

**AGREEMENT FOR THE FORMATION
OF A JOINT VENTURE COMPANY**

BETWEEN

LA GENERALE DES CARRIERES ET DES MINES DU DRC, a State company duly incorporated in the DRC, with its registered office at 419. Kamanyola Avenue, P O Box 450, Lubumbashi, DRC ("Gecamines");

AND

TREMALT LIMITED

1. PARTIES

1.1. GECAMINES

1.2. TREMALT LIMITED

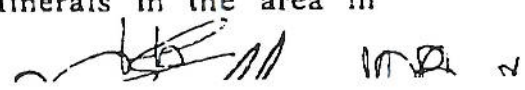
2. DEFINITIONS AND GENERAL PROVISIONS

2.1 The head notes to the clauses of this Agreement are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.

2.2 Unless inconsistent with the context, the expressions set forth below, whether used as a verb or a noun, shall bear the following meanings:

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- 2.2.1 "the Act" means Act N° 81 – 013 of 2 April 1981 on general legislation pertaining to mines and hydrocarbons in the DRC;
- 2.2.2 "the agreement / this Agreement/the Convention" means the Mining Convention and Joint Venture Agreement set out in this document and includes all appendices or other annexure hereto;
- 2.2.3 "Auditor" means the auditors of KMC for the time being;
- 2.2.4 "the Board" means the board of director KMC as constituted from time to time;
- 2.2.5 "Business Day" means any day other than a Saturday, Sunday or an official public holiday in the DRC;
- 2.2.6 "KMC" means the *Joint Venture Company* new company to be incorporated in the DRC, as contemplated in clause 5 below.
- 2.2.7 "Commercialisation" means the marketing and sale of extracted minerals, including cobalt, copper and other metals, in any format, including crushed, concentrated, refined, metallurgically processed or any on the world market;
- 2.2.8 "Concession Area" means the demarcated area outlined in red on the plan attached hereto as Annexure "A" initialled by the parties for identification purposes, which area includes all the Concessions, Quarries and Mines excluding Likasi;
- 2.2.9 "the Concessions" means Concessions identified on Annexure "K" to this Agreement , and any other Mining and/or Quarry Rights, which entail all rights in terms of a mining permit or mining title granted under the provisions of the Act, to mine Minerals in the area in



- respect whereof the Concession is granted;
- 2.2.10 "Dollars or \$" Means United States Dollars, as the official currency of the United States of America on the Signature Date;
- 2.2.11 "DRC/the DRC" Means the sovereign country known as the Democratic Republic of the Congo.
- 2.2.12 "Exploration" the activity by which a party intends to search for mineral deposits by way of exploration works which disturb the surface of the earth;
- 2.2.13 "Gecamines" Means the party defined in clause 1.1 above;
- 2.2.14 "TREMALT LIMITED" Means the party defined in clause 1.2 above;
- 2.2.15 "Management Team" Means those members of KMC personnel from time to time contracted or employed or appointed by KMC who are vested with the day to day management of KMC;
- 2.2.16 "Metals" Means metallurgically processed minerals;
- 2.2.17 "Minerals/Mineral Deposits/Ore Deposits" means any mineral substance which is the subject of any of the Concessions or Quarry Rights transferred to KMC pursuant to this Agreement, occurring naturally in or on or underneath the earth, in or under water, which mineral substance may have value and which has been formed by or subjected to some geological process, excluding water, in any format or derivative;
- 2.2.18 "the Mineral Rights / the Mining Titles" shall include but not be limited to all reconnaissance, prospecting, exploration, retention and mining licences, permissions and Concessions to Minerals such as Cooper, - Cobalt Deposits and Quarry Substances, issued by the DRC authorities (or its predecessors) under previous, prevailing or

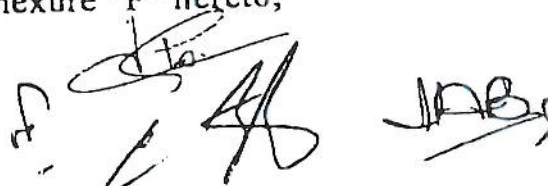
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future legislation including
the Act;

- 2.2.19 "the Mining Zone / the Mines" means the entire geographical area wherein KMC may conduct its exploration, research and mining operations in the Concession Area, being an area duly surveyed, with its perimeter boundaries demarcated and beacons, as more fully illustrated in Annexure "A" hereto, comprising no less than the individual Mineral Deposits and quarries set in Annexure "L" to this Agreement;
- 2.2.20 "Mining/Mining Operations" means the activity by which, from a Mineral Deposit sufficiently explored, by means of either opencast or surface or underground works, to an unlimited depth, a party extracts Minerals, refines same, and transforms it into any derivative or format thereof with value, where after the Minerals are commercialised;
- 2.2.21 "Non-Project Production" means any production arising from mining or exploitation or processing of Minerals other than in terms of the Mining Operations contemplated herein;
- 2.2.22 "the Project" means the joint venture Project hereby undertaken by the parties comprising of the conception, exploration, development exploitation and mining operations undertaken in the Concession Area, including the marketing and commercialisation of the extracted Metals;
- 2.2.23 "the Signature Date" the date on which the last party to sign this Agreement, signs it;
- 2.2.24 "Tailings" means the discards from the processing of minerals located within the Concession Area and identified in Annexure "F" hereto;

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2.2.25 "year" means a calendar year;

2.3. Unless inconsistent with the context, an expression which denotes :

2.3.1 Any gender includes the other gender;

2.3.2 A natural person includes an artificial person and vice versa;

2.3.3. The singular includes the plural and vice versa

2.4. Any annexure and schedules to this Agreement form an integral part hereof and words and expression defined in this Agreement shall, unless the context otherwise requires, the meaning in such annexures and schedules, and definitions in this clause 2 must inter alia be interpreted in accordance with any substantive provisions contained in this "Interpretation" clause.

2.5 Any term or word utilized in this Agreement shall, unless expressly or contextually stated otherwise, bear the meaning ascribed thereto in the Act.

3. INTRODUCTION

3.1 Gecamines, a State company with an industrial and commercial character and vested with legal personality, the entire share capital whereof is 100 % (one hundred per centum) owned by the DRC, is the registered holder of respectively all the Mineral Rights, Mining Titles, Concessions and Quarry Rights in the Mining Zone, and owner of the Processing Equipment defined above.

3.2 TREMALT LIMITED is a private company registered in Switzerland with its headquarters located 6 Boulevard George Favon in Geneva.

3.3 TREMALT LIMITED wishes to conclude a Joint Venture agreement with Gecamines for the incorporation of KMC, whereby the Project hereby constituted will enable KMC to mine and process the Minerals found in the Mining Zone, on the terms and conditions herein contained, to the mutual benefit of the parties hereto.

