing the Environmental Impact Assessment and Environmental Management Plan and prior to the finalization of its Feasibility Study, give the [Government] Notice of any conditions that it believes could result in a material change to the Environmental Assessment. Within sixty (60) Days after receipt of each such Notice, the [Government] shall advise [Mine] whether it agrees that conditions identified in the Notice warrant an amendment of the Environmental Assessment, and if so, the nature and extent of the amendment. If the [Government] does not agree that conditions identified in the Notice warrant an amendment of the Environmental Assessment, or [Mine] does not agree with the amendment proposed by the [Government], the matter shall be submitted as a Dispute to the Environmental Management Panel as contemplated by Section 11.10 and Section 16.3. If the Environmental Management Panel is unable to resolve the Dispute, it shall be submitted to arbitration pursuant to Section 16.5.

[...]

11.4 Environmental Management Plan of the [Government]. No later than one hundred eighty (180) Days after the Approval Date, the [Government] shall prepare and submit to [Mine] a draft Environmental Management Plan. [Mine] shall have the right, but not the obligation, during the thirty (30)-Day period following receipt of the draft Environmental Management Plan to notify the [Government] of any comments on the draft plan. The [Government] shall consider any comments made by [Mine] on the draft plan and shall, within sixty (60) Days after delivery of the draft Environmental Management Plan, adopt and deliver to [Mine] a final Environmental Management Plan of the [Government]. The [Mine] shall implement the Environmental Management Plan of the [Government], beginning during the Initial Period, at its expense but with recourse to the Governmental Remediation Fund.

11.5 The Environmental Management Plan. The Environmental Management Plan shall be prepared by Company during the Initial Period and shall include plans for environmental management, remediation, control and closure of all areas and aspects of the Project that are included in the Feasibility Study consistent with this Article 11. Company will use commercially reasonable efforts to coordinate the Environmental Management Plan with the Environmental Management Plan of [Government] as then in effect. Company shall include in the Environmental Management Plan, a Closure Plan for Mine closure that will describe all activities that will occur during the Closure Period and the Post-Closure Period to meet the objectives of the Environmental Laws and the Environmental and Social Policies and Guidelines during all potential closure events. The Closure Plan shall also include a description of the actions to be taken during any periods of temporary closure or cessation of operations and for the closure activities to be performed should closure be required prior to the completion of the planned mine life. The Closure Plan will include a schedule and an estimate of the funds required to conduct closure and remediation of all site facilities and site disturbances during the Closure Period and the Post-Closure Period. Closure cost estimates shall include an allowance for Third Party closure and management of the Mine.

EXAMPLE 3

Clause 16.3

Resolution of Environmental Disputes

- (a) Any Environmental Dispute which is not resolved by negotiation pursuant to Section 16.1 within forty-five (45) Days after Notice of the Dispute is given pursuant to Section 16.1, shall be subject to mediation by the Environmental Management Panel as provided in Section 11.10.
- (b) If an Environmental Dispute is not resolved by mediation by the Environmental Management Panel within ninety (90) Days after the Environmental Dispute is submitted to the Environmental Management Panel, any Party may submit the Environmental Dispute to arbitration pursuant to Section 16.5 and upon such submission the provisions of Section 11.10 shall no longer apply to such Dispute.
- (c) If a Party to a Dispute does not agree for any good faith reason that the Dispute proposed by any other Party for mediation pursuant to Section 11.10 is an Environmental Dispute, the disagreeing Party may submit the Dispute to arbitration pursuant to Section 16.5 and upon such submission the provisions of Section 11.10 shall no longer apply to such Dispute.

EXAMPLE 4

11. Protection and Management of the Environment

1. Within a reasonable time after giving a Project Notice in respect of the Initial Project or any Subsequent Project and at three yearly intervals thereafter the participating Joint Venturers shall submit to the Minister a three year programme for the protection, management and rehabilitation (if appropriate) of the environment in respect of that Project including arrangements with respect to monitoring and the study of sample areas to ascertain the effectiveness of such programme.

2. On receipt of any programme submitted to him pursuant to sub-clause (l) of this Clause the Minister shall:
 - (a) Approve the said programme without qualification or reservation; or
 - (b) Approve the said programme subject to such conditions in respect thereof or such variations thereto as he thinks reasonable; or
 - (c) Refuse to approve the said programme.
3. The Minister shall within two months of receipt of a programme submitted to him pursuant to sub-clause (1) of this Clause give notice to the relevant Joint Venturers of his decision in respect thereof. If the decision of the Minister is as mentioned in paragraph (b) or (c) of sub-clause (2) of this Clause the Minister shall disclose to such Joint Venturers his reasons for his decision.
4. The provisions of sub-clauses (4) and (6) of Clause 7 shall mutatis mutandis apply to any decision of the Minister in the terms of paragraphs (b) or (c) of sub-clause (2) of this Clause.
5. The relevant Joint Venturers shall implement the programme when approved or determined by arbitration in accordance with the terms (including any conditions) thereof.
6. The relevant Joint Venturers shall:
 - (a) Provide all relevant raw data to the Minister;
 - (b) At yearly intervals, commencing from the date when the programme is approved, submit an interim report to the Minister concerning such programme; and
 - (c) At the expiration of three years from the date the programme is approved submit a detailed report to the Minister concerning such programme during the previous three years.
7. In the event of a sudden and unexpected material detriment to the environment occurring as a result of the Joint Venturers' operations, the relevant Joint Venturers as soon as reasonably practicable shall submit to the Minister a programme for the mitigation of such detriment and the provisions of sub-clauses (2) to (6) inclusive of this Clause shall apply to any such programme.
8. For the purposes of the [noise control act], the area of the Initial Project or any Subsequent Project shall be described as predominantly industrial.
9. Notwithstanding the provisions of this Clause, the State acknowledges that the Joint Venturers, in assessing the economic feasibility of the Initial Project or any Subsequent Project, will have regard to the laws, regulations or standards (other than those referred to in Clause 10) relative to the environment existing at the time at which the relevant Project Notice is given. Should there occur during the currency of this Indenture any changes to any such laws, regulations or standards of or applied by the State the result of which is to impose substantial additional costs upon the Joint Venturers or any of them the State shall, upon request of the relevant Joint Venturers give due consideration to ameliorating the adverse effects of such costs.

EXAMPLE 5

IFC Safeguard Policy on Natural Habitat; November 1998.

The Parties agree to comply with the substantive environmental and social principles prescribed by this Policy.

EXAMPLE 6

Environmental Protection. Consistent with the basic policy of the State to assure the availability, sustainability and equitable distribution of the country's natural resources, the Contractor shall manage its mining operations in a technically, financially, socially, culturally and environmentally responsible manner to promote the general welfare of the country and the sustainable development objectives and responsibilities as provided for in the [environmental law]. The Contractor shall conduct all Mining Operations in accordance with the provisions of the Act, [environmental law] and applicable laws concerning environmental protection, mine safety and health, using appropriate anti-pollution technology and facilities to protect the Environment and to rehabilitate areas mined out or affected by Mine Wastes and Mill Tailings or other Pollution or surface disturbance of the Contract Area by the Contractor.

2.4.3 Social Impact Assessment and Action Plan

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

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

with appropriate disclosure of information and Consultation;

- (c) Improve, replace or restore the livelihoods of displaced persons to ensure in all material respects the availability of means of livelihood adequate to maintain a an appropriate quality of life in the community; and
- (d) Improve, replace or restore living conditions among displaced persons through provision of adequate housing with security of tenure at resettlement sites.
- (f) A procedure where, if the surface of the Mining Area is occupied by artisanal miners or persons conducting small scale mining activity, the Company shall treat such persons as displaced persons and implement the resettlement under the foregoing provisions, *provided that* the Company shall not be liable to compensate or resettle any artisanal miners who first occupy the Mining Area after the Effective Date, including a procedure to ensure that information regarding the Effective Date is well documented and disseminated throughout the Mining Area in a culturally accepted manner and that the resettlement plan is developed in Consultation with those artisanal miners or persons conducting small scale mining activity; and
- (g) A plan for the transition of the Project Area to a post mining economy.

**For related provisions see 22.0 Local Community Development.*

EXAMPLE 1

Social Impact Assessment and Social Action Plan.

- (a) The Concessionaire shall conduct an SIA and produce an SAP in accordance with the Bid Materials. The SIA shall set forth the potential adverse impact of the construction and operation of the Mining Plant and the Infrastructure on the individuals and communities resident in and around (a) such Proposed Production Area and any Mining Plant or Infrastructure not located on such Proposed Production Area, or (b) areas affected by the proposed processing or transport of Product whether using Concessionaire-provided Infrastructure or equipment or facilities or equipment provided by the Government or third parties.
- (b) The SAP shall set forth reasonable procedures, in light of the costs involved, for the mitigation of such adverse impact. The SAP shall include a Resettlement Action Plan ("RAP") component if communities located in or adjacent to such Proposed Production Area or to Mining Plant or Infrastructure not located in the Proposed Production Area should under International Standards be resettled for health or safety reasons. The RAP shall provide for (but not be limited to) suitable area(s) of resettlement with key emphasis on shelter and livelihood continuity.
- (c) The Concessionaire shall hold public hearings on the SIA and the SAP in [localities], and shall provide the Minister with a report the means taken to publicize the hearings, the names and affiliations of the persons who attended such hearings, a summary of the issues raised at such hearings, and a discussion of the actions taken by the Concessionaire in response to such hearings.

EXAMPLE 2

Social Undertakings.

- (a) [COMPANY] shall perform its obligations and operate the Project in accordance with its corporate sustainability policy, which is based on the cornerstone principles of corporate commitment, public responsibility, social progress, environmental stewardship and economic benefits. [COMPANY], through a sustainable development project, shall make contributions for the improvement of the life quality of the community, including the following contributions
 - (i) To lay out the formal bases and framework for its relationship with the local and national community of [COMPANY]'s operating philosophy and policies with respect to the social, economic, health and environmental aspects;
 - (ii) To establish the ways and manner in which [COMPANY] will work with and take the concerns of the local and national communities into account (e.g., [COMPANY]'s operating procedures, industrial, community, and external relations practices, communication and

consultation mechanisms, stakeholders participation models, long-term sustainable and development strategy);

- (iii) To formalize a function to promote and coordinate [COMPANY]'s activities with community stakeholders, and serve as an internal monitor, ombudsman and facilitator of cross-company performance with respect to sustainability objectives; and
- (iv) To implement, if practical, specific policies regarding local hiring and purchasing policies (based on competitive terms and prices) and procedures; employee access to and terms of use of local public services; housing policy for hourly and salaried employees where necessary; direct employment during Construction and Operational Periods; opportunities for local and regional business to supply and service the Project; and company-community social-economic development initiatives.

EXAMPLE 3

The Company shall continue to prepare, conduct, implement, update on an appropriate basis, and make public socio-economic baseline studies, socio-economic impact assessments, socio-economic risk analyses, as well as multi-year communities plans, community relations management systems, policies, procedures and guidelines, and mine closure plans, all of which shall be produced with community participation and input and be consistent with international best practice.

EXAMPLE 4

Social Acceptability. The Contractor's obligations under the Act, the Implementing Rules and Regulations and this Section XII to address the impact of its Mining Operations on the total environment of human beings, such as economic, social, cultural, political and historic factors, shall be Satisfied by compliance with the following:

- (a) Recognition of Rights, Customs and Traditions. The Contractor shall recognize and respect the rights, customs and traditions of local communities, particularly Indigenous Cultural Communities;
- (b) Obligations in Specific Phases. During or prior to the applicable Phase(s) of this Agreement, the Contractor shall comply with the following requirements:
 - I. Exploration, Pre-feasibility and Feasibility Phases. If the Contractor has not previously done so, the Contractor shall consult with and disseminate information to affected local communities concerning its Exploration activities prior to conducting Exploration therein.
 - II. Development and Construction Phase. In the process of obtaining approval of its Environmental Compliance Certificate, the Contractor shall participate in scoping, information dissemination and consultation with affected communities concerning its proposed project, and shall consider concerns raised by the community, as required under [RELEVANT ENVIRONMENTAL LAW], to Further Strengthen the Implementation of the Environmental Impact Statement System, and other pertinent laws, rules and regulations.
 - III. Operating Phase. After the Environmental Compliance Certificate is issued, the impacts of the Contractor's Mining Operations on the human environment shall be addressed by the Contractor's compliance with the Environmental Compliance Certificate, [RELEVANT ENVIRONMENTAL LAWS], Social Development Plan and the Contractor's community development obligations under [RELEVANT ENVIRONMENTAL LAW] and Clause 13.1(i), (j) and (k) of this Agreement.
- (c) Payment of Just Compensation. The Contractor shall pay just compensation in accordance with [RELEVANT ENVIRONMENTAL LAW] when it builds, constructs or installs infrastructure and facilities on lands owned, operated or leased by other persons.

In accomplishing the foregoing, the Contractor may enter into one or more agreements with affected local communities, Indigenous Cultural Communities and Local Government Organizations. The Government agrees to encourage, facilitate and respect such agreements that are freely entered into between the Contractor and such affected communities, and agrees not to impose requirements with respect to social or cultural acceptability beyond what is required by pertinent laws, rules and regulations, and those voluntarily agreed to between the affected communities and the Contractor.

EXAMPLE 5

OCCUPATION OF SURFACE LAND

- 1. In order to exercise its exploration rights and mining rights under this Agreement and subject to the limitations of sections [xx] of the Minerals Act, the Company shall have the right to occupy and utilize permanently or temporarily within a Prospecting Area or Mining Base Area such parts of the surface land, whether Government owned, or otherwise, as may be reasonably required for accessory works and installations of the type listed in [RELEVANT CLAUSE] which are necessary or useful for its operations and such part of the surface as may be required for its prospecting and mining operations. The Company shall endeavor to make satisfactory arrangements for payment of a fair and reasonable compensation for any prospective damage to any crops, buildings, trees or works therein. The Government shall negotiate on behalf of the landowners or occupiers with the Company to assess the compensation to be paid. The landowners or occupiers shall have the right to participate in the negotiations.
- 2.
 - (i) It is recognized that the Company's mining operations will of necessity disturb the top soil and intermix subsoil strata therewith, and that

such disturbance and intermixing is a necessary incidental to the alluvial mining of [mineral] and associated minerals. Accordingly, it is agreed that such disturbance and intermixing, and their effect, if any, on the future use and occupancy of the surface land shall not be taken into account or evaluated in determining compensatory damages payable to the owner or occupier of the land. To minimize such disturbances, the Company agrees that it will restore all mined areas to reasonable surface contours not in substantial contrast with the contours of the adjacent and surrounding land surface.

- (ii) In case it shall not be possible for the Company to reach a satisfactory agreement with the owner or occupier of the surface, in case of land not owned by the Government, within thirty (30) days after the commencement of its efforts to do so; or such extended time as the Company and such owner or occupier shall agree, the Company, unless it elects not to occupy and utilize such surface areas, shall bring the matter to the attention of the District Officer having jurisdiction by filing a petition setting forth the facts of the case and specifying as exactly as may be possible the land which it requires and the nature of the occupation of the same, whether for accessory works and installations or for prospecting or mining operations. As soon as may be conveniently done thereafter, but not more than sixty (60) days after, the date of the filing of the said petition, the Government shall cause the District Officer to assess the compensation to be paid to the owner of the land when and if such prospective damages, loss or destruction of goods or property are inflicted by the Company, and to promptly notify the parties of the sum awarded. If the owner of the land should be unknown or there should be a controversy as to the ownership, the Company shall make a payment to the District Officer who shall determine its disposition. Either party who is dissatisfied with the award of the District Officer may appeal to the Minister who may render a decision or refer the dispute for determination by arbitration. The decision by the Minister or the arbitrators shall be final and binding on the parties. Upon agreeing to pay the amount specified, the Company may enter the land, but shall not be required to agree to pay such amount if it withdraws its petition to enter upon such land and has not already entered upon such land.
- (iii) The compensation payable by the Company pursuant to this Clause shall be based on the estimated monetary amount (or fair market value) of the damage to be done to the crops, buildings, trees or works on the land. Any compensation with reference to the fact that the owner will be deprived of the use and occupancy of the land is included in and covered by the surface rent payable pursuant to Clause 6(a)(2) hereof.
- (iv) The Company shall not unduly disturb and interfere with the living conditions of local population settled within the Mining Lease Area. The Company shall respect and cause its employees and contractors to respect the customs of the local populations.
- (v) If at any point a resettlement of the local population appears to be absolutely essential, the Company shall move with utmost caution, with the consent of the Government and in consultation with local authorities in persuading the local population to resettle and provide a fully adequate resettlement program in accordance with the directions of the responsible Minister.

EXAMPLE 6

The Licensee shall not disturb or unreasonably interfere with the living conditions of the population lawfully settled within the Exploration License Area and surroundings and shall respect their customs and shall provide a fully adequate resettlement program [if that is essential and] approved by the Licensing Authority.

EXAMPLE 7

Obligations of the Contractor

I. Indigenous Peoples

- (i) To recognize and respect the rights, customs and traditions of Indigenous Peoples within the Contract Area in accordance with pertinent laws, rules and regulations.
- (ii) To comply with existing laws, rules and regulations respecting the rights of the Indigenous Peoples over their area within the Contract Area.
- (iii) To comply with any and all obligations as may be provided under specific agreements entered into with the Indigenous Peoples within the Contract Area.

Obligations of the [HOST COUNTRY]. The [HOST COUNTRY] shall:

[...]

c. Indigenous Peoples:

- (i) The [HOST COUNTRY], when necessary and appropriate, shall use its best efforts:
- (a) To ensure the strict compliance by the Contractor and the concerned Indigenous Peoples with any and all terms and conditions of any agreement entered into by and between said parties; and b. to facilitate when requested, any future agreements that the Contractor and the Indigenous Peoples may enter into.
- (ii) The [HOST COUNTRY] shall respect any and all agreements entered into between the Contractor and the Indigenous Peoples and shall not impose conditions on the Contractor's Mining Operations on Ancestral Lands/Domains that are more restrictive than those imposed

- by law, rules or regulations, and those agreed upon by and between the affected Indigenous Peoples and the Contractor;
- (iii) The intention of the parties in their voluntary agreements shall prevail to the extent not inconsistent with pertinent laws, rules and regulations.

EXAMPLE 8

Policy of the World Bank Group on Involuntary Resettlement (OD 4.30); June 1, 1990.

The Parties agree to comply with the substantive environmental and social principles prescribed by this Policy, with the following procedural exceptions and modifications:

- (a) Paragraphs 23, 24, 26, 27, and 30 of the Policy shall be deemed not to apply.
- (b) Paragraph 22 of the Policy, beneath the heading “Implementation Schedule, Monitoring, and Evaluation”, shall be deemed to read as follows:
- Arrangements for monitoring implementation of resettlement and evaluating its impact should be developed during Project preparation and used during supervision. Monitoring provides a warning system and a channel for the resettlers to make known their needs and a reaction to resettlement execution. Annual and mid-term reviews are desirable for large-scale resettlement. Impact evaluation should continue for a reasonable period after all resettlement and related development activities have been completed.
- (c) Paragraph 31 of the Policy, beneath the heading “Implementation and Supervision”, shall be deemed to read as follows:
- Resettlement components should be supervised throughout implementation. Supervision that is sporadic or left until late in implementation invariably jeopardizes the success of resettlement. Annual reviews of large-scale resettlement are highly desirable. These reviews should be planned from the outset to allow for necessary adjustments in Project implementation. Complete recovery from resettlement can be protracted and often make it necessary to continue supervision until well after populations have been relocated, sometimes even after a project has been closed.

2.4.4 Financing Plan

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

2.4.5 Compliance with Law; Requested Changes by State

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

EXAMPLE 1

Approval of the Feasibility Study and Grant of Mining License.

- (a) The Minister may (i) reasonably request additional information with respect to any aspect of the Feasibility Study, and (ii) reasonably recommend changes in any component of the Feasibility Study to the extent the Minister deems the changes necessary to satisfy applicable

requirements of this Agreement.

- (b) The Minister may not unreasonably withhold approval of the Feasibility Study if:
- (i) the Feasibility Study complies with the provisions of the Mining Law and the terms of this Agreement,
 - (ii) a Competent Person reasonably selected jointly by the Government and Concessionaire has concluded that the basic design and material and operating specifications, the capital expenditure plan and construction schedule included in the Feasibility Study and the Concessionaire's plans are sufficient if implemented as contemplated by the Feasibility Study to support the efficient and economic Operations, processing and marketing of the Minerals proposed to be Mined from such Proposed Production Area,
 - (iii) the EIA and the EMP have received the approval of the EPA,
 - (iv) the proposed SIA and RAP satisfy the requirements of Section 5.4,
 - (v) the proposed STDP satisfies the requirements of Section 5.5,
 - (vi) the capital expenditure plan shows that the debt/equity ratio of the investment taking into account initial working capital at commencement should not exceed x:x, and
 - (vii) the Feasibility Study and proposed plan are financially viable.
- (c) The Minister shall be deemed to have approved the Feasibility Study unless the Minister has notified the Concessionaire in writing of the reasons for disapproval not later than 120 days after the Ministry receives from the Concessionaire a Feasibility Study and related materials substantially complying with the requirements of this Agreement. Following any such disapproval and the resubmission by the Concessionaire of an amended, modified or supplemented application or Feasibility Study, the Minister shall be deemed to have approved the Feasibility Study unless within 60 days of such amendment, modification or supplement the Minister has notified the Concessionaire in writing of the reasons for disapproval.
- (d) Upon the approval of the Feasibility Study, the Minister must grant the Concessionaire a Mining License covering the Proposed Production Area that was the subject of the license application filed under [law], in which case the Proposed Production Area shall become an approved Production Area. Notwithstanding the preceding sentence, a Proposed Production Area may not include land the use of which for Mining operations would violate Section [x] of the Mining Law.

EXAMPLE 2

Government shall, within ninety (90) days of receipt of an application by Company in accordance with Clause 0, grant its consent to the Project in accordance with the proposals submitted if:

2.1.8 Company's environmental plan conforms to specifications and practices established by generally acceptable national standards for the management of the environment as it is affected by mining operations;

2.1.9 taking account of the size and nature of the proposed mining operations, Company's proposals for the employment and training of Country's citizens meet the criteria of Schedule 4;

2.1.10 neither Company nor [other company] is in material and substantial breach of any conditions of any of their respective Large Scale Mining Licences or of any provision of the Act or regulations made thereunder or of this Agreement;

2.1.11 the Project would, if approved, entail production of a further [x] tonnes of Product (in excess of the budgeted production, not taking into account the implementation of the Project) over the duration of the proposed extended life of mine for the Ore Body; and

2.1.12 Company's application does not include any conditions the approval of which by Government is a precondition to Company's application and willingness to implement the Project (as described in Clause 2.1.7).

Government shall not reject an application without affording Company full opportunity to consult with it and, should Company so desire, to submit new or revised proposals either generally or in respect of any particular matter. If, in the event of its application being rejected, Company considers that the criteria set out in Clause 0 are satisfied, it may within two (2) months after receipt of the rejection notice elect to refer the matter to a Sole Expert (or Tribunal) for his (or its) determination pursuant to Clauses 20 or 21 respectively.

[dispute resolution procedure...]

2.5 Requirement to Obtain Permits

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

2.6 Construction

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

**See 20.0 Development Obligations for related provisions.*

EXAMPLE 1

Construction.

- (a) Within thirty (30) Days subsequent to the last to occur of (i) Company's receipt of all the Permits required for Construction of the Mine, (ii) Company's receipt of all approvals required by Law for its Initial Mine Plan of extraction; (iii) formalization of the lease and delivery of all the lands necessary for the permanent disposal of tailings and waste in the manner contemplated by the Feasibility Study and the amendment of the Fiscal Reserve to include the right to exploit all Minerals in such lands as provided in Section 7.6 of the SLA; and, (iv) the Project Notice Date, Company shall, subject to Sections 17.14 and 17.15, commence Construction of the Mine until its completion in accordance with the Feasibility Study, subject to changes resulting from engineering and other studies conducted by Company after completion of the Feasibility Study, and all the Permits.

THE STATE shall establish simple and expedited procedures for the approval of all Permits required for the Construction of the Mine, in a manner consistent with the Laws.

- (b) Not more than thirty (30) Days after the Project Notice Date, Company shall submit to the STATE a detailed schedule for the performance of all planned activities during the Construction Period. The schedule shall include all activities identified in the Feasibility Study and include the details to be developed for construction. The schedule shall include an estimated duration of the key components of all planned activities to be performed during the Construction Period including a critical path, milestones and decision points. Company shall submit to the General Directorate of Mining, thereafter on a Quarterly basis, an updated schedule showing progress and any changes in the milestones or critical paths for the Construction of the Mine. The Company shall have the right to comment upon and request explanation of the any changes that occur in the schedule.

EXAMPLE 2

As soon as approval is received from Government after the submission of the plans and designs provided for in Article 8.3 hereof, Contractor shall commence construction of the facilities and prosecute the same to completion in accordance with the time schedule hereinabove referred to in said Article to the extent feasible.

EXAMPLE 3

7.2 Timetable. During the Development and Construction Phase, the Contractor shall complete Mine Development in the Mining Area(s) identified in the Mining Project Feasibility Study filed pursuant to Clause 7.1(a). The Contractor shall also during the Development and Construction Phase have the right in its discretion to continue Exploration activities and other Mining Operations in any Mining Area.

7.3 Expenditure Commitment. The Contractor shall expend in total not less than [\$\$] on infrastructure and development in the Contract Area, which amount shall include all Pre-Operating Expenses incurred after the commencement of the Development and Construction Phase. In the event this expenditure commitment is not or can not be met, the Contractor has the option to convert this Agreement into a Mineral Production Sharing Agreement or withdraw from this Agreement in accordance with the terms prescribed in Clause 18.1 and Clause 17.3, respectively.

7.4 Reporting Requirements. The Contractor shall submit the following reports during the Development and Construction Phase:
[...]

EXAMPLE 4

Conduct of Operations

- (a) Company shall conduct all Operations in a reasonably prudent manner, and in accordance with:
- (i) The Environmental Management Plan that was approved as a part of the Environmental Impact Assessment pursuant to Section 6.2(c);
 - (ii) The Environmental and Social Policies and Guidelines;
 - (iii) The Permits issued to Company; and
 - (iv) The Laws, including those applicable to the Environment hygiene, industrial safety, and labor, subject to Section 11.8.
- (b) After Construction of the Mine, once Commercial Production has been achieved, except as set forth in Section 6.8, Section 17.14 and Section 17.15, Company shall maintain Commercial Production of Minerals at the Mine during the Term of the Leases.

EXAMPLE 5

The lessee/lessees shall commence operation within one year from the date of execution of the lease and shall thereafter at all times during the continuance of his lease search for, win, work and develop, the said minerals without voluntary intermission in a skilful and workman-like manner and as prescribed under clause 12 hereinafter without doing or permitting to be done any unnecessary or avoidable damage to the surface of the said lands or the crops buildings structures or other property thereon. For the purposes of this clause operations shall include the erection of machinery, laying of a tramway or construction of a road in connection with the mine

FINANCIAL

3.0 Annual Rental

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

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

4.0 Royalty

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

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

4.1 Calculation of Royalty

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

Alternative #1: Profit-based Royalty

[NOTE: The profits-based royalty is the most sensitive to changes in Mineral prices during the life of the Project and differences in the economics of ore bodies (for example, large vs. small deposits, high vs. low

grade, access to existing infrastructure (power, transportation) vs. need to build infrastructure. It allows the Parties to share these risks and benefits. However, a profits-based royalty will be low or non-existent during the initial recovery of the investment in the mine and periods of capital expansion. It is also more difficult for the State to calculate and collect than value-based royalties.]

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

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

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

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

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

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

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

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

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

- (B) “**Gross Market Value**” has the following meaning: *[See definition in Gross Value royalty alternative]*

Alternative #4: Unit-based Royalty

[NOTE: This type of Royalty may be appropriate for certain industrial minerals or minerals sold in bulk,

but is generally not appropriate for most other minerals. Consideration should be given to indexing this type of royalty for inflation given the extended term of the Agreement.]

MINERAL	ROYALTY RATE [●] per ton

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

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

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

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

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

- (a) Variation of Royalty Rate
 - (i) The Royalty Rate payable under this Agreement shall be based on the profitability of Mining

Operations, adjusted annually after the end of the Company’s financial year and effective as of the commencement of the Company’s next financial year.

- (ii) Such profitability shall be determined by the application of the “**Operating Ratio**,” being the ratio as expressed in terms of percentage which the Operating Margin bears to the [value of Minerals produced, saved and sold from the Mining Area.] during such financial year.
- (iii) The following Royalty Rates shall apply in accordance with the applicable Operating Ratios:

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

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

Comment on “Windfall Profits” or Resources Rent Taxes

Some countries have proposed or adopted an additional tax, sometimes described as a “windfall profits”

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

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

4.2 Royalty on other mineral materials

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

4.3 Production Statement

- (a) The Company must submit to the State a production statement in accordance with Applicable Law, and if not so provided then not later than [30] days after the end of the calendar quarter in which the Date of Commencement of Commercial Production occurs and thereafter not later than thirty [30] Days after the end of each subsequent calendar quarter during the term of this Agreement. The production statement must be prepared in accordance with Applicable Law, if any, and Good Industry Practice, containing the following particulars:
 - (a) The quantity and quality of Minerals produced and sold;

- (b) The size of Minerals stocks held at the beginning of the calendar quarter;
 - (c) The size of Minerals stocks held at the end of the calendar quarter;
 - (d) The calculation of the royalty due on such Minerals produced and sold, in accordance with Section 4.1 and, if applicable, Section 4.2.
- (b) The State may give Notice specifying other particulars relating to Project operations necessary for calculation of the royalty be included in the production statement and the Company must comply with any such reasonable request.

4.4 Payment of Royalty

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

4.5 Disputes regarding Royalty Payments

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

EXAMPLE 1

The Company shall pay to Government Mineral Royalty tax (the "Royalty") on the net back value of minerals produced in the Mining Area at a rate of two per cent (2%).

For purposes of the foregoing, "net back value" shall mean: the market value of Mine Products free-on-board at the point of export from County, or in the case of consumption within County, at the point of delivery within County, less:

- (a) the cost of transport, including insurance and handling charges, from the Contract Area to the point of export or delivery; and
- (b) the cost of smelting and refining (where applicable) or other processing costs except that such other processing costs are relate to processing normally carried out in County in the Contract Area.

The term "market value" means realized price for a sale free-on-board at the point of export from Country or at point of delivery within Country.

EXAMPLE 2

Royalties.

- (a) Except as may be provided by amendment to the Revenue Code subsequent to the Effective Date, the Concessionaire shall no later than 30 days following the date of (i) shipment (in the case of exports by the Concessionaire); or (ii) of sale or other disposition (whichever is earlier), in the case of transactions in which the Concessionaire transfers title to Product(s) before the Product(s) leave Country, pay to the general revenue account of the Government a royalty for Product(s) in that shipment (or subject to such sale or other disposition) at the percentage rate stated in subsection (b) times the Reference Price for each unit of Product, FOB Country (such payment collectively, the "Royalty"). Each payment shall be accompanied by a statement from the Concessionaire showing in such reasonable detail as the Ministry of Finance may require the basis of computation of Royalties due.
- (b) The royalty rate for shipments or sales of Iron Ore in any month during the Term shall be as follows: (i) when the Index Price is US\$100 per metric ton or less the royalty will be [w]%, (ii) when the Index price is greater than US\$100 per metric ton and less than US\$125 per metric ton, the royalty will be 3[x]%, (iii) when the Index Price is greater than US\$125 per metric ton and less than US\$150 per metric ton, the royalty will be [y]%, and (iv) when the Index Price is US\$150 per metric ton or more the royalty will be [z]%. The "Index Price" shall be the CVRD spot price FOB Brazil for shipment to China for the same product of equivalent grade and quality produced at Mine.

EXAMPLE 3

- (a)
 - (i) The NSR payments shall be [x]% of (A) Company's Net Receipts from the sale of Royalty Minerals to purchasers other than Affiliates, and (B) Company's Deemed Receipts from the special cases described in Section 8.2(b). "Net Receipts" from the sale of Royalty Minerals shall be the Dollar value of the gross selling price to the purchaser minus costs incurred by Company of the nature described in Section 8.2(c) that are actually borne by Company after mining, extraction or removal of the Royalty Minerals from the ground of the Leased Properties.
 - (ii) The CENTRAL BANK may request, at any time and from time to time, upon at least two (2) Months' Notice to Company, payment of a portion of the NSR in physical refined gold using values as described in Section 8.2(b)(ii)(B)(I) as of the date of payment. Such portion shall not exceed so much of the NSR as is attributable to gold. The CENTRAL BANK shall bear all storage, transportation, insurance and security costs regarding such refined gold after the transfer of ownership. Company shall in its discretion determine the place of transfer of ownership and delivery of such refined gold.

EXAMPLE 4

ROYALTY

- (a) Licensee shall pay an ad valorem royalty, as that term is used in the Mining Proclamation, at the production site and at the rate of [] percent (%). For purposes of this provision, ad valorem means: (i) for gold and precious minerals, the value of the Mineral at the moment it is extracted at the mine site, and (ii) for base minerals, the value of the Mineral at the moment it is extracted at the mine site, which value shall be the amount Licensee estimates that it will receive from the smelter, refinery, or other purchaser of the Product. The amount of royalty so paid by Licensee when the Mineral is extracted at the mine site shall be adjusted within thirty (30) days following the end of each calendar quarter based on the quantity of Product sold and the sales proceeds actually received by Licensee for such Product for the prior quarter. In the event there arise problems in implementing this provision, the Parties agree to negotiate in good faith a reasonable resolution to the problems, failure of which a Party may elect to submit the matter to arbitration pursuant to Article 21 (SETTLEMENT OF DISPUTES). The Licensee may raise the issue of a lower royalty in the future by requesting the Licensing Authority to enter into a good faith negotiation on the matter. Such request shall be supported by a detailed explanation of the nature of the deposit and the corresponding Feasibility Study.
- (b) Such royalty shall be paid quarterly, within thirty (30) days of the end of the quarter in which the Mineral is extracted. Any required adjustments, based upon actual sales proceeds, shall be made as provided in Section 12.4(a).
- (c) The Licensing Authority may elect to take all or any part of the royalty in kind. Unless the Licensing Authority elects to take royalty in kind as provide herein, the royalty shall be paid in cash.
- (d) Title to the royalty production Minerals not taken in kind shall pass to Licensee upon extraction of such Minerals and a production royalty shall be paid to the Licensing Authority as provided in Section 12.4(a).

5.0 Customs Duties

5.1 Customs Duties

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

5.2 Reimbursement of Import Duties

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

EXAMPLE 1

Import Duty on goods imported into County:

- (i) exemption and tax reliefs on import duty of capital goods, equipment, and machinery and supplies are granted to the Company based on [Foreign Capital Investment law].
- (ii) import of other goods into County customs areas, including personal effects shall be subject to the customs rule in accordance with the prevailing Law and Regulations.
- (iii) excise tax on tobacco and liquor are governed by prevailing legislation.

EXAMPLE 2

Duties, Consumption Taxes and Other Assessments.

- (i) Imports into the County by Company shall be exempt from payment of customs duties, and all other sales and excise taxes, on goods and services used in the Project. Likewise, imports by Company shall be exempt from all taxes, fees, administrative charges and other charges related to the importation of goods and services. However, if any such imported articles cease to be used in connection with the Project within three years of being placed in service by Company, Company shall be responsible to pay any such duties or taxes with respect to such imported articles at the rate applicable at the time of importation or other due date for payment under the applicable Law imposing such duties or taxes at such time or times, but applied to the normal market value of the item or items at the time of cessation of use. With respect to importations of finished articles having a value of less than fifty thousand Dollars (\$50,000), the date of importation shall be deemed to be the date the article is placed in service. The normal market value shall be the sale price in the case of a disposition to a party that is not an Affiliate or an arm's-length price in the case of a sale to an Affiliate or use or retention by Company outside the Project. Additionally, the exports from Company shall be exempt from all taxes, fees, duties, administrative charges and other charges related to exportation of goods and services.
- (ii) Company shall be exempt from all forms of taxes, permits, licenses, fees and duties (excluding the Exchange Commissions in accordance with Section 9.6(b)), sales taxes, gross revenue taxes, value added taxes (including the [specific tax] or the future tax that replace or complement such tax), customs export duties and excise taxes, on all goods, services and rights purchased, consumed, produced, sold or leased that relate to the activities concerning the construction, operations and closure of the Leased Properties, including fees payable with relation to the Construction of the Mine to the Municipal Governments and other governmental and municipal entities that do not correspond to services effectively provided to Company.

EXAMPLE 3

18.1 Imports.

The Concessionaire may, in accordance with applicable Law, import and use for Operations, and subsequently export, any and all machinery, equipment, vehicles, supplies, consumable items, fuels, petroleum products, explosives and any other thing whatsoever reasonably required with respect to Operations. The Concessionaire must at all times comply with applicable Law regarding the safe use, sale, disposal and security of fuels, petroleum products, and explosives.

18.2 Taxes on Resale of Imported Items.

The Concessionaire may sell, in Country, all imported items that are no longer needed for Operations, except that the Concessionaire may not sell explosives, gasoline or diesel within Country to third parties without the Government's consent. If such imported items were exempted in all or in part from Taxes and Duties on import into Country, then the Concessionaire must, upon their sale, pay to the Government those Taxes and Duties that would otherwise have been payable under applicable Law on such items and fulfill all formalities required by Law in connection with such sales.

18.3 Right to Export Minerals and Other Rights.

The Concessionaire (i) may, directly or through appropriate contractual arrangements, market and sell the Product(s) obtained from Operations during the Term of the relevant Mining License to any Person in any country or state, subject in all cases to applicable Law and the provisions of this Agreement, and (ii) subject to its obligations to pay Royalty, Taxes and Duties and such other payments to the Government under this Agreement, may receive all income and proceeds from such sales and deposit them in banks within Country and outside of Country of its own choosing (provided that the approval of the Central Bank of Country for the choice of external bank, if required by applicable Law, shall be obtained in accordance with applicable Law).

EXAMPLE 4

3.0 Rights to Export and Import and Arms' Length Dealings

3.1 Subject to Clause 4 and the payment of applicable duties and taxes not otherwise exempted or deferred pursuant to this Agreement, the Company may import and where it so desires, re-export without further reference to [Government], materials, equipment and services to be used in implementing the Scheduled Programmes provided that [Government] has not notified the Company that the import and/or re-export (as applicable) of such materials and equipment would give rise to the matters specified in Clause 3.2(b)(i) or (ii).

EXAMPLE 5

ARTICLE 11 EXEMPTION FROM CUSTOMS, TAXES, AND DUTIES

11.1 Imports

Licensee and its Contractors shall be entitled to import into *[name of host country]* all consumables (excluding food items), supplies, materials, and equipment necessary for its Exploration Activities and Mining Activities, including drilling, geological, geophysical and other mining machinery and equipment, aircraft (subject to applicable licensing procedure), vehicles and other transportation equipment, and parts therefore (other than sedan cars and fuel therefore), chemicals, films, seismic tapes, house-trailers, office-trailers, and disassembled prefabricated structures free of import duties and taxes, provided that:

- (i) all the items are wholly and exclusively destined for use in Licensee's activities hereunder and are imported into *[name of host country]* in the name of or consigned to the Licensee; and
- (ii) similar goods of reasonably equal quality, delivery, parts availability, and price are not readily available in *[name of host country]*.

11.2 Government Verification

The Government and its authorized representatives shall have the right to verify, acting within a commercially reasonable time, that any items imported by Licensee or its Contractors meet the conditions set forth in Section 11.1 (*Imports*). The Government shall provide procedures to expedite the admission and clearance by the Government's authorized customs representatives of all imports destined exclusively for use in Licensee's activities hereunder and Governmental verification of such use.

11.3 Expatriate Personnel

The expatriate personnel of the Licensee and Licensee's Staff shall be entitled to import, free of all duties and taxes, their personal effects, including single sedan car within six (6) months of their arrival in *[name of host country]*. Licensee and Licensee's Staff shall have, in addition to all other rights recognized in *[name of host country]* with respect to such imported property, the right to export same as well as any other imported property on which duty was paid at the time of import, without payment of any duties or taxes.

