

# **MODEL MINING DEVELOPMENT AGREEMENT 1.0 (MMDA)**

MMDA 1.0 August 12, 2010

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MMDA 1.0 August 12, 2010

# MINE DEVELOPMENT AGREEMENT

The Effective Date of this Agreement is \_\_\_\_\_, 20\_\_ (“**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 [COUNTRY].

Second, the [NATIONAL] Government of [COUNTRY] (the “**Government**”).

Whereas, the Government owns all of the subsurface minerals in the Country, and

Whereas, the Company desires to extract hard mineral resources in the Country, and

Whereas, the Parties recognize the need to develop the resources in a manner that serves all of society and protects the human environment,

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 develop the mineral resources in a manner to contribute to the sustainable development of the Country and its communities, through a process in which the production and use of nonrenewable natural resources takes place in an equitable framework, and to promote long term stability in the conditions of mining investment;

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

## 1.0 Definitions and Interpretation

### 1.1 Definitions

“**Applicable Law**” means the law of [COUNTRY] as further defined in Section 39.0.

“**Central Bank**” means the central bank of [COUNTRY].

“**Closure Plan**” has the meaning assigned to that term in Section 29.1.

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

“**Confidential Information**” has the meaning assigned to that term in Section 34.2(b).

“**Consultation**” means an open, inclusive, and non-coercive process, conducted in the native language of the participants, without any deadlines other than those agreed to by the



participants, for exchange of information, ideas and viewpoints about the potential benefits and impacts of the Project. Consultation must include, in socially and culturally acceptable forms, all social elements in the area affected by the Project, and must include both men and women. Where Indigenous or Tribal Populations are part of the Consultation, the Parties shall refer to the Akwe:Kon Guidelines for guidance as to the appropriate ways to proceed. A process shall only be considered Consultation if it occurs in advance of any decisions to be taken.

“ \_\_\_\_\_ ” means [*COUNTRY*]

“**Date of Commencement of Commercial Production**” means the first day of the calendar quarter after that quarter in which the cumulative Minerals production equals twenty percent (20.0%) of the Project’s constructed initial annual design capacity as shown in the Feasibility Study.

“**Days**” means business days in [*COUNTRY*], excluding Saturdays, Sundays and public holidays recognized by the [*COUNTRY*] Government agencies.

“**Debt**” has the meaning assigned to that term in Section 9.3(a).

“**Documents**” has the meaning assigned to that term in Section 2.3.

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

“**Environmental Impact Assessment and Environmental Management Plan**” means the plan required to be produced and submitted to the Government by the Company under Section 2.3.2(a).

“**Equity**” has the meaning assigned to that term in Section 9.3(b).

“**Feasibility Study**” means the Feasibility Study prepared by the Company containing the matters referred to in Section 2.3.1.

“**Financing Plan**” means the plan required to be produced and submitted to the Government by the Company under Section 2.3.4.

“**Force Majeure**” means any event 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 labor conflicts, riots, epidemics, earthquakes, storms, floods, or other adverse weather conditions, explosions, fire, lightning, acts of terrorism, or the unavailability 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 by the International Council on Mining and Metals, by the International Finance Corporation’s Performance Standard 1 (Social and Environmental Assessment and Management Systems), Standard 3 (Pollution Prevention and Abatement), and Standard 6

(Biodiversity Conservation and Sustainable Natural Resource Management), by ISO 140001 standards.

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

“**Indigenous or Tribal Populations,**” shall have the same meaning as that in the Convention concerning Indigenous and Tribal Peoples in Independent Countries, ILO Convention 169;

“**Independent Sole Expert**” means an individual employee of an internationally recognized mining consulting firm competent on international mineral markets and prices as the Parties may agree in writing within ten (10) Days after a Party notifies the other of a dispute under Sections 36.0 and 38.1 or failing such agreement, as shall be appointed for this purpose on the application of either Party by the President of the International Chamber of Commerce in Paris.

“**Local Government**” means \_\_\_\_\_.

“**Minerals**” means \_\_\_\_\_.

“**Mining Area**” consists of the area specifically delineated in Annex A of this Agreement, and in which the Company shall have the right to conduct Mining Operations.

“**Notice**” has the meaning assigned to that term in Section 38.1.

“**Parent Company**” means \_\_\_\_\_.

“**Parties**” means the Company and the Government.

“**Party**” means the Company or the Government as the context requires.

“**Project**” means the development, production and reclamation of a hard rock mining operation under this agreement, including all facilities and infrastructure that are reasonable and necessary for the Project according to Good Industry Practice.

“**Project Area**” means the Mining Area plus the other areas in which there are significant environmental, social and economic impacts of the Project, as defined by the Environmental Impact Assessment and Environmental Management Plan for and the Social Impact Assessment and Action Plan.

“**Royalty**” means the payment of royalties required under this Agreement, and for the specific Minerals listed below, shall mean the following Royalty Rates:

| <b>MINERAL</b> | <b>ROYALTY RATE</b><br>[●] per ton |
|----------------|------------------------------------|
|                |                                    |

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“**Security Interest**” means any mortgage, pledge, lien, charge, assignment, hypothecation or Security Interest or any other agreement or arrangement having a similar effect.

“**Social Impact Assessment and Action Plan**” means the plan required to be produced and submitted to the Government by the Company under Section 2.3.3.

“**Tax**” means any Tax imposed by Government under Applicable Law on income, goods and services, and the employment, health and welfare of persons.

“**Tax Law**” means the Applicable Law of [COUNTRY] and any subsidiary and associated legislation or regulation pertaining to any Tax.

## 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 annexure refers to a part, clause, schedule, exhibit or annexure 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 [COUNTRY] court;
- (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 [ \$, OR DOLLARS ], is to the lawful currency of [COUNTRY];

(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.

## 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 the Project remains in commercial production the Company shall have the option to renew this Agreement up to [FOUR] time(s), each for an additional period up to [25] years, on terms and conditions that the Parties may then agree unless sooner terminated in accordance with the terms of this Agreement.

#### 2.2 Grant of Mine Development Rights

The Government hereby grants to the Company full and complete access to the Mining Area, the exclusive right to mine and market [LIST MINERALS] extracted from the Mining Area, including the rights to:

(a) Have priority over any other permit, concession, grant or any other activity of whatever nature on the Mining Area granted or issued 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;

(b) Make all necessary excavations to mine the mineral deposits in Mining Area and to re-work mine tailings and dumped materials;

(c) Construct in Mining Area all plant, machinery, buildings, workshops, pipeline and other production facilities which is necessary or convenient for mining operations;

(d) Stockpile products or dump any waste products of mining or mineral processing operations, including tailings;

(e) 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;

(f) Take and use water from waterways and bores, and to lay water pipes and make water races and ponds, dams and reservoirs and divert and use any water necessary for the Project, and, if economical and practical, return the diverted water to its natural channel;

(g) Construct and maintain all transportation and telecommunication facilities and conveniences in Mining Area and such other areas as specified in the approved Feasibility Study as is necessary or convenient to construct and operate the Project;

(h) Quarry stone, gravel and other materials for use in construction and operation of the Project;

(i) Adjust, after due consultation with Government, production schedules, operating rates and manpower levels as necessary and prudent to respond to temporary operating conditions according to Good Industry Practice;

(j) Subject to Section 2.3.3, to engage in all other activities as are reasonably necessary or convenient to carry out the Project consistent with Good Industry Practice;

(k) Acquire, import, construct, install, and operate plant, equipment, railroads, roads, bridges, airports, ports, jetties, breakwaters, pipelines, power facilities including power generation facilities, towns, or communities any and other infrastructures reasonably requires for the operations; and

(l) Free of charge, to cut and utilize timber, to quarry and use stone or rock and use water reserve, in each case within the Mining Area, to the extent reasonably needed for the operation (but not for any other purpose, including resale), subject to non interference with any other persons lawful use and to Applicable Law, including the environmental law of [COUNTRY] and the international treaty obligations of the Government.

The Company must exercise its rights and obligations under this Agreement according to the terms of this Agreement, plans and programs in the Documents, Good Industry Practice and Applicable Law.

### **2.2.1 Exclusivity**

The Government assures the Company, subject to Section 2.3.3, that its rights to mine in the Mining Area and market minerals from the Mining Area are exclusive. The Government 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.

### **2.2.2 Legal Title to Minerals**

The Government undertakes and agrees that the Company will acquire property in and title to the minerals from the Government upon severance of the minerals from the land in Mining Area. The Company shall, consistent with Section 2.3.3, receive cooperation and verification from the Government to ensure that the local or native people are in fact the rightful owners of the area.

### **2.2.3 Traditional and Native Titles**

Where the surface rights to any land within the Mining Area is owned by local or native people under the laws of [COUNTRY] including relevant customary law, the Company shall pay rent to the title holder for the use of the surface area at a reasonable rate agreed by the native titleholder and the Company. Such payments shall be a credit against the annual rental fee payable to the Government under this Agreement.

## **2.3 Obligations Prior to Construction**

Prior to commencing construction of the Project, the Company shall submit the following documents, as further described in this Agreement (collectively, the “**Documents**”):

- (a) Feasibility Study.
- (b) Environmental Impact Assessment and Environmental Management Plan (including Closure Plan).
- (c) Social Impact Assessment and Action Plan.
- (d) Financing Plan.