3.4 It is further recorded that :

3.4.1 The proposed exploitation of the Mineral Rights within the Mining Zone will fall within the framework of DRC's policy to promote the

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value of the country's mineral resources, train domestic manpower, create jobs, transfer technology and elevate the population's standard of living;

- 3.4.2 The execution of the proposed mining Project will require a large investment and substantial foreign financing will be necessary to complement KMC's share capital;
- 3.4.3 Considering the risks involved in such a mining project, the procurement of foreign loans will be impossible unless, during the investment period, the Project generates enough net profits from operations to ensure the repayment of these loans;
- 3.4.4 The complete success of the Project will require stable and durable legal, fiscal and economic conditions under which KMC can conduct its operations;
- 3.4.5 The Project will result in greater economic activity and employment in the concession Area and its surrounding regions, as well as large foreign export revenue for DRC;
- 3.5. TREMALT LIMITED and Gecamines wish to exploit Minerals in the Mining Zone by way of a joint shareholding in KMC, based upon the joint venture relationship provided for herein.

4. JOINT VENTURE

This Agreement is conceived as and shall constitute a joint venture between TREMALT LIMITED and Gecamines, with effect from the Signature Date, subject however in all respects to the terms and conditions and limitations hereof, with the purpose of profitable exploitation and processing of Minerals extracted from the Mining Zone, and each shall accordingly act as a joint venturer towards the other with the same good faith upon the terms of this Agreement and subject to the conditions hereof, provided however that nothing herein contained shall be deemed to constitute a partnership between the parties, or create any several liability, and the Parties hereto accordingly reciprocally indemnify each other against any claims which may be made against the one in relation to the obligations or liabilities of the other, including obligations which were incurred prior to - or after the Signature Date.

5. INCORPORATION OF KMC

5.1 TREMALT LIMITED and Gecamines shall endeavour to procure the incorporation as soon as possible of a company being a "société privée à responsabilité limitée" to be known as KABAMBANKOLA MINING COMPANY(KMC). TREMALT LIMITED shall be entitled to settle the nature, constitution, initial capitalization, share structure, notarial status documents, and all other matters affecting the registration, formation and incorporation of KMC.

5.2.1 Upon incorporation of KMC, or as soon as reasonably possible thereafter, KMC shall procure the issue and allotment to respectively Gecamines of 20 % (twenty percent) of the issued share capital of KMC, and to TREMALT LIMITED of 80 % (eighty percent) of KMC's issued share capital. Gecamines shall obtain its shareholding free of any consideration additional to what is provided for in this Agreement. The Auditors shall be obliged to ensure that the formal share registers of KMC contain all relevant information in order to accurately reflect the shareholdings.

5.2.2 TREMALT LIMITED shall, during the subsistence of this Agreement, notwithstanding anything to the contrary contained in the founding documents or other constitutional documents of KMC, be at liberty to sell, and to offer for sale, its shareholding (or any portion thereof) in KMC to any third party of its election.

5.2.3 At any stage after incorporation of KMC, Gecamines and TREMALT LIMITED, as KMC's sole shareholders, may at their discretion further define their relationship by of a shareholders agreement, which must be signed by both parties.

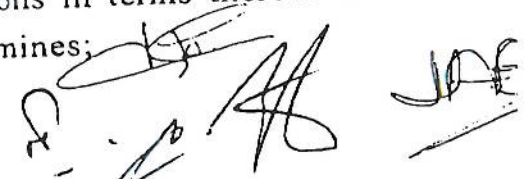
6 WARRANTIES

6.1 Gecamines warrants and undertakes in favour of KMC, that as the Signature Date hereof, and furthermore at the date of cession of the Mineral Right and Concessions to KMC, as contemplated herein :


6.1.1 In respect of all the Mineral Rights and each and all of the Concessions :

6.1.1.1 All laws applicable thereto and to operations in terms thereof have been complied with in all respects by Gecamines;

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- 6.1.1.2 Gecamines is not in breach of any of its obligations;
- 6.1.1.3 No threats of cancellation, termination, withdrawal, invalidity, unenforceability, or non-compliance have been received or rumoured in respect thereof;
- 6.1.1.4 All minimum work lawfully required to be performed by Gecamines has been performed;
- 6.1.1.5 Gecamines has incurred all minimum legally required expenditure;
- 6.1.1.6 Gecamines has all rights, titles, permits and other contractual and statutory right and authorizations in respect of the Mining Zone in order to carry on prospecting, development and mining operations in respect of Minerals in the Mining Zone;
- 6.1.1.7 The Mineral Rights and Concessions are valid and enforceable on the Signature Date and shall furthermore be valid for a period terminating not earlier than 20 (twenty) years after Signature Date, which validity is extendable thereafter for either the life of the Mines or a further period of 10 (ten) years, whichever of the 2 (two) latter periods are the shorter.
- 6.1.1.8 The Minerals Rights and Concessions confer on the holder thereof the sole and exclusive right to mine, or to acquire the right or title to mine, for the specified Minerals in the Concession Area;
- 6.1.2 Gecamines do not hold and during the subsistence of this Agreement, in respect of the Mining Zone and Concession Area, will hold no other rights to prospect or mine, or rights ancillary to prospecting or mining, or options or rights of first refusal in respect thereof;
- 6.1.3 Gecamines is not aware of any impediments to the full implementation and continuation of this Agreement;
- 6.1.4 Gecamines is the sole titleholder and owner of the Tailings, which are hereby transferred to KMC in unencumbered form.
- 6.1.5 Gecamines is the sole holder of respectively the Mineral Rights and Ore Deposits in the Concession Area and of the Mines in the Mining Zone;

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- 6.1.6 Should the Mineral Rights or the Concessions expire while this Agreement is still in force, Gecamines shall timeously provide for the renewal or for the grant of one or more new Concessions with identical terms and conditions in accordance with Article 24 of the Act, for the duration of this Agreement and any renewal thereof. Gecamines warrants that the Project is sufficient, as a matter of law, for purpose of renewal and/or granting anew such Mineral Rights. Gecamines shall furthermore be obliged to cede additional exploitable Concessions to KMC in the eventuality of the herein defined Concessions being depleted prior to expiry of this Agreement.
- 6.1.7. The Mineral Right and Concessions are not encumbered by any duties, obligations or constraints towards third parties and Gecamines can transfer the Mineral Right and Concessions unrestrained;
- 6.1.8 Gecamines is the exclusive titleholder, owner and beneficiary in and to the Processing Equipment, which it warrants to be free of any obligations towards third parties, and is entitled to grant valid Option to lease all facilities of the Processing Equipment to KMC for the duration of this Agreement. Accordingly, as recorded in clause 4 above, Gecamines hereby identifies KMC against any liabilities or claims, of whatsoever nature, made by third parties at any stage prior to or the Signature Date, in respect of debts or obligations or any liabilities incurred as a result of the direct or indirect activities or failures of Gecamines.
- 6.1.9 Gecamines possesses all rights to use the surface assets in the Concession Area, naturally occurring or man-made, and all infrastructural improvements necessary to operate in the Mining Zone, and Gecamines will for the duration of this Agreement grant KMC such unrestricted access and usage thereto (inclusive of rail, water, electricity, roads, airports and airspace);
- 6.1.10 No non-contracting party has any right to any part of the Processing Equipment or to the Minerals, Metals or concentrates derived there from.