11.4 Re-Export

Licensee and Licensee's Staff shall have the right to re-export, free of all export duties and taxes, property which is no longer required for use in Licensee's activities carried out hereunder, which property was originally imported free of duties and taxes as provided in

Section 11.1, and shall be subject to Article 26 (ACQUISITION OF PROPERTY). Licensee and Licensee's Staff shall also have the right to dispose of any of their respective property within *[name of host country]*, provided that in the case of property imported under import duty privileges in accordance with Section 11.1 (*Imports*), they shall pay all duties and taxes due upon such sale in accordance with the Law then in force.

11.5 Export of Minerals

Subject to Licensee complying with customs and bank formalities, Licensee shall have the irrevocable right to export from *[name of host country]*, without restriction whatsoever and free of all duties or taxes on such export, all Minerals produced under this Agreement and under any applicable License.

[...]

ARTICLE 13 EXPORT AND SALE OF SAMPLES

13.1 General

Licensee may remove, transport, analyze and, with the prior consent of the Licensing Authority, export samples of Minerals collected during the Exploration Activities for testing. However, Licensee shall not dispose of such samples without the prior consent of the Licensing Authority.

13.2 Duplicate Samples

Except for bulk samples, the Licensee shall maintain and make available to the Licensing Authority duplicates of samples exported for testing when requested, in writing, to do so by the Licensing Authority.

6.0 Insurance

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

EXAMPLE 1

Required Insurance.

1.1 As of the Effective Date, the Company shall obtain from reputable insurers and thereafter at all times maintain in full force and effect, at its expense, insurance with respect to its properties and operations under this Agreement of the types, in amounts, on policy terms and with limits at least as favourable to the Company and the State as is customary under Good Industry Practice. The Company shall provide the State with copies of all such insurance policies and the State shall have the right to review and approve same, such approval not to be unreasonably withheld, provided that unless the State gives Notice to the Company of disapproval of such insurance policies within thirty (30) Business Days following receipt of all such insurance policies, the State shall be deemed to have given its approval.

1.2 Modifications of Insurance Coverage.

Within 60 days of each third anniversary of the Effective Date, the Company shall provide the State with a report of an independent insurance consultant reasonably acceptable to the State to the effect that the insurance obtained and maintained by the Company complies with the requirements of this Section 7.0.

1.3 General Insurance Requirements.

All required insurance policies must:

- (a) provide that the same shall not be modified or terminated without at least thirty (30) days prior written notice to the State;
- (b) with respect to policies insuring against loss or damage to property, cover the full replacement cost of such property;
- (c) with respect to all liability insurance, name the State and its ministers, officers, agents and employees as joint assureds;
- (d) with respect to all policies insuring against loss or damage to property, name the State as an additional insured; and
- (e) with respect to the State as an additional insured, provide that such insurance will not be invalidated by any action or inaction of the State.

1.4 Reinsurance

If insurance is obtained from insurers in the State, reinsurance shall be obtained for the greatest proportion of the risk that Applicable Law or insurance regulation will allow with reinsurers of international standing with a minimum rating of "A" with A.M. Best or "AA" with ISI Standard & Poor's. The Company shall use its reasonable efforts to ensure that, to the extent from time to time available in the international reinsurance market at a reasonable cost and on commercially reasonable terms and to the extent permitted from time to time by Applicable Law, its insurers in the State and their international reinsurers agree to arrangements such that the Company or the State, as the case may be, shall be permitted to make claims under such reinsurance policies directly against such reinsurers.

1.5 Failure to Maintain Insurances

Breach of any of the Company's obligations under this Section 7.0 shall be deemed a material breach of this Agreement if it has a material adverse effect on (i) the State or (ii) the performance of the Company's obligations under this Agreement. If at any time the Company fails to purchase and maintain in full force and effect any and all insurances required under this Agreement, the State may, at its sole discretion, purchase and maintain such insurance and all amounts incurred by the State therefore shall be reimbursed by the Company.

1.6 Contractor Insurance

The Company shall require its contractors and its subcontractors to obtain and maintain such coverage as an operator in the position of Company would require as a matter of Good Industry Practice. The failure of any contractor or subcontractor to obtain and maintain such coverage shall not excuse the Company from any liabilities it may have under this Agreement or from any failure to carry insurance required by Section 7.0. The Company shall use reasonable efforts to include the State as an additional named insured under any third party liability policies entered into by

the Company's contractors or subcontractors performing services in the Project Area, and to include the State as beneficiary of any waiver of subrogation included in such policies.

1.7 No Duty to Verify or Review.

Any failure on the part of the State to pursue or obtain the evidence of insurance required by this Agreement or failure of the State to inform the Company of any non-compliance with a request to provide evidence of insurance shall not constitute a waiver of any of the insurance requirements in this Agreement.

EXAMPLE 2

Insurance.

At all times during the Mining Term (including during the construction period) the Concessionaire will maintain with financially sound and reputable insurers, insurance with respect to its properties against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business in the Country. The Concessionaire must provide the Government at least annually with evidence as to the existence of such insurance.

EXAMPLE 3

INSURANCE

The terms and conditions of the insurance by Company of its assets and potential liabilities shall provide coverage:

- (a) on terms no less comprehensive in relation to the risks covered; and
- (b) for an insured amount no less, than that set out in Schedule 5 and shall in any event carry coverage in accordance with the requirements of the Act and be consistent with Good Mining, Metal Treatment and Environmental Practices.

Government agrees that the insurance cover specified in Schedule 5 is that which, as at the date hereof, is required by the Director of Mines pursuant to Section [x] of the Act. In the event that Company intends to issue a statutory instrument referred to in Section [x] of the Act or the Director of Mines as aforesaid intends to make a direction, in either case applicable to and binding upon Company and inconsistent with Schedule 5, Government shall provide a draft of the statutory instrument or direction, as the case may be, to Company which shall confirm in writing to Government no later than thirty (30) days following receipt by Company of such draft whether or not it considers the insurance coverage, the amount of such insurance coverage or the types of risks specified in such draft to be:

- (a) unreasonable; or
- (b) inconsistent with Good Mining, Metal Treatment and Environmental Practices.

If Company does so object, the dispute shall be referred to a Sole Expert in accordance with Clause 20 for determination as to whether the draft is unreasonable or inconsistent with Good Mining, Metal Treatment and Environmental Practices. In the event the Sole Expert determines that the draft statutory instrument or direction by the Director of Mines is unreasonable or so inconsistent, the draft statutory instrument or direction shall be withdrawn or amended to be consistent with the determination of the Sole Expert prior to issuance or implementation by Government.

Government shall be advised of the insurance policy or policies in place which comply with Clause 0 and Schedule 5 and Company shall forward copies to Government whereupon Government, if appropriate, shall acknowledge that such insurances constitute the insurance coverage prescribed by any statutory instrument issued under Section [x] of the Act and/or required by or a direction of the Director of Mines pursuant to Section [x] of the Act. Government undertakes to permit, to the extent necessary, insurers resident in Country to assign their rights under any re-insurance contracts to which they are party to Company or any lender to Company.

EXAMPLE 4

- (a) During the Term of this Agreement, Company shall obtain and maintain insurance policies in the extent of its insurable interest, to cover risks related to the development and operation of the Mine in such a manner as are generally insured against in the international mining industry. Such insurance policies shall not cover the risks inherent to Historical Environmental Matters in the Development Areas or elsewhere, without prejudice of what is provided in Section 11.2(c). THE STATE shall be included as an additional insured in such insurance policies, to the extent of its insurable interest. Company shall present each year to THE STATE, a certificate of the insurance policy as evidence of its compliance with the provisions of Section 6.9(a).
- (b) Nothing in Section 6.9(a) shall be deemed to limit Company's ability to self-insure against risks in accordance with practices that are customary in the mining industry.
- (c) In addition to the insurance coverage described in Section 6.9(a), Company may, at its sole discretion, obtain insurance against (i) property damage, (ii) business interruption, (iii) political risk through facilities or other insurance offered through the World Bank Group, Multilateral Investment Guaranty Agency or other governmental or private sources or participate in other bilateral political risk programs that may be available, or (iv) other risks.

- (d) In order to comply with the insurance requirements set forth in Section 6.9(a), Company shall have the right to acquire its insurance for the Mine from local insurance companies, Affiliates that carry on an insurance business or from other sources in the international insurance markets, as Company deems appropriate.

7.0 Taxation

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

7.1 Taxation - General

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

EXAMPLE 1

Subject to the provisions in this Agreement, the Company shall pay to the Government and fulfill its tax liabilities including its obligations as a tax withholder as hereinafter provided:

[list of taxes]

The Company shall not be subject to any other taxes, duties, levies, contributions, charges or fees now or hereafter levied or imposed or approved by the Government other than those provided for in this Article and elsewhere in this Agreement.

EXAMPLE 2

8.3 General Tax Obligations.

To the extent that Company conducts activities constituting the carrying on of business or investment activities for the production of income that are not related to or contemplated in connection with the Project, such activities (the “Extra-Project Activities”) shall be accounted for and treated for purposes of this Section 8.3 as if these Extra-Project Activities are carried on by a legal entity separate from Company not subject to this Section 8.3, but instead subject to all Laws, including the tax laws of the Country, so that the activities contemplated by this Agreement in undertaking the Project by Company (“Project Activities”) are treated as “Ring Fenced” (*i.e.*, separately treated as the sole activities of Company). [...] References to Company in this Section 8.3, unless qualified to refer specifically to the deemed separate legal entity, shall be to Company as an entity conducting Project Activities. [...] All Laws, including the tax laws, of the Country as they exist from time to time shall apply to the treatment and obligations arising out of Extra-Project Activities. With respect to the Ring Fenced Project Activities of Company, the provisions of the paragraphs in the remainder of this Section 8.3 shall apply.

7.2 Income Tax

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

** Note on examples: The tax provisions of many actual agreements are long and complex, thus the following examples have been edited for space.*

EXAMPLE 1

(a) Project Activities Tax Obligations.

The Company's tax obligations shall apply as provided in the [Code] as in effect on the Effective Date without regard to subsequent modifications, amendments or changes (other than those specified in this Section [X]) which arise under the Laws as in effect from time to time (the "Code"). The Code as in effect on the date of this Agreement, however, shall be deemed modified as specifically provided in this Section [X] and so applied. The Company shall be treated as if it were a Country permanent establishment deriving all of its income from Country sources in carrying on the Project Activities with respect to its liability for income tax under the Code as modified herein. [...]

[...]

(c) Income Tax Obligations of Company.

The obligations of Company to pay income tax shall be determined each year under the Code as modified by this Section [X]. Except as otherwise validly elected by the Company under the Code, the Company's fiscal year for purposes of computing its income tax liability under this Section [X] and its liability under Section [X] shall be the Calendar Year. The tax rate of twenty-five percent (25%) shall be applied regardless of statutory changes under the Laws, but shall take into account any limitation of the rate applicable to Country source income from a permanent establishment provided by any applicable income tax treaty between the Country and the residence country of Company. In addition to the modifications provided in Section [X] the following modifications shall apply to the Code for such purposes:

[modifications]

EXAMPLE 2

- (a) The Company shall, while this Agreement remains in effect, pay to the Government an income tax in accordance with the provisions of this Agreement and the Applicable Law; provided, however, that all such taxes shall be nondiscriminatory within the large scale mining industry within [Host Country]. All income taxes shall be payable in respect of the Company's income arising from its Mining Activities carried out in [Host Country] pursuant to this Agreement.
- (b) The rate of income tax to be assessed and paid in respect of income derived by Licensee from Mining Activities shall be [X] percent (%) of the taxable income derived therefrom.
- (c) Compensation received by expatriate employees of Licensee or its Contractors shall be exempt from the payment of income tax under Applicable Law.

EXAMPLE 3

Corporate Income Tax in respect of income received or accrued by the Company:

- (i) The Company shall pay Income Tax on income, that is any increase in economic ability received, or accrued by the Company, whether originating from within or outside the Country, in whatever name and form, including but not limited to gross profit from business, dividends, interest and, royalties and the tax rates to be charged for the duration of this Agreement shall be as follows:
 - [(a), (b), (c) progressive schedule]Should the income brackets be amended by the Government, then the tax rates mentioned in (a), (b), (c) will be applied to the amended income brackets.
- (ii) To calculate the taxable income, the rules for computation of Income Tax as provided for in Annex [X] attached to and made part of this Agreement shall apply. Except as otherwise stipulated in this Agreement, the rules as provided in Income Tax Law, and its implementing regulations, shall apply.

EXAMPLE 4

- 2.5. The annual taxable income of 0-3.0 billion [currency unit] of the Company taxable under Corporate Income Tax Law shall be taxed at the rate of 10% (ten percent). If annual taxable income exceeds 3.0 billion [currency unit] it shall be 300.0 million [currency unit] plus 25% (twenty five percent) of taxable income exceeding 3.0 billion [currency unit].
- 2.6. The Tax specified in Clause [X] shall not be payable by the Investor from 1 January 2011.
- 2.7. Tax shall be imposed on the following income of the Investor at the following rates:
 - 2.7.1. Dividends shall be taxed at the rate of 10% (ten percent);
 - 2.7.2. Income from royalties shall be taxed at the rate of 10% (ten percent);
 - 2.7.3. Income from disposal of an immovable property shall be taxed at the rate of 2% (two percent);
 - 2.7.4. Income from interest shall be taxed at the rate of 10% (ten percent);
 - 2.7.5. Income from sale of rights shall be taxed at the rate of 30% (thirty percent).

7.3 Deductions in the Computation of Company Income Tax

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

- (a) All royalties and other Taxes and duties payable under the Tax Law or this Agreement to the State, to any Local Government, or under a Community Development Agreement [and payments made pursuant to Section 2.4.3];
- (b) All exploration expenditures, development expenditure and general and administrative expenditure incurred by the Company or on its behalf, including local exploration costs incurred in seeking further resources within the Mining Area or 5 kilometres of its perimeter;
- (c) Expenditure (including payments made on borrowed or equity funds) incurred by the Company that is reasonable and necessary according to Good Industry Practice for
 - (a) Mining Operations (including those associated with negotiating this Agreement);
 - (b) Planning, financing, constructing, developing and insuring the Project;
 - (c) Managing, maintaining, de-commissioning and rehabilitating the Project;
 - (d) Mining, processing, refining, marketing, selling and transporting Minerals produced from Mining Area; and
 - (e) All amounts allowable for deduction in calculating chargeable income under Applicable Law,
- (d) Interest incurred on loans and other financing arrangements entered into in accordance with the Financing Plan;
- (e) Depreciation of plant and equipment capital costs incurred by the Company in constructing, developing and commissioning the Project up to the Date of Commencement of Commercial Production in full in the Tax year incurred with unlimited loss carry forward;
- (f) Depreciation of plant, equipment and further development costs, including decommissioning expenses, acquired or incurred after the Date of Commencement of Commercial Production at the rates set out in the Applicable Law;
- (g) Depreciation on any capital items including buildings, plant, equipment, Project infrastructure and lease improvements acquired for the Project, less the proceeds from the sale of those items in the Tax year, must be multiplied by x/y where:

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

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

x/y is never less than 1

and where:

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

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

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

EXAMPLE 1

3. Subject to the provisions of the Income Tax Law and its implementing regulations, “Operating Expenses” in any year means the amount paid or accrued for all expenditures attributable to the Enterprise in such year to the extent that the useful life is less than one (1) year. Operating expenses include, among others, the following expenses:

- (a) Expenses in respect of material, supplies, equipment and utilities;
- (b) Expenses for contracted services on behalf of the Enterprise;
- (c) Expenses for premiums of insurance (foreign and domestic) on tangible assets, inventories and for premiums against business and operational interruptions and for premiums against other parties indemnities claims, provided that where such premiums are paid to an affiliate, the premiums shall not exceed the amount payable in arm’s length transaction to other independent parties;
- (d) Expenses in respect of damage or losses to the extent that they are not fully compensated for by insurance or otherwise;
- (e) Expenses for royalties, interest and other payments including those to Affiliates for patents, designs, technical information and services provided that such amounts and payments shall not exceed the amount paid for similar transactions with the independent parties;
- (f) Amounts in respect to losses resulting from obsolescence, theft, or inventory damage that make them no longer useable in operations, supported by appropriate evidence with an official report witnessed by the Department. The amount to be deducted is the book value of such inventory;
- (g) Expenses for rental payment of tangible goods;
- (h) Expenses for Deadrent, Land and Building Tax, Royalties, uncredited Value Added Tax, Sales Tax on Luxury Goods, Stamp Duty, transfer of ownership tax, import duty and levies paid passed on this Agreement, except the Company’s Income Tax;
- (i) Expenses for treatment, washing, and other processing expenses;
- (j) Expenses for handling, storing, transporting and shipping;
- (k) Expenses for repairs and maintenance;

- (l) Expenses for commissions and discounts, including expenses paid to the Affiliates, provided that such cost and payments shall not exceed the amount should have been paid for similar transaction with independent parties;
- (m) Environment Management and Reclamation Costs, which is deducted from reserve for reclamation cost account;
- (n) Allowable for deductions governed by paragraphs [X-X] below.
- (o) [depreciation and amortization schedules]

7.4 Value-Added Taxes and Project Activities

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

EXAMPLE 1

- 5.1 In accordance with the provisions of Applicable Law, goods and services produced by the facilities are taxable at a standard rate and zero rated if exported.
- 5.2 Government confirms that input VAT in excess of VAT payable in respect of the supply of goods and services shall be credited to Company within a reasonable period of time (and in any event within 30 days) from the date of submission of Company's monthly VAT return in respect of each prescribed accounting period.
- 5.3 For the purposes of this Clause, "input VAT" shall mean VAT claimable in respect of allowable business purchases of goods and services supplied by a registered supplier during a prescribed accounting period.

7.5 Property Taxes

The State will ensure that:

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

EXAMPLE 1

The Company shall be exempt from real property tax as provided by Applicable Law including real property used for Production provided further that the Company shall be exempt from real property tax on residences or improvement thereon where such residences are primarily utilized by employees.

EXAMPLE 2

Rating

28. The State shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands the subject of this Agreement (except the accommodation area and any other parts of the lands the subject of this Agreement which accommodation units or housing for the Company's workforce is erected or which is occupied in connection with such accommodation units or housing and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the mining activities carried out by the Company pursuant to approved proposals) shall for rating purposes under Applicable Law, be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate.

7.6 Taxes on Expatriate Employees

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

EXAMPLE 1

(b) Withholding Taxes.

Company shall comply with all Laws in effect from time to time requiring the withholding of taxes on payments or disbursements made to any Person, whether or not resident or domiciled in the Country, including physical persons or entities related to, or employed by, Company or any of its Affiliates, with the following modifications:

[...]

- (ii) Before the commencement of production, all payments for technical services to Persons, including Affiliates, not resident in the [COUNTRY] for tax purposes, shall be exempt from all Laws requiring the withholding of taxes. This exemption extends to the recipients of such payments. For purposes of this Section [X], technical services means any and all services, except management and administrative services as defined by Section [X]. For purposes of this Section [X], Uncompleted Technical Services shall be treated as performed before the commencement of production in applying the exemption from withholding under this Section [X]. Uncompleted Technical Services means technical services that relate to construction of any particular plant or facility contemplated by the Feasibility Study that are performed before the end of the third calendar month following the calendar month during which production of Minerals begins within the particular plant or facility on a regular and continuing basis.
- (iii) After the commencement of production, except with respect to Uncompleted Technical Services, the following payments shall be subject to withholding at rates equal to the lesser of those provided by the Laws (including any applicable income tax treaty) at the Effective Date or those in effect at the time of withholding (also including any applicable income tax treaty):
 - (A) Payments for services by residents of Country;
 - (B) Payments for renting or leasing any kind of personal or real property;
 - (C) Prizes of the National Lottery; and
 - (D) Payments to non-residents and non-domiciliaries of Country. [...]

EXAMPLE 2

In lieu of the withholding rates provided by Applicable Law for non-residents and as provided by the Revenue Code for residents, the Company shall withhold tax on payments made to non-residents and residents at the following rates for the first 12 Years:

- (i) Dividends, 0 percent.
- (ii) Interest, 5 percent.
- (iii) Payments for services, 5 percent.

Thereafter withholding shall be at the rates provided by Applicable for non-residents and as otherwise provided by Applicable Law for residents.

EXAMPLE 3

Without affecting Clause [X] and the rights of the Investor to avail itself of applicable double tax treaties, the Parties agree that, for the purposes of tax required to be withheld by the Investor under Corporate Income Tax Law, the following income of a non-resident taxpayer, but which are earned

in Country, shall be taxed when transferred to the non-resident taxpayer at the following rates:

2.8.1. Loan interest and payment for issuing a guarantee shall be taxed at the rate of 20% (twenty percent).

2.8.2. Income from royalties, income from interest on financial leases, payments for administrative expenses, rent payments, lease payments and income from use of tangible and non-tangible assets shall be taxed at the rate of 20% (twenty percent).

2.8.3. Income from goods sold, work performed and services provided within the territory of Country shall be taxed at the rate of 20% (twenty percent).

EXAMPLE 4

The Parties agree that, for the purposes of tax required to be withheld by the Investor under Article [x] of the Corporate Income Tax Law, income of a non-resident taxpayer from Management Services Payments, but which is earned in Country, shall be taxed when transferred to the non-resident taxpayer at the rate of 20% (twenty percent).

7.7 Taxes on Non-Resident Contractors

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

EXAMPLE 1

Taxation of Associates.

Any Associate of the Concessionaire or the Operating Company engaged within Country solely in Production or Operations exclusively for the Concessionaire or the Operating Company (other than incidental activity) shall be entitled to the same income tax and customs duty treatment as the Concessionaire and the Operating Company, provided that its activities otherwise conform to the requirements of this Agreement applicable to Concessionaire or the Operating Company, including without limitation auditing and reporting provisions. Incidental activity shall be limited to services to the Government, local community groups and residents local to the concession area other than major commercial entities. Such incidental activity, even if for profit, shall not cause such Associate to lose the tax and customs treatment provided pursuant to this Section 14.5 with respect to imports for and income from Production and Operations. The Government shall have the right to treat the Concessionaire, the Operating Company and their Affiliates (but not Associates who are not Affiliates) as a single consolidated entity for purposes of Country tax. Any activities of such Affiliates within Country that are outside of Production and Operations other than incidental activity shall be disaggregated from the taxable income of the single consolidated entity.

7.8 Withholding Tax Obligations

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

**See more examples regarding withholding of taxes at [7.6 Taxes on Expatriate Employees](#).*

EXAMPLE 1

Withholding Tax

Company shall pay withholding tax on dividends, royalties and management fees to Shareholders or its or their Affiliates at a rate of [x]% and on interest payments to Shareholders or its or their Affiliates, or any lender of money to Company, at a rate of [y]%.

7.9 Provisions Relating to Other Taxes and Levies

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

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

EXAMPLE 1

12.7 Other Taxes and Charges

Subject to Section 10.2 (*Stabilization*), Licensee shall not be subject to taxes, fees, or charges other than those listed in this Agreement, the Mining Proclamation, the Mining Tax Proclamation and Regulations; subject, however, to the following:

- (a) Licensee shall be subject to charges and fees for actual services rendered by governmental authorities upon written request or provided to the public or commercial enterprises generally; provided such charges and fees are reasonable and non discriminatory.
- (b) Licensee shall be subject to:
 - (i) taxes, fees, and charges of general application including stamp duties, immigration and registration fees, license fees, and other charges pertaining to the registration or operation of business organizations, of vehicles, aircraft, vessels and such other facilities and services for which registration or licensing is required by Law; and
 - (ii) taxes payable upon the local purchase or acquisition by Licensee of goods, materials, supplies, equipment, and services; provided that such fees and charges are at rates no higher than those generally applicable in [*name of host country*].
- (c) Dividend Tax.
 - (i) Licensee shall be subject to dividend withholding tax in accordance with Article [] of the Mining Tax Proclamation; provided, however, a dividend withholding tax shall not be imposed on net profits repatriated by Licensee.

- (ii) All settlements of loans made by Licensee with banking and non-banking institutions and which are related to the License Area shall not be subject to a dividend tax or interest withholding tax.
- (d) Transfer Tax. Subject to Article [] of the Mining Tax Proclamation and Article [] of the Mining Proclamation, the transfer or assignment (without proceeds) by Licensee to (i) an Affiliate, or (ii) a bank or other lending institution as security for a loan shall not be considered a taxable event for purposes of any tax, fee, or similar charge.

7.10 Local Government Taxes and Levies

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

EXAMPLE 1

Subject to the provisions in this Agreement, the Company shall pay to the Government and fulfill its tax liabilities including its obligations as a tax withholder as hereinafter provided

[...]

(x) Levies, taxes, charges and duties imposed by Local Governments in Country which have been approved by the Central Government;

[...]

8.0 Financing

8.1 Security Interest

- (a) The Company shall have the right, with the prior consent of the State, which consent shall not be unreasonably withheld or delayed, to mortgage, pledge, lien, charge, assign, hypothecate or otherwise encumber all or part of its interest under this Agreement for the purpose of raising, from one or more third parties, financing for Mining Operations and other obligations under this Agreement. As a condition to receiving consent, the mortgagee must agree upon foreclosure to operate the Project and infrastructure in accordance with the requirements of this Agreement, and transfer the mortgaged property only to a transferee that commits to operate in accordance with the requirements of this Agreement.
- (b) The State agrees that in the event of default by the Company that any such person holding such mortgage, charge or other encumbrance shall be entitled either to conduct operations on the same terms and conditions as the Company under this Agreement or, with the prior consent of the State, which consent shall not be unreasonably withheld or delayed, to exercise any power of sale granted by any such mortgage, charge or other encumbrance so long as any purchaser at such sale commits to fulfil the obligations of the Company under this Agreement.
- (c) Any restrictions on transfers of rights under this Agreement or mining license shall also apply to transferees under mortgage foreclosure.

EXAMPLE 1

Project Finance and Encumbrances.

Company may pledge, grant, transfer, assign, charge or otherwise encumber, partially or totally, all of its rights under this Agreement and related assets as described in Section 10.2(a) in favor of one or more financing institutions or credit sources, domestic or foreign, acting as lender to Company or agents or trustees appointed for such lender (collectively, the "Lender"), to obtain the financing necessary to develop, operate or expand the Project and exploit the Mine, subject to the limitations and requirements set forth in Section 6.3(c) and Section 6.3(d). All such pledges, grants, transfers, assignments, charges or other encumbrances (collectively, "Project Encumbrances") shall be recorded in the Public Registry. In addition, the documents evidencing the Project Encumbrances shall provide that the rights of Company under this Agreement may only be transferred (other than the grant to the Lender of the Project Encumbrances) to a Person that i) possesses the technical and managerial expertise, and financial capacity in order to assume Company's obligations under this Agreement; or ii) is a Lender (a "Qualified Successor").

[...]

Any Project Encumbrances placed on the Environmental Reserve Fund shall be subject to the requirement that such funds shall only be used for the purposes and in the manner specified in this Agreement. Notwithstanding anything herein to the contrary, no Project Encumbrance shall

- (i) extend to or encumber (A) funds due to the STATE and the CENTRAL BANK under this Agreement, including without limitation the NSR Tax, the income tax and the NPI Tax, or (B) the moneys necessary to fund in a timely manner all payments (if any) required to be made to the Environmental Reserve Fund and the Governmental Remediation Fund, or
- (ii) limit or otherwise impede (A) the right of the STATE to receive payment of all funds due it in a timely manner or (B) the obligation that the amounts in the Environmental Reserve Fund or the Governmental Remediation Fund be used solely for the purposes set forth in this Agreement and in a timely manner.

[...]

In the event there shall occur a default by Company hereunder that entitles the Government Parties to terminate this Agreement, the Government Parties shall give the Lender Notice of such default, in the manner specified in Section 17.12(a) at the address(es) for Lender specified pursuant to Section 10.2(b). If Company fails to cure any such default within the time specified herein, the Government Parties shall notify the Lender of such failure in the manner specified above. The Government Parties and Company agree that the Lender shall have the right, but not the obligation, to

cure any Company default within a period of sixty (60) Days after the later to occur of: (i) expiration of the period during which Company may cure such default; or (ii) actual receipt by the Lender of the notice of Company's failure to cure the default.

EXAMPLE 2

Notwithstanding the foregoing provisions of this Clause 16, and subject to Clause 0, Company may charge by way of fixed or floating charge the Large Scale Mining Licences together with this Agreement to secure the repayment of principal, and payment of interest and other fees, costs and expenses relating to all loans made to Company to finance or refinance the Scheduled Programmes and any hedging arrangements relating thereto or other mining projects within Country and Government covenants and will procure that the consent of the Minister pursuant to Section [x] of the Act to such mortgages and charges shall be given provided that:

16.1.1 such mortgages and charges:

- (a) are notified to the Minister upon their grant (and, in any event, within thirty (30) days thereof); and
- (b) impose on the mortgagee or chargee the obligation to comply with Clause 0 on exercising any rights of sale and other rights as contemplated in that Clause; and

16.1.2 the proposed mortgagee or chargee, as the case may be, is not an Affected Party.

Subject to Clause 0, any mortgagee or chargee under a mortgage or charge given by Company (each a "**Secured Party**") pursuant to Clause 0 may exercise all rights of sale and other rights included in such instrument of mortgage or charge provided that:

16.1.3 it shall first give to Government at least thirty (30) days' notice of its intention to exercise any rights of sale and five (5) days' notice in all other cases; and

16.1.4 the purchaser under such power of sale (if applicable): (a) is not an Affected Party; and (b) undertakes to Government to procure that neither the Large Scale Mining Licences nor this Agreement nor any interest therein are subsequently sold, secured or otherwise disposed of or transferred to or dealt with in favour of an Affected Party.

It is acknowledged and agreed that:

16.1.5 save as contemplated in Clauses 0 and 0 in respect of the Large Scale Mining Licences and this Agreement, there is no restriction on Company's right to sell, mortgage, charge or otherwise assign or encumber the whole or part of its undertaking, including the Leases, the Facilities, the Mine Products (or the proceeds of sale), surface rights and all other rights essential to the maintenance and operation of the Facilities, together with any assets and relevant agreements to which Company is a party;

16.1.6 Company may mortgage, charge or otherwise encumber any specified asset (whether real or personal property) to secure the purchase price thereof where such amount has been borrowed to finance the purchase of that asset and this asset is to be used as part of Normal Operations or other mining projects within Country; and

16.1.7 provided such mortgages, charges and other encumbrances are notified to the Minister upon their grant (and, in any event, within thirty (30) days thereof) and provided further that the proposed mortgagee or chargee, as the case may be, is not an Affected Party, each shareholder in COMPANY from time to time may mortgage, charge, pledge, transfer in security or conditionally assign its right, title and interest in the shares ("**Share Security**") in COMPANY as security for any financing raised or to be raised by COMPANY either to finance or re-finance the Scheduled Programmes and any related hedging arrangements or other mining projects in Country and GOVERNMENT confirms and agrees:

- (a) that the Share Security may be granted without any further consent from GOVERNMENT, whether pursuant to Section 55(1) of the Act or otherwise; and
- (b) any transferee of such shares pursuant to enforcement of the Share Security will be approved by GOVERNMENT subject only to such transferee:
 - (i) not being an Affected Party;
 - (ii) undertaking to GOVERNMENT to procure that such shares will not subsequently be sold, secured or otherwise disposed of or transferred to or dealt with in favour of an Affected Party; and
 - (iii) otherwise meeting the criteria set out in Clause 0.

The rights of any Secured Party pursuant to Clause 0 shall be subject to and limited by the rights of COMPANY under this Agreement and, subject to cure rights granted to COMPANY and the Secured Parties pursuant to Clause 18, to GOVERNMENT's right to terminate those rights under Clause 18. The rights of such mortgagee or chargee to sell an interest in a Large Scale Mining Licence and this Agreement so charged shall be exercisable if the interest in such Large Scale Mining Licence and this Agreement which are charged by the mortgage or charge are sold together with all or sufficient of the assets and undertakings of COMPANY as are sufficient (or would be sufficient) (a) following cessation of any period of suspension or curtailment of production as may then apply pursuant to Clause 8 and/or (b) in conjunction with such additional assets as the buyer may contribute) to enable the buyer to undertake Normal Operations (or with such exceptions as GOVERNMENT may agree, approval of which sale GOVERNMENT covenants not to unreasonably withhold and not to withhold in the circumstances set out in Clause 0 subject to the proviso therein contained).

EXAMPLE 3

22.5 Right to Encumber.

- (a) Each of the Concessionaire and the Operating Company may mortgage, charge or otherwise encumber (collectively, "Mortgage") all or any portion of its interest under this Agreement and under any Exploration License or Mining License issued under this Agreement to finance a portion of the cost of constructing and acquiring any Non-Country Mine, Country Mine, Additional Concession Area Mine, Contiguous Area Mine, Mining Plant, Infrastructure and other property contemplated by the Modified Bid Materials or any Approved Feasibility Study upon receipt of prior written consent thereto from the Government. Other than in the case of Permitted Liens, (a) the Mortgage must extend to all rights of the Concessionaire, or the Operating Company, as applicable, under such Exploration or Mining Licenses and to substantially all of such Non-Country Mine, Country Mine, Additional Concession Area Mine, Contiguous Area Mine, Mining Plant, Infrastructure, and other property (including intellectual property) necessary for Operations ("Pledged Assets"), and (b) the holder of such Mortgage must agree in writing with the Government to the terms of this Section 22.5 and to any transfer restrictions set forth in such Exploration and Mining Licenses. Subject to its confidentiality rights under this Agreement, the Government will provide the Concessionaire, the Operating Company and any lender with such documents as any of them shall reasonably request in connection with any transaction with respect to such Mortgage.
- (b) Any foreclosure or other exercise of remedies under such Mortgage must result in a transfer of the rights of the Concessionaire, or the Operating Company, as applicable, under this Agreement and the Pledged Assets to a single Person who satisfies all the requirements for an assignee set forth in the proviso contained in Section 22.4.
- (c) "Permitted Liens" shall mean Liens created solely for the purpose of securing Indebtedness incurred to finance or refinance the purchase price or cost (including the cost of installation, repair, or improvements) of Movable assets acquired after the Effective Date (by purchase or otherwise), including after acquired inventory, equipment, or other tangible or intangible Movable assets, provided that no such Lien shall extend to or cover any assets other than the assets so acquired and improvements thereof.

8.2 Debt-Equity Ratio

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

For the purposes of this Section:

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

EXAMPLE 1

At no time during the Term of this Agreement shall Company have Project Debt that exceeds 70% of the sum of the total Capital it has invested in the Project.

“Project Debt” shall mean any indebtedness of Company excluding (i) Operating Debt and (ii) any amounts advanced by Company to THE STATE pursuant to an agreement that is subject to Section 9.2(b).

EXAMPLE 2

Debt-Equity Ratio

The ratio of loan capital to paid-up equity capital must be at all times not more than [9:1]. All loan capital shall be procured by Parent Company on behalf of Mining Company on such terms and conditions as approved by the Central Bank, which approval shall not be unreasonably withheld, and in accordance with Applicable Law relating to the borrowing of foreign exchange by companies resident in [Country]. The definition of loan capital must be specified in the Feasibility Study and set out in the approved Financing Plan.

EXAMPLE 3

Adequate Capital.

- (a) The Concessionaire and the Operating Company, on a consolidated basis, must at all times maintain a ratio of Indebtedness to Net Worth that is equal to or lower than 3:1. Prior to satisfaction of each of the Phase I Capacity Test and the Phase II Capacity Test, the Concessionaire may make no Restricted Payment.
- (b) After satisfaction of each of the Phase I Capacity Test and the Phase II Capacity Test, the Concessionaire may not make any Restricted Payment unless after giving effect thereto, the ratio of Indebtedness to Net Worth of the Concessionaire and the Operating Company, on a consolidated basis, does not exceed 3:1. For purposes of this Section 20.5, the amount of any Restricted Payment made in property is be the greater of (x) the fair market value of such property (as determined in good faith by the board of directors of the Concessionaire and of the Operating Company) and (y) the net book value thereof on the books of the Concessionaire and of the Operating Company, in each case determined as of the date on which such payment is made.

8.3 Foreign Currency Remittance and Availability

- (a) Except in the case of generally applicable exchange controls imposed on a non-discriminatory basis during a limited time period of genuine fiscal emergency, the State confirms that interest, dividends and all other payments for goods and services are freely remittable from the State and that if foreign currency is required to make such payments, in addition to that available from foreign currency accounts authorized under this Agreement, foreign currency will be made available to make such payments up to the amount of foreign currency payments made by the Company to the State and converted into the State currency.
- (b) The Company has the right to establish, maintain and hold funds in bank accounts in [*COUNTRY* currency] and in US Dollars in the State in as well as bank accounts in foreign currency located outside the State.
- (c) The Company has the right to freely repatriate abroad without any barriers and to and freely dispose of all proceeds (including by way of dividend or other form of distribution) received within the State from the sale, exchange or export of Minerals, and any other payments (including loan principal and interest) to be made abroad.
- (d) Any obligation originally stated in the State currency shall be converted to US Dollars at the prevailing market rate of exchange.
- (e) For purposes of determining compliance by the Company of required payments in the State currency under Applicable Law (including without limitation any Law determining minimum wages), the amount of any payment by the Company made in US Dollars shall be converted to the State currency at the prevailing market rate of exchange as of the date of payment.
- (f) The Company shall have the right to remit and receive in US Dollars all payments of dividends, interest, finance charges, principal, management fees and other property payable items arising from, as a result of, or related to the operations of the Project.
- (g) All remittances and receipts of such payments shall be free of any penalties in connection with such remittances or receipts, any required total or partial surrender, exchange or confiscation of US Dollars received to be remitted, and any other direct or indirect restriction on such remittances or receipts.
- (h) The Parties acknowledge that the Company may:
 - (a) Obtain, hold, deal with and disburse funds in such manner, currencies and places as it, in its absolute discretion, determines;
 - (b) Freely import into the State funds necessary to properly carry out the Project;
 - (c) Remit foreign currency accruing to or earned by it outside the State into the State;
 - (d) Remit proceeds (in currency or otherwise) and repatriate capital (in cash or assets) outside the State; and
- (i) Amounts received and expenditure made in [*COUNTRY CURRENCY*] or in US Dollars shall be converted from [*COUNTRY CURRENCY*] into US Dollars or from US Dollars into [*COUNTRY CURRENCY*] on the basis of prevailing market rates for the month in which the relevant transaction occurred.

- (j) Amounts received and expenditure made in currencies other than US Dollars or [COUNTRY CURRENCY] must be converted into US Dollars or [COUNTRY CURRENCY] on the basis of the monthly average of prevailing market rates for the month in which the relevant transaction occurred.

**See related provisions at 9.1 Payments and Exchange Rates.*

EXAMPLE 1

9.1 Foreign and Domestic Bank Accounts. Company shall be authorized to establish, maintain and administer bank accounts in banking institutions and depositories located both outside and inside the Country. Company shall deposit all revenues and proceeds from Operations, including the sales of the Royalty Minerals extracted and the sale of any Electricity produced as contemplated by Section 7.12, in one or more of such bank accounts (the "Special Accounts") as herein set forth. Proceeds from any sales of Electricity, Minerals or other products within the Country for [local currency] shall be deposited in one or more Special Accounts located inside the Country. Proceeds from all other sales may be deposited in Special Accounts located outside the Country. Disbursement from each such Special Account shall be made only as set forth in this Agreement.

[...]