### **2.3.1 Feasibility Study**

The Feasibility Study shall be prepared by an independent third-party (and not the Company) on the basis of sound engineering and economic principles in accordance with Good Industry Practice and shall include the following:

- (a) A market study for all of the minerals to be produced in the Mining Area;
- (b) An evaluation of the known deposits within the boundaries of the Mining Area, as well as the minerals, if any, which can be exploited in the facilities, with the corresponding mining studies;
- (c) A description of the technology process to be used in each case, with the results of the laboratory tests;
- (d) An initial mine plan;
- (e) An Environmental Impact Assessment and Environmental Management Plan as provided in Section 2.3.2(a);
- (f) Description of requirements associated with obtaining and complying with Applicable Law, including the estimated cost of compliance and implementation of the Environmental Impact Assessment and Environmental Management Plan;

- (g) Description and plans of the area of the plant, 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) Organization and requirements for personnel;
- (i) Schedules to initiate construction and construction timetables;
- (j) Estimates, within fifteen percent (15%), of capital costs and operation costs;
- (k) Economic evaluation (estimated rate of return of the investment and cash flow for the various phases of the exploitation);
- (l) Financial analysis, with comments on the financial viability of the exploitation;
- (m) 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 that includes 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;
- (n) Description of plans for potential reprocessing of materials, if the Company has determined to reprocess such tailings;
- (o) Description of plans for the development of the deposits;
- (p) Description of plans for tailings disposal from the ore processing plant; and waste rock and materials from mining operations;
- (q) An estimate of minable reserves in accordance with internationally accepted standards;
- (r) Electricity supply for 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;
- (s) To the fullest extent reasonably practicable, detailed proposals (including plans where practicable and specifications where reasonably required by the Government and any other details normally required by a Local Government in whose area any works are to be situated) with respect to any beneficiation or further processing of Minerals proposed to be carried out by the Company within [COUNTRY]; and
- (t) The estimated Date of Commencement of Commercial Production.

### 2.3.2 Environmental Protection

The Parties to this Agreement believe that the Project can be developed, economically operated, and closed while protecting the natural capital of [COUNTRY] and the productivity of its ecosystems, managing adverse environmental impacts to eliminate, minimize, or mitigate them to acceptable levels, and compensating for any remaining impacts.

(a) The Company shall prepare an Environmental Assessment and Environmental Management Plan. The objective of the Environmental Assessment and 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 Mine Area; to preserve water quality; to ensure that impacts within the Mine Area are contained in that area; and to ensure that the Mine Area may be safely and beneficially used by future generations. The Environmental Assessment and Environmental Management Plan shall be made publicly available in a language and in a form that is accessible to communities affected by the Project, and shall be placed in the Repositories identified in Section 34.1(e) of this Agreement. The Environmental Assessment and Environmental Management Plan shall be consistent with Good Industry Practice and shall contain the following:

- (i) Measures that the Company intends to use to mitigate adverse consequences of further development of the Project as described in the Feasibility Study;
- (ii) Opportunities for the improved management and conservation of natural resources in the Project Area;
- (iii) 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,
- (iv) A Closure Plan for the Project, consistent with Section 29.1 of this Agreement and prepared in accordance with the Planning for Integrated Mine Closure Toolkit and related guidance published by the International Council on Mining and Metals, to meet the objectives of Applicable Law related to environmental protection during all potential closure events.
- (v) A statement regarding the intended post mining land use in the Project Area, and the transition to a post mining economy, developed after Consultation with the communities in the Project Area;
- (vi) 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.
- (vii) Plan for protection and conservation of biological diversity,



- (viii) A plan for preventing pollution of rivers and other potable water and ensuring that such pollution does not cause harm or destruction to human or animal life or fresh water fish or vegetation.
- (ix) A plan to avoid or minimize emissions from the Project that could contribute to climate change.
- (x) A plan to minimize disturbing the top soil and intermixing sub-soil strata therewith, and their effect, if any, on the future use and occupancy of the surface land
- (xi) A plan to restore all mined areas to reasonable surface contours not in substantial contrast with the contours of the adjacent and surrounding land surface, and suitable for the proposed post mining land use.
- (xii) The Government may at any time during the Project life or the closure phase conduct an independent audit of the Environmental Management Plan

(b) Environmental Licenses and Permits. The Company shall comply with the terms of any Environmental Licenses or Permits issued by the Government for the purposes of this Project, and all of the conditions and limitations contained in those Licenses and Permits. The Company understands that a material failure to comply with the terms of Environmental Licenses or Permits constitutes a breach of Applicable Law and this Contract.

(c) Compliance with Environmental Laws. The Company shall comply with the environmental laws of [COUNTRY] 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. The Company understands that a material failure to comply with environmental laws constitutes a breach of Applicable Law and this Contract.

(d) Compliance With Terms of Mitigation Measures and Restrictions in Environmental Assessment and Environmental Management Plan. The Company shall comply with the terms of all mitigation measures and restrictions contained in the approved Environmental Assessment for this Project, as the same may be amended from time to time.

(e) Obligation to Observe Good Industry Practice. The Company agrees to observe Good Industry Practice throughout the life of this Agreement.

### **2.3.3 Social Impact Assessment and Action Plan**

The Social Impact Assessment and Action Plan shall include the following:

(a) The Company shall not disturb or unreasonably interfere with the living conditions of the population lawfully settled within the Mining Area and surroundings, and shall cause its employees and contractors to respect the customs of the local populations.

(b) Where the surface of the Mining Area is permanently or seasonally occupied, or that resources in the Mining Area are integral to livelihoods of local persons or communities, or to their cultural practices, other than artisanal or small scale miners, the Company, using guidance from Performance Standard 5 of the International Finance Corporation as it may from time to time be amended, shall:

(i) Avoid or minimize involuntary resettlement wherever feasible by exploring alternative Project designs. 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 Government authorities in agreeing with the local population to a plan of resettlement and provide a fully adequate resettlement program in accordance with the directions of responsible Government officials and Section 2.3.3 above;

(ii) Mitigate adverse social and economic impacts from land acquisition or restrictions on affected persons' use of land by ensuring that resettlement activities are implemented with appropriate disclosure of information, Consultation, and the informed participation of the affected persons;

(iii) Improve or restore the livelihoods and standards of living of displaced persons to ensure to the extent practicable means of livelihood are available upon resettlement; and

(iv) Improve living conditions among displaced persons through provision of adequate housing with security of tenure at resettlement sites.

(v) 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.

(vi) If the Company is unable to reach a reasonable agreement with the owner (in case of land not owned by the Government) or informal occupant of the surface, or users of resources within ninety (90) Days after the commencement of its efforts to do so; or such extended time as the Company and such owner or informal occupant or user shall agree, the Company, unless it elects not to occupy and utilize such surface areas, shall bring the matter to the attention of the Government which shall negotiate with the Company to assess the resettlement plan, including any element of compensation, for the benefit of the landowners, informal occupants or users who shall have the right to participate in the negotiations.

(vii) The resettlement plan shall be guided by the principle of replacement of livelihoods with reference to the potential deprivation of the use and occupancy of the land and its resources.

(viii) The Company shall recognize the right of the surface right owner, or the rights of a native or other community in which the Mining Area is located, to utilize land within the Mining Area for subsistence purposes, including grazing livestock, using water, cultivating crops, hunting game, and collecting fruits and fuel wood, provided that such subsistence use does not interfere with the mineral operations in the area.

(c) Where the surface of the Mining Area is occupied by artisanal miners or any 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. The Company shall 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 affected.

#### **2.3.4 Financing Plan**

The Financing Plan shall include such provisions as the Company shall 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.

#### **2.3.5 Requested Changes by Government**

(a) Upon receipt of the Documents, the Government shall cause its appropriate agencies, as promptly as reasonably possible after receipt, to review the Documents and provide comments thereon to the Company of any deficiencies. The Government may request the Company to make such revisions 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 Mining Area, and provided further that such requested revisions shall not materially impact the economic returns of the Company as shown in the Feasibility Study.

(b) The Company and the Government shall meet within fifteen (15) Days of the Government's written notification to the Company as to these requested changes so that the Parties may meet and negotiate changes to any of the Documents. The Parties shall establish a time frame within which to revise the document, which time frame shall not exceed forty-five (45) Days of the Government's written notification to the Company as to the requested changes.

(c) If the Parties are unable to reach agreement within forty-five (45) Days of the Government's written notification to the Company as to the requested changes, the matter may be referred by either Party for resolution pursuant to Section 36.0.

(d) If the Government does not request in writing any changes to the Documents within forty-five (45) Days after receipt thereof, they shall be deemed to have satisfied the requirements of this Agreement.

## **2.4 Requirement to Obtain Permits**

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

## **2.5 Construction**

(a) Not more than 120 Days after the last to occur of (i) the Company's receipt of all the permits required for construction of the Project and (ii) the satisfaction of the Company's obligation to submit the Feasibility Study, the Environmental Impact Assessment and Environmental Management Plan, the Company shall submit to the Government 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. The Company shall submit to the appropriate Government 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. The Government shall have the right to comment upon and request explanation of the any changes that occur in the schedule.

(b) Within 180 Days after to the last to occur of (i) the Company's receipt of all the permits required for construction of the Project and (ii) the satisfaction of the Company's obligation to submit the Feasibility Study, the Environmental Impact Assessment and Environmental Management Plan, the Company shall, commence construction of the Project until its completion in accordance with the Feasibility Study, subject to the Permits and any non-material changes resulting from engineering and other studies conducted by the Company after completion of the Feasibility Study.

## **2.6 Operations**

(a) The Company shall use commercially reasonable efforts to produce and market minerals included in Mining Area at rates contemplated by the Feasibility Study. All operations shall be conducted in accordance with Good Industry Practice and Applicable Law. The Company shall use all reasonable efforts in accordance with such standards and law to optimize the recovery of minerals, provided it is economically and technically feasible to do so.

(b) 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 mining operations.

(c) The Company may not make any material changes to operations detailed in the Feasibility Study unless it first submits those changes to the Government for comment following the same procedure set forth above for obtaining Government comments on the Feasibility Study.