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6.1.11 Gecamines warrants and declares that it has completed all feasibility studies, in respect of the Concessions, the Mineral Deposits and the Mines, which lawfully require completion, prior to the Signature Date.

6.1.12 Gecamines hereby waives all rights to dividends in the favour of the DRC's Government and shall have no entitlement to dividends declared by KMC at any stage, either during the currency or after expiry of this Agreement.

Dividends are regulated by a profit sharing agreement executed by TREMALT LIMITED with DRC Government.

7.1 TREMALT LIMITED and Gecamines, stipulate, declare and warrant each to the other, that :

7.1.1 It is validly constituted company or other entity legal personality according to the laws in effect at the place of its incorporation, it is duly organized and exists validly according to those laws and it has the power to exercise its activities in the jurisdictions wherein it operates;

7.1.2 It has full power and competence to exercise its activities, to enter into this Agreement, as well as to execute any and all obligations imposed upon it in terms of this Agreement;

7.1.3 It has obtained all resolutions or other compulsory authorizations needed in order to sign, remit and execute this Agreement and any and all agreements or obligatory acts envisaged in this Agreement; furthermore such signature, remittance and execution;

7.1.3.1 Do not contradict or violate any of the provisions of its statutes, any decision by shareholders or administrators, any agreement, stipulation or undertaking whatsoever to which it is a party of by which it is bound, and do not create any charge on its assets by virtue of those same Acts; and

7.1.3.2 Do not violate any applicable law in the jurisdiction where it is incorporated;

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- 7.2 This Agreement is validly signed and remitted by itself and is in accordance with its terms, valid, compulsory and executable on each's part.

8. PRINCIPAL OBLIGATIONS OF GECAMINES

- 8.1 On the Signature Date, to the extent to which it shall not already have done so, Gecamines shall deliver to KMC, all feasibility studies, geological, geophysical, geobotanical, geochemical, photo geological, aero magnetic, assay and analysis information and any other relevant data (including drilling samples and interpretation of such data) in its possession or control relating to all prospecting and mining activities carried on by Gecamines in the Concession Area prior to the Signature Date.
- 8.2 Within 7 (seven) days after either the incorporation of KMC or the Signature Date, whichever is the later, Gecamines shall cede and assign to KMC the Tailings, Mineral Rights and the Concessions and any and all other relevant rights held by Gecamines in respect of the Mining Zone.
- 8.3 KMC shall be entitled at any time to amend or extend or procure replacements or substitutes for all or any of the Mineral Rights or the Concessions, or to exercise all or any of the rights therein contemplated, including but not limited to rights to acquire Mining Rights or Mining Titles. Upon the lawful termination or final expiry of this Agreement, KMC shall be obliged to cede and transfer to Gecamines, or its nominee, all Mineral Rights and Concessions obtained by it in terms of this Agreement, to vacate and cancel the leases in respect of Processing Equipment (which shall include all improvements or rehabilitation thereof made during the currency of this Agreement), and to surrender any and all rights to any unused portions of the Tailings.
- 8.4 The transfer of the Mineral Rights and Concessions will be undertaken in such a way that KMC will have at its disposal all plant and equipment, waste dumps, slag dumps, Tailings dams and all other infrastructure of the Mining Zone, provided that KMC shall not assume any liabilities associated with these assets arising prior to the Signature Date.

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9. THE SHITURU PLANT

- 9.1 Shituru Plant remains the property of Gecamines.
- 9.2 Gecamines shall provide unhindered access to KMC in order to process its concentrate according to a toll treatment agreement to be agreed without delay.
- 9.3 To ensure efficient and effective use of the plant the two parties shall set up a joint technical collaboration team in Shituru Plant.

10. RESTRAINT AND EXCLUSIVITY

- 10.1 Gecamines shall not, during the period of this Agreement, grant any rights to any third party in respect of the Concession Area or the Mining Zone or in any other way relevant to this Project, without first having offered such rights to KMC.
- 10.2 Nothing in this Agreement shall disentitle TREMALT LIMITED from carrying out any prospecting or mining operations independently of Gecamines or KMC anywhere in DRC, subject to lawfully required permissions from the DRC, and TREMALT LIMITED shall be under no obligation whatsoever, save as expressly provided for in this Agreement, to offer any such prospecting or mining propositions or any rights thereto to Gecamines or to KMC.
- 10.3 KMC shall be entitled at any time after its formal incorporation to enter into a contract with TREMALT LIMITED or Gecamines in terms whereof one or more or all aspects and functions of the Mining Operations of the Project may be fulfilled by TREMALT LIMITED or Gecamines. This contract may be in the form of either a mineral lease or any other similar agreement.

11. FINANCING

- 11.1 From the Signature Date:
- 11.1.1 TREMALT LIMITED will be subject to a 6 (six) month period in order to establish, with the obligatory assistance of the other parties hereto as and when required, in the name of and for the account of KMC, the necessary financing required to conduct the mining operations of the Project. Substantive mining operations in respect of at least 3 (three) of the Mineral Deposits listed in Annexure "L" hereto, will have to commence within a further 3 (three) months after the expiry of the aforementioned 6 (six) month period;
- 11.1.2 All financing for the Project shall be procured by means of advances effected by TREMALT LIMITED and/or by loans.
- 11.1.3 Gecamines shall have no responsibilities in respect of any of the operational financing requirements of the Project. It shall, however, always be accurately informed of the financial position of KMC and the Mining Operations, by virtue of its seat on the board of directors of KMC. Gecamines may further be required,

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in its capacity as a Shareholder of KMC, to co-operate in the procurement or establishment of bank or other guarantees necessary for financing in accordance with clause 13.2 below.

- 11.2 Gecamines hereby formally consents to TREMALT LIMITED and KMC obtaining part or all of the financing for the Project from international agencies and/or banks and/or other suitable entities or persons, subject in all respects to the provisions of clause 13.1.2 above. TREMALT LIMITED is hereby authorised to act at its own reasonable discretion in this regard. Gecamines shall co-operate fully with TREMALT LIMITED and/or KMC to facilitate the procurement of such financing, particularly by signing any documents and by giving all assurances which may reasonably be required to obtain such financing, though without any financial and legal obligations on its part.

