

**DEVELOPMENT AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF MALAWI**

**PALADIN (AFRICA) LIMITED**

**AND**

**PALADIN ENERGY MINERALS NL**

**ON THE KAYELEKERA URANIUM PROJECT**

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**THIS DEVELOPMENT AGREEMENT IS MADE** on the **22<sup>nd</sup>** day of **February** 2007

**BETWEEN:**

**THE GOVERNMENT OF THE REPUBLIC OF MALAWI**, acting through the Minister of Energy, Mines and Natural Resources whose office is at the Ministry of Energy, Mines and Natural Resources, Private Bag 350 at Capital Hill, Lilongwe 3, in the Republic of Malawi ("**Mines Minister**") and the Minister of Finance whose office is at the Ministry of Finance, P.O. Box 30049 at Capital Hill, Lilongwe 3, in the Republic of Malawi ("**the Finance Minister**") (the "**Government**");

**AND**

**PALADIN (AFRICA) LIMITED**, a company incorporated in the Republic of Malawi and whose registered office is situated at its offices in First House which is situated on land held under Title Numbers Blantyre Central 759-760, Blantyre in the said Republic of Malawi (the "**Company**" and which shall include any permitted assigns or successors of the rights and obligations of the Company);

**AND**

**PALADIN ENERGY MINERALS NL ACN 073 700 393** a company incorporated in Australia and whose registered office is Level 1, Grand Central, 26 Railway Road, Subiaco in the State of Western Australia, in the Commonwealth of Australia ("**Paladin**" and which shall include any permitted assigns or successors of the rights and obligations of Paladin).

**RECITALS:**

- A.** The Company is at the date of this Agreement a wholly owned subsidiary of Paladin.
- B.** The Company obtained an interest in the Tenement in August 1999 and became the holder of the Tenement in August 2002 and is now undertaking a Bankable Feasibility Study in relation to the establishment of a uranium mine on the Tenement.
- C.** The Government wishes to ensure that the establishment and operation of the Project benefits the Company, and adequately contributes to the advancement and the social and economic welfare of the people of Malawi, including the people in the vicinity of the Contract Area, in a manner consistent with their needs and the protection of the environment and which attracts foreign investment and secures an appropriate return on investment commensurate with the risks involved to the Company.
- D.** Pursuant to section 10 of the Mines Act the Government through the Mines Minister has power to enter into an agreement with the holder of a tenement granted under the Mines Act with respect, amongst other things, to the grant of that tenement.
- E.** As part of the agreement the Company and the Government have negotiated a fiscal and equity regime for both the Company and Project.
- F.** The Company is seeking to obtain the comfort from the Government that the Government fully supports the terms under which the Company is proposing to undertake the Project and for this purpose the cabinet of the Government has met and

fully approved the Government entering into this Agreement in the manner and on the terms proposed.

- G.** The Government and the Company have agreed on a number of matters which are set out in this Agreement which is being entered into pursuant to section 10 of the Mines Act and generally and wish the matters agreed upon to be an enduring arrangement of national interest and to provide stability for the Company's investment in Malawi.

## PART A

### GENERAL

#### 1. DEFINITIONS, INTERPRETATION AND COMPLIANCE

1.1 In this Agreement, unless the context otherwise requires:

"**Act**" means an act of the Parliament of Malawi;

"**Additional Minerals**" mean all minerals other than the Mineral;

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

- (a) any person in which the Company or a Shareholder (as the case may be) holds one hundred per cent (100%) of the ordinary voting shares and which holds one hundred per cent (100%) of the Company's or a Shareholder's (as the case may be) ordinary shares; or
- (b) any person which, directly or indirectly, is controlled by or Controls, or is under Common Control of, with or over the Company or a Shareholder (as the case may be);

"**Agreement**" means this Agreement as varied from time to time in accordance with the terms of this Agreement;

"**Agreement Date**" means the date of signing this Agreement;