9.6 Freedom of Currency Exchange and Transfer of Funds.

- (a) Company shall be entitled to open and maintain, and to retain moneys (including interest arising on the balances therein) in, [local currency] bank accounts located in the Country and foreign currency bank accounts located outside of the Country. For purposes of compliance with Foreign Investment registration, as provided by Law No. [x], equity funds deposited in any offshore accounts shall be eligible for registration under Law No. [x] on Foreign Investment. Company shall apply and comply with the foreign investment registration requirements and procedures set forth by Law No. [x] and this Agreement.
- (b) COMPANY shall be entitled to exchange, with commercial banks, exchange agents and any other entities authorized by the Monetary Board, from time to time, [local currency] into foreign currency according to applicable monetary laws and resolutions of the Monetary Board, subject to payment of any exchange fee (the "Exchange Commission"), commission, administrative fee, charge or tax that could be levied upon foreign currency transactions. At the Signature Date, the Exchange Commission was set at 4.75%. COMPANY shall not be required to pay any fee, charge or commission to the STATE or any agency thereof on or with respect to actual or deemed conversion of foreign currency into [local currency] or on or with respect to the importation of goods, supplies or equipment into the Country.
- (c) Notwithstanding Section 9.6(b), COMPANY shall have the right to make all investments in and payments with respect to the Project in Dollars or other foreign currency, including payments for the importation of goods, machinery, spare parts, supplies and equipment, the repayment of loans, off shore services and any other payment to a non-resident entity or individual. Any such payment may be made by COMPANY in Dollars or other foreign currency generated by or as a result of (i) Operations, (ii) equity from its shareholders, or (iii) proceeds from loans obtained by COMPANY, and in no event shall any such payment be subject to payment of any Exchange Commission or similar fee.
- (d) The exchange rate applicable to any COMPANY transaction shall be the rate that COMPANY is able to freely negotiate with any commercial banks, exchange agents and any other entities that are authorized by the Monetary Board, from time to time, at the sole election of COMPANY.
- (e) COMPANY shall have the unrestricted right to expatriate to any country all funds to which it is entitled to withdraw pursuant to this Agreement, including amounts disbursed from the Special Accounts pursuant to Section 9.2(d).

EXAMPLE 2

11. FOREIGN EXCHANGE

The Parties acknowledge that under legislation and practice currently in force in Country, subject to Clause 0, COMPANY is free to:

11.1.1 remit foreign currency out of Country;

11.1.2 maintain any monetary assets (including foreign currency accounts) outside and within Country; and

11.1.3 remit foreign currency accruing to or earned by it outside Country into Country.

In the event foreign exchange controls were to be re-introduced in Country within the Stability Period, COMPANY shall have (without any further approvals from Government or any entity thereof being required) the right to:

[list of rights]

[...]

In the absence of foreign exchange controls in Country, COMPANY shall have the same rights to buy and sell currencies from authorised dealers and enter into swaps and hedging arrangements (which expression shall include, without limitation, arrangements for taking out forward cover against local and other currency fluctuations or other fluctuations in incomes or costs or other expenses incurred as part of the management operations but shall not include Speculative Currency Transactions) with non-Country entities as other commercial concerns in Country. In the event foreign exchange controls were to be reimposed in relation to the purchase and sale of currencies (and without prejudice to COMPANY's rights under Clause 0), such controls shall not be applied to COMPANY in a manner less favourable to it than the manner in which they are generally applied to other large commercial concerns in Country. COMPANY shall be entitled to buy and sell foreign currency in accordance with such controls at rates of exchange no less favourable or otherwise prejudicial than those available to other commercial buyers and sellers of the currency concerned.

COMPANY shall remit to Country, and convert into [local currency] for credit to a bank account in the name of COMPANY, sufficient of its foreign currency earnings to pay such commitments as COMPANY may have incurred in [local currency], but only to the extent COMPANY does not already have [local currency] available to meet such commitments (including, without limitation, taxes, royalties and customs duties and obligations to pay dividends to local shareholders payable in local currency, if applicable). COMPANY shall use its reasonable endeavours to notify the Central Bank of transfers of a substantial amount which are not in accordance with the normal pattern of transfers.

COMPANY shall not engage in or use any provisions of this Clause 11 or any authority or approval given by the Central Bank, to engage in Speculative Currency Transactions. For the avoidance of doubt, this Clause shall not prohibit or prevent normal risk management operations which shall be deemed to include the entering into of hedging agreements ordinarily utilised by mining companies in the international mining industry. COMPANY shall ensure that any borrowings it may incur denominated in [local currency] shall not exceed five per cent (5%) of annual sales revenues as recorded in the latest set of audited annual accounts of COMPANY. In the event COMPANY determines to sell foreign currency held by it, it shall not discriminate against the Central Bank if the Central Bank is demonstrably willing and able to purchase foreign exchange at market rates and on terms that are no less favourable to COMPANY than terms available from other buyers.

EXAMPLE 3

CURRENCY EXCHANGE

1. All investment remittances into Country for the purpose of any expenditures to be made in Country (including but not limited to equity capital and loan capital) shall be deposited into a foreign investment account (the PMA Account) established at one or more foreign exchange banks in Country. All such investment remittances shall be used in accordance with the prevailing investment and utilization of offshore funds regulations applicable to foreign investment law companies established under the Foreign Investment Law. The conversion or sale of foreign exchange originating from the PMA foreign currency account is to be done with foreign exchange banks.
2. The company shall be granted the right to transfer abroad, in any convertible currency, funds in respect of the following items, provided that such transfers are effected in accordance with the prevailing laws and regulations and at the prevailing market rates of exchange to commercial transactions as follows:
[list of monies]
3. The proceeds of the export sales of minerals and any products derived from them can be used as the Company sees fit. Without prejudicing the foregoing rights of the Company, the Company agrees that with regard to the proceeds of the Company's export sales it shall comply with laws and regulations from time to time in force.
4. The Company in the exercise and performance of its rights and obligations set forth in this Agreement shall be authorized to pay abroad, in any convertible currency, without conversion into [local currency], for the goods and services it may require and to defray abroad, in any currency it may desire, any other expenses incurred for mining operations under this Agreement.
5. In respect of other matters of foreign currency arising in any way out of or in connection with this Agreement, the Company shall be entitled to receive treatment no less favorable to the Company than that accorded to any other Mining Company carrying on operations in Country.
6. Subject to the foregoing paragraphs of this Article 15, the Company shall comply with all financial reporting and approval requirements applicable to foreign investment law companies established under the Foreign Investment Law.

EXAMPLE 4

9.4 The Investor shall be entitled to maintain bank accounts in a commercial bank of Country and elsewhere, and the Investor may make international transactions freely and without any obstructions in its chosen currency. Without affecting the Investor's rights under Clause 9.10.5, payments for goods and services inside Country must be made in Country currency in accordance with Country laws and regulations, unless the Investor is authorised to make such payments in foreign currency as a result of an authorisation issued by the Bank of Country in accordance with Article [x] of the Law of Country on Conducting Settlements in National Currency.

[...]

9.10. The Investor has the following rights:

- 9.10.1. to provide in freely convertible foreign currencies all funds needed to conduct Core Operations and to convert such currencies to Host

Country currency as it deems necessary;

9.10.2. to hold and freely dispose of any funds outside of Country;

9.10.3. to retain abroad and freely dispose all of its proceeds received outside of Country from the export, sale or exchange of Product;

9.10.4. to freely repatriate abroad without any barriers and to and freely dispose of, all proceeds (including by way of dividend or other form of distribution) received within Country from the sale, exchange or export of Product, and any other payments (including loan principal and interest) to be made abroad;

9.10.5. to freely pay its Contractors, Subcontractors and citizens of Country operating outside Country in foreign currencies; and

9.10.6. to maintain, if it wishes (but with no obligation to do so), an account or accounts in a bank in Country chosen by the Investor for foreign currency.

EXAMPLE 5

Financial Conditions

31.1 Subject to the provisions of this Agreement, the State guarantees to Company, the SEP, the Operator, and their Affiliates and subcontractors, during the term of this Agreement:

- (a) free conversion and transfer of funds intended for the payment of all debts (principal and interest) in foreign exchange to non-host country creditors;
- (b) free conversion and transfer of Net Cash Flow for distribution to non-host country partners and all amounts allocated for the amortization of financing obtained from non-host country institutions including loans obtained from Affiliates, after having paid all taxes and levies imposed under this Agreement;
- (c) free conversion, and transfer of profits and of funds resulting from the liquidation of shareholdings, after payment of taxes, customs duties and levies under the Agreement.

31.2 The Parties agree to request upon the effective Date of this Agreement from the proper authorities. The authorization for the Operator of each SEP to maintain overseas, in US dollars or any other convertible currency, an amount, realized from its export sales, sufficient to meet its requirements for the forthcoming six-month period with respect to payments to non-host country vendors and creditors for such goods and services purchased, as well as loans incurred for its activities.

31.3 Company and the Operator of each SEP shall be authorized to open a bank account in Country denominated in foreign exchange.

31.4 The State guarantees the free conversion and transfer overseas of the savings of expatriate personnel of Company, and each Operator as well as their Affiliates and subcontractors, resulting from their salaries or the liquidation of investments in Country or the sale of personal effects in Country.

EXAMPLE 6

7.3 Foreign Accounts and Currency Transactions

- (a) Licensee shall be subject to the procedures and formalities required by the Law and regulations relating to foreign exchange and currency transactions, including the Exchange Control Regulations, in force from time to time in *[name of host country]*.
- (b) Subject to Section 7.3(a), Licensee shall have the right to freely make funds and other transfers incident to its operations and investments pursuant to this Agreement in freely convertible currency, including: (i) contributions to capital, (ii) profits, dividends, capital gains, and proceeds from the sale of all or part of the investment made pursuant to this Agreement or from the complete or partial liquidation of said investment, (iii) interest, management fees, and technical assistance fees, and (iv) payments due under contracts, including loan payments, provided that taxes and other obligatory payments are made in accordance with the relevant Laws.
- (c) Licensee shall have the right to open and operate local currency accounts and foreign currency accounts in banks within *[name of host country]*.
- (d) In order to keep the Exchange Control authorities of the Government informed of its prospective and actual foreign exchange transaction, Licensee shall inform the National Bank of *[name of host country]* (the "National Bank") in writing and in such form and detail as the National Bank may reasonably request: (i) the location of the Licensee's bank accounts in *[name of host country]*; (ii) annually, before the commencement of each fiscal year of Licensee, Licensee's projected receipts and disbursements of foreign exchange by principal headings for the coming year (which statement may be amended from time to time if this appears necessary); (iii) Licensee's actual receipts and disbursements of foreign exchange by principal headings during the preceding quarter, within thirty (30) days of the end of each applicable calendar quarter.
- (e) Licensee shall have the right to purchase or otherwise acquire for payment abroad the foreign currencies needed in furtherance of its activities under this Agreement, for payment for goods and services acquired abroad, for payment of external debt service (interest and amortization), and for payment of dividends on Licensee's shares held abroad.
- (f) Licensee's Staff being employed and residing in *[name of host country]* pursuant to this Agreement shall be entitled to remit to his home

country or to the country of which he is a citizen:

- (i) not less than [X%] of the salary received by him in [name of host country] each month;
 - (ii) upon approval by the National Bank, such additional sums, payable out of his salary received in [name of host country], as he may require to meet insurance premiums, maintenance of dependents, tuition, and other costs for his children and family incurred abroad; and
 - (iii) upon termination of his employment in [name of host country], such sums as he can show to have been reasonably accumulated by way of savings and investments from his salary received in [name of host country] or from the disposal of movable property owned by him in [name of host country].
- (g) Licensee and Licensee's Staff shall be entitled to the relevant exchange facilities, rates, and charges on no less favorable terms than those which are currently and consistently applied to other mining operations or to the general public, whichever terms are more favorable.

8.4 Role of State in Financing

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

EXAMPLE 1

THE STATE shall cooperate in efforts by Company to obtain financing; provided however that such cooperation shall not include (i) guaranties of any kind, (ii) pledges of any kind (except as contemplated by Article 10), or (iii) becoming a borrower or co-signer in any manner.

8.5 State Guarantees

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

**For related provisions see 14.0 Fair and Economical Project Operation. For the MMDA's provisions relating exclusively to tax stabilization and examples, see 13.2 Tax Stabilization Clause. Some of the below examples relate to stabilization.*

EXAMPLE 1

19.5 Expropriation.

Subject to Constitution of Country, the Government undertakes not to expropriate except upon payment of prompt and adequate compensation:

1. any Mining Plant, Infrastructure or other property of the Concessionaire to the extent used in, connected with or affecting Operations;
or
2. Minerals the Mining of which is authorized under the Mining License(s) resulting from Operations or the Product(s) derived therefore;
or
3. any equity, shares or ownership interests of whatever nature held in or issued by the Concessionaire.

19.6 Covenant of Quiet Enjoyment.

The Government hereby warrants, and defends the Concessionaire's title to, possession and peaceful enjoyment of all rights granted to it by this Agreement, provided that the Government makes no warranty with respect to any claim that may arise out of any rights of third parties in the

Contiguous Area with whom the Concessionaire has negotiated as described in Section 3.2.

EXAMPLE 2

11 CHAPTER ELEVEN: PROTECTION OF FOREIGN INVESTMENT

11.1. All Foreign Investment made by the Investor and its Affiliates within the territory of Country shall enjoy the legal protection guaranteed by the Constitution, Foreign Investment Law, other laws and regulations and the international treaties to which Country is a party.

11.2. The Investor's and its Affiliates' capital, property and assets shall not be expropriated except for public purposes or interest, and only in accordance with due process of law on a non-discriminatory basis, and with the condition of full compensation by the Government according to the Foreign Investment Law, the Law on Land, the Minerals Law and any international treaties to which Country is a party.

11.3. Unless otherwise provided in international treaties to which Country is a party, the amount of compensation for the property expropriated shall be determined on the basis of the value of the property expropriated to be determined immediately prior to the expropriation, or notice of the expropriation becoming public, and shall be promptly paid in full.

11.4. The Investor and its Affiliates shall be entitled to conditions no less favorable than the conditions granted to domestic Country investors regarding the right to own, utilize and spend its investment.

EXAMPLE 3

13. GENERAL STABILITY AND OPERATIONAL UNDERTAKINGS

GOVERNMENT undertakes that, during the Stability Period, it shall not in the case of:

13.1.1 legislation or regulations governing the regulation and management of companies, effect any changes thereto or to their application which would impose a requirement that the directors of COMPANY comprise a higher number of Country residents than that presently required by Section [x] of the Companies Act;

13.1.2 legislation or regulations governing the operation of mines or related activities but subject to Clause 12, effect any changes thereto or to their application which, individually or cumulatively, would have a Material Adverse Economic Effect;

13.1.3 regulations and procedures governing imports and exports within Country, effect any changes thereto or to their application which, individually or cumulatively, would have a Material Adverse Economic Effect;

13.1.4 legislation or regulations governing the terms and conditions of employment within Country, effect any changes thereto or to their application which would prevent COMPANY from:

- (a) operating on a seven (7) days a week, twenty-four (24) hours a day, three hundred and sixty five (365) days a year basis; or
- (b) negotiating with employees or relevant unions or engaging employees or terminating their contracts of employment in such a manner which would be likely to have a Material Adverse Economic Effect, individually or cumulatively.

GOVERNMENT further undertakes that, during the Stability Period, it shall not by general or special legislation or by administrative measures or decree or by any other action or omission whatsoever (other than an act of nationalisation such as is referred to in Clause 0) ("GOVERNMENT Action") vary, amend, cancel or terminate this Agreement or the rights and obligations of the Parties under this Agreement, or cause this Agreement or the said rights and obligations to be varied, amended, cancelled or terminated, or prevent or hinder performance of this Agreement by any party thereto, provided always that this Agreement and the rights and obligations of the Parties under this Agreement may be varied, amended, cancelled or terminated as expressly provided herein. GOVERNMENT undertakes that COMPANY and its officers, directors, employees and shareholders shall be held free and made exempt from any GOVERNMENT Action or any change in the law of Country which would, but for such freedom or exemption, adversely affect COMPANY's rights under, or COMPANY's ability to comply with its obligations under, this Agreement.

In the event that the Parties disagree as to whether any action (including changes to any legislation, regulations or procedures specified in Clauses 13.1.2 to 13.1.4) will have a Material Adverse Economic Effect, any Party may refer the disagreement for determination in accordance with Clauses 19 and 21 but subject to Clause 22. In determining whether such changes would have a Material Adverse Economic Effect, regard shall be had to the individual and cumulative effect (whether adverse or beneficial) of such changes compared with the position at the Effective Date.

GOVERNMENT shall ensure (both during and after the Stability Period) that no law, statute, regulation or enactment shall be passed or made which would discriminate against COMPANY in respect of any such matters as are referred to in this Clause 13 or Clauses 0 or 0 or otherwise in its conduct of Normal Operations or any other circumstances under this Agreement when compared to other companies or joint ventures conducting similar operations in Country under large scale mining licences.

GOVERNMENT shall take such action as is required to ensure that its Agencies comply with the provisions of this Agreement applicable to GOVERNMENT.

Subject to compliance by COMPANY with:

13.1.5 all applicable legislation; and

13.1.6 this Agreement,

GOVERNMENT undertakes to issue and renew expeditiously all necessary licences and approvals required for Normal Operations within the confines of the Laws of Country and not to withdraw or change the terms of such licences and approvals or attach any onerous conditions to them without reasonable justification in view of the operations proposed.

Government hereby covenants that it shall not acquire compulsorily any assets of COMPANY or any interest in or over any property comprising the assets of COMPANY, except for public purposes under an Act of Parliament relating to the compulsory acquisition of property which provides for payment of compensation at fair market value as between an independent buyer and seller in respect thereof.

EXAMPLE 4

10.2 Stabilization

- (a) In the event of changes in any Law, the provisions of which are more favorable to Licensee, then such provisions shall apply to the Licensee if Licensee so requests.
- (b) In the event there occurs any change in the legislation of the Government or local legislation (including provisions relating to imposts, duties, fees, charges, penalties, and tax related legislation) after the date of this Agreement, and if in Licensee's sole and good faith opinion such change would have the effect of divesting, decreasing, or in any way limiting any rights or benefits accruing to Licensee under this Agreement or under current legislation, then the Parties shall, in good faith, negotiate to modify this Agreement so as to restore Licensee's economic rights and benefits to a level equivalent to what they would have been if such change had not occurred.

EXAMPLE 5

The State assures Company that it has no intention of expropriating any future Deposit or Mine nor of attaching any of their assets. However, if the circumstances or a critical situation demand such measures, the State recognizes that, according to international law, it will be liable to pay the affected interests rapid, just, and equitable compensation.

EXAMPLE 6

Rights of Company Upon Expropriation.

If the STATE or any agency, department, branch or subdivision thereof, any provincial or local government or any national, provincial or local quasi-governmental body causes an Expropriation of the Mine, or any portion thereof, the STATE shall pay to Company compensation that is fair, just and appropriate in a manner that is prompt, adequate and effective. Any such Expropriation shall be for a public purpose, nondiscriminatory and in accordance with Law. The compensation to be paid by the STATE pursuant to this Section 7.14 shall be equal to the fair value of the Mine or the portion thereof subject to Expropriation, based upon the most recent annual and life-of-mine plans developed by Company prior to the

Expropriation and all other relevant circumstances, including the investment made by Company in the Mine, any penalties that may be incurred by Company as a result of such Expropriation, and additional resources not included in the most recent life-of-mine plan.

EXAMPLE 7

The Government hereby warrants and defends the Company's title to possession and peaceful enjoyment of all rights granted to it by this Agreement and all of its property in the Republic against expropriation, confiscation, condemnation, wrongful possession, and to the extent possible, destruction, disruption, or interference by any Person.

EXAMPLE 8

Government hereby covenants that it shall not acquire compulsorily any assets of Company or any interest in or over any property comprising the assets of Company, except for public purposes under an Act of Parliament relating to the compulsory acquisition of property which provides for payment of compensation at fair market value as between an independent buyer and seller in respect thereof.

9.0 Financial Records and Statements, Accounting Standards and Currencies

9.1 Payments and Exchange Rates

- (a) Unless otherwise specified in this Agreement, payments to the State may be made in US dollars or other foreign currency which is freely convertible directly to the Central Bank for the account of the State.
- (b) The payment of the Company's direct obligations to the State for Taxes and duties shall be in [*COUNTRY CURRENCY*], unless the Parties otherwise agree. However, the Company shall make payments of sums it collects on behalf of the State, including but not limited to Taxes withheld from the salaries or wages of the employees of the Company and any other sums payable to other persons from which a portion is required by Applicable Law to be withheld or retained by the Company on behalf of the State, in currency in which such salaries or wages or such other payments are made.
- (c) It is the intention of the Parties that neither the State nor the Company should experience an exchange gain or loss at the expense of or to the benefit of the other. However, if there be any gain or loss from exchange of currency, it must be credited or charged to the accounts with the average monthly exchange rates calculated in accordance with this Section identified in the relevant accounting records or statements.

**For additional examples, see 8.3 Foreign Currency Remittance and Availability.*

EXAMPLE 1

Income Tax Obligations of COMPANY.

[.] In addition to the modifications provided in Section 8.3(b) the following modifications shall apply to the Tax Code for such purposes:

- (i) The Dollar shall be used as the currency for preparing and maintaining COMPANY's books and records, for the computing of its taxable income and tax liability and for making payment of taxes due. No inflation adjustment shall apply with respect to the determination of taxable income or tax liability, except as provided in Section 8.3(c)(v)(A) and Section 8.3(b)(iii)(D).
- (ii) Accounting for determining gross income, deductions and other matters affecting income tax liability shall be on the accrual method with only such modifications as are specifically provided herein. In no event shall deductions be allowed with respect to the establishment of any reserves. For these purposes, however, the Environmental Reserve Fund or any arrangements required under the Laws (such as Law No. [x]) shall not be considered reserves. Receipts of prepaid income shall be included in gross income in the year of receipt.

EXAMPLE 2

SECTION 17 – FINANCIAL REPORTING, CURRENCY AND OTHER MATTERS REGARDING PAYMENTS

17.1 Accounting.

All of the Operating Company's accounting under this Agreement shall be in Dollars and all amounts paid or received, and obligations incurred or transactions carried out, in currency that is [host country] Currency or in any other currency other than Dollars shall be converted to Dollars in accordance with and pursuant to GAAP or IFRS, as applicable, based upon the Prevailing Market Rate of Exchange of Dollars and any such currency at the date of the applicable transaction.

9.2 Financial Records and Financial Statements

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

**See 12.0 Inspection of Books, Records and Information, Independent Audit for the MMDA provisions relating to inspection and audit of books and records.*

EXAMPLE 1

Inspection and Audit Rights.

- (a) The STATE, through its appropriate agencies, shall have the right, at its sole risk, cost and expense, on reasonable Notice to Company and subject to reasonable safety regulations, to inspect from time to time all Operations. Any such inspection shall be made during Company's normal business hours on Business Days and shall not interfere with Operations.
- (b) Representatives of the STATE shall, upon ten (10) Business Days' prior Notice, have the right to inspect and copy, at its sole cost, all books and records of Company and its Affiliates (provided, however, that the ten (10) Business Day period shall be extended to a reasonable period in the event books and records of Affiliates are not located in the Dominican Republic) relating to the performance of any of Company's obligations under this Agreement. Company shall make all such books and records available in the Country. Such access shall be granted during normal business hours and upon Company's receipt of appropriate consents and authorizations.
- (c) The STATE shall indemnify and hold harmless Company and its Affiliates from any and all Losses arising out of any death, personal injury, or property damage sustained by the STATE, Company, or their agents, employees or representatives resulting from the gross negligence or willful misconduct of the STATE's employees or agents in conducting any audit or inspection in or upon the Mine as permitted under this Agreement, except to the extent such Losses arise from the gross negligence or willful misconduct of Company or its agents, consultants or employees.

EXAMPLE 2

Government Inspection and Audit

- (a) The Government, through the Secretary or his authorized representatives shall have the right to free ingress and egress within any part of the

Contract Area at any reasonable time to inspect works or activities being undertaken or implemented by the Contractor in order to monitor and verify compliance with the terms of this Agreement and all applicable laws, rules and regulations.

- (b) The Government, through the Secretary or representatives authorized by the Secretary, shall have access to the Contractor's financial and other records and transactions at any time upon reasonable advance notice, the right to copy therefrom, for the purpose of assessing the performance and compliance of the Contractor with the terms of this Agreement and all applicable laws, rules and regulations or to aid in the enforcement of the same.
- (c) Authorized representatives of other Government agencies may also have access to Contractor's financial and other records in accordance with existing laws, rules, and regulations.
- (d) The Government, shall upon reasonable notice to the Contractor, have the right to audit the Contractor's books, records and accounts relating to this Agreement for any Calendar Year within the one (1) year period following the end of such Calendar Year. Any such audit will be completed within twelve (12) months after its commencement. Any exception must be made in writing within sixty (60) days following the completing of such audit and failure to give such written exception within such time shall establish the correctness of the Contractor's books, records and accounts for the period of such audit.

EXAMPLE 3

3.24 As soon as practicable after the annual financial statements of the Investor are available for that financial year, an audit of the capital costs and operating costs among other things shall be conducted by an internationally recognised and reputable audit and accounting firm which may be undertaken as part of, or in conjunction with, the audit referred to in Clause 9.7.

[...]

9.7 The Investor shall submit an investment report, audited by an internationally recognized and not conflicted (under professional rules) accounting and auditing firm, in respect of each Calendar Year to the State administrative authority in charge of geology and mining within the first Calendar Quarter of the following Calendar Year, using the approved format.

EXAMPLE 4

ARTICLE 8 BOOKS, RECORDS, AND REPORTS

8.1 General

Licensee shall keep and maintain during the term of this Agreement all financial, employment, commercial, and other books and records of its operations as provided for in the Mining Proclamation, Mining Tax Proclamation, Regulations and Directives issued thereunder.

8.2 Inspection

Licensee shall make available to the Licensing Authority or its duly authorized officials, upon not less than 48 hours prior notice to Licensee, all such books and records for the purposes of inspection.

8.3 Annual Report

Within thirty (30) days of each anniversary of the Commencement Date, the Licensee shall submit to the Licensing Authority an annual exploration and technical assessment report in the form and content provided for in the Mining Proclamation, Mining Tax Proclamation, Regulations and Directives.

EXAMPLE 5

Inspection and Audit Rights

- (a) The GOVERNMENT, through the [RELEVANT GOVERNMENT OFFICES], acting within the scope of their respective powers, and subject to procedures under the Law, shall, at its sole risk, cost and expense inspect the operations and facilities of the Mine provided that representatives of the agencies of THE GOVERNMENT comply with the mining-industrial safety regulations imposed by from time to time by THE COMPANY. Such inspections shall be made during THE COMPANY's normal business hours on Business Days and shall not interfere with Operations of THE COMPANY, except in cases of force majeure.

The employees and contractors of THE GOVERNMENT working with some permanence within the site of the Mine, in activities derived from this Agreement shall observe and comply with the mining-industrial safety regulations established by THE COMPANY and the mutually agreed regulation on entrance and exit that will not interfere with THE COMPANY's work nor jeopardize the Operations.

- (b) If the purpose of the inspection is an audit or of a fiscal nature, the authorized representatives of THE GOVERNMENT, giving reasonable advance Notice and subject to compliance with the mining-industrial safety regulations established by THE COMPANY from time to time, shall, at its own cost, inspect all the books and records of THE COMPANY and its Affiliates as they relate to THE COMPANY's performance under this Agreement.

THE COMPANY shall be bound to maintain its books in the country. Notwithstanding the aforementioned, the Affiliates of THE COMPANY,

shall be obliged to show their books and records in a term no longer than ten (10) Business Days beginning from the reception of the request, all without undermining the right of THE GOVERNMENT to verify data abroad with the authority of this Agreement, if deems it convenient.

- (c) The GOVERNMENT shall indemnify and hold harmless THE COMPANY and its Affiliates from any and all Losses arising out of any death, personal injury, or property damage sustained by the GOVERNMENT, THE COMPANY, or their agents, employees or representatives resulting from the gross negligence or willful misconduct of the GOVERNMENT's employees or agents in conducting any audit or inspection in or upon the Project as permitted under this Agreement, except to the extent such Losses arise from the gross negligence or willful misconduct of THE COMPANY or its agents, consultants or employees.

EXAMPLE 6

The Company shall maintain all original records and reports relating to its activities and operations under this Agreement including all documents relating to financial and commercial transactions with independent parties and affiliates in its principal office in Country for a period of three (3) years. These records and reports shall be opened to inspections by Government through an authorized representative during normal working hours upon Government giving not less than one (1) week advance notice of its intention to inspect. Such reports and records shall be maintained in the English language and all financial data shall be recorded in US dollars or [other currency].

All records, reports, plans, maps, charts, accounts, and information which the Company is or may be from time to time required to supply under the provisions of this Agreement shall be supplied at the expense of the company.

EXAMPLE 7

The Company shall always conduct and maintain in Country, precise, complete, and systematic technical records in connection with financial reports showing a true and fair view of all of its operations and the status of proven, probable and possible ore reserves, including mining, processing, transportation and marketing in accordance with generally accepted accounting principles, stated in [host country currency] or in equivalent United States dollars. The financial and other reports may be presented in English and in US Dollars together with its conversion into [host country currency].

The Tax Return (SPT) with its appendices and tax payment liability shall be maintained in the ___ language and [host country] currency. The Company shall keep financial record or notes and basic document and other supporting documents which relate to the Enterprise within ten (10) years. The Company shall furnish to the Government annual financial statements consisting of a balance sheet and income statement and all such other financial information in accordance with generally accepted accounting principles in Country and all such other information concerning its operations in reasonable detail and such detail as the Government may reasonably request.

EXAMPLE 8

17.2 Financial Statements and Audit.

- (a) Each of the Concessionaire and the Operating Company shall deliver to the Government within 90 days after the end of each of its respective Financial Years, or within such shorter period as may then be required by applicable Law:
- (iv) a balance sheet of the Concessionaire or the Operating Company, as applicable, as at the end of such year, and
 - (v) statements of income, changes in shareholders' equity and cash flows of the Concessionaire or the Operating Company, as applicable, for such year,
setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, and certified by the chief financial officer of the Concessionaire or the Operating Company, as applicable, as having been prepared in accordance with generally accepted accounting principles in the United States ("GAAP") or International Financial Reporting Standards ("IFRS"), consistently applied except as otherwise noted.
- (b) Such financial statements shall be accompanied by an opinion thereon of independent public accountants of recognized international standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of Operations and cash flows and have been prepared in conformity with GAAP or IFRS, consistently applied except as otherwise noted, that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances.
- (c) Each year's financial statements shall be accompanied by a certificate of the chief financial officer of the Concessionaire or the Operating Company, as applicable, to the effect that during the Financial Year then ended the Concessionaire or the Operating Company, as applicable, was in compliance with (1) Section 20.3, (2) Section 20.5 (setting forth in such certificate the value of the ratio provided for in such Section as at the end of each quarter of such Financial Year) and (3) Section 20.8 (or setting forth the extent of non-compliance at such time (if any) and the actions taken and being taken to remedy such non-compliance), and has made all deposits or contributions (if any) required by the closure management component of the applicable approved EMP.
- (d) Each year's financial statements shall be accompanied by a listing of all transactions with Affiliates of the Concessionaire or the Operating Company, as applicable, or any of its respective shareholders, whether or not reflected in such financial statements, identifying the amount of

the transaction, the Affiliate involved, the shareholder of which such entity is an Affiliate, and the nature of the transaction, certified by the chief financial officer of the Concessionaire or the Operating Company, as applicable, as being correct and complete. Transactions of the same type with the same entity that are individually immaterial may be aggregated rather than separately listed. Each of the Concessionaire and the Operating Company shall maintain contemporaneous documentation of each such transaction with an Affiliate evidencing that the pricing of the transaction was negotiated at arms-length.

- (e) If the Minister or the Government determines that it is necessary for it to cause an independent review or audit of the Concessionaire's or the Operating Company's own records or books or those of any Affiliate outside of Country, the Concessionaire will cooperate to provide the Government with copies of the information, books and records needed to complete the review or audit. If the Government nonetheless deems it necessary for any part of such audit to be performed outside of Country, the cost of associated travel will be borne by the Government except to the extent that the Concessionaire or the Operating Company is unable to provide the information, books or records needed to complete the audit in Country, in which case the Concessionaire or the Operating Company, as applicable, shall bear both the reasonable travel cost of a reasonable number of auditors selected by the Government to travel to the place where such information, books and records may be obtained and their accommodation costs for a reasonable amount of time necessary to complete their review.

[...]

20.2 Books and Records.

Each of the Concessionaire and the Operating Company will maintain proper books of record and account in conformity with GAAP or IFRS, as applicable under Section 17.6(a), and with all applicable requirements of Law.

RIGHTS AND OBLIGATIONS

10.0 Mutual Obligations

10.1 Information to Local Government

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

10.2 Applicability of IFC Performance Standards and Equator Principles

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

10.3 Parties' Commitment to Protecting Human Rights

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

**Please see [19.3 Security](#) for additional examples relevant to human rights.*

EXAMPLE 1

Relocation under IFC and World Bank Social and Environmental Policies and Guidelines

The Government, in accordance with Applicable Law, agrees to relocate the persons residing in the [affected area] under the Social and Environmental Policies and Guidelines of the International Finance Corporation (IFC) and the World Bank, such relocation being budgeted at _____ USD.

EXAMPLE 2

IFC Safeguard Policy on Natural Habitat; November 1998

The Parties agree to comply with the substantive environmental and social principles prescribed by this Policy.

EXAMPLE 3

IFC Policy Statement on Forced Labor and Harmful Child Labor; March 1998

The Parties agree to comply with the substantive environmental and social principles prescribed by this Policy, with the following procedural exceptions and modifications:

(a) Paragraph 5 of the Policy, entitled "Responsibilities of the IFC Project Team", shall be deemed to read as follows:

Responsibilities of the Parties.

A Party and/or its directors, officers, employees or agents who witness or suspect potential incidences of harmful child labor associated with this Agreement will contact the Environmental Management Panel for further information on how to appropriately deal with the issue. The Environmental Management Panel will then determine the facts of the situation, review options and recommend a course of action consistent with this Policy. If harmful child labor is identified as a potential issue, the Parties will meet and negotiate an appropriate mitigation plan to eliminate or avoid harmful child labor.

(b) Paragraph 6 of the Policy, entitled "How Can Project Sponsors Reduce and Manage the Risk?" shall be deemed to read as follows:

How Can the Parties Reduce and Manage the Risk?

To assist in combating harmful child labor, the Parties should review:

- The age and employment profile of all people under 18 working in the business, paying particular attention to young people under school leaving age;
- Present workplace conditions (i.e., occupational health and safety conditions including exposure to machinery, toxic substances, dust, noise, ventilation);
- Work hours and nature of the work; and
- Local and national laws governing child labor.

Following this assessment, the Parties should:

- Eliminate those cases of harmful child labor which may exist in the business, taking into account the welfare of the child; and
- Set a corporate minimum work age and develop a corporate policy statement against harmful child labor.

EXAMPLE 4

21.1 Obligations

The Government shall fulfill its obligations under this agreement while acting in accordance with its international human rights obligations as they develop from time to time.

21.2 Human Rights Instruments

The Company acknowledges its responsibility to respect human rights as set out in:

- (a) The Universal Declaration of Human Rights;
- (b) The International Covenant on Civil and Political Rights;
- (c) The International Covenant on Economic, Social and Cultural Rights;
- (d) The International Convention on the Rights of the Child;
- (e) Convention on the Elimination of all Forms of Discrimination against Women;
- (f) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (g) The Indigenous and Tribal Peoples Convention (ILO No. 169);
- (h) The International Convention on the Elimination of all Forms of Racial Discrimination; and
- (i) All international human rights instrument to which the State is a party.

21.3 Company Undertaking

In order to meet the obligations set out in this Article, the Company shall

- (a) Seek to prevent, mitigate and remediate all negative human rights impacts resulting from its activities or through its relationships with third parties relative to this agreement;
- (b) Undertake an initial, independent human rights impact study prior to initiating the Development Plan set out in this Agreement, to determine where its activities or relationships (including any anticipated security measures) may have a negative impact on human rights, and update this study on an annual basis;
- (c) In all dealings between the security personnel of the Company, or the Company's Contractors or Subcontractors, and police, military or other security forces of the State, assure compliance with the norms of the Voluntary Principles on Security and Human Rights.

- (d) Ensure that its operational policies reflect the responsibility to respect human rights and that the policies and procedures required to prevent, mitigate and remediate any potential or actual negative human rights impacts from its operations or relationships, taking into account the above-mentioned impact studies, are in place;
- (e) Remediate any apparent negative human rights impacts from its operations or relationships as soon as is practicable, including through, as appropriate:
 - (i) Providing adequate compensation or other appropriate remedy to any victim of the negative impact;
 - (ii) Removing or altering the cause of the negative impact so as to avoid further negative impacts of the same type;
 - (iii) Revising its operational policies and manuals to seek to prevent a recurrence of the actions or failures to act leading to the violation; and
 - (iv) Such other actions as may be necessary to avoid similar negative impacts in the future.

21.4 Cooperation

- (a) The Government and the Company shall strive to cooperate to the maximum extent possible to ensure the implementation of this Article. They shall seek the cooperation of local communities for this purpose.
- (b) The independent human rights impact assessor shall be appointed by mutual agreement of the Company and the local community and have recognized expertise in this field. He or she shall meet with the local community and may meet with any other agency or individual in order to ensure a comprehensive and objective report.

21.5 Complicity in Human Rights Violations

- (a) The Government and the Company shall not act or fail to act in a manner so as to be complicit in the breach of human rights by other persons while fulfilling their rights or obligations under this agreement.
- (b) For the purposes of this Article “complicity” means acts or failures to act by the Government or Company that knowingly contribute to the violation of human rights by third persons, including other Government agencies or non-State actors.
- (c) For the purposes of this Article, “knowingly” is deemed to include acts or failures to act where the party should have known of the relationship of such act or failure to act with a potential or actual violation of human rights. For greater certainty, the mere presence in a country or paying taxes or other payments in accordance with the Applicable Law and this Agreement, does not amount to complicity for the purposes of this Agreement.

21.6 Breach No Excuse

A breach of this provision by one party shall not excuse a breach of this provision by the other party.

21.7 Reports

The initial human rights impact study and the annual updated report shall be made available to the central government office, to a central location in each mine affected province, at the principle Company office in the Mine Area, and at any additional agreed upon location. The study shall be made available in the local language of the area where it is deposited.

21.8 Breach of International Human Rights Law

For the purposes of this Agreement and the Applicable Law, the parties agree that a negative human rights impact does not always constitute a breach of international human rights law has taken place for any other legal purposes.

10.4 Prevention of Corruption

10.4.1 Obligations of the Company

The Company, its officers, directors and employees acknowledge and agree that they are subject to the anti-bribery and anti-corruption provisions of Applicable Law and of the jurisdictions in which the Company is organized or conducts business (collectively, “**Anticorruption Laws**”), and shall conduct their activities in the State in accordance with their obligations under the Anticorruption Laws.

10.4.2 Obligations of the State

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

10.4.3 Other Applicable Norms

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

10.4.4 Understanding of the Parties

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

EXAMPLE 1

15.20. The Investor and its Affiliates are subject to the anti-bribery/corruption laws of the jurisdictions in which the Investor or its Affiliates (as applicable) are organized, including Host Country, and the Investor and its Affiliates shall conduct their activities in Host Country in accordance with their obligations under such laws.

STATE RIGHTS

11.0 State Access to Project

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

**See 9.0 Financial Records and Statements, Accounting Standards and Currencies for more examples of mine inspection clauses.*

EXAMPLE 1

The Government and its authorized representatives may enter the Contract Area and any other place of business of the Company to inspect its operation at any time as well as from time to time during regular business hours. The Company shall render all necessary assistance to enable the representatives to inspect technical and financial records relating to the Company's operation and shall give the said representatives such information as they may reasonably request. The said representatives shall conduct such inspection at their own risk and shall avoid interference in the normal operations of the company.

12.0 Inspection of Books, Records and Information, Independent Audit

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

**See 9.0 Financial Records and Statements, Accounting Standards and Currencies for examples.*

STATE OBLIGATIONS

13.0 State Assurances and Obligations

13.1 Legislation to Approve Agreement

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

EXAMPLE 1

Ratification and Operation

3.