## **2.7 Suspension of Operations**

Where for reasons beyond the Company's control, including without limitation, market conditions, the Company proposes to suspend Operations, the Company shall notify the Government thirty (30) Days in advance giving reasons for the proposed suspension, and the Government, 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 Government may terminate this Agreement if the Company suspends Operations for more than thirty-six (36) months in the aggregate. In such case, the Project shall be considered as not remaining in commercial production at the expiration of the 36<sup>th</sup> month in which Operations are suspended.

## **FINANCIAL**

### **3.0 Goodwill Payment**

The Government acknowledges receipt prior to or upon execution of this Agreement of \$ \_\_\_\_\_ from the Company as a goodwill payment on the understanding that Government shall utilize the payment received to develop the institutions and expertise required at the local and national levels to effectively perform the activities of the Government under this Agreement. The Government shall quarterly report publicly on the specific expenditures of all funds received under this provision, starting 90 Days after the Effective Date of this Agreement.

### **4.0 Annual Rental**

The Company shall pay to Government an annual rental fee of \$ \_\_\_\_\_ per hectare of land included in the Mining Area.

### **5.0 Royalty and Other Duties**

#### **5.1 Calculation of Royalty**

(a) The Company must pay to the Government a Royalty calculated at the Royalty Rate set forth in Section 1.1 on all Minerals produced and sold from the Mining Area, and on other minerals at a rate, amount of product and value to be agreed between the Government and the Company, in accordance with this Section 5.1.

(b) If minerals other than those defined as "Minerals" in Section 1.1 are produced from the Mining Area and are sold separately, Royalty and export duty must be paid to the Government at the same Royalty Rate applicable to [*insert relevant Mineral*]. The value of such minerals shall be based on the international fair market value of such minerals, determined, in the absence of published international market prices for such minerals in such manner as agreed by the Parties. Any issue or disagreement between the Parties on the international fair market value of such minerals that may arise between the Parties must be referred to an Independent Sole Expert. The Independent Sole Expert shall act on the following basis:

(i) The Independent Sole Expert shall act as expert and not as arbitrator;

(ii) 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;

(iii) The Independent Sole Expert shall decide the procedure to be followed in the determination;

(iv) The determination of the Independent Sole Expert shall (in the absence of manifest error) be final and binding on the Parties; and

(v) The costs of the determination, including fees and expenses of the Independent Sole Expert, shall be borne equally between the Parties.

(c) Royalties shall not be paid on 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 or in mining Operations.

## **5.2 Production Statement**

(a) The Company must, not later than thirty (30) Days after the end of the first calendar quarter during which minerals are produced from the Mining Area, and thereafter not later than thirty (30) Days after the end of each subsequent calendar quarter during the term of this Agreement submit to the Government a production statement, prepared in accordance with Good Industry Practice, containing the following particulars in respect of the Mining Area:

(i) The quantity of Minerals produced;

(ii) The size of Minerals stocks held at the beginning of the calendar quarter; and

(iii) The size of Minerals stocks held at the end of the calendar quarter.

(b) The Government may give Notice that such other particulars relating to Project operations as specified in the Notice be included in the production statement and the Company must comply with any such reasonable request.

(c) The production statement shall be freely available on request by any person.

## **5.3 Payment of Royalty**

(a) The Royalty payable under this agreement must be paid no later than ninety (90) Days after the last day of the month in which the minerals are produced.

(b) The Government may elect to take all or any part of the Royalty in kind. Unless the Government elects to take the Royalty in kind, the Royalty shall be paid in cash.

## **6.0 Customs Duties**

### **6.1 Customs Duties**

(a) The Company shall be permitted to import into [COUNTRY] all the supplies, goods, materials, 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 subject to the procedures of importation of services and goods based on Applicable Law.

(b) The Government shall provide procedures to expedite the admission and clearance by the Government's authorized customs, foreign investment authority, or mining authority representatives, as applicable, of all imports necessary to properly carry out the Project and Governmental verification of such use.

(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.

(d) The Company, its sub-contractors and persons acting on its or their behalf may re-export, free of Taxes and/or import duties, goods imported in accordance with this Agreement when they are no longer necessary for the Project.

(e) Other than Taxes and/or 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.

(f) Foreign personnel assigned to work in [COUNTRY] 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 [COUNTRY] free of customs duties.

### **6.2 Reimbursement of Import and Export Duties**

If items on which no duties or levies, or reduced duties or levies are paid, are afterwards sold, exchanged or transferred in [COUNTRY] (except to the Government) and not re-exported or totally consumed, within the period of the first three (3) years after importation, the Company shall be liable to pay to the Government the balance of 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.

## **7.0 Insurance**

The Company shall ensure that the aspects of the facilities used in the Project that are normally and commercially insurable (and where such insurance is customarily obtained in the

mining industry in accordance with Good Industry Practice) are insured and the Government shall be advised of the policy or policies are in place and shall forward to the Government.

## **8.0 Taxation**

*[The Taxation provisions below are intended for use as a starting point for discussions between the Parties only. These provisions will require amendment to reflect the Taxation regime in force in the relevant jurisdiction.]*

### **8.1 Taxation**

The Company shall be subject to all fiscal legislation from time to time in force in [COUNTRY] 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.

### **8.2 Income Tax**

(a) The Company must pay corporate income Tax in accordance with to Applicable Law for companies resident in [COUNTRY]; provided that:

(i) 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 [COUNTRY] (including the effect of any Tax rebates or subsidies) or [X %], whichever is the lesser;

(ii) The Company income Tax rate on dividends paid by the Company to non-resident companies is [nil];

(iii) 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

(iv) The additional deductions allowable under this Agreement must be deductible in computing income chargeable to Tax.

(b) The Government confirms that:

(i) All dividends paid by the Company to a non-resident shareholder will not be considered as [COUNTRY] income to that shareholder;

(ii) All interest paid by the Company to a non-resident lender will not be considered as [COUNTRY] income to that lender;

(iii) Any income that the Company, lender or shareholder earns in [COUNTRY] on the deposit of interest or dividends is subject to the Tax Law;



(iv) Realized foreign exchange gains are income and realized foreign exchange losses are deductible in calculating the Company's chargeable income except realized gains or losses on the portion of any foreign loans taken to have been applied to purchasing or leasing capital items including buildings, plant, equipment, Project infrastructure and lease improvements acquired for the Project; and

(v) Income derived from money retained outside [COUNTRY] is [COUNTRY]-sourced income. No Tax paid on that income in a foreign jurisdiction may be creditable in [COUNTRY] but may be deductible in computing income chargeable to Tax.]

### **8.3 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 Applicable Law or this Agreement to the Government, or any Local Government; and

(b) All exploration expenditures, development expenditure and general and administrative expenditure incurred by the Company;

(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

(i) Operations (including those associated with negotiating this Agreement);

(ii) Planning, financing, constructing, developing and insuring the Project;

(iii) Managing, maintaining, de-commissioning and rehabilitating the Project;

(iv) Mining, processing, refining, marketing, selling and transporting Minerals produced from Mining Area; and

(v) All amounts allowable for deduction in calculating chargeable income under the Income Tax Act.

(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 Tax 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 [COUNTRY] currency against [US] currency during the Tax Year for which the calculation is being made (expressed in terms of [COUNTRY] dollars per [US] dollar);

$y =$  the mean of the monthly published buying and selling rates of [COUNTRY] currency against [US] currency during the Tax Year when the money for the capital item was outlaid (expressed in terms of [COUNTRY] 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 [COUNTRY], or such other buying and selling rates as may be published and recognized by the Government as the official buying and selling rates.

For 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 [5 YEARS]; and

(j) Any other rate, Tax charge, due, duty, tariff, or other levy paid or payable to the Government or a Local Government.

#### **8.4 Value-Added Taxes and Project Activities**

(a) Prior to the Date 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 in [COUNTRY] 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:

(i) All capital items, and supplies and consumables including fuel, exclusively and necessarily required for the Project; and

(ii) 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 Applicable 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 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 the 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 thereafter sold, exchanged or transferred in [COUNTRY] and not re-exported (other than to the Government) or totally consumed, within the period of the first three (3) years after importation) 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.

## **8.5 Property Taxes**

The Government 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.

## **8.6 Taxes on Expatriate Employees**

(a) Up to the Date of Commencement of Commercial Production, the Government must exempt from any applicable Taxes on [COUNTRY] - 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 and agents, engaged in operations under this Agreement are subject to any applicable Taxes that are generally in effect in the [COUNTRY], but only on their [COUNTRY] - sourced income from those operations, on a non-discriminatory basis, and whether or not paid in [COUNTRY].

## **8.7 Taxes on Non-Country Contractors**

(a) Up to the Date of Commencement of Commercial Production, the Government 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-[COUNTRY] resident contractors for services performed by those contractors and their subcontractors in [COUNTRY] withholding Tax in accordance with the Applicable Law.

## **8.8 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 requiring the withholding of Taxes.

## **8.9 Provisions Relating to Other Taxes and Levies**

The Government 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 acquired or thing in furthering the Project done 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 the Applicable Law;
- (c) Sales Tax and capital gains Tax under the Applicable Law.;
- (d) Subject to the provisions of this Agreement, income Tax pursuant to the Applicable Law;
- (e) Subject to the provisions of this Agreement, Value-Added Tax pursuant to the Applicable 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 [COUNTRY] 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 [COUNTRY]; 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 [COUNTRY].]

## **8.10 Local Government Taxes and Levies**

### Provincial or Local Government Taxes and Levies

(a) [COUNTRY] 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 as at the Effective Date of this Agreement.

(b) If a Local Government purports to pass a law contrary to this Agreement, or making it impossible for any Party to perform or receive the benefits of this Agreement, or imposing, altering or extending any Tax, duty or fee in breach of this Section, [COUNTRY] undertakes to move to disallow the proposal under the [COUNTRY] Local Government law, or otherwise withhold its consent to the proposed regulation or ordinance.

