

EXECUTION COPY

DATED 31 MARCH 2000

THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA

and

MOPANI COPPER MINES PLC

**MUFULIRA MINE, SMELTER AND REFINERY AND
NKANA MINES, CONCENTRATOR AND COBALT PLANT
DEVELOPMENT AGREEMENT**

CONTENTS

Clause	Page
1. Definitions And Interpretations	5
2. Obligations To Develop	15
3. Rights To Export And Import And Arms' Length Dealings	16
4. Procurement.....	18
5. Local Business Development	18
6. Training And Human Resources Management.....	19
7. Insurance	22
8. Suspension Or Curtailment Of Production.....	22
9. Social Assets And Municipal Infrastructure Services	25
10. Records And Operating Reports	28
11. Foreign Exchange	31
12. Environmental Issues	34
13. Communications.....	41
14. General Obligation To Pay Tax	43
15. Vat Refunds	43
16. Taxation Stability.....	43
17. Assignment	46
18. Extensions To Time.....	47
19. Termination	48
20. Amicable Settlement Of Disputes	51
21. Sole Expert.....	52
22. Arbitration.....	57
23. Performance To Continue.....	58
24. Waiver Of Sovereign Immunity	58
25. Law Applicable	59
26. Force Majeure	59
27. Variation.....	60
28. Consultation	62
29. Notices	63
30. Waiver	64
31. Severability.....	64

32. Further Acts.....	64
33. Counterparts	64
34. Representations And Warranties	65
Schedule 1	APPROVED PROGRAMME OF MINING AND METAL TREATMENT OPERATIONS 67
Schedule 2	LOCAL BUSINESS DEVELOPMENT PROGRAMME.....68
Schedule 3	CONTRACT AREAS, LARGE SCALE MINING LICENCE AND MINING AREAS69
Schedule 4	SOCIAL SERVICES
Schedule 5	ENVIRONMENTAL PLAN.....75
Schedule 6	TRAINING & HUMAN RESOURCES MANAGEMENT PROGRAMME.....76
Schedule 7	INSURANCE POLICIES
Schedule 8	TAX SCHEDULE.....78
Schedule 9	TRANSFERRING SOCIAL ASSETS
	83

THIS AGREEMENT is made on 31 March 2000

BETWEEN:

- (A) **THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA**, acting through the Ministry of Mines and Minerals Development whose office is at the Ministry of Mines and Minerals Development, PO Box 31969, Haile Selassie Avenue, Lusaka, Zambia and the Ministry of Finance and Economic Development whose office is at the Ministry of Finance and Economic Development, PO Box 50062, Ridgeway 15101, Chimanga Road, Lusaka, Zambia; and
- (B) **MOPANI COPPER MINES PLC**, a company incorporated in Zambia (registered number 44139), whose registered office is at Insurance House, Kitwe, Zambia (the "**Company**", which term shall include any permitted assigns or successors of the rights and obligations of the Company).

WHEREAS:

- (1) Proposals have been submitted for the acquisition and subsequent rehabilitation, development and operation of the mine, concentrator, smelter and refinery, and associated facilities at the ZCCM operating division known as Mufulira and the mine, concentrator and cobalt plant at the ZCCM operating division known as Nkana, all situated in the Copperbelt Province of Zambia (the "**Facilities**") the location of which is more specifically identified by reference to the plan annexed hereto as Schedule 3, Part I.
- (2) GRZ has approved these proposals, which are hereafter referred to as the "**Approved Programme of Mining and Metal Treatment Operations**".
- (3) The rehabilitation, development and operation of the Facilities will be of major economic significance to the people of Zambia.
- (4) GRZ wishes to ensure that the continued development and exploitation of the commercial deposits of copper and cobalt ore at the Facilities' mines, together with the development and operation of the smelter, refinery, concentrators and cobalt plant will secure the maximum benefit for, and adequately contribute to the advancement and the social and economic welfare of, the people of Zambia, including the people in the vicinity of the Contract Area in a manner consistent with their needs and the protection of the environment and, at the same time, secure an appropriate return on investment for the Company commensurate with the risks involved to the Company.
- (5) GRZ and the Company have agreed on a number of matters which are set out in this Agreement and wish the matters agreed upon to be an enduring arrangement of national interest.
- (6) GRZ has granted to the Minister of Mines and Minerals Development and the Minister of Finance statutory authority under Section 9 of the Act to enter into this Agreement on behalf of GRZ, and GRZ and the Company agree to be bound by all the terms and

conditions relating thereto. The Minister has consulted with the Minister of Finance as required by Section 9 of the Act, as amended, and has sought and received the advice of the Mining Advisory Committee in accordance with Section 88 of the Act and is acting in accordance with such advice.

- (7) GRZ, the Company and ZCCM have entered into a Sale and Purchase Agreement dated 18 February 2000 which requires on its Completion (as therein defined) the entry into of this Agreement.

**PART A
GENERAL**

1. **DEFINITIONS AND INTERPRETATIONS**

1.1 In this Agreement and the Schedules hereof, unless the context otherwise requires:

"Act" means the Mines and Minerals Act (Chapter 213 of the Laws of Zambia) as from time to time amended and in effect and includes any regulations made thereunder;

"Affiliate, Affiliated Party, or Affiliated Parties" means:

- (a) any company in which the Company or a Shareholder (as the case may be) holds forty per cent. (40%) or more of the ordinary voting shares or which holds forty per cent. (40%) or more of the Company's or a Shareholder's (as the case may be) ordinary shares;
- (b) any person which, directly or indirectly, is controlled by or Controls, or is under Common Control with the Company or a Shareholder (as the case may be); or
- (c) any person or group of persons being directors or executive officers of, or in the employment of any person referred to in (a) or (b) above,

and "Control" means:

- (d) the power (whether directly or indirectly) and whether by the ownership of share capital, the possession of voting power, contract or otherwise to appoint and/or remove all or such of the board of directors or other governing body of a person as are able to cast a majority of the votes capable of being cast by the members of that board as body, or otherwise to control or have power to control the policies and affairs of that person; and/or
- (e) the holding and/or the ownership of the beneficial interests in and/or the ability to exercise the voting rights applicable to shares or other securities in any person which confer in aggregate on the holders whether directly or by means of holding such interests in one or more other persons (either directly or indirectly) more than forty per cent. (40%) of the voting rights exercisable at general meetings of that person,

and "Controlled by" shall be construed accordingly and "Common Control" means the circumstances where two (2) or more persons are controlled by the same person or its Affiliates;

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

"Approved Programme of Mining and Metal Treatment Operations" means the proposals for rehabilitating, developing and operating the Facilities which are set out in Schedule 1 (as varied from time to time in accordance with Clause 27);

"Arms' Length Terms" means a transaction (which, provided that all such agreements are properly disclosed, may be documented by more than one (1) agreement between the same parties) where:

- (a) the parties in negotiating the transaction have sought to promote their own best interests in accordance with fair and honest business methods;
- (b) the consideration expressed in the agreement(s) for the transaction entered into is the only consideration for the transaction; and
- (c) the price and other terms of the transaction:
 - (i) are similar to the average market prices and terms and conditions offered by third parties for a transaction of a similar size and nature; or
 - (ii) have not been affected by, nor determined as a consequence of, any other agreement or any direct or indirect relationship (other than the relationship created by the transaction agreement(s)) between the selling party or shareholders of the selling party, or a company in which the selling party is a shareholder, and buying party or shareholders of the buying party, or a company in which the buying party is a shareholder;

"Assets" shall have the meaning assigned to it in the Sale and Purchase Agreement;

"Business Day" means a day on which commercial banks are generally open for business in London, Lusaka, New York City and Zurich;

"Calendar Month" means a month commencing on the first (1st) day of such month and ending on the thirtieth (30th) or thirty first (31st) day of such month or, in the case of February, the twenty eighth (28th) or twenty ninth (29th) day as the case may be;

"Carlisa" means Carlisa Investments Corp, a company incorporated in the British Virgin Islands (registered no.211422) whose registered office is at R.G. Hodge Plaza, Upper Man Street, Wickham Cay 1, Road Town, Tortola, British Virgin Islands;

"Central Bank" means the Bank of Zambia or any successor;

"Collective Agreement" means the agreement between the Seller and the MUZ dated 17 August 1999 (effective from 1 July 1999) as amended from time to time which, for the avoidance of doubt, includes the Standard Code Book 1996, the Disciplinary Code Book, the 1981 Joint Evaluation Agreement, the 1997 Redundancy Agreement and Administrative Rules Governing Payment for Service Held in Trust dated 15 September 1997;

"**Companies Act**" means the Companies Act, Chapter 388 of the Laws of Zambia as from time to time amended and in effect;

"**Completion**" has the meaning assigned to it in the Sale and Purchase Agreement;

"**Completion Date**" has the meaning assigned to it in the Sale and Purchase Agreement;

"**Contingent Commitment**" means an investment of three hundred and forty three million US dollars (US\$343,000,000) to be expended in the manner, proportions and amounts specified in, but subject to satisfaction of the conditions to that expenditure as detailed in, the Approved Programme of Mining and Metal Treatment Operations;

"**Contract Area(s)**" means those land area(s) covered by the Leases, as are described in Schedule 3 Part I;

"**Control of Goods Regulations**" means the Control of Goods (Import Declaration Fee) Regulations, 1997 (S.I. No. 20 of 1997) as issued pursuant to an amendment (S.I. No. 7 of 1997) to the Control of Goods Act (Chapter 690 of the Laws of Zambia) as from time to time amended and in effect;

"**Copperbelt**" means Copperbelt Province in Zambia comprising the main copper mining area in Zambia;

"**Costs to Resume Operations**" means:

- (a) one point two (1.2) times the costs (including the cost of new capital expenditures) required to resume Normal Operations; plus
- (b) one point two (1.2) times the sum of the Company's estimate of:
 - (i) royalties;
 - (ii) Operating Costs;
 - (iii) new capital expenditure to the extent not included in Operating Costs; and
 - (iv) all other incidental costs,necessary to continue Normal Operations for a further period of twelve (12) months;

"**Director**" means the person for the time being entitled to exercise the powers of the Director of Mines under the Act;

"**Dispute**" means any dispute, disagreement, controversy, claim or difference of whatsoever nature arising under, out of, in connection with or relating (in any manner whatsoever) to this Agreement including (without limitation) any dispute or difference:

- (a) concerning the initial or continuing existence of this Agreement or any provision thereof;
- (b) as to whether this Agreement or any provision thereof is invalid, illegal or unenforceable (whether initially or otherwise);
- (c) as to the interpretation, performance or breach of this Agreement (including whether any default notices served under Clause 19 is valid or whether the default or failure alleged in any such Default Notice has occurred);
- (d) concerning the legal capacity of any of the Parties, or the signatories on their respective behalves to this Agreement, to enter into and validly bind the Parties to the terms of this Agreement or any provisions (or any part of any provision) thereof;
- (e) as to whether any compensation is payable under any provision of this Agreement and as to the quantum of such compensation; or
- (f) any dispute or claim which is ancillary or connected, in each case in any manner whatsoever, to the foregoing;

"Distributable Profits" means after tax profits and accumulated reserves of the Company, available for distribution as dividends in accordance with Section 84 of the Companies Act, as shown in the financial statements of the Company;

"Education Services" means the education services as set out in Schedule 4, Part I;

"Employees" has the meaning assigned to it in the Sale and Purchase Agreement;

"Enabling Legislation" means the Mines and Minerals (Amendment) Act (Cap No. 2 of 2000);

"Environmental Comfort Letter" means the letter from the Environmental Council of Zambia supplied to the Buyer at Completion in the form set out in Schedule 17 to the Sale and Purchase Agreement;

"Environmental Laws" means: the Mining (Mineral Resource Extractions) Regulations SI No.119 1994; the Environmental Protection and Pollution Control Act (Act No 12 of 1990), and regulations enacted thereunder; Sections 75 to 82 of the Act, the Mines and Minerals Environmental Regulations 1997 SI No. 29 1997, and the Mines and Minerals (Amendment) Act (Cap No. 2 of 2000) save for the provisions contained in each of such laws and regulations which relate to mine safety and/or the safety of persons rather than to the protection of the environment, as each may from time to time be amended and in effect;

"Environmental Liabilities Agreement" means the agreement of even date between the Company, ZCCM and GRZ providing for the indemnification of the Company by GRZ in respect of certain environmental liabilities and as amended in accordance with Clause 12 herein;

"Environmental Licences" means all licences issued by the Environmental Council of Zambia under the Environmental Laws or regulations made pursuant to such Environmental Laws which relate to the Assets and the operations carried out at the Operations immediately prior to Completion;

"Environmental Plan" means until such time as agreement is reached pursuant to Clause 12.1 on the final form of the Environmental Plan, the framework programme for environmental protection and compliance as set out in Schedule 5 and, after agreement on the final form of the plan pursuant to Clause 12.1, shall mean the Environmental Plan as so agreed and which shall be deemed a modification of the existing environmental plan and therefore exempt from any acceptance fees or costs imposed on acceptance of new environmental plans pursuant to the Environmental Laws as amended in accordance with Clause 12;

"Environmental Protection Fund" means the fund set up for environmental protection by Section 82 of the Act and the Mines and Mine Products (Environmental) Regulations 1997 SI No. 29 1997;

"Excise Duty on Power" means the excise duty on power levied from time to time under the Customs and Excise Act, Chapter 322 of the Laws of Zambia as amended and currently set at ten (10) per cent.;

"Facilities" has the meaning ascribed to it in Recital (1);

"Force Majeure" has the meaning given to the term in Clause 26.2;

"Good Mining Practices" means internationally accepted mining, metallurgical and metal treatment practices;

"GRZ" means the Government of the Republic of Zambia and includes any authorised agent of the Government of the Republic of Zambia;

"Investment Commitment" means an investment of one hundred and fifty-nine million US dollars (US\$159,000,000) (or as the Parties hereto may otherwise agree pursuant to this Agreement) to be expended on the Facilities through net increases in the Company's working capital or investment in capital items or, if less, such amount as is required to achieve:

- (a) ore production at the Mufulira mine of not less than two million four hundred thousand (2,400,000) metric tonnes in 2003 and on a sustainable basis thereafter; and
- (b) copper metal production from the Mufulira mine of not less than fifty six thousand (56,000) metric tonnes in 2003 and on a sustainable basis thereafter; and

- (c) ore production at the Nkana mines of not less than four million two hundred and fifty thousand (4,250,000) metric tonnes in 2003 and on a sustainable basis thereafter;
- (d) copper metal production from the Nkana mines of not less than seventy four thousand (74,000) metric tonnes in 2003 and on a sustainable basis thereafter; and
- (e) cobalt metal production from the Nkana mines of not less than two thousand two hundred (2,200) metric tonnes in 2003 and on a sustainable basis thereafter;

"Kwacha" or **"K"** means the lawful currency of Zambia;

"Large Scale Mining Licence (Mufulira)" means the large scale mining licence number thirty-two (32) granted as at the date hereof under Part III of the Act, to the Company by the Ministry in the form set out in Schedule 3 Part II for a term of twenty five (25) years;

"Large Scale Mining Licence (Nkana)" means the large scale mining licence number thirty-seven (37) granted as at the date hereof under Part III of the Act, to the Company by the Ministry in the form set out in Schedule 3 Part II for a term of twenty five (25) years;

"Large Scale Mining Licences" means the Large Scale Mining Licence (Mufulira) and the Large Scale Mining Licence (Nkana);

"Leases" means the leases, details of which are set out in Schedule 2 of the Sale and Purchase Agreement and **"Lease"** means any one of these leases;

"LIBOR" means, in relation to any amount on which interest for a given period is to accrue:

- (a) the percentage rate per annum equal to the offered quotation which appears on the page of the Telerate Screen which displays an average British Bankers Association Interest Settlement Rate for US dollars (being currently "3750") for one month deposits at or about 11.00 am London time on the date which is two (2) Business Days preceding the final Business Day of each calendar month that monies are outstanding or, if payment is not made on the final Business Day of a Calendar Month, two (2) Business Days preceding the Business Day on which payment is made or, if such page or such service shall cease to be available, such other page or such other service for the purpose of displaying an average British Bankers Association Interest Settlement Rate for one (1) month deposits in US dollars as the parties, after consultation with each other, shall select; or
- (b) if no quotation for US dollars for one month deposits is displayed and the parties have not selected an alternative service on which a quotation is

displayed, the arithmetic mean (rounded upwards to four decimal places) of the rates at which the principal London offices of each of four major banks in the London Interbank Market as selected by the Parties was offering to prime banks in the London Interbank Market one (1) month deposits in US dollars at or about 11.00 am London time on such date;

"Local Business Development Programme" means the programme for local business development which is described in Clause 5 and which is set out in Schedule 2;

"Material Adverse Effect" means a material adverse effect on the condition (financial or otherwise) of the Company which has or may have a material adverse effect on the Company's present or future ability to operate the Assets and the Facilities pursuant to the Scheduled Programmes;

"Medical Services" means the medical services as set out in Schedule 4, Part II;

"Metal Treatment Products" means all smelter and refinery products of the Mfulira smelter and refinery and Nkana cobalt plant;

"Metal Treatment By-Products" means sulphuric acid;

"Mine Products" means the ores or concentrates or other Minerals produced from the Mining Area;

"Minerals" means all minerals excluding petroleum and other hydrocarbons, as the same may be located in the Mining Area;

"Minister" means the person for the time being entitled to exercise the powers of the Minister of Mines and Minerals Development under the Act;

"Mining" has the meaning given to the term in the Act;

"Mining Area" means the areas covered by the Large Scale Mining Licences, the same being set out in Schedule 3 Part III;

"Ministry" means the Ministry of Mines and Minerals Development or other successor ministry from time to time;

"Non-Transferring Employees" means Employees who do not transfer to the employment of the Company immediately prior to or at Completion;

"Normal Operations" means the operation of the Facilities in accordance with the Scheduled Programmes;

"Notices" means any notice, consent, demand, approval or other communication required or permitted to be given under Clause 28;

"Operating Costs" for any period means the costs incurred by the Company during Normal Operations excluding (a) depreciation and other non-cash costs and (b) capital costs other than replacement capital costs and (c) financing charges;

"Operations" has the meaning assigned to it in the Sale and Purchase Agreement;

"Parties" means the persons who are from time to time parties to this Agreement including the original parties hereto and parties added or substituted pursuant to Clause 17, and **"Party"** means any one of them;

"Quarter" means:

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

"Redundancy Terms" means those terms relating to entitlement to certain payments and other rights in the event of loss of employment due to redundancy which are applicable to the Transferring Employees as set out in the Collective Agreement;

"Registered Dependants" means the spouse, children, step-children or legally adopted children of Transferring Employees or SmelterCo Employees who, in the case of children are 21 years old or less at the date of this Agreement and are further registered as of the date of this Agreement in the records of ZCCM as being entitled to use some or all of the Social Assets and thereafter those that shall be registered in accordance with Clause 9.1;

"Sale and Purchase Agreement" means the agreement dated 18 February 2000 and made between ZCCM, the Company and GRZ vesting the Assets (as such term is defined therein) in the Company in consideration of the payment of cash and the issue of shares to ZCCM;

"Scheduled Programmes" means the Approved Programme of Mining and Metal Treatment Operations, the Environmental Plan, the Training and Human Resources Management Programme and the Local Business Development Programme;

"Shareholder" means a registered holder of ordinary shares in the Company whose rights are set out in the Company's Articles of Association (as defined in the Sale and Purchase Agreement);

"Shareholders' Agreement" means the agreement of even date herewith amongst certain Shareholders in the Company being initially Carlisa, the Company and ZCCM governing the relationship between them as Shareholders in the Company;

"Social Assets" means the Educational Services and the Medical Services;

"Sole Expert" means a person appointed in accordance with the provisions of Clause 21;

"SmelterCo Social Assets Access Agreement" means the agreement of even date herewith between the Buyer and SmelterCo for the provision of educational and medical services to SmelterCo;

"Social Assets Access Agreements" means the following agreements:

- (a) between the Seller and CEC dated 21 November 1997; and
- (b) between the Seller and NFC (Africa) Mining PLC dated 29 June 1998,

in each case for the provision of education, medical and recreational services;

"Social Assets Access Novation Agreements" means the agreements of even date herewith novating the Social Assets Access Agreements;

"Speculative Currency Transaction" means a transaction involving the purchase or sale of Zambian currency, the primary object of which is the making of a profit on the exchange of currency but does not include the taking out of forward cover against reasonably predictable incomes or costs;

"Stability Period" means the period commencing as of the date of this Agreement and ending on the fifteenth (15th) anniversary of the date of this Agreement;

"Taxes" means any present and future taxes, duties, imposts and levies imposed by statute or howsoever otherwise arising, whether by state or provincial authorities or local or municipal authorities whatsoever and whenever imposed and without prejudice to the generality of that expression includes: income tax, corporation tax, capital gains tax, inheritance tax, stamp duty, stamp duty reserve tax, rates, value added tax, customs and other import duties and national insurance contributions, any payment whatsoever which the Company may be or become bound to make to any person as a result of any enactment relating to taxation and any other taxes, duties or levies supplementing or replacing any of the above and all costs, charges, interest, fines, penalties and expenses incidental, or relating thereto and **"Taxation"** shall have a corresponding meaning;

"Training and Human Resources Management Programme" means the programme which is set out in Schedule 6;

"Transferring Employees" shall have the meaning ascribed to it in the Sale and Purchase Agreement;

"Transferring Social Assets" means those Social Assets listed in Schedule 9;

"Unspent Portion of the Budgeted Commitment" means in respect of any part or parts of the Facilities where production is to be suspended or curtailed an amount equal to the capital allocated in the Approved Programme of Mining and Metal Treatment Operations for expenditure on such Facilities but which remains unspent as of the date of suspension or curtailment;

"US\$", "US dollars" or "United States dollars" means the lawful currency of the United States of America;

"VAT" means value added tax payable under the Value Added Tax Act, Chapter 331 of the Laws of Zambia as from time to time amended and in effect;

"Zambia" means the Republic of Zambia; and

"ZCCM" means Zambia Consolidated Copper Mines Limited.