- 1) The State shall introduce and sponsor a Bill in the State Parliament of State to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 19xx or such later date as may be agreed between the parties hereto.
- 2) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation until the Bill referred to in subclause (1) has been passed by the Parliament of State and comes into operation as an Act.
- 3) If before 31 December 19xx the said Bill has not commenced to operate as an Act then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- 4) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

EXAMPLE 2

RATIFICATION AND EFFECTIVENESS OF THIS AGREEMENT

- (1) Following the execution of this Agreement, the Government will introduce and use its best endeavors to cause to be passed legislation for the purpose of ratifying and confirming the Agreement and implementing the terms hereof.
- (2) If such legislation shall not be duly passed and become law within 45 days from the date of this Agreement or within such extended time as the Government and the Company may in writing agree, this Agreement and all rights granted and obligations assumed hereunder shall cease and determine upon the expiration of such forty-five (45) day period or such extended time so agreed, and without penalty with respect to any actions taken by the Company thereunder, prior to the date of such termination.
- (3) This Agreement shall come into force and effect upon the coming into operation of such legislation within the period specified in paragraph (2) hereof.

13.2 Tax Stabilization Clause

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

**For related clauses, see 8.5 State Guarantees and 14.0 Fair and Economical Project Operation.*

*** Stabilization Clauses are very controversial, even within the MMDA Working Group. Neither this generic clause nor the example clauses provided reflect the opinions of the Working Group. They are merely examples. For more information, see Additional Resources.*

EXAMPLE 1

Article 15 Taxation Stability

15.1 [Government] undertakes that it will not for a period of fifteen (15) years commencing on the Effective Date:

- (a) increase corporate income tax or withholding tax rates applicable to the Company (or decrease allowances available to the Company in computing its liability to such taxes) from those prevailing at the date hereof; or
- (b) otherwise amend the VAT and corporate tax regimes applicable to the Company from those prevailing as at the date hereof; or
- (c) impose new taxes or fiscal-imposts on the conduct of Normal Operations,
- (d) alter the right of any non-[Country] citizens (and entitled dependents) (on his or their arrival or permanent departure from [Country]) to:
 - (i) import within six (6) months from the date of arrival free of duty and tax, for personal use, household and personal effects;
 - (ii) export, without let or hindrance or the imposition of duty or tax on export, all personal effects originally imported or acquired during residency in [Country]; and
 - (iii) freely remit all income earned in [Country] during such residency,
so as to have, in each case, a material adverse effect (the issue of whether or not such effect is materially adverse to be determined by a Sole Expert in accordance with Clause 19 in the event of disagreement between the Parties) on the Company’s Distributable Profits or the dividends received by its shareholders.

[Government] further undertakes that for the same period of fifteen (15) years, it will not:

- (e) increase

- (i) the rate of Royalty referred to in Schedule 8 from the level prevailing at the date hereof; or
- (ii) import duty rates applicable to the Company so as to result in the weighted average import duty rate to which the Company is subject on the import goods and materials required for the Approved Programme of Operations or Normal Operations and which would, at the date hereof, be exempt from customs and excise duties under Section [x] of the Act, above a level of zero per cent. (0%); or
- (iii) import duty rates applicable to the Company so as to result in the weighted average import duty rate to which the Company is subject on the import of goods and materials required for the Approved Programme of Operations or other Normal Operations and which do not fall under Clause 15.1(d)(ii) above a level of fifteen per cent. (15%); or
- (iv) the Excise Duty on Power applicable to the Company's electricity purchases above the rate prevailing at the date hereof,

For the purposes of Clause 15.1(e)(ii) and (iii) the Facilities will be deemed to be a "mine" and the operations conducted in connection therewith to be "mining" for the purposes of Section [x] of the Act.

- (f) impose other royalties or duties on Normal Operations, so as to have a material adverse effect on the Company's Distributable Profits or the dividends received by its shareholders.

15.2 Upon expiry of the period specified in Clause 15.1, [Government] shall ensure that no law, statute, regulation or enactment shall be passed or made which would discriminate against the Company in respect of any such matters as are referred to in Clause 15.1 or otherwise in its conduct of Normal Operations or any other circumstances under this Agreement when compared to other mining companies or joint ventures conducting similar operations on a scale equivalent to those conducted by Company in [Country] provided that [Government] will be at liberty to pass or make any such law, structure, regulation or enactment to enable the performance or amendment of a development agreement entered into by it and another mining company or joint venture prior to the expiry of such period.

15.3 [Government] covenants to reimburse the Company as soon as is practicable (or, at its option, make offsetting changes in any law, statute, regulation or enactment applicable to the Company) to ensure the Company is fully and fairly compensated for any losses, costs or other adverse effects on its Distributable Profits incurred by it by reason of a failure by [Government] to comply with the provisions of Clauses 15.1 and 15.2 provided that (if [Government] opts to make such legislative changes) [Government] shall reimburse the Company for any loss, costs or effects incurred along with interest at a rate of one (1) month LIBOR whilst offsetting changes in any law, statute, regulation or enactment are being enacted. The Company acknowledges that this will be its sole remedy for such failure to comply with Clauses 15.1 and 15.2.

15.4 In the event there is a dispute as to whether or not the Company has suffered any losses, costs or other adverse effect on its Distributable Profits the matter shall be referred to a Sole Expert in accordance with Clause 19.

EXAMPLE 2

Stabilization

- (a) In the event of changes in any Law, the provisions of which are more favorable to the Company, then such provisions shall apply to the Company if Company so requests.
- (b) In the event there occurs any change in the legislation of the Government or local legislation (including provisions relating to imposts, duties, fees, charges, penalties, and tax related legislation) after the date of this Agreement, and if in the Company's sole and good faith opinion such change would have the effect of divesting, decreasing, or in any way limiting any rights or benefits accruing to the Company under this Agreement or under current legislation, then the Parties shall, in good faith, negotiate to modify this Agreement so as to restore the Company's economic rights and benefits to a level equivalent to what they would have been if such change had not occurred.

EXAMPLE 3

Stabilization

The Government hereby undertakes and affirms that at no time shall the rights (and the full and peaceful enjoyment thereof) granted by it under Article [X] (Income Taxation), Article [X] (Royalty), and Article [X] (Other Payments to the Government) of this Agreement be derogated from or otherwise prejudiced by any Law or the action or inaction of the Government, or any official thereof, or any other Person whose actions or inactions are subject to the control of the Government. To the extent there is inconsistency between the [Tax Law] as defined in Article [X] (Taxation), the Agreement shall govern.

EXAMPLE 4

2.1. Except as provided elsewhere in this Agreement, the Investor shall only be subject to the Taxes listed in Article [X] of the General Taxation Law as in force on the date of this Agreement. The Parties agree that, in accordance with Article [Y] of the Minerals Law, the following Taxes are Stabilized (the "Stabilized Taxes"):

- 2.1.1. Income tax of business entities (corporate income tax);
- 2.1.2. Customs duty;

- 2.1.3. Value-added tax;
- 2.1.4. Excise tax (except as provided for in Clause 2.23);
- 2.1.5. Payment for use of mineral resources (royalty) (as specified in Clause 3.13);
- 2.1.6. Payment for mineral exploration and mining licenses;
- 2.1.7. Immovable property tax and/or Real Estate Tax; and
- 2.1.8. Tax on price increase of some products, which as from 1 January 2011 shall be invalidated by the WPT Invalidating Law.

Taxes listed in Article X of the General Taxation Law (as in force on the date of this Agreement) not listed above will be payable in accordance with the laws and regulations effective in that tax year of Country (the "Non-Stabilized Taxes").

[...]

14.0 Fair and Economical Project Operation

The State shall not adopt any provision of Applicable Law that imposes a material financial burden or material other burden solely on the Company or any of its Affiliates, whether or not such provision specifically identifies the Company or any of its Affiliates as the target thereof, provided that this provision shall not apply to any Applicable Law reasonably intended to protect the safety, health, welfare or security of the State or citizens thereof or to fulfill the State's international obligations. The Company shall be bound by all non-discriminatory changes in Applicable Law concerning health, safety, labour, the environment, and to address the proximate human rights impacts of Mining Operations, *provided that* the changes in social and environmental standards are reasonable and achievable under Good Industry Practice.

EXAMPLE 1

Clause 27

No discriminatory rates

27. Except as provided in this Agreement, the State shall not impose, nor shall it permit or authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles, property, or other assets, products, materials, or services used or produced by or through the activities of the Company in the conduct of its business hereunder nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement.

EXAMPLE 2

11.4. The Investor and its Affiliates shall be entitled to conditions no less favorable than the conditions granted to domestic Country investors regarding the right to own, utilize and spend its investment.

15.0 Permits

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

16.0 Expatriates

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

EXAMPLE 1

Government shall, in respect of any non-Host Country citizens identified by Company pursuant to Clauses 0 or 0 or approved by Government pursuant to Clause 0 (if any), consent (such consent not to be unreasonably withheld or delayed) to and cause all necessary permits (including entry and exit permits, work permits, visas and such other permits or permissions as may be requested) to be issued to such persons and their entitled dependants promptly and without hampering the continuous and efficient performance of Company's operations and its obligations under this Agreement (including allowing such non-Host Country citizens the right to import and export personal effects free of taxes), provided always that such non-Host Country citizens:

6.1.12 qualify for entry under immigration laws, regulations and practices of general application within Country as in force from time to time (other than by reason of a prohibition inconsistent with the provisions of this Agreement) relating to previous criminal convictions, public health and national security (but excluding any laws, regulations and practice relating to the education, experience and qualifications of such non-Host Country citizens); and

6.1.13 in relation only to those non-Host Country citizens identified by Country pursuant to Clause 0 have the educational qualifications and sufficient experience and any other necessary qualifications to perform the relevant functions as required under immigration laws, regulations and practice of general application within Country as in force from time to time (other than by reason of a prohibition inconsistent with the provisions of this Agreement).

The Ministry shall use its best endeavours to ensure that any dispute regarding whether any such permits should be issued shall be resolved as swiftly as possible in accordance with the applicable dispute resolution procedures in connection therewith in place from time to time.

17.0 Infrastructure

17.1 Availability of Existing Infrastructure

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

17.2 Access to Infrastructure

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

EXAMPLE 1

6.1 Electrical Energy

If the Company elects to purchase all or a portion of its electricity for the Project from a third party electrical energy generating company, the State will use all commercially reasonable good faith efforts to:

- (a) Provide, or cause to be provided, electrical high voltage transmission services through the national interconnected system of electricity from the energy company generation facility to the Project at the lowest of then existing toll rates applicable to any unregulated industrial consumer connected to the national interconnected electrical system, including line losses, dispatch charges, interconnection charges, and any other charges from the generator bus-bar to the Project;
- (b) Provide, or cause to be provided, to the Project the highest priority dispatch and delivery of the required electricity supply that is available to any consumer connected to the national interconnected electrical system;
- (c) Cause the reliability of supply to be uninterrupted and with minimum forced outages;
- (d) Maintain in accordance with good utility practices the portion of the national interconnected electrical system serving the Project; and
- (e) Assist the Company in contracting for a long-term supply of electricity at the peak demand of the Project at a competitive rate based on the cost of generation.

6.2 Process Water

- (a) If the State has constructed or is operating a drainage control facility or water treatment facility at the Project, the Company may, at its sole option, by Notice to the State, acquire any or all of such facilities for a price equal to the actual construction cost of the purchased facilities (including Project management costs).
- (b) Should the Company acquire any facilities pursuant to this Section, the State may, at its option, require that the Company manage and treat drainage from the Mining Area for which the State is responsible at such Company facilities.
- (c) The State shall pay to the Company the proportion of operating costs of such management and treatment incurred by the Company related to drainage managed and treated as a result of any such requirement by the State during each month, within thirty (30) Days of receipt of an invoice for such costs.

6.3 Water

- (a) The Company will apply modern technology and procedures to minimize the volume of water used by the Project, maximize the efficiency of water usage, and recycle used water where reasonably practicable to do so having regard to technology and procedures used in similar operations.
- (b) The Company is granted the right, subject to the Company's permits and Applicable Law, to access and use its self-discovered water resources for purposes connected with the Project during the life of the Project, including to construct, commission, operate and rehabilitate the Project. The Parties agree in respect of these matters that to the extent practicably and commercially feasible, the Company shall endeavour to:
 - (a) make its self-discovered water resources available to be used for household purposes, Indigenous and Tribal Populations and agricultural activities of the local communities.
 - (b) support the State in the establishment of safe drinking water for the local communities directly impacted by the Project.
 - (c) Recognizing that the quality of self discovered water may vary considerably, support the State to upgrade or treat these water resources for use by the local communities, or provide infrastructure for water transportation for local household use only.
 - (d) not reduce from the current level the quality and quantity of the existing potable, irrigation and livestock water supplies used by existing users at the date of this Agreement within the water resources of the Project Area.

6.4 Communications Infrastructure

The State shall issue to the Company a license to import telecommunications equipment and to establish and maintain a radio-communication station or stations as necessary for the Project or for the development of the surrounding regions.

6.5 Roads and Transportation

6.5.1 Private Roads

The Company shall:

- (a) Be responsible for the provision of finance for and the construction and maintenance of all private roads required for the Project;
- (b) Have the right at its cost to make such provision (including if necessary the erection of physical barriers) as shall ensure that all persons and vehicles (other than those engaged in the Mining Operations and their invitees and licensees) are excluded from use of such private roads or any part thereof.

6.5.2 Public Roads

- (a) The State when requested to do so by Notice from the Company, shall construct and maintain or cause to be constructed and maintained new public roads to the boundary of the Project Area to connect with specified townships and airstrips, or shall widen or otherwise improve existing roads, according to prevailing standards of the region and the terms of this Agreement.
- (b) The State shall use its best efforts to ensure the completion of the construction or improvements of public roads as soon as is reasonably practicable. The State and the Company shall confer with a view to minimizing the periods of time for such completion.
- (c) The State shall maintain or cause to be maintained the public roads to a standard similar to comparable public roads that bear comparable traffic loads in the State.
- (d) The Company shall not be or be deemed to be liable for the maintenance of any road except private roads that the Company has an obligation to maintain pursuant to this Agreement.
- (e) Any contribution made by the Company to the State for the upgrading or maintenance of any public road by the Company shall not be construed as an admission of responsibility for road maintenance under this Agreement or otherwise.
- (f) The Company shall with the consent of the State (which shall not be unreasonably withheld or delayed) have the right at its cost to upgrade (whether by way of widening, surfacing, resurfacing, sealing, re-sealing or otherwise howsoever) any public road for the purposes of the Project. The standard of upgrading shall be that appropriate to the relevant Company requirements only *provided that* the Company and the State may agree upon a higher standard in which case the additional cost involved shall be borne by the State.
- (g) The Company may at any time and from time to time, with the consent of the State (which shall not be unreasonably withheld or delayed), dedicate any private road as a public road whereupon road shall become a public road, *provided that* any such road meets the usual standards prevailing in the State in respect of roads of a comparable nature at the time of such dedication.
- (h) The State may, after consultation with the Company, compulsorily acquire from the Company such land as is necessary to construct a public road across or over a private road owned by the Company, *provided that* such acquisition of land will not significantly constrain Mining Operations and any compensation payable in respect of any such acquisition shall include any costs incurred by the Company in constructing or otherwise providing for any necessary grade separation.

6.5.3 Airstrip and Related Facilities

- (a) The Company may, and subject to the State's consent (which consent shall not be unreasonably withheld or delayed), construct or cause to be constructed a sealed airstrip and related facilities to facilitate Mining Operations.
- (b) The State when requested to do so by Notice from the Company shall grant to the Company at no cost to the Company ownership of the

land delineated as the airstrip and related facilities as agreed by the Company. The grant of ownership as aforesaid shall be made free and clear of all easements of whatsoever nature or kind other than as may have been previously advised in writing to the Company by the State.

6.5.4 Railway Facilities

The Company shall consult with the State for the provision of maintenance and operation of such railways sidings, shunting loops, spurs and other connections as are required for Mining Operations and the provision and maintenance of loading and unloading facilities sufficient to meet train operating requirements and terminal equipment (including weighing devices and communications systems) together with a staff adequate to ensure the proper operation thereof, and from time to time shall inform the State of its anticipated railway requirements.

6.5.5 Port

- (a) The Company shall from time to time consult with the State regarding the technical, logistical and economic feasibility of using existing ports and facilities within the State for the purposes of the Project.
- (b) If the Company determines to utilize the facilities of a port or ports within the State for the purposes of Mining Operations, the Company, shall provide at its cost any additional facilities required at such port or ports to facilitate conduct of the Project.
- (c) The Company may agree with third parties already operating at the relevant port or ports upon a basis of sharing, at no cost to the State, port facilities already provided by others.
- (d) The Company and the State may enter into an agreement whereby additional facilities are provided by and at the cost of the State in consideration of the relevant Company agreeing to pay special rates for the use of those facilities.

6.5.7 State Facilities

- (a) The State when requested to do so by Notice from the Company shall grant to the Company at no cost to the Company such estates in land, leases, licenses, easements and rights free of any liens charges or other encumbrances which the relevant Company may reasonably require for railway operations or with respect to any State owned port facilities.
- (b) In the event that any rate, charge, levy or impost is or becomes payable by the Company to the State for railway or port facilities owned and operated by the State, the State will ensure that any such rate, charge, levy or impost is calculated on the same basis as that payable by other users generally of such services and includes all allowances, discounts and subsidies as may from time to time be granted or given to such other users.

EXAMPLE 2

The Government agrees to use its best endeavors to facilitate the continued provision of the following municipal infrastructure services by the relevant private companies and local councils. The Company agrees that it will co-operate with such private companies and local councils in ensuring that any transitional arrangements to be agreed with the Company and put in place for recovering the costs of such services from the Company's employees are effective:

- (a) Water;
- (b) Sewerage Services;
- (c) Solid Waste;
- (d) Domestic Electricity Supply;
- (e) Street Lighting;
- (f) Storm Water Drainage;
- (g) Roads;
- (h) Markets; and
- (i) Cemeteries.

The Government and the Company acknowledge that the cost to the Company of the municipal services in aggregate at the date of this Agreement is approximately _____USD per annum.

18.0 State Obligations Re: Local Governments and Landowners

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

EXAMPLE 1

The municipalities where the Mine is located shall receive five percent (5%) of net profits generated in accordance with what is established in the Environmental Law. THE STATE, as lessor of the Fiscal Reserve, shall assume the payment of said contributions to the municipalities where the Mine is located. THE STATE may request that Company make such payments on its behalf and deduct them from the payments it must make to THE STATE under this Agreement.

EXAMPLE 2

The STATE and the CENTRAL BANK shall distribute at least five percent (5%) of the total payments they receive pursuant to Article 8 [royalty and taxes] [...] to the various communities in the vicinity of the Mine.

EXAMPLE 3

Landowners Royalty Sharing

- (a) The Government and the Provincial Government acknowledge and confirm that the Landowners entitled to customary native tribal land within the Prospecting Area are as follows:
[Specify land areas and tribes or clans]
- (b) In recognition of the Landowners' rights to compensation for disturbance to their customary land and lifestyle caused presently by exploration operations in the Prospecting Area and in the future by mining operations in Mining Area, the Government undertakes to share the royalties receivable by it under this agreement and Mining Act as follows:

Government: [x]%

Provincial Government: [x]%

Landowners Trust Account: [x]%

- (c) Mining Company is authorised and directed by the Government to pay royalty to the above entities in the proportions set out above in lieu of its obligation to pay royalty to the Government under clause 5.1.
- (d) Receipt by the Premier of the Provincial Government and by the trustee of the Royalty Trust will be full and sufficient discharge to Mining Company of its obligation to pay royalty under clause 5.1 of this agreement and the Mining Act.

COMPANY RIGHTS

19.0 Company Rights

19.1 Affiliated Company Transactions

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

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

EXAMPLE 1

6.11 Arm's-Length Commercialization and Marketing.

- (a) [Party] shall have the right to export all products produced or obtained through its Operations without any limitation.
- (b) [Party] shall sell the products derived from its Operations in accordance with generally accepted international business practices, at commercially reasonable prices, and on commercially reasonable terms compatible with world market conditions in the circumstances then prevailing.

EXAMPLE 2

3. Rights to Export and Import and Arms' Length Dealings

[...]

3.2 The Company may market and export without further reference to [Government] all Mine Products and shall have sole control and management of sale of such Mine Products, including the forward selling of such Mine Products, and shall assume all risks therefore, provided that:

- (a) the Company sells its products on Arms' Length Terms;
- (b) [Government] has not notified the Company that the export of the Mine Products would:
 - (i) breach an obligation of [Government] arising under international law (including mandatory sanctions imposed by the United Nations); or
 - (ii) result in dealing or contracting with nationals of a state with which [Government] is in a state of declared war;
- (c) manufacturers of processed and semi-processed goods involving copper content with processing facilities located in [Country] which are willing and able to purchase copper cathode at market prices not less than that or those otherwise available to the Company payable in US dollars to the Company's account outside [Country] shall be afforded a preference over manufacturers whose processing facilities are not so located; provided that this obligation shall only apply to an amount of copper which does not exceed 10 per cent of the Company's annual production from time to time; and
- (d) no order has been made by the Minister pursuant to Section [x] of the Act.

EXAMPLE 3

Section 20.6

20.6 Transactions with Affiliates. Neither the Concessionaire nor the Operating Company will enter into directly or indirectly any transaction or group of related transactions (including without limitation the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate, except in the ordinary course and pursuant to the reasonable requirements of its respective business and upon fair and reasonable terms no less favourable to it than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate. In addition, any transaction between the Concessionaire or the Operating Company, on the one hand, and an Affiliate or either of them, on the other hand, involving Product(s) shall be on the basis of competitive international prices and such other terms and conditions as would be fair and reasonable had the transaction taken place between unrelated parties dealing at arms' length and shall otherwise comply with Section 15.2.

EXAMPLE 4

3.3 The Company shall advise [Government] of each material agreement concerning sales or processing of Mine Products, patent licensing, engineering, construction or management services which is entered into with an Affiliate. Such agreements shall be on Arms' Length Terms. Copies of such agreements shall be copied to [Government] upon request. If, in the opinion of [Government], any such agreement is not on Arms' Length Terms, [Government] may, within thirty (30) days of receipt of such agreement, give notice to the Company of the terms which [Government] considers to be Arms' Length Terms. If the Company disagrees with the terms so considered by [Government], it may refer the dispute to a Sole Expert (or arbitration panel) in accordance with Clause 18 for a determination as to what are Arms' Length Terms. Upon receipt of the Sole Expert's (or arbitration panel's) determination, the Company shall renegotiate the agreement, if necessary, to embody those terms decided by the Sole Expert (or arbitration panel) to be Arms' Length Terms or terminate the agreement.

19.2 Company Hiring Decisions

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

**See also examples at 24.0 Employment and Training of Local Citizens.*

EXAMPLE 1

8.4 In accordance with Article [x] of the Minerals Law, not less than 90% (ninety percent) of the Investor's employees will be citizens of [Country].

8.5 In accordance with Government Resolution Number [x] dated [date] making amendment to the Annexure of Resolution Number [x] of [year] on establishing the quota of work force and professionals to be received from abroad in [year] made under the authority of the Law on Sending Labor Force Abroad and Receiving Labor Force and Specialists from Abroad, the Investor will utilize best efforts to work with entities that contract with the Investor to provide labor to the Project to ensure that:

8.5.1 for construction work during the Construction Period and Expansion Periods, not less than 60% (sixty percent) of the entities' employees will be citizens of [Country]; and

8.5.2 for mining and mining-related work, not less than 75% (seventy five percent) of the entities' employees will be citizens of [Country].

[...]

8.11 The Investor will use its best endeavours to maximize the participation on a competitive basis of qualified citizens of [Country] as engineers for the Project and within 5 (five) years of the Commencement of Production the Investor must use its best endeavours to ensure that no fewer than 50% (fifty percent) of its employed engineers, and within 10 (ten) years of the Commencement of Production that no fewer than 70% (seventy percent) of its employed engineers, shall be citizens of [Country].

EXAMPLE 2

Article 6

Labor Services

6.1 Party B shall have the final right to decide the employees and laborers and salary issues, and to the progress (m/d), the core samples, etc. Also, Party A will be preferably awarded to provide exploration services to the Company except in those situations that Party A lacks the expertise needed to provide the required services as shall be determined by Party B in its reasonable discretion. Party A shall charge its services at a rate that is equal to the market standard or shall be otherwise agreed to by Party A and Party B.

6.2 Both Parties shall have the right to provide supervisory personnel and research specialists and to pay international rates to these employees, and the standard of bill consulting fees and overhead costs where appropriate shall be decided by the board of directors of the Company.

EXAMPLE 3

Article 15.

Employment and Training of Host Country Personnel

15.1 Employment Preference. The Contractor shall conform with laws, rules and regulations regarding labor and safety standards. In giving preference to [Country] citizens in all types of mining employment for which they are qualified, the Contractor shall employ [Country] personnel in its Mining Operations with preference to those who have established domicile in the host province(s) and municipality(ies) and shall, after the Date

of Commencement of Commercial Production, in consultation and with consent of the Government, elaborate an appropriate training program for employment of suitable [Country] nationals at all levels of employment. If necessary skills and expertise are currently not available, the Contractor must immediately prepare and undertake a training and recruitment program at its expense to identify suitably qualified [Country] citizens in the host and neighboring communities with the aptitude to acquire the necessary skills and expertise.

15.2 Alien Employment. For highly-technical and specialized mining operations, the contractor may, subject to the necessary government clearances, employ qualified foreigners. It is agreed that alien employment shall be limited to technologies requiring highly specialized training and experience, subject to the required Government clearance under existing laws, rules and regulations, as provided in Section [x] of the Act. Where foreign technologies are utilized and where alien executives are employed, an effective program of training understudies shall be undertaken.

15.3 Non-Discrimination. The Contractor shall not discriminate on the basis of gender. The Contractor shall respect the rights provided by law for all workers to participate in policy and decision-making processes affecting their rights and benefits.

19.3 Security

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

EXAMPLE 1

Security and Human Rights

The Company shall have the right in keeping with the provisions of the Law, to directly or under contract with other persons, establish and maintain its own security force for the purpose of maintaining law, order and security, with power both of detention (any detained person to be handed over to the appropriate Government authorities as soon as practicable), and of search of and exclusion from the Concession Area and such other areas as may be properly restricted for economic, operational or security reasons. Any such security force will be subject to Law at all times and at all times will conduct itself in accordance with Law (including all Laws relating to apprehension and detention and human rights) and the “Voluntary Principles of Security and Human Rights.”

EXAMPLE 2

Security

The Company may, directly or by contract with a responsible provider of security services, establish, manage and maintain its own asset and employee security and protection service for the purpose of maintaining law, order and security in each Production Area and in the immediate vicinity of other locations at which Concessionaire has or maintains property and assets through its own security force and to do so always being subject to applicable Law (including all Laws relating to apprehension and detention and human rights) and the “Voluntary Principles on Security and Human Rights” (as of December 2008 located at: <http://www.voluntaryprinciples.org>). Those members of the Company’s (or such contractor’s) security force certified by name by the Company to the Ministry of Justice as being literate, as having have received adequate full time training in police and law enforcement procedures given by an outside contractor satisfactory to the Ministry of Justice, and as having been provided with operating manuals approved by the Ministry of Justice, shall have enforcement powers within the areas described in the preceding sentence, always being subject to Applicable Law.

COMPANY OBLIGATIONS

20.0 Development Obligations

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

**See related provisions and examples at 2.6 Construction.*

EXAMPLE 1

9.1 Scientific Exploration and Exploitation

Subject to applicable Laws and regulations:

- (a) Licensee shall, within sixty (60) days from the Effective Date, commence and carry out Exploration Activities. Licensee shall conduct all such operations and activities in a prudent, diligent, and efficient manner in accordance with good and acceptable mineral exploration and mining engineering standards and practices and in accordance with modern and accepted scientific and technical principles applicable to the exploration and mining of Minerals. All operations and activities under this Agreement shall be conducted so as to minimize waste or loss of natural resources, protect natural resources against unnecessary damage, and in a manner intended to minimize pollution and contamination of the environment.
- (b) Licensee shall take commercially reasonable measures to prevent and control fires and to identify and notify immediately the proper governmental authorities of any fire that occurs within the License Area and which Licensee is aware of.
- (c) Licensee shall take commercially reasonable measures to avoid damage to the properties of the Government and third parties located within the License Area.
- (d) Licensee shall install and utilize such recognized modern safety devices and observe such recognized modern safety precautions as are provided and observed under mining and exploration activities comparable to those undertaken by the Licensee under this Agreement.
- (e) Licensee shall observe internationally recognized modern measures for the protection of the general health and safety of its employees and of all other persons contracted by Licensee having legal access to the area covered by this Agreement.

EXAMPLE 2

Overall development

8. (1) Having regard to the geographical relationship and physical association of the mining lease with other iron ore deposits in and to the general development of the [locale A], the Company in its initial proposals under Clause 6 and any additional proposals pursuant to Clause 9 (other than a proposal under that Clause to increase production of iron ore where the total production after such increase will not exceed ___ tonnes of iron ore per annum for transportation from the mining lease and the proposal does not involve any significant variation to the mine infrastructure)

or Clause 10 shall take into account and make provision where it is reasonably practicable so to do for –

- (a) the economic and orderly overall development of the lands the subject of this Agreement and those other iron ore deposits;
- (b) appropriate infrastructure development in the [locale A] having regard to then existing iron ore operations and facilities and to other existing infrastructure including the [locale B]; and
- (c) an open town or other appropriate housing and accommodation arrangements to service the iron ore mines and other developments in the [locale A].

(2) The Company and the State shall co-operate and consult with each other regarding the matters referred to in subclause (1), State Government policies, planning and development objectives, the Company's commercial requirements and any other relevant matters that the Minister or the Company may wish to consider.

EXAMPLE 3

2. Commitment to Operate

2.1 The Company shall, following the Completion of the Sale and Purchase Agreement:

- (a) negotiate in good faith with Government (which undertakes to negotiate in good faith with Company) with a view to agreeing within six months (or such longer period as the Parties may agree) of the Effective Date the detailed terms and conditions of the Approved Programme of Operations; and
- (b) subject to the terms of this Agreement, the Large Scale Mining Licenses and laws and regulations of general application in Country from time to time, implement the Approve Programme of Operations in accordance with the timetable contained therein and good international mining and metal treatment standards and practices.

2.2 Without prejudice to the obligation contained in 2.1, the Company shall [...]:

- (a) expend the Investment Commitment substantially in the manner, on the terms and in the amounts set out in the Scheduled Programmes; and
- (b) in the event that the contingencies in the Approved Programme of Operations are fulfilled, expend the Contingent Commitment substantially in the matter, on the terms and in the amounts set out in the Scheduled Programmes.

21.0 Use of Local Goods and Services

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

**See additional examples at 5.1 Customs Duties.*

EXAMPLE 1

4. Procurement

4.1 The Company shall, on a periodic basis, identify and invite registration of businesses in [Country] (particularly in the [Region] and with particular emphasis on businesses directly or indirectly majority owned by [Country] citizens) which are capable of supplying materials, equipment and services to the Company.

4.2 Where materials, equipment and services required for the implementation of the Scheduled Programmes are manufactured or substantially assembled (or in the case of services, are procurable) within [Country] from a business or businesses registered pursuant to Clause 4.1, such business(es) shall have the opportunity to tender and if a tender submission from any such business:

- (i) meets the specifications of the invitation to tender;
- (ii) is competitive in price with international sources; and
- (iii) meets the quality standards and delivery requirements of the Company;

then the Company shall not discriminate against such business(es) in its award of such tender.

4.3 In assessing the tenders from local contractors and suppliers, the Company will consider the extra costs it would incur if it was 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.

4.4 A Committee shall be formed, comprised of one member from each of the Ministry, the local government, the Company and a representative of the Ministry of Commerce, Trade & Industry, which shall monitor the supply and procurement of goods and services to the Facilities.

4.5 The Committee shall operate during the term of this Agreement and the Company shall furnish it with reports every six (6) months comprising the following information:

- (i) a list of successful tenderers which shall include the items supplied, residence of tenderers and the reasons for awarding the tender; and
- (ii) a list of unsuccessful locally based tenderers which shall include reasons for not awarding the tender.

5. Local Business Development

5.1 The Company shall:

- (a) comply with the Local Business Development Programme so as to encourage and assist the establishment of businesses within [Country] (particularly in the [Region] and with a particular emphasis on businesses directly or indirectly majority owned by [Country] citizens) to supply materials, equipment and services to the Company, provided that the Company shall not be obliged to grant or lend money to any person or provide technical or other support to them;
- (b) conduct an annual review of progress being made on the implementation of the Local Business Development Programme and make such variations to it as required by changing circumstances; and
- (c) designate a responsible person experienced in setting up and managing small business enterprises:
 - (i) to assist [Country] citizens who wish to or have set up businesses to offer services to the Company and the Facilities;
 - (ii) to assist in the implementation of the Local Business Development Programme and variations thereof;
 - (iii) to liaise with the appropriate officials from [Government]; and
 - (iv) to compile and maintain the register referred to in Clause 4.1.

5.2 The Company may, with the consent of [Government] (which consent shall not be unreasonably withheld), amend or alter the Local Business Development Programme, with a view to securing the maximum benefit to the establishment of [Country] businesses from the Facilities.

If the Company is unable to comply with some or all of the Local Business Development Programme as a result of circumstances or events beyond its control then such non-compliance shall not constitute a default under this Clause 5 and the Company may give notice of alternative or revised plans for the Local Business Development Programme.

5.3 Should the Company give notice pursuant to Clause 5.2, [Government] shall within thirty days (30) either:

- (a) approve those alternative or revised plans; or
- (b) meet with the Company to discuss and agree upon the alternative or revised plans.

5.4 If the discussions under Clause 5.3 do not lead to [Government]'s approval of alternative or revised plans and the Company considers [Government]'s decision to be unreasonable, the Company may elect to refer the reasonableness of [Government]'s decision to a Sole Expert in accordance with Clause 19.

5.5 If the Sole Expert determines that [Government]'s decision is not unreasonable, he shall identify to the Company such changes to the Local Business Development Programme as will be necessary to bring such programme into compliance with [Government]'s requirements in this regard and the Company shall elect whether to amend the programme accordingly or to retain the original programme. However, if the Sole Expert determines that [Government]'s decision is unreasonable, he shall declare his determination to both Parties and the proposed amendment or alteration to the Local Business Development Programme shall be deemed approved.

EXAMPLE 2

9.4 Preferences

Notwithstanding its right to contract with any third party and to the extent allowed by applicable Laws, Licensee shall

- (i) give preference to equipment, materials, services, and finished products manufactured in [*name of host country*], provided they are competitive in economic and technical terms, price, operational parameters, and delivery terms; and
- (ii) in conducting its Exploration Activities and Mining Activities, give priority to the services of the indigenous people of [*name of host country*] or businesses owned by them, including using air, water, rail, and other transport services, provided such services are competitive in price and in efficiency and quality for performing activities of a similar nature and within similar timeframes. Such preferences, however, shall be subject to such indigenous people or businesses providing the same indemnifications and insurances and assuming the same liabilities as those in Licensee's standard contracts with other contractors that are similar in nature.

22.0 Local Community Development

22.1 Community Development Agreement

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

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

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

22.2 Relationship of This Agreement to Community Development Agreement

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

22.3 Local Business Development Plan

The Company resolves to cooperate with the State in carrying out the State’s responsibilities by developing a local business development program to promote economic development and growth in the area of communities impacted by the Project. Such a program would be modified from time to time to fit the existing circumstances

related to the particular operating phase (development, construction and operation) in the life of the Project. The program would be based on the objectives listed in Annex C.

EXAMPLE 1

Development of Host and Neighboring Communities:

The Contractor shall assist in creating self-sustaining, income-generating activities, such as but not limited to, reforestation and production of goods and services needed by the mine and the community. Where traditional self-sustaining income and community activities are identified by such communities to be present, the Contractor shall work with such communities in the preservation or enhancement of such activities.

EXAMPLE 2

Policy of World Bank Group on Indigenous Peoples (OD 4.20, September 1991).

The Parties agree to comply with the substantive environmental and social principles prescribed by this Policy, with the following procedural exceptions and modifications:

(a) Paragraph 12, beneath the heading “Bank Role”, paragraph 15(f), beneath the heading “Indigenous People Development Plan”, and paragraphs 16, 17, 18, 19 and 20, beneath the heading “Project Processing and Documentation”, shall be deemed not to apply.

(b) Paragraph 10 beneath the heading “Bank Role” shall be deemed to read as follows:

Issues on indigenous peoples may be addressed through (a) country economic and sector work, (b) technical assistance, and (c) investment project components or provisions. Issues concerning indigenous peoples can arise in a variety of sectors; those involving, for example, agriculture, road construction, forestry, hydro power, mining, tourism, education, and the environment should be carefully screened. Issues related to indigenous peoples are commonly identified through the environmental assessment or social impact assessment processes, and appropriate measures should be taken under environmental mitigation actions.

(c) Paragraph 11, beneath the heading “Bank Role”, shall be deemed to read as follows:

Country Economic and Sector Work. Country departments should maintain information on trends in government policies and institutions that deal with indigenous peoples. Issues concerning indigenous peoples should be addressed explicitly in sector and sub-sector work. National development policy frameworks and institutions for indigenous peoples often need to be strengthened in order to create a stronger basis for designing and processing projects with components dealing with indigenous peoples.

(d) Paragraph 15(e), beneath the heading “Indigenous People Development Plan” and the subheading “Contents”, shall be deemed to read as follows:

Technical proposals should proceed from on-site research by qualified professionals. Detailed descriptions should be prepared and appraised for such proposed services as education, training, help, credit, and legal assistance. Technical descriptions should be included for the planned investments in productive infrastructure. Plans to draw upon indigenous knowledge are often more successful than those introducing entirely new principles and institutions. For example, the potential contribution of traditional health providers should be considered in planning delivery systems for health care.

(e) Paragraph 15(h), beneath the heading “Indigenous People Development Plan” and the subheading “Contents”, shall be deemed to read as follows: *Monitoring and Evaluation.* Independent monitoring capacities are usually needed when the institutions responsible for indigenous populations have weak management histories. Monitoring by representatives of indigenous peoples’ own organizations can be an efficient way for the project management to absorb the perspectives of indigenous beneficiaries. Monitoring units should be staffed by experienced social science professionals, and reporting formats and schedules appropriate to the project’s needs should be established. Monitoring and evaluation reports should be reviewed by the Parties. The evaluation reports should be made available to the public.

(f) Paragraph 15(i) beneath the heading “Indigenous People Development Plan” and the subheading “Contents”, shall be deemed to read as follows:

The plan should include detailed cost estimates for planned activities and investments. The estimates should be broken down into unit costs by project year end linked to a financing plan. Such programs as revolving credit funds that provide indigenous people with investment pools should indicate their accounting procedures and mechanisms for financial transfer and replenishment.

EXAMPLE 3

OBLIGATIONS OF THE CONTRATOR

A. Development of Community and Mining Technology and Geosciences

- (i) To assist in the development of its mining community to promote the general welfare and enhance the quality of life of its inhabitants, both Indigenous Cultural Community and Non-indigenous, living in the host and neighboring communities.
- (ii) In coordination with the Bureau, to assist in developing mining technology and geosciences as well as corresponding manpower training and development.
- (iii) To allot annually each Contract Year after the Date of Commencement of Commercial Production a minimum of [X %] of the direct mining and milling costs as part of its operating costs to implement Clauses 13.1 (i-i) and 13.1 (i-ii) hereof, of which not more than [X%] shall be allocated to implement clause 13.1(i-ii). Any activity or expenditure intended to enhance the development of the mining and neighboring communities, other than those for which the Contractor is required to be responsible or provide under existing laws, or collective bargaining agreements, and the like, shall be credited as an expenditure under Clause 13.1(i-i), including but not limited to those activities listed in [RELEVANT ENVIRONMENTAL LAW]. Any activity or expenditure directed towards the development of geosciences and mining technology such as, but not limited to, institutional and manpower development, and basic and applied researches, shall be credited as an expenditure under Clause 13.1 (i-ii), including but not limited to those activities listed in [RELEVANT ENVIRONMENTAL LAW].
- (iv) Compliance with the obligations described in this clause may be accomplished by Contractor entering into one or more written agreements between the Contractor and each host and neighboring community, including any agreements which Contractor may have entered into prior to the Effective Date or may hereafter enter into with any such community. Such agreements may provide for the use of multi-stakeholder organizations with ties to the community, such as NGOs, private foundations, or [RELEVANT ORGANIZATION], to implement community development activities funded by the Contractor. If provided in such agreement, the Contractor may have a representative on the organization's board of directors or other managing body. The Contractor shall provide a copy of any such agreement to the Director/Regional Director.