12. AGREEMENT WITH DRC GOVERNMENT

GECAMINES, TREMALT LIMITED and KMC will settle immediately with the DRC Government a specific convention covering the purpose of the present agreement and governing key issues of the intended operations such as:

- Social obligations
- Calculation of net taxable income
- Customs duties
- Fiscal and other duties exonerations
- Samples and exports
- Work permits and visas
- Authority for security and means of communications
- Central bank
- Arbitrations
- Performance
- More favourable provisions
- Free circulation
- Power and water, etc..

13. ACCOUNTING

13.1 Accounting Records

13.1.1 The accounting records and financial statements of KMC shall be drawn up in accordance with the provisions of the DRC accounting legislation and practice. Such records shall also take into account and respect the accounting rules and procedures usually adhered to by the international mining industry;

13.1.2 KMC's accounting records and financial statements shall be drawn up in United State Dollars and may be converted to Congolese Francs simultaneously with finalization of the required audit procedures annually, by the utilization of the official rate of exchange as effective on the final business day of the exercise concerned.

13.2 Annual Audit

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- 13.2.1 The Auditors shall perform an annual audit of KMC's accounts in the manner and in accordance with the international regulations pertaining to mining companies;
- 13.2.2 Each year, within 3 (three) months of receiving the Auditors' report, KMC shall send the report, together with its comments and observations, to its shareholders.

14. SALES

In accordance with the provisions of clause 12 above, KMC's products shall be sold in the United States Dollar currency or other foreign currencies and both of these parties shall each have the right to dispose freely of the returns from these sales.

15. ACCOUNTS ABROAD

15.1 KMC may open, hold and operate one or more foreign accounts abroad in foreign currency with one or more reputable international banks it has selected and which are approved of by the Central Bank of the DRC. The transactions made on these accounts will include, without limitation:

- 15.1.1 the payments made by the shareholders of KMC
 - 15.1.2 the calls made by KMC on the loans granted by its financial backers;
 - 15.1.3 the sale proceeds, pursuant to clauses 12 and 14 above;
 - 15.1.4 the proceeds from other transfers and possible commercial or financial dealings.
- 15.2 From these accounts will be deducted the amounts necessary for:
- 15.2.1 the payment of supplies and contracts for the construction and investment of the Project;
 - 15.2.2 the payment of salaries and remunerations owed in foreign currency;
 - 15.2.3 the payment for the purchase of goods, supplies and services necessary for the normal operation of the exploitations;
 - 15.2.4 covering the operating costs in the DRC;
 - 15.2.5 the redemption of debt;
 - 15.2.6 the payment of management and other fees;
 - 15.2.7 the payment of dividends;
 - 15.2.8 the establishment of any reserve necessary to cover future costs and risks;
 - 15.2.9 the payment of the liquidation bonus in favour of the shareholders;

- 15.2.10 the repayment of loans and the payment of dividends, consultant fees and other payments in favour of KMC shareholders.

16. PERSONNEL AND OTHER OPERATIONAL ISSUES

16.1 Personnel

- 16.1.1 KMC shall forthwith after exercising the Options be contractually responsible for payment of the salaries of all personnel members employed by Gecamines on date of signature of the Agreement ("the employees"), provided however that such employees are required and will be directly involved in the Project undertaken in terms of the Convention. To this end, Gecamines will supply a list of relevant employees to KMC who shall be able to verify the correctness thereof prior to incurring any contractual liabilities. However, all other past employment benefits of the employees obtained from Gecamines shall remain the exclusive responsibility of Gecamines, for instance pension and medical aid benefits. Accordingly new employer/employee relationship will be established between the employees and either KMC.
- 16.1.2 Furthermore all other responsibilities and administrative aspects of employment in respect of the employees shall remain the exclusive responsibility of KMC, and e monthly financial remunerations pertaining to employees will be transferred to KMC upon conclusive verification of the correctness of the list of employees subsequent to the Options having been exercised.
- 16.1.3 Additionally, if any employees are found to be unsuitable for their intended position, Gecamines will have to replace such employees, to the complete satisfaction of KMC, failing which the latter 2 (two) parties will be able to replace them.
- 16.1.4 There are no restrictions on the number of expatriates KMC may appoint to the Project, neither are there restrictions on the positions which these expatriates can fill.
- 16.1.5 Board control and Managerial control at KMC will be exercised by the majority shareholder, TREMALT LIMITED. Notwithstanding their respective shareholdings, TREMALT LIMITED is allowed to appoint 5 (five) directors to the board of KMC for every 2 (two) directors that Gecamines may appoint. In consideration of the control it has at board level, TREMALT LIMITED shall also be able to control the appointment of the entire Management Team of KMC.
- 16.1.6 Subject to the provisions of clauses 18.1.1 to 18.1.5 above and of the Labour Law of DRC, KMC shall be free to select, recruit, employ and dismiss the employees in accordance with the relevant regulations, provided that the consent of Gecamines must always first be obtained for the instant dismissal of any employee contractually utilised by KMC in respect of the Project.

16.2 TRAINING AND ANTICIPATORY MANAGEMENT

- 16.2.1 TREMALT LIMITED undertakes to implement a policy of technology transfer, subject to normal confidentiality provisions. This transfer and related training in

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respect of extraction of minerals and metallurgical processing of minerals shall take place either on the Project site or elsewhere.

16.2.2 In addition to technology transfer, there will also be a transfer of operational techniques, especially in extraction and processing sectors. The transfer of modern management techniques will also be a primary objective for the management and supervisory team.

16.2.3 TREMALT LIMITED undertakes to supply the employees with the training necessary to undertake their work competently, and with the opportunity to learn new techniques which will allow them to progress in future in relation to more complex and demanding posts. This policy has as its objective to encourage the employees to show initiative and to take on responsibilities in order to fulfil their potential.

17. DISPUTES

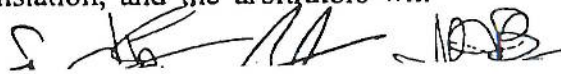
17.1 Amicable Settlement. In the case of a dispute between the Parties resulting from or concerning this Agreement or related to a breach hereof, the Parties in question undertake, before beginning any arbitral or judicial procedure, and except in the case of urgency, to meet in an attempt to reach an amicable settlement. To this effect, the president of the Parties in question (or their agents) will meet within 15 days of the date of a written invitation sent by registered post by the most diligent Party to the other Parties involved. If this meeting does not take place within this time limit or if the dispute is not resolved by a written agreement signed by all the Parties involved within 15 days of the meeting, the Party involved may submit the dispute to arbitration or may take it to court in accordance with the following provisions of this Article.

17.2 Arbitration

(a) Binding Arbitration. All disputes, controversies or claims arising out of or related to this Agreement or the breach hereof, which are not resolved in accordance with section 17.1 above, will be settled by arbitration.