1.2 In this Agreement, unless the context otherwise requires, a reference to:

- (a) a statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time before or after the date of this Agreement and any subordinate legislation made under the statutory provision before or after the date of this Agreement;
- (b) a person includes a reference to that person's successors and permitted assigns;
- (c) a Clause, paragraph or Schedule is a reference to a Clause or paragraph of or Schedule to this Agreement;
- (d) a document is a reference to that document as from time to time supplemented or varied;
- (e) any document or agreement shall include such document or agreement as amended novated, replaced or supplemented from time to time; and
- (f) a person include a partnership, firm or corporation and any reference to GRZ includes any instrumentality of GRZ or any political sub-division thereof,

and,

- (g) words importing the singular include the plural and vice versa;
- (h) words importing any gender include the other gender;
- (i) the headings do not affect the interpretation or construction; and
- (j) the recitals form part of this Agreement.

PART B
OPERATIONAL AND EMPLOYMENT ISSUES

2. OBLIGATIONS TO DEVELOP

- 2.1 The Company shall, following the Completion Date and, subject to the terms of the Act, regulations made thereunder, the Large Scale Mining Licences and this Agreement and, in the case of the Contingent Commitment only, satisfaction of the conditions attaching thereto detailed in the Approved Programme of Mining and Metal Treatment Operations, implement the Approved Programme of Mining and Metal Treatment Operations in accordance with the timetable contained therein and Good Mining Practices provided that the Company shall not be obliged to expend more than the Investment Commitment and the Contingent Commitment (if applicable).
- 2.2 Without prejudice to the obligation contained in Clause 2.1 and subject at all times to the provisions of Clause 8 and Clause 27, the Company shall:
- (a) expend the Investment Commitment; and
 - (b) if and to the extent that the conditions specified in the Approved Programme of Mining and Metal Treatment Operations relating to the Contingent Commitment are satisfied, expend that portion of the Contingent Commitment in relation to which the conditions are so satisfied substantially in the manner, on the terms and in the amounts set out in the Approved Programme of Mining and Metal Treatment Operations.

The Investment Commitment shall be deemed to have been satisfied through an investment of less than one hundred and fifty nine million US dollars (US\$159,000,000) notwithstanding the failure by the Company to meet the targets of ore, copper metal and cobalt metal production contained in the definition thereof if the failure to meet such targets could not reasonably be considered to have a substantive affect on the Company's ability to achieve these targets on a sustainable basis in the immediately succeeding twelve (12) Calendar Month period and without significant further capital expenditure.

- 2.3 The Company's obligation to expend the Investment Commitment or the Contingent Commitment (as the case may be) in accordance with Clause 2.2 will be suspended where an event of Force Majeure has been declared to the extent that such event of Force Majeure impedes the activity upon which monies would otherwise be expended and for so long as such event of Force Majeure is continuing.
- 2.4 Subject in all cases to the provisions of this Agreement, GRZ hereby acknowledges its agreement to the Scheduled Programmes and the compliance of the Scheduled Programmes with Sections 24(3) and 25(1) of the Act.
- 2.5 If at any time prior to the satisfaction of the Investment Commitment or, subject as provided in Clause 2.2(b), the Contingent Commitment, the Company suspends or

curtains production at any part or parts of the Facilities in accordance with Clause 8 and has met its associated obligations under Clause 8, the Investment Commitment or the Contingent Commitment, as the case may be, shall be deemed to be reduced by:

- (a) in the case of a suspension of production, the Unspent Portion of the Budgeted Commitment in respect of such part or parts of the Facilities; or
- (b) in the case of a curtailment of production, by the Unspent Portion of the Budgeted Commitment at which the curtailment is proposed, multiplied by the quotient of:
 - (i) the proposed curtailment of production; and
 - (ii) the production budgeted for the relevant Facilities which are the subject of the proposed curtailment,

PROVIDED HOWEVER THAT, if the Company resumes operations in whole or in part at the relevant part or parts of the Facilities previously so suspended or curtailed, the Investment Commitment or Contingent Commitment, as the case may be, shall be increased by the Unspent Portion of the Budgeted Commitment in respect thereof taking account of the extent of the resumption. The period over which the renewed portion of the Investment Commitment must be expended will be extended on a day for day basis equal to the period of suspension or curtailment **PROVIDED FURTHER THAT** the provisions of this Clause 2.5 shall not cause the Investment Commitment to exceed one hundred and fifty nine million United States dollars (US\$159,000,000) or the Contingent Commitment to exceed three hundred and forty three million United States dollars (US\$343,000,000) or prohibit the Company from expending at the Facilities sums exceeding the Investment Commitment or the Contingent Commitment.

- 2.6 GRZ confirms that it considers the proposed mining, smelting and refinery practices described in the Approved Programme of Mining and Metal Treatment Operations not to constitute "*wasteful mining practices*" for the purposes of Section 81 of the Act and neither GRZ nor the Director of Mining Safety shall allege that mining practices used by the Company are wasteful so long as the Company is conducting mining in accordance with mining practices set out in the Approved Programme of Mining and Metal Treatment Operations or any GRZ approved variation or modification thereto. Nothing in this Clause 2.6 shall prevent or restrict or otherwise limit GRZ from taking all actions within the law to protect public health and safety provided that any dispute or disagreement between the Company and GRZ as to the action taken or proposed to be taken under such laws shall be regarded as a Dispute.

3. **RIGHTS TO EXPORT AND IMPORT AND ARMS' LENGTH DEALINGS**

- 3.1 Subject to Clause 4 and the payment of applicable Taxes not otherwise exempted or deferred pursuant to this Agreement, the Company may import and where it so desires, re-export without further reference to GRZ, materials, equipment and services to be used directly or indirectly in Normal Operations provided that GRZ has not notified the

Company that the import and/or re-export (as applicable) of such materials, equipment and services would give rise to the matters specified in Clause 3.2(b).

3.2 The Company may market and export without further reference to GRZ (and GRZ will cause to be issued the requisite export authorisation documents in respect thereof at the date of such export) all Mine Products, Metal Treatment Products and Metal Treatment By-Products and shall have sole control and management of the sale of such Mine Products, Metal Treatment Products and Metal Treatment By-Products including the forward selling of such Mine Products, Metal Treatment Products and Metal Treatment By-Products and shall assume all risks therefor, provided that:

- (a) the Company sells the Mine Products, Metal Treatment Products and Metal Treatment By - Products on Arms' Length Terms;
- (b) GRZ has not notified the Company that the export of the Mine Products, Metal Treatment Products or Metal Treatment By-Products would:
 - (i) breach an obligation of GRZ arising under international law (including mandatory sanctions imposed by the United Nations); or
 - (ii) result in dealing or contracting with nationals of a state with which GRZ is in a state of war;
- (c) manufacturers of processed and semi-processed goods involving copper content with processing facilities located in Zambia which are willing and able to purchase, and pay for, copper cathode or other Metal Treatment Products at currently prevailing international market prices payable in US dollars to the Company's account within or outside Zambia at its option and within the time limits laid down by the Company's forward selling plan of copper cathodes or other Metal Treatment Products shall be afforded a preference over manufacturers whose processing facilities are not so located PROVIDED THAT:
 - (i) this obligation shall only apply to an amount of copper which does not exceed 10 per cent. of the Company's annual copper production from time to time;
 - (ii) the application of this preference shall not result in the Company breaching its delivery obligations with respect to any of the sales contracts which are transferred to the Company pursuant to the Sale and Purchase Agreement; and
 - (iii) the application of this preference shall not operate so as to cause the Company to incur any greater cost or otherwise suffer any prejudice; and
- (d) no order has been made by the Minister pursuant to Section 69 of the Act which remains in force.

4. PROCUREMENT

4.1 The Company shall, on a regular basis, identify and invite by advertisement in the local press registration of businesses in Zambia (particularly those in the Copperbelt and with emphasis on businesses directly or indirectly majority owned by Zambian citizens) which are capable of supplying materials, equipment and services to the Company and satisfy the criteria of Clause 4.2.

4.2 The supply of materials, equipment and services may be tendered for and procured internationally and without restriction, Provided, however, that where materials, equipment and services required for the implementation of the Scheduled Programmes or otherwise are manufactured or substantially assembled (or in the case of services, are procurable) within Zambia from a business or businesses registered pursuant to Clause 4.1 as having proven ability and reputation in performing work similar in size and nature as that required by the Company or as being of established, recognised and reputable suppliers of material and/or equipment, such business(es) shall have the opportunity to tender and if a tender submission from any such business:

- (a) meets the specifications of the invitation to tender;
- (b) meets quality standards;
- (c) is competitive in cost with international sources; and
- (d) meets the delivery requirements of the Facilities,

then the Company shall not discriminate actively against such business(es) in its award of such tender. In the event of active discrimination, notwithstanding the rights of GRZ under this Agreement, the validity of the award shall not be affected.

4.3 In assessing the tenders from local contractors and suppliers, the Company will consider the extra costs it would incur if it were to grant the contract to a foreign supplier or contractor. These extra costs shall include, but are not necessarily restricted to, wharfage costs, shipping costs, stevedoring costs, customs clearance costs, customs duties (where appropriate having regard to Schedule 8), and demurrage charges.

5. LOCAL BUSINESS DEVELOPMENT

5.1 The Company shall:

- (a) comply with the Local Business Development Programme so as to encourage and assist the establishment of businesses within Zambia (particularly in the Copperbelt and with a particular emphasis on businesses directly or indirectly majority owned by Zambian citizens) to supply materials, equipment and services to the Company, provided that the Company shall not be obliged to grant or lend money to any person or to enter into any contract with any person or entity;

- (b) conduct an annual review of progress being made on the implementation of the Local Business Development Programme and make such variations to it as required by changing circumstances; and
- (c) identify an employee experienced in setting up and managing small business enterprises:
 - (i) assist Zambian citizens who wish to or have set up businesses to offer services to the Company and the Facilities;
 - (ii) to have primary responsibility for the implementation of the Local Business Development Programme and variations thereof; and
 - (iii) to liaise with the appropriate officials from GRZ.

6. TRAINING AND HUMAN RESOURCES MANAGEMENT

- 6.1 The Company shall comply in all material respects with the Training and Human Resources Management Programme applicable from time to time.
- 6.2 Subject to the provisions of this Clause 6 and the Company being in compliance at all times with all applicable labour or other relevant legislation in force from time to time, the Company may with the consent of GRZ (which consent shall not be unreasonably withheld), amend or alter the Training and Human Resources Management Programme, with a view to securing the maximum training of and benefits to Company employees.
- 6.3 Subject to the provisions of this Clause 6, if the Company is unable to comply with the Training and Human Resources Management Programme as a result of:
 - (a) circumstances or events beyond its control; or
 - (b) a direction of the Director of Mine Safety under the Act (or regulations made thereunder),

then such non-compliance shall not constitute a default under this Clause 6 nor a material default for purposes of Section 19 and the Company may give notice of alternative or revised plans to the part of the Training and Human Resources Management Programme affected.

- 6.4 Should the Company give notice pursuant to Clause 6.3, GRZ shall within thirty (30) days either:
 - (a) approve those alternative or revised plans; or
 - (b) meet with the Company to discuss and agree upon the alternative or revised plans.
- 6.5 If the discussions under Clause 6.4 do not lead to GRZ's approval of alternative or revised plans following a notice given under Clause 6.3 and the Company considers

GRZ's decision to be unreasonable, the Company may elect to refer the reasonableness of GRZ's decision to a Sole Expert in accordance with Clause 21.

- 6.6 If the Sole Expert determines that GRZ's decision is not unreasonable, he shall identify to the Company the changes to the Training and Human Resources Management Programme as will be necessary to bring such programme into compliance with GRZ's requirements in this regard. However, if the Sole Expert determines that GRZ's decision is unreasonable, he shall declare his determination to both Parties and the proposed amendment or alternation to the Training and Human Resources Management Programme shall be deemed approved.
- 6.7 The Company shall not, save as provided below, be restricted in its employment, selection, assignment or discharge of personnel Provided, however, that the employment and the terms and conditions of such employment and the discharge or disciplining of personnel within Zambia shall be carried out in compliance with (i) the laws and regulations of Zambia which are, from time to time, of general application, (ii) the Collective Agreement and (iii) the terms of individual employment contracts from time to time.
- 6.8 The Training and Human Resources Management Programme identifies a target level of employees necessary to conduct Normal Operations from time to time. The Company will, however, be entitled to modify such target level in accordance with its requirements with sixty (60) days prior notification to GRZ
- 6.9 The Company will, in its recruitment, selection, promotion and assignment of personnel, not discriminate actively against comparably qualified and experienced Zambian citizens.
- 6.10 The Company acknowledges GRZ's policy to attract qualified Zambian citizens working overseas back to employment within the Zambian mining and metallurgical industry. In order to facilitate the fulfilment of this policy, the Company will take all reasonable efforts in its recruitment and employment of employees in professional, managerial, engineering and scientific grades to bring to the attention of such qualified Zambians positions of employment available within the Company.
- 6.11 The Company will honour and perform the terms and conditions of the contracts of employment of the Transferring Employees save that such contracts may be varied with the Transferring Employees' consent, such variation to be made and obtained in compliance in all respects with Zambian law and regulations and the terms of the Collective Agreement.
- 6.12 The Company will recognise, for collective bargaining purposes, the trade union currently representing the Transferring Employees and the Collective Agreement covering the Transferring Employees in force at the date hereof PROVIDED THAT the Transferring Employees shall be free to form or belong to any other trade union or no trade union at their choice.

- 6.13 The Company will adopt the Redundancy Terms currently applicable to Transferring Employees. The Company will, as of the Completion Date, calculate the redundancy payments due to all Transferring Employees for those years previously worked for ZCCM (“ZCCM Redundancy”) in accordance with the Redundancy Terms applicable immediately prior to the Completion Date in respect of the Transferring Employees and provide such Transferring Employees with the option to retain their existing service contracts or enter into new service contracts with the Company on terms to be agreed with the employees of the Company or their representatives.

For those Transferring Employees who elect to enter into new service contracts, the Company will note the ZCCM redundancy amounts on each Transferring Employee’s service record and thereafter shall apply any agreed new Redundancy Terms which shall include an obligation to pay the redundancy payments calculated as at the Completion Date as aforesaid in addition to any amounts to be paid under any new Redundancy Terms by reference to service from the Completion Date.

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

- 6.15 Any such non-Zambian citizens (and dependants) as are referred to in Clause 6.14 shall be entitled (on his or their arrival or permanent departure from Zambia) and, in the case of (c), at any time during his or their residency in Zambia to:

- (a) import within six (6) months from the date of arrival free of duty and tax, for personal use, household and personal effects;
- (b) export, without let or hindrance or the imposition of duty or tax on export, all personal effects originally imported or acquired during residency in Zambia; and
- (c) freely remit all income earned within Zambia during such residency.

7. INSURANCE

7.1 The Company shall insure and keep insured with a reputable insurance company the Assets and those aspects of the Facilities that are normally and commercially insurable (and where such insurance is customarily obtained in the mining industry in accordance with good international mining practice and reasonably obtainable for the Assets and Facilities). Such policies shall be in accordance with good risk management practice having regard to the nature, age and condition of the Assets and relevant aspects of the Facilities and having regard to terms of insurance set out in Schedule 9 to the Sale and Purchase Agreement. Subject to the foregoing, the terms and conditions of the insurance taken by the Company shall otherwise be left to the sole discretion of the Board of the Company. The Company shall advise GRZ of the policy or policies in place and shall forward copies to GRZ.

7.2 GRZ agrees that the insurances specified in Schedule 7 are those which, as at the date hereof, would otherwise be required by:

- (a) the statutory instrument referred to Section 101(1) of the Act; and/or
- (b) the Director pursuant to Section 101(3) of the Act.

7.3 The Company shall, unless the insurance policies or any of its loan agreements state otherwise or GRZ otherwise agrees, use any amount paid to it pursuant to any damage or destruction provisions in any contract of insurance to reinstate such elements of the Facilities (except for Mine Products) in respect of which such amount was paid, provided that the Company shall not be required to repair or restore any portion of the Facilities where such failure to repair or restore would not have a Material Adverse Effect provided that such amount is invested at the Operations. In the event GRZ notifies the Company that it disagrees that the failure to repair or restore would not have such a Material Adverse Effect, the matter shall be referred for determination to a Sole Expert in accordance with Clause 21.

8. SUSPENSION OR CURTAILMENT OF PRODUCTION

8.1 The parties acknowledge that the Company's right to suspend and curtail (hereinafter referred to as "suspend") Normal Operations is governed by Section 28 of the Act and that, in the event of any such suspension or curtailment, the Minister may exercise powers under Section 28(3) of the Act.

8.2 GRZ hereby agrees that:

- (a) the Minister's approval shall be deemed given in accordance with Section 28(3)(a) of the Act upon compliance by the Company with this Clause; and
- (b) in such event, any direction capable of being given pursuant to Section 28(3)(b) of the Act will only be given either:
 - (i) in compliance with this Clause; or

- (ii) if the Company has not complied with any provision of this Clause and has not remedied such non-compliance within thirty (30) days of being given notice of such non-compliance by GRZ.

8.3 The Company may elect by giving written notice to GRZ to suspend Normal Operations if in its reasonable opinion the Company forecasts in the following six (6) month period operating losses, shortages of supplies and materials, interruption of transportation, smelting, power, labour and other services essential to Normal Operations, or other economic or practical reasons or other events or circumstances which are, or may become, a Force Majeure event making it prudent to suspend production. As soon as possible after giving notice under this Clause, the Company shall submit a report giving the reasons why, in its opinion, it is necessary to suspend Normal Operations.

8.4 Where pursuant to Clause 8.3 or otherwise in accordance with Section 28 of the Act, the Company has elected to suspend Normal Operations, it shall maintain, subject to fair wear and tear, the Facilities so as to prevent significant deterioration until Normal Operations are resumed.

8.5 No later than twelve (12) months from the date on which the Company suspended Normal Operations pursuant to Clause 8.3 or otherwise in accordance with Section 28 of the Act and thereafter at no longer than twelve (12) month intervals until Normal Operations are resumed, the Company shall submit a further report to GRZ:

- (a) showing its projection of the Costs to Resume Operations and of revenue from Normal Operations (if resumed) for the same period; and
- (b) giving reasons why in its opinion it considers it prudent not to resume Normal Operations in such period.

8.6 If a report submitted pursuant to Clause 8.5 shows:

- (a) the Company's projection of revenues from Normal Operations for the succeeding twelve (12) month period is greater than its projection of the Costs to Resume Operations for the said twelve month period; and
- (b) that there are no other relevant and extraordinary commercial considerations including without limitation the after tax return to the Shareholders that would otherwise make it economically unreasonable and uncommercial to do so,

then the Minister may direct the Company to take promptly such measures necessary to ensure that Normal Operations are resumed within a reasonable time period.

8.7 Where Normal Operations have been suspended for a continuous period of not less than three (3) years, the Minister may direct the Company to resume Normal Operations if he is of the reasonable opinion that:

- (a) the Costs to Resume Operations are less than revenue from Normal Operations for the same period (the Minister will provide the Company with a copy of GRZ's projections of costs and revenues supporting such opinion); and
 - (b) there are no other relevant and extraordinary commercial considerations including, without limitation, the after tax return to the Shareholders that would otherwise make it economically unreasonable and uncommercial to do so.
- 8.8 If the Company disagrees with the Minister's direction pursuant to either of Clauses 8.6 and 8.7 it may elect either to submit the matter to a Sole Expert for his opinion in accordance with Clause 21 or to submit the matter for arbitration in accordance with Clause 22 provided that any determination by the Sole Expert or award by an arbitral tribunal shall be final.
- 8.9 Where a matter has been referred to the Sole Expert or to arbitration pursuant to Clause 8.8, the Sole Expert or the arbitral tribunal (as applicable) shall determine whether:
- (a) the Costs to Resume Operations are less than revenue from Normal Operations for the period of the suspension of Normal Operations; and
 - (b) there are any other relevant and extraordinary commercial considerations including, without limitation, the after tax return to the Shareholders that would make it economically unreasonable and uncommercial to resume Normal Operations.

The opinion of the Sole Expert or arbitral tribunal (as applicable) shall be binding on the Parties so that in the event that the Sole Expert or arbitral tribunal (as applicable) determines that it would be economically unreasonable and uncommercial to resume Normal Operations, the direction given by the Minister pursuant to Clauses 8.6 and 8.7 shall be deemed to have been withdrawn. In reaching its opinion, the Sole Expert or arbitral tribunal, as the case may be, shall have regard to the Company's cost of capital as at the date of referral pursuant to Clause 8.8 when considering whether the after tax return to the Shareholders is sufficient to justify the resumption of Normal Operations.

- 8.10 Where pursuant to Clause 8.7 the Minister has directed the Company to resume Normal Operations and that direction has not been or is not deemed to have been withdrawn, the Company, if it does not promptly take such measures to ensure that Normal Operations are resumed within a reasonable time period, shall be deemed for the purposes of this Agreement to have abandoned all the land subject to the Large Scale Mining Licence pursuant to Section 49 of the Act PROVIDED HOWEVER that where the matter has been referred to a Sole Expert or arbitral tribunal pursuant to Clause 8.8, the time period shall run from the date the Sole Expert or arbitral tribunal (as applicable) gave his (its) determination.

8.11 Nothing herein contained shall prejudice the Company's rights to suspend Normal Operations under Section 28 of the Act for any other reason and the exercise by the Minister of his powers under the said section save as specifically described herein.

9. **SOCIAL ASSETS AND MUNICIPAL INFRASTRUCTURE SERVICES**

9.1 The Parties acknowledge that the Company has, as at the date hereof, (a) assumed ownership and operational control of, and responsibility for the Transferring Social Assets and (b) entered into the SmelterCo Social Assets Access Agreement and become party to the Social Assets Access Agreements through execution of the Social Assets Access Novation Agreements so as to ensure the provision of the Transferring Social Assets to the employees of SmelterCo, their Registered Dependants and qualified Third Party users (which shall include persons entitled to access the same pursuant to the terms of the Social Assets Access Agreements). The Company agrees to review the registration practice for determining eligibility of dependants to qualify as Registered Dependants in place as of the date of this Agreement and to maintain the same for Transferring Employees, their Registered Dependants and persons entitled to access to the same pursuant to the terms of the SmelterCo Social Assets Access Agreement and the Social Assets Access Agreements PROVIDED THAT the Company shall be entitled to alter any registration practice if it is reasonably of the view that any existing practice from time to time has been subject to abuse.

Nothing in this section will oblige the Company to offer the same registration practice to new employees of the Company, their dependants, new employees of SmelterCo, their dependants and new Third Party users.