(c) A Local Government may, in the following circumstances and to the following extent impose or extend Taxes without violating this Agreement: \_\_\_\_\_.

## **9.0 Financing**

### **9.1 Security Interest**

The Company shall have the right, with the prior consent of the Government, which consent shall not be unreasonably withheld or delayed, to mortgage, charge 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 its Operations and other obligations under this Agreement. The Government 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 [COUNTRY], which consent shall not be unreasonably withheld, 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 fulfill the obligations of the Company under this Agreement.

### **9.2 Government and Central Bank**

The Government 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 Government must promptly consider requests for approvals concerning the financing and must not unreasonably withhold or delay those approvals.

### **9.3 Debt-Equity Ratio**

The ratio of the Company's debt to equity must not at any time exceed [9:1].

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) 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).

#### **9.4 Foreign Currency Remittance and Availability**

(a) The Central Bank confirms that interest, dividends and all other payments for goods and services are freely remittable from [COUNTRY] 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 [COUNTRY] and converted into [COUNTRY] currency.

(b) The Company has the right to establish, maintain and hold funds in bank accounts in [COUNTRY] currency] and in United States Dollars in [COUNTRY] in as well as bank accounts in foreign currency located outside [COUNTRY].

(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 [COUNTRY] from the sale, exchange or export of Product, and any other payments (including loan principal and interest) to be made abroad.

(d) Except as otherwise expressly provided in this Agreement, payment of the Company’s obligations to the Government under this Agreement, including obligations for Taxes and duties payable as a consequence of the Company’s operations, shall be in the United States Dollars.

(e) Any obligation originally stated in [COUNTRY] currency shall be converted to United States Dollars at the prevailing market rate of Exchange.

(f) For purposes of determining compliance by the Company of required payments in [COUNTRY] currency under Applicable Law (including without limitation any Law determining minimum wages), the amount of any payment by the Company made in United States Dollars shall be converted to [COUNTRY] currency at the prevailing market rate of exchange as of the date of payment.

(g) The Company shall have the right to remit and receive in United States 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.

(h) 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 United States Dollars received to be remitted, and any other direct or indirect restriction on such remittances or receipts.

(i) The Company has the right to establish, maintain and hold funds in bank accounts in [COUNTRY currency] and in United States Dollars in [COUNTRY] in as well as bank accounts in foreign currency located outside the [COUNTRY].

## **9.5 Parent Company Guarantee**

(a) The Parent Company unconditionally and irrevocably:

(i) Guarantees to the Government the payment when due of all amounts payable by the Company under or pursuant to this Agreement;

(ii) Undertakes to ensure that the Company will perform when due all its obligations under or pursuant to this Agreement;

(iii) Agrees that if and each time that the Company fails to make any payment when it is due under or pursuant to this Agreement, it must on demand (without requiring the Government first to take steps against the Company or any other person) pay that amount to the Government as if it were the principal obligor in respect of that amount;

(iv) Undertakes to ensure that all its subsidiary companies conduct themselves in conformity with this Agreement, and in no circumstances prevent the Company from performing its obligations under this Agreement.

(b) The Parent Company's obligations under this Agreement shall not be affected by any matter or thing which but for this provision might operate to affect or prejudice those obligations, including without limitation:

(i) Any time or indulgence granted to, or composition with, the Company or any other person;

(ii) The taking, variation, renewal or release of, or neglect to perfect or enforce this agreement, or any right, guarantee, remedy or security from or against the Company or any other person;

(iii) Any variation or change to the terms of this Agreement; or

(iv) Any unenforceability or invalidity of any obligation of the Company, so that this Agreement shall be construed as if there were no such unenforceability or invalidity.

## **9.6 Role of Government in Financing**

(a) The Government 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 Government 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.

## **9.7 Government Guarantees**

(a) The Government will protect the Company's ownership of structural and movable property, together with all rights and interests of the Company on or in connection with the Mining Area, from confiscation, liquidation, or requisition, unless in accordance with general law issued by the Government pursuant thereto and 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 Government or any instrumentality of the Government or any authorized representative of the Government except in accordance with general Applicable Law and a court order.

(b) Neither the Government nor any of its instrumentalities, agencies, or authorized representatives may interfere with the rights, interests, or activities of the Company on the Mining Area or in any way connected with the Company, except where expressly stipulated by the general Applicable Law and this Agreement.

(c) The Government, its instrumentalities, agencies, and authorized representatives shall provide the Company an investment regime as favorable as that granted in similar situations to [COUNTRY] legal entities and individuals and foreign investors.

## **10.0 Financial Records and Statements, Accounting Standards and Currencies**

### **10.1 Payments and Exchange Rates**

(a) Unless otherwise specified in this agreement, payments to the Government may be made in US dollars or other foreign currency which is freely convertible directly to the Central Bank for the account of the Government.

(b) The Parties acknowledge that the Company may:

(i) Obtain, hold, deal with and disburse funds in such manner, currencies and places as it, in its absolute discretion, determines;

(ii) Freely import into [COUNTRY] funds necessary to properly carry out the Project;



- (iii) Remit foreign currency out of [COUNTRY];
  - (iv) Remit foreign currency accruing to or earned by it outside [COUNTRY] into [COUNTRY];
  - (v) Remit proceeds (in currency or otherwise) and repatriate capital (in cash or assets) outside [COUNTRY]; and
  - (vi) Open, operate and manage local currency accounts and foreign currency accounts in banks within [COUNTRY].
- (c) It is the intention of the Parties that neither the Government 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.
- (d) 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 the monthly average of the mean of the daily official buying and selling exchange rates between the currencies in question as published by the [COUNTRY] Central Bank for the month in which the relevant transaction occurred.
- (e) 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 the mean of the daily buying and selling exchange rates between the currencies in question as published by the Central Bank or, failing such publication, as published in the Financial Times (London edition) for the month in which the relevant transaction occurred.

## **10.2 Financial Records and Financial Statements**

- (a) The Company is responsible for maintaining all accounting records in the currency of [COUNTRY] in order to comply with all Applicable Law and this agreement and to support all fiscal returns or any other accounting reports required by the Governmental in relation to the Project.
- (b) The Company must keep in [COUNTRY] complete, accurate and up to date technical and commercial books and records of all Project 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 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 the 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 the 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 the Applicable Law and shall conduct its activities in accordance with Applicable Law, Regulations and Directives.

(f) The Company shall submit to the Government within thirty (30) Days of the end of each Quarter:

(i) A statement of the foreign currency accounts maintained overseas by the Company showing movements on the accounts during the Quarter With Quarter-end balances;

(ii) A statement of the foreign currency accounts maintained at banks within [COUNTRY] by the Company showing movements on the accounts during the Quarter with Quarter-end balances;

(iii) A statement of the foreign exchange converted into [COUNTRY CURRENCY] and the total amount of [COUNTRY CURRENCY] converted into foreign exchange during the Quarter; and

(iv) A forecast of the foreign currency which it expects to receive and retain in a foreign currency account overseas or within [COUNTRY] and that which it expects to convert into [COUNTRY CURRENCY] during the ensuing Quarter; and

(g) The Company shall submit to the Government within thirty (30) Days of the end of each year, audited financial statements showing the amount of distributable profits.

### **10.3 Transparency and Publication of Payments**

The Company and the Government shall each comply with requirements of the Extractive Industries Transparency Initiative with respect to all payments and reporting to be made by it or pursuant to this Agreement. Breach by one Party of these provisions shall not excuse compliance by the other Party.

### **10.4 Accounting Standards**

All of the Company's accounting under this Agreement shall be in US Dollars and all amounts paid or received, and obligations incurred or transactions carried out, in currency that is legal tender in [COUNTRY] or in any foreign currency other than US Dollars shall be converted to US Dollars in accordance with and pursuant to generally accepted accounting principles and Good Industry Practices (except to the extent inconsistent with the terms of this Agreement) based upon the prevailing market rate of exchange of US Dollars and any such currency at the date of the applicable transaction. Notwithstanding the foregoing, and solely for informational

purposes, the Company may also keep a set of books of account in the currency of its home country (if different from US Dollars).

## **10.5 Currencies**

Payment of the Company's direct obligations to the Government for Taxes and Duties payable under this Agreement shall be in [*COUNTRY CURRENCY*], unless the Parties otherwise agree. Any obligation originally stated in [*COUNTRY CURRENCY*] or in any currency other than US Dollars, will be converted to US Dollars at the prevailing market rate of exchange. However, the Company shall make payments of sums it collects on behalf of the Government, 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 Law to be withheld or retained by the Company on behalf of the Government, in currency in which such salaries or wages or such other payments are made. The Company shall have the right to make all other payments whether to the Government or to other persons in [*COUNTRY CURRENCY*].

# **RIGHTS AND OBLIGATIONS**

## **MUTUAL OBLIGATIONS**

### **11.0 Mutual Obligations**

#### **11.1 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 inadequate or less stringent than any applicable international standards, such as the International Finance Company's Performance Standards on Social and Environmental Sustainability ("Performance Standards"), or the Equator Principles, the Company shall endeavor to comply with the international standards.

#### **11.2 Parties' Commitment to Protecting Human Rights**

(a) It is the objective of each of the Parties hereto that the 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 Government at any time the Company shall consult with the Government and with the community mutually to establish plans and programs for the implementation of this objective and thereafter the Company shall cooperate with the Government with regards to its effort concerning the realization of such plans and programs.

(b) 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 and Applicable Law.

(c) In all dealings between Company security departments and the police, military, or other security organs of Government, the Parties pledge themselves to respect the guidance set forth in the Voluntary Principles on Security and Human Rights.