(b) Designation of Arbitrators. Within 15 days after delivery of its notice demanding arbitration, the Party first calling for arbitration will designate one person to serve as its arbitrator and will deliver a notice containing the name and address of its designee to the other Party. Within 10 days after its receipt of such notice, the other Party will designate another person to serve as a second arbitrator and will deliver a notice containing the name and address of its designee to the Party who first designated an arbitrator. Within 20 days after the designation of the second arbitrator, the 2 arbitrators so designated will designate and secure the agreement to serve of a third arbitrator, who will be a person reasonably knowledgeable with respect to the matters involved in the arbitration.

(c) Situs. The arbitration will be conducted in Geneva (Switzerland) in English with simultaneous French translation, and the arbitrators will



take inspiration from the procedure rules of the International Chamber of Commerce to the extent such rules are not inconsistent with law or this Agreement. Arbitration proceedings will continue in the absence of an arbitrator or a Party who, after notice given pursuant to this Article 17, fails to participate in or to obtain an adjournment of the proceedings. A Party who fails to exercise any right granted to it in this Article 17 within the time provided herein will be deemed to have waived such right. A majority of the arbitrators will by written notice to the Parties establish a schedule for the arbitration proceedings and issue orders relating to the conduct of such proceedings governing, among other matters, discovery and the conduct of the hearing. Unless the Parties agree otherwise in writing, the arbitrators will issue their final decision in writing within 60 days of the designation of the third arbitrator. If they fail to do so, they will be discharged and 3 other arbitrators will be designated in accordance with the provisions of this Article 17 and arbitration hereunder will begin anew upon the demand by either Party.

- (d) Decision. The decision of the arbitrators will be final and binding upon the Parties as soon as it is notified to each of the Parties pursuant to Article 18. The decision must state clearly how the arbitrators have ruled with respect to each issue submitted to them.
- (e) Fees. Each Party will pay all fees and costs of the arbitrator designated by it and of its counsel and witnesses and all other expenses associated with the preparation and presentation of its case. All other costs and expenses of the arbitration will be shared equally by the Parties unless the decision of the arbitrators will specify a different apportionment of any or all of such costs and expenses.

17.3 Disputes with the State. If one Party considers that a dispute between Parties is connected to a dispute between one or more Parties and the State, it must first of all submit the question of such connection to the arbitration court mentioned at section 19.2. If this arbitration court confirms the connection, the latter must declare itself incompetent. In this case, the most diligent Party may, in accordance with Article 37 of the State Agreement, jointly submit the two disputes which have been recognised as connected, to the International Centre for the Settlement of Investment Disputes. Gecamines hereby submits itself to the jurisdiction of this last body, but only in this specific situation. If the arbitration court judges that there is no connection, the two disputes will be treated separately in accordance with the procedures provided in each of the agreements.

17.4 Jurisdiction. All disputes, controversies or claims arising out of or related to this Agreement, or the breach thereof, for which the arbitration court referred to in section 19.2 or section 19.3 (and 7.6) declares itself not competent (except if, with respect to the arbitration court referred to in section 19.2 the latter has declared itself incompetent because of connection pursuant to section 19.3, in which case the arbitration court referred to in section 19.3 will be competent), will be of the sole competence of the courts of Vancouver (Canada) and conducted in English, with simultaneous translation in French.

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18. CONDITIONS OF TRADE

- 18.1 KMC shall be entitled to a free choice of suppliers, contractors or sub-contractors without any conditions or restrictions other than those resulting from the provisions of the legislation on trading companies.
- 18.2 However, it shall firstly give preference to DRC organisations and companies, provided always that these entities guarantee the same quality, security and supply periods as those offered by other competitive companies.

19. ENVIRONMENTAL PROTECTION

- 19.1 The activities of KMC will be carried on in compliance with environmental standards internationally accepted as good mining practice, provided that such standards are in practice adhered to by Gecamines in all its operations, prior to the Signature Date, it being recorded that Gecamines does not expect KMC to adhere to environmental standards which are more onerous in any way than those of Gecamines. In addition, KMC undertakes:
- 19.1.1 to take adequate measures, for the duration of this Convention, to protect the environment and the public infrastructures used beyond normal industrial use, in compliance with the rules and uses internationally accepted in the mining industry, as far as these may be applied in the DRC, and with the laws in force;
- 19.1.2 to mitigate, by adequate measures, the damage which could be caused to the environment and to the public infrastructure used beyond normal industrial use;
- 19.1.3 to comply with the legislation in force concerning dangerous waste, damage to natural resources and protection of the environment;
- 19.1.4 to restore used sites and the excavated plots of land in compliance with the rules and uses internationally accepted in the mining industry, as far as these may be applied in the DRC;
- 19.1.5 to comply with the provisions of the Forest Guide, in particular those relating to the reclamation along banks, rivers and slopes; and
- 19.1.6 to set up a system for the purification or treatment of used residual water from the mines and plants, which are released from the areas foreseen in the works program.
- 19.2 Following the completion, and adoption by the Board of KMC, of a bankable feasibility study, and the design of the exploitation envisaged to be provided for therein, Gecamines shall ensure the orderly removal of all dwellings which are likely to be affected by the future Mining Operations. KMC shall fund the cost of the relocation of the relevant inhabitants, which shall be deducted from the gross operating income for purposes of determining the Net Taxable Income.

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20. LANGUAGE

The English and French languages shall be the official languages to be used under this Agreement and shall be used by the parties in all notices, communications, statements and any technical or commercial documentation to be prepared and presented under this Agreement; provided that in the case of inconsistency between the English and French versions, the English language version shall always prevail.

21. DURATION

This Agreement shall endure for 25 (twenty five) years after the Signature Date and may be extended upon terms to be mutually agreed, subject however to extension in the case of force majeure as referred to in clause 29.

22. FORCE MAJEURE

- 22.1 In case of Force Majeure (as such term is hereinafter defined) the party materially affected or which could be materially affected by Force Majeure (the "Affected Party") shall give to the other parties to this Agreement prompt written notice describing such event of Force Majeure.
- 22.2 As from the occurrence of an event of Force majeure, the obligations of the Affected Party shall be suspended during the whole continuance of such event of Force Majeure and for an additional period, sufficient to permit the Affected Party, acting with all required diligence, to place itself to the same situation as before the occurrence of such event of Force Majeure.
- 22.3 All time periods and all dates subsequent to the date of occurrence of the event of Force Majeure shall be adjusted to take into account the extension and delay arising out of such event of Force Majeure.
- 22.4 The Affected Parties shall use all diligence reasonably possible to eliminate such even of Force Majeure as quickly as possible, but such requirement shall not entail the settlement of strikes or other industrials disputes against the judgement of the Affected Party.
- 22.5 For purposes of this clause the term Force Majeure means any sudden or unforeseen or insurmountable even outside the control of the Affected Party, excluding lack of funds, but including without limitation: strikes, lockouts or other industrial disputes, acts of a public enemy, riots, acts of public violence, pillage, rebellion, revolt, revolution, civil war, coup d'Etat or any event of political character which materially affects or could materially affect the success of the Project, fire, storm, flood, explosion, government restriction, failure to obtain any approval required from public authorities inclusive of environmental protection agencies.
- 22.6 In case of Force Majeure, the parties hereto will consult with each other as to how to limit the damage caused by the Force Majeure.