9.2 *Educational Services*

Subject to Clause 9.9, the Company shall:

- (a) ensure that the Educational Services are accessible to all employees of the Company, those persons entitled to access the same pursuant to the SmelterCo Social Assets Access Agreement and the Social Assets Access Agreements and Registered Dependants of such employees or persons (including for the avoidance of doubt, such of those persons to whom access to the Educational Services is granted by virtue of relevant redundancy or retirement provisions);
- (b) make available to those persons described in Clause 9.2(a), the Educational Services at the time of this Agreement coming into effect, at the level and standard thus applying and thereafter at a level appropriate to the number of persons entitled thereto, namely the number of the Company's employees and the Registered Dependants of such employees from time to time;
- (c) ensure that the Educational Services are provided to such persons described in Clause 9.2(a) at least to the same standard (as to range and quality of service) as that currently available at the date of this Agreement; and

- (d) ensure that the charges for the provision of the Educational Services to those persons described in Clause 9.2(a) are in accordance with the terms and conditions of employment of such employees as apply from time to time.

9.3 *Medical Services*

Subject to Clause 9.9, the Company shall:

- (a) ensure that the Medical Services are accessible to all employees of the Company, those persons entitled to access the same pursuant to the SmelterCo Social Assets Access Agreement and the Social Assets Access Agreements and the Registered Dependants of such employees or persons (including for the avoidance of doubt, such of those persons to whom access to the Medical Services is granted by virtue of relevant redundancy or retirement provisions);

- (b) make available the Medical Services at the following levels:

- (i) at the date of this Agreement, at the level prevailing at the date hereof which is specified in Schedule 4, Part II; and
- (ii) thereafter, at a level appropriate to the number of persons entitled thereto from time to time, namely the sum of the number of the Company's employees and the Registered Dependants of such employees (including persons to whom access to the Medical Services is granted by virtue of redundancy or retirement provisions);

taking into account improvements in efficiency and/or technology which result in the same standards of services capable of being provided by fewer people;

- (c) ensure that the Medical Services are provided to such persons described in Clause 9.3(a) at least to the same standard (as to range and quality of service) as that currently available as at the date of this Agreement; and
- (d) ensure that charges for the provision of Medical Services to such persons described in Clause 9.3(a) are in accordance with the terms and conditions of employment of such employees as apply from time to time.

9.4 *Municipal Infrastructure Services*

GRZ will procure the permanent provision of the following municipal infrastructure services in the areas in which the Company will operate:

- (a) water;
- (b) sewerage services;
- (c) solid waste;
- (d) domestic electricity supply;

- (e) street lighting;
- (f) storm water drainage;
- (g) roads;
- (h) pest control services (including, but not limited to, grass cutting and mosquito spraying);
- (i) markets; and
- (j) cemeteries,

(together the "Municipal Infrastructure Services").

GRZ will procure that the Municipal Infrastructure Services will be provided by the local councils, and in the case of domestic electricity supply - ZESCO Limited, except that for an interim period of approximately five years water, sewerage services and solid waste services will be provided by a wholly owned subsidiary of ZCCM under a GRZ funded program PROVIDED THAT the provision of such water, sewerage services and solid waste services during this interim period does not fall below the level of service otherwise available to the Company from ZCCM.. The Company will not be required to provide or pay for the Municipal Infrastructure Services in respect of its employees.

The Company will co-operate with the local councils, the ZCCM subsidiary and ZESCO Limited in ensuring that any transitional arrangements to be agreed with the Company and put in place for recovering costs of the Municipal Infrastructure Services from the Company's employees are effective subject to obtaining all necessary agreements of employees or their representatives. For these purposes, "effective" does not constitute a guarantee by the Company that the recovery of the costs of the Municipal Infrastructure Services will be actually achieved from each of the Company's employees.

9.5 The Company shall be free to effect the maintenance of the Transferring Social Assets, pursuant to Clauses 9.2 and 9.3 at the Company's sole option either:

- (a) itself; or
- (b) through outsourcing or other third party provision, such outsourcing or third party provision being effected by persons of suitable competence or professional standing.

9.6 GRZ agrees that, subject to the Company giving notice in writing, it will accept non-compliance with Clauses 9.2 and 9.3 (as the case may be) and that no action will be taken under this Agreement if simultaneously with the giving of such notice:

- (a) the Company submits proposals to GRZ for an increase in general levels of remuneration or other employment benefits to employees of the Company; and

- (b) the Company also provides GRZ with reasonable evidence that such proposals are agreed with the employees of the Company or their representatives.
- 9.8 Pending confirmation from GRZ that such proposals for increases in general levels of remunerations or other benefits are acceptable to it, the Company will comply in all respects with Clauses 9.2 and 9.3 and GRZ agrees that it will respond to the Company's proposal within 60 days of receipt of the same from the Company Provided that, in the event GRZ does not respond by such 60 day period, acceptance will be deemed granted. If the Parties disagree about:
- (a) the level of Social Assets to be maintained or the availability of the Social Assets pursuant to Clauses 9.2(a) and 9.2(b) and Clauses 9.3(a) and 9.3(b) (as the case may be);
 - (b) the standard of, or charges made for, the provision of the Social Assets pursuant to Clauses 9.2(c) and 9.2(d) and Clauses 9.3(c) and 9.3(d) (as the case may be);
 - (c) the competence of persons or companies providing outsourcing or third party provision pursuant to Clause 9.5(b); or
 - (d) the sufficiency of the evidence that such proposals made by the Company to the employees of the Company or their representatives have been agreed.

either Party may elect to submit the matter in issue to a Sole Expert for determination in accordance with the provisions of Clause 21.

- 9.9 The Company will not be required to make Social Assets available to persons who are not
- (a) employees of the Company;
 - (b) Registered Dependants of employees of the Company;
 - (c) persons to whom access to the Social Assets is assured by virtue of relevant redundancy or retirement provisions applying to the Company (save for those employees who but for having been dismissed for cause would have been assured access by relevant redundancy provisions); and
 - (d) persons to whom access to the Social Assets is assured pursuant to the Social Assets Access Agreements or the SmelterCo Social Assets Access Agreement.

10. RECORDS AND OPERATING REPORTS

- 10.1 The Company shall, pursuant to Section 104 of the Act, keep GRZ, through the Ministry, advised concerning the Company's operations through submission of progress reports, beginning with the first Quarter following the Completion Date as to the progress and results of the Company's mining operations under this Agreement.

10.2 Pursuant to Sections 2(d) and (e) of the Fourth Schedule to the Act, the Company shall provide quarterly reports to the Ministry of:

- (a) quantities of ore mined and average head grades;
- (b) quantities of waste mined;
- (c) concentrates treated on behalf of third parties and the Metal Treatment Products returned to the owner;
- (d) quantities of copper and cobalt concentrates produced from the Company's mines and quantities of contained copper and cobalt sold for the Company's own account;
- (e) quantities of the Company's concentrates toll treated by facilities in Zambia not owned by the Company and quantities of smelter products returned by each to the Company;
- (f) Operating Costs;
- (g) progress in implementing the Scheduled Programmes, the extent of any continuing non-compliance by the Company with Environmental laws and progress made in remedying this in accordance with the Environmental Plan; and
- (h) any other relevant matters as to the progress and results of the Company's metallurgical operations but excluding any internal Company information relating to innovations in mining and mining related activities which, if disclosed prior to proper protection (patent or trademark) being obtained, would damage the Company commercially.

10.3 The Company shall file with the Ministry a summary of any geological and metallurgical investigations and such other material data that may be obtained from any prospecting activities and a sample representative of each principal type of mineralisation encountered in such investigations.

10.4 The Company shall provide quarterly reports relating to any prospecting, appraisal and development activities to the Ministry which shall include such information as to the progress of operations in the Mining Area as the Ministry may from time to time reasonably require but excluding any internal Company information relating to innovations in mining and mining related activities which, if disclosed prior to proper protection (patent or trademark) being obtained, would damage the Company commercially.

10.5 All information furnished to GRZ shall be in English and, in the event that such information is a translation from the original, shall be a certified true translation. All financial data shall be recorded in US dollars or Kwacha.

- 10.6 The Company shall maintain all original records and reports relating to its activities and operations under this Agreement including all documents relating to financial and commercial transactions with independent parties and Affiliates in its principal office in Zambia for a period of three (3) years. These records and reports shall be opened to inspection by GRZ through an authorised representative during normal working hours upon GRZ giving not less than one (1) week advance notice of its intention to inspect. Such reports and records shall be maintained in the English language and all financial data shall be recorded in US dollars or Kwacha.
- 10.7 All records, reports, plans, maps, charts, accounts, and information which the Company is or may be from time to time required to supply under the provisions of this Agreement shall be supplied at the expense of the Company.
- 10.8 GRZ and the Ministry hereby acknowledge that all information supplied to them pursuant to Clause 10 above is confidential information and hereby agree to treat as secret and confidential and not at any time for any reason to disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any such information where the information was received during the period of this Agreement pursuant to this Clause and upon termination of this Agreement for whatever reason GRZ and the Ministry will deliver up to the Company all working papers, computer disks and tapes or other material and copies provided to or prepared by the Company pursuant to this Agreement and still retained by it.
- 10.9 For the avoidance of doubt and subject to the Act:
- (a) all documents, reports, records or information made available to GRZ and the Ministry will remain the property of the Company; and
 - (b) nothing herein contained shall preclude GRZ from using any such information as has been supplied for the purposes of the preparation of governmental statistics and data or from publishing the same in statistical format.

PART C
UNDERTAKINGS NECESSARY FOR OPERATIONS

11. FOREIGN EXCHANGE

11.1 The Parties acknowledge that under legislation and practice currently in force in Zambia, the Company is free to:

- (a) remit foreign currency out of Zambia;
- (b) maintain foreign currency accounts outside of and within Zambia; and
- (c) remit foreign currency accruing to or earned by it outside Zambia into Zambia.

11.2 In the event foreign exchange controls were to be re-introduced in Zambia within the Stability Period, the Company shall notwithstanding such reintroduction (and without requiring further approvals from GRZ or any entity thereof) have the right to:

- (a) retain foreign currency both outside Zambia and within Zambia, in accounts established for that purpose and to have paid to it and maintain in such accounts the following:
 - (i) proceeds of the sale of Mine Products, Metal Treatment Products and Metal Treatment By-Products including proceeds received from third parties resident in Zambia for foreign exchange purposes and toll treatment and refining revenues;
 - (ii) payments made by insurers or re-insurers not resident in Zambia under contracts of insurance in the Company's favour;
 - (iii) proceeds of any disposal of capital assets received from persons not resident in Zambia for foreign exchange purposes;
 - (iv) the amount of any funds received pursuant to any loan finance provided by persons not resident in Zambia for foreign exchange purposes;
 - (v) any share capital received in foreign currency from persons not resident in Zambia for foreign exchange purposes;
 - (vi) any other foreign currency earned or accrued in the ordinary course of business from persons not resident in Zambia for foreign exchange purposes; and
- (b) use freely the foreign currency accounts maintained by the Company to:
 - (i) service payments of principal and interest, service charges and other fees and expenses in respect of any loans arranged with institutions including Shareholders and their Affiliates who are not resident in

Zambia for foreign exchange purposes to implement the Scheduled Programmes or otherwise finance or refinance the Facilities;

- (ii) make payments due to (aa) suppliers not resident in Zambia for foreign exchange purposes for the supply of goods and services to the Company (including capital goods and services of foreign employees and consultants) where goods and services are required to implement the Scheduled Programmes or conduct Normal Operations and (bb) suppliers resident in Zambia for foreign exchange purposes with respect to the treatment/refining of ores and concentrates and to the supply of electricity to the Facilities;
- (iii) finance the payment to Shareholders and their Affiliates who are not resident in Zambia for foreign exchange purposes of:
 - (A) dividends provided that such payments are made out of Distributable Profits (as defined in the Companies Act); and
 - (B) management and marketing fees payable under management services and marketing agreements, respectively entered into with its Shareholders or their Affiliates who are not resident in Zambia for foreign exchange purposes;
- (iv) pay expatriate employees whose contracts of employment specify that they be paid (in whole or in part) in a currency other than Kwacha; and
- (v) effect such other payments in foreign currency to persons not resident in Zambia for foreign exchange purposes as may be necessary or desirable in the ordinary course of the Company's business.

11.3 The Company shall submit to the Central Bank:

- (a) within fifteen (15) days of the end of each calendar month:
 - (i) a statement of the foreign currency accounts repatriated to Zambia within the previous month from accounts maintained overseas by the Company;
 - (ii) a statement of the balance of the Company's foreign currency accounts at the end of the previous month; and
 - (iii) a forecast of the foreign currency which the Company intends to repatriate during the ensuing calendar month, and
- (b) within five (5) months of the end of each year, audited financial statements showing the amount of Distributable Profits (if any).

11.4 In the absence of foreign exchange controls in Zambia, the Company shall have the same rights to buy and sell currencies from authorised dealers or other commercial

concerns in Zambia and enter into swaps and hedging agreements (which agreements will include, without limitation, arrangements for taking out forward cover against local or other currency fluctuations or other fluctuations in incomes or costs or other expenses incurred as part of the management operations but shall not include Speculative Currency Transactions). In the event foreign exchange controls were to be reimposed (and without prejudice to the Company's rights under Clause 11.2) such controls shall not be applied to the Company in a manner less favourable to it than the manner in which they are generally applied to other large commercial concerns in Zambia. The Company shall be entitled to buy and sell foreign exchange in accordance with such controls at rates of exchange no less favourable than those available to other commercial buyers and sellers of the currency concerned.

- 11.5 The Company shall remit to Zambia and convert into Kwacha for credit to a bank account in the name of the Company in an orderly fashion sufficient of its foreign currency earnings to pay such commitments as the Company may have incurred in Kwacha (including, without limitation, obligations to pay dividends to local shareholders payable in local currency, taxes, royalties and customs duties) which cannot be met by its Kwacha balances from time to time. The Company shall use its reasonable endeavours to notify the Central Bank of transfers of a substantial amount which are not in accordance with the normal pattern of transfers.
- 11.6 The Company shall not engage in or use any provisions of this Clause 11 or any authority or approval given by the Central Bank to engage in Speculative Currency Transactions. For the avoidance of doubt, this section shall not prohibit or prevent normal risk management operations discussed in section 11.4 above. If the Company is in breach of this Clause 11 it shall pay to GRZ as liquidated damages an amount equal to the amount of any net after tax profit or gain which the Company makes on the Speculative Currency Transaction and any cost incurred by GRZ in establishing that the transaction was a Speculative Currency Transaction.
- 11.7 Where any right or assurance given to the Company under this Clause 11 requires the Central Bank:
- (a) to approve any act, matter or thing; or
 - (b) to grant authority under applicable law and regulations for its exercise or performance,

and the Company has supplied any necessary information to the Central Bank and otherwise met the conditions of this Clause 11, GRZ shall, upon request from the Company, ensure by policy directions to the Central Bank or otherwise that such approval is given or such authority is granted as soon as reasonably practicable.

- 11.8 The Company shall ensure that any borrowings it may incur denominated in Kwacha will not exceed the Kwacha equivalent from time to time of twenty million US dollars (US\$20,000,000) or such greater amount as may be agreed from time to time between the Company and the Central Bank.

11.9 The Company shall not actively discriminate against the Central Bank in selling foreign exchange for Kwacha.

12. ENVIRONMENTAL ISSUES

12.1 The Company will:

- (a) within twelve (12) months (or such longer period as the Parties may agree) finalise a baseline environmental study of the Contract Areas with a view, *inter alia*, to defining pre-existing conditions to which the provisions of Clause 12.19 will apply;
- (b) negotiate in good faith with GRZ (which undertakes to negotiate in good faith with the Company) with a view to agreeing within six (6) months of finalisation of the baseline environmental study referred to in (a) above (or such longer period as the Parties may agree) the detailed terms and conditions of the Environmental Plan.
- (c) (subject to the provisions of and save to the extent provided otherwise in this Clause 12) comply with
 - (i) environmental and safety laws and regulations enacted or promulgated within Zambia from time to time which are of general application (including, for the avoidance of doubt, making such contribution as is required under Section 82 of the Act to the Environmental Protection Fund). For the purposes of Section 82 of the Act, the Facilities shall be deemed to be either a category one (1) mine or a two (2) mine (or such other category of mine for Environmental Protection Fund contribution purposes as the Parties may agree from time to time) at the discretion of the Director; and
 - (ii) the Environmental Plan.

12.2 The Company shall comply with and implement the Environmental Plan in accordance with the timetable contained therein and Good Mining Practices and, without prejudice to the timetable, the Company shall achieve the objectives specified in the Environmental Plan no later than the last date specified therein for achievement.

12.3 Save as provided in Clause 12.4 below, GRZ hereby confirms that for the Stability Period it will not take any action (and will procure no action is taken by any of its ministries, departments or agencies over which it has operational control acting on its behalf) under, or in enforcing, any applicable Environmental Laws with the intent of:

- (a) securing the Company's earlier compliance with Environmental Laws other than that envisaged by the timetable and conditions set out in the Environmental Plan;

- (b) requiring the Company to clean up and/or remove any stock of pollutants and/or remedy any other condition which was pre-existing as at the date of this Agreement (other than in respect of areas of land or bodies of water identified by the Company pursuant to Clause 12.19(b)(ii));
 - (c) imposing fines or penalties upon the Company payable under Environmental Laws (or enacting new fines and penalties thereunder) which are payable in respect of the Company's non-compliance with such Environmental Laws and where the Environmental Plan provides for the remedy of the same in accordance with a specified timetable and the Company is in material compliance with that timetable;
 - (d) imposing fines or penalties in respect of the Company's breach of Environmental Laws in the case of penalty charges in respect of the emission of sulphur dioxide arising from the ongoing operation of the Mufulira smelter provided that the Company remains in compliance with the measures, and in material compliance with the timetables for implementing those measures set out in the Environmental Plan to reduce such omissions and, as appropriate, for the construction of a new acid plant as set out in the Environmental Plan; or
 - (e) effecting any changes thereto or enacting new legislation and regulation or repealing existing legislation or regulation which would prevent the Company complying with the Environmental Plan and the timetables contained therein without making provision for the Company to be exempted therefrom or materially alter or affect the scope, enforcement or application of Environmental Laws regarding the establishment, maintenance or operation of the Environmental Protection Fund.
- 12.4 (a) In the event that GRZ considers in its reasonable opinion that the Company is in material non-compliance with the Environmental Plan, it shall notify the Company of such fact in writing, specifying the facts and circumstances it considers give rise to such non-compliance and the actions it considers necessary to remedy the same. Subject to Clauses 12.4(b) and 12.5, the Company shall have three (3) months from the receipt of such notice within which to remedy the alleged material non-compliance.
- (b) In the event that:
 - (i) such alleged material non-compliance is not remedied within the three (3) months notice period; or
 - (ii) the Company is not, within the three (3) months period substantially in the process of remedying the non-compliance and such non-compliance is not remedied in full within a further three (3) months,

GRZ shall cease to be bound by the provisions of Clause 12.3 but only in respect of such breach and matters arising out of such breach (and in respect of no other matters) and the Parties acknowledge that GRZ (or its ministries departments or such agencies acting on its behalf) shall be free to take such action as is permitted under applicable Environmental Laws in respect of such breach.

12.5 If the Company contests the non-compliance asserted by GRZ it shall serve a counter-notice specifying its reasons for disagreeing with GRZ within thirty (30) Business Days of receiving GRZ's notice under Clause 12.4(a). Thereafter any dispute regarding:

- (a) whether or not GRZ is entitled to serve a notice under Clause 12.4(a); or
- (b) whether or not the actions GRZ consider necessary to remedy such non-compliance specified in such notice are necessary and reasonable; or
- (c) whether the material non-compliance has been remedied within the specified period or whether the Company is not substantially in the process of remedying such non-compliance within the initial three (3) month period,

may be referred by the Company to a Sole Expert in accordance with Clause 21, for determination provided that:

- (d) notwithstanding the provisions of Clause 21, the determination by the Sole Expert shall be within thirty (30) days of the counter-notice served by the Company; and
- (e) GRZ shall continue to be bound by the provisions of Clause 12.3 pending the determination of the Sole Expert.

12.6 The Company shall be entitled to amend the Environmental Plan from time to time:

- (a) if in its view at any time the conduct of Normal Operations in accordance with the Environmental Plan for whatever reason poses a material danger to public health and safety;
- (b) if in its view the impact of Normal Operations would be likely to result in significant environmental damage which was not anticipated in the relevant Environmental Plan;
- (c) so as to reflect changes in operations and other circumstances considered to be appropriate by the Company, provided that following such amendment:
 - (i) the Environmental Plan is in accordance with accepted environmental standards as applicable to Good Mining Practice; and
 - (ii) such amendment will not result in GRZ's liability under the Environmental Liabilities Agreement or the Enabling Legislation being materially increased or any liability thereunder being incurred or arising

on a date earlier than would otherwise have been the case but for the making of such amendment.

- (d) if, at any time following the expiry of a period of three (3) years following the date of this Agreement, the continued operation of the smelter at Nkana by Konkola Copper Mines PLC (or any successor in title thereto) renders the operation of the Mufulira smelter and refinery in accordance with the then applicable Environmental Plan uneconomic and amendment(s) thereto is (are) required to enable its continued economic operation.

Prior to any formal proposal being made by the Company, it shall allow a period of four (4) Calendar Months for informal discussions of any proposed amendments to an Environmental Plan.

Any formal proposal from the Company to amend the Environmental Plan shall be delivered in writing to the Minister. This shall include a written statement of the reasons why the Company considers the proposed variation to be necessary, setting out to the extent it is reasonably practicable to do so:

- (a) its reason for concluding there is a risk to public health or safety or of significant environmental damage not anticipated in the Environmental Plan;
- (b) its reasons for concluding the amendments proposed under Clause 12.6(c) are in accordance with Good Mining Practice and would not materially increase GRZ's liabilities under the Environmental Liabilities Agreement or the Enabling Legislation; or
- (c) why the continued operation of the smelter at Nkana by Konkola Copper Mines PLC (or any successor in title thereto) renders the operation of the Mufulira smelter and refinery in accordance with the Environmental Plan uneconomic and the consequent amendments to the Environmental Plan necessary to ensure the continued economic operation of the Mufulira smelter and refinery.