[...]

- (v) Expenditures incurred under this clause pursuant to the request of or under an agreement with the community, in excess of the above percentage of mining and milling costs, shall be carried forward and credited to succeeding years' obligations under this clause.

[...]

J. Development of Host and Neighboring Communities

The Contractor shall coordinate with proper authorities and consult with the host and the neighboring communities in assisting such communities in implementing their development plans, in accordance with sustainable development objectives.

EXAMPLE 4

COMMUNITY RESOURCES

Community Responsibility. It is the policy of the Government and the obligation of the Concessionaire that Operations shall be carried out by the Concessionaire in a manner that is consistent with the continuing economic and social viability of centers of population that have formed and which may form as a result of Operations during the term of this Agreement. Upon request of the Government at any time, the Concessionaire shall consult with the Government and the local communities affected by the Concessionaire's Operations to mutually establish plans and programs for the implementation of this objective, and thereafter the Concessionaire shall in good faith cooperate with the Government with regard to its efforts concerning the realization of such plans and programs.

EXAMPLE 5

COMMUNITY DEVELOPMENT PLAN

- (1) In this clause, the term "community and social benefits" includes:
 - (a) Guaranteed employment for indigenous and non-indigenous persons living in the [REGION] of the said State;
 - (b) Regional development and local procurement of goods and services;
 - (c) Contribution to community services and facilities; and
 - (d) A regionally based workforce.
- (2) The Company acknowledges the need for community and social benefits flowing from this Agreement.
- (3) The Company agrees that, prior to the time at which it submits any proposals pursuant to clause 8 and, if required by the Minister, prior to the time at which it submits any additional proposals pursuant to clauses 10 or 11, it shall:
 - (a) consult with the relevant local government or local governments with respect to the need for community and social benefits in relation to the developments proposed;
 - (b) following such consultation, prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with the developments proposed, and such plan shall include a process for regular consultation by the Company with the relevant local government or local governments in respect of the strategies; and

- (c) submit to the Minister the plan prepared pursuant to subclause (3)(b) and confer with the Minister in respect of the plan.
- (4) The Minister shall within one month after receipt of a plan submitted under subclause (3)(c), either notify the Company that the Minister approves the plan as submitted or notify the Company of any changes that the Minister requires be made to the plan. If the Company is unwilling to accept the changes which the Minister requires it shall notify the Minister to that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes required by the Minister.
- (5) The effect of an award made on an arbitration pursuant to subclause (4) shall be that the plan submitted by the Company pursuant to subclause (3)(c) shall, with such changes required by the Minister under subclause (4) as the arbitrator determines to be reasonable (with or without modification by the arbitrator), be deemed to be the plan approved by the Minister under this clause.
- (6) During the continuance of this Agreement, the Company shall implement the plan approved or deemed to be approved by the Minister under this clause.
- (7) The Company shall report to the Minister about the results of its periodic ongoing consultation with the relevant local government or local governments in accordance with the plan approved or deemed to be approved by the Minister under this clause and as soon as practicable after each such consultation takes place.
- (8) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan approved or deemed to be approved by the Minister under this clause and may agree to amendment of the plan or adoption of a new plan. Any such amended plan or new plan will be deemed to be the plan approved by the Minister under this clause.

EXAMPLE 6

The Company shall establish cooperation agreements with local administrative organizations in accordance with [APPLICABLE LAW] and these agreements may include the establishment of local development and participation funds, local participation committees and local environmental monitoring committees.

23.0 Community Health

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

EXAMPLE 1

9.2 Medical Services

The Company shall:

- (a) enter into service agreements with one or more third party providers of the Medical Services in the vicinity (meaning with the area commonly known as [locale]) of the Facilities to:
 - (i) make the Medical Services available to all employees of the Company and the Registered Dependents of such employees (including for the avoidance of doubt all persons to whom access to the Medical Services is granted by virtue of relevant redundancy or retirement provisions);
 - (ii) make the Medical Services available at a level appropriate to the number of persons entitled thereto from time to time, namely the number of the Company employees and their Registered Dependents (including persons to whom access to the Medical Services is granted by virtue of relevant redundancy or retirement provisions);
 - (iii) ensure, to the extent possible in terms of such agreements, that the Medical Services are provided to such persons described in Clause 9.2(a)(i) and (ii) above at least to the same standard (as to range and quality of service) as that currently available as at the date of this Agreement; and
- (b) ensure that the costs for the provision of Medical Services to such persons described in Clause 9.2(a) above are no greater in real terms than those levied by [predecessor company] for such services immediately prior to Completion.

Provided that, in respect of 9.2(a) and (b) above, the obligations of the Company shall survive only for such period as such Medical Services are reasonably available in the vicinity of the Facilities. For the avoidance of doubt, the obligations of Company hereunder are to procure the provision of Medical Services [...] and do not require the Company to become a primary service provider [...].

EXAMPLE 2

During its Operations, the Concessionaire shall maintain and operate or cause to be operated, health facilities to ensure the availability in each Production Area of medical treatment, care and attention in accordance with applicable Law, and such other improved standards as may be agreed between the parties. Such treatment, care and attention shall be free of charge for the Concessionaire's employees and their resident spouses and dependents. Government officials and/or employees assigned to and regularly employed in the Production Area in an official capacity, and resident in or adjacent to the Production Area, and their resident spouses and dependants, shall, during the time of such assignment, employment and residence, also be entitled to receive medical care on the same basis as Concessionaire employees. The Concessionaire shall further provide reasonable access to such health facilities to members of local communities for ambulatory or emergency care. It is understood that "reasonable access" may include the imposition of fees that are reasonable in light of the economic level of such communities, it being understood that such fees are unlikely to cover the cost of service.

24.0 Employment and Training of Local Citizens

24.1 Minimum Employment Levels

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

24.2 Investment in Skills of Local Work Force

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

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

24.3 Labour Training and Capacity Enhancement

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

24.4 Management Training and Capacity Enhancement

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

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

**Some of the below examples are the full labor sections of actual agreements and may cover issues that are dealt with elsewhere in the MMDA, such as 19.2 Company Hiring Decisions and 16.0 Expatriates.*

EXAMPLE 1

ARTICLE 6 Employment and Training of Host Country Citizens

6.13

- (a) [Company] shall employ [Country] personnel to the maximum extent practicable consistent with efficient operations, subject to the provisions of Law.
- (b) [Company] shall not be limited by the terms of this Agreement in the appointment and dismissal of personnel, which it may do subject to the Law. Nonetheless, due to the particular characteristics of the Project, the [Country] shall grant to [Company], its Affiliates, contractors and/or subcontractors, authorizations related to special work schedules that permit the execution of the Project in accordance with the international standards applicable to mining and the Laws.
- (c) [Company] shall seek to provide direct participation by the citizens of [Country] in the Project through the inclusion of [Country] nationals in the management of the Project. [Company] shall train [Country] nationals to occupy responsible positions in connection with the Project.
- (d) [Company] shall conduct a comprehensive training program for [Country] personnel in the [Country] and in other countries, if necessary, and carry out such program for training and education in order to meet the requirement for various classifications of full time employment for its operations in [Country]. [Company] shall also conduct a program to acquaint all expatriate employees and contractors with the laws and customs of [Country].
- (e) [Company] and its contractors may bring into [Country] such expatriate individuals and their dependents as in [Company]'s judgment are required to carry out the operations efficiently; provided however, that [Country] may make known to [Company], and [Company] shall duly observe, objections based on grounds of national security or foreign policy of [Country]. [Company] shall make arrangements for the acquisition of all necessary Permits (including entry and exit permits, work permits, visas and such other permits as may be required). [Company] will be allowed to provide specific benefits internationally recognized as expatriate allowances related to offshore assignments.

EXAMPLE 2

8. Chapter Eight: Labor Relations, Employment and Training

8.1 The Investor and its Affiliates shall comply with the provisions of relevant labor, employment and social security laws and regulations of [Country]. In implementing its remuneration policies, the Investor will ensure fair wages and equal remuneration for work of equal value.

8.2 During the term of this Agreement, the Investor and its Affiliates and the Government will cooperate together to ensure that there is a suitably qualified Project Workforce available to meet the timeframe of the Project.

8.3 A citizen of [Country], foreign nationals, and people without citizenship, employed by the Investor under a contract must be covered by social insurance as required by law.

8.4 In accordance with Article [x] of the Minerals Law, not less than 90% (ninety percent) of the Investor's employees will be citizens of [Country].

8.5 In accordance with Government Resolution Number [x] dated [date] making amendment to the Annexure of Resolution Number [x] of [year] on establishing the quota of work force and professionals to be received from abroad in [year] made under the authority of the Law on Sending Labor Force Abroad and Receiving Labor Force and Specialists from Abroad, the Investor will utilise best efforts to work with entities that contract with the Investor to provide labor to the Project to ensure that:

8.5.1 for construction work during the Construction Period and Expansion Periods, not less than 60% (sixty percent) of the entities' employees will be citizens of [Country]; and

8.5.2 for mining and mining-related work, not less than 75% (seventy five percent) of the entities' employees will be citizens of [Country].

8.6 If the Investor provides employment and income earning works and services to a number of foreign nationals within the specified percentage set forth in Clause 8.4, it shall pay a monthly workplace charge of twice the minimum monthly wage established by the Government for each foreign national to the Employment Promotion Fund.

8.7 If the Investor employs more foreign nationals than the specified percentage set forth in Clause 8.4, the Investor shall pay a monthly fee of 10 (ten) times the minimum monthly salary for each foreign national in excess of the specified percentage.

8.8 After the payment referred to in Clause 8.7 has been submitted to the budget of the relevant [Province] or district under Article [x] of the Minerals Law a portion of this fee shall be allocated to be spent on the OT Training Strategy and Plan specified in Clause 8.13 to train citizens of [Country] to upgrade their skills or learn new skills in accordance with the rules established by the [Government Body] of the relevant [Province] or district.

8.9 Breaches of the labor quotas set out in Clauses 8.4 and 8.5 shall not constitute a breach of this Agreement and Clause 10.7 shall not apply.

8.10 The Government shall provide support requested by the Investor to facilitate and expedite the granting of all Permits necessary for the engagement of such foreign nationals of the Project Workforce.

8.11 The Investor will use its best endeavours to maximize the participation on a competitive basis of qualified citizens of [Country] as engineers for the Project and within 5 (five) years of the Commencement of Production the Investor must use its best endeavours to ensure that no fewer than 50% (fifty percent) of its employed engineers, and within 10 (ten) years of the Commencement of Production that no fewer than 70% (seventy percent) of its employed engineers, shall be citizens of [Country].

8.12 Within 90 (ninety) days after the Effective Date, the Investor will submit to the Government for public release a detailed and comprehensive 5 (five) year [Country] nationals training strategy and plan for the Project ("Training Strategy and Plan").

8.13 The Training Strategy and Plan will focus on training skilled workers for the Project and training them for professions, and improving their vocational and professional skills, relevant to the Project and mining in [Country] generally and specifically in [region].

8.14 The Investor shall, in accordance with its annual training plan:

8.14.1 organize training of its employees at its Core Operations to upgrade employees' skills and provide further practical experience;

8.14.2 train employees in line with the Investor's short and mid-term human resource plans; and

8.14.3 upgrade selected employees' qualifications by enrolling them in studies inside or outside [Country] on a contractual basis to further upgrade their professional qualifications.

8.15 The Investor shall establish a graduate scholarship program for assisting in the education of [Country] nationals in mining related disciplines, with an emphasis on engineering related disciplines, within which scholarships over a 6 (six) year period from the Effective Date will be granted to 120 (one hundred and twenty) students studying at [Country] universities and to 30 (thirty) [Country] students studying at international universities. The scholarship program will cover tuition fees and living expenses. The Investor shall provide the students holding scholarships with an opportunity to participate in work experience and training at the Project or at a suitable international mining operation.

8.16 The Investor shall establish and maintain health and safety systems and procedures at the Project to ensure a safe workplace which complies with the Law on Labor Safety and Health and all applicable health and safety laws and regulations in [Country] while complying with all requirements under the Labor Law, including in respect of collective bargaining.

8.17 To enable all employees on the Project to be trained to international standards, the Government shall render all support for the adoption, within 6 (six) months of the Effective Date, of an international mining education and training curricula at selected domestic universities and vocational training institutions.

EXAMPLE 3

ARTICLE 6. Training and Human Resources Management

6.1 The Company will comply with the Training and Human Resources Management Programme applicable from time to time.

6.2 The Company may, with the consent of [Government] (which consent shall not be unreasonably withheld), amend or alter the Training and Human Resources Management Programme, with a view to securing the maximum training of and benefits to [Country] citizens from the Facilities. If the Company is unable to comply with the Training and Human Resources Management Programme due to circumstances beyond its control, then such non-compliance shall not constitute a default under this Clause 6 and the Company may give notice of alternative or revised plans to the part of the Training and Human Resources Management Programme affected.

6.3 Should the Company give notice pursuant to Clause 6.2, [Government] shall within thirty (30) days either:

(a) approve those alternative or revised plans; or

(b) meet with the Company to discuss and agree upon the alternative or revised plans.

6.4 If the discussions under Clause 6.3 do not lead to [Government]'s approval of alternative or revised plans and the Company considers [Government]'s decision to be unreasonable, the Company may elect to refer the reasonableness of [Government]'s decision to a Sole Expert in accordance with Clause 19.

6.5 If the Sole Expert determines that [Government]'s decision is not unreasonable, he shall identify to the Company the changes to the Training and Human Resources Management Programme as will be necessary to bring such programme into compliance with [Government]'s requirements in this regard and the Company shall elect whether to amend the programme accordingly or to retain the original programme. However, if the Sole Expert determines that [Government]'s decision is unreasonable, he shall declare his determination to both Parties and the proposed amendment or alteration to the Training and Human Resources Management Programme shall be deemed approved.

6.6 The Company shall not, save as provided below, be restricted in its employment, selection, assignment or discharge of personnel, provided, however, that the employment and the terms and conditions of such employment and the discharge or disciplining of personnel within [Country] shall be carried out in compliance with (i) the laws and regulations of [Country] which are, from time to time, of general application, (ii) the Collective Agreement and (iii) the terms of individual employment contracts from time to time.

6.7 The Company will, in its recruitment, selection, promotion and assignment of personnel not discriminate against comparably trained, qualified and experienced [Country] citizens.

6.8 The Company acknowledges [Government]'s policy to attract qualified [Country] citizens working overseas back to employment within

the [Country] mining and metallurgical industry. In order to facilitate the fulfillment of this policy, the Company will take all reasonable efforts in its recruitment and employment of employees in professional, managerial, engineering and scientific grades to bring to the attention of such qualified [Country] citizens, positions of employment available within the Company (including, but not limited to the advertising of positions in international press and trade journals likely to have circulation amongst suitably qualified potential employees).

6.9 The Company will honour and perform the terms and conditions of the contracts of employment of the Transferring Employees save that such contracts may be varied provided that any variance shall be made in compliance with all aspects of [Country] law and regulations and the terms of the relevant Collective Agreement.

6.10 The Company will recognise, for collective bargaining purposes, the trade union currently representing the Transferring Employees.

6.11 The Company adopts the Redundancy Terms currently applicable to Transferring Employees (and agrees that years previously worked for [Company] shall form part of the accrued service of such Transferring Employees when calculating any subsequent redundancy payment to which they may become entitled upon being terminated by the Company) and agrees that no amendment or variation will be proposed or made to the Redundancy Terms which would adversely affect the Transferring Employees (or any of them) if such Redundancy Terms were to be implemented without the Transferring Employees' consent.

6.12 Notwithstanding the provisions of this Clause 6, the Company (and its contractors or subcontractors) may bring into and retain in [Country] such non-[Country] citizens as, in the reasonable judgment of the Company's management, are required for the efficient and successful operation of the Facilities and, at the Company's request (which shall be accompanied by such information concerning the education, experience and other qualifications of the personnel concerned as may be required by regulations of [Country] of general application in [Country] from time to time) [Government] shall cause all necessary permits (including entry and exit permits, work permits, visas and such other permits or permissions as may be requested) to be issued to such persons and their dependents without undue delay and without hampering the continuous and efficient operation of the Facilities. Provided that [Government] shall be under no such obligation to issue the permits aforesaid to any non-[Country] citizen who is disqualified from entry by reason of previous criminal convictions, health regulations and like restrictions set out in immigration regulations of general application in [Country] from time to time.

6.13 A committee shall be formed, comprising of one member from each of the Ministry, the Company, Ministry of Labour and the local government, which shall have no powers to bind the Company but shall monitor the implementation of the Training and Human Resources Management Programme.

6.14 Such committee shall operate during the term of this Agreement and the Company shall furnish it with reports every six (6) months outlining the progress of the Training and Human Resources Management Programme, problems encountered, positions filled and the number of local people employed.

EXAMPLE 4

ARTICLE 25. Employment of Host Country Personnel

25.1 During the term of this Agreement, [Company], and/or the Operator, and their Affiliates and subcontractors agree to:

- (a) Employ [Country] personnel to the extent they have equal qualifications.
- (b) Prepare and establish a comprehensive program for training [Country] personnel,
- (c) Ensure the housing of workers employed on site in conditions of health and safety conforming to existing or future regulations.
- (d) Respect the existing and future sanitary laws and regulations in force from time to time.
- (e) Respect the existing and future labor laws and regulations relating specifically to conditions of work, minimum wages, the prevention and remedying of work-related accidents and occupational illness, as well as relating to professional associations and trade unions.

EXAMPLE 5

Section XIII

Employment and Training of (Country) Personnel

13.1 The (Contractor) agrees to employ, to the extent possible, qualified (Country) personnel in all types of mining operations for which they are qualified; and after Commercial Production commences shall, in consultation and with consent of the (Government), prepare and undertake an extensive training programme suitable to (Country) nationals in all levels of employment. The objective of said programme shall be to reach within the timetable set forth below the following targets:

[table]

13.2 Cost and expenses of training such (Country) personnel and the (Contractor's) own employees shall be included in the Operating Expenses.

13.3 The (Contractor) shall not discriminate on the basis of gender and shall respect the right of women workers to participate in policy and decision-making processes affecting their rights and benefits.

25.0 Labour Standards

25.1 Labour Standards

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

25.2 Health & Safety

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

26.0 Mining Closure/Post-Closure Obligations

26.1 Closure Plan and Closure Obligations

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

26.2 Guarantees for Closure Expenses

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

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

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

26.3 Post-Closure Monitoring

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

EXAMPLE 1

Clause 9.5

Environmental Reserve Fund

- (a) Within fifteen (15) Days after the end of each Quarter after the Operational Period commences, [Mine] shall deposit into the Environmental Reserve Fund an amount equal to five percent (5%) of the amount obtained by subtracting (i) all monies expended during such Quarter by [Mine] for concurrent or progressive rehabilitation of the Sites and the cost of any bond, surety or other financial assurance required by Law from (ii) all operating costs paid or incurred by [Mine] during such Quarter in the operation of the Project and the Electrical Generation System, until the amount in the Environmental Reserve Fund has reached the estimated costs of closure of the Mine, including post-closure requirements, as estimated in the Closure Plan. If the calculation described in the preceding sentence produces a negative number (i.e., a credit to [Mine]), the amount [Mine] shall be required to deposit in the Environmental Reserve Fund in subsequent Quarters shall be reduced by the amount of such credit. If [Mine] is required by Law to post any bond, surety or other financial assurance with respect to the costs of closure of the Mine, the amount of the Environmental Reserve Fund shall be reduced by the face amount of such bond or financial assurance. All Quarterly payments made by [Mine] to the Environmental Reserve Fund and any costs incurred for any bond, surety or other financial assurance required by Law shall be deductible for income tax purposes in the Year in which the payments are made. The [Government] shall have the right, within one hundred eighty (180) Days of the end of each Calendar Year, to audit the expenditures made by [Mine] for concurrent or progressive remediation of the Sites during such Year.
- (b) If the estimated costs of closure and post-closure change materially as a result of changes to the Closure Plan or changes in the condition of the Sites or concurrent or progressive rehabilitation, [Mine] shall amend the estimate for closure contained in the Closure Plan, consistent with Section 11.5. The Environmental Reserve Fund shall be adjusted in accordance with the changed estimate, through payment of any excess to [Mine] or further deposits by [Mine] in accordance with Section 9.5(a). [Mine] shall not be required to make a deposit greater than deposits

required under Section 9.5(a) in any given Year, except as may be required pursuant to Section 9.5(e).

- (c) Once the Environmental Reserve Fund has reached the level necessary to fund the estimated costs of closure of the Mine, then: (i) any future payments to the Environmental Reserve Fund will be based on substantial changes to the Closure Plan or other circumstances as agreed by the Parties; and (ii) the excess amount at the end of each Year, as agreed by the Parties, shall be paid in accordance with Section 9.5(d) after the end of that Year to [Mine] from the Environmental Reserve Fund, and the amount withdrawn shall be subject to income taxation and included in the calculation of the NPI Tax.
- (d) Funds in the Environmental Reserve Fund shall be disbursed for closure and post-closure costs in a manner consistent with the Environmental Management Plan, Section 9.5(c) and Section 9.5(e). All disbursements from the Environmental Reserve Fund shall be subject to approval by the [Government], which approval shall not unreasonably be withheld, conditioned or delayed. If the [Government] has neither approved nor objected to any proposed disbursement in accordance with this Section 9.5(d) within thirty (30) Days after Notice given by [Mine] of such proposed disbursement, the [Government] shall be deemed to have approved such disbursement.
- (e) Immediately prior to the combination of the Governmental Remediation Fund and the Environmental Reserve Fund pursuant to Section 11.11, an actuarial determination shall be made as to the amount required in the Environmental Reserve Fund pursuant to the mechanism established in Sections 9.5(a) through 9.5(c), and in the event there are funds in the Environmental Reserve Fund over and above those required pursuant to such determination, such excess funds shall be paid to [Mine] and shall be subject to income taxation and included in the calculation of the NPI Tax. Conversely, if the funds in the Environmental Reserve Fund are not sufficient to complete the remaining activities in the Post Closure Period as set out in the Closure Plan, then [Mine] shall be required to fund the shortfall.

EXAMPLE 2

11.5 The Environmental Management Plan.

The Environmental Management Plan shall be prepared by Company during the Initial Period and shall include plans for environmental management, remediation, control and closure of all areas and aspects of the Project that are included in the Feasibility Study consistent with this Article 11. Company will use commercially reasonable efforts to coordinate the Environmental Management Plan with the Environmental Management Plan of THE STATE as then in effect. Company shall include in the Environmental Management Plan, a Closure Plan for Mine closure that will describe all activities that will occur during the Closure Period and the Post-Closure Period to meet the objectives of the Environmental Laws and the Environmental and Social Policies and Guidelines during all potential closure events. The Closure Plan shall also include a description of the actions to be taken during any periods of temporary closure or cessation of operations and for the closure activities to be performed should closure be required prior to the completion of the planned mine life. The Closure Plan will include a schedule and an estimate of the funds required to conduct closure and remediation of all site facilities and site disturbances during the Closure Period and the Post-Closure Period. Closure cost estimates shall include an allowance for Third Party closure and management of the Mine.

[...]

11.11 Combination of Funds. Upon either (i) the termination of this Agreement or (ii) at [Mine]'s option following the completion of the Closure Period, the Governmental Remediation Fund and the Environmental Reserve Fund shall be combined into one fund (the "Post-Closure Fund") to create a source of funding for the performance of any and all foreseen Post-Closure activities. The Post-Closure Fund shall be transferred to the [Government] who shall continue to perform the required post-closure activities. Alternatively, a Third Party manager shall be retained who will directly, or through qualified Third Parties, continue to perform the post-closure activities. Upon completion of the Closure Period in accordance with Section 11.9 and the combination of funds under this Section 11.11, the [Government], [Mine] and the CENTRAL BANK shall release [Mine] from any and all obligations arising under this Agreement with respect to Environmental Conditions at the [Mine], however caused or created.

11.12 Deposit of Additional Monies in the Post-Closure Fund. In the event Environmental Conditions newly identified prior to completion of the Closure Period result in the need for additional monies to be deposited in the Post-Closure Fund, [Mine] and/or the [Government], depending upon the Party responsible for the increased liability, shall promptly deposit such monies in the Post-Closure Fund.

11.13 Assumption by [Mine] of Responsibilities for Remediation of Historic Environmental Matters.

- (a) Notwithstanding any assignment of responsibility for Historic Environmental Matters pursuant to this Article 11, [Mine] shall have the right, but not the obligation, from time to time during the Term of this Agreement, by Notice to the Government Parties (each a "Liability Assumption Offer") to offer to assume all of the obligations and rights of the Government Parties arising under Section 7.2 of this Agreement for the remediation of Historic Environmental Matters in return for the payment by the [Government] of the consideration (which may involve the forgiveness of some or all of the payments due to the [Government] pursuant to Article 8) and on the terms and conditions specified in the Liability Assumption Offer. The Government Parties may accept a Liability Assumption Offer within sixty (60) Days after the receipt of such offer by Notice to [Mine]. If the Government Parties do not accept a Liability Assumption Offer within sixty (60)-Day period, the Liability Assumption Offer shall expire and be of no further force or effect. If the Government Parties timely accept a Liability Assumption Offer, the Parties shall promptly thereafter amend this Agreement in accordance with terms of the Liability Assumption Offer.
- (b) If the Government Parties accept a Liability Assumption Offer, the Government Parties will continue to remain liable for any claim, demand, cause of action, or asserted right arising out of or relating in any way to the operation of the [Mine] or any activities at the [Mine] prior to the Project Notice Date, (other than operations or activities conducted by or on behalf of [Mine] or its Affiliates), and for all Third Party Liability.

EXAMPLE 3

The Company shall rehabilitate the environment damaged by Core Operations in accordance with [HOST COUNTRY] and international standards and codes in effect when the mine is closed in whole or in part.

27.0 Rights of Citizens of the State

27.1 Company Grievance Mechanism

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

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

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

OTHER TERMS & CONDITIONS

28.0 Obligations of Contractors and Subcontractors

28.1 Applicability of Obligations to Contractors and Their Subcontractors

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

28.2 Applicability of Obligations to Parent Company, and Affiliates

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

EXAMPLE 1

9.3 Use of Contractors

Licensee shall assume control, management, and responsibility for its Exploration Activities and Mining Activities and shall assume all risks thereof in accordance with the terms of this Agreement. Subject to Section 12.2 (*Pricing and Transactions with Affiliates*), Licensee may engage contractors and suppliers, whether or not Affiliates of Licensee, for the execution of such phases of its activities as the Licensee deems appropriate. The records of such Contractors shall be made available to the Licensing Authority, in accordance with Section 8.2 (*Inspection*).

29.0 Assignment

29.1 Affiliated Company Assignment

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

29.2 Third Party Assignment

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

29.3 Capacity of Successors and Assigns

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

29.4 Release

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

29.5 No Assignment by State

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

**See related provisions at 8.1 Security Interest and 37.7 Conflicts of Interest.*

EXAMPLE 1

14.1 Assignment by THE STATE.

- (a) During the Term of this Agreement, THE STATE shall not transfer or assign its rights or obligations in this Agreement or in the Mine or create or permit to be created any encumbrance or claim on its rights in this Agreement or on all or any portion of the Mine. The foregoing shall not prohibit the CENTRAL BANK from transferring or selling shares of the capital stock of Company owned by it to another governmental entity of the STATE. The STATE shall not sell, mortgage, divest, lease, otherwise dispose of or terminate the Fiscal Reserve and assets leased

hereunder during the Term of this Agreement.

- (b) The restrictions and obligations set forth in Section 14.1(a) shall be recorded in the Public Registry of Mining Rights. Any attempted disposition in violation of Section 14.1(a) shall be void.

14.2 Assignment by COMPANY.

- (a) The rights and interests of COMPANY under this Agreement may be transferred or assigned and the duties and obligations of COMPANY under this Agreement may be delegated, in whole or in part, at any time only (i) as provided in Article 10 or this Article 14, or (ii) to an Affiliate of COMPANY (for the duration of the time such Affiliate remains an Affiliate of COMPANY), provided, however, that COMPANY shall remain liable for the performance of all such obligations.
- (b) COMPANY may transfer or assign fifty-one percent (51%) or less of its rights, interests, and/or obligations or both under this Agreement to a Qualified Successor at any time without the prior written consent of THE STATE.
- (c) Except as provided in Section 14.2(a), COMPANY may not transfer or assign more than fifty-one percent (51%) of its rights, interests and/or obligations under this Agreement without the prior written consent of the STATE, which consent shall not be unreasonably withheld, conditioned or delayed.
- (d) For purposes of this Section 14.2, a Change of Control of COMPANY (to any Person that is not an Affiliate of COMPANY) or a Change in Management shall be deemed a transfer by COMPANY of its rights, interests and/or obligations under this Agreement.
- (e) COMPANY shall give the STATE Notice at least thirty (30) Days prior to any proposed transfer of its rights, interests and/or obligations under this Agreement, other than a transfer subject to Section 14.2(a) or Section 14.2(b). Such Notice shall specify (i) the name and address of the proposed transferee or assignee, (ii) a description of the technical capabilities and mining experience of the proposed transferee or assignee, and (iii) reasonable information on the financial stability of the proposed transferee or assignee. The STATE shall give expedited attention to such Notice, and in any event shall be deemed to have approved the proposed transferee or assignee if it fails to approve or disapprove the proposed transferee or assignee within ninety (90) Days after receipt of the Notice of the proposed transfer or assignment.
- (f) Nothing in this Section 14.2 shall grant THE STATE any right to approve any arrangements by COMPANY for the financing of the construction, development or expansion of the Mine, the creation of security interests or the transfer or assignment of interests in this Agreement or in respect of the Mine in connection with such financing.
- (g) Any transferee or assignee of the rights and obligations of COMPANY under this Agreement (other than in the case of transfer or assignment of equity in COMPANY) shall agree to assume the obligations of COMPANY under this Agreement, and such provision shall be incorporated in and made part of the instrument of assignment or transfer, a copy of which shall be furnished to the STATE.

[...]

17.4 Successors and Assigns.

Subject to the limitations on transfer contained in Article 14, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties.

EXAMPLE 2

ASSIGNMENT

COMPANY may, with the consent of the Minister (in accordance with Section xx of the Act), assign its interest in a Large Scale Mining Licence and this Agreement and Government covenants that the consent of the Minister to such an assignment shall not be withheld in the circumstances set out in Clauses 0 and 0. No assignment of an interest in a Large Scale Mining Licence may be made without the assignment to such person of a concomitant interest in this Agreement and vice versa.

If COMPANY assigns its entire interest in a Large Scale Mining Licence and its rights and obligations under this Agreement in accordance with Clause 0, then upon the assignee becoming party to this Agreement, COMPANY shall be discharged from any further liability in respect of any obligation which accrues after the date of that assignment, without prejudice to pre-existing rights accrued to Government against COMPANY and vice versa.

EXAMPLE 3

22 ASSIGNMENT

22.1 To Affiliates

The Parties acknowledge that Licensee contemplates transferring this Agreement and the License, and its rights and interests thereunder, to an Affiliate. The Licensee shall have the right to transfer its rights and interest under the License and this Agreement to an Affiliate subject to notification to the Licensing Authority.

22.2 To Third Parties

Licensee shall have the right to freely transfer its rights and interest under the License and this Agreement to a third party, but subject to prior

approval by the Licensing Authority, which approval shall not be unreasonably withheld or delayed.

EXAMPLE 4

Section 22 – Assignment, Encumbrance and Change of Control

22.1 General Rules. Except as provided in this Section 22,

- (a) no sale, assignment, pledge or other transfer of the rights of the (Concessionaire) or the (Operating Company) under this Agreement or under any Exploration License or Mining License issued under this Agreement, by operation of law or otherwise,
- (b) no direct or indirect transfer of Management Rights with respect to the (Concessionaire) or the (Operating Company), or of the right to share in profits of the (Concessionaire) or the (Operating Company), by operation of law or otherwise, and
- (c) no transfers by the (Concessionaire) or the (Operating Company) other than in the ordinary course of renewal and replacement of its properties of any interest in any (Mine), Mining Plant or Infrastructure to any Person is valid unless it has received the prior written consent of the (Government). Terms used in this Section 22 are defined in Section 22.9.

22.2 Transfers to (Operating Company). The (Concessionaire) may appoint the (Operating Company) to conduct the Operations on its behalf in accordance with the terms and conditions of this Agreement and of any operating or other agreement between the (Concessionaire) and the (Operating Company) (the “(Project) Operating Agreement”), provided, that at all times the (Operating Company) shall be a wholly-owned subsidiary of the (Concessionaire) and shall be incorporated in (Country). Prior to the Effective Date, the (Concessionaire) shall deliver to the (Government) a complete and accurate copy of the (Project) Operating Agreement and subsequent to the Effective Date, the (Concessionaire) shall deliver to the (Government) a complete and accurate copy of any and all amendments to the (Project) Operating Agreement, in each case within 3 Business Days after the effective date thereof. All rights, obligations and undertakings of the (Concessionaire) provided in this Agreement in connection with the Operations shall be deemed assigned to and assumed by the (Operating Company) to the extent applicable and appropriate for purposes of conducting the Operations and, except for any provision of this Agreement that specifically refers to the (Operating Company), for purposes of this Agreement, other than in this Section 22, the term “Concessionaire” shall be deemed to mean the Operating Company when referring to any activities undertaken by the (Operating Company) pursuant to the (Project) Operating Agreement, provided that the (Operating Company) may not engage in any transaction described in Section 22.3 or 22.4 without the prior consent of the (Government).

22.3 Other Transfers Permitted Without Prior Consent.

- (a) The transfer of rights under this Agreement and under any Exploration License or Mining License issued under this Agreement as a consequence of a merger or consolidation of the (Concessionaire) with another entity does not require such consent if the transaction does not result in a Change of Control, the surviving entity is a corporation organized under the laws of (Country) that delivers to the Minister concurrently with such merger or consolidation written representations and warranties as to such corporation as set forth in Section 21.1 immediately after giving effect to such merger or consolidation and assumes in a writing satisfactory to the (Government) all liabilities of the (Concessionaire) under this Agreement and under any Exploration License or Mining License issued under this Agreement, and (i) the survivor is an “Eligible Applicant” under the Mining Law and a Permitted Transferee under Section 22.6, and (ii) the survivor has in the reasonable judgment of the Minister the technical skills, experience, and financial resources necessary to carry out its obligations under this Agreement and under any such Exploration and Mining Licenses.
- (b) A transfer by the (Concessionaire) of all of its interest in this Agreement and under any Exploration License or Mining License issued under this Agreement and to the related Mine, Mining Plant and Infrastructure to an Affiliate of the (Concessionaire) at a time at which the (Concessionaire) is not in default in the performance of its obligations under this Agreement does not require such consent if the beneficial owners of the right to share in profits of the Affiliate and the holders of Management Rights with respect to the Affiliate are the same as for the (Concessionaire) immediately prior to such action, the Affiliate that delivers to the Minister concurrently with such transfer written representations and warranties as to such corporation as set forth in Section 21.1 made immediately after giving effect to such transfer and assumes in a writing satisfactory to the (Government) all liabilities of the (Concessionaire) under this Agreement and such Mining Licenses, and (i) the (Concessionaire) remains jointly and severally liable for the performance of its obligations under this Agreement, and (ii) the transferee is an “Eligible Applicant” under the Mining Law and a Permitted Transferee under Section 22.6.
- (c) A direct or indirect transfer of Management Rights in the (Concessionaire) independently of any transfer or purported transfer of any interest in this Agreement and under any Exploration License or Mining License issued under this Agreement does not require such consent if it does not result in a Change of Control, or in a Prohibited Person acquiring Management Rights in the (Concessionaire).
- (d) A direct or indirect transfer of any right to share in the profits of the (Concessionaire) does not require such consent if it does not result in a Prohibited Person or the members of the immediate family of such Prohibited Person being deemed entitled to receive in excess of 5% of the profits of the (Concessionaire).

22.4 Transfers with Consent. Any other transfer referred to in Section 22.1 and not covered by Section 22.5 requires the prior written consent of the (Government), provided that the consent of the (Government) shall not be unreasonably withheld in the case of a transfer after completion of both the Phase I Capacity Test and Phase II Capacity Test as described in Section 6.2 of all of the (Concessionaire’s) interest under this Agreement, under any Exploration License or Mining License issued under this Agreement and all Mining Plant, Infrastructure and other property of the (Concessionaire) used in connection with this Agreement at a time at which the (Concessionaire) is not in default in the performance of its obligations under this Agreement if the transferee delivers to the Minister concurrently with such transfer written representations and warranties as

to such corporation as set forth in Section 21.1 made immediately after giving effect to such transfer and assumes in a writing satisfactory to the (Government) all liabilities of the (Concessionaire) under this Agreement and such Exploration and Mining Licenses, and (a) the transferee is an "Eligible Applicant" under the Mining Law and a Permitted Transferee under Section 22.6 and (b) the transferee has in the reasonable judgment of the Minister the technical skills, experience, and financial resources necessary to carry out its obligations under this Agreement and such Exploration and Mining Licenses.

22.5 Right to Encumber.

- (a) Each of the (Concessionaire) and the (Operating Company) may mortgage, charge or otherwise encumber (collectively, "Mortgage") all or any portion of its interest under this Agreement and under any Exploration License or Mining License issued under this Agreement to finance a portion of the cost of constructing and acquiring any current mines, Additional Concession Area Mine, Contiguous Area Mine, Mining Plant, Infrastructure and other property contemplated by the Modified Bid Materials or any Approved Feasibility Study upon receipt of prior written consent thereto from the (Government). Other than in the case of Permitted Liens,
- (b) the Mortgage must extend to all rights of the (Concessionaire), or the (Operating Company), as applicable, under such Exploration or Mining Licenses and to substantially all of such [mines], Additional Concession Area Mine, Contiguous Area Mine, Mining Plant, Infrastructure, and other property (including intellectual property) necessary for Operations ("Pledged Assets"), and
- (c) the holder of such Mortgage must agree in writing with the (Government) to the terms of this Section 22.5 and to any transfer restrictions set forth in such Exploration and Mining Licenses. Subject to its confidentiality rights under this Agreement, the (Government) will provide the (Concessionaire), the (Operating Company) and any lender with such documents as any of them shall reasonably request in connection with any transaction with respect to such Mortgage.
- (d) Any foreclosure or other exercise of remedies under such Mortgage must result in a transfer of the rights of the (Concessionaire), or the (Operating Company), as applicable, under this Agreement and the Pledged Assets to a single Person who satisfies all the requirements for an assignee set forth in the proviso contained in Section 22.4.
- (e) "Permitted Liens" shall mean Liens created solely for the purpose of securing Indebtedness incurred to finance or refinance the purchase price or cost (including the cost of installation, repair, or improvements) of Movable assets acquired after the Effective Date (by purchase or otherwise), including after acquired inventory, equipment, or other tangible or intangible Movable assets, provided that no such Lien shall extend to or cover any assets other than the assets so acquired and improvements thereof.

22.6 Permitted Transferee. A "Permitted Transferee" is a Person defined as such in regulations issued by the (Government) specified as being for the purpose of identifying eligible recipients of Mining Licenses issued under the Mining Law.

Pending the issuance of such regulations, a Person is a "Permitted Transferee" if (i) it is not a Prohibited Person, does not have an officer or director who is a Prohibited Person, and is not controlled by a Prohibited Person, and (ii) no Person or Persons holding in the aggregate (x) in excess of 5% of the voting rights ordinarily empowered to control the management of such Person or (y) in excess of 5% of the rights to share in the profits of such Person is or are Prohibited Persons. A "Prohibited Person" for the purposes of this Section 22.6 is a Person identified as such in regulations issued under the authority of the Ministry of Finance and the Ministry of Justice and applicable to the holders of licenses issued under the Mining Law. Pending the issuance of such regulations, a "Prohibited Person" is a Person with whom transactions are currently prohibited under any Sanctions List published by a Sanctions Committee of the United Nations Security Council or any equivalent measure issued by the World Bank, the European Union or the United States of America, or any Person that issues bearer shares or other instruments to evidence ownership of such Person that do not permit the identification of the owners of such Person.