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23. **BREACH**

Subject to clause 24 below, if any of the parties to this Agreement commit a material breach of contract, the other parties shall have the right to demand that such breach be remedied within reasonable specified period of time. If such breach is not remedied within such period of time, the complaining party shall have the right to terminate this Agreement by giving 60 (sixty) days written notice to the defaulting party. However, if the defaulting party contests such material breach of this Agreement, no termination shall occur unless and until an alleged unremedied material breach shall have been judged by a final award of arbitration in accordance with clause 17 of this Agreement.

24. **RIGHT TO EARLY TERMINATION BY TREMALT LIMITED**

24.1 TREMALT LIMITED may terminate this Agreement on 30 (thirty) days written notice forwarded to both Gecamines and KMC at its own election and without being obliged to give reasons for such termination. In such event and to give full effect to this right, TREMALT LIMITED will cede free of charge its shares in KMC to Gecamines and will procure the resignation of the persons who have been elected Managing Director, Directors, General Managers and Consultants. Furthermore, all advances which have by then made by TREMALT LIMITED to KMC as being part of KMC's debt in favour of TREMALT LIMITED, will immediately be repayable and any feasibility study (if in existence at that time) will remain the property of KMC.

24.2 From transmission of the abovementioned notice, TREMALT LIMITED shall be liberated of any further obligation to make advances or finance the expenses, including salaries of employees to participate in any increase of capital and/or to render to Gecamines any further payments of the Project Fees and/or Pre-Option Fees due, and TREMALT LIMITED shall not be held liable for the payment thereof or for any damages towards any party whatsoever. Any Project Fees already paid by TREMALT LIMITED to Gecamines at that time will remain the latter's.

25. **LIQUIDATION**

Should the shareholders agree on the dissolution or the liquidation of KMC, the provisions of the statutes of KMC concerning liquidation will apply in accordance with the laws of the Democratic Republic of the Congo.

26. **INSTITUT DRC DU COBALT**

In the event of the creation, on Gecamines' initiative, of an Institut DRC du Cobalt, whose object would be the study and promotion of the international cobalt market, KMC will become one of its founding members.

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27. CONFIDENTIALITY

27.1 The parties shall, save as required by virtue of the fact that any of them is a listed Company at any stage and save as required by any regulatory authorities, keep secret and confidential and shall not without prior written permission of the other parties hereto, publish, disclose, divulge or communicate to third parties or make public disclosures of:

27.1.1 the commercial terms and conditions of this Agreement;

27.1.2 any information relating to any activities carried on or proposed to be carried on pursuant to this Agreement;

27.1.3 any information or interpretations thereof relating to the results of prospecting, assay, analysis, or aeromagnetic surveys herein contemplated or the mineralisation of the Concession Area and other areas contemplated in this agreement, the feasibility or terms of a mining venture in the Concession Area, proposed methods of mining, or geological, technical, financial or other data and interpretations thereof relating to Minerals in the Concession Area.

27.2 The parties shall take all necessary action, including legal proceedings, to compel compliance with this clause 35 by their shareholders, directors, officers, employees, agents, contractors and representatives.

28. SEVERABILITY

If any provision of this Agreement should be or become void, illegal or unenforceable, the parties shall negotiate in good faith to amend the agreement to achieve the parties' stated intention, but if this is not possible then such provision shall be severed and the remaining provisions of this Agreement shall remain of full force and effect.

29. COSTS

TREMALT LIMITED shall bear the cost of and incidental to the negotiation, preparation, execution and implementation of this Agreement.

30. SUPREMACY OF THIS AGREEMENT

30.1 The provisions of this Agreement shall take precedence over the notarial status document, founding documents, or other form of constitution of KMC.

30.2 The parties shall procure that the notarial status document, founding documents, or other form of constitution of KMC, reflect the provisions of this Agreement and in the event of any conflict between any of the foregoing documents and this Agreement the provisions of this Agreement will prevail and the foregoing documents shall be deemed amended accordingly.

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31. GENERAL

- 31.1 This document constitutes the sole record of the agreement between the parties in regard to the subject matter thereof.
- 31.2 No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.
- 31.3 No addition to, variation or consensual cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of all the parties.
- 31.4 No indulgence which any of the parties ("the grantor") may grant to any other or others of them ("the grantee") shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which might have arisen in the past or which may arise in the future.
- 31.5 The parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance or the terms, conditions and import of this Agreement and furthermore to act in good faith towards each other and to co-operate with each other to the fullest extent.
- 31.6 All required formalities, undertakings, obligations, rights and other commitments made pursuant to this Agreement are accepted as material by the parties hereto.

32. DOMICILIUM

- 32.1 Any notice or other document to be served under this Agreement may be delivered or sent by prepaid first class or registered post or telex or facsimile to the other party to be served at the address set out below or at such other address as it may have notified to the other parties in accordance with this clause:

32.1.1 GECAMINES
 La Generale des Carrieres et des Mines
 419 Avenue Kamanyola
 B.P. 450, Lubumbashi

For attention:
 Monsieur L'Administrateur Directeur General
 Facsimile No: 090032 26768041
 Telephone No: 090032 26768040

TREMALT LIMITED

6 BOULEVARD GOERGES-FAVON
 CH-1204 GENEVA
 SWITZERLAND
 P O BOX 5726
 CH-1211 GENEVA 11
 SWITZERLAND

TEL: 44/22/321 6800
 FAX: 44/22/321 6862

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32.2 Any party hereto shall be entitled to change its address as set out in clause 3.2 from time to time, provided that any new address selected by it shall be an address other than a box number, and any such change shall only be effective upon receipt of notice in writing by the other part of such change.

32.3 All notices, demands, communications, legal process or payments intended for either party shall be given, made or served as such party's address for the time being.

32.4 A notice sent by one party to another party shall be deemed to be received:

32.4.1 on the same day, if delivered by hand;

32.4.2 on the same day, if sent by telex or facsimile;

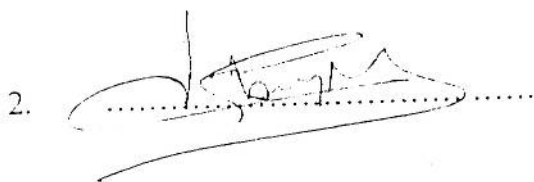
32.4.3 on the recorded date of delivery by post, which in the absence of proof to the contrary shall be deemed to be 10 (ten) business days after the date of posting.