12.7 In the event that the Company proposes a variation of the Environmental Plan under the circumstances set forth in Clause 12.6, GRZ undertakes to consider the proposed variation in good faith and to accept the proposal unless it believes that the proposal falls outside the scope permitted under Clause 12.6 and unless, by notice of objection in writing served on the Company within two (2) Calendar Months of receipt of the proposal made pursuant to Clause 12.6, GRZ informs the Company that it considers the proposed variation to be unnecessary or unreasonable it shall be deemed to have agreed the same. A notice of objection shall include a written statement of the reasons why GRZ considers the proposed variation to be unnecessary or unreasonable setting out to the extent it is reasonably practicable to do so:

- (a) its reasons for concluding there is no risk to public health and safety or of significant environmental damage not anticipated in the Environmental Plan;

- (b) in relation to amendments proposed under 12.6(c) its reasons for concluding that the amendment would not meet Good Mining Practice and/or its analysis of the increase in liabilities under the Environmental Liabilities Agreement or the Enabling Legislation; or
- (c) in relation to amendments proposed under Clause 12.6(d), its reasons for concluding either:
 - (i) that the continued operation of the Nkana smelter and refinery as aforesaid has not rendered the continued operation of the Mufulira's smelter and refinery in accordance of the Environmental Plan uneconomic; or
 - (ii) the amendments sought to the Environmental Plan are unnecessary in order to render the continued operation of the Mufulira smelter and refinery economic.

12.8 Following receipt of a notice of objection under Clause 12.7, the Company shall, within two (2) Calendar Months and having considered the notice of objections in good faith, inform the Minister by notice in writing whether or not the Company's proposal for variation of the Environmental Plan is or is not withdrawn. In the event that the Company's proposal for variation is not withdrawn it will be deemed to have been agreed unless the Minister elects, within a further period of two (2) Calendar Months from receipt of notification from the Company that its proposal is not withdrawn, to submit the question of whether the Company's proposal for variation is unnecessary as unreasonable for determination by a Sole Expert in accordance with Clause 21.

12.9 The Minister on behalf of GRZ may propose an amendment to the Environmental Plan if:

- (a) at any time the conduct of Normal Operations in accordance with the Environmental Plan for whatever reason poses a material danger to public health and safety or may result in significant damage to the ecology of the area which was not contemplated in the original Environmental Plan and is or may become irreversible or only become reversible or only be reversed after the lapse of fifteen (15) years;
- (b) the environmental impact of Normal Operations shall prove substantially more adverse than anticipated in the Environmental Plan; or
- (c) tested and established technology or procedures, or improvements thereof shall have become available and economically viable subsequent to the date of this Agreement and which, if applied to the operation of the Facilities, (but excluding those areas of land or bodies of water identified in Clause 12.19 below), could materially mitigate the environmental impact of Normal Operations.

- 12.10 Prior to any formal proposal being made by the Minister, unless he reasonably considers such danger or damage to be imminent and acute, he shall allow a period of four (4) Calendar Months for informal discussions of any proposed amendments to an Environmental Plan.
- 12.11 Any formal proposal from the Minister to amend the Environmental Plan shall be delivered in writing to the Company. This shall include a written statement of the reasons why the Minister considers the proposed variation to be necessary, setting out to the extent it is reasonably practicable to do so:
- (a) the danger to public health and safety or the environmental damage which may result from Normal Operations if the Environmental Plan is not amended and the risk and materiality of such damage or, as the case may be, the technology, procedures or improvements which could materially mitigate the environmental impact of Normal Operations;
 - (b) the actions it considers necessary to remedy the same;
 - (c) the time scale within which it considers the actions should be completed; and
 - (d) the cost of such actions.
- 12.12 In the event that the Minister proposes a variation to the Environmental Plan on behalf of GRZ under the circumstances set forth in Clause 12.10, the Company undertakes to consider the proposed variation in good faith and, unless by notice of objection in writing served on the Minister within two (2) Calendar Months of receipt of the proposal made pursuant to Clause 12.10 it informs the Minister that it considers the proposed variation to be unreasonable it shall be deemed to have agreed the same. A notice of objection shall include a written statement of the reasons why the Company considers the proposed variation to be unnecessary or unreasonable setting out to the extent it is reasonably practicable to do so:
- (a) its estimate of the costs to implement such change;
 - (b) its analysis of the variation in the environmental impact that would be effected by such change; and
 - (c) its appraisal of the economic and other effects of the change proposed by GRZ and, in particular, whether the proposed variation would conform to Good Mining Practice.
- 12.13 Following receipt of a notice of objection under Clause 12.12, the Minister shall, within two (2) Calendar Months and having considered the notice of objection in good faith, inform the Company by notice in writing whether or not the Minister's proposal for variation of the Environmental Plan is or is not withdrawn. In the event that the Minister's proposal for variation is not withdrawn it will be deemed to have been agreed unless the Company elects, within a further period of two (2) Calendar Months from receipt of notification from the Minister that his proposal is not withdrawn, to

submit the question of whether GRZ's proposal for variation is unnecessary or unreasonable for determination by a Sole Expert in accordance with Clause 21.

- 12.14 Should a Party refer the proposed change to expert determination, the determination pursuant to Clause 12.8 or Clause 12.13, will be binding on the parties with the effect that:
- (a) if the Sole Expert determines that the proposal for variation is not unnecessary or unreasonable the proposal for variation will be deemed to have been agreed; or
 - (b) if the Sole Expert determines that the proposal for variation is unnecessary or unreasonable the proposal will be deemed to have been withdrawn;

Provided that the Sole Expert may in his sole discretion suggest alternative proposals or time schedules or mitigation of cost proposals to the parties who will consider the same in good faith prior to the determination being rendered by the Sole Expert. The period during which such proposals suggested by the Sole Expert shall be considered by the Parties shall be specified by him but shall not exceed six (6) Calendar Months.

- 12.15 Where a variation to the Environmental Plan has been agreed by the Company and GRZ or is determined pursuant to Clause 21, that Environmental Plan shall be amended accordingly.
- 12.16 Nothing in this Clause 12 shall be deemed or construed to:
- (a) limit the right of GRZ to take such other actions within its power, such as those rights given to the Director under Section 81 of the Act, to protect the public health and safety (provided that any dispute or disagreement between the Company and GRZ as to the action taken or proposed to be taken under such laws shall be regarded as a Dispute); or
 - (b) render the Company liable for penalties or fines imposed, or third party claims whenever they are made, in respect of activities undertaken by ZCCM prior to the date hereof.
- 12.17 Notwithstanding the provisions of this Clause 12, the Company shall, at the invitation of the Minister responsible for the environment, participate either individually or on an industry-wide basis, in discussions relating to the impact and effectiveness of the Environmental Laws or on any prospective changes thereto.
- 12.18 Pending an amendment of an Environmental Plan pursuant to this Clause 12, the existing Environmental Plan shall continue to apply.
- 12.19 During such period as is referred to in Clause 12.1(b), the Parties shall:
- (a) identify any areas of land or bodies of water which are polluted or contain pollutant stocks which were pre-existing as at Completion and which the Company does not require for future Operations (notwithstanding that such

areas of land or bodies of water may have been used by the Company during such period referred to in Clause 12.1(b));

- (b) identify whether areas of land or bodies of water referred to in (a) above:
 - (i) can be detached from the Leases without affecting the conduct of Normal Operations and surrendered to GRZ; or
 - (ii) cannot be so detached from the Leases (within the period of twelve (12) months from the end of the period referred to in Clause 12.1(b) (the "Short Term Use Period")) without affecting the conduct of Normal Operations.

12.20 Any such land as is referred to in Clause 12.19(b)(i) shall forthwith upon adoption of the Environmental Plan pursuant to Clause 12.1(b) be surrendered by the Company to GRZ who shall accept such surrender. Any such surrender shall be free of encumbrances.

12.21 In the event that areas of land or bodies of water are identified pursuant to Clause 12.19(b)(ii), the Parties shall procure the amendment of the Environmental Liabilities Agreement (and until such amendment is made the Environmental Liabilities Agreement shall be deemed amended in its operation) to reflect the following provisions:

- (a) the indemnity contained in clause 2 of the Environmental Liabilities Agreement shall be amended to cover all costs and expenses the Company incurs by reason of a requirement by GRZ or the Company issued at any time after the expiry of the Stability Period to clean-up and/or remove any stock of pollutants contained within the boundaries of such land or bodies of water or remedy any other condition in respect thereto which was pre-existing as at the date of this Agreement; and
- (b) such indemnity shall not apply if such stock of pollutants as is referred to in (a) above is augmented, used in, or depleted after the Short Term Use Period as a result of the conduct of Normal Operations at any time after the date of this Agreement.

12.22 The Parties will procure all necessary amendments to the Large Scale Mining Licences, the Leases and this Agreement to reflect any detachment of land as is referred to in Clause 12.19(b)(i).

13. COMMUNICATIONS

13.1 GRZ will provide any reasonably required assistance and facilitation to the Company in respect of any application for licenses and other approvals necessary for the installation, maintenance and operation of a modern telecommunications system PROVIDED THAT GRZ will not be required to afford any such assistance or

facilitation if it would result in the breach of any legislation or regulation relating to telecommunications in Zambia or any regulatory or contractual duty binding on it.

**PART D
TAXATION**

14. GENERAL OBLIGATION TO PAY TAX

- 14.1 The provisions of Schedule 8 correctly reflect, in respect of the matters therein specifically described, the current tax regime applicable to the Company in the conduct of its activities under this Agreement. Whilst Schedule 8 is not intended to override applicable legislation, in the event of any ambiguity between applicable legislation and Schedule 8, GRZ and the Company agree that the provisions of Schedule 8 shall apply.
- 14.2 Subject to Clauses 14.1, 16 and Schedule 8, the Company shall pay tax, royalties and duties from time to time in accordance with applicable legislation.

15. VAT REFUNDS

- 15.1 GRZ shall ensure that VAT collected on goods and services procured by the Company is refunded to the Company within thirty (30) days from the date of submission of an acceptable monthly VAT return for the Company.

16. TAXATION STABILITY

- 16.1 GRZ undertakes that it will not for the Stability Period:
- (a) increase corporate income tax or withholding tax rates applicable to the Company (or change the basis of calculation which would result in a decrease of deductions or decrease allowances available to the Company in computing its liability to such Taxes) from those prevailing at the date hereof (and as set out in detail in Schedule 8 attached hereto);
 - (b) otherwise amend the VAT and corporate Tax regimes applicable to the Company and any management or marketing company to the Company from those prevailing as at the date hereof (and as set out in detail in Schedule 8 attached hereto); or
 - (c) impose new Taxes or fiscal imposts (including new import or export duties or other new duties or new royalties on Normal Operations) on the conduct of Normal Operations or sale or export of products therefrom or increase withholding taxes applicable to the Company, its Shareholders or their Affiliates or lenders to it on the remittance by the Company of principal, interest or dividends above the rate prevailing as at the date hereof (as set out in detail in Schedule 8 attached hereto),

provided that in the case of Clause 16.1(b) and Clause 16.1(c) amendments may be made which taken together do not have a material adverse effect (compared with what the position would have been but for the amendments) on the Company's Distributable

Profits or the dividends received by its Shareholders or their Affiliates or the amounts received by lenders to it (the issue of whether or not such effect is materially adverse to be determined by a Sole Expert in accordance with Clause 21 in the event of disagreement between the Parties).

GRZ further undertakes that for the Stability Period , it will not:

- (a) alter the right of any non-Zambian citizens (and dependants) (on his or their arrival or permanent departure from Zambia) and, in the case of (iii) below, during the period of his or their residency in Zambia to:
 - (i) import within six (6) months from the date of arrival free of duty and tax, for personal use, household and personal effects;
 - (ii) export, without let or hindrance or the imposition of duty or tax on export, all personal effects originally imported or acquired during residency in Zambia; and
 - (iii) freely remit all income earned in Zambia during such residency;
- (b) increase:
 - (i) the rate of royalty referred to in Schedule 8 from the levels set out therein;
 - (ii) import duty rates applicable to the Company so as to result in the import duty rate to which the Company is subject on the import of machinery and equipment (including specialised motor vehicles) or other items of a capital nature required for the Approved Programme of Mining and Metal Treatment Operations, Normal Operations or the construction of a new acid plant and any other proposed capital expenditure as set out in the Environmental Plan or in the Scheduled Programmes and which is, at the date of this Agreement, exempt from customs and excise duties under Section 97(1) of the Act, above a level of zero per cent. (0%); or
 - (iii) import duty rates applicable to the Company so as to result in the weighted average import duty rate to which the Company is subject on the import of other goods and materials required for the Approved Programme of Mining and Metal Treatment Operations or Normal Operations or the operation of a new acid plant as set out in the Environmental Plan or in the Scheduled Programmes and which do not fall under Clause 16.1(e)(ii), above a level of fifteen per cent. (15%).

16.2 For the purposes of Clause 16.1(e)(ii) and (iii) the Facilities shall be deemed to be a "mine" and the operations conducted in connection therewith to be "mining" for the purposes of Section 97 of the Act.

- 16.3 GRZ shall ensure that no law, statute, regulation or enactment shall be passed or made which would discriminate against the Company in respect of any such matters as are referred to in Clause 16.1 or otherwise in its conduct of Normal Operations or any other circumstances under this Agreement when compared to other mining companies or joint ventures conducting similar operations on a scale equivalent to those conducted by the Company in Zambia provided that GRZ will be at liberty to pass or make any such law, structure, regulation or enactment to enable the performance or amendment of a development agreement entered into by it and another mining company or joint venture prior to the expiry of such period.
- 16.4 GRZ covenants to reimburse the Company (or, at its option, make offsetting changes in any law, statute, regulation or enactment applicable to the Company) to ensure the Company is fully, fairly and timely compensated for any costs incurred by it by reason of a failure by GRZ to comply with the provisions of Clauses 14, 16.1 and Clause 16.3. The Company acknowledges that this will be its sole remedy for such failure to comply with Clauses 14, 16.1 and 16.3.
- 16.5 In the event there is a dispute as to whether or not the Company has suffered any costs for the purposes of Clause 16.4 the dispute shall be referred to a Sole Expert in accordance with Clause 21.
- 16.6 GRZ hereby exempts the Company for a period of fifteen (15) years from the date hereof from liability to pay the Excise Duty on Power applicable to the Company's purchases of electricity in relation to the operation of the Facilities during such period. For the avoidance of doubt, the Company shall not incur any liability in relation to non-payment of the Excise Duty on Power pursuant to this Clause 16.6.
- 16.7 GRZ confirms that the Company shall not pay any property transfer taxes associated with the acquisition of the Assets under the Sale and Purchase Agreement and the transfer of the Facilities to the Company.

PART E
FORMAL CLAUSES

17. ASSIGNMENT

- 17.1 The Company may, with the consent of the Minister in accordance with Section *fifty-four (one)* of the Act, assign the whole or part only of its rights and obligations under this Agreement and its interest in the Large Scale Mining Licences and GRZ covenants that the consent of the Minister to such an assignment will not be withheld in the circumstances set out in Clauses 17.5 and 17.7. No assignment of an interest in a Large Scale Mining Licence may be made without the assignment to such person of a comparable interest in this Agreement and vice versa.
- 17.2 If the Company assigns its entire interest in the Large Scale Mining Licences and its rights and obligations under this Agreement in accordance with Clause 17.1, then upon the assignee becoming party to this Agreement, the Company shall be discharged from any further liability in respect of any obligation which accrues after the date of that assignment without prejudice to pre-existing rights accrued to GRZ against the Company.
- 17.3 Where an assignment takes effect pursuant to Clause 17.1, the Company shall enter into an agreement with the assignee wherein the assignee agrees with the Company and undertakes to GRZ that it will:
- (a) become a Party to the Agreement; and
 - (b) assume, observe and comply with all obligations of the Company under this Agreement, the Act and any regulations made thereunder.
- 17.4 If the Company assigns part only of its interest in the Large Scale Mining Licences and the rights and obligations attaching thereto under this Agreement, then the Company shall be discharged from any further liability which accrues after the date of that assignment in respect of any obligation which accrues after such date as it relates to the interest so assigned without prejudice to pre-existing rights accrued to GRZ against the Company.
- 17.5 Notwithstanding the foregoing provisions of this Clause 17, the Company may charge by way of fixed and/or floating charge the Large Scale Mining Licences together with this Agreement to secure the repayment of principal, and payment of interest and other fees, costs and expenses relating to all loans made to the Company to finance or refinance the Scheduled Programmes or otherwise for purposes of the Operations and GRZ covenants that the consent of the Minister to such mortgages and charges shall be given provided that such mortgages and charges are notified to the Minister upon their grant (and, in any event, within sixty (60) days thereof). Subject to Clause 17.6, any mortgagee or chargee under a mortgage or charge given by the Company pursuant to this Clause may exercise all rights of sale and other rights included in such instrument

of mortgage or charge provided it shall first give to GRZ fourteen (14) days notice of its intention to exercise any rights of sale and five (5) days notice in all other cases.

17.6 The rights of any mortgagee or chargee under a mortgage or charge given by the Company pursuant to Clause 17.5 shall be subject to and limited by the rights of the Company under this Agreement and to the rights of GRZ to terminate this Agreement under Clause 19. The rights of such mortgagee, chargee or lender to sell an interest in such Large Scale Mining Licence and this Agreement while so charged shall not be exercisable unless the interest in such Large Scale Mining Licence and this Agreement is sold together with all or sufficient of the assets and undertakings of the Company as are sufficient (or would be sufficient in conjunction with such additional assets as the buyer may contribute) to enable the buyer to undertake Normal Operations to a purchaser approved by GRZ (which approval GRZ covenants not unreasonably to withhold).

17.7 Where the Minister's consent is necessary to effect:

- (a) an assignment under Section 54(1) of the Act or a change of control under Section 55(1) of the Act; or
- (b) an assignment pursuant to Clause 17.1,

GRZ will procure that the Minister will not withhold his consent where, in the case of an assignment, the proposed assignee has demonstrated its financial capacity and technical ability to meet its obligations hereunder or, in the case of a change of control of the Company, the acquiring party has demonstrated that it is of appropriate financial standing having regard, *inter alia*, to the obligations it will assume under the Sale and Purchase Agreement and the Shareholders' Agreement.

17.8 In the event that the Company considers that a proposed assignee has demonstrated such financial capacity or technical ability or the acquiring party has demonstrated such financial standing, each as is referred to in Clause 17.7, it may refer the issue to a Sole Expert for its opinion in accordance with Clause 21. If the Sole Expert determines that the proposed assignee or the acquiring party has demonstrated the requisite levels of financial capacity and technical ability or financial standing (or as the case may be) the consents referred to in Clause 17.7(a) or Clause 17.7(b) (as the case may be) shall be deemed given and, if not, the Minister's determination shall stand.

18. EXTENSIONS TO TIME

18.1 Notwithstanding any provision of this Agreement the Parties, by agreement between the persons responsible for giving Notices under Clause 29, may from time to time extend any period referred to in this Agreement, or substitute for any date referred to in this Agreement such later date, as they think fit.

18.2 If the Company is prevented or hindered by any circumstances or event of a kind set out in Clause 26 or by a reference to a Sole Expert or by an arbitration under Clause 21 or Clause 22 from undertaking all or any of its obligations or exercising any right

granted hereunder, the period of time allowed for the performance of that obligation or exercise of that right and all periods of time thereafter allowed for the performance of obligations or exercise of rights which are dependent upon the first mentioned obligation or right, shall be extended by a period equal to the period during which such prevention or hindrance continues or during the period from the time when the question, dispute or difference arose until the time of its determination by the Sole Expert or settlement by agreement or arbitration, as the case may be.

18.3 Where any period is, or is deemed to be, extended or any later date substituted for an earlier date under this Clause 18, that extended or substituted period or date shall be deemed to constitute the period or date referred to in this Agreement (notwithstanding that at the time of such extension or substitution such period may have expired or such date may have passed).

19. TERMINATION

19.1 The Company may terminate this Agreement at any time after the fifteenth anniversary of the date hereof by giving twelve (12) months written notice to GRZ. Such notice may be delivered at any time after the fourteenth anniversary of the date hereof.

19.2 GRZ may terminate this Agreement by written notice to the Company if:

- (a) the Large Scale Mining Licences have expired by effluxion of time (which subject to the remainder of this Clause 19 cannot occur prior to twenty five (25) years from the date of this Agreement) and have not been renewed; or
- (b) the land the subject of the Large Scale Mining Licences (or either of them) is abandoned or for the purposes of this Agreement is deemed to have been abandoned by the Company under Section 49 of the Act.

19.3 In the event that any Party:

- (a) is in material default in the performance of its obligations set forth in this Agreement; or
- (b) fails to treat as binding and comply with any award made by a Sole Expert or in an arbitration pursuant to Clause 22,

and has not remedied such default or failure within thirty (30) days of receiving a notice from another Party to do so, the other Party may give notice of such default or failure (hereinafter called a "Default Notice") to the defaulting Party which shall specify the default or failure alleged. If the Company receives a Default Notice, GRZ shall at the same time give a copy of the Default Notice to each lender to the Company, where the name and address of that lender has previously been notified to GRZ, and to each mortgagee or chargee of any of the Company's assets under any mortgage or charge notified to the Minister in accordance with Clause 17.5. If the Company disputes the subject matter of the Default Notice, it may refer the issue to arbitration pursuant to Clause 22.

- 19.4 For the purposes of Clause 19.3(a) the words "material default" shall mean a default which is material in nature and effect.
- 19.5 If within a period of three hundred and sixty (360) days following a Default Notice (or such longer period as may be fixed by a tribunal where the subject matter of the Default Notice is submitted to arbitration under Clause 22) either:
- (a) the default or failure specified in the Default Notice has not been remedied (or active steps have not been commenced and continued to remedy the default or failure if it is not capable of speedy remedy); or
 - (b) compensation is not paid in respect thereof (in the case of a default or failure not capable of remedy but where payment of compensation would be adequate recompense to GRZ),

then, subject to Clause 19.6, the non defaulting party may by notice (hereinafter in this Clause 19 called a "**Termination Notice**") to the defaulting party (which shall be copied to each lender, mortgagee or chargee who was given a copy of the Default Notice) bring about the termination of this Agreement on a date which is not less than thirty (30) days thereafter (hereinafter in this Clause called the "**Termination Date**"). GRZ shall ensure that the Minister does not make a decision to suspend or cancel the Large Scale Mining Licences and that no other action is taken by or on behalf of GRZ without the approval of the Company to terminate the Large Scale Mining Licences or any of the Leases prior to the Termination Date.

- 19.6 A party shall not serve a Termination Notice while arbitration between GRZ and the Company under Clause 19.7 is in progress and any Termination Notice already served will be suspended immediately upon the commencement of such arbitration for the duration of any such arbitration. If the arbitrator finds in favour of the Company, or within the period fixed by the arbitrator the default or failure is substantially remedied or the compensation is paid, a party shall not serve a Termination Notice and any Termination Notice already served shall be deemed withdrawn.