22.7 Responsibility of (Concessionaire). It is the responsibility of the (Concessionaire) and its Controlling Persons to ensure that Management Rights with respect to the (Concessionaire) and the rights to share in the profits of the (Concessionaire) are structured and held in such a manner that transfers of such rights are made in compliance with this Section 22.

22.8 Disclosure; Consents; Exceptions; Fees.

- (a) If the Minister questions whether a transfer occurred without a required consent, the relevant transferor has the burden of demonstrating that consent was not required.
- (b) A transfer does not comply with the requirements of this Section 22 if any representations and warranties required to be delivered in connection with such transfer were not true and correct as of the date as of which they were made.
- (c) If the (Concessionaire) or the (Operating Company) determines that a transfer occurred that did not comply with this Section 22, and reports such transfer to the Minister promptly thereafter, the (Concessionaire) or the (Operating Company), as applicable, is not in breach of its obligations under this Section 22 if within 60 days of such report it takes such actions as will result in such unpermitted transfer being reversed or otherwise remedied to the satisfaction of the Minister.

22.9 Terms used in Section 22. For the purpose of this Section 22:

- (a) a "Change of Control" with respect to the (Concessionaire) occurs if a Person or Group other than the Person or Group that had Control of the (Concessionaire) at the time it executed this Agreement was granted or acquires Control of the (Concessionaire), or if there is a Change of Control within the Group that Controls the (Concessionaire);
- (b) a "Change in Control" within a Group is deemed to occur if there is a change in the beneficial ownership of at least 33 1/3% of the Management Rights of the (Concessionaire) held within such Group (including both a change that comes about by expansion of a Group and a change that

comes about through a transfer of Management Rights within a Group);

- (c) a "Controlling Person" is a Person who Controls the (Concessionaire) or who is a member of a Group that Controls the (Concessionaire);
- (d) a "holder" of a Management Right includes any Person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares the power to direct the exercise of such Management Right
- (e) a Person holding the right to share in distributions from a Person that holds a right to share in the profits of the (Concessionaire) has the right to share in the profits of the (Concessionaire) if the second Person passes through distributions from the (Concessionaire) to the first Person without reflecting in the distribution its own income and expenses, or if the right to share in the profits of the (Concessionaire) represents a principal asset of the second Person.
- (f) if a trust or other entity holds the rights to share in the profits of a Person, the beneficiaries of such trust are deemed to hold the rights to share in the profits of that Person. If Person A Controls Person B, and Person B has a 25% voting interest in the (Concessionaire), then Person A is deemed to hold 25% of the Management Rights in the (Concessionaire). And if Person Z Controls Person A, then Person Z is deemed to hold 25% of the Management Rights in the (Concessionaire), and a transfer of Person Z's rights to a third party is within the scope of Section 22.2(c). But if there is no Person (or Group) that Controls Person B, then the (Concessionaire) does not have to look beyond Person B for persons who may be said to have Management Rights with respect to the (Concessionaire). Similarly, if Person A is entitled to a 10% share of the profits of Person B, and Person B's sole asset is a 25% interest in the (Concessionaire), then Person A is deemed to hold the rights to share in 2.5% of the profits of the (Concessionaire).

EXAMPLE 5

Assignment

26. (1) Subject to the provisions of this clause the Company may at any time assign, mortgage, charge, sublet or dispose of to any person with the consent of the Minister the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of any Agreement Mining Tenement or any other lease, licence, easement or other title granted under or pursuant to this Agreement) and of the obligations of the Company hereunder subject however in the case of an assignment, subletting or disposition, to the assignee, sublessee or disponent (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with, observe and perform the provisions hereof on the part of the Company to be complied with, observed or performed in regard to the matter or matters the subject of such assignment, subletting or disposition.

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained in this Agreement and in the Agreement Mining Tenements and in all other leases, licences, easements or other titles the subject of an assignment, mortgage, subletting or disposition under subclause (1) provided that the Minister may agree to release the Company from such liability where the Minister considers such release will not be contrary to the interests of the State.

(3) Notwithstanding the provisions of the [country statutes], insofar as the same or any of them may apply:

- (a) no assignment, mortgage, charge, sublease or disposition made or given pursuant to this clause of or over an Agreement Mining Tenement or other lease, license, easement or other title granted under or pursuant to this Agreement by the Company or any assignee, sublessee or disponent who has executed and is for the time being bound by deed of covenant made pursuant to this clause; and
- (b) no transfer, assignment, mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge, shall require any approval or consent other than such consent as may be necessary under this clause and no equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent (otherwise than as required by this clause) or because the same is not registered under the provisions of the [statutes] as the case may be.

EXAMPLE 6

33.5 Assignment and Succession. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the permitted successors by operation of law and permitted assignees of the parties including without limitation in the case of the (Government), all future manifestations or forms of public power exercising sovereign authority over all or part of the present territory of (Country).

30.0 Availability of Information

30.1 This Contract a Public Document

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

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

30.2 Certain Information Confidential

- (a) Confidential Information shall be retained by the State and the Company in strictest confidence and shall not be disclosed to any third party without the express prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, provided that the Company's consent shall be deemed given if not withheld in writing within 24 hours after the State notifies the Company in writing of an emergency situation where disclosure is required to protect the health, safety, and security of the citizens
- (b) "**Confidential Information**" shall mean:
 - (a) Information that is by law confidential under Applicable Law;
 - (b) Personnel matters, health records of individual employees, or other documents in which employees or others have a reasonable expectation of privacy and other matters that involve the privacy of individuals;
 - (c) Confidential technical or proprietary information regarding equipment, process innovations, or

business secrets;

- (d) Confidential legal matters, including advice from attorneys;
 - (e) The Company's intellectual property related to the Project, including geological information and mineral reserves;
 - (f) Information (other than Confidential Information) obtained in the course of an audit as set forth in Section 11.0 above;
 - (g) Information disclosed to the other Party to this Agreement designated as "Confidential" by Notice to the other Party at the time of its initial disclosure to such Party, provided that such designation shall be deemed to be a representation that the disclosing Party has reasonably determined after review of such information that maintaining the confidentiality of such information is necessary to protect business secrets or proprietary information .
- (c) The term "Confidential Information" does not mean or include information that:
- (a) becomes publicly available without wrongful disclosure;
 - (b) was obtained by a Party from a Third Party who is not known by the obtaining Party to be under any obligation of confidentiality with respect to such information;
 - (c) is required to be disclosed by Applicable Law, by any law to which the Company or its Affiliates is subject, by any court proceeding or arbitral award, or by any applicable rule of a stock exchange;
 - (d) is disclosed to Affiliates, professional advisers, potential providers of finance, bona fide potential purchasers; or
 - (e) Confidential Information specifically related to any part of the Mining Area that is relinquished from the provisions of this Agreement.
- (d) The Company and the State shall implement the Extractive Industries Transparency Initiative (EITI) and, where appropriate, the Company shall contribute to the State's implementation of the EITI by becoming an EITI supporting company.
- (a) The Company and the State shall each comply with requirements of the Extractive Industries Transparency Initiative with respect to all payments and reporting to be made by either of them pursuant to this Agreement. Breach by one Party of these provisions shall not excuse compliance by the other Party.

**See related provisions at 9.0 Financial Records and Statements, Accounting Standards and Currencies.*

EXAMPLE 1

17.10 Confidentiality.

- (a) Except as required by Law, THE STATE and COMPANY shall retain in strictest confidence all Confidential Information and shall not disclose

the Confidential Information to any Third Party without the express prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

- (b) If THE STATE is required by Law to disclose Confidential Information, THE STATE shall use its reasonable efforts to provide a Notice to COMPANY in advance of such disclosure describing the circumstances giving rise to the required disclosure and the Confidential Information that it proposes to disclose and afford COMPANY an opportunity to oppose or to seek a limitation on such disclosure from an appropriate court or other governmental agency.
- (c) Nothing in this Section 17.10 shall, however, in any way limit or impair the right of COMPANY to use Confidential Information to carry out Operations or otherwise to secure the benefits of, or exercise its rights under, this Agreement.

“Confidential Information” shall mean (i) the COMPANY’s Intellectual Property and (ii) information about the Project which is obtained by a Party to this Agreement in the course of conducting activities or duties or exercising its rights under this Agreement or in connection with this Agreement and which is designated as “Confidential” by Notice to the other Parties at the time of its initial disclosure to such Parties, including the Feasibility Study. The term “Confidential Information” shall not include information which: (i) becomes available to the public; (ii) was obtained by a Party from a Third Party who is not known by the obtaining Party to be under any obligation of confidentiality with respect to such information; or (iii) is required by Law or any applicable rule of a stock exchange to be disclosed.

EXAMPLE 2

Article 17 CONFIDENTIALITY

17.1 Ownership of Information and Obligation of Confidentiality

Subject to Article [x] of the Mining Proclamation, all factual reports, geological and geophysical data, maps, and other work product (“work product”) furnished by Licensee to the Licensing Authority or other Government agencies or obtained or developed by or for Licensee in the performance of activities under this Agreement shall be and remain the property of Licensee during the term of this Agreement. All such work product shall be kept confidential by the Licensing Authority, Government and all its agencies, which shall not disclose the same to any third person directly or indirectly except upon the prior written consent of Licensee.

17.2 Expiration of Confidentiality Obligation

The confidentiality obligation in Section 17.1 shall end upon the termination of this Agreement.

EXAMPLE 3

Confidential Information.

- (a) Subject to the limitations below and subject to applicable Law, for a period of three years from disclosure, each party agrees not to divulge information designated in writing at the time of delivery as confidential information (“Confidential Information”) by the other party to any other Person without the prior written consent of the designating party. By designation of information as Confidential Information a party will be deemed to have represented that after review of such information it has reasonably determined that the release of such information to third parties would materially adversely affect the party or its economic well-being. In any event Confidential Information does not include information that (a) was publicly available or otherwise known to a party prior to the time of disclosure to it and not subject to a confidentiality obligation, (b) subsequently becomes publicly known through no act or omission by a party, (c) otherwise becomes known to a party other than through disclosure to such party by the other party, (d) constitutes financial statements delivered to the Government under Section 17.6 that are otherwise publicly available, (e) is mainly of scientific rather than commercial value, such as geological and geophysical data relating to areas in which the Concessionaire no longer holds a valid exploration license and has not designated as a Proposed Production Area, or (f) has been disclosed pursuant to generally applicable Law or a final order of any court having jurisdiction that is not subject to appeal.
- (b) Each party will maintain the confidentiality of Confidential Information disclosed to it in a manner consistent with procedures adopted by such party to protect its own confidential information, provided that such party may deliver or disclose Confidential Information to
 - (i) its financial, legal and other professional advisors (to the extent such disclosure reasonably relates to the administration of this Agreement), or
 - (ii) any other Person to which such delivery or disclosure may be necessary or appropriate (1) to effect compliance with any law, rule, regulation or order applicable to such party, (2) in response to any subpoena or other legal process, (3) in connection with any litigation to which such party is a party if reasonably delivered necessary to protect such party’s position in such litigation or (4) if an Event of Default has occurred and is continuing but only to the extent such party reasonably determines such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under this Agreement.
- (c) This Agreement and any amendments thereto are not confidential. The Concessionaire is not entitled to confidential treatment of information relating to the timing and amount of royalties and other payments specifically due under the terms of this Agreement or of Taxes and Duties payable by the Concessionaire or the rates at which such royalties, other payments or Taxes and Duties become due or are assessed, or information that is necessary to compute the amount of such royalties or other payments becoming due.

EXAMPLE 4
CONFIDENTIALITY

15.1 Confidential Information

- (a) All of (Parent Company), (Mining Company), the (Government), the (Provincial Government), all their Ministers and the (Bank) must treat this agreement and all commercial, technical, financial and personal information concerning activities conducted pursuant to this agreement (Confidential Information) as confidential, except for reports and studies the parties jointly agree to publish concerning the environment or other matters.
- (b) Subject to clause 15.2, a party may not reveal that information to any third parties except to its officers, employees, agents, professional advisers and contractors.

15.2 Permitted Disclosure

- (a) Either (Parent Company) or (Mining Company) may disclose Confidential Information:
- (i) to an Affiliated Company, as long as the information is treated as confidential by the Affiliated Company;
 - (ii) to a prospective purchaser, and its advisers, of an interest in the (Project) concerning a bona fide proposed assignment provided the prospective purchaser has first executed a confidentiality agreement in respect of the information to be provided;
 - (iii) to the extent the information enters the public domain independently of any breach by either of them or is revealed by a third party not under an obligation of confidentiality;
 - (iv) as required by the rules of any stock exchange on which (Parent Company), (Mining Company) or an Affiliated Company's shares are traded;
 - (v) where reasonably necessary for the purposes of any arbitration or legal proceedings involving only the parties; or
 - (vi) as may otherwise be required by this agreement, Applicable Law or the applicable law and regulations of any country having jurisdiction over the party.
- (b) The (Government), the (Provincial Government), all their Ministers and the (Bank) must not reveal any Confidential Information or proprietary information owned by (Parent Company) or (Mining Company) except to the extent the information enters the public domain independently of any breach by any of them or is revealed by a third party not under an obligation of confidentiality; or as provided by the Applicable Law.
- (c) A party may disclose technical information with the consent of the other parties (and this consent must not be unreasonably withheld) [5 years] after that technical information was created or communicated to another party, whichever is the later. However, technical information concerning the Prospecting Area may only be revealed [3 months] after the expiration of the Mining Lease.
- (d) If an application is made by a third party to the (Government) for information subject to this clause 15, the information may only be revealed [18 months] after the date of the application. But the (Government) may use any information in general and statistical reports on minerals and mining in (Country).
- (e) Any person making a permitted disclosure under this clause must take all reasonable steps to ensure that the person to whom disclosure is made keeps confidential all Confidential Information disclosed

15.3 Press Releases

Subject to clause 15.2, (Mining Company) and the (Government) must not quote the other parties views in any press release. A party may only give a press release with the prior consent of the other parties, which consent must not be unreasonably withheld

15.4 Obligations exist beyond termination

The obligations in relation to Confidential Information imposed by this agreement continue until that Confidential Information ceases to be confidential despite the termination of this agreement for any reason.

EXAMPLE 5

33.9 Publication. The Government shall make public this Agreement and any amendments thereof.

EXAMPLE 6

15.21 This Agreement shall be made public.

EXAMPLE 7

This Agreement will be published in [government gazette/federal register] or publicly available at [ministry website/ ministry library/ parliamentary records]. Information in relation to activities under these agreements shall be kept confidential if requested by a Party, to the extent that such Party establishes that confidentiality is necessary to protect business secrets or proprietary information. Such confidentiality is subject to

[relevant disclosure laws], as well as to applicable laws and regulations, including stock exchange and securities rules, and requirements for the implementation of the Extractive Industries Transparency Initiative.

EXAMPLE 8

- (a) Subject to the limitations below and subject to applicable Law, for a period of [three] years from disclosure, each party agrees not to divulge information designated in writing at the time of delivery as confidential information (“Confidential Information”) by the other party to any other Person without the prior written consent of the designating party. By designation of information as Confidential Information a party will be deemed to have represented that after review of such information it has reasonably determined that the release of such information to third parties would materially adversely affect the party or its economic well-being. In any event Confidential Information does not include information that was publicly available or otherwise known to a party prior to the time of disclosure to it and not subject to a confidentiality obligation, subsequently becomes publicly known through no act or omission by a party, otherwise becomes known to a party other than through disclosure to such party by the other party, constitutes financial statements delivered to the Government that are otherwise publicly available, is mainly of scientific rather than commercial value such as geological or geophysical data relating to areas in which the Company no longer holds a valid exploration license and has not designated as a Proposed Production Area, or has been disclosed pursuant to generally applicable Law or a final order or any court having jurisdiction that is not subject to appeal.
- (b) Each party will maintain the confidentiality of Confidential Information disclosed to it in a manner consistent with procedures adopted by such party to protect its own confidential information, provided that such party may deliver or disclose Confidential Information to its financial, legal and other professional advisors (to the extent such disclosure reasonably relates to the administration of this Agreement) or any other Person to which such delivery or disclosure may be necessary or appropriate to effect compliance with any law, rule, regulation or order applicable to such party, in response to any subpoena or other legal process, in connection with any litigation to which such party is a party if reasonably delivered necessary to protect such party’s position in such litigation or if an Event of Default has occurred and is continuing but only to the extent such party reasonably determines such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under this Agreement.
- (c) This Agreement and any annexes or amendments are not confidential, and the Company is not entitled to confidential treatment of information relating to the timing and amount of royalties and other payments specifically due under the terms of this Agreement or of Taxes and Duties payable by the Company or the rates at which such royalties, other payments or Taxes and Duties become due or are assessed, or information that is necessary to compute the amount of such royalties or other payments becoming due.

31.0 Force Majeure; Suspension of Operations for Market Conditions

31.1 Obligations of Party in Event of Force Majeure

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

31.2 Extension of Agreement

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

31.3 Negotiation in Event of Force Majeure

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

31.4 Suspension of Operations for Market Conditions

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

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

EXAMPLE 1

17.14 FORCE MAJEURE

- (a) Each Party shall be exempt from compliance with its obligations under this Agreement, except the obligation to pay money, and any period in which it must perform an obligation or exercise a right shall be extended, to the extent that, and for so long as, such compliance is hindered or prevented by the occurrence of an event of Force Majeure.
- (b) A Party asserting Force Majeure shall exercise commercially reasonable efforts to eliminate the event of Force Majeure and shall give prompt Notice to the other Parties within a reasonable period after it becomes aware of the event that constitutes the event of Force Majeure.

“Force Majeure” shall mean any event or circumstance beyond the reasonable control of the Party asserting Force Majeure, that prevents or delays such Party from fulfilling its obligations or exercising its rights under this Agreement. Such events of Force Majeure shall include: fire, flood, explosion, atmospheric disturbance, lightning, storm, volcanic eruptions, hurricane, tornado, earthquake, landslide or epidemic, war, riot, civil war, blockade, insurrection or civil disturbances, acts of terrorism, strike, lockout or other industrial disturbances, an act of government, including, the issuance or promulgation by a governmental body or entity having jurisdiction, or any court of an order, law, statute, ordinance, rule, regulation or directive, that directly affects the ability of a Party to perform any obligation under this Agreement, other than the obligation to remit payments.

17.15 ECONOMIC HARDSHIP

Company shall be exempt from compliance with its obligations under this Agreement, except the obligation to pay money, during any period in which such compliance is made uneconomic by Economic Hardship. Any period of time in which Company must exercise any right or perform any obligation shall be extended for a period equal to the duration of the Economic Hardship. If Company asserts the existence of Economic Hardship, it shall give prompt Notice to THE STATE of the circumstances constituting Economic Hardship.

“Economic Hardship” shall mean economic conditions of the market that materially and adversely affect actual or planned Operations.

EXAMPLE 2

25

FORCE MAJEURE

Any failure on the part of a Party hereto to comply with any of the terms, conditions and provisions of this Agreement (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:

25.1.1 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 Agreement; and

25.1.2 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 fulfill terms and conditions of this Agreement 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.

For the purposes of this Agreement, Force Majeure means act of war (whether declared or undeclared), invasion, armed conflict, act of foreign enemy, act of terrorism, martial law, military or usurped power, insurrection, revolution, civil disturbances, blockades, riot, embargoes, strikes, lock-outs and other labour conflicts, sabotage, criminal damage, land disputes, epidemics, plague, volcanic eruptions, earthquakes, subsidence, heave, landslip, collapse, rock falls, storms, cyclones, floods (including flooding of underground mine works), explosions (including nuclear explosions), fires, lightning, methane and other underground gases and the explosion thereof, radioactive or chemical contamination or ionising radiation unless the source or cause of the contamination, radiation or other hazardous thing is brought or has been brought onto or near COMPANY's operations by the Party claiming Force Majeure or those employed or engaged by the Party claiming Force Majeure unless it is or was essential for the construction or operation of the Facilities, non-availability of electrical power, gas, water or other utilities other than due to the negligence or default of COMPANY, restrictions imposed by the government or other authorities of any country which has jurisdiction either over COMPANY or its operations (provided that GOVERNMENT will not be entitled to claim a Force Majeure Event as a result of restrictions imposed by Country governmental authorities) or destruction of, damage to or unavailability of materials, equipment or supplies and any other event which the Party claiming Force Majeure could not reasonably be expected to prevent or control.

EXAMPLE 3

FORCE MAJEURE

Any failure by Government or by the Company to carry out any of its obligations under this Agreement shall not be deemed a breach of contract or default if such failure is caused by force majeure, that party having taken all appropriate precautions, due care and reasonable alternative measures with the objectives of avoiding such failure and of carrying out its obligations under this Agreement. If any activity is delayed, curtailed or prevented by force majeure, then anything in this Agreement to the contrary notwithstanding, the time for carrying out the activity thereby affected and the term of this Agreement specified in Article 31 shall each be extended for a period equal to the total of the periods during which such causes or their effects were operative, and for such further periods, if any, as shall be necessary to make good the time lost as a result of such

force majeure. For the purposes of this Agreement, force majeure shall include among other things: war, insurrection, civil disobedience, blockade, sabotage, embargo, strike and other labor conflict, riot, epidemic, earthquake, storm, flood, or other adverse weather conditions, explosion, fire, lightning, adverse order or directive of any Government due to de jure or de facto or any instrumentality or subdivision thereof, act of God, breakdown of machinery having a major effect on the operation of the Enterprise and any cause (whether or not of the kind hereinbefore described) over which the affected party has no reasonable control and which is of such a nature as to delay, curtail or prevent timely action by the Party affected.

The Party whose ability to perform its obligations is affected by force majeure shall notify as soon as practicable the other Party thereof in writing, stating the cause, and the Parties shall endeavor to do all reasonable acts and things within their power to remove such cause, provided, however, that neither Party shall be obligated to resolve or terminate any disagreement with third parties, including labor disputes, except under conditions acceptable to it or pursuant to the final decision of any arbitral, judicial or statutory agencies having jurisdiction to finally resolve the disagreement. As to labor disputes, the Company may request the Government to co-operate in a joint endeavor to alleviate any conflict which may arise.

EXAMPLE 4

ARTICLE 19 FORCE MAJEURE

19.1 If the Licensee is prevented from complying with this Agreement, in whole or in part, by an event of Force Majeure, the Licensee shall give written notice to the Licensing Authority as soon as practicable after its occurrence and the obligations of Licensee which are directly related to the Force Majeure shall be suspended during the continuance of the Force Majeure.

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

19.3 If an obligation is suspended by Force Majeure for more than one (1) year, the Parties to this Agreement may enter into good faith negotiations to decide on the fate of this Agreement.

EXAMPLE 5

Part IX, General Provisions

Failure to fulfill the terms of leases due to "Force Majeure":

Failure on the part of the lessee/lessees to fulfill any of the terms and conditions of this lease shall not give the (Central or State Government) any claim against the lessee/lessees or be deemed a breach of this lease, in so far as such failure is considered by the said (Government) to arise from force majeure, and if through force majeure the fulfillment by the lessee/lessees of any of the terms and conditions of this lease be delayed, the period of such delay shall be added to the period fixed by this lease. In this clause the expression "Force Majeure" means act of God, war, insurrection, riot, civil commotion, strike, earth quake, tide, storm, tidal wave, flood, lightning, explosion, fire, earthquake and any other happening which the lessee/lessees could not reasonably prevent or control.

EXAMPLE 6

ARTICLE 38, FORCE MAJEURE

38.1 Any failure by either Party to carry out any of its obligations under this Agreement other than payment or notice obligations shall be excused to the extent such failure is caused by force majeure. If the performance of the obligation affected by force majeure is delayed, anything in this Agreement to the contrary notwithstanding, the time provided for carrying out such obligations and the terms of this Agreement specified in Article 7 shall each be extended for a period equal to the delay caused as a result of force majeure. However, it is agreed that neither the (Government) nor (Company) shall be able to invoke in their favor as force majeure any action (or failure to take action) for which they are responsible.

38.2 For purposes of this Agreement, force majeure shall mean any event beyond control of any Party including among other things, wars, insurrections, civil disturbances, blockades, embargoes, strikes and other labor conflicts, riots, epidemics, earthquakes, storms, floods, or other adverse weather conditions, explosions, fire, lightning, acts of terrorism, or government acts. It is the intention of the Parties that force majeure be interpreted as closely as possible in accordance with the principles and customs of international law.

38.3 The Party whose ability to perform its obligations is affected by force majeure shall notify the other Party thereof in writing, stating the cause. And the Parties shall endeavor to do all reasonably within their power to remove such cause; provided, however, that neither Party shall be obligated to resolve or terminate any disagreement with third parties, including labor disputes, except under conditions acceptable to it or pursuant to the final decision of any arbitral, judicial or statutory agencies having jurisdiction to finally resolve the disagreement. The (Government) agrees to cooperate with (Company), each SEP, and/or each Operator to alleviate any labor conflict which may arise.

EXAMPLE 7

CHAPTER 13: FORCE MAJEURE

13.1 A Force Majeure event means an event defined as "Force Majeure" in Chapter 16 (Sixteen).

13.2 A Party to this Agreement shall not be liable for the consequences of any failure by it to perform or default by it in performing any or all of its obligations under this Agreement, if that failure or default is caused by Force Majeure. Where there has been any such failure or default, the failure or default shall not be considered non-compliance with any obligation under this Agreement, and all the obligations and times which because of such failure or default could not be fulfilled shall be deemed to have been suspended while the Force Majeure continues.

13.3 The Party whose ability to perform its obligations is affected by Force Majeure shall notify as soon as practicable the other Party thereof in writing stating the cause, and the Parties shall do all reasonable acts and things, and the Parties shall cooperate to mutually agree to remove such cause.

13.4 If a Party is prevented or delayed by Force Majeure from performing its obligations under this Agreement in whole or in part, an amount of time reasonably required to overcome the effect of the event of Force Majeure and a reasonable period to prepare for the resumption or initiation of the actions so prevented or delayed shall be added to any time provided for or otherwise allowed therefore under this Agreement and to the term of this Agreement.

[...]

16.22. Force Majeure means an event beyond the control of a Party, including natural disasters such as earthquake, storm, fire, lightning, flood, drought, radioactive contamination, the closure of an international border crossing (on either side), significant labor unrest, and social emergency situations such as plague, war, state of war, and quarantine.

EXAMPLE 8

20.7 FORCE MAJEURE

- (a) If any party becomes wholly or partly unable because of force majeure to perform any of its obligations under the accepted exploration contract, then the party affected by the force majeure must give the other parties notice of the force majeure specifying:
- (i) details of the force majeure;
 - (ii) insofar as it is known, the probable scope of the force majeure; and
 - (iii) insofar as it is known, the probable duration for which it will be unable to perform the relevant obligation, and the relevant obligation shall be deemed to be suspended, but:
 - (iv) the suspension shall be of no greater scope nor longer duration than the consequences of the relevant event of force majeure; and
 - (v) the party affected by the force majeure must use all reasonable endeavours to counter it or to otherwise remedy its inability to perform.
- (b) Nothing in clause 20.7(a)(v) requires a party to:
- (i) settle any strike or other labour dispute otherwise than on terms acceptable to it; or
 - (ii) contest the validity or enforceability of any law, regulation or order, or determination of any authority, by way of legal proceedings.

1.1 DEFINITIONS

[...]

“force majeure” means any act, event or cause, which is beyond the reasonable control of a party, including such an event being:

- (a) an Act of God, war, sabotage, riot, civil commotion, national emergency (whether in fact or law), fire, lightning, flood, earthquake, landslide, drought, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of that party), epidemic, disease, pestilence, quarantine or radioactive contamination;
- (b) action or inaction of any competent authority (including any court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order or decision;
- (c) religious or other ceremonial activities (carried out pursuant to obligations under Aboriginal tradition) of members of the native title claim group or other persons (if any) who hold native title in relation to any of the land or waters within the exploration land; or
- (d) breakdown of plant, machinery or equipment (including ships, trains, trucks or vehicles) or shortage of labour, transportation, fuel, power, plant, machinery, equipment or material.

32.0 Cooperation, Dispute Resolution and Arbitration

32.1 Cooperation

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

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

32.2 Arbitration

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

- (a) The State and the Company hereby consent to submit to ICSID any dispute arising out of or related to this agreement for settlement by conciliation followed, if the dispute remains unresolved within ninety (90) Days of the communication of the report of the Conciliation Commission to the parties, by arbitration pursuant to the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States (hereinafter the "ICSID Convention").
- (b) The State irrevocably waives any claim to state or sovereign immunity:
 - (i) In respect to proceedings on the merits of any claim which is the subject matter of the arbitration;
 - (ii) In respect of proceedings to recognise or to enforce or to execute any arbitration award including, without limitation, immunity from service of process and from the jurisdiction of any court; and
 - (iii) In respect of the execution of any such award against the assets or property of the State assets held by

the State for commercial purposes or otherwise.

- (c) For purposes of the ICSID Convention and of this Agreement:
- (i) the Parties expressly stipulate that the transaction to which this Agreement relates is an investment;
 - (ii) **either** [it is hereby stipulated by the Parties that the investor is a national of [name of an ICSID Contracting State] **or** [the Parties agree that, although the Company is a national of the State, it is controlled by nationals of [name(s) of other ICSID Contracting State(s)] and shall be treated as a national of said State[s] for the purposes of the ICSID Convention.
- (d) Any arbitral tribunal constituted pursuant to this Agreement shall consist of three arbitrators, one appointed by each party, and an arbitrator, who shall be Chairman of the Administrative Council of the tribunal, appointed by agreement of the parties or, failing such agreement, by the President of ICSID.
- (e) If ICSID declares itself not to be competent shall be settled in accordance with the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with such Rules. The arbitration shall be held in London, England U.K., in the English language. The arbitral award shall be in writing, and shall be final and binding on the Parties. Judgment on the award rendered may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance for the award and an order of enforcement, as the case may be.
- (f) Unless this Agreement has already been repudiated or terminated, the Parties shall continue to observe and perform all the obligations contained in, and may exercise their rights under, this Agreement notwithstanding the reference of any dispute to arbitration. No Party shall be entitled to exercise any rights or election arising in consequence of any alleged default by any other arising out of the subject matter of the dispute until the dispute has been resolved by arbitration or by agreement of the Parties as the case may be.

EXAMPLE 1

16.1 Negotiation.

Prior to submitting any Dispute to mediation or arbitration, the Parties shall attempt in good faith promptly to resolve any Dispute by negotiations between or among their executive officers, as appropriate. The disputing Party shall give the other Party Notice of the Dispute. The executive officers shall meet at a mutually acceptable time and place within thirty (30) Days after the date of the disputing Party's Notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the Dispute. Nothing in this Section 16.1 shall be deemed to limit a Party's right to submit a Dispute to mediation or arbitration as herein provided if the Dispute has not been resolved to its satisfaction no later than forty-five (45) Days after Notice of the Dispute has been given by a Party.

16.2 Arbitration of Disputes.

- (a) All Disputes between the Parties that are not resolved within ninety (90) Days after the delivery of a Notice pursuant to Section 16.1 by negotiation conducted pursuant to Section 16.1 shall exclusively be resolved by final and binding arbitration pursuant to Section 16.5; provided, however, that all Environmental Disputes between the Parties shall be subject to prior mediation as provided in Section 16.3(a), and if not resolved by such mediation within the period specified in Section 16.3(b), shall be resolved by final and binding arbitration pursuant to Section 16.5; and provided further that all Transfer Pricing Disputes shall be subject to resolution as provided in Section 16.4(a), and if not resolved by such mediation within the period specified in Section 16.4(b), shall be resolved by final and binding arbitration pursuant to Section 16.5. No exhaustion of local remedies by Company shall be required prior to submission of any Dispute to arbitration pursuant to the provisions of this Article 16.
- (b) The Parties hereby irrevocably waive any right to institute, and irrevocably covenant not to institute or permit to be instituted on their behalf, any litigation, arbitration, mediation, conciliation or other legal or administrative proceeding with respect to any Dispute, other than as provided in this Article 16 or the institution of any proceedings necessary for the recognition and enforcement of any arbitral award as provided in this Article 16, in any jurisdiction (including [countries], or in any other place where relevant Parties have assets or may be found). Nothing in this Agreement shall limit the rights of any Party to institute proceedings to secure, in any court of competent jurisdiction, the recognition and

enforcement of any arbitral decision or award made in an arbitration proceeding conducted pursuant to Section 16.5, where such proceedings are required for the enforcement of such decision or award.

- (c) THE STATE waives any right to assert any defense of sovereign immunity as to it and its property in respect of: (i) the institution of any arbitration proceeding pursuant to this Agreement, or the grant of interim relief or provisional measures in connection with such a proceeding; and (ii) the enforcement and execution of any award rendered by an arbitral tribunal pursuant to this Article 16.
- (d) No Party shall be entitled to recover from any other Party in any arbitration proceeding any punitive damages, or except as provided in Section 7.15 any incidental, special, indirect or consequential damages and the arbitrators shall not have jurisdiction or authority to award any such damages.
- (e) The prevailing Party in any arbitration proceeding brought pursuant to this Agreement shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses relating to such arbitration proceedings, including arbitration costs and reasonable attorneys' fees. The prevailing Party in any legal action brought to confirm or enforce an arbitral award shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses relating to such judicial proceedings, including court costs and reasonable attorneys' fees. If neither Party prevails as to all matters in Dispute (for example, because there are multiple claims or successful counterclaims), the arbitrators shall have the authority to allocate the costs and expenses of the arbitration proceedings between the Parties as they deem appropriate, taking into account which Party has prevailed on particular claims in Dispute.

[...]

16.5 Arbitration under the International Chamber of Commerce Rules.

The Parties hereby irrevocably agree that any Dispute (including any Disputes not timely resolved by mediation pursuant to Section 16.3 or Section 16.4(a)) shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC Arbitration Rules"). The arbitration shall be conducted in accordance with the ICC Arbitration Rules in effect on the date the arbitration proceeding is instituted, except as the ICC Arbitration Rules are modified by this Article 16 or by subsequent written agreement of the Parties.

[additional arbitration rules]

EXAMPLE 2

Arbitration

37.

- (1) Any dispute or difference between the State and the Company arising out of or in connection with this Agreement, the construction of this Agreement or as to the rights, duties or liabilities of either of them under this Agreement or as to any matter to be agreed upon between them under this Agreement shall in default of agreement between them and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the [Arbitration Act] and notwithstanding section [x] of that Act each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.
- (2) Except where otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State, the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of either of the parties to the arbitration to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties to the arbitration and an award may in the name of the Minister grant any further extension or variation for that purpose.

EXAMPLE 3

Section 26 – Arbitration

26.1 Submission to Arbitration.

- (a) Any dispute, controversy, or claim between the (Government) and the (Concessionaire) arising out of, in relation to or in connection with this Agreement or its formation, or the validity, interpretation, performance, termination, enforceability or breach of this Agreement for which resolution by submission to an expert is not specifically provided elsewhere in this Agreement shall be exclusively and finally settled by binding and enforceable arbitration under the then prevailing rules of arbitration of UNCITRAL (the "UNCITRAL Rules"). The law applicable to any arbitration shall be determined pursuant to Section 29 below. In the event of any conflict between the UNCITRAL Rules and this Section 26, the provisions of this Section 26 shall govern. Arbitration hereunder shall be the parties' exclusive remedy and no party to arbitration shall be required to exhaust any local administrative or judicial remedy, provided that in a dispute involving a violation of Law, the (Company) shall not initiate arbitration prior to a final administrative determination of a violation.
- (b) Either of the parties to such dispute may institute arbitration proceedings by giving Notice to the other party and notice to the International Chamber of Commerce ("ICC"), including in each a statement of the issues in dispute.

26.2 Nationality for Purposes of Arbitration. Notwithstanding the incorporation of the (Company) in (Country) it shall be treated under this

Section 26 as a Person that is a national of (Country) for purposes of any arbitration pursuant to this Agreement.

26.3 Arbitrators. Any arbitral tribunal constituted pursuant to this Agreement shall consist of one arbitrator to be appointed by the (Government), one arbitrator to be appointed by the (Company), and one arbitrator, who shall be the president of the tribunal and shall be a citizen neither of (Country) nor of (Country) (or of any other state of which a party owning shares in (Company) is a national), to be appointed by the ICC. No such arbitrator shall have an interest in the matters in dispute.

26.4 Single Arbitrator. If the parties agree, they may jointly request that any matter subject to arbitration under this Agreement shall instead be referred for resolution by a single arbitrator to be appointed by agreement between them. In the absence of agreement as to the choice of arbitrator the ICC, or of any successor entity as provided for by Section 26.9 below, shall make the appointment. The decision of the single arbitrator shall be rendered pursuant to Section 26.6 below (except as regards the requirement for a decision by majority vote) and shall be final and binding unless appealed by any party to a full panel of arbitrators appointed as provided in this Section 26.3, who shall examine the single arbitrator's decision only as to manifest error of law, findings of fact that are not supported by any credible evidence, and abuse of authority, misconduct or other unauthorized act by the single arbitrator.

26.5 Venue and Other Items. Arbitration proceedings conducted pursuant to this Agreement shall be held in (Country), or such other place as the parties may agree, and shall be conducted in the English language. The parties submit to the jurisdiction of the Courts of (Country) for the limited purpose of enforcing this agreement to arbitrate. Each party shall bear equally the costs and fees incurred or imposed by the ICC; provided that the arbitral tribunal may decide in its award how the costs and fees are allocated between the parties. Any procedural issues that cannot be determined under UNCITRAL Rules shall be determined pursuant to applicable Law as set forth in Section 29 below.

26.6 Award. The arbitrators shall, by majority vote, render a written decision which shall be public stating the reasons for their award within 3 months after any hearing conducted has been concluded. Any monetary award shall be assessed and payable in Dollars (determined at the Prevailing Market Rate of Exchange if the award involves an obligation expressed in any currency other than Dollars) through a bank designated by the recipient. Each party shall bear its own costs and attorney fees. Neither party shall have any liability for either consequential damages (except for purposes of set-off) or exemplary or punitive damages, but interest at a rate not to exceed the London Interbank Offering Rate ("LIBOR") existing at the time of such award, plus one percentage point, multiplied by the amount of the award, shall be assessed from the date of any monetary award until its satisfaction. If LIBOR should cease to be reported, then the rate to be applied shall be another substitute rate agreed to by a majority of the arbitrators. If the decision of the arbitral tribunal is adverse to either party, then the arbitral tribunal may, in its discretion, specify a reasonable period of grace to cure any defect or default on the part of such party, provided that such period of grace shall not exceed 180 days for the making of any payment required by such award.

26.7 Reservation of Rights. The right to refer a claim or dispute to arbitration hereunder shall not be affected by the fact that a claimant or respondent has received full or partial compensation from another Person for a loss or injury that is the object of the claim or dispute, and any such other Person may participate in such proceedings by right of subrogation.

26.8 Nature of Award. The parties agree that, subject to Section 26.6 hereof, the arbitral award of any arbitral tribunal constituted pursuant to this Agreement may contain such orders (including orders for equitable relief or monetary damages) in respect of or affecting any of the parties (and any loss or damage suffered by any of them) as such arbitral tribunal determines to be appropriate in the circumstances, provided, that, the arbitrators may not award specific performance or other similar equitable remedies against either party. The parties, subject to their respective obligations contained elsewhere in this Agreement, shall take all such actions as are necessary to give full and complete effect to the award which, in accordance with its terms, shall be binding upon and enforceable against them.

26.9 General. The consent to the jurisdiction of the ICC as set forth in this Section 26 shall equally bind any successor or successors-in-interest to each party to this Agreement. Should the ICC be replaced by, or their functions be substantially conferred upon or be transferred to, any new international body of a similar type and competence, each party shall have the right to submit any dispute to such body for settlement by arbitration in accordance with the foregoing provisions of this Section 26. The provisions of this Section 26 shall be severable from the remainder of this Agreement and shall remain in full force and effect notwithstanding termination of this Agreement.