(d) The Company shall 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. The process will be guided by the tenets of transparency, independence, and inclusivity, as defined by international standards. The process will be overseen by a steering committee that will set the scope and timeliness of the assessment, will select the assessors, and will be responsible for managing the assessment process. The steering committee will consist of a minimum of three people with representation from the Company, the shareholder group, and a third party representative, preferably a citizen of the [COUNTRY], considered to be independent and credible by reasonable stakeholders. All decisions of the steering committee, including a decision to add other members to the steering committee will be made by mutual consent of the steering committee members. The qualified assessor will be chosen by the steering committee and will be independent from all stakeholders, including the Company and its shareholders. The assessment team must include someone with extensive human rights assessment experience. A summary of the committee's findings and recommendations, and the Company's response to the assessment will be made public. Any member of the steering committee acting in good faith and for good cause may designate specific factual information developed during the assessment process as confidential.

### **11.3 Prevention of Corruption**

(a) Obligations of the Company. The Company, its officers, directors and employees acknowledge that they are subject to the [ANTI-BRIBERY] [ANTI-CORRUPTION] laws of [COUNTRY] and of the jurisdictions in which the Company is organized, and shall conduct their activities in [COUNTRY] in accordance with their obligations under such laws.

(b) Obligations of the Government. The Ministry, its officials, as well as other Government agencies and Government officials at other levels of Government acknowledge that they are subject to the [ANTI-BRIBERY] [ANTI-CORRUPTION] laws of [COUNTRY] and shall conduct their activities in accordance with their obligations under such laws.

(c) Other Applicable Norms. The Parties to this Agreement understand that all payments made by the Company, or any of its Contractors, Subcontractors, officers or directors to Government agencies or officials at any level shall be public information and made public in accord with the norms of the Extractive Industries Transparency Initiative.

(d) Understanding of the Parties. The Parties to this Contract understand that:

(i) The offering, solicitation or acceptance of an offer, promise or gift of any pecuniary or other nature, whether directly or through intermediaries, to any public official of the Government, or a member of an official's family or business associate or other person in close proximity to an official, for that official or for a third party, in order that the official or third party act or refrain from acting in relation to the performance of official duties to achieve any favor in relation to a proposed investment or any licenses, permits, contract or other rights in relation to an investment; and

(ii) Any acts complicit in any act described in Section 11.3(d)(i), including incitement, aiding and abetting, conspiracy to commit or authorization of such acts, are acts inconsistent with the Applicable Law and this Agreement are acts subject to appropriate criminal and other enforcement and sanctions.

(e) Prosecution. The Government shall make every effort to prosecute such activities in accordance with domestic law, and to seek enforcement action by the government of any foreign State where appropriate, and shall fully cooperate with any such action by a foreign government.

## **GOVERNMENT RIGHTS**

### **12.0 Government Access to Project**

The Government 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 activities are carried out in accordance with this Agreement and the provisions of Applicable Law.

### **13.0 Inspection of Books, Records and Information, Independent Audit**

#### **13.1 Audit and Inspection of the Government**

(a) The Government has the right, from time to time, at its sole cost and risk, by and through a technical inspector or an independent professionally qualified auditor to audit the Company's accounts, books and records maintained under this Agreement and the Applicable Law for each calendar year within two (2) years (or such longer period as may be required in exceptional circumstances) from the end of each such calendar year. Any such audit will be completed within twelve (12) months of its commencement and shall be conducted in a manner which will result in the minimum amount of inconvenience to the Company.

(b) The inspector or auditor has the right in connection with such audit, upon forty-eight (48) hours prior written Notice to the Company, to visit and inspect, during normal business hours on any Day and provided it shall result in the minimum amount of inconvenience to the Company, 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 Government shall, and shall ensure that any inspector or auditor engaged to audit the Company's accounts, books and records 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.

### **13.2 Independent Audit**

As soon as practicable after the annual financial statements of the Company are available for that financial year, the Company shall submit an audited financial statement by an internationally recognized and not conflicted (under professional rules) accounting and auditing firm, in respect of each Calendar Year to the Government within the first Calendar Quarter of the following Calendar Year, using the approved format.

### **14.0 Waiver of Ownership/Equity Interest**

The Government waives its right to acquire, by purchase or otherwise, a participating interest of any mining investment made by the Company within any portion of the Mining Area.

### **15.0 Limited Waiver of Sovereign Immunity**

The Government 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 Agreement.

## **GOVERNMENT OBLIGATIONS**

### **16.0 Government Assurances and Obligations**

#### **16.1 Legislation to Approve Agreement**

(a) The Government undertakes to use its best efforts to cause the legislation necessary to ratify this agreement and to give effect to the exemptions from the Applicable Law, to the extent expressly provided in this Agreement.

(b) Pending ratification of this Agreement, the Company may undertake reconnaissance or exploration activities within the Mining Area subject to compliance with all Applicable Law and rights and obligations of this Agreement.

(c) The provisions of this Agreement, shall not come into operation until legislation ratifying this Agreement comes into effect.

## **16.2 Tax Stabilization Clause**

If a provision of the Tax Law, at the date of this Agreement is changed or repealed, or new fiscal impositions in the nature of a Tax or duty on the Company are made by the Government after the date of this Agreement, 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.

For greater clarity, the Company shall be bound by all non-discriminatory changes in Applicable Law concerning health, safety, labor, the environment, and to address the proximate human rights impacts of mining provided that the changes in social and environmental standards are reasonable and generally accepted Good Industry Practice.

## **17.0 Fair and Economical Project Operation**

### **17.1 Non-Discrimination**

The Government 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.

### **17.2 Non-Cancellation**

Unless the 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. Neither Party shall be entitled to exercise any rights or election arising in consequence of any alleged default by the other arising out of the subject matter of the Dispute until the Dispute has been resolved by arbitration or by agreement of the Parties as the case may be.

### **17.3 Non-Expropriation**

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 Government according to the Applicable Law on foreign investment, land, mining and any international treaties to which the Government is a party.

## **18.0 Permits**

The Government 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. The Government 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.

## **19.0 Expatriates**

The Government shall issue such permits as may be required to allow expatriates employed by the Company freely to enter into, work and reside in the [COUNTRY] in connection with the operations of the Project, and to depart from the [COUNTRY].

## **20.0 Infrastructure**

### **20.1 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.

### **20.2 Access to Infrastructure**

To the extent commercial feasible, the Company shall endeavor to plan and develop all forms of infrastructure (including the infrastructure for electrical energy, process water, potable water, communications, and roads and transportation described in this Section 18.2) 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 without being 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.

### **20.3 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 Government 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.

## **20.4 Process Water**

(a) If the Government 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 host Government, 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 Government may, at its option, require that the Company manage and treat drainage from the Mining Area for which the Government is responsible at such Company facilities.

(c) The Government 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 Government during each month, within thirty (30) Days of receipt of an invoice for such costs.

## **20.5 Potable 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 as follows:

(i) The Company shall make its self-discovered water resources available to be used for household purposes, herder families and agricultural activities of the local communities.

(ii) The Company shall support the Government in the establishment of safe drinking water for the local center(s) directly impacted by the Project.

(iii) Recognizing that the quality of self discovered water may vary considerably, the Company shall support the Government to upgrade or treat these water resources for household purposes and agricultural activities of the local communities, or provide infrastructure for water transportation for local household use only.

(iv) The Company shall not reduce from the current level the quality and quantity of the existing potable and livestock water supplies used by existing users at the date of this Agreement within the water resources area of the Project.

## **20.6 Communications Infrastructure**

The Government shall issue to the Company a license to import telecommunications equipment and to establish and maintain a radio-communication station or stations for the Project.

## **20.7 Roads and Transportation**

### **20.7.1 Private Roads**

(a) The Company shall:

(i) Be responsible for the provision of finance for and the construction and maintenance of all private roads required for the Project;

(ii) Have the right at their 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 upon the Company's operations and their invitees and licensees) are excluded from use of such private roads or any part thereof.

### **20.7.2 Public Roads**

(a) The Government 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 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 Government shall use its best endeavors to ensure the completion of the construction or improvements of public roads as soon as is reasonably practicable. The Government and the Company shall confer with a view to minimizing the periods of time for such completion.

(c) The Government shall maintain or cause to be maintained the public roads to a standard similar to comparable public roads that bear comparable traffic loads in [COUNTRY].

(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 Government for the upgrading 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 Government (which shall not be unreasonably withheld) 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 relevant Company and the Government may agree upon a higher standard in which case the additional cost involved shall be borne by the Government.

(g) The Company may at any time and from time to time, with the consent of the Government 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 [COUNTRY] in respect of roads of a comparable nature at the time of such dedication.

(h) The Government 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 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.

#### **20.7.3 Airstrip and Related Facilities**

(a) The Company may, and if appropriate and the Government so consents (which consent shall not be unreasonably withheld), construct or cause to be constructed a sealed airstrip and related facilities to facilitate their operations.

(b) The Government when requested to do so by Notice from the Company shall grant to the Company at no cost to the Company the fee simple estate of the land delineated as the airstrip and related facilities as agreed by the Company. The grant of the fee simple estate 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 Government.

(c) The Company shall as and when required by the Government surrender to the Government (which surrender shall be accepted) that part or parts of any licenses, leases, or other tenements whatsoever (if any) as shall be necessary to enable the Government to comply with its obligations under this Agreement.

#### **20.7.4 Railway Facilities**

(a) The Company shall consult with the Government for the provision of maintenance and operation of such railways sidings, shunting loops, spurs and other connections as are required for their 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 when appropriate and from time to time shall inform the Government of their anticipated railway requirements.

(b) The Government when requested to do so by Notice from the Company shall grant to the Company at no cost to the Company such fee simple estates in land and leases

licenses easements and rights free of any liens charges or other encumbrances which the relevant Company may reasonably require for such railway operations.

(c) In the event that any rate, charge, levy or impost is or becomes payable by the Company to the Government for railway facilities, the Government 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.