- 19.7 If the Company or GRZ contest:
- (a) the grounds for the issue of the Default Notice;
 - (b) the materiality of the default;
 - (c) whether the default or failure has been remedied; or
 - (d) the adequacy of any compensation to be paid pursuant to Clause 19.5(b),

the matter shall be submitted for arbitration pursuant to Clause 22. If the arbitrator finds (in the case of Clause 19.7(a)) that adequate grounds exist for issue of the Default Notice, he shall fix a period for compliance with Clause 19.5(a) or 19.5(b) and the amount of compensation payable (if applicable). If the arbitrator finds (in the case of Clause 19.7(c)) that the default or failure has not been remedied, he shall fix a period

during which the defaulting party must remedy the default or failure. If the arbitrator finds (in the case of Clause 19.7(d)) in favour of the non-defaulting party, he shall fix the amount of compensation payable and the period for its payment.

19.8 If this Agreement is terminated by GRZ pursuant to Clauses 19.2 or 19.5:

- (a) the Company will surrender to GRZ the Large Scale Mining Licences and the Leases but without prejudice to the liability of any of the Parties in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given and without prejudice to the rights of the Company to remove and recover any of the Facilities for the purposes of Clause 19.8(d);
- (b) each Party shall forthwith pay to the other Party all monies that may be owing to the other Party hereunder which, for the avoidance of doubt, shall not include any unexpended amounts of the Investment Commitment or the Contingent Commitment;
- (c) GRZ shall have the option to purchase the assets comprising the Mufulira mine, the Nkana mine or the Mufulira smelter and refinery (and any associated assets of any of them) at a price equivalent to the lesser of the then residual value of such assets after tax depreciation or the fair market value of such assets, each having regard to any encumbrances over all or any portion of the Facilities and with vacant possession. The fair market value is to be determined by agreement between GRZ and the Company but failing such agreement by a Sole Expert in accordance with Clause 21. Such option to be exercisable by notice to the Company within thirty (30) days following termination of this Agreement. If requested to do so by GRZ, the Company shall also assign to GRZ such contracts to which it is a party as GRZ determines and deliver all applicable records of the Facilities held by the Company to GRZ but GRZ shall be bound to take the contracts that relate to the Transferring Social Assets;
- (d) the Company shall have the right, within the one (1) year period following the thirty (30) day notice period referred to in Clause 19.8(c) if GRZ has not exercised its option thereunder:
 - (i) to assign or otherwise dispose of all or any portion of the assets comprising the Mufulira mine, the Nkana mine or the Mufulira smelter and refinery (and any associated assets of any of them) not acquired by GRZ under Clause 19.8(c) to any person; or
 - (ii) to remove and recover from the Mining Area and export from Zambia any of the remaining Facilities on the condition that such removal does not cause irreparable damage to major assets which are not removed from the Mining Area; and

- (e) the Company shall leave the Facilities and Mining Area in a safe and stable condition to the reasonable satisfaction of the Director of Mine Safety having regard to natural conditions in the area and applying generally accepted standards of Good Mining Practice, provided that the Company shall not be required to alter the physical condition of the Facilities or the Mining Area beyond the requirements of the Environmental Plan applicable from time to time or as otherwise provided under Clause 12.

19.9 If following the expiry of the one (1) year period referred to in Clause 19.8(d), the assets comprising the Mufulira mine, the Nkana mine or the Mufulira smelter and refinery (and any associated assets of any of them) have not been sold or removed in their entirety and such assets as remain are not posing any danger to the environment or to public health and/or safety, GRZ's option under Clause 19.8(c) shall be renewed and the Company's right under Clause 19.8(d) shall be extended for a further period of one (1) year or, if less, until any of the remaining assets pose a danger to the environment or to public health and/or safety, at which time all such assets which remain on the Mining Area shall become the property of GRZ without any cost to GRZ or any liability for GRZ to pay compensation therefor.

19.10 Clauses 12, 19.8, 19.9, 19.11, 20, 21, 22, 24, 25, 26 and 29 shall continue in force notwithstanding the termination of the rest of this Agreement and termination hereunder shall not otherwise in any way affect a party's accrued rights and obligations at the date of termination.

19.11 For the avoidance of doubt, in the event of the termination of this Agreement, GRZ undertakes not to enforce applicable legislation retrospectively against the Company to the extent that it is inconsistent with the provisions of Clauses 12.3, 12.21, 14 and 16 and Schedule 8.

20. AMICABLE SETTLEMENT OF DISPUTES

20.1 A Dispute shall be deemed to arise when one Party serves on the other Party a notice ("**Notice of Dispute**") stating the nature of the Dispute, provided that no Notice of Dispute may be served unless the Party wishing to do so has first taken any steps or invoked any procedure available elsewhere in this Agreement in connection with the Dispute and the other Party has either taken such step or invoked such procedure as may be required, or been allowed a reasonable time to take such step or invoke such procedure.

20.2 Following service of a Notice of Dispute the Parties shall attempt in good faith to settle such Dispute amicably. The provisions of Clauses 21 and 22 shall not apply to any Dispute until a period of thirty (30) Business Days, or any longer period agreed between the Parties, shall have elapsed following service of a Notice of Dispute.

21. **SOLE EXPERT**

- 21.1 Where so provided by Clauses 6.5, 7.3, 8.8, 9.8, 12.5, 12.8, 12.13, 16.1, 16.5, 17.8, 19.8(c), 27.2(b) and 27.4(d) of this Agreement any Dispute shall be referred to a Sole Expert for determination in accordance with the provisions of this Clause 21.
- 21.2 The Party wishing the appointment to be made shall serve written notice to that effect on the other Party ("**Notice to Appoint**") and with such Notice to Appoint shall give details of the matter which it is proposed shall be resolved by the Sole Expert.
- 21.3 If within ten (10) Business Days from the service of the Notice to Appoint the Parties have failed to agree upon the selection of a Sole Expert, either Party may then submit a request in writing ("**Request for Proposal**") to the ICC International Centre for Expertise (the "**ICC Centre**") for the proposal of a Sole Expert as quickly as possible. The Request for Proposal shall set out the names, description and addresses of the Parties, shall attach a copy of this Agreement, shall set out any relevant indications concerning the choice of the Sole Expert (including a reference to the provisions of this Clause 21) and shall set out a descriptive summary of the Sole Expert's brief. The Parties agree to accept the expert proposed by the ICC Centre as the Sole Expert selected under this Clause 21.
- 21.4 Upon a Sole Expert being selected under the foregoing provisions of this Clause 21, the Parties or either of them shall forthwith notify the Sole Expert of his selection and request him to confirm within five (5) Business Days after such notification whether or not he is willing and able to (and does in fact) accept appointment as Sole Expert and to confirm that the requirements of Clauses 21.8(b), (c) and (d) are all satisfied in his case.
- 21.5 If the Sole Expert shall be either unwilling or unable to accept such appointment or shall not have given the confirmation in response to the request to be made under Clause 21.4 (the "**Confirmation**") within the said period of five (5) Business Days, then (unless the Parties are able to agree upon the selection of another Sole Expert) either Party may submit a Request for Proposal in the manner provided in Clause 21.3 to the ICC Centre which shall be requested to make a proposal or (as the case may be) a further proposal and the process shall be repeated until a Sole Expert is selected who accepts appointment.
- 21.6 The Parties shall co-operate with each other to ensure that the terms of the contract of appointment of the Sole Expert are agreed with him as soon as possible. If the Parties and the Sole Expert cannot within five (5) Business Days of the giving of the Confirmation agree on the amount of remuneration to be paid to the Sole Expert or any other terms of his contract of appointment, then (unless the Parties are able to agree upon the selection of another Sole Expert) either Party may submit a Request for Proposal or (as the case may be) a further Request for Proposal in the manner provided in Clause 21.3 to the ICC Centre which shall be requested to make a proposal or (as the case may be) a further proposal and the process shall be repeated until a Sole

Expert is selected who accepts appointment and whose terms of contract of appointment are agreed.

- 21.7 The appointment of the Sole Expert shall be deemed to have been made upon his signing the contract of appointment.
- 21.8 The Parties shall select or (if applicable) the ICC Centre shall propose a Sole Expert meeting the following criteria:
- (a) The Sole Expert shall be a person reasonably qualified by education, experience and training to determine the Dispute to be referred to him.
 - (b) Neither the Sole Expert nor (if he is an individual) any member of his immediate family nor (in other cases) any partner in or director of the Sole Expert shall be (or within ten (10) years before his appointment have been) a director, office holder or an employee of or directly or indirectly retained as a consultant or an adviser to either Party or an Affiliate of either Party.
 - (c) The Sole Expert shall be independent of the Parties and shall have no interest or duty which conflicts or may conflict with his function as Sole Expert.
 - (d) The Sole Expert shall not be a citizen or a national of nor a permanent resident in Zambia, Canada or Switzerland.
- 21.9 If, in respect of any particular Dispute, the ICC Centre informs the Parties or either of them that is unable to propose an expert as the Sole Expert to determine that Dispute, then the said Dispute shall be referred to arbitration in accordance with Clause 22.
- 21.10 The terms of appointment of the Sole Expert shall contain confirmation from the Sole Expert as to the matters required by Clause 21.8, shall require the Sole Expert to comply with the obligations set out in Clauses 21.11 and 21.12, and shall contain at least the following provisions regarding the procedure to be followed in the proceedings before the Sole Expert (the "**Expert Proceedings**"):
- (a) The Sole Expert shall not later than fourteen (14) Business Days after his appointment call the Parties to a meeting at which he shall raise any matters requiring clarification (whether arising out of his contract of appointment or otherwise) and give directions as to the procedural rules to be applicable in the Expert Proceedings which rules shall comply with the terms of this Clause 21.10. Such directions may thereafter be given from time to time by the Sole Expert as he shall consider necessary. The Parties agree to comply with such directions made by the Sole Expert, and with any request the Sole Expert may make in accordance with this Agreement or with such directions.
 - (b) The Parties shall be entitled to supply data, information and documentation and to make submissions (written and/or oral as the Sole Expert may direct) to the Sole Expert up to fifteen (15) Business Days after his appointment (and the Sole Expert shall ignore all data, information, documentation and submissions

supplied and made after such fifteen (15) Business Days unless the same are furnished in response to a specific request from him or are made in response, in accordance with Clause 21.10(e), to data, information, documentation or submissions by the other Party).

- (c) The Sole Expert shall be entitled to obtain such independent professional and/or technical advice as he may reasonably require and to obtain any secretarial assistance as is reasonably necessary.
- (d) The Sole Expert shall be entitled to request from the Parties (and the Parties shall supply to the Sole Expert) all documents and other information which the Sole Expert shall reasonably consider to be related to the Dispute and necessary for resolution thereof, provided that neither Party shall be obliged to provide the Sole Expert with any document or information which he would in an action in the High Court be entitled to refuse to disclose on grounds of legal professional privilege.
- (e) Copies of all data, information, documentation and submissions supplied or made by any party to the Sole Expert shall be provided simultaneously to the other Party, and any data, information or submissions supplied or made orally by one Party to the Sole Expert shall be supplied or made in the presence of the other Party. The other Party shall, notwithstanding the limitations in Clause 21.10(b), have the right for the period of ten (10) Business Days from receipt of such data, information, documentation or submissions to comment in writing on it to the Sole Expert and copies of any such comments shall be promptly supplied to the other Party.
- (f) No meeting between the Sole Expert and the Parties or either of them shall take place unless both Parties are given a reasonable opportunity to attend any such meeting.
- (g) If, without showing sufficient cause, a Party fails to comply with any rule, request, direction or timetable deadline applicable to the Expert Proceedings, or in any other way fails to comply with a requirement relating to the Expert Proceedings, the Sole Expert shall nevertheless be obliged to proceed and to issue his determination in accordance with Clause 21.10(j) and (k), and in so doing may:
 - (i) continue the Expert Proceedings in the absence of that Party or of the document, information or submission;
 - (ii) draw such inferences from that failure to comply or produce as may, in the opinion of the Sole Expert, be justified; and
 - (iii) make his determination on the basis of the information before him attaching such weight as he thinks fit to any evidence submitted to him

outside any period he may have requested or directed or as required by the rules applicable in the Expert Proceedings.

- (h) The Sole Expert shall have the power to open up, review and revise any certificate, opinion, decision, instruction, direction, valuation, requisition or notice issued, given or made under this Agreement and to determine all matters referred to him in accordance with the terms of his appointment.
- (i) The Sole Expert may conduct the Expert Proceedings at one or more locations in any country as may appear to the Sole Expert to be reasonable.
- (j) Not more than ten (10) Business Days after expiry of the period provided under Clause 21.10(e) the Sole Expert shall furnish the Parties with a draft of his proposed determination of the Dispute (including a draft of the reasons required by Clause 21.10(k) below) in respect of which both Parties shall be entitled to make representations to the Sole Expert for the period of five (5) Business Days after receipt of the said draft.
- (k) The Sole Expert shall issue his determination of the Dispute in writing within ten (10) Business Days after expiry of the period under Clause 21.10(j) and shall give full written reasons for that determination.

21.11 The Sole Expert shall act impartially in carrying out his duties and shall do so in accordance with any relevant terms of this Agreement and shall make his determination in accordance with the applicable law in relation to this Agreement.

21.12 All data, information or documentation disclosed or delivered to the Sole Expert in connection with his appointment as Sole Expert shall be treated as confidential and the Sole Expert shall not disclose to any person or company any such data, information or documentation. All such data, information and documentation shall remain the property of the Party disclosing or delivering the same and shall (together with all copies thereof) be returned to that Party on completion of the Sole Expert's work or his discharge from office under Clause 21.14. Provided that the Sole Expert may disclose any data, information or documentation to employees of the Sole Expert or his firm or company or Affiliates (if any) of the Sole Expert or his or its professional advisers if such employees or Affiliates or professional advisers have prior to such disclosure entered into specific undertakings to maintain the confidentiality of such information data and documentation.

21.13 Without prejudice to the Parties' obligation to comply with any request made by the Sole Expert under Clause 21.10(d) above, the Parties shall not be entitled to, or to apply for, discovery of documents in the Expert Proceedings.

21.14 If the Sole Expert:

- (a) relinquishes, resigns or abandons his appointment or dies or becomes incapacitated before the issue of his determination on costs under Clause 21.17(b); or

- (b) shall not have issued his determination within the time limit set out in Clause 21.10(k)

then, at the request of either Party, a replacement Sole Expert shall be appointed in accordance with the provisions of Clauses 21.3 to 21.6 and on such appointment being made (as defined in Clause 21.7) the appointment of the Sole Expert shall cease unless prior to the date of appointment of the replacement Sole Expert the Sole Expert shall have rendered his determination thereunder in which case such determination shall be binding on the Parties and the proposed appointment of the replacement Sole Expert shall be withdrawn.

21.15 The Sole Expert shall act as an expert and not as an arbitrator and the laws relating to arbitration shall not apply to the Sole Expert or his determination or the Expert Proceedings or the procedure by which he reaches his determination.

21.16 Any determination of the Sole Expert shall be final and binding upon the Parties save in the event of fraud or manifest error.

21.17 (a) Whilst the Expert Proceedings are in progress:

- (i) each Party shall bear the costs of providing all data, information, documentation and submissions supplied or made by it and the costs of all lawyers, advisers, witnesses, employees and other Persons retained by it; and
- (ii) each Party shall comply with its obligations as to payment of the Sole Expert set out in his contract of appointment.

(b) The costs referred to in (a) above and the costs and expenses of the Sole Expert and any independent advisers to the Sole Expert retained in connection with a determination hereunder and any costs of his appointment if he is proposed by the ICC Centre shall be borne as may be determined by the Sole Expert. The Sole Expert shall issue his determination on the question of how the said costs are to be borne within five (5) Business Days of the issue of his determination of the Dispute under Clause 21.10(k). In reaching that determination the Sole Expert shall be guided by the principle that the unsuccessful Party should pay the costs of the successful Party, and shall take into account the relative extent of success or lack thereof by each Party.

21.18 The amount (if any) which is required by a determination of the Sole Expert under this Clause 21 (including, without limitation, any costs under Clause 21.17(b)) to be paid by one Party to the other Party shall be paid within ten (10) Business Days of the issue of the determination, and if not paid within that time, interest on that amount shall accrue and be payable at the rate of LIBOR plus five per cent. (5%) per annum (to be compounded on the first day of each calendar month of non-payment).

22. **ARBITRATION**

- 22.1 Subject to the provisions of Clauses 20 and 21, GRZ and the Company hereby consent to submit to the International Centre for Settlement of Investment Disputes ("ICSID") any Dispute for settlement by arbitration pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "Convention"). Save where the contrary appears, terms used in this Clause 22 shall bear the same meaning as they do in the Convention.
- 22.2 The Parties hereby agree that the Company, because of foreign control, shall be treated as a national of a state other than Zambia for the purposes of the Convention.
- 22.3 The Parties agree that the transaction to which this Agreement relates is an investment.
- 22.4 Any arbitral tribunal (the "Tribunal") constituted pursuant to this Agreement shall consist of three arbitrators. Each Party shall appoint (1) one arbitrator within fourteen (14) days of the registration of the request for arbitration. The third arbitrator, who shall be President of the Tribunal, shall be appointed by agreement of the arbitrators appointed by the Parties or, failing such agreement within twenty eight (28) days of registration of the request for arbitration by the Chairman of the Administrative Council at the request of either Party. None of the arbitrators may be a citizen or a national of, or a permanent resident in, Zambia or Canada or Switzerland. Without prejudice to its other powers, the Tribunal shall have the power to fix a longer period than the period 360 days referred to in Clause 19.5 in any case in which the question whether a Default Notice is valid or whether the default or failure alleged in any such Default Notice has occurred has been submitted for settlement by arbitration.
- 22.5 Any arbitration proceeding pursuant to this Agreement shall be conducted in accordance with the Arbitration Rules of ICSID in effect on the date on which the proceeding is instituted (the "Arbitration Rules"). Such Arbitration Rules shall be subject to the express provisions of this Clause 22. In the event of any conflict the provisions of this Clause 22 shall take precedence over such Arbitration Rules. Any communications by the Secretary-General with either Party under either the Institution Rules or the Arbitration Rules of ICSID may be sent by the Secretary General in the manner provided in Clause 29.
- 22.6 Any arbitration proceedings commenced pursuant to this Agreement shall be held in London which shall be the seat of the arbitration proceedings. In relation to any arbitration proceedings commenced under or in connection with this Agreement, GRZ irrevocably submits to the jurisdiction of the United Kingdom and waives, to the extent permitted by applicable law, any objection to such arbitration whether on the ground of venue or on the ground that the arbitration has been commenced in an inconvenient forum.
- 22.7 The language of any arbitration proceedings shall be English.
- 22.8 Any award in arbitration proceedings held pursuant to the Convention shall be binding on the parties and judgement thereon may be entered in any court having jurisdiction

for the purpose. Subject to Clause 24, GRZ irrevocably and generally consents in respect of the enforcement of any arbitral award or determination of a Sole Expert against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including, without limitation, the making, giving, enforcement or execution against or in respect of any property whatsoever (irrespective of its use or intended use) of any decision, award, order or judgment which may be made or given in such proceedings and the granting of any injunction or order for specific performance or for recovery of land or other property).

22.9 The Parties waive any right to appeal to any court of law or other judicial authority in connection with any arbitration proceedings conducted pursuant to this Agreement.

22.10 The costs incurred by the Parties in connection with any arbitration procedure (to include both Parties' legal and other professional costs and other expenses, the fees and expenses of the Tribunal, and the charges for the use of the facilities of ICSID) shall be borne:

(a) equally by the Parties where the Dispute has been referred jointly by them; or otherwise,

(b) in accordance with Article 61(2) of the Convention.

22.11 The amount (if any) which is required by a determination or award of the Tribunal under this Clause 22 to be paid by one Party to the other Party shall be paid within ten (10) Business Days of the issue of the determination or award and, if not paid within that time, interest on that amount shall accrue and be payable at the rate of LIBOR plus five per cent. per annum (to be compounded on the first day of each Calendar Month of non-payment).

22.12 The provisions of this clause shall not preclude any Party from applying for interim relief on an urgent or any other basis to a court of competent jurisdiction.

23. PERFORMANCE TO CONTINUE

23.1 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 the Sole Expert or 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 the Sole Expert or by arbitration or by agreement of the Parties as the case may be.

24. WAIVER OF SOVEREIGN IMMUNITY

24.1 GRZ irrevocably agrees that should any proceedings in relation to, arising out of or in connection with this Agreement be taken in any jurisdiction against it or its assets, no immunity (to the extent that it may at any time exist, whether on the grounds of sovereignty or otherwise) from those proceedings shall be claimed by it or on its behalf

or with respect to its assets, and GRZ hereby irrevocably waives any such immunity which it or any of its assets now has or may acquire in the future in any jurisdiction.

24.2 The waiver of immunities referred to in Clause 24.1 constitutes only a limited and specific waiver for the purposes of this Agreement and under no circumstances shall it be interpreted as a general waiver by GRZ or a waiver with respect to proceedings unrelated to this Agreement. GRZ has not waived such immunity in respect of property which is (i) located in Zambia, (ii) used by a diplomatic or consular mission of GRZ (except as may be necessary to effect service of process), or (iii) property of a military character and under the control of a military authority or defence agency.

25. LAW APPLICABLE

25.1 This Agreement shall be governed by and interpreted in accordance with the laws of Zambia as in force at the date of execution of the Agreement, supplemented by the rules of international law where necessary to give effect to this Agreement.

26. FORCE MAJEURE

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

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

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

26.2 For the purposes of this Agreement, Force Majeure shall include war, insurrection, civil disturbances, blockades, riot, embargoes, strikes, lock-outs and other labour-conflicts, land disputes, epidemics, volcanic eruptions, earthquakes, cyclones, floods, explosions, fires, lightning, governmental restrictions, change in applicable law, unavailability of materials or equipment, failure by GRZ or any of its applicable ministries, departments or agencies to grant or issue to the Company (as consultant/operator) or contractors or subcontractors appointed by the Company (as consultant/operator) the necessary consents and permissions to enable them to operate in Zambia or to import equipment into Zambia or to grant or issue the necessary permits for non-Zambian employees of the Company to enter into Zambia and take up

employment in a timely fashion and any other event which the Party claiming Force Majeure could not reasonably be expected to prevent or control and which prevents a Party from complying with any of the terms, conditions or provisions of this Agreement (provided that GRZ shall not be entitled to give notice of the occurrence of Force Majeure nor be excused from performance hereunder as a result of any of its actions or inaction or any of the actions or inactions of its applicable ministries, departments or agencies).