EXAMPLE 4

Article 8

Arbitration

8.1 The Parties agree:

- (a) to seek amicable resolution of any disputes concerning the interpretation or application of this Agreement;
- (b) in the case of any controversy or dispute relating exclusively to technical matters, including Work Programs and Budgets, to submit such controversy or dispute to any expert recognized for his technical knowledge, chosen jointly by the Parties, and not being of either of the Parties' nationality or related to them. The decision of such expert must be rendered within 30 days. Such decision shall be final, and not subject to appeal. In case of disagreement as to the technical nature of the difference or dispute or in case of disagreement between Parties over the choice of the expert, the controversy or dispute will be submitted to arbitration in accordance with the provisions of 8.2.

The expenses of technical arbitration shall be split equally between the Parties.

8.2 Subject to the provisions of Article 8.1, any controversy or dispute relating to this Agreement shall be settled by arbitration in accordance

with the Convention for Settlement of Investment Disputes between States and nationals of other States in effect since October 14, 1966 (hereafter "the Convention").

In all cases of arbitration:

- (a) arbitration shall take place in (Country) unless the Parties decide otherwise;
- (b) the language of the arbitration shall be (Language), with translation into English;
- (c) the costs of the arbitration shall be borne by the losing Party.

8.3 For the purposes of arbitration, the Parties agree that the transactions to which this Agreement relates constitutes an investment within the meaning of Article 25(1) of the Convention.

8.4 In case, for whatever reason, the International Center for Settlement of Investment Disputes should not accept jurisdiction or should reject the arbitration request, the dispute shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce and the remaining provisions of Article 8.2 shall apply. Arbitration shall be conducted by one sole arbitrator appointed by mutual agreement of the Parties. This arbitrator shall be of a nationality other than that of the Parties and shall have extended experience in the mining field.

In case the Parties cannot agree on the choice of the arbitrator, arbitration shall be conducted by three arbitrators names in accordance with the rules and regulations of the International Chamber of Commerce.

8.5 The Parties agree to execute the decision rendered by the arbitrators without delay and hereby waive any rights of appeal. The execution of the decision may be carried out by any tribunal having jurisdiction.

EXAMPLE 5

14. Chapter Fourteen: Dispute Resolution

14.1. Any disputes between the Parties arising out of or in connection with this Agreement shall be settled by the Parties first attempting in good faith to negotiate a resolution and if a negotiated resolution to the dispute is not agreed to within 60 (sixty) Working Days of the date of a Party's request in writing for such negotiation, or such other time period as may be agreed, then the dispute shall be settled in accordance with Clause 14.2. No notice under Clause 10.7 shall be issued if the Parties are in dispute over the subject matter of this Agreement.

14.2 If a dispute is not settled by negotiation in accordance with Clause 14.1, it shall be resolved by binding arbitration in accordance with the procedures under the Arbitration Rules of the United Nations Commission on International Trade Law (the "UNCITRAL Rules") as in force at the time of the dispute. Accordingly, the following shall apply:

- 14.2.1 the number of arbitrators shall be 3 (three);
- 14.2.2 the 3 (three) arbitrators shall be appointed in accordance with rules 7 and 8 of the UNCITRAL Rules;
- 14.2.3 the language of the arbitration shall be English;
- 14.2.4 the arbitrators shall apply the laws and regulations of (Country) to the interpretation of the Investment Agreement;
- 14.2.5 the place of arbitration shall be in London, United Kingdom; and
- 14.2.6 the arbitral proceedings shall be administered under the UNCITRAL Rules by the London Court of International Arbitration.

14.3 The arbitral award shall be final and binding on the Parties. Judgment on the award may be entered by any court having competent jurisdiction, provided that an arbitral award shall first be presented in an appropriate court of (Country) for execution and enforcement. If such execution and enforcement has not occurred within 30 (thirty) days of presentation, the award may be presented in any other court having competent jurisdiction. The Parties hereby commit to fulfill the execution and enforcement of the arbitral award and shall not raise any defense to its execution and enforcement.

14.4 The provisions of this Clause 14 shall continue to apply to any dispute that arises during the term of this Agreement or any dispute that occurs after the expiry or earlier termination of this Agreement in regard to activities arising out of or in connection with this Agreement.

33.0 Surrender and Termination

33.1 Surrender

- (a) The Company may surrender its rights under this Agreement by Notice to the State signed by an authorized Company representative on:
 - (a) Sixty (60) Days Notice under this Agreement at any time before the Date of Commencement of Commercial Production; and
 - (b) Six months' Notice under this Agreement after the Date of Commencement of Commercial Production.
- (b) Once an effective surrender is made, the Company shall have no obligations and liabilities under this Agreement except as specifically provided herein to the contrary.
- (c) The Company shall remain liable for all obligations accrued before the effective date of the surrender and also for the obligations that must be fulfilled after termination, except for the Project completion and the cost and payment obligations specified in this Agreement.

33.2 Termination by the State

33.2.1 Termination on Certain Events.

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

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

33.2.2 Termination on Breach.

- (a) The State may provide Notice to the Company of a material breach of, or a failure to comply with

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

33.3 Termination by the Company

The Company may terminate this Agreement without prejudice to any other rights it may have if the State commits a material breach of a fundamental provision of this Agreement and fails or neglects to diligently and consistently pursue a course of action that is reasonably intended to remedy that breach within sixty (60) Days (or a longer period as is reasonable in the circumstances) after the Company gives Notice requiring that the breach be remedied.

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

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

33.5 Retention of Books and Records

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

33.6 Access following Expiration or Termination

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

**See related examples at 33.7 Obligations Following Expiration, Surrender or Termination.*

EXAMPLE 1

25.2 Disposition of Assets on Termination by the Government or Expiration of the Term.

Upon a termination of this Agreement for any reason other than termination by the Concessionaire upon the occurrence and continuation of a Government Event of Default, the following rules apply:

- (a) The Concessionaire shall deliver to the Government, not more than 60 days after the termination date a list (the "Property List") describing in reasonable detail and locating [types of property, including intellectual property and moveable assets].

The Property List shall also set forth the estimated fair market value and book value of each Movable asset contained on such list. Movable assets identified in clause (iii) of this Section 25.2 may be grouped for valuation purposes by generic type of asset and physical location, so that, for example, all Movable assets in a particular heavy equipment maintenance shop might be classified for valuation purposes as "mine truck parts and supplies," "dragline and shovel parts and supplies" and "maintenance equipment," but such grouping for valuation purposes does not excuse the Concessionaire from the duty to describe such Movable assets in reasonable detail. The Property List shall be accompanied by a certificate of the chief executive officer of the Concessionaire to the effect that such list is complete and correct in all material respects.

- (b) Failure of the Concessionaire timely to deliver the Property List or delivery by the Concessionaire of a Property List that is significantly deficient or incomplete shall be deemed an offer by the Concessionaire to sell to the Government all assets referred to in clause (iii) of Section 25.2(a) for a purchase price of US\$1.00.
- (c) The Concessionaire shall, as part of its closure responsibilities, remove all such structures and installations described in the Property List pursuant to clause (i) of Section 25.2(a) except insofar as the Government, within 90 days of receipt of such list, has directed the Concessionaire to transfer to the Government such structures or installations, related rights to Land (in the case of any such assets not located on Government land), and any required Movable Assets or intellectual property identified in the Property List. The Concessionaire shall transfer to the Government, without charge, all of its right, title and interest in each structure or installation and its related property promptly following its receipt of such authorization or direction as to such property.
- (d) The Concessionaire shall transfer to the Government, without charge, all of its right, title and interest in all property described pursuant to clause (ii) of Section 25.2(a) within 10 days of the delivery of the Property List.
- (e) The delivery of the Property List shall constitute an offer by the Concessionaire to sell to the Government or its designee any or all Movable assets and related intellectual property described pursuant to clause (iii) of Section 25.2(a) at a purchase price equal to the lesser of the fair market value or the depreciated book value of each such asset, on an as is and where is basis. If the Government does not exercise such purchase right as to any Movable asset included in the Property List by notice to the Concessionaire within 90 days after delivery of the list, then the Concessionaire may sell such asset to any Person for such price as it may be able to obtain therefore or remove such asset from Country. If the Government exercises its purchase right with respect to any Movable asset and related intellectual property, it shall pay the purchase price within 90 days of the date upon which such purchase price is established, against transfer by the Concessionaire to the Government of all of its right title and interest in such Movable asset.
- (f) The Government, by notice to the Concessionaire within a reasonable period but not to exceed one year after any termination of this Agreement, may require the Concessionaire to dispose of in accordance with applicable Law any Movable assets not sold to the Government that remain on Government Land or in Mining Plant or Infrastructure that has been transferred to the Government. If the Concessionaire does not reasonably dispose of or remove such asset or assets within a reasonable period after said notice, the Government may effect such reasonable disposal or removal at the expense of the Concessionaire.
- (g) No transfer to the Government of any assets pursuant to this section with or without compensation shall release the Concessionaire from any of its environmental restoration or remediation obligations under this Agreement or applicable Law, or entitle the Concessionaire to release to it of any amounts set aside to fund the performance of such obligations. However, if the Government arranges for a qualified replacement operator to acquire all of the assets on the Property List and to continue the operations of each Mine, Additional Concession Area Mine or Contiguous Area Mine, it will release the Concessionaire from such obligations and make such set-aside amounts available to fund the environmental restoration or remediation obligations of the replacement operator. In any such case, the Concessionaire must at the request of the Government transfer directly to such replacement operator all assets otherwise to be transferred to the Government under this Section 25.2, in the manner provided for in this Section 25.2, provided that the Concessionaire is not obligated to transfer assets for which payment is required under this Section 25.2 except against payment of the purchase price required by this Section 25.2.

[...]

25.6 Disposition of Mining Plant and Infrastructure on Termination by the Concessionaire.

Upon a termination of this Agreement by the Concessionaire upon the occurrence and continuation of a Government Event of Default, all Mining Plant and Infrastructure shall become the property of the Government except to the extent the Government elects to transfer the relevant Land

to the Concessionaire. All Movable assets, to the extent not constituting Mining Plant or Infrastructure, shall be and remain the property of the Concessionaire. The Concessionaire must remove all such property from Land owned or leased by the Government within two years of the date of termination and until removal must maintain third party liability insurance as required by this Agreement.

EXAMPLE 2

Effect of cessation or determination of Agreement

(1) [...]

(2) Except as otherwise determined by the Minister and subject to the provisions of subclause (3), upon the cessation or determination of this Agreement all buildings, erections and other improvements erected on any land then occupied by the Company under the mining lease or any other lease, licence, easement or other title made under or pursuant to this Agreement shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Company or any other party and freed and discharged from all mortgages and other encumbrances and the Company shall do and execute all such deeds, documents and other acts, matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

(3)

- (a) In the event of the Company immediately prior to the cessation or determination of this Agreement or within 3 months thereafter desiring to remove any of its fixed or movable plant and equipment or any part thereof from any part of the land occupied by it at the date of such cessation or determination it shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within 3 months thereafter to purchase in situ such fixed or moveable plant and equipment at a fair valuation to be agreed between the State and the Company or failing agreement determined by arbitration under this Agreement.
- (b) If the State does not exercise the right or option referred to in paragraph (a) the Company may on the expiry of the 3 month period referred to, or sooner with the consent of the Minister, remove the fixed or movable plant and equipment to which the right or option refers.

33.7 Obligations Following Expiration, Surrender or Termination

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

EXAMPLE 1

12.5 Rights and Obligations Following Termination.

- (a) After the expiration or termination of this Agreement, COMPANY shall have the rights to access and use the Mine for as long as COMPANY reasonably determines is necessary to permit it to exercise, fulfill, or discharge its accrued rights and obligations.
- (b) Upon the expiration or termination of this Agreement, COMPANY shall remove from the Mine as promptly as reasonably possible, but in no event later than eighteen (18) Months after the effective date of such expiration or termination, all equipment, materials and supplies placed on the Sites by COMPANY, and if requested by the STATE, all buildings, structures, and any other improvements placed thereon by COMPANY, except equipment, materials, supplies, buildings, structures, or other improvements that COMPANY intends to use to fulfill or discharge any accrued obligations or to exercise any accrued right, which shall be removed (if applicable) after such obligations have been fulfilled or discharged and such rights fully exercised.
- (c) Upon the expiration or termination of this Agreement prior to the completion of the Closure Period in accordance with Section 11.11, COMPANY shall remain responsible for the closure of the Mine in accordance with the Closure Plan contained in the Environmental Management Plan; provided, however, such plan shall be modified to reflect the conditions of the mining operations at the time of such termination; and provided further, that COMPANY shall be released from any obligation to complete closure of the Mine (other than any remaining obligation to fund the Environmental Reserve Fund as provided in Section 9.5 or the Post-Closure Fund as provided in Section 11.11) if a Third Party commences mining or processing operations at the Mine.
- (d) Notwithstanding the foregoing, the STATE shall retain responsibility for any rehabilitation or remediation required of any Historic Environmental Matter, except as provided in Section 11.2 and for all Third Party Liability, regardless of the expiration or termination of this Agreement.

12.6 Survival of Certain Provisions.

All obligations of the Parties that accrued prior to termination of this Agreement shall survive termination of this Agreement. In addition, the following provisions shall survive termination or expiration of this Agreement: Articles 5, 8, 13, 15, 16, and 17.

EXAMPLE 2

If this Agreement is terminated by GOVERNMENT pursuant to Clause 0 or 0:

- 18.1.10 COMPANY shall surrender to GOVERNMENT all of the Large Scale Mining Licences and the Leases but without prejudice to the liability of any of the Parties in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given;
- 18.1.11 each Party shall forthwith pay to the other Party all monies that may be owing to the other Party hereunder;
- 18.1.12 GOVERNMENT shall have the option:
 - (a) to request that COMPANY abandon the Facilities within a reasonable timetable specified by GOVERNMENT; and

- (b) to purchase (subject to any encumbrances thereon) all or any portion of the Facilities at a price equivalent to the fair market value of such assets, which fair market value is to be determined by agreement between GOVERNMENT and COMPANY but failing such agreement by a Sole Expert in accordance with Clause 20.

Such option is to be exercisable by notice to COMPANY given within thirty (30) days following the date of termination of this Agreement. If requested to do so by GOVERNMENT, COMPANY, so far as it is able, shall also assign to GOVERNMENT such contracts related to the Normal Operations to which COMPANY is a party as GOVERNMENT determines and deliver all records of the Facilities held by COMPANY to GOVERNMENT.

18.1.13 COMPANY shall have the right, within the one (1) year period following the thirty (30) day notice period referred to in Clause 18.1.12 (save where the option referred to in such Clause was exercised) to assign or otherwise dispose of all or any portion of the remaining Facilities to any person.

18.1.14 COMPANY shall leave the Facilities and the Mining Areas in a safe and stable condition to the reasonable satisfaction of the Director of Mine Safety having regard to natural conditions in the area and applying generally accepted standards of good mining and metallurgical industry practice; provided that COMPANY shall not be required to alter the physical condition of the mines, the tailings disposal sites or other Facilities beyond the requirements of the Final Environmental and Social Management Plan.

Upon the expiry of the one (1) year period referred to in Clause 18.1.13 all Facilities which remain on the Mining Areas shall become the property of GOVERNMENT without any cost to GOVERNMENT or any liability for GOVERNMENT to pay compensation therefor.

Clauses 0, 0, 19, 20, 21, 23, 24, 25, 28 and 34, shall continue in force notwithstanding the termination of the rest of this Agreement.

EXAMPLE 3

Effect of cessation or determination of Agreement

39.

(1) On the cessation or determination of this Agreement -

(a) except as otherwise agreed by the Minister the rights of the Company to, in or under this Agreement and the rights of the Company or of any assignee of the Company or any mortgagee to, in or under the mining lease and any other lease, licence, easement or other title or right granted hereunder or pursuant hereto (but excluding townsite lots which have been granted to or acquired by the Company and which are no longer owned by it) shall thereupon cease and determine but without prejudice to the liability of any of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given under this Agreement;

(b) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;

(c) save as aforesaid and as otherwise provided in this Agreement neither the State nor the Company shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.

(2) Except as otherwise determined by the Minister and subject to the provisions of subclause (3), upon the cessation or determination of this Agreement all buildings, erections and other improvements erected on any land then occupied by the Company under the mining lease or any other lease, licence, easement or other title made under or pursuant to this Agreement shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Company or any other party and freed and discharged from all mortgages and other encumbrances and the Company shall do and execute all such deeds, documents and other acts, matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

(3)

(a) In the event of the Company immediately prior to the cessation or determination of this Agreement or within 3 months thereafter desiring to remove any of its fixed or movable plant and equipment or any part thereof from any part of the land occupied by it at the date of such cessation or determination it shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within 3 months thereafter to purchase in site such fixed or moveable plant and equipment at a fair valuation to be agreed between the State and the Company or failing agreement determined by arbitration under this Agreement.

(b) If the State does not exercise the right or option referred to in paragraph (a) the Company may on the expiry of the 3 month period referred to, or sooner with the consent of the Minister, remove the fixed or movable plant and equipment to which the right or option refers.

34.0 Notices

34.1 General

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

To [STATE]:

To [COMPANY]:

34.2 Change of Address

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

34.3 Delivery Methods

All Notices shall be given:

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

34.4 Effective Time of Delivery

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

EXAMPLE 1

28. Notices

28.1.1 Any notice, consent, demand, approval or other communication (a "Notice") required or permitted to be given, delivered or served under this Agreement or in connection with the transaction as evidenced by the Sale and Purchase Agreement or under the Act shall be deemed to have been given, delivered or served if:

- (a) in the case of a Notice given by [Government], such Notice is signed on behalf of [Government] by either the Minister or Permanent Secretary to the Ministry as their respective responsibilities require; or
- (b) in the case of a Notice to be given by [Company], such Notice is signed.

28.1.2 Each such Notice shall, as elected by the Party giving such notice, be personally delivered or transmitted by fax to the other Party as follows:

A Notice to [Government]:

XXXXXX

A Notice to [Company]:

XXXXX

Except as otherwise specified herein, a Notice or other communication shall be deemed to have been duly given on the earlier of:

28.1.3 if delivered personally, the date at which it was left at the address referred to in Clause 0 and signed for at that address by someone with apparent authority to do so; or

28.1.4 if transmitted by facsimile the date of transmission to the fax number set out in Clause 0 with confirmed successful transmission from the sender's fax machine. Either Party may change its address by Notice to the other Party given in accordance with the provisions of this Clause. All Notices and all communications, documents or instruments given, transmitted, delivered or served under this Agreement or in connection with this transaction shall be in the English language.

Where [Company] is required to submit any plans, proposals or other material for the approval of [Government], the date of submission shall be deemed to be the date on which [Government] received the said plans, proposals or other materials.

EXAMPLE 2

17.12 Notifications

- (a) All the communications (each a "Notice") shall be made in writing, and shall be deemed as effectively delivered: (i) if personally delivered, with acknowledgement of receipt; and, (ii) when delivered through a reputable international courier service, they shall be deemed to have been received on the third Business Day after being sent. The addresses of the Parties for delivery of Notices shall be:

XXXXXXXX

The changes to the above addresses shall be notified by Notice to the other Party and the same shall be effective in a term of Five (5) Business Days beginning from the date on which the change is notified.

The Parties acknowledge that the notices for purposes of any arbitration or proceeding before any court, may be effected in the manner specified in this Section, it being agreed that the notices served in such manner shall constitute valid notices to the Party or its successors and assigns; provided that the above does not affect the right of any Party or of its successors or assigns of duly notifying in another manner permitted by law or by the Arbitration Rules of the ICC.

- (b) The Government Parties hereby appoint the Secretary of Industry and Commerce as its sole and exclusive agent to give all Notices and communications authorized or prescribed by this Agreement (the "Authorized Government Representative"). Whenever this Agreement authorizes or demands that the Government Parties take any action or give Notice to [Company], such action shall be made or the Notice solely given by the Authorized Government Representative. The Government Parties may change the identity of the Authorized Government Representative by means of a Notice served to [Company].

Unless otherwise established expressly herein, all the approvals that must be given by THE STATE, on its behalf and in replacement of the other Government Parties pursuant to this Agreement and the Amendment to the SLA, in accordance with Article One of the Amendment of the SLA, shall be considered as approved when a term of thirty (30) Days beginning from the Notice given by [Company] to THE STATE, has elapsed and the latter has not made any objection.

- (c) [Company] hereby appoints the General Manager of [Company] as its sole and exclusive agent for the giving of all Notices and communications authorized or required by this Agreement ("[Company]'s Authorized Representative"). Whenever this Agreement authorizes or requires [Company] to take any action or give any Notice to THE STATE, such action shall be taken or Notice shall be given only by the [Company]'s Authorized Representative. [Company] may change the identity of [Company]'s Authorized Representative by Notice to THE STATE.

EXAMPLE 3

Notices

7. Every notice by these presents required to be given to the lessee/lessees shall be given in writing to such person resident on the said lands as the lessee/lessees may appoint for the purpose of receiving such notices and if there shall have been no such appointment then every such notice shall be sent to the lessee/lessees by registered post addressed to the lessee/lessees at the address recorded in this lease or at such other address in Country as the lessee/lessees may from time to time in writing to State Government designate for the receipt of notices and every such service shall be deemed to be proper and valid service upon the lessee/lessees and shall not be questioned or challenged by him/them.

EXAMPLE 4

Notices

36. Any notice, consent or other writing authorised or required by this Agreement to be given or sent by the State to the Company or to the Guarantor will be deemed to have been duly given or sent if signed by the Minister or by any senior officer of the Public Service of the State acting by the direction of the Minister and forwarded by prepaid post or handed to the Company or to the Guarantor as the case may be at its address hereinbefore set forth or other address in the said State nominated by the Company, or by the Guarantor as the case may be, to the Minister and by the Company or by the Guarantor to the State if signed on its behalf by any person or persons authorised by the Company or by its solicitors, or by the Guarantor or by its solicitors as the case may be, as notified to the State from time to time, and forwarded by prepaid post or handed to the Minister and except in the case of personal service any such notice, consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

35.0 Applicable Law

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

EXAMPLE 1

Article 21 Governing Law and Resolution of Disputes

21.1 Governing Law

Alternative (B):

This Agreement shall be governed by, interpreted, and construed in accordance with the Laws of (Country), as such Laws are set forth in duly adopted and published legislation, and supplemented by the standards, customs, and usage generally applied in the international mining industry for those matters not covered by (Country) Laws and as may be applicable. If there are conflicts between this Agreement and the Mining Proclamation or Mining Tax Proclamation, including definitions, then the Mining Proclamation and the Mining Tax Proclamation shall govern.

EXAMPLE 2

Article 5

Applicable law

The law applicable to this Agreement is the law of the (Government), subject to the following conditions:

The (Government) declares that this Agreement is authorized by (Country) law. It is expressly understood that, for the entire period of its validity, the present Agreement shall constitute the law applicable between the Parties. Consequently, domestic law of the (Government), as in force and effect on the date of signature of this Agreement, shall be applicable in the interpretation of this Agreement, as a complementary tool, only to the extent that this Agreement does not exhaustively govern the issue.

EXAMPLE 3

Article 15.

Applicable law

15.1 Applicable Law. This Agreement shall be governed by, construed under, and enforced in accordance with the Laws of the (Government). Anything not expressly addressed in this Agreement shall be governed by the Constitution of the (Government), the Mining Law, the Civil Code, the Commercial Code, and the Labor Code of the (Government), the General Law on Environment and Natural Resources, and other Laws, to the extent such Laws are laws of public policy.

EXAMPLE 4

16.3 Governing Law

This Agreement and the relation between the parties hereto shall be governed by and construed in accordance with the laws of the [Country]. The Contractor hereby agrees and obliges itself to comply with the provisions of the Act, its implementing rules and regulations and other relevant laws and regulations.

EXAMPLE 5

Applicable Law

48. This Agreement shall be interpreted according to the law for the time being in force in the State of [Country].

36.0 Periodic Review

36.1 Modification and Review

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

EXAMPLE 1

Section 21:

The parties agree to meet at regular intervals of three years from the date of execution of this agreement or such other period as may be agreed to:

- (a) review the performance of all aspects of this agreement;
- (b) deal with any issues arising during the performance of this agreement; and
- (c) agree on requisite measures to ensure the smooth development and execution of the Project.

EXAMPLE 2

Article XXXVI: Periodic Review

Section 1 Modification and Review

The Parties hereto agree that the Agreement shall be subject to periodic review once every five (5) years after the Commercial Operation Startup Date for the purpose of good faith discussions to effect such modifications to the Agreement as may be necessary or desirable in the light of any substantial changes in circumstances which may have occurred during the previous five (5) years.

Section 2 Good Faith

It is hereby understood that this clause subjects the Parties to this Agreement to a simple obligation to consider in good faith any proposed modification(s) of the Agreement, subject to Article XXXV, Section 2 [Entire Agreement Modifications]. This Agreement shall remain unaltered and in force during any such period of consideration.

EXAMPLE 3

Section 30 – Periodic Review.

30.1 Profound Changes in Circumstances. For the purpose of considering Profound Changes in Circumstances from those existing on the Effective Date or on the date of the most recent review of this Agreement pursuant to this Section 30, the Government on the one hand and the Concessionaire and the Operating Company jointly on the other hand, shall at the request of the other consult together. The parties shall meet to review the matter raised as soon after such request as is reasonably convenient for them both. In case Profound Changes in Circumstances are established to have occurred, the parties shall effect such change in or clarification of this Agreement that they in good faith agree is necessary.

30.2 Five Year Review. This Agreement shall be subject to periodic review once every five (5) years after the date of the start of Production for the purpose of good faith discussions to effect such modifications to this Agreement as may be necessary or desirable in the light of any substantial changes in circumstances which may have occurred during the previous five years.

30.3 Other Consultation. In addition to the consultation and review provided by Section 30[...], each party may at any time request a consultation with the other party with respect to any matter affecting the rights and obligations of the parties pursuant to this Agreement or any matter relating to Operations. The parties shall meet to review in good faith the matter raised as soon after such request as is reasonably

convenient for them both. Subsequent to such consultation, the parties shall take such action, if any, that is mutually agreed to address the matter.

EXAMPLE 4

Section 2.2 Review

- (a) Not more than 12 months, and not less than 6 months, before the date of expiry of the 5 year period calculated from the commencement date and each successive 5 year period during the framework term (review date) any party may give the other parties notice that it requires a review of this framework ILUA.
- (b) If any party gives the other parties a notice under clause 2.2(a) the parties must:
 - (i) meet as soon as possible, but in any event within 20 business days after the date of that notice; and
 - (ii) negotiate in good faith with a view to reaching agreement between the parties in relation to any amendments proposed to this framework ILUA by any party.
- (c) The parties may agree:
 - (i) upon the amendments required to this framework ILUA by any party and record the relevant agreement in a written document signed by all of the parties; or
 - (ii) that no amendments are required to this framework ILUA, and, if the parties do so agree, this framework ILUA continues to apply (where appropriate, as amended in accordance with clause 2.2(c)(i)) to enable an explorer to enter into an accepted exploration contract pursuant to clause 5.1.
- (d) If any party has given notice under clause 2.2(a) and no agreement has been made pursuant to clause 2.2(c) by the relevant review date or such later date agreed by the parties, then:
 - (i) this framework ILUA no longer enables an explorer to enter into an accepted exploration contract pursuant to clause 5.1; and
 - (ii) the acceptance term ends on that review date or such later date agreed by the parties.
- (e) The provisions of clause 2.2(d) do not in any way affect:
 - (i) (i) the continued application of this framework ILUA after the review date (or such later date as agreed between the parties) and during the remainder of the framework term, other than for purposes of enabling an explorer to enter into an accepted exploration contract pursuant to clause 5.1; and
 - (ii) (ii) any accepted exploration contracts entered into prior to the relevant review date (or such later date as agreed between the parties).

37.0 Ancillary Provisions

37.1 Entire Agreement

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

EXAMPLE 1

18.9 Entire Agreement. The terms of this Agreement shall constitute the entire Agreement between the Parties hereto and no previous communications, representations or agreements either oral or written, between the Parties hereto with respect to the subject matter thereof shall vary the terms of this Agreement.

EXAMPLE 2

Article
Entire Agreement

16

16.1 It is the intention of the Parties that this contract be binding on the Parties upon signing, and that this Contract embodies the entire agreement between the parties relating to the subject matter hereof and shall supersede all other agreements, assurances, conditions, covenants, or terms relating hereto, whether written or oral or antecedent or contemporaneous with the execution hereof. There are no covenants implied by or under this Contract, other than those of good faith and fair dealing. This contract may be modified or amended only by an instrument in writing signed by both parties.

EXAMPLE 3

Entire Agreement

This Agreement contains the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings as between the Parties. All Exhibits to this Agreement are incorporated by reference and form part of this Agreement.

EXAMPLE 4

17.9 Entire Agreement.

- (a) This Agreement, the Amendment to the SLA, the Letter Agreements and the MOU, including its Annexes and Appendixes, constitute the entire agreement between the Parties and substitute and replace any and all negotiations, understandings and prior agreements, whether verbal or in writing, between the Parties, including the Letter of Intent, the Terms of Reference, the bidding protocol, the bidding documents submitted by Company and the Access Letter.
- (b) Except as expressly provided in this Agreement, no term, condition, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the provisions of this Agreement shall be effective or binding upon the Parties unless the same shall have first been effected in accordance with Section 17.8.
- (c) All the references in this Agreement and to the Amendment of the SLA shall include, incorporate and specifically refer to the Annexes and Appendixes, which constitute an integral part of this Agreement. No other representations, promises, guarantees, agreements, compromises or securities (either express or implied) besides those expressly established in this Agreement and in the Amendment of the SLA, exist.

37.2 Survival of Certain Provisions

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

EXAMPLE 1

12.6 Survival of Certain Provisions. All obligations of the Parties that accrued prior to termination of this Agreement shall survive termination of this Agreement. In addition, the following provisions shall survive termination or expiration of this Agreement: Articles 5, 8, 13, 15, 16, and 17.

37.3 Amendment

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

EXAMPLE 1

Article
Amendments

29

This Agreement shall not be amended, modified, or supplemented except by an instrument in writing signed by the Parties.

EXAMPLE 2

17.8 Amendments. The Parties acknowledge that during the term of this Agreement, certain events may occur which may justify amending the terms and conditions of the SLA, in the understanding that no amendment shall be valid unless made in writing and signed by all the Parties, and complies with all procedures of the Law.

EXAMPLE 3

No amendment or variation of the accepted exploration contract:

- (a) is valid or binding on a party unless made in writing executed by all parties to it; or
- (b) may be made if the amendment or variation is inconsistent in any way with the provisions of the framework ILUA (excluding, for this purpose, all schedules, annexures and appendices to it).

EXAMPLE 4

15.30. Upon mutual consent recorded in writing, the Parties may amend or modify this Agreement.

37.4 Severability

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

EXAMPLE 1

33.7 Severability. Should any Section of this Agreement, or any provision or term of any section, be found to be void, invalid or unenforceable, in whole or in part, then the remaining sections, and those unaffected provisions or terms of any other sections which contain some void, invalid or unenforceable provisions or terms, shall nevertheless remain valid and subsisting and shall be construed as if this Agreement had been executed without such void, invalid or unenforceable sections, provisions or terms. Any otherwise void, invalid or unenforceable section, term or provision of this Agreement shall be so construed, or reformed, as to alter, amend or change any such term, provision or condition to the extent necessary to render it valid, lawful and enforceable, while also giving maximum effect to the parties' originally intended purpose or result, short of creating any void, invalid or unenforceable provision, term or condition.

EXAMPLE 2

20.3 Severability

Each word, phrase, sentence, paragraph and clause (a provision) of the accepted exploration contract is severable and if a court determines that a provision is unenforceable, illegal or void the court may sever that provision which becomes inoperative and such severance will not affect the other provisions of the accepted exploration contract.

EXAMPLE 3

17.7 Severance of Invalid Provisions.

If and for so long as any provision of this Agreement shall be deemed to be determined to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other provision of this Agreement except only so far as shall be necessary to give effect to the construction of such invalidity, and any such invalid provision shall be deemed severed from this Agreement without affecting the validity of the balance of this Agreement. Upon such determination that any term or other provision is invalid and unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in order that the transactions contemplated by this Agreement can be consummated as contemplated.

EXAMPLE 4

15.29 If any provision of this Agreement is found to be unenforceable for whatever reason, that provision will be severed from the Agreement, and the remainder of this Agreement shall remain in force.

EXAMPLE 5

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

37.5 Limitations on Waiver

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

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

EXAMPLE 1

Article
No Waiver by Licensee

20

Any waiver of an obligation of the Licensee shall be in writing and signed by the Licensing Authority. No waiver shall be implied unless the Licensing Authority exercises a remedy under this Agreement or except as may be expressly provided for in this Agreement.

EXAMPLE 2

33.4 Non-Waiver of Rights. The non-exercise or partial exercise by any party of any of its rights under the terms of this Agreement shall not in any case constitute a waiver of that right.

EXAMPLE 3

17.6 No Waiver.

No waiver by any Party of any one or more defaults by another Party in the performance of this Agreement shall operate or be construed as a waiver of any future default or defaults by the same Party, whether of a like or of a different character. Except as expressly provided in this Agreement, no Party shall be deemed to have waived, released or modified any of its rights under this Agreement unless such Party has expressly stated, in writing, that it does waive, release or modify such right. The failure of any Party to assert or exercise any claim, right or remedy hereunder shall not be construed as a waiver of such claim, right or remedy in the future.

37.6 Indemnification by Company and by the State

37.6.1 Indemnification for Breach of Agreement

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

37.6.2 Indemnification of the State by Company

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

EXAMPLE 1

Indemnity

31. The Company shall indemnify and keep indemnified the State and its servants, agents and contractors in respect of all actions, suits, claims, demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Company pursuant to this Agreement or relating to its activities hereunder or arising out of or in connection with the construction maintenance or use by the Company or its servants, agents, contractors or assignees of the Company's works or services the subject of this Agreement or the plant, apparatus or equipment installed in connection therewith PROVIDED THAT subject to the provisions of any other relevant Act such indemnity shall not apply in circumstances where the State or its servants, agents, or contractors are negligent in carrying out work for the Company pursuant to this Agreement.

EXAMPLE 2

13.1 Indemnification by COMPANY.

Subject to Section 13.4, COMPANY shall defend, indemnify and hold harmless THE STATE and their [its] directors, officers, employees and agents (each a "Government Indemnified Party") against all Losses to the extent that such Losses are sustained or incurred by a Government Indemnified Party relating to, resulting from, arising out of or otherwise by virtue of:

- (a) Any misrepresentation or breach of a representation or warranty made herein by COMPANY;
- (b) Non-compliance with or breach by COMPANY of any of the covenants or agreements contained in this Agreement to be performed by COMPANY;
- (c) The conduct by or on behalf of COMPANY of the Evaluative Activities;
- (d) Environmental Conditions to the extent such conditions result from or are adversely affected by COMPANY's activities;
- (e) Subject to Section 13.2(f), the presence, release, disposal or the threat of a release or disposal of any Hazardous Substance other than in compliance with Law or this Agreement in connection with the Project, except as the same is or results from an Historic Environmental Matter, unless, and then to the extent that, COMPANY has assumed responsibility for such Historic Environmental Matter pursuant to Section 11.2;
- (f) Subject to Section 13.2(f), the failure, after the Project Notice Date, to promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions with respect to a release or the threat of a release other than in compliance with Law or this Agreement of any Hazardous Substance and other than any release or threat of a release arising from or related to an Historic Environmental Matter unless, and then only to the extent that, COMPANY has assumed responsibility for such Historic Environmental Matter pursuant to Section 11.2;

- (g) Human exposure to any Hazardous Substance, noises, vibrations or nuisance of whatever kind to the extent the same arise from the care, operation or maintenance of the Mine by or for COMPANY, and not from any Historic Environmental Matter, unless (and only to the extent that) the actions of COMPANY shall have adversely changed such Historic Environmental Matter;
- (h) Subject to Section 11.8(a), a violation of any Law by COMPANY, including without limitation any applicable Environmental Law, or the Environmental and Social Policies and Guidelines;
- (i) The remediation of Historic Environmental Matters for which COMPANY has assumed responsibility as provided in Section 11.2; and
- (j) All Losses against which such Government Indemnified Party would have been insured against as an additional insured pursuant to Section 6.9(a) in the event COMPANY undertakes to self-insure with respect to the risk of such Losses pursuant to Section 6.9(b).

13.2 Indemnification by THE STATE.

Subject to Section 13.4, the STATE shall defend, indemnify and hold harmless COMPANY, its Affiliates, and its and their directors, officers, employees and agents (each a "COMPANY Indemnified Party") against all Losses to the extent that such Losses are sustained or incurred by COMPANY relating to, resulting from, arising out of or otherwise by virtue of:

- (a) Any misrepresentation or breach of a representation or warranty made herein by any of the Government Parties;
- (b) Non-compliance with or breach by of the Government Parties of any of the covenants or agreements contained in this Agreement to be performed by THE STATE;
- (c) Operation of or at the Mine that was:
 - (i) Not conducted by COMPANY; and
 - (ii) Conducted prior to the Project Notice Date;
- (d) Subject to Section 13.2(f), existing facilities previously used in connection with the Mine, except for Historic Environmental Matters for which, and to the extent that, responsibility has been assumed by COMPANY pursuant to Section 11.2;
- (e) Subject to Section 13.2(f), Historic Environmental Matters and, if remediation of such Historic Environmental Matter shall have been undertaken by the STATE, such remediated condition, except for Historic Environmental Matters for which, and to the extent that, responsibility has been assumed by COMPANY pursuant to Section 11.2;
- (f) Notwithstanding any assumption by COMPANY of the Management or remediation of, or any other responsibility for, any Historic Environmental Matter pursuant to this Agreement, the death of or injury to any person, damage to any property or any other Loss or harm arising out of or relating in any way to: (i) the operation of the Mine or any activities at the Mine prior to the Project Notice Date, (other than Operations or activities conducted by or on behalf of COMPANY or its Affiliates) or (ii) any Historic Environmental Matter, including in all cases constitutional claims, claims relating to the relocation of people, the expropriation of property, loss of enjoyment, use or value of property, damage to natural resources, business loss or interruption, pollution or contamination of air, surface or ground water or soils, toxic tort claims (including claims under the Civil Code), and private or public health claims arising from or related to any Historic Environmental Matter (collectively, "Third Party Liability"); and
- (g) Any claim, demand or proceeding by or on behalf of any consultant to [any of] THE STATE arising out or relating in any way to any payment made by COMPANY pursuant to Section 3.3.

13.3 Indemnification Procedure.

- (a) If a Government Indemnified Party or a COMPANY Indemnified Party (an "Indemnified Party") shall elect to claim a right to indemnification under this Agreement, the Indemnified Party shall give prompt Notice to the Party from which the Indemnified Party seeks indemnification (the "Indemnifying Party") of the nature of the event, matter or proceedings in connection with which the Indemnified Party would be entitled to claim indemnification from the Indemnifying Party under this Agreement ("Indemnifiable Claim"), which Notice shall set forth the nature of the Indemnifiable Claim and the factual basis therefor.
- (b) The respective obligations and liabilities of the Parties regarding Indemnifiable Claims resulting from claims made by Third Parties ("Third Party Claims") shall be subject to the following terms and conditions:
 - (i) The Indemnified Party shall give the Indemnifying Party prompt Notice of any Third Party Claims. If the Indemnified Party fails to give such prompt Notice, the Indemnifying Party shall be relieved of its indemnification obligations only to the extent that the Indemnifying Party has been actually prejudiced by the delay.
 - (ii) Upon Notice from the Indemnified Party, the Indemnifying Party may, but shall not be required to, assume the defense of any such Third Party Claims, including their compromise or settlement, in which the outcome would give rise to a claim for indemnification hereunder, and the Indemnifying Party shall pay all reasonable costs and expenses incurred by it in connection therewith and shall be fully responsible for the outcome thereof. The Indemnifying Party shall give Notice to the Indemnified Party as to its intention to assume the defense of any such Third Party Claims within thirty (30) Days after the date of receipt of the Indemnified Party's Notice in respect of such Third Party Claims. No compromise or settlement in respect of any Third Party Claims may be effected by the Indemnifying Party without the Indemnified Party's prior consent (which consent shall not be unreasonably withheld) unless the sole relief is monetary damages that are to be paid in full by the Indemnifying Party and such monetary damages are fully paid by the Indemnifying Party. The Indemnifying Party shall have no liability with respect to any compromise or settlement thereof effected without its prior consent (which

consent shall not be unreasonably withheld).