#### **20.7.5 Port**

(a) The Company shall from time to time review with the Government the technical, logistical and economic feasibility of using existing ports and facilities within [COUNTRY] for the purposes of the Project.

(b) If the Company determines to utilize the facilities of a port or ports within [COUNTRY] for the purposes of their operations, the Company, shall provide 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 Government, port facilities already provided by others.

(d) The Company shall, in respect of the use by them of a Government owned port, pay to the relevant port authorities all charges properly and lawfully levied by such authorities from time to time and the Government shall ensure that such charges are levied on a non-discriminatory basis compared with charges levied by the Government on all other importers and exporters within [COUNTRY].

(e) The Government when requested to do so by Notice from the Company shall grant to the Company at no cost to the Company such leases, licenses, easements, and rights free of any liens charges or other encumbrances which the Company may reasonably require for the performance of the Company's obligations with respect to any port in [COUNTRY].

(f) The Company and the Government may enter into an agreement whereby additional facilities are provided by and at the cost of the Government in consideration of the relevant Company agreeing to pay special rates for the use of those facilities.

### **20.8 Housing**

The Company shall ensure that its employees and their immediate families, including those who are self-employed and aged, retired or physically handicapped, have housing and suitable living environments adequate for health and well-being [*as outlined in ILO Recommendation 115 (1961)*].

## **21.0 Government Obligations Re: Local Governments and Landowners**

(a) Financial benefits to be received by the Local Government and the Landowners, in addition to those expressly provided in this Agreement or under legislation on the date of this Agreement, must be negotiated by the Government. The benefits must be provided without added cost to the Company.

(b) The Government and the Company must keep the Local Government, landowners 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 Government has the obligation to respect and enforce agreements made between the Company and Local Government and landowners.

(d) The Government has the obligation to resolve disputes between mineral the Company and Local Government/landowners.

(e) The Government assures that:

(i) The Company shall not be required to apply for more than one business license from the Local Government under the Applicable Law and will not be required to pay more than one business license fee; and

(ii) It or the Local Government will not under the Roads Act, or other Applicable Law, close any public or private road giving access to Mining Area without first obtaining the written consent of the Company.

## **COMPANY RIGHTS**

### **22.0 Company Rights**

#### **22.1 Marketing of Minerals**

The Company is hereby granted the rights to market, sell and export its Products at international market prices and to freely expend and repatriate its sale proceeds in local and foreign currencies.

#### **22.2 Affiliated Company Transactions**

Sales of goods and services to the Company by its Affiliates shall be at an arm's-length fee 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.

It is understood that in accordance with such guidelines, sales to Affiliates shall be made only at prices based on or equivalent to arm's-length sales and in accordance with such terms and conditions at which such agreements would be made if the parties had not been Affiliates.

Any discounts or commissions allowed to Affiliates must be no greater than the prevailing rate so that such discounts or commissions will not reduce the net proceeds to the Company below those which it would have received if the parties had not been Affiliates. No discounts or commissions shall be allowed in respect of any sale to an Affiliate for consumption by it. Upon request of the Government, the Company shall provide to the Government documentation of the prices, discounts and commissions, and a copy of all contracts and other relevant documentation related to sales to Affiliates.

### **22.3 Expatriate Staffing**

The Company shall be entitled to employ expatriates in accordance with the Labor Law of [COUNTRY] for the efficient conduct of the operations of the Project in [COUNTRY].

### **22.4 Company Control Over Hiring Decisions**

(a) Employment practices of the Company must conform to Applicable Law. The Company may not hire individuals who are not citizens of [COUNTRY] for unskilled labor positions. The Company must employ and give preference to the employment of qualified citizens of [COUNTRY] for financial, accounting, technical, administrative, supervisory, managerial and executive positions and other skilled positions and when they become available, it being the objective of the Parties as soon as is practicable that the Operations of the Company under this Agreement should be conducted and managed primarily by citizens of [COUNTRY]. In furtherance of the Company's obligations under the preceding sentence, the Parties shall agree on progressive implementation of an employment schedule so as to cause citizens of [COUNTRY] to hold at least [X %] of all management positions, including [X %] of its [X NUMBER] most senior positions, within [X] years of the Effective Date, and at least [X %] of all management positions, including [X %] of its ten most senior positions, within ten years of such date. Appointment of a citizen of [COUNTRY] to a particular position does not preclude subsequent employment of a citizen of another country in such position as long as the percentage requirements are otherwise met.

(b) Subject to the foregoing provision, the Company may at all times choose its employees and shall be free to employ such Persons who are not citizens of [COUNTRY] as are required for the efficient conduct of the Project. Where Applicable Law stipulates minimum technical qualifications and/ or minimum levels of competence for any technical post, the Government undertakes to recognize equivalent technical qualifications and/ or certificates of competency held by Persons who are not citizens of [COUNTRY], provided that such qualifications and/ or certificates of competency shall have been issued by a recognized institution or statutory authority in any other country having a substantial mining industry.

## **22.5 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 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 search of, and exclusion from the Mining Area and such other areas as may be properly restricted for economic, operational or security reasons. Any such security force will be subject to Applicable Law at all times and at all times will conduct itself in accordance with Applicable Law (including all Laws relating to apprehension and detention and human rights) and the Voluntary Principles on Security and Human Rights.

## **COMPANY OBLIGATIONS**

### **23.0 Development Obligations**

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, according to the terms and conditions of this Agreement and Good Industry Practice at a cost of not less than [*\$ MILLION*] per year up to the Date of Commencement of Commercial Production.

### **24.0 Supply Chain: Use of Local Goods and Services**

#### **24.1 Local Preference – Procurement and Capacity Building for Procurement**

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

#### **24.2 Importation of Goods and Services**

Subject to the provision of the foregoing Section, the Company shall be entitled to import into [*COUNTRY*] all consumables (excluding food items), supplies, materials, and equipment necessary for its 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, chemicals, films, seismic tapes, house-trailers, office-trailers, and disassembled prefabricated structures free of import duties and Taxes, provided that all the items are wholly and exclusively destined for use in the Company's activities hereunder and are imported into [*COUNTRY*] in the name of or consigned to the Company.

## **25.0 Local Community Development**

### **25.1 Community Development Agreement**

Within thirty (30) Days of the Effective Date of this Agreement, the Company shall enter into negotiations for a Community Development Agreement 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 recognize and respect the rights, customs, traditions and religion of the affected persons. Each Community Development Agreement shall:

- (a) Be based on the objectives listed in Annex B;
- (b) 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;
- (c) Serve as the Agreement that specifies how the Company's obligation to spend funds for local development shall be met; and
- (d) Address environmental, social, and economic conditions during mining and after mine closure, and the 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.

### **25.2 Relationship of This Agreement to Local Level 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 panels declaring a material breach of the Community Development Agreement by the Company shall constitute a breach of this Agreement.

### **25.3 Local Business Development Plan**

The Company resolves to cooperate with the Government in carrying out its governmental 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 (exploration, development, construction and operation) in the life of the Project. The program would be based on the objectives listed in Annex C.

## **26.0 Community Health**

The Company shall construct, maintain, and operate health facilities to serve the communities impacted by the Project and 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.

The Company shall provide subsidized 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 Government set out in Applicable Law, and shall maintain an adequate and properly staffed dispensary or hospital headed by a resident medical doctor.

## **27.0 Employment and Training of Local Citizens**

### **27.1 Minimum Employment Levels**

In selecting employees to carry out its operations under this Agreement the Company shall give preference to qualified and competent [*THE HOST COUNTRY*] executives, officers, engineers, consultants, technicians and skilled and semi-skilled labor.

### **27.2 Local Training and Capacity Enhancement**

The Company shall conduct a comprehensive training program for [*COUNTRY*] personnel in [*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*]. The Company shall also conduct a program to acquaint all expatriate employees and contractors with the Applicable Law and customs of [*COUNTRY*].

### **27.3 Investment in Skills of Local Work Force**

The Company shall, in accordance with its annual training plan:

- (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 [*COUNTRY*] on a contractual basis to further upgrade their professional qualifications.

### **27.4 Education**

The Company shall provide on continuing basis training for up to [X] inhabitants of communities impacted by the Project in order to qualify them for skilled, technical, administrative and managerial positions, by means of:

- (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 [COUNTRY] but to the extent reasonably feasible in the offices of the Company in [COUNTRY], in order that the beneficiaries may receive training in the overseas aspects of the Company's shipping, marketing and accounting functions; and

(c) Providing an aggregate amount of at least [X AMOUNT] per year to fund new scholarships for inhabitants of affected communities to pursue studies, including advanced studies in the [COUNTRY] or abroad. Detailed plans and programs for such training, including timetables and schedules, shall be formulated (and revised when necessary) in consultation with, and shall be subject to the approval of the Government. Such consultation shall commence within ninety (90) Days of the Effective Date of this Agreement.

## **28.0 Labor Standards**

### **28.1 Labor Standards**

(a) The Company shall adhere to the laws on labor applicable in [COUNTRY].

(b) The Company, its affiliates, contractors and subcontractors shall observe guidance provided by Good Industry Practice, as well as all International Labor Organization agreements to which the Government is a Party.

(c) The Company, its affiliates, contractors and subcontractors shall not utilize forced labor, nor shall the Company, its affiliates, contractors and subcontractors utilize child labor, as outlined in the International Finance Corporation Policy Statement on Forced Labor and Harmful Child Labor of March 1998.

### **28.2 Health & Safety**

(a) The Company 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 the Company having legal access to the Mining Area.

(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.

(c) The Company shall train its employees in accordance with generally accepted health and safety procedures and practices.

## **29.0 Mining Closure/Post-Closure Obligations**

### **29.1 Closure Plan and Closure Obligations**

(a) As part of the Environmental Assessment and Environmental Management Plan, the Company shall prepare and deliver a Closure Plan to the Government. The Closure Plan shall address the anticipated environmental, social and economic state of the Project Area

during and after 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 in accordance 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 deliver to the Government 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 Government (with or without modification), the Company shall deliver the final Closure Plan to the Government by the planned end of the Operational Period. 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 Government, subject to any approval required by Applicable Law.