- 26.3 In the event of any circumstances or event of a kind set out in this Clause 26 the period of time allowed for the performance of those obligations or exercise of those rights which are delayed by such event of Force Majeure and the periods of time thereafter allowed for the performance of obligations or exercise of rights which are dependant upon the first mentioned obligations or rights, shall be extended by a period equal to the period during which such event of Force Majeure continues. Any Force Majeure event arising as a result of the failure by GRZ to perform its obligations as detailed in Clause 26.2 shall not preclude the right of the Company to enforce its rights arising from a breach of GRZ's obligations under this Agreement.
- 26.4 Where any period is, or is deemed to be, extended or any later date substituted for an earlier date under this Clause 26, that extended or substituted period or date shall be deemed to constitute the period or day referred to in this Agreement (notwithstanding that at the time of such extension or substitution such period may have expired or such date may have passed).

27. VARIATION

- 27.1 The Parties may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement, the Approved Programme of Mining and Metal Treatment Operations, the Large Scale Mining Licences or any other programme (including any of the Scheduled Programmes), proposal or plan approved for the purpose of facilitating the objectives of this Agreement.
- 27.2 (a) Except as otherwise provided in Clause 27.4, where the Company proposes to modify or vary the Approved Programme of Mining and Metal Treatment Operations (for the avoidance of doubt, not including the Environmental Plan) (hereinafter called a "**Modification**"), the Company shall provide written notice of such Modification to GRZ. Such Modification shall be deemed to be approved by GRZ and the Approved Programme of Mining and Metal Treatment Operations shall be amended to the extent necessary to reflect such Modification unless GRZ within ninety (90) business days of the notice being given to it notifies the Company that GRZ considers the Modification to be a Major Change. If the Company accepts that the Modification is a Major Change the provisions of Clause 27.4 shall apply.
- (b) If the Company does not agree that the Modification is a Major Change then it may either refer to the Sole Expert in accordance with Clause 21 or submit for

arbitration in accordance with Clause 22 the question whether the Modification is a Major Change. If the Sole Expert or the arbitral tribunal determines that the Modification is a Major Change then it is deemed that notice has been given pursuant to Clause 27.2(a) as of the date of the Sole Expert's or arbitral tribunal's decision and the provisions of Clause 27.4 apply, unless the Company has implemented or commenced implementation of the Major Change. If such implementation has occurred or commenced then the Sole Expert or the arbitral tribunal's shall also determine:

- (i) what action the Company must take; or
- (ii) what compensation the Company must pay and to whom such compensation shall be paid.

27.3 For the purpose of this Clause 27, a proposed Major Change to the Approved Programme of Mining and Metal Treatment Operations means:

- (a) any Modification by which the Company shall not remain in substantial compliance with the Approved Programme of Mining and Metal Treatment Operations; or
- (b) any proposed material change involving the elimination or material diminution in the capacity or availability of the Facilities or in the Approved Programme of Mining and Metal Treatment Operations if a consequence of such proposed material change would be to reduce materially or delay materially receipt of GRZ's tax revenues or royalties derived from the Facilities' operations or in a material respect adversely impact or increase the adverse impact of the Company's mining activities on the environment; or
- (c) any material change in capital expenditure on items not previously included in the Investment Commitment.

27.4 No Major Change shall take effect unless it has been approved or is deemed to have been approved by GRZ and where the Company intends to make a Major Change the following provisions shall apply:

- (a) within thirty (30) days of GRZ giving notice to the Company under Clause 27.2(a) the Company shall, by notice to GRZ of the proposed Major Change, give full details including an economic analysis of the proposed Major Change entitled "Proposed Major Change to the Approved Programme of Mining and Metal Treatment Operations";
- (b) if GRZ does not notify the Company that it objects to the Major Change within thirty (30) days of the notice, GRZ shall be deemed to have approved the Major Change;
- (c) where GRZ requires additional time to evaluate the Major Change, it shall within the thirty (30) days stipulated in Clause 27.4(b), extend the period by

an additional thirty (30) days and if within that thirty (30) day period GRZ does not notify the Company of any objections it shall be deemed to have approved the Major Change;

- (d) where GRZ objects to the Major Change and the Company considers the objection to be unreasonable, the Company may elect to refer the question of the reasonableness of GRZ's objection, at its option, to the Sole Expert under Clause 21 or the arbitral tribunal under Clause 22. In assessing the reasonableness or otherwise of GRZ's objections the Sole Expert or the arbitral tribunal shall have regard to the impact which withholding approval to the change would have on the economic viability of the project or on other relevant and extraordinary commercial considerations, as well as the impact on GRZ revenues, as described in Clause 27.3; and
- (e) if the Sole Expert or the arbitral tribunal determines that GRZ's objection is unreasonable, GRZ shall be deemed to have approved the Major Change.

27.5 Where GRZ approves or is deemed to have approved a Modification, the Approved Programme of Mining and Metal Treatment Operations shall be varied or amended to the extent necessary to reflect the Modification.

27.6 For the purposes of this Agreement, a reduction in the number of employees of the Company notified (where applicable) to GRZ in accordance with Clause 6.8 shall not, in and of itself, constitute a Major Change.

28. CONSULTATION

28.1 (a) The Company shall nominate a representative, of appropriate qualifications and who meets the approval of the Minister, to a committee comprising of one member from each of the Ministry, the Company and the local government and chaired by a representative of the Ministry of Labour, which shall have no powers to bind the Company but shall monitor the implementation of the Training and Human Resources Management Programme.

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

(c) The Company shall only be liable for the costs associated with its representative in respect of the committee formed pursuant to Clause 28.1.

28.2 (a) The Company shall nominate a representative, of appropriate qualifications and who meets the approval of the Minister, to a committee, comprising of one member from each of the Ministry, the local government and the Company and chaired by a representative of the Ministry of Commerce, Trade

& Industry, which shall monitor the supply and procurement of goods and services to the Facilities.

- (b) The committee shall operate during the term of this Agreement and the Company shall furnish it with reports every six (6) months comprising the following information:
 - (i) a list of successful tenderers which shall include the items supplied, residence of tenderers and the reasons for awarding the tender; and
 - (ii) a list of unsuccessful locally based tenderers which shall include reasons for not awarding the tender.
- (c) The Company shall only be liable for the costs associated with its representative in respect of the committee formed pursuant to this Clause 28.2.

29. NOTICES

- 29.1 (a) Any notice, consent, demand, approval or other communication (a "Notice") required or permitted to be given shall be in writing and:
 - (i) in the case of a Notice given by GRZ, such Notice shall be signed on behalf of GRZ by either the Minister or Permanent Secretary to the Ministry as their respective responsibilities require; or
 - (ii) in the case of a Notice to be given by the Company, such Notice shall be signed by a director or by the Secretary of the Company.
- (b) Each such Notice shall, as elected by the Party giving such notice, be personally delivered or transmitted by telex or facsimile to the other Party as follows:

A Notice to GRZ

If by facsimile:
Permanent Secretary
Ministry of Mines and Minerals
Development
+260 1 251 244/252 916

If by hand:
Permanent Secretary
Ministry of Mines and Minerals
Development
PO Box 31969
Haile Selassie Avenue
Lusaka
Zambia

A Notice to the Company

If by facsimile:
The Secretary
Mopani Copper Mines Plc

If by hand:
The Secretary
Mopani Copper Mines Plc

+ 260 2 229 177

Insurance House
Kitwe
Zambia

- 29.2 Except as otherwise specified herein, all Notices shall be deemed to have been duly given on the earlier of:
- (a) the date of receipt if delivered personally; and
 - (b) the date of transmission with confirmed answerback if transmitted by facsimile,

PROVIDED THAT in the event that a Notice is delivered on a day which is not a Business Day in the jurisdiction in which it is delivered, the Notice shall be deemed to be delivered on the next following Business Day in that jurisdiction.

Either Party may change its address by Notice to the other Party in accordance with the provisions of this Clause 29. All Notices and all documents or instruments delivered in connection with this transaction shall be in the English language.

- 29.3 Where the Company is required to submit any plans, proposals or other material for the approval of GRZ, the date of submission shall be deemed to be the date on which GRZ received the said plans, proposals or other materials.

30. WAIVER

- 30.1 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.

31. SEVERABILITY

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

32. FURTHER ACTS

- 32.1 The Parties shall execute such documents and do and perform such acts that lie within their power and are necessary to give full effect to this Agreement.

33. COUNTERPARTS

- 33.1 This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one Agreement.

34. REPRESENTATIONS AND WARRANTIES

- 34.1 Except as expressly stated in this Agreement, no representation, inducement or warranty was, prior to the execution of this Agreement, given or made by one of the Parties hereto with the intent of inducing the other Party to enter into this Agreement, and any representations, inducements or warranties that may have been so given are hereby denied and negated.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorised representatives on the day and year first before written.

SIGNED for and on behalf of
GOVERNMENT OF THE REPUBLIC
OF ZAMBIA

)
)


SIGNED for and on behalf of
MOPANI COPPER MINES PLC

)
)


SCHEDULE 1
APPROVED PROGRAMME OF MINING AND METAL TREATMENT OPERATIONS

Schedule 1

Approved Programme of Mining and Metal Treatment Operations

The Company has developed a Business Plan based on its intention to purchase ZCCM's Nkana Mine, Concentrator and Cobalt Plant as well as the Mufulira Division as going concerns. The plan's main focus revolves around the rehabilitation and improvement of the assets and in so doing ensuring the long term survival and prosperity of both operations. These goals will be supported by a planned programme of capital expenditure as envisaged under the Investment Commitment. A more detailed discussion of the Company's plans in each area follows. A breakdown of the Investment Commitment is included in the annexure.

Mufulira

Reserve Development

Current reserves down to the 1340 level, based on information provided by ZCCM, amount to 28.8mio tonnes grading 3.02% copper in-situ. Below this level there is an indicated resource of around 18mio tonnes grading 3.21% copper in-situ.

Several studies on the economic feasibility of exploiting the resource at the 1340 to 1540 level have been completed. The Business Plan provides for the completion of a detailed feasibility study on this resource within the first three years of operations.

Mining Operations

The current business plan envisages an increase in ore throughput from the current level of 2.1mio tpa to an estimated 2.4mio tpa by 2003. This will be achieved by completing the implementation of the up-dip open stoping mining method and by investing capital in the operation as per the Investment Commitment.

The bulk of the spending will initially be applied to rehabilitating the underground mining fleet and other mining equipment and also in increasing stocks of critical spares to the levels required to sustain the operation. In years two and three capital will be invested in replacing obsolete equipment and in developing the SV shaft. This should result in an increase in throughput and a significant reduction in the operating costs of the mine.

Provided that the feasibility study results are positive and it makes economic sense to do so, a decision will be taken on the development of the 1340 to 1540 level. Preliminary estimates of the development capital required are approximately US\$11.5 mio over a three year period.

Concentrator Operations

As is the case with the Mining Operation the focus of our efforts in the first year of operations will be to reverse the deterioration of the asset and build up the necessary spares and consumables to improve the operation of the concentrator. In years two and three the focus will shift to increasing its capacity and improving efficiencies.

Smelter Operations

Expenditure will be directed during the initial years of the Business Plan on improving the efficiencies of the Operation as well as addressing the major environmental concerns. To this end funds have been allocated for the repair and improvement of the converters, electrostatic precipitators and electric furnace transformers as well as for the repair and, where needed, the replacement of key items of equipment.

Further reductions in the unit operating costs of the smelter will be achieved by focussing efforts on ensuring that sufficient concentrate feed is secured to enable the smelter to operate at the highest capacity level possible. These concentrates will mainly be secured under toll arrangements with KCM, RAMC and the soon to be reopened Chambishi operations.

Acid Plant

Following the completion of a feasibility study and depending on whether KCM exercise its option on the Nkana Smelter and Refinery complex, the Company will take a decision on the construction of an acid plant at the Mufulira Smelter. Preliminary estimates set the cost of constructing an acid plant capable of handling the Smelter's emissions at approximately US\$60 mio.

Refinery Operations

Our efforts in the Refinery will be focussed on the refurbishment of the tankhouse and the modernisation of the ancillary infrastructure. Particular attention will be paid to the rectifier transformers and the rehabilitation and conversion of Tankhouse 2 to periodic current reversal.

The Company intends to refurbish Tankhouse 4 and the Stripper section four years after the completion date. These projects will, however, only be undertaken should it make economic sense to do so. The cost of these projects have been estimated at around US\$14.6 mio.

Engineering/Other

The Engineering Department supplies a full range of services to the Division. After completion the Company will review its needs and rationalise the Engineering Department in line with its needs. Excess capacity will be leased off to private enterprises and where practical to retrenched employees. As in other areas the

Engineering Department is critically short of spares and consumables. Our initial efforts will be focussed on addressing this need.

Significant amounts of money have been provided for the funding of the various service departments as well as the social assets that will be purchased as part of the Operation.

A further provision has been made to fulfill the Company's obligations under the proposed retrenchment plan which is to be implemented as part of the rationalisation of the Operation.

Production Targets

The Business Plan targets production levels of 2.4 mio tonnes of ore and 56,000 tonnes of copper metal per annum by 2003.

Nkana

Reserve Development

Current in-situ reserves are shown as being 78 mio tonnes at a grade of 2.26% Cu. The Company will continue with an ore reserve delineation programme mainly comprising underground drilling. One of the main purposes of this programme will be to firm up estimates regarding the Synclonorium resource. The cost of this drilling programme will form part of the Investment Commitment.

The Company will also undertake studies into the feasibility of exploiting various surface oxide resources and an oxide dump. This will have both positive economic and environmental consequences.

Mining Operations

Mining Operations will continue to focus on the Mindola, Mindola North, Central and South Ore Bodies. During the first two years the bulk of the funds made available will be spent in rehabilitating the underground equipment and infrastructure as well in increasing spares to a level that is sufficient to sustain operations at the planned levels.

Current mining methods will be reviewed in due course with a view to improving efficiencies and reducing dilution. Expatriate personnel will be introduced in certain key positions. Their main purposes will be to train the local workforce and to ensure that international best practice is followed in conducting the operation.

Following the successful completion of the drilling programme and a positive feasibility study the board will evaluate the economic viability of developing the Synclonorium Ore Body. Should the decision be taken to proceed with the development of this area a further investment of approximately US\$240 mio will be required.

Pending the outcome of further technical studies it is foreseen that there could be a need for the construction of cooling facilities for the Mindola Shaft. Should this prove necessary the capital requirements have been estimated at around US\$27.6 mio.

Concentrator Operations

The initial focus in this area would be to reverse the deterioration of the asset and to increase the levels of spares and consumables to levels that will support the production plan.

Notwithstanding the fact that current recoveries are satisfactory, the planned increase in throughput will necessitate the investment of capital to ensure that the plant operates at a satisfactory level in future.

Should the decision be taken to develop the Synclonorium Ore Body the current milling capacity would prove insufficient. A capital investment of approximately US\$10 mio would be required to expand capacity to a level sufficient to cope with the expanded throughput.

Cobalt Plant Operations

The focus of the Investment Commitment in the Cobalt Plant during the three years following completion will be aimed at improving recoveries and reducing operating costs. This will include the completion of the Zn SX programme, the refurbishment and improvement of the filtering system, the process conversion from Lime to Soda Ash and the improvement of offgas collection.

The Cobalt Plant's production is currently constrained by the roaster capacity. Following the completion of a successful feasibility study and the positive outcome of an economic evaluation the Company will invest approximately US\$38.8mio in increasing the capacity of the plant to 3,500 tpa of cobalt.

Engineering/Other

Due to the split of the Nkana operation between the Company and ZCCM the current Engineering Facilities will be in excess of our needs. We are planning to consolidate the key functions to provide the Mine with the necessary services. Excess capacity will be leased off to private enterprises and where practical to retrenched employees.

As a further measure to optimise cost efficiencies the management of the engineering services that affect key operational areas will be decentralised. For shared services a centralised approach is still envisaged.

Production Targets

The Business Plan targets production levels of 4.25 mio tonnes of ore, 72,000 tonnes of copper metal and 2,200 tonnes of Cobalt metal per annum by 2003.

Annexure:
Committed Capital Expenditure for the Nkana- and Mufulira Operations

During the First three Years of Operations:

Nkana Operation:

<u>Mining:</u>	<u>Year One</u>	<u>Year Two</u>	<u>Year Three</u>	<u>Total</u>
Underground Equipment	4,000,000	2,700,000	2,200,000	8,900,000
Stores buildup	2,500,000	2,300,000	1,800,000	6,600,000
Pumping	0	1,270,000	3,409,000	4,679,000
Geological	20,000	10,000	10,000	40,000
WCPE	5,650,000	3,750,000	3,700,000	13,100,000
Feasibility Studies	0	2,000,000	0	2,000,000

Concentrator:

Crushing and Milling	420,000	335,000	50,000	805,000
Concentrating	1,750,000	430,000	1,330,000	3,510,000
Spares and Reagents Buildup	3,337,000	1,696,000	1,018,000	6,051,000
WCPE	70,877	77,218	85,437	233,532

Cobalt Plant:

Plant Refurbishment	1,000,000	3,110,000	1,350,000	5,460,000
WCPE	230,000	430,000	170,000	830,000

Other:

Stores Replenishment	5,000,000	0	0	5,000,000
Retrenchment etc	6,656,000	0	0	6,656,000
Engineering	1,000,000	1,000,000	1,000,000	3,000,000
Overheads	2,300,000	1,525,000	410,000	4,235,000
WCPE	1,040,000	1,020,000	912,000	2,972,000

Subtotal	34,973,877	21,653,218	17,444,437	74,071,532
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Mufulira Operation:

Mining:

Underground Equipment	1,870,000	1,290,000	1,020,000	4,180,000
Pumping	300,000	700,000	0	1,000,000
SV Shaft	0	0	5,600,000	5,600,000
Spares	2,950,000	500,000	500,000	3,950,000
WCPE	1,228,000	1,228,000	1,036,000	3,492,000
Feasibility Studies	0	1,000,000	1,000,000	2,000,000

Concentrator:

Crushing and Milling	869,000	1,248,000	150,000	2,267,000
Concentrating	563,000	172,000	665,000	1,400,000
Spares and Reagents Buildup	2,500,000	0	0	2,500,000
WCPE	319,500	330,150	272,640	922,290

Smelter:

Precipitator Rehabilitation	3,233,000	3,140,000	0	6,373,000
Equipment Replacement	3,510,000	2,198,000	450,000	6,158,000
Workshop Equipment	0	118,000	0	118,000
WCPE	330,000	330,000	0	660,000

Refinery:

Tankhouse Refurbishment	1,353,000	1,215,000	2,130,000	4,698,000
Overhead Cranes	0	0	200,000	200,000
WCPE	200,000	200,000	200,000	600,000

Other:

Stores Replenishment	5,000,000	0	0	5,000,000
Retrenchment etc	4,000,000	3,000,000	3,000,000	10,000,000
Engineering	2,405,000	2,397,000	435,000	5,237,000
Overheads	7,483,250	4,078,750	4,165,000	15,727,000
WCPE	1,500,000	1,200,000	350,000	3,050,000

Subtotal	39,613,750	24,344,900	21,173,640	85,132,290
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Total Capital Expenditure	74,587,627	45,998,118	38,618,077	159,203,822
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SCHEDULE 2
LOCAL BUSINESS DEVELOPMENT PROGRAMME

Schedule 2

Local Business Development Programme

1. INTRODUCTION

The Company is very conscious of the need for the establishment of long term, viable and sustainable local businesses. Over and above the economic requirement for this, there is the need to reduce the community dependency on the mining operations. The main thrust of the Company's involvement in local business development will be in assisting retrenched employees to have meaningful employment after leaving the mines. Sufficient financial resources have been provided, within the retrenchment provision, to establish this local Business Development Programme.

2. BASIS OF THE LOCAL BUSINESS DEVELOPMENT PROGRAMME

The basis of the Programme will be to provide advice and assistance to retrenched employees. This advice will focus on the following fundamental business issues:-

- the husbanding of retrenchment packages to establish the basis of required capital
- the identification of suitable entrepreneurial opportunities
- preparation of a business plan
- the establishment of a company/business vehicle
- training in business techniques including marketing, bookkeeping, hiring, taxation, cash management, etc.
- ongoing assistance in the actual running of the business.

This advice will be offered through the Administration Department. These people will be trained by suitable qualified professionals, who will also be called upon to interact directly with the retrenched.

3. ENCOURAGEMENT TO OTHER EMPLOYEES

The company is keenly aware of the fact that not every retrenched miner will be self-employed, or indeed an employer. To this end, the Company will encourage other employees to establish their operations at the Mine sites so as to create employment opportunities. In turn, the Company will provide suitable inducements for other companies to establish operations at our mine sites as opposed to any other.

4. POTENTIAL BUSINESS OPPORTUNITIES

The Company does not wish to prescribe areas of business opportunities that ex-employees may be interested in as these are of a limited scope. However, there are a number of areas in which the Company may be able to actively create opportunities, these include:

- c) **Light vehicle maintenance.** The maintenance of Company vehicles is an area which would easily be sub-contracted, provided quality and cost objectives are met. It is also an area where there is a large client base outside the Company. If the Company was satisfied that these services could satisfactorily be sub-contracted, then it would consider leasing out its existing premises to ex-employees
- d) **Property Maintenance.** There are many areas relating to property maintenance that lend themselves to subcontract by suitably qualified ex-employees. These include: painting (internal, external and roofs), plastering and bricklaying, plumbing, electrical work, garden services, etc. Potential customers for these services include: the mine, homeowners, absentee landlords, businesses and municipalities, as well as social and sporting clubs.

- c) **Funeral Services.** The services that may be offered in this regard include provision of coffins and firewood, supply and/or pitching of tents, transportation of mourners. Again this may be an area where certain of the carpentry shop are sub-contracted to carpentry retrenchees. These services could be offered to the public at large.
- d) **Taxi Services.** The Company could assist retrenched drivers in purchasing, running and maintaining small Combi buses. These small vehicles are possibly in range of certain retrenchees' severance packages. This service has a relatively low entry threshold, but critically requires astute operating and maintenance.
- e) **Forestry and Farming.** Within the mine licence area, there are tracts of land that are suitable for agriculture. Every effort will be made to discourage ad-hoc subsistence type of farming, while encouraging the sub-division of adequately sized plots to allow good farming practice, such as rotation, to provide economic returns. Plantations of certain exotic trees will be advocated in areas which will not encroach on an existing indigenous forests. Although forest plantations have a long return period, the steady planting of trees in early years could lead to substantial and steady returns later on.
- e) **Fish Farming.** The Company's properties are blessed with wonderful water resources. These resources are already endangered with poor fishing practices. The initiation of proper fish breeding programs, with controlled destocking methods could lead to the steady cropping of an eminently saleable product. Individual retrenchees or their companies involved in such an undertaking would need to give adequate attention to security.
- f) **Workshop Services.** The Company is keen to downsize its workshops to provide only unique services which are not readily available outside, This policy would lead to the abandonment of large parts of the existing workshops. The Company would like to sublet sections of these workshops as mini-units to a variety of skilled ex-employees. These units could then offer their services not only to the mine but to other businesses in the cities.