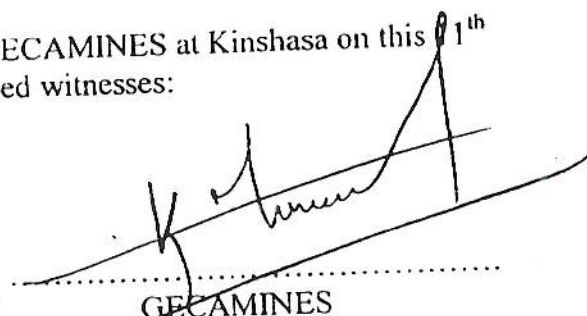
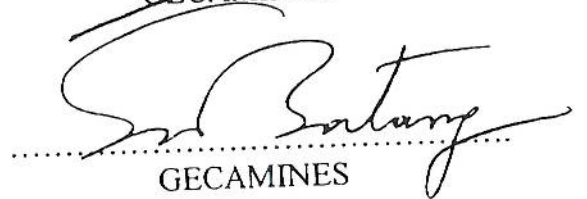
32.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address.

THUS DONE AND SIGNED for and on behalf of GECAMINES at Kinshasa on this 11th day of January 2001 in the presence of the undersigned witnesses:

AS WITNESSES:

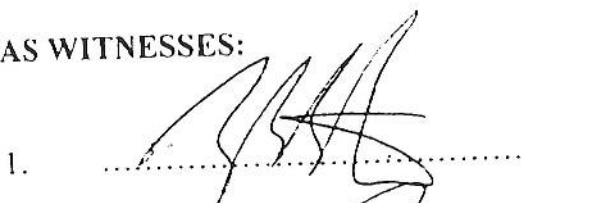

1. 

2. 


.....
GECAMINES

.....
GECAMINES

THUS DONE AND SIGNED for and on behalf of TREMALT LIMITED on this 11th day of January 2001 in the presence of the undersigned witnesses:

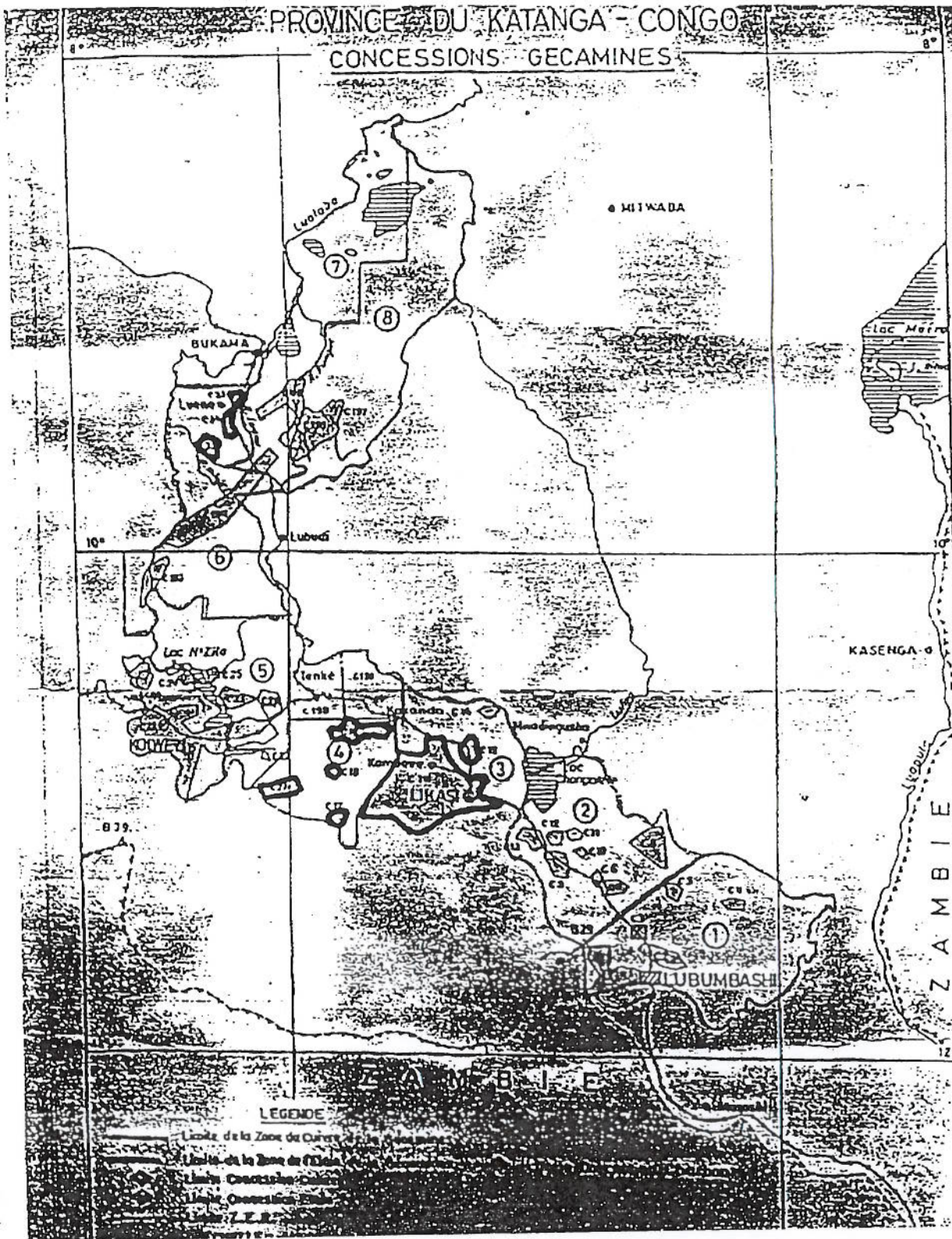
AS WITNESSES:

1. 
.....
2. 
.....


.....
TREMALT LTD
JOHN. A. BREDEKKA

ANNEXURE "A"

MINING ZONE & CONCESSION AREA



Handwritten signature/initials and a vertical label "ZAMBEZI" on the right edge of the map.

Handwritten initials "SB" at the bottom left corner.

ANNEXURE "F"

TAILINGS TO BE TRANSFERRED FROM GECAMINES

1. Kakanda Tailings
2. Kambove Tailings

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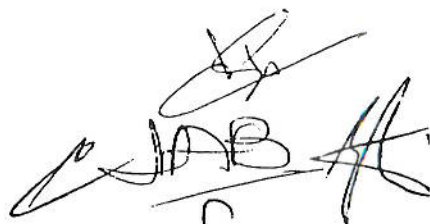
Handwritten signatures and initials, including a large signature that appears to be 'JAB' and another signature that appears to be 'A' with a dollar sign, along with some other scribbles.