- (iii) If the Indemnifying Party does not, within thirty (30) Days after the Indemnified Party's Notice is given, give Notice to the Indemnified Party of its assumption of the defense of the Third Party Claims, the Indemnifying Party shall be deemed to have waived its rights to control the defense thereof; provided, however, that the Indemnifying Party shall be entitled to participate, at its own cost and expense, in the defense of such Third Party Claims and the Indemnified Party shall fully cooperate with the Indemnifying Party in respect of the defense of such Third Party Claims. If the Indemnifying Party assumes the defense of any Third Party Claims, it shall not be responsible or liable for any costs or expenses of legal counsel incurred by the Indemnified Party in connection with the Indemnified Party's participation in the defense thereof unless agreed to in advance by such Indemnifying Party. If the Indemnified Party assumes the defense of any Third Party Claims in accordance with this Section 13.3(b), then the Indemnifying Party shall pay all reasonable costs and expenses of such defense.

13.4 Limitations on Liability.

- (a) Notwithstanding any other provision of this Agreement, except as provided in Section 7.15, in no event shall any Party be liable to any other Party for any special, punitive, or incidental or consequential damages.
- (b) In no event shall the STATE be liable for any Environmental Condition that results from the actions of COMPANY.
- (c) Each of the Parties shall assume the risk of injuries to its own employees, agents and contractors, except for cases of willful misconduct or gross negligence of another Party.

EXAMPLE 3

19.8 Indemnification of the Concessionaire and the Operating Company by the Government. The Government shall at all times indemnify and hold harmless each of the Concessionaire and the Operating Company from all claims and liabilities arising out of a breach of the covenant set forth in Section 19.6 or a breach of its representation and warranty set forth in Section 21.2(b).

[...]

20.1 Indemnification of the Government by the Concessionaire and the Operating Company. Each of the Concessionaire and the Operating Company shall at all times indemnify and hold harmless the Government and its officers and agents from all claims and liabilities for death or injury to Persons or damage to property from any cause whatsoever arising out of its Operations (except liability arising or in connection with the environmental or safety hazard existing before the handover of the relevant assets by the Government to the Concessionaire or Operating Company) or as a result of its failure to comply with any Law to which it is subject.

37.7 Conflicts of Interest

[Covered by Section 10.4]

**See related provisions at 19.1 Affiliated Company Transactions and 29.1 Affiliated Company Assignment.*

EXAMPLE 1

17.2

- (a) (Company) shall use commercially reasonable efforts to avoid any conflict of interest between its own interests (including the interests of its Affiliates) and the interests of the (Government) in dealing with suppliers, customers and all other organizations or individuals doing or seeking to do business with (Company) in connection with activities contemplated by this Agreement.
- (b) The provisions of Section 17.2(a) shall not apply to:
 - (i) (Company's) performance which is in accordance with the Laws; or
 - (ii) (Company's) acquisition of products or services from its Affiliates, or the sale thereof to one of its Affiliates, subject to Section 6.11.

37.8 Governing Language

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

EXAMPLE 1

17.13 Governing Language.

The Spanish language shall be the governing language of this Agreement. The English language shall be used in the mediation and arbitration proceedings as provided by Article 16. All communications, hearing or visual materials or documents relating to this Agreement shall be written or prepared in Spanish. The Feasibility Study and all documents related to financing may be in English, but shall be translated into Spanish. An English language version of this Agreement shall be prepared for informational purposes only and shall be initialed by the Parties, to show that it is the official English language version, simultaneously with the execution of this Agreement.

EXAMPLE 2

This Agreement has been drawn up in both the Indonesian and English languages and both texts are valid. In the event of any divergency between the two texts, however, the English text shall be applied.

EXAMPLE 3

Article 42 Language of the Contract and System of Measurement

42.1 This agreement is drafted in French. All reports and other documents required or which may be required by this Agreement must be drafted in French. The translation of this Agreement into English is made with the sole aim of facilitating understanding. In case of difference between the French and English version, the French text will prevail.

42.2 The system of measurement applicable is the metric system.

37.9 Further Acts

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

EXAMPLE 1

Clause 31 Further Acts

31.1 The Parties shall execute such documents and do and perform such acts that lie within their power and are necessary or desirable to enable the Parties to fulfill their obligations hereunder so that the Project and related infrastructure can be constructed and operated in accordance with the Approved Proposal for Development.

31.2 Where this Contract is executed by different Parties on different dates, the last Party to execute this Contract shall promptly notify all other Parties of the date of such execution.

EXAMPLE 2

26. Further Acts

26.1 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 Agreement.

EXAMPLE 3

20.10 Further Assurances

Each party agrees to do all things and sign all documents necessary or desirable to give full effect to the provisions of the accepted exploration contract and the transactions contemplated by it.

EXAMPLE 4

17.21 Further Assurances

- (a) The Parties, subject to the terms and conditions of this Agreement, shall use all reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under the applicable Laws, to consummate and make effective the transactions contemplated by this Agreement.
- (b) If at any time during the Term of this Agreement any further action is necessary or desirable to carry out the purposes of this Agreement, the Parties shall take, or cause to be taken, all such necessary or convenient action, and to execute, deliver and file, or cause to be executed, delivered and filed, all necessary or convenient documentation.

37.10 Duplicate Originals

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

37.11 Representations and Warranties

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

EXAMPLE 1

33. ABSENCE OF REPRESENTATIONS AND WARRANTIES

Except as expressly stated in this Agreement, the Subscription Agreement and the Shareholders' Agreement, no representation, inducement or warranty was, prior to the execution of this Agreement, given or made by one of the Parties hereto with the intent of inducing the other Party to enter into this Agreement, and any representations, inducements or warranties that may have been so given are hereby denied and negated.

EXAMPLE 2

15.27. Each Party warrants to each other Party that at the date of this Agreement it has full power and lawful authority to execute and deliver this Agreement and to perform its obligations under this Agreement.

EXAMPLE 3

SECTION 21 – REPRESENTATIONS AND WARRANTIES

21.1 Representations and Warranties of the Concessionaire. The Concessionaire represents and warrants to the Government as follows:

- (a) The Concessionaire is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and has the corporate power and authority to execute, deliver and perform its obligations under this Agreement.
- (b) This Agreement has been duly authorized by all necessary corporate action on the part of the Concessionaire, and this Agreement constitutes a legal, valid and binding obligation of the Concessionaire enforceable against the Concessionaire in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- (c) Schedule 21.1(c) contains (except as noted therein) complete and correct lists or tables setting forth:
 - (i) the Concessionaire's Shareholders,
 - (ii) the Concessionaire's and each shareholder's Affiliates showing forth, in each case, its relationship to the Concessionaire or the Shareholder and the jurisdiction in which it is organized,
 - (iii) the directors and senior officers of the Concessionaire, each shareholder of the Concessionaire, and each Person or Group deemed to Control the Concessionaire, and
 - (iv) each Person or Group that is the ultimate beneficial owner of 5% or more of (x) the voting rights ordinarily empowered to control the

management of the Concessionaire or (y) the rights to share in the profits of the Concessionaire, and the chain through which such rights are exercised.

- (d) None of the Affiliates, directors, officers or other Persons identified in Schedule 21.1(c) is a Prohibited Person and the Concessionaire, each of its shareholders and each of their respective officers and directors is an "Eligible Applicant" under the Mining Law.
- (e) The execution, delivery and performance by the Concessionaire of this Agreement will not (i) contravene, result in any breach of, or constitute a default under any agreement or instrument to which the Concessionaire is a party or by which or any of its properties are bound or affected, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or governmental authority applicable to the Concessionaire or (iii) subject to the issuance of the SAFE Approval, violate any provision of any statute or other rule or regulation of any governmental authority applicable to the Concessionaire.
- (f) There are no actions, suits, investigations or proceedings pending or, to the knowledge of the Concessionaire, threatened, against or affecting the Concessionaire or any property of the Concessionaire in any court or before any arbitrator of any kind or before or by any governmental authority that call into question the right of the Concessionaire to enter into and perform its obligations under this Agreement or that would, if resolved against the Concessionaire, would materially adversely affect its ability to perform its obligations under this Agreement.
- (g) Except as has previously been disclosed to the Minister and the [environmental ministry] in writing, neither the Concessionaire nor any Affiliate of the Concessionaire has been determined under any order, judgment, decree or ruling of any court, arbitrator or governmental authority to be in material violation of (i) any applicable law, ordinance, rule or regulation relating to the protection of the environment of any governmental authority or (ii) any agreement pursuant to which it is entitled to extract Minerals or hydrocarbons under the laws of any jurisdiction.
- (h) The Concessionaire has the experience, finance, expertise, technical know-how and systems required for the conduct of the activities contemplated by this Agreement.
- (i) None of the Concessionaire, any Affiliate of the Concessionaire or any Person acting on behalf of the Concessionaire or any Affiliate of the Concessionaire has made or promised to make any payment or transfer of anything of value, directly or indirectly, to or for the benefit of an Official or an Official's family member or to an intermediary for payment to or for the benefit of an Official or an Official's family member in connection with this Agreement or the transactions contemplated hereby. (For the purposes of this paragraph, "Official" means any employee or officer of the Government, including any regional or local department or agency thereof, any enterprise owned or controlled by the Government, any official of a political party in Country, any official or employee of a public international organization, any other person acting in an official capacity for, or on behalf of, any such entity, or any candidate for political office in Country.)

21.2 Representations and Warranties of the Government. The Government represents and warrants to the Concessionaire and the Operating Company as follows:

- (a) On the Effective Date, the execution, delivery and performance of this Agreement will have received all necessary governmental approvals and authorizations and will constitute the legal, valid and binding obligation of the Government.
- (b) Any portion of the Concession Area granted to the Concessionaire shall be state owned land, free and clear of all Liens and other rights of third parties as of the date the use of that portion of the Concession Area is granted to the Concessionaire pursuant to Section 3.1, provided that the Government makes no representation or warranty hereunder in respect of the rights of third parties in the Contiguous Area with whom the Concessionaire has negotiated as described in Section 3.2.

38.0 Good Faith

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

[SIGNATURE PAGES FOLLOW]

ANNEX A

ANNEX A-1

Mining Area

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

ANNEX A-2

Project Area

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

ANNEX B

Community Development Agreement Objectives

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

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

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

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

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

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

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

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

Regional Development Council

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

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

funds, local participation committees and local environmental monitoring committees.

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

Community Development Foundation

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

Acceptance of Obligations of Prior Owners

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

ANNEX C

Local Business Development Plan

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

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

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

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

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

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

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

MMDA COMMENT SUMMARIES

The statements below are generic summaries of hundreds of valuable MMDA comments made by individuals and organization from around the world. Where only one or very few comments were made on a given article, an article summary may not be posted below. Each comment, however, was taken into consideration and has contributed to revisions of the MMDA.

Thank you for your comments. For more information visit www.MMDAProject.com.

SUMMARY 1.0 Definitions and Interpretation

[Insufficient Comments Available for Summary]

SUMMARY 1.1 Definitions

Comments indicated that the MMDA needs to provide additional clarification on several terms, including “Days,” “Date of First Commercial Production,” “Stability Clause,” “Performance Standards,” “Local Communities,” “Production,” “Tenure,” “ICSID” (International Centre for Settlement of Investment Disputes), “Commercial Production,” and “Stability Period.” Suggestions often sought greater consistency with applicable law, as well as to increase the scope of the definition. Comments also identified a number of terms that were not included in the definition section, but were utilized in the MMDA, such as “child labor,” “forced labor,” “discrimination,” and “freedom of association,” and suggested defining these terms.

SUMMARY 1.2 Interpretation

[Insufficient Comments Available for Summary]

SUMMARY 1.3 Existing Rights

[Insufficient Comments Available for Summary]

TENURE

SUMMARY 2.0 Development of Mining Area

[Insufficient Comments Available for Summary]

SUMMARY 2.1 Term of this Agreement

Comments indicated that this article could be duplicative of provisions already prescribed by applicable mining law. A few comments noted that, while the MMDA must take care not to derogate from applicable law, it should help parties with the difficult task of filling in the gaps that mining law doesn’t typically cover.

SUMMARY 2.1.1 Grant of Mine Development Rights

Comments noted that this article would be strengthened by addition of language such as “subject to existing laws and regulations” and “under Applicable Law.” Comments also noted that this article should balance the developer’s rights with the Sovereign State’s right to protect and sustainably manage natural resources. Commentators noted that maintaining such a balance, particularly when local communities are involved in the process, will help Parties avoid political and legal issues.

SUMMARY 2.1.2 Grant of Access Rights

SUMMARY 2.2 Exclusivity

Comments noted that addition of such language as “subject to existing laws and regulations” and “under Applicable Law” would strengthen this article. Comments also noted that this article should take into consideration the rights and responsibilities of artisanal miners in the mining area.

SUMMARY 2.3 Legal Title to Minerals

[Insufficient Comments Available for Summary]

SUMMARY 2.4 Obligations Prior to Construction

Comments noted that adding the term “subject to applicable law” would strengthen this article. Comments noted that completion of a social impact assessment, and/or a human rights impact assessment, should be part of this article. Comments also noted that the MMDA should not assume that permits and documents will be approved by the State, but should outline procedures to follow when a permit or document is denied.

SUMMARY 2.4.1 Feasibility Study

Comments noted the need to include a reasonable deadline for completion of the Feasibility Study. Other comments noted the need to provide additional definition of terms in this section, such as “geographic source of impacts and benefits,” “independent 3rd party” and “Date of Commencement of Commercial Production.”

SUMMARY 2.4.2 Environmental Assessment & Environmental

Management Plan

Comments on this article called for stronger language to promote environmental protection, mitigate environmental harm, improve environmental remediation, and rectify long-term environmental impacts. Comments called for greater clarification of monitoring and reporting of environmental impacts throughout the mining project. Comments also noted the need to include local communities in the environmental management plan, including the need to make the plan publicly available in a form that is accessible to local communities.

SUMMARY 2.4.3 Social Impact Assessment and Action Plan

Comments called for greater clarification of monitoring and evaluation procedures related to the social impact assessment and action plan. Comments also noted the need to include local communities in the social impact assessment and management plan, including developing the plan in consultation with local communities, and making the plan publicly available in a form that is accessible to local communities.

SUMMARY 2.4.4 Financing Plan

[Insufficient Comments Available for Summary]

SUMMARY 2.4.5 Compliance with Law; Requested Changes by State

Comments promoted an increased time period for approval of the feasibility study and grant of the mining license, such as 90 – 120 days.

SUMMARY 2.5 Requirement to Obtain Permits

[Insufficient Comments Available for Summary]

SUMMARY 2.6 Construction

Comments suggested that the reporting scheme described in this article should involve less frequent submissions, such as semi-annually or annually, instead of quarterly.

FINANCIAL

SUMMARY 3.0 Annual Rental

Comments noted that this clause may be an unnecessary repetition of applicable law.

SUMMARY 4.0 Royalty and Other Duties

Comments requested inclusion, or at least examples, of sliding scale royalties. Other comments noted that the MMDA should include procedures for verification of reported production, to ensure accuracy in royalty payments.

SUMMARY 4.1 Calculation of Royalty

[Insufficient Comments Available for Summary]

SUMMARY 4.2 Royalty on Other Mineral Materials

[Insufficient Comments Available for Summary]

SUMMARY 4.3 Production Statement

[Insufficient Comments Available for Summary]

SUMMARY 4.4 Payment of Royalty

[Insufficient Comments Available for Summary]

SUMMARY 4.5 Disputes regarding Royalty Payments

[Insufficient Comments Available for Summary]

SUMMARY 5.0 Customs Duties and Reimbursement

Comments suggested that this article should balance the needs of the local government to collect customs duties with the needs of the company to import supplies that are not locally available. Comments also suggested that the MMDA should reflect the differences in customs considerations in the construction phase versus the exploration phase.

SUMMARY 5.1 Customs Duties

Comments noted some inconsistencies in this article related to other articles in the agreement.

SUMMARY 5.2 Reimbursement of Import Duties

Comments suggested that this article should balance the needs of the local government to collect duties with the reasonable needs of the company to import and export.

SUMMARY 6.0 Insurance

[Insufficient Comments Available for Summary]

SUMMARY 7.0 Taxation

Comments introduced strategies for capturing windfall profits and for allowing the host government to share profit by taxing capital gain.

SUMMARY 7.1 Taxation – General

Comments noted that the MMDA should list additional resources and recent publications on the difficult topic of taxation. Other comments noted that the MMDA should be a little more flexible regarding payments to non-residents, and that the MMDA should not promote tax exemption.

SUMMARY 7.2 Income Tax

[Insufficient Comments Available for Summary]

SUMMARY 7.3 Deductions in the Computation of Company Income Tax

[Insufficient Comments Available for Summary]

SUMMARY 7.4 Value-Added Taxes and Project Activities

[Insufficient Comments Available for Summary]

SUMMARY 7.5 Property Taxes

[Insufficient Comments Available for Summary]

SUMMARY 7.6 Taxes on Expatriate Employees

[Insufficient Comments Available for Summary]

SUMMARY 7.7 Taxes on Non-Resident Contractors

[Insufficient Comments Available for Summary]

SUMMARY 7.8 Withholding Tax Obligations

[Insufficient Comments Available for Summary]

SUMMARY 7.9 Provisions Relating to Other Taxes and Levies

[Insufficient Comments Available for Summary]

SUMMARY 7.10 Local Government Taxes and Levies

Comments noted that this article should not preclude a local government from passing lawful tax regulations, but should allow the company to appeal such changes, including appeal of relevant administrative procedures.

SUMMARY 8.0 Financing

[Insufficient Comments Available for Summary]

SUMMARY 8.1 Security Interest

[Insufficient Comments Available for Summary]

SUMMARY 8.2 Debt-Equity Ratio

[Insufficient Comments Available for Summary]

SUMMARY 8.3 Foreign Currency Remittance and Availability

[Insufficient Comments Available for Summary]

SUMMARY 8.4 Role of State in Financing

[Insufficient Comments Available for Summary]

SUMMARY 8.5 State Guarantees

[Insufficient Comments Available for Summary]

SUMMARY 9.0 Financial Records and Statements, Accounting Standards and Currencies

[Insufficient Comments Available for Summary]

SUMMARY 9.1 Payments and Exchange Rates

Comments suggested that the MMDA should clarify the use of foreign exchange for payments to the State. One commentator suggested that such payments should only be made to a foreign exchange account in the Central Bank.

SUMMARY 9.2 Financial Records and Financial Statements

[Insufficient Comments Available for Summary]

RIGHTS AND OBLIGATIONS

SUMMARY 10.0 Mutual Obligations

[Insufficient Comments Available for Summary]

SUMMARY 10.1 Information to Local Government

[Insufficient Comments Available for Summary]

SUMMARY 10.1 Applicability of IFC Performance Standards and Equator Principles

Many comments requested that the MMDA require Free Prior and Informed Consent of local communities prior to any mining activities. Comments included a number of potential references to relevant international standards, such as the Organization of Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, International Organization for Standardization (ISO) 26000, and the International Council on Mining and Metals (ICMM) sustainable development framework.

SUMMARY 10.3 Parties' Commitment to Protecting Human Rights

Comments called for gender equality to be a more prominent feature of this article.

SUMMARY 10.4 Prevention of Corruption

Comments suggested this article would be strengthened by requiring investors to certify that no direct or indirect bribes were made during contract formation; should a bribe be found to have influenced the contract, the contract should become invalid. Other comments suggested that the MMDA should include references to end party lists and other resources that help identify parties found guilty of bribes and other corrupt activity.

SUMMARY 10.4.1 Obligations of the Company

[Insufficient Comments Available for Summary]

SUMMARY 10.4.2 Obligations of the State

[Insufficient Comments Available for Summary]

SUMMARY 10.4.3 Other Applicable Norms

[Insufficient Comments Available for Summary]

SUMMARY 10.4.4 Understanding of the Parties

[Insufficient Comments Available for Summary]

STATE RIGHTS

SUMMARY 11.0 State Access to Project

Comments indicated that 48 hours notice prior to a health and safety inspection is unreasonable. Comments also indicated that, outside of exceptional circumstances, visits and inspections should be limited to normal business hours and should be conducted in a way that avoids unnecessary interference with the normal operations of the Company.

SUMMARY 12.0 Inspection of Books, Records and Information, Independent Audit

Comments noted that proper auditing of books and records is crucial. Comments suggested use of the more universal term “fully independent” as opposed to “not conflicted” in descriptions of audit requirements.

Comments suggested that the requirements of this article should appear with requirements related to delivery of financial statements. Comments noted that the deadline this article requires for production of annual audited financial statements should be consistent with the deadlines most international mining companies must follow for filing accounts, and should also be consistent with deadlines in other articles of this agreement. Comments also indicated that the term “investment report” must be clarified.

STATE OBLIGATIONS

SUMMARY 13.0 State Assurances and Obligations

[Insufficient Comments Available for Summary]

SUMMARY 13.1 Legislation to Approve Agreement

Comments noted that a mining agreement that goes beyond local legislation could be perceived as an insult and lead to conflict in negotiations. Other comments noted that this article refers to exploration, which should be covered in a separate exploration agreement.

SUMMARY 13.2 Tax Stabilization Clause

This is likely the most controversial clause in the MMDA. Commentators had very serious and divided concerns about the use of stabilization clauses, particularly as it may be difficult to distinguish between the stabilization of tax regimes and the stabilization of other regimes, such as those that protect the environment and promote social development. Many comments suggested that a stabilization clause is inappropriate for the MMDA or any other agreement, particularly as a starting point for negotiations. Some States, for example, no longer allow stabilization.

Other comments strongly advocated for the inclusion of a stability clause. These comments noted that investors in the mining sector require tax stability, and proof of a strong record by the State in honoring agreements related to tax stability.

Many comments suggested that, regardless of one’s position on tax stabilization, a model agreement should not assume a stabilization clause, but should leave it up to negotiating parties to decide whether such a clause is necessary. Commentators suggested that the best approach is one that helps all parties balance their economic interests.

SUMMARY 14.0 Fair and Economical Project Operation

[Insufficient Comments Available for Summary]

SUMMARY 15.0 Permits

Comments suggested this article should be revised to simply state an affirmative obligation of the State to process all applications for required consents or approvals expeditiously and to not unreasonably withhold or delay any consents or approvals. Comments noted that the article should be rephrased so that it does not imply that the State is required to grant approvals; the State should be able to deny an approval when the company is clearly not satisfying applicable requirements.

SUMMARY 16.0 Expatriates

Comments noted that disparity in the wages of expatriate hires and local hires leads to conflict and may result in violence. Many commentators advocated for a strong preference for local hires. Other comments noted that the company has the right to make its own hiring decisions; the appropriate balance between expatriates and local hires changes in various contracts. Commentators also noted that this section should be revised to allow immediate family members and other dependants of expatriates employed by the company to freely enter the country, provided that such expatriates comply with applicable law. Comments suggested this article should be combined with the article related to company hiring decisions.

Comments suggested that this article should create a partnership between the company and host country to meet staffing targets, which may require more innovative use of educational resources. Comments also suggested combining this article with other articles that relate to skills transfer and training of local staff.

SUMMARY 17.0 Infrastructure

Commentators noted that this article describes a number of State obligations that should appear in more relevant articles. Comments noted that companies should repair all road damages caused by their use of public road infrastructure, and that, to promote sustainable development, company infrastructure should be as accessible to all parties as possible.

SUMMARY 17.1 Availability of Existing Infrastructure

Comments noted that exclusive use agreements should be avoided, as they are uncompetitive and detrimental to the economy as a whole. Other comments noted that the level of access the article provides to local community members and the fee-based user agreements outlined in the article may be unrealistic.

SUMMARY 17.2 Access to Infrastructure

Comments noted that mining companies should not be responsible for infrastructure development outside the mining area because this is not the mining company's area of expertise. Other comments noted that shared use of infrastructure with the company can be dangerous and can lead to problems, such as a local communities' excessive reliance on a relatively short-term mining project. Other comments strongly advocated for infrastructure to remain accessible to all parties.

SUMMARY 18.0 State Obligations Re: Local Governments and Landowners

Comments suggested that this article should be reduced to a simple clause that says the State will ensure that agreements made between the Company and local communities, landowners and local authorities are enforced. Other comments noted that the Company should ensure that its payment to communities are transparent, so that the Company receives credit for its efforts, and also to ensure that no issues related to bribery or corruption result from such payments.

COMPANY RIGHTS

SUMMARY 19.0 Company Rights

[Insufficient Comments Available for Summary]

SUMMARY 19.1 Affiliated Company Transactions

Comments indicated that this article must give greater consideration to compliance with existing regulations, including WTO regulations, and should allow for extenuating circumstances. Other comments noted that the article should be based on generally accepted international accounting principles instead of on generally accepted accounting principles in the host country. Comments also indicated that the article must ensure that transfer pricing yields balanced returns to both the company and the state.

SUMMARY 19.2 Company Hiring Decisions

Comments indicated that this is a controversial and political topic. Comments noted that disparity in the wages of expatriate hires and local hires leads to conflict and may result in violence. Some comments called for the company to focus its efforts on local hires while others call for the article to give the company flexibility in hiring decisions. Comments called for this article to promote partnerships between the company and the host government to meet hiring targets. Other comments suggested that this article is too specific for a model agreement; that this article must be negotiated according to the particular circumstances of a given agreement.

SUMMARY 19.3 Security

Comments generally called for this article to place strong emphasis on human rights, including the Voluntary Principles on Security and Human Rights. Comments were also generally opposed to the use of private security. Commentators noted that security is a State responsibility that should remain in the hands of the State, subject to applicable law. Where the company cannot avoid use of private security, comments called for private security to be restricted by clear standards of conduct and measures that prevent detention and use of excessive force. Comments also indicated that this article should require the company to inform local communities regarding codes of conduct applicable to company security, and to ensure that these communities have a means to peacefully resolve disputes related to company security.

COMPANY OBLIGATIONS

SUMMARY 20.0 Development Obligations

Comments noted that this article should not establish minimum development expenditures; such a requirement is contrary to efficient and cost effective development. Comments also noted that this article should not include concerns that should be addressed during the exploration phase; such considerations should be covered in a separate exploration agreement.

SUMMARY 21.0 Use of Local Goods and Services

Comments noted that this article should require the company to procure local goods and services to the extent they are available. Other comments noted that this article should only require the company to procure local goods and services when price, quality, and reliability are comparable to that of other vendors. Comments also noted that this article should require the company to monitor and evaluate labor standards throughout the supply chain.

SUMMARY 22.0 Local Community Development

Comments noted that this article should provide greater detail and must be consistent with the referenced annexes. Other comments noted that this article should be less prescriptive and less detailed.

SUMMARY 22.1 Community Development Agreement

Several comments noted that the Community Development Agreement (CDA) should be in place at a much earlier date, such as the Date of Commencement of Commercial Production. Many comments also noted that the timeline for entering into CDAs should extend far beyond 30 days. Comments noted that this article should address procedures relating to breakdowns or failure in the CDA negotiation process.

SUMMARY 22.2 Relationship of This Agreement to Local Level Agreement

Comments noted that this article must be very specific about what constitutes a company breach of the CDA. Several comments strongly disagreed with a breach of the CDA resulting in breach of the mining development agreement.

SUMMARY 22.3 Local Business Development Plan

Comments suggested that this article should be combined with an article regarding Employment and Training of Local Citizens. Other comments suggested that “guaranteed employment” of local populations might be unrealistic.

SUMMARY 23.0 Community Health

Comments noted that this article should only require the company to provide health care for employees; a requirement to provide community health care is unsustainable because it promotes dependency on the company instead of state responsibility. Other comments suggested extending company responsibility for health care services beyond project employees to individuals whose health is impacted by the mining project. Several comments noted that the company's obligation regarding health care should be to work in partnership with the state to enhance the state's long-term capacity to provide health care. Comments also suggested that the terms of this article could be negotiated as part of the Community Development Agreement.

SUMMARY 24.0 Employment and Training of Local Citizens

Comments suggested that this article should be combined with an article regarding Company Hiring Decisions. Other comments noted that this article must clarify the meaning of “local” to determine when the company is required to hire individuals in the mine area vs. citizens residing anywhere within the host country.

SUMMARY 24.1 Minimum Employment Levels

[Insufficient Comments Available for Summary]

SUMMARY 24.2 Investment in Skills of Local Work Force

[Insufficient Comments Available for Summary]

SUMMARY 24.3 Labour Training and Capacity Enhancement

[Insufficient Comments Available for Summary]

SUMMARY 24.4 Management Training and Capacity Enhancement

[Insufficient Comments Available for Summary]

SUMMARY 25.0 Labour Standards

Comments suggested that this article should include references to “good industry practice” and cites to specific ILO Conventions and to the UN Convention on the Rights of the Child.

SUMMARY 25.1 Labour Standards

Several comments underscored the importance of this article and of protecting union bargaining rights. Comments suggested that this article should include references to “good industry practice” and cites to specific ILO Conventions and to the UN Convention on the Rights of the Child.

SUMMARY 25.2 Health & Safety

Comments suggested that this article should be much more detailed and could provide references to specific health and safety standards.

SUMMARY 26.0 Mining Closure/Post-Closure Obligations

Comments stressed the importance of this article and suggest adding provisions that would apply in circumstances of a temporary mine closure.

SUMMARY 26.1 Closure Plan and Closure Obligation

Commentators suggested that this article should outline a step-by-step process for mine closure, while other commentators suggest that the article should be more general. Several comments noted that the period within which the State must provide feedback on the closure plan should be lengthened.

SUMMARY 26.2 Guarantees for Closure Expenses

Comments suggested that companies should not be required to provide cash payments in advance of mine closure, as such payments may invite misuse of the reserved funds and may detract from funds available for community development.

SUMMARY 26.3 Post-Closure Monitoring

Comments suggested that many aspects of this article, such as retraining and community development, as well as sustainable biodiversity, must be dealt with much earlier in the mining project, thus should be emphasized in other articles of the mining development agreement.

SUMMARY 27.0 Rights of Citizens of the State

Comments suggested that this article should emphasize the rights of host country citizens regarding access to information, public participation, and access to justice.

SUMMARY 27.1 Company Grievance Mechanism

Comments suggested that the community aspects of the grievance mechanism described in this article should instead become part of the Community Development Agreement and related negotiations. Several comments noted that this article incorrectly refers to International Finance Corporation (IFC) Performance Standard 23 when it should refer to Article 23 of IFC Performance Standard 1. Comments also noted that any union associated with the company is likely to have its own grievance mechanism, which this article must take into account.

SUMMARY 27.2 Forum for Claims and Disputes involving Natural Citizens of the State

Comments suggested that this article should be negotiated within the Community Development Agreement (CDA) and thus should become part of the article pertaining to the CDA. Comments also suggested that arbitration is inappropriate and cost prohibitive for many host country citizens. Commentators also noted that this article should provide protection for “whistle-blowers” to avoid unjust retaliation.

OTHER TERMS & CONDITIONS

SUMMARY 28.0 Obligations of Contractors and Subcontractors

Comments suggested that this article should be revised, as it appears to apply only to subcontractors. Other comments suggested that this article is inappropriate for a model mining agreement.

SUMMARY 28.1 Applicability of Obligations to Contractors and Their Subcontractors

Commentators noted that this article should be revised to avoid any attempt to bind third parties to the mining development agreement.

SUMMARY 28.2 Applicability of Obligations to Parent Company and Affiliates

Commentators noted that this article should be revised to avoid any attempt to bind third parties to the mining development agreement.

SUMMARY 29.0 Assignment

Comments emphasized that this article must require any assignee, affiliate, or successor to accept all obligations of the assignor.

SUMMARY 29.1 Affiliated Company Assignment

[Insufficient Comments Available for Summary]

SUMMARY 29.2 Third Party Assignment

[Insufficient Comments Available for Summary]

SUMMARY 29.3 Capacity of Successors and Assigns

[Insufficient Comments Available for Summary]

SUMMARY 29.4 Release

[Insufficient Comments Available for Summary]

SUMMARY 29.5 No Assignment by State

[Insufficient Comments Available for Summary]

SUMMARY 30.0 Availability of Information

Comments emphasized the importance of transparency in general, particularly when related to matters of public concern such as health, safety, environmental protection, and transparency of government revenues and expenditures. Other comments noted the importance of protecting commercially sensitive information from company competitors, and express the need for balance in this article to protect such information.

Comments particularly emphasized the importance of referencing the Extractive Industries Transparency Initiative (EITI). Other comments suggested referencing domestic Freedom of Information Acts and Aarhus Convention disclosure requirements.

Comments noted that some of the examples included with this article directly contradict the article and should be removed.

SUMMARY 30.1 This Contract a Public Document

Comments noted that the confidentiality exception provided in subsection b conflicts with the broad transparency provided in subsection a; any confidentiality exception must be clearly defined and revised to ensure consistency with the rest of the agreement. Other comments noted that the company should only be required to make its reports and submissions to the State public, particularly the environmental management plan, social impact assessment plan, and closure plan, but that other documents, such as the feasibility study, should remain confidential.

Many comments noted that Internet publication was sufficient to meet the transparency requirement, noting that a requirement to leave documents in physical “repositories” was overly burdensome and unnecessary. Other comments noted that physical repositories would make documents more easily accessible to the public, but the documents should be in an accessible form, avoiding overuse of legalese when possible and including audio recordings when this would increase accessibility to illiterate populations.

SUMMARY 30.2 Certain Information Confidential

[Insufficient Comments Available for Summary]

SUMMARY 31.0 Force Majeure; Suspension of Operations for Market Conditions

[Insufficient Comments Available for Summary]

SUMMARY 31.1 Obligations of Party in Event of Force Majeure

[Insufficient Comments Available for Summary]

SUMMARY 31.2 Extension of Agreement

[Insufficient Comments Available for Summary]

SUMMARY 31.3 Negotiation in Event of Force Majeure

Comments noted that this article should take into consideration the company's mine closure obligations in the event that performing such obligations is precluded by force majeure.

SUMMARY 31.4 Suspension of Operations for Market Conditions

Comments suggest that this article should be strengthened, particularly to balance the host government's need to maintain revenue stability with the company's need to pursue options that may result in greater overall revenue.

SUMMARY 32.0 Cooperation, Dispute Resolution and Arbitration

Comments noted that the company must have a grievance mechanism, and that this mechanism must be transparent and accessible to the public. Other comments noted the ambiguity of "good faith," which must be clarified, and the need to establish a renegotiation period.

SUMMARY 32.1 Cooperation

Comments noted that the period of time during which parties to a dispute must identify Independent Sole Experts should extend beyond 10 days.

SUMMARY 32.2 Arbitration

Comments suggested that the International Centre for Settlement of Investment Disputes (ICSID) should not be named in this article because this would be undesirable to some States; the article should use a blank "_____" instead of a specific reference to ICSID. Some comments also suggested that this article should not require conciliation prior to arbitration.

SUMMARY 33.0 Surrender and Termination

[Insufficient Comments Available for Summary]

SUMMARY 33.1 Surrender

Comments noted that the purpose of this article is unclear.

SUMMARY 33.2 Termination by the State

Comments noted that this article should refer to specific articles in the agreement so that Parties are aware of the specific circumstances in which a right to terminate exists. Commentators also suggested that the State's right to terminate the agreement should be suspended during active negotiations or resolution of disputes between the parties.

SUMMARY 33.2.1 Termination on Certain Events

[Insufficient Comments Available for Summary]

SUMMARY 33.2.2 Termination on Breach

[Insufficient Comments Available for Summary]

SUMMARY 33.3 Termination by the Company

Commentators noted that termination by the company must be without prejudice to other rights and remedies under the agreement or under applicable law.

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

Commentators noted that any requirement for the company to sell assets must be subject to the rights of third parties such as suppliers and finance providers and should be based on market value. Commentators also noted that this article should be more balanced and may not be appropriate for a model agreement.

SUMMARY 33.5 Retention of Books and Records

Comments noted that it may be impractical for the company to leave all books and records in the country; the company instead should be required to provide a full copy of all records on mine closure and provide periodic record updates to the State.

SUMMARY 33.6 Access Following Expiration or Termination

[Insufficient Comments Available for Summary]

SUMMARY 33.7 Obligations Following Expiration, Surrender or Termination

Comments noted that this article should grant to the company continued rights of access and use of the mine in order to fulfill or discharge its accrued rights and obligations.

SUMMARY 34.0 Notices

[Insufficient Comments Available for Summary]

SUMMARY 34.1 General

[Insufficient Comments Available for Summary]

SUMMARY 34.2 Change of Address

[Insufficient Comments Available for Summary]

SUMMARY 34.3 Delivery Methods

Comments suggested that where notices are delivered electronically, a hard copy of the notice should also be delivered.

SUMMARY 34.4 Effective Time of Delivery

[Insufficient Comments Available for Summary]

SUMMARY 35.0 Applicable Law

Comments suggested that this article should not list specific categories of treaties, such as human rights treaties or bilateral treaties. Other comments suggested that this article should refer to the mining development agreement as an international agreement to which international law applies.

SUMMARY 36.0 Periodic Review

[Insufficient Comments Available for Summary]

SUMMARY 36.1 Modification and Review

Commentators suggested that this article should allow reviews to take place upon request of either party based on actual need for review, instead of at a fixed time interval.

SUMMARY 37.0 Ancillary Provisions

[Insufficient Comments Available for Summary]

SUMMARY 37.1 Entire Agreement

[Insufficient Comments Available for Summary]

SUMMARY 37.2 Survival of Certain Provisions

[Insufficient Comments Available for Summary]

SUMMARY 37.3 Amendment

Commentators noted that this article should recognize that a State signature alone might be insufficient to bind the State to the amendment.

SUMMARY 37.4 Severability

[Insufficient Comments Available for Summary]

SUMMARY 37.5 Limitations on Waiver

[Insufficient Comments Available for Summary]

SUMMARY 37.6 Indemnification by the Company and by the State

Some commentators noted that an indemnity clause is not appropriate in this model agreement.

SUMMARY 37.6.1 Indemnification for Breach of Agreement

Some commentators noted that an indemnity clause is not appropriate in this model agreement.

SUMMARY 37.6.2 Indemnification of the State by Company

Some commentators noted that an indemnity clause is not appropriate in this model agreement.

SUMMARY 37.7 Conflicts of Interest

Commentators noted that this article is too vague and should be covered in other articles, such as Article 12.3 (Prevention of Corruption).

SUMMARY 37.8 Governing Language

Commentators noted that a dual language agreement could lead to disputes, as articles in two different languages are not likely to have equivalent meanings.

SUMMARY 37.9 Further Acts

Commentators noted that this article should incorporate less aggressive terms, including a reasonableness requirement.

SUMMARY 37.10 Duplicate Originals

[Insufficient Comments Available for Summary]

SUMMARY 37.11 Representations and Warranties

[Insufficient Comments Available for Summary]

SUMMARY 38.0 Good Faith

Commentators noted that the meaning of “good faith” is ambiguous and may not be recognized under applicable law.

SUMMARY Annex A: Mining Area

Comments noted that references to exploration must be removed from this article and should be part of a separate exploration agreement; references to protected areas, national parks and world heritage sites are more appropriate for an exploration agreement.

SUMMARY Annex B: Community Development Agreement

Several comments noted that this annex is too specific and complex. Commentators noted that this article should encourage a community development agreement that avoids legalese and instead promotes an agreement that is easily understood by the broader community. Other commentators noted that this text should become part of the mining development agreement, particularly any articles that require payment, such as to a community development foundation, or duplicate articles in the mining development agreement, such as those related to applicable law and to assignment.

Commentators also suggested that a drafting note be added to this annex to explain that it is a list of possible obligations, all of which may not be applicable or appropriate for particular circumstances of the project or traditions in the community. Commentators also noted the need to use terms that clearly differentiate the mining development agreement from the community development agreement throughout this annex.

SUMMARY Annex C: Local Business Development Plan

Comments noted that this annex is too specific and prescriptive, and in some circumstances may be inappropriate for a negotiating document. Comments also noted that the annex should not include local content requirements, as these are already part of the mining development agreement.

For additional information see www.MMDAProject.org. Thank you for your interest!



MMDA 1.0
MODEL MINING DEVELOPMENT AGREEMENT



the global voice of
the legal profession