5. FURTHER ASSISTANCE TO ENTREPRENEURS.

There are a number of external factors that impact negatively on the successful implementation of our Local Business Development Program, these include:

- a) **Lack of access to Capital.** There is a very militant banking system in Zambia. This through its extortionate lending rates prevent locals from borrowing funds. Borrowing is the secret to the industrial nations rapid growth. Unfortunately high interest rates are a product of high inflation rates. The Company will offer whenever possible to improve individuals' access to capital.
 - b) **Lack of working capital.** Where certain ex-employees sublease company premises from which to provide services, there may still be difficulties in purchasing working capital. In cases where it is deemed prudent, the Company will assist in the supply of work-in-progress stocks.
 - c) **Lack of Recognition.** Wherever an ex-employee or their company is able to provide a competitive service (in terms of price, quality and service) then the Company will have a fixed policy to support such an enterprise.
6. The Company has designated Mr Brian Robinson of First Quantum Minerals to be the responsible person to facilitate the success of the Local Business Development Plan.

SCHEDULE 3
CONTRACT AREAS, LARGE SCALE MINING LICENCE AND MINING AREAS

PART I
CONTRACT AREAS

Schedule 2 of the Sale and Purchase Agreement shall be incorporated here by reference

PART II
LARGE SCALE MINING LICENCE

Mines Form 103/96

Stocked by Mines Development Department

Im B1 4399/96

REGISTRATION No. LML

REPUBLIC OF ZAMBIA
LARGE-SCALE MINING LICENCE

(Section 25 of the Mines and Minerals Act, 1995, No. 31 of 1995)

Applicant's name

Address

Prospecting Licence No.

The mining area shall be the area described in the Schedule and annexed hereto and bordered
..... on the Plan.

The Licence is granted for a period of twenty five (25) years commencing on the . . .
day of

The programme of mining and development operations shall be as shown in the Appendix
hereto.

The following conditions included in Prospecting Licence No. PL

shall continue to apply: N/A

Issued at this day of

.....
Director

ENDORSEMENT OF REGISTRATION

This large-scale mining licence has this day of
been registered in the Register of Mining Rights.

.....
Director

RENEWALS AND AMENDMENTS

Date of Amendment	Details of Renewal or Amendment	Date of Registration and Registration No.	Signature of Director

PART III

MINING AREAS

Schedule 2 of the Sale and Purchase Agreement shall be incorporated here by reference

**SCHEDULE 4
SOCIAL SERVICES**

**PART 1
EDUCATIONAL SERVICES**

SCHEDULE 4
PART II
MEDICAL SERVICES

muf 1

TABLE 1 - HOSPITAL BED CAPACITY

PAGE 1

MALCOLM WATSON HOSPITAL 24HRS OPEN	LOW COST		HIGH COST			BEDS & COTS
	BEDS	COTS	BEDS	COTS	INCUB.	
CHILDREN'S WARD		12		6		18
FEMALE GEN. WARD	24		12			36
MALE GEN. WARD	24		8			32
MATERNITY WARD	16				6	16
SIDE WARD	5					5
EXECUTIVE WARD			3			3
TOTAL FOR BEDS & COTS	69	12	23	6	6	110

NOTE: The 2000/2001 bed capacity is for both high cost and low cost wings at Malcolm Watson Hospital

muf 2

TABLE 2 - CLINIC BED CAPACITY

PAGE 2

CLINIC NO.	TOWNSHIP	FARM/ LOT NO	BEDS	COTS	CRIBS	HRS OPEN/DAY	TOTAL
2	Kariba Street	932	3	-	3	24	6
6	Mulombwa Road	936	3	-	4	24	7
7	Shinanga street	72M	3	-	3	24	6
9	Ndola Road	920	3	-	3	24	6
1 PLANT SITE CLINIC	Refinery, Smelter and Mining depts		2	-	0	24	2
TOTAL			14	0	13	-	27

muf 3

TABLE 3 - HOSPITAL OCCUPANCY RATE

PAGE 3

MALCOLM WATSON HOSPITAL	1997	Jan 1998 - Oct. 1998	1999/2000	PROJECTED 2000/2001
Bed Capacity including Cots	63	63	63	110
average stay in Hospital	3 days	3 days	4 days	3
Bed occupancy rate	30%	24%	29%	60%

TABLE 4 - HOSPITAL OUTPATIENT ATTENDANCE

MALCOLM WATSON HOSPITAL	1997 NO. OF PATIENTS	JAN 1998 - OCT. 1998 NO. OF PATIENTS	1999/2000 NO. OF PATIENTS	2000/2001 PROJECTED NO. OF PATIENTS
Mufulira Division Employees	4,135	3,525	2,057	3,800
Mufulira Division dependants	11,113	8,798	9,426	26,000
Non-Mufulira Division users	2,972	1,701	2,788	1,200
TOTAL	18,220	14,024	14,271	31000*

* This is as a result of all employees attending one hospital

TABLE 5 - HOSPITAL ADMISSION

MALCOLM WATSON HOSPITAL	1997 NO. OF PATIENTS	JAN 1998 - OCT. 1998 NO. OF PATIENTS	1999/2000 NO. OF PATIENTS	2000/2001 PROJECTED NO. OF PATIENTS
Mufulira Division Employees	279	257	246	601
Mufulira Division dependants	924	806	1,000	2,400
Non-Mufulira Division users	493	370	421	234
TOTAL	1,696	1,433	1,667	3,235

muf 4

PAGE 4

TABLE 6 - LABOUR DISTRIBUTION BY GRADE -
MALCOLM WATSON HOSPITAL

CATEGORY	CURRENT EXPAT/LOCAL	PROJECTION 2000/2001
G14	6	6
G13	1	1
G12	7	7
G11	4	4
G1	8	21
G2	10	46
G3	4	32
G4	8	9
G5	16	16
G6	12	18
G7	4	22
TOTAL	80	182

my 5

**TABLE 7 - PLANNED LABOUR DISTRIBUTION BY
FUNCTION FOR F.Y. 2000/2001**

PAGE 5

CATEGORY	MWH Labour Figures
ADMINISTRATION	3
CONSULTANTS	
Consultant Anaesthetist	1
Consultant Gynaecologist	1
Consultant Surgeon	2
Consultant Paediatrician	1
Specialist Gynaecologist	0
Consultant Physician	0
SUB TOTAL	5
MEDICAL DOCTORS	
Substantive	4
Dentist	1
Interns	0
SUB TOTAL	5
NURSES	79
PARAMEDICAL	
Pharmacist/Technologist	5
Laboratory	5
Microscopist	3
Physiotherapist	2
Radiographer	3
Dental Surgery	2
SUB TOTAL	20
PUBLIC HEALTH	7
ANCILLARY SERVICES	
First Aid / Hospital Laundry / Clerical e.t.c.	25
Hospital Cleaning	19
Mortuary / Catering / Orderlies e.t.c.	19
SUB TOTAL	63
GRAND TOTAL	182

muf 6

TABLE 8 - HOSPITAL UTILISATION BY ELIGIBLE USERS

PAGE 6

MALCOLM WATSON HOSPITAL	JAN 1998 - OCT 1998		2000/2001 PROJECTED
	NO. OF ELIGIBLE USERS	1999/2000 NO. OF ELIGIBLE USERS	NO. OF ELIGIBLE USERS
Mufuira Division Employees	1,601	848	3,800
Mufuira Division dependants	3,427	3,422	25,000
Registered Private users	1,468	1,603	1,200
Ex-Mufuira Division users	89	898	-
TOTAL	6,585	6,771	31,000

NOTE

The projected figure for 2000/2001 above is for both High and Low Cost Wings at MWH post privatisation.

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TABLE 9 - CURRENT HOSPITAL BUILDINGS AND FACILITIES (M.W.H)

PAGE 7

WARDS:	Labour	1
	Maternity	1
	Children	1
	Female Surgical	1
	Isolation	-
	Male Medical	1
	Male Surgical	1
	Gynaecologist/Surgical/General	1
	Nursery	1
	Female Medical	1
	Executive	1
	OPD Wing	2
	Casualty	1
	Theatre	1
OTHER FACILITIES	Consulting Rooms	6
	Hospital Kitchen	1
	Nurses Hostels: Double Storey	15
	Mortuary	1
	Pharmacy Bulk Store	1
	Conference Room	1
	Incinerator	1
	Maintenance Workshop	1

muf 8

PAGE 8

CURRENT HOSPITAL BUILDINGS AND FACILITIES Contd.

PARAMEDICAL SERVICES		
Laboratory:		
	Biochemistry	1
	Microbiology	1
	Haematology and Blood Transfusion	1
	Immunology	1
	Pharmacy	2
	Radiology	1
	Physiotherapy	1
	Dental care / Surgery	1
	Public Health (Preventive Medicine)	1
	Scanning/Ultra Sound	1
TRANSPORT		
	Ambulance	0
	Other motor vehicles	2
SPECIALIST SERVICES		
	Internal Medicine	1
	General Surgery	1
	Paediatrics	1
	Obstetrics/Gynaecology	1
	Anaesthesia / Intensive Care	1
	Martenal Child Health Care (Clinics)	4

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TABLE 10
 MEDICAL COSTS BY ELEMENT
 A) MALCOLM WATSON HOSPITAL

	96/97		97/98		98/99		99/00		00/01
	US '000 BUDGET	ACTUAL	US '000 BUDGET	ACTUAL	US '000 BUDGET	ACTUAL	US '000 BUDGET	ACTUAL (Projection)	US '000 BUDGET **
Local Labour	408	448	495	433	469	323	726	557	1114
Expatriate Labour	112	183	118	67	36	68	100	107	301
Materials	325	585	380	539	281	313	232	383	685
Reallocations	41	65	103	134	74	67	91	64	66
Contractors	10	26	18	18	50	2	2	8	56
Electricity	20	25	28	38	55	54	52	65	69
Sundry expenses	13	116	19	16	11	13	7	28	22
Sundry revenue	-109	-129	-145	-157	-79	-99	-19	-80	0
Working Cost Project	9	3	0	0	42	0	0	0	45
Total by element	829	1301	1016	1088	939	741	1191	1132	2358

Note:
 ** The 2000/2001 projected budget is for both high cost and low cost wings based at Malcolm Watson Hospital with a grand total of 110 beds as opposed to the current 63.

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MANAGER - B/R

B) CLINICS

	96/97		97/98		98/99		99/00		00/01
	US '000 BUDGET	ACTUAL	US '000 BUDGET	ACTUAL	US '000 BUDGET	ACTUAL	US '000 BUDGET (Projection	ACTUAL	US '000 BUDGET **
Local Labour	451	493	547	478	518	357	798	613	66
Expatriate Labour	124	181	131	74	39	73	110	117	0
Materials	48	84	51	77	40	45	32	54	24
Reallocations	8	9	15	19	11	10	13	9	4
Contractors	1	4	3	3	7	0	0	1	1
Electricity	3	4	4	5	8	8	7	9	4
Sundry expenses	2	16	3	2	2	2	1	4	2
Sundry revenue	-18	-18	-21	-22	-54	-14	-3	-11	0
Working Cost Project	1	0	0	0	6	0	0	0	0
Total by element	620	773	733	636	575	481	958	798	101

Note :
 ** ONLY FOUR CLINICS AND PLANTSITE CLINIC WILL BE MAINTAINED WITH A TOTAL LABOUR FORCE OF 25 .

Muf 11

PUPIL ENROLMENT AT ZCCM MUFULIRA PRIMARY SCHOOL

<u>CHILDREN OF MINERS/NON-MINERS</u>	<u>PUPIL ENROLMENT 1999</u>	<u>PUPIL ENROLMENT 2000</u>
Children of Miners	400	412
Children of Non-Miners	45	31
TOTAL	445	443

NUMBER OF TEACHERS AND SUPPORT STAFF BY PAY GRADE

<u>PAY GRADE</u>	<u>NUMBER OF TEACHERS</u>	<u>NUMBER OF SUPPORT STAFF</u>
G12	2	-
G1	8	-
G2	9	-
G3	-	2
G4	-	1
G5	-	2
G7	-	5
TOTAL	19	10

VACANCIES

<u>PAY GRADE</u>	<u>NUMBER OF TEACHERS</u>	<u>NUMBER OF SUPPORT STAFF</u>
G2	2	-
G7		2

MAIN FACILITIES AT ZCCM MUFULIRA PRIMARY SCHOOL

<u>BUILDINGS AND GROUNDS</u>	<u>NUMBER</u>
Classrooms	16
Music Room	1
Library	1
Homecraft	1
Print/Computer Library	1
Costume Room	1
Store Room	1
Administration	1
Hall	1
Playing Fields	2
Car Parks	2

Wusakile I

TABLE 1 - HOSPITAL BED CAPACITY

WUSAKILE HOSPITAL	BEDS	COTS	CRIBS	INCUBATORS	HRS OPEN/ DAY	TOTAL
WARD						
Male Medical	30	0	0	0	24	30
Male Surgical I	18	0	0	0	24	18
Male Surgical II	22	0	0	0	24	22
Surgical Admission	18	1	0	0	24	19
Intensive Care Unit	5	0	0	1	24	6
Children's Medical I	10	17	0	0	24	27
Children's Medical II	31	0	0	1	24	32
Children's Surgical	6	15	0	0	24	21
Female Medical	25	0	1	0	24	26
Female Surg & Gynae	23	0	4	0	24	27
Female Orthopaedic	8	0	0	0	24	8
Labour Ward	10	0	4	1	24	15
Post Natal and Nursery	17	0	16	5	24	38
Isolation	22	1	1	0	24	24
Female OPD	2	0	0	0	24	2
TOTAL	247	34	26	8		315*

Note: * Before 1998, the total number of beds at Wusakile Hospital was 330. From 1999 to date the number has reduced to 315 as a result of doing away with 15 hot boxes.

wusakile 2

TABLE 2 - CLINIC BED CAPACITY

CLINIC NO	TOWNSHIP	FARM/ LOT NO	BEDS	COTS	CRIBS	HRS OPEN/ DAY	TOTAL
J Chamboli	Chamboli	Sub C1, Farm 842	4	-	3	24	7
P Maternity	Chamboli	Sub C1, Farm 842	3	-	2	24	5
Mindolo II	Mindolo	Sub G21, Farm 840	6	-	3	24	9
Miseshi Maternity	Mindolo Miseshi	Sub E68, Farm 840	3	-	2	24	5
Natwange	Natwange	Sub TT3, Farm 842	4	-	2	24	6
Plantsite Clinics	SOB, Central Mindolo Main Mindolo North	Farm 971 Farm 839 Farm 840 Farm 840	-	-	5 couches each	24	20

Wusakile 3

TABLE 3 - HOSPITAL OCCUPANCY RATE

WUSAKILE HOSPITAL	1997	1998	1999
Bed Capacity	330	330	315
Average stay in hospital	5 days	5 days	5 days
Bed occupancy rate	48%	50%	50%

TABLE 4 - HOSPITAL OUT-PATIENT ATTENDANCE

WUSAKILE HOSPITAL	1997 NO. OF PATIENTS	1998 NO. OF PATIENTS	1999 NO. OF PATIENTS
Nkana Division employees	13844	12656	18790
Nkana Division dependants	36371	26439	37170
Non-Nkana Division users	14832	6045	17403
TOTAL	65047	45140	73363

TABLE 5 - HOSPITAL ADMISSIONS

WUSAKILE HOSPITAL	1997 NO. OF PATIENTS	1998 NO. OF PATIENTS	1999 NO. OF PATIENTS
Nkana Division employees	2112	1574	2012
Nkana Division dependants	8559	7726	9903
Non-Nkana Division users	1301	2320	2872
TOTAL	11972	11620	14787

Wusabile 4

TABLE 6 - LABOUR DISTRIBUTION BY FUNCTION

CATEGORY	LABOUR
ADMINISTRATION	28
CONSULTANTS	
Consultant Pathologist	1
Consultant Gynaecologist	0
Consultant Surgeon	0
Consultant Paediatrician	0
Specialist Gynaecologist	0
Consultant Physician	0
SUB TOTAL	29
MEDICAL OFFICERS/DOCTORS	
Substantive	23
Overseas training	0
Interns	2
SUB TOTAL	25
NURSES	298
PARAMEDICAL	
Pharmacist/technologist	4
Laboratory	11
Microscopist	0
Physiotherapist	2
Radiographer	3
Dental surgery	1
SUB TOTAL	319
PUBLIC HEALTH	15
ANCILLARY SERVICES	
Catering	11
First Aid	4
Hospital cleaning	24
Hospital laundry	9
Medical Store keeping	1
Clerical	15
Mortuary	3
Ambulance/transport	15
SUBTOTAL	82

Wusabile 5

- 2 -

CATEGORY	LABOUR
NURSES IN-SERVICE	1
TOWNSHIP/PLANTSITE CLINICS	37
GRAND TOTAL	492

Wusakile 6

- 2 -

BUILDINGS AND FACILITIES	WUSAKILE
SPECIALIST SERVICES	
Internal Medicine	-
General Surgery	-
Paediatrics	-
Obstetrics/Gynaecology	-
Anaesthesia/Intensive Care	-
Pain Clinic/Acupuncture	-
Maternal Child Health Care	-
NURSE TRAINING SCHOOL	
Trainee Hostels: Old	
New	-
Cottages	-
Medical Library	-
Casualty	-
Mortuary	-
Pharmacy Bulk Store	-
Surgical Store	-
Conference Room	-
House Keeper/Warden House	-
Incinerator	-
Maintenance Workshop	-
Administration Block	-
Staff Tea Room	-
PARAMEDICAL SERVICES	
Laboratory	
Biochemistry	1
Microbiology/Seriology	1
Haematology and Blood Transfusion	1
Histology	1
Immunology	1

wusakile 7

- 3 -

BUILDINGS AND FACILITIES	WUSAKILE
Pharmacy	1
Radiology	1
Physiotherapy	1
Dental Care	1
Catering	1

Wusakile 8

TABLE 8 - HOSPITAL BUILDINGS AND FACILITIES

BUILDINGS AND FACILITIES	WUSAKILE
WARDS:	
Labour	1
Maternity	1
Children's	3
General	-
Executive	-
Ante-Natal	1
Isolation	1
Male Medical/Surgical	1
Gynaecology/Surgical/General	2
OPD Wing	1
Post Natal	2
Nursery	1
Female Medical	1
Laboratory	1
Consulting Rooms	6
Hospital Kitchen	1
Laundry	1
Dental Surgery	1
Nurses Hostels Rooms and Flats	-
Cottages	-
Theatre	1
Public Health (Preventive Medicine)	1
Nurse Training	-
Scanning/Ultra Sound	-
TRANSPORT	
Ambulancce	*4
Other Motor vehicles	7

Note: *3 of the 4 ambulancce are non-runners

Wusakile 9

**TABLE 9 - LABOUR DISTRIBUTION BY GRADE - WUSAKILE HOSPITAL
(JANUARY 2000)**

CATEGORY	LOCAL	EXPATRIATE	TOTAL
G14	-	1	1
G13	2	0	2
G12	12	1	13
G11	8	0	8
G1	27	-	27
G2	94	-	94
G3	123	-	123
G4	6	-	6
G5	10	-	10
G6	29	-	29
G7	28	-	28
TOTAL	339	2	341

Wusikili 10

MEDICAL COSTS BY ELEMENT- WUSIKILI HOSPITAL

DESCRIPTION	1996 / 97		1997 / 98		1998 / 99	
	US \$'000 BUDGET	US \$'000 ACTUAL	US \$'000 BUDGET	US \$'000 ACTUAL	US \$'000 BUDGET	US \$'000 ACTUAL
Local labour	1,773	1,571	1,651	1,763	1,859	1,640
Expatriate Labour	262	281	376	291	375	413
Materials	2,054	1,487	1,912	1,551	1,749	898
Reallocations	130	190	169	42	57	33
Inter div. charges	(835)	(606)	(790)	(531)	0	0
Contractors	31	43	19	29	48	52
Electricity	27	30	26	22	49	63
Sundry expenses	14	13	30	110	67	16
Sundry revenue	(262)	(247)	(284)	(159)	(653)	(395)
Working cost project	54	10	63	0	0	4
Total by element	3,248	2,773	3,170	3,119	3,551	2,723

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TABLE 4 - PUPIL ENROLMENT AT ZCCM NKANA PRIMARY SCHOOL

CHILDREN OF MINERS/NON-MINERS	PUPIL ENROLMENT 1997	PUPIL ENROLMENT 1998	PUPIL ENROLMENT 1999
Children of Miners	765	797	690
Children of Non-Miners	114	78	189
TOTAL	879	875	879

TABLE 5 - NUMBER OF TEACHERS AND SUPPORT STAFF BY PAY GRADE

PAY GRADE	NUMBER OF TEACHERS	NUMBER OF SUPPORT STAFF
G12	3	
G1	16	
G2	26	
G3	-	
G4	-	09
G5	-	03
G7	-	01
G8	-	07
TOTAL	45	20

TABLE 6 - MAIN FACILITIES AT ZCCM NKANA PRIMARY SCHOOL

BUILDINGS AND GROUNDS	NUMBER
Classrooms	36
Music room	01
Library	01
Homecraft room	02
Print and costume room	01
Administration	02 (blocks)
Hall	01
Playing fields	04
Car parks	02
Costume room	04
Computer room	01
Store rooms	11
Ablution blocks	17
Pools	02
Change rooms	02
Netball Courts	02

SCHEDULE 5

PART I

ENVIRONMENTAL PLAN

This document is the framework Environmental Plan referred to in Clause 12.1(b)(ii) of the Agreement and sets out the Company's environmental policies and broad outline plans.