(c) During the Post-Closure Period, the Company shall continue to perform the required environmental management of the Sites as set forth in the Environmental Management Plan and Closure Plan.

(d) Upon completion of the Closure Period, the Government shall inspect the Mining Area and provide the Company with Notice as to whether the Company has completed closure in accordance with the Closure Plan. Alternatively, the Company may engage a Third Party to determine whether the Company shall have completed closure in accordance with the Closure Plan, upon agreement by the Parties.

(e) In the event of temporary closure or a cessation of operations of the Project, 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 Government terminate this Agreement as a result of a suspension of Operations, the Company shall be required, following the approval of the Government, to enter the Closure Period. Should this occur prior to the establishment of adequate funds within the Environmental Reserve Fund to perform all closure and post-closure activities for which the Company is responsible, the Company shall, upon Notice from the host Government and within thirty (30) Days, deposit the deficit into the Environmental Reserve Fund.

(f) Should this Agreement be terminated after the Project Notice Date, the Company shall, upon Notice from the Government and within thirty (30) Days, deposit any deficit in funds required to perform all closure and post-closure activities for which the Company is responsible under the terms of this Agreement into the Environmental Reserve Fund.

## **29.2 Guarantees for Closure Expenses**

The Company shall provide a Mine Closure Guarantee in the amount of [ \$ ] \_\_\_\_\_ Dollars to the Government. The purpose of this payment is to ensure the completion of the Company's Closure Plan.

(a) The basis for calculation of this amount is that this is the amount calculated to be necessary to implement the Closure Plan should the Company fail to implement it. The amount of the guarantee shall be updated any time the Closure Plan is updated 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 for any reason be unable or unwilling to complete them, or fail to do so.

(b) The Company shall provide to the Government a detailed report explaining the completion of each step described in its Closure Plan. The Company shall provide this report to the Government within [X] Days after that specific activity is completed.

(c) The Government shall return to the Company the full sum of the Company's paid Guarantee within [X] Days following acceptance of the Company's final Mine Closure Report and verification by the Government that the Company has fulfilled all the obligations of the Closure Plan. The Government is permitted to inspect the Contract area prior to approval to confirm the obligations in the Plan have been fulfilled. Upon return of the Company's paid Guarantee, the Government must itemize the sum of any amount withheld from the returned Guarantee due to any alleged lack of compliance with the Closure Plan.

(d) During the life of the Project, if there is any substantive change in the operation, or the Company completes some step in the Closure Plan, or there is any other event that means that the amount of the 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.

(e) Any dispute related to the Closure Plan or the Mine Closure Guarantee shall be resolved through the dispute resolution mechanism outlined in this Agreement.

### **29.3 Post-Closure Monitoring**

The Company shall develop and implement a post-closure monitoring committee, with the mandate to monitor geophysical stability, water quality, rehabilitation of contaminated sites and restoration of land to post-closure use. The Company shall also, in collaboration with local community leaders, develop standards, by which the post-closure monitoring committee will monitor retraining of employees, sustainable biodiversity, and sustainable community development programs. The post-closure monitoring shall take place for a period of [X] years after the closure of the mine.

## **30.0 Rights of Host Country Citizens**

### **30.1 Company Grievance Mechanism**

The Company shall, at its own expense, promptly respond to communities' concerns related to the Mining Project as outlined in International Finance Corporation Performance Standard 23. If the Company anticipates ongoing risk or adverse impacts on affected communities, 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.

### **30.2 Forum for Claims and Disputes Involving Host Country Citizens**

(a) A citizen of [COUNTRY] who has a claim or dispute regarding the Project or against the Company may submit such claim or dispute for resolution under the [COUNTRY'S] judicial system, or under an applicable customary law dispute resolution mechanism recognized under the Applicable Law.

(b) Where no dispute resolution mechanism exists or the claim or dispute cannot be dealt with under the available dispute resolution mechanisms, the claim or dispute shall in the first instance be resolved through consultation between the parties.

(c) Any claim or dispute not finally resolved by consultation shall be exclusively and definitively resolved through final and binding arbitration, according to the following rules:

(i) Unless the parties agree on a single arbitrator within [X] Days after the initial Notice of arbitration, each party shall within [X] Days after the initial Notice of arbitration nominate an arbitrator, and the two arbitrators shall appoint a third arbitrator within [X] Days.

(ii) The arbitration proceedings shall be conducted in [LANGUAGE].

(iii) Unless otherwise agreed by the parties, the place of arbitration shall be [.....] in [COUNTRY][*the venue where the claim or dispute first arose*].

(iv) All arbitrators shall be and remain at all times wholly impartial, and, once appointed, no arbitrator shall have any ex parte communications with any of the parties to the dispute concerning the arbitration or the underlying dispute other than communications directly concerning the selection of the presiding arbitrator, where applicable. Only arbitrators who are knowledgeable in the subject area concerning the matter or claim in dispute shall qualify to be nominated as arbitrators.

(v) The arbitrators shall, with the consent of the parties determine any other rules required to ensure a fair determination of the arbitration.

## **31.0 Forward Linkages**

### **31.1 Availability of Products for Domestic Industry**

The Company may make its products available for sale to domestic industries according to the following sales values:

(a) For exported Products, the sales value shall be the international market prices of the products or similar products, based on recognized principles of international trade for determining average monthly prices;

(b) For Products sold or used on the domestic markets, the sales value shall be based on the domestic market price for the particular or similar products;

(c) For Products sold on international or domestic markets, where it is impossible to determine market prices, the sales value shall be based on the revenue derived from the sale of the Product as declared by the license holder.

### **31.2 Company Payments to Local Communities and Tax Treatment of Such Payments**

(a) The Company shall provide an annual payment of [*X AMOUNT*] which shall be managed and disbursed for the benefit of [*COUNTRY*] communities affected by the Project, as provided in the Community Development Agreement or Agreements. The first annual payment shall be made to the Government on the Effective Date and each subsequent payment shall be made to the general revenue accounts on the anniversary date of the Effective Date.

(b) A development committee shall be appointed by or selected in accordance with procedures established by the Government from time to time. Such committee shall develop an annual budget in consultation with the Government and the Company, and the Government shall make disbursements account in which such funds are deposited in accordance with such budget, the instructions of the committee, and any applicable Community Development Agreement

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

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

(e) The Government shall exempt the Company from incurring any Taxes related to the payments to local community referenced in this Section.

## **OTHER TERMS & CONDITIONS**

## **32.0 Obligations of Subcontractors**

### **32.1 Applicability of Obligations to Contractors and Their Subcontractors**

Any subcontractor engaged by the Company to perform any activities under this Agreement shall be bound by the terms of the Agreement to the extent applicable to the activities undertaken by the subcontractor.

Nothing in this contract shall exempt the Company from any and all obligations under this Agreement despite the delegation of such obligations to a subcontractor.

### **32.2 Applicability of Obligations to Parent, Subsidiary and Other Related Companies**

A Parent, Subsidiary, or other company related to the Company in any way, shall to the extent applicable, be bound by the terms of this Agreement, and the obligations of the Company under this Agreement shall be duly extended to the Parent, Subsidiary or other related company as shall be reasonable and appropriate.

## **33.0 Assignment**

### **33.1 Affiliated Company Assignment**

The Company shall have the right to transfer its rights and interest under this Agreement to an affiliate subject to notification to the Government. The Company shall have the right to assign, or otherwise dispose of all of its interest under this Agreement to third parties only with the prior written consent of the Government, which consent shall not be unreasonably withheld or delayed.

### **33.2 Third Party Assignment**

The Company shall have the right, with the prior written approval by the Government, which approval shall not be unreasonably withheld or delayed, to freely transfer 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.

### **33.3 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 or managerial capacity to honor the obligations in this Agreement.

### 33.4 Release

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

### 34.0 Availability of Information

#### 34.1 This Contract a Public Document

(a) This Agreement, including any attachments, and any documents required to be submitted under it, 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 Government office and at the Repositories designated in the following subsection (e), and at the Company's office in [COUNTRY] 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 Ministry, and all responses by the Ministry, are freely available on request to the Ministry or the Company.

(d) Information regarding the amounts and types of Taxes paid by the Company, or any other payments made by the Company to Government agencies or officials at any level are, and will be regarded as freely available to the public.

(e) The Company shall establish Repositories at the following locations in or near the Mining Area to facilitate public access to documents related to the Project, and informed participation in all Consultation required by this Agreement. These Repositories shall contain this Agreement, the Environmental Impact Assessment and Environmental Management Plan, the Social Impact Assessment and Action Plan, the Closure Plan, and all proposed or adopted updates and amendments thereto, an accounting for all funds spent pursuant to Sections 2.3.2, 2.3.3 and 29.1 of this Agreement, and other appropriate public information about the Project or its impacts. Repositories shall be maintained at the following locations and shall be open to all members of the public during normal business hours:

\_\_\_\_\_  
\_\_\_\_\_

(f) Any document in any Repository may be inspected by anyone who chooses to do so, and may be copied at a nominal fee, not to exceed \$\_\_\_\_ per page.



## 34.2 Certain Information Confidential

(a) Confidential Information shall be retained by the Government 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.

(b) “Confidential Information” shall mean:

- (i) Information that is by law confidential;
- (ii) Confidential business information in which the Company or the Government could suffer loss or injury if the information were made public;
- (iii) Personnel matters, health records of individual employees, or other documents in which employees or others have a reasonable expectation of privacy;
- (iv) Confidential technical or proprietary information regarding equipment, process innovations, or business secrets;
- (v) Confidential legal matters, including advice from attorneys;
- (vi) The Company’s intellectual property and information about the Project, including geological information and mineral reserves;
- (vii) Information obtained in the course of an Audit as set forth in Section 10 above; or
- (viii) Other matters that involve the privacy of individuals, or in which the commercial interests of the Company or the regulatory processes of the state would be injured.