ANNEXURE "K"

IDENTIFIED CONCESSIONS (MINING AND QUARRY)
[MINING CONCESSIONS AND QUARRY PERMITS]

1. C14
2. C15
3. C17
4. C18
5. C19
6. C21
7. C33
8. Luena & Kakontwe Quarry Rights

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C1

ANNEXURE "L"

MINERAL DEPOSITS AND QUARRIES

- (1) all Kasole deposits;
- (2) all Sinko 2 deposits;
- (3) all Guluwe deposits;
- (4) all Kakanda North & South deposits;
- (5) all Bangwe deposits;
- (6) all Kabolela North & South deposits;
- (7) all Milebi deposits;
- (8) all Mindigi deposits;
- (9) all Shangulowe deposits;
- (10) all Shinkotobwe deposits;
- (11) all Kababankola deposits;
- (12) all Mukonde deposits;
- (13) all Chimbedia deposits;
- (14) all Tarataja deposits;
- (15) all Kamoya (1, 2 & 3) deposits;
- (16) all Kambove deposits;
- (17) all Likasi deposits;
- (18) all Sesa deposits;
- (19) all Kazibizi deposits;
- (20) all Kamfundwa deposits;
- (21) all Saafi deposits;
- (22) all Kiwana II deposits;
- (23) ~~all Luita deposits;~~ ✓
- (24) all Kahumbwe deposits;
- (25) all Disele deposits;
- (26) all Lufomboshi deposits;
- (27) all Signal deposits;
- (28) all Mirungwe deposits;
- (29) ~~all Swambo deposits;~~
- (30) all Kufumabsambo deposits;
- (31) all Kasampi deposits;
- (32) all Kazilangwe deposits;
- (33) all Kalabi deposits;
- (34) all Kabela deposits;
- (35) ~~all Menda deposits;~~
- (36) ~~all Kakontwe quarries;~~
- (37) ~~all Luena quarries;~~
- (38) Kepisi.

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**PREMIER AVENANT A
L'ACCORD DE CREATION DE LA JOINT VENTURE
KABABANKOLA MINING COMPANY. SPRL**

LA GENERALE DES CARRIERES ET DES MINES, Société d'Etat à caractère industriel et commercial, ayant son siège social à Lubumbashi, sis n° 419, avenue Kamanyola, Province du Katanga. République Démocratique du Congo

ET

TREMALT LIMITED, Société Privée dûment constituée suivant les lois des Iles Vierges Britanniques et ayant son siège social à Akara Building, 24 de Castro Street, Road Town, Tortola

Vu l'accord intitulé « agreement for the formation of a joint venture company » conclu entre les parties à Kinshasa, en RDC en date du 11 janvier 2001,

Attendu que ledit accord a été renforcé par la Convention Minière entre la République Démocratique du Congo, la Société Kababankola Mining Company, Tremalt Limited et la Générale des Carrières et des Mines, dûment approuvée par le décret présidentiel Nr 034/2001 du 18 Juin 2001 ;

Vu la lettre Nr CAB/MINES-HYDRO/01/311/02 du 19 mars 2002 du Ministre des Mines et Hydrocarbures datée du 19 mars 2002, laquelle justifie une révision de l'accord du 11 janvier 2001 cité ci-avant suivant le prescrit de l'article 28 dudit accord ;

IL EST CONVENU CE QUI SUIT :

Article 1 :


Les annexes « F », « K » et « L » de l'accord du 11 janvier 2001 sont annulées et remplacées par les nouvelles annexes « B », « C » et « D » qui accompagnent le présent avenant et en font partie intégrante.


Article 2 :

Toutes les références aux annexes « F », « K » et « L » doivent être lues respectivement « B », « C » et « D ».

Ainsi fait ce 09 avril 2002 à Lubumbashi en double original chaque partie retenant le sien.

**LA GENERALE DES CARRIERES
ET DES MINES**


MUKASA KALEMBWE
Vice-Président du Comité de Gestion
Provisoire


YUMBA MONGA
Président du Comité de Gestion
Provisoire

TREMALT LIMITED



**AVENANT No. 2 A L'ACCORD DE CREATION DE
LA JOINT VENTURE KABABANKOLA MINING COMPANY , SPRL**

LA GENERALE DES CARRIERES ET DES MINES , Société d'Etat à caractère industriel et commercial, ayant son siège social à Lubumbashi sis n° 419, avenue Kamanyola, Province du Katanga, République Démocratique du Congo (GECAMINES), d'une part ;

ET

TREMALT LIMITED, Société Privée dûment constituée suivant les lois des Isles Vierges Britanniques et ayant son siège social à Akara Building, 24 de Castro Street, Road Town, Tortola, d'autre part ;

Vu la convention intitulée « Agreement for the formation of a joint venture company » conclu entre les parties à Kinshasa, en République Démocratique du Congo le 11 janvier 2001, lequel a été modifié par l'Avenant n° 1 conclu entre les parties en date du 9 avril 2002, à Lubumbashi ;

Vu la Convention Minière conclue entre la République Démocratique du Congo, la Société Kababankola Mining Company SPRL, Tremalt Limited et la Générale des Carrières et des Mines en date du 7 mars 2001, laquelle convention a été approuvée par le Décret Présidentiel n° 034/2001 en date du 18 juin 2001 ;

Vu l'avenant n° 1 à la Convention Minière précitée conclue entre les mêmes parties en date du 15 Avril 2002 et approuvé par le Décret n° 002/2003 du 13 Janvier 2003 ;

Attendu que les parties conviennent que la Gecamines reprend ses droits aux dividendes, dans la société Kababankola Mining Company SPRL, qu'elle avait jadis cédés au Gouvernement de la République Démocratique du Congo ;

IL EST CONVENU CE QUI SUIV

Article unique

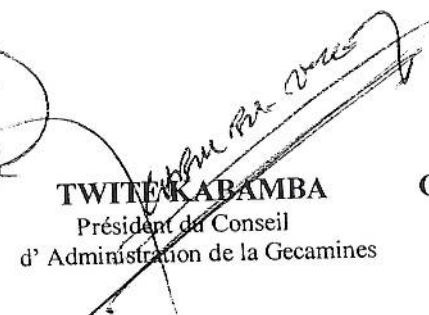
L'Article 6.1.12 de la convention intitulée « Agreement for the formation of a joint venture company » est abrogé dans son intégralité.

Fait à Lubumbashi, le 15 jour du mois de janvier 2003

**LA GENERALE DES CARRIERES
ET DES MINES**

TREMALT LIMITED


NZENGA KONGOLO
Administrateur Délégué
Général


TWITE KABAMBA
Président du Conseil
d' Administration de la Gecamines


GARY NEIL WEBSTER