The Company shall conduct environmental studies at its Mufulira and Nkana Operations and prepare its own environmental impact statement, which shall comprise a detailed Environmental Plan which shall be submitted to GRZ within 15 months of Completion. GRZ shall, within three (3) months of its receipt thereof, approve the Environmental Plan provided that such Environmental Plan is in accordance with and meets Good Mining Practices as defined in the Agreement. In the event there is a dispute as to whether the Environmental Plan meets Good Mining Practices the matter shall be referred for determination by a Sole Expert in accordance with Clause 21 of the Development Agreement. If the Sole Expert determines that (a) the Environmental Plan is in accordance with Good Mining Practices, GRZ shall be deemed to have approved the Environmental Plan and GRZ shall notify the Company accordingly; or (b) the Environmental Plan does not meet Good Mining Practices, the Company shall make such amendments as directed by the Sole Expert in order that the Environmental Plan shall conform to Good Mining Practice. If either party fails to abide by the Sole Expert's determination this will constitute a "material default" for the purposes of Clause 19 of the Agreement. The Environmental Plan shall bring the Operations (with the exception of Mufulira Smelter) into compliance with existing Environmental Laws within a period of three (3) years from Completion.

In the interim, the Company shall adopt ZCCM's current environmental impact statement for the Mufulira Division, and that for the Nkana Division in so far as it refers to the Company's Operations at that location, subject in both cases to any subsequent approved amendments or updates which are to be approved by GRZ (acting reasonably). The two environmental impact statements were originally prepared by the consultants Steffen, Robertson and Kirsten on behalf of ZCCM in September 1996 and March 1997, and shall be deemed to be incorporated into the Environmental Plan. They have been approved by the Minister under the Act for the purpose of renewal of the Large Scale Mining Licences for the Mufulira and Nkana mining licence areas.

The detailed Environmental Plan will include proposals to bring the Mufulira Smelter into compliance with Environmental Laws within a period of five (5) years of Completion in accordance with and subject to the Contingent Commitment provisions of the Development Agreement.

The Company shall assume any obligations for environmental clean-up, which result from its own operations after Completion, following closure of the mine until such time as a closure certificate is granted.

The Company undertakes to comply with its obligations regarding making payments to the Environmental Protection Fund as provided for under applicable laws in Zambia.

This framework Environmental Plan has identified the following issues:

- (a) The Mufulira smelter has no sulphur dioxide abatement facility and consequently about 98% of the total sulphur in feed to the smelter is emitted as sulphur dioxide gas at a rate of about 5,000 tonnes per month;
- (b) At times there are emissions of sulphur dioxide from the Nkana Cobalt Plant roaster due to the inability of the Nkana acid plants to accept the gas;
- (c) Effluents discharged into streams in or around both plant areas are generally compliant with S.I. No. 72 of 1993, but occasional "upsets" in the processing operations may cause elevated concentrations of suspended solids, copper and sulphate (and cobalt, at Nkana) to enter the effluent drains.

As part of the ongoing activities of the environmental management programme, the Company shall:

- (a) Examine ways to improve water management and mineral processing procedures to reduce contaminant levels in the effluent discharges;
- (b) Quantify the levels of air emissions from processing and smelting activities and propose measures to reduce sulphur dioxide emissions;
- (c) Implement measures to reduce sediment release and wind erosion from the tailings dumps;
- (d) Assess aquatic resources during periods of high flow;
- (e) Assess the effects of air emissions on health, vegetation and soils, particularly in the most affected townships;
- (f) Assess the socio-economic impact of mining activities and the consequences of mine closure in the local and regional environs.

Environmental Policies and Objectives

1. Pollution Prevention

Priority will be given to technological modernisation and improved process maintenance, monitoring and control to complement conventional pollution control systems for atmospheric emissions and effluent discharges.

This approach will, inter alia:

- (i) reduce the volume of water requiring treatment by increasing recycling of process water and minimise the use of fresh water. This will improve the efficiency of metals and solids removal in effluent treatment systems; and

(ii) minimise process upset conditions and spills to the environment.

2. Reduction of Risks

Incidences of inadvertent releases will be minimised by an improved capacity for the containment of untreated water and reduced external storage of sludges and residues. The implementation of spill prevention plans will further reduce risks.

3. Reduction of Environmental Impacts

Treated water discharges into the environment will be consolidated into one stream as far as possible. This will result in improved treatment efficiency and will reduce stress on the number of streams currently receiving untreated or partially treated water.

4. Conducting Progressive Rehabilitation

Where appropriate, progressive rehabilitation will be exercised over the operating life of facilities when areas become inactive and plant units redundant.

General housekeeping improvements within the plant site are a part of the investment programme. This includes appropriate storage for concentrates, residues, full and empty containers for chemicals, sludges and so forth.

5. Achieving Production Efficiency

A fundamental objective of the Company will be to achieve a high level of production efficiency. Losses of metals through discharges of concentrates and process solutions represent unacceptable economic costs and environmental effects. Optimising process and production efficiency will have a favourable environmental benefit.

6. Protection of Human Health

The Company commits to a modernisation programme at Mufulira and Nkana that will reduce emissions, discharges and releases into the environment and address, inter alia, the issue of the protection of human health. Major environmental capital expenditures as contemplated in the Agreement will be required to bring these operations to an acceptable standard.

7. Final Environmental Plan

The final Environmental Plan will describe the Company's commitment (subject to the provisions of the Agreement) to bring the environmental performance of its Assets into compliance, over a period of time, with the Environmental Laws. The technological modernisation programme is expected to be completed within thirty six (36) months of Completion, with the exception of the Mufulira Smelter which shall be addressed as a separate issue depending upon the Company's future operating plans.

Areas of non-compliance will be discussed and agreed to with GRZ. The time required to bring each process into compliance which will not exceed 5 years, will be detailed in the final Environmental Plan.

8. Timetable

In accordance with clause 12.1 of the Agreement and the second paragraph of Part 1 of this Schedule 5 .

SCHEDULE 5

PART II

ENVIRONMENTAL CLEAN-UP OBLIGATIONS

Programmes of progressive rehabilitation will be undertaken over the remaining life of Mufulira and Nkana Mines in preparation for their eventual closure. The costs of these programmes for the areas which will fall under the control of the Company are estimated to be \$4.0 million at Mufulira and \$5.3 million at Nkana.

The Company undertakes that after Operations come to an end, it will clean up the mine site and plant areas with the objectives of:

- (a) Protecting public health and safety;
- (b) Minimising or eliminating environmental degradation;
- (c) Allowing a productive use of the land.

The global costs of such rehabilitation are estimated at \$11 million at Mufulira and \$19 million at Nkana, of which in each case approximately 90% is required for demolition of buildings and clearance and resurfacing of the plant areas. At Nkana, a large proportion of this cost will be the responsibility of the operators of the smelter, refinery and acid plants. Studies will be undertaken in the context of the Environmental Plan to define more accurately the costs ascribable to the Company in each case.

Mine closure

Mine closure will follow exhaustion of ore reserves at the Company's Operations. The following activities are expected to be required:

- (a) The Company will undertake to decommission all shafts by sealing all openings to surface after salvage of underground equipment, dismantle and remove all surface structures for which there is no further use, and contour and re-vegetate disturbed surfaces. Open pits and caving areas will be protected from inadvertent access by suitable barriers or warning signs. Water levels and qualities will be monitored until results indicate that conditions have stabilised.
- (b) Overburden and waste rock dumps will be re-profiled by appropriate methods in cases where there is a possibility of instability, and re-vegetation will be encouraged if the dumps have no further resource potential. Tailings dams will be stabilised by vegetation of surfaces and by construction of toe bunds, surface evaporation paddocks or engineered discharge structures as appropriate.
- (c) Plant facilities and unwanted buildings will be removed. Structures will be disassembled and all scrap steel and other waste materials removed. Slabs and foundations will be broken up, contaminated soils removed or treated, and contaminated areas covered with a layer of waste rock or soil. The site will be

contoured, natural drainage systems will be reestablished, and the area will be re-vegetated as appropriate.

- (d) Monitoring of pollution control measures and water flows and quality will be conducted regularly after the cessation of operations until the final closure certificate is granted.

Environmental Safeguards – Key Aspects

The principal components of the Mining Area requiring rehabilitation, decommissioning and closure activities have been identified in the environmental impact statements. Progressive rehabilitation of disused workings and affected areas will be undertaken prior to mine closure. Specific measures that will be taken to safeguard the environment during the rehabilitation stage will include:

- (a) Undertaking an environmental monitoring programme to monitor the impact of operations and to characterise the mine site and receiving environment. The programme will cover air quality, surface and ground water quality and meteorology;
- (b) Minimising discharge of liquid effluents to surface waters;
- (c) Preparation of an erosion and sediment control plan;
- (d) Development of management plans for handling, storage and disposal of chemicals, reagents, fuels, oils, and other hazardous (reactive, inflammable, radioactive, corrosive or toxic) materials and wastes;
- (e) Preparation and implementation of a reclamation plan with the objective of progressively returning the land to conditions capable of supporting productive uses. To the extent possible, reclamation activities will be concurrent with ongoing production activities.

SCHEDULE 6

TRAINING & HUMAN RESOURCES MANAGEMENT PROGRAMME

1. Human Resources Policy

The Company believes that the success of Operations depends on the retention of a well-integrated and trained labour force. The Company will invest in the training and developing of its employees with a view to ensuring the availability of all necessary skills for the successful development of its business in a changing business and technological environment.

2. Formal Agreements

The Company undertakes to recognise for purposes of collective bargaining and negotiation the trade union that currently represents the Transferring Employees, at present being the Mineworkers Union of Zambia, provided that Transferring Employees shall be free to form or belong to any other trade union of their choice.

The Company will abide by the conditions of the collective agreement and redundancy agreement currently in force, as agreed with the Mineworkers Union of Zambia. It will continue to apply the terms and conditions of employment as specified in the Standard Code Book 1996 until such time as any revised terms are agreed with the employees and their trade union.

3. Manpower Plans

The Company will continually review the size and composition of its labour force to ensure that it remains consistent with projected production levels and methods. The management team will have a primary responsibility for assessing the future manpower needs of the business and defining organisational structures and interfaces as well as detailing accountabilities of each major functional area.

At Completion, all existing employees of Mufulira Division, and the majority of the employees at those Operations at Nkana Division which are to be acquired by the Company, who have been selected and have agreed to transfer, will become employees of the Company. The current relevant numbers are 4,800 at Mufulira and 5,951 at Nkana.

Over the subsequent five years, the Company will progressively reduce employee numbers in line with production requirements. Initial projections suggest that the number of employees over the period of the plan may be as follows:

Division	Current	Post Completion	End 2000	End 2001	End 2002	End 2003	End 2004
Mufulira	4800	4208	3808	3628	3448	3268	3088
Nkana	5951	4479	3879	3699	3519	3339	3159
Total	10751	8687	7687	7327	6967	6607	6247

4. Expatriates / Zambian Citizens and Equal Opportunities

The Company may recruit and retain in Zambia such expatriate employees as the Company judges necessary for the efficient and successful operation of its business. The Company envisages that there will be a net addition of 20 expatriates at senior management level and approximately 40 others to support operations at lower levels. These numbers will be subject to continual review, and it is the Company's intention that many of the expatriates will not be retained for an extended period but will use their expertise to raise the skills of the Zambian workforce to the requisite level such that the requirements for expatriate labour should progressively reduce.

Notwithstanding the above, the Company's human resources department shall, in its recruitment, selection, promotion and assignment of personnel, not discriminate against comparably qualified and experienced Zambian citizens and shall focus on securing and maximising training and development opportunities for Zambian citizens. Importance will be accorded to attracting qualified Zambian citizens working overseas to return to employment within the Zambian mining and metallurgical industry.

Formal management development programmes shall be instituted to meet the development needs of the business. Promising young professionals shall be specifically targeted to ensure that they are accorded equal opportunities for recruitment, promotion, training and development

5. Staff Development

The Company expects to spend approximately US\$0.8 million on training its workforce each year, although this figure will be subject to review in the light of total workforce numbers and specific training requirements. Funds will be allocated to both local and overseas training.

Consideration shall be given to the long-term manpower requirements of the business and the need to ensure that senior and key positions are appropriately manned. Career Development plans will therefore be established for the guidance of individual employee development and will ensure that employees receive relevant training and experience consistent with operational skill requirements. The Company shall adopt a policy of filling positions and promoting employees from within the Company wherever appropriate.

6. Overseas Training

The Company shall consider and target opportunities for overseas training to provide broad based experience to managerial and technical staff where appropriate. These may include:

- (a) Formal secondment to associate companies of the joint venture partners overseas;
- (b) Business management courses;
- (c) Technical courses based upon requirements of the Company's operations;
- (d) Scholarships for undergraduate or graduate studies in exceptional cases.

- (e) The Company will continue to sponsor Zambian employees currently undertaking appropriate specialised courses locally and abroad.

7. Remuneration Policy

The Company, consistent with its cash flows, shall review the remuneration of employees with a view to improving base salaries to attract and retain competent and experienced staff.. The Company shall progressively reduce the dependence of employees upon the Company by grossing-up non-cash benefits into the wage structure.

8. Employee Shareholding

The Company shall establish a profit sharing scheme with its managers and employees.

9. Retrenchment Mitigation

Given the need for retrenched employees to be re-equipped to direct their talents and energies outside of the Company, an additional expense of \$12.5 million is budgeted over the first five years for retraining those employees whose jobs have been made redundant. The Company shall also investigate assisting retrenched employees to find formal employment elsewhere.

10. Safety training and Awareness

The Company attaches great importance to the safety of employees at the work place and believes that the success of safety programmes will only be guaranteed by the involvement and participation of employees. Safety training will be given where appropriate to create greater safety awareness, develop expertise and encourage ownership of safety concerns by the entire workforce.

11. Emergency Response Teams

Prompt and proper medical attention for injured persons and prevention of injury to employees and members of the public are primary considerations. Emergency and medical services at workplaces will be evaluated to ensure that they are appropriate to needs. First Aid training will continue to be offered to employees to enable them to deal with emergency situations.

12. Training and Human Resources Management Plan

The Company will produce, within 12 months of Completion, a detailed training and human resources management plan (which will be submitted to GRZ for approval under clause 6.2 of the Agreement), encapsulating and expanding upon all of the above issues.

SCHEDULE 7
INSURANCE POLICIES

Schedule 9 of the Sale and Purchase Agreement shall be incorporated here by reference

SCHEDULE 8
TAX SCHEDULE

The principal applicable taxes and the rates applicable to the Company in the conduct of Normal Operations as at the date hereof are as follows:

(1) ***Income Tax:***

- (i) The Company shall pay to GRZ income tax in accordance with the provisions of this Agreement on its net taxable income arising from all mining, concentration, smelting and refining and other operations.
- (ii) The income tax rate applying as at the date of this Agreement shall be twenty five per cent. (25%).
- (iii) The carry forward of losses shall be permitted for a period of ten (10) years from the date at which the loss was incurred. Losses should be used on a first in, first out basis with earlier losses used before later losses.
- (iv) The Company shall be entitled to maintain books of account and to render income tax returns and returns in respect of royalties and custom and excise duties stated in United States dollars in accordance with generally accepted accounting principles.
- (v) For the purposes of Part VI of the Fifth Schedule to the Income Tax Act, the Facilities shall be deemed a "1975 new mine" allowing the deduction of one hundred per cent. (100%) of capital expenditure (as defined in the Act) in the year in which the capital expenditure was incurred provided the Facilities continue to be owned by a single legal entity. In the calculation of the Company's liability to income tax, the Company shall be entitled to deduct "price participation payments" payable pursuant to Clause 4.2(c) of the Sale and Purchase Agreement.
- (vi) Any Price Participation Payments (as defined in the Sale and Purchase Agreement) shall be regarded as an expense of the Company and deductible in calculating the income tax payable by the Company.

(2) ***Royalties:***

- (i) The Company shall pay to GRZ Mineral Royalty tax (the "**Royalty**") on the gross revenue of minerals produced in the Mining Area at a rate of 0.6% provided that the Royalty otherwise payable hereunder shall be exempt from payment in the first five (5) years following Completion.
- (ii) GRZ confirms that for the Stability Period, royalty payable under the Act shall be deductible against liability for income tax.

- (iii) The circumstances where the discretion available to GRZ under Section 67 of the Act to defer the payment of royalty would be exercised are:
 - (aa) under the terms of Section 67(3) where the cash operating margin of the Company's mining operations is less than nil; and
 - (bb) under the terms of Section 67(2) on samples of minerals acquired for the purposes of assay, analysis or other examination.
 - (iv) For the purposes of the foregoing "cash operating margin" means the amount derived by deducting operating costs (not including capital expenditure during or required for the development of the Facilities) from revenue.
- (3) ***Other Taxes, Charges and Fees:***
- (i) ***Customs and Excise Duties***

Subject to the provisions of Clause 14 and Section 97 of the Act, the Company shall be liable to pay customs and excise duties on all items imported for the purposes of the Approved Programme of Mining and Metal Treatment Operations at such rates and on the terms and conditions as are set out in the Customs and Excise Act save that:

 - (aa) for the twelve (12) month period commencing from the Completion Date, the Company shall pay such customs and excise duties at rate of zero per cent. (0%) on all consumable items imported during that period for the purposes of the Approved Programme of Mining and Metal Treatment Operations and which imports, but for the conditions set forth in this section, would have resulted in customs and excise duties being payable up to a value of sixteen million dollars (US\$16,000,000);
 - (bb) for the next following twelve (12) months, the Company shall pay such customs and excise duties at a rate of zero per cent. (0%) on all consumable items imported during that period for the purposes of the Approved Programme of Mining and Metal Treatment Operations and which imports, but for the conditions set forth in this section, would have resulted in customs and excise duties being payable up to a value of twelve million dollars (US\$12,000,000);
 - (cc) for the next following twelve (12) months, the Company shall pay such customs and excise duties at a rate of zero per cent. (0%) on all consumable items imported during that period for the purposes of the Approved Programme of Mining and Metal Treatment Operations and which imports, but for the conditions set forth in this section, would have resulted in customs and excise duties being payable up to a value of ten million dollars (US\$10,000,000); and

- (dd) for the next following twelve (12) months, the Company shall pay such customs and excise duties at a rate of zero per cent. (0%) on all consumable items imported during that period for the purposes of the Approved Programme of Mining and Metal Treatment Operations and which imports, but for the conditions set forth in this section, would have resulted in customs and excise duties being payable up to a value of ten million dollars (US\$10,000,000); and
- (ee) the Company will also enjoy the benefit of Section 97 of the Act namely that the Company shall be entitled to exemption from customs and excise duties, and from any other duty or impost levied under the Customs and Excise Act, in respect of all machinery and equipment (including specialised motor vehicles) or other items of a capital nature required for any of the activities carried on or to be carried on in pursuance of the right or otherwise for the purposes of its investment in mining metal treatment operations or prospecting. GRZ and the Company agree that such machinery, equipment and other items of a capital nature imported by contractors of the Company engaged by the Company for the purposes of implementing the Approved Programme of Operations, Normal Operations, or any other proposed capital expenditure as set out in the Scheduled Programmes shall similarly enjoy the benefit of the Company's exemption from customs and excise duties under Section 97 of the Act. GRZ and the Company further agree to establish an administrative mechanism to achieve this post Completion of which an essential part shall be the implementation of an audit trail for purposes of proving to GRZ that the imported equipment referred to above have been used for purposes falling within Section 97 of the Act.

(ii) ***Excise Duty on Power:***

GRZ confirms that this is ten per cent. (10%) of the amount paid to ZESCO by the Copperbelt Energy Corporation PLC for the purchase of electricity. For the avoidance of doubt and as provided in Clause 16.6, the Company will not be required to pay the Excise Duty on Power applicable to the Company's purchases of electricity in relation to the operation of the Facilities for the Stability Period.

(iii) ***Other Taxes, Charges and Fees:***

For the avoidance of doubt, the Company shall be liable to pay (and these provisions will be without prejudice to such liability) all other taxes, charges and fees payable to GRZ or to any governmental authority in Zambia as of the date of this Agreement in relation to its mining, concentration, smelting or refining and other operations carried out in Zambia, including but not limited to:

- (aa) any annual fees, company fees, land rents falling due post Completion or other payments due to GRZ in accordance with applicable legislation and the provisions of this Agreement; and
- (bb) taxes, charges and fees for services rendered by governmental authorities on request or to public or commercial enterprises generally;

save that such liability will not include any amounts owed by ZCCM and still outstanding as of the date of this Agreement.

(4) **Value Added Tax ("VAT"):**

- (i) In accordance with the provisions of the Value Added Tax Act, Chapter 331 of the laws of Zambia 1995, Plant Products are chargeable to VAT at a rate of zero per cent. (0%) if exported and are otherwise taxable at a standard rate.
- (ii) GRZ confirms that input VAT shall be credited to the Company within thirty (30) days from the date of submission of the Company's monthly VAT return in respect of each accounting period.
- (iii) For the purposes of this Clause, "input VAT" shall mean VAT claimable in respect of allowable business purchases of goods and services supplied by a registered supplier (which, for the avoidance of doubt, shall include the treatment of Mine Products) during a prescribed accounting period for the purposes of the Facilities and/or the activities contemplated in the Scheduled Programmes and/or the conduct of Normal Operations.
- (iv) In accordance with the VAT Letter issued by the Commissioner General of the Zambia Revenue Authority, the transfer of the business of ZCCM's Mufulira Division and the Nkana mines, concentrate and cobalt plant to the Company shall not be treated as a taxable supply of goods and services for the purposes of the Value Added Tax Act Chapter 331 of the laws of Zambia 1995.

(5) **Relief from Withholding Tax**

The rate of withholding tax applicable to the Company shall be ten per cent. (10%) save that for the Stability Period the Company shall pay withholding tax on dividends, royalties, patents, principal or interest payments to lenders or Shareholders or their Affiliates and marketing and management fees to Shareholders or their Affiliates (in any such case who are not resident in Zambia for withholding tax purposes) at a rate of zero per cent. (0%).

GRZ confirms its intention to enter into Double Taxation Agreements with its major trading partners which should, inter alia, reduce the level of withholding tax suffered on distributions and payments of interest by the Company.

(6) Deductions for Mining Expenditure on a non-producing and non-contiguous mine

For the purpose of ascertaining the Company's allowable deductions under Section five (one) (5(1)) of Part VI, Paragraph 23 of the Fifth Schedule to the Income Tax Act, the Facilities shall at all times be regarded as a single large scale mining and metal treatment operation, provided the Facilities continue to be owned by a single legal entity.

SCHEDULE 9
TRANSFERRING SOCIAL ASSETS

Schedule 15 of the Sale and Purchase Agreement shall be incorporated here by reference