(c) Information disclosed to the other Party to this Agreement shall only be regarded as Confidential Information if it is designated as “Confidential” by Notice to the other Party at the time of its initial disclosure to such Party. The term “Confidential Information” does not mean information that: (i) becomes publicly available without wrongful disclosure; (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.

## **35.0 Force Majeure**

### **35.1 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 of Force Majeure, it shall give written Notice to the other Party as soon as practicable after its occurrence and the obligations of the Party which are directly related to the Force Majeure shall be suspended during the continuance of the Force Majeure.

### **35.2 Extension of Agreement**

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

### **35.3 Negotiation in Event of Force Majeure**

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

## **36.0 Cooperation, Dispute Resolution and Arbitration**

### **36.1 Cooperation**

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, 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 this Agreement.

### **36.2 Arbitration**

All disputes, controversies or claims arising out of or related to this Agreement, or the breach thereof, for which the International Center for Settlement of Investment Disputes would declare itself not to be competent shall be settled in accordance with the Rules of Arbitration of the [ARBITRATION BODY] by three arbitrators appointed in accordance with such Rules. The arbitration shall be held in [CITY], [COUNTRY] 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.

## **37.0 Surrender and Termination**

### **37.1 Surrender**

(a) The Company may surrender their rights by Notice signed by their respective an authorized Company representative on:

(i) Sixty (60) Days Notice under this Agreement at any time before the Date of Commencement of Commercial Production; and

(ii) Six month's 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.

### **37.2 Termination by the Government**

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

(a) Subject to the Force Majeure Section of this Agreement, the Date of Commencement of Commercial Production does not occur on or before the end of the thirty-sixth (36) month following the Effective Date;

(b) The Company commits a material breach of, or does not comply with or observe, a fundamental provision of this Agreement, and then fails or neglects to remedy that breach or comply with or observe that provision within sixty (60) Days (or a longer period as is reasonable in the circumstances) after the Government gives a Notice requiring that the breach be remedied or the provision be complied with or observed;

(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; or

(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 Government, which consent must not be unreasonably withheld.

### **37.3 Termination by the Company**

The Company may terminate this Agreement without prejudice to any other rights it may have if the Government commits a material breach of a fundamental provision of this Agreement and fails or neglects 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.

### **37.4 Retention of Assets on Surrender, Expiration or Termination by the Government**

(a) On the expiration or termination of this Agreement by the Government or the surrender of this Agreement by the Company, the Government has the option 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 Government 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 Government has not exercised its option to acquire.

(c) Any property not removed within twelve (12) months from the date of expiration, surrender or termination, may then be acquired by the Government without charge.

(d) The Government may require the Company to remove any property not acquired by the Government or otherwise comply with the environmental rehabilitation plan for the Mining Area.

### **37.5 Retention of Books and Records**

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

### **37.6 Obligations Following Expiration, Surrender or Termination**

(a) On the expiration, surrender or termination of this agreement by the Government under this agreement, the Company must:

(i) Make the Mining Area safe to the reasonable satisfaction of the Government so as to prevent injury to persons, livestock or other property;

(ii) Comply with the environmental program for reclaiming and rehabilitating the Mining Area, subject to any amendment to such program made in accordance with this Agreement; and

(iii) Otherwise comply with Applicable Law.

(b) If the Government intends to carry out mining operations subsequently in the Mining Area, it must provide Notice 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.

(c) If a Party to this Agreement is given Notice of Termination by another Party to this agreement, the Party given Notice shall have thirty (30) Days to deny the existence of the cause of the Termination Notice.

(d) If a Party receiving a Termination Notice does not deny the existence of the reason for termination set forth in the Termination Notice, such Party shall make reasonable efforts to remedy the breach as promptly as reasonably possible. After receipt of a Termination Notice, a Party shall have thirty (30) Days to cure any reason set forth for termination, or if such reason is not capable of cure within such thirty (30) Day period, a reasonable additional period of time if such Party diligently and consistently pursues a course of action that is reasonably intended to cure the reason for termination.

(e) If a Party receiving a Termination Notice denies the existence of the reason for termination set forth in the Termination Notice, it shall the other Party a Notice that it denies the alleged reason for termination and the Parties shall thereafter use good faith efforts to resolve the Dispute by negotiation pursuant to this Agreement. If the Parties are unable to resolve any such Dispute within [X] Days after receipt of the Termination Notice by the Party alleged to be in breach, any Party may thereafter initiate arbitration pursuant to this Agreement with respect to the Dispute arising from the Termination Notice.

(f) The rights and remedies of the Parties set forth in this Agreement shall be the exclusive and sole remedies of the Parties with respect to any breach, default, or Termination Notice under this Agreement or any Dispute relating thereto.

## **38.0 Notices**

### **38.1 General**

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

(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 below; or

(b) By registered mail, charges prepaid.

To [GOVERNMENTAL ENTITY]:

To [COMPANY]

## **38.2 Change of Address**

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

## **38.3 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 38.1; or

(b) By registered mail, charges prepaid.

## **38.4 Effective Time of Delivery**

All Notices shall be effective and shall be deemed received on the date of delivery 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.

## **39.0 Applicable Law**

This Agreement shall be governed by and construed in accordance with the Applicable Law and the international treaties to which [COUNTRY] is a party. For greater clarity, of this Section, the Applicable Law shall include all human rights treaties to which the Government is a party.

## **40.0 Periodic Review**

### **40.1 Modification and Review**

This Agreement shall 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 the 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.

### **40.2 Good Faith**

It is hereby understood that this Section subjects the Parties to this Agreement to a simple obligation to act in good faith in all matters related to this Agreement.

## **41.0 Ancillary Provisions**

### **41.1 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 Schedules and Exhibits to this Agreement are incorporated by reference and form part of this Agreement.

### **41.2 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] 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.

### **41.3 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 a writing signed by the Parties shall be null and void.

### **41.4 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 then the remainder of this Agreement shall remain binding upon and enforceable by the Parties hereto, provided that the provision or portion so severed shall not materially affect the remainder of this Agreement. Nothing herein shall preclude a Party from requesting the other Parties to renegotiate any provision herein.

### **41.5 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.

## **41.6 Indemnification by Company and by Government**

### **41.6.1 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.

### **41.6.2 Indemnification of [COUNTRY] by Company**

The Company shall at all times indemnify and hold harmless 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 or as a result of its failure to comply with any Applicable Law to which it is subject.

## **41.7 Conflicts of Interest**

Neither the Government or the Company, nor employees of the Government or the Company, shall engage in any activity related to the Project in exchange for any improper benefit or improper benefit to an employee or an employee's friends or family. These terms apply to every aspect of the Project, including any bidding processes and/or subcontracts.

## **41.8 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 the [DESIGNATED LANGUAGE] and English versions will be treated equally except that, in the event of any legal dispute in the interpretation between the two-language versions, the English version shall prevail.

## **41.9 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.

## **41.10 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.



#### **41.11 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 including 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.

*[SIGNATURE PAGES FOLLOW]*

MMDA 1.0 August 12, 2010

## **ANNEX A**

### **Mining Area**

*[Description of Mining Area, including maps]*

#### **Protected Areas, National Parks and Reserves**

The Company undertakes not to explore or mine in areas designated by law or other appropriate means as a protected area, national park or reserve, or as a World Heritage site, and shall ensure that it maintains at least [*X DISTANCE*] buffer between such areas and its operations in order not to damage, degrade or otherwise adversely impact these areas. Where an area is designated as [*a protected area, a national park or reserve, or*] a World Heritage site after the Effective Date of this Agreement, the Company shall [*not conduct any exploration or mining activities in that area.*] / [*take steps to protect the area or minimize the impact of its operations on the area.*]

MMDA 1.0 August 12, 2010

## ANNEX B

### Community Development Agreement Objectives

In furtherance of the objectives in 9.1, the provisions of the 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 [COUNTRY] which shall manage the agreement;

(b) The duly elected person or body that represents each affected community for the purposes of the agreement;

(c) The means by which members of any affected community will participate in the community's agreement 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 agreement 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:

(i) Undertakings with respect to the social and economic contributions that the project will make to the sustainability of the community;

(ii) 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;

(iii) 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 agreement in the event that any modifications to the agreement 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 agreement;

(j) The language(s) to be used in the preparation of reports, plans, and other written matters required under the agreement;

(k) The means by which any funds made available under the agreement 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 the IFC Performance Standards 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 agreement 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 Agreement, or as provided under the IFC Performance Standards.

(o) Severability of articles;

(p) The Applicable Law;

(q) Reasons and procedure for declaring Force Majeure;

(r) Duration of the agreement;

(s) Termination of the agreement;

(t) Assignment of the agreement or any right or obligation there under;

(u) Transfer of all CDA rights and obligations to any party to whom the Company transfers its mining right;

(v) How notifications to respective Parties shall be done;

(w) Location where the agreement may be accessed by members of the community; and

(x) The agreement signatories, and witnesses where applicable.

A breach by the Company of the terms of the CDA shall be considered to be a breach of this Agreement, and the Government shall be entitled to terminate the Agreement upon the failure of the Company to remedy the breach within sixty (60) Days of being notified in writing by the community of the breach.

## Regional Development Council

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

(a) The Government 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 Government, 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 Government 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 [COUNTRY] 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 [COUNTRY] 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 Government, 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 Community Development Agreement 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.

MMDA 1.0 August 12, 2010

## 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 [COUNTRY] 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 [COUNTRY] 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 [COUNTRY] 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 Government 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.