"**Approved Programme of Operations**" means the proposals submitted by the Company in accordance with section 37(3) of the Mines Act as may be amended or varied as a consequence of the terms and conditions on which the Tenement is granted;

"**Arbitration**" means determination of a dispute by arbitration in accordance with clause 33, subject to clauses 31 and 32;

"**Arbitrator**" means an independent body appointed pursuant to clause 33 to make a determination on a matter the subject of a Notice of Dispute;

"**Arms' Length Terms**" means a transaction 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 for the transaction entered into is the only consideration for the transaction;
- (c) the price and other terms of the transaction 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 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); and

- (d) neither the selling party, nor any person or company connected with it through shareholding or otherwise, has any direct or indirect interest in the subsequent disposal, if applicable, by the buying party of any of the products or services obtained pursuant to the transaction agreement;

"**Assets**" means the assets of the Company;

"**Bankable Feasibility Study**" means a bankable feasibility of a standard that would be acceptable in a project financing by a prime bank whose business includes lending to resources projects and which will include:

- (a) from appropriate sampling programmes estimates of the tonnes of proven and probable reserves of ore and the Mineral grades thereof;
- (b) estimates of both capital costs and operating costs likely to be incurred in establishing and conducting Mining operations, including costs to be incurred in Project development, pre-production and crushing and treatment;
- (c) an analysis of how to proceed with a Mining operation to economically and commercially extract, transport and export, yellowcake;
- (d) an environmental impact assessment and a management plan to manage the outcomes of the assessment;
- (e) references to relevant marketing and financial aspects;
- (f) an analysis of the risks associated with the Project and the alternative methods and costs for dealing with such risks;
- (g) a statement whether or not the establishment of the proposed Mining operation is commercially viable, the recommended parameters for the most viable form of Mining operation and a statement as to what the Life of Mine is expected to be;
- (h) a schedule of relevant approvals necessary before production may commence;
- (i) the proposed Local Business Development Programme;
- (j) the proposed Employment and Safety Plan; and
- (k) the proposals called for in section 37(3) of the Mines Act;

"**Best Endeavours**" means the taking by the relevant Party of all lawful, reasonable steps in such Party's power which a prudent and reasonable person

acting in his own interest and anxious to achieve what is required would have taken under the circumstances;

**"Best Mining, Ore Processing and Environmental Practices"** means acceptable mining and metal treatment practices conducted internationally (including the right to process and treat material twenty four (24) hours a day, three hundred and sixty five (365) days a year (including public holidays), if required) which shall, in any event, be no less than internationally accepted mining and metal treatment practices;

**"Business"** means the business to be carried on by the Company from time to time namely, all or some of the following:

- (a) prospecting, exploration and development;
- (b) mining of ore and waste;
- (c) treatment of ore to produce yellowcake and by-products;
- (d) selling of yellowcake outside of Malawi and by-products whether within or outside Malawi; and
- (e) such other activities including production of reagents, consumerables, and related transport and trading of yellowcake and by-products, incidental and or conducive to the foregoing which may be approved by the Company from time to time;

**"Business Day"** means any day (other than a Saturday, a Sunday or a public holiday) on which commercial banks are generally open for business in London, New York, and Malawi;

**"Calendar Month"** means a month commencing on the first (1st) day of any 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;

**"Centre"** has the meaning given to that term in clause 33.1;

**"Change in Law"** means any enactment, domestic or subject to adoption by the Government any international agreement or treaty, any legislation or regulation or policy or interpretation of any such matter by a court or other authority that arises after the execution of the Agreement;

**"Commercial Operations"** means the commercial operation of the Project carried on in accordance with the Approved Programme of Operations and all other Mining or Mining related activities of the Company or Affiliates of the Company in Malawi, including all activities and operations ancillary to Normal Operations listed in paragraphs (a) to (f) of the definition of that terms;

**"Commissioner"** shall have the meaning given to that term under the Mines Act;



**"Companies Act"** means the Companies Act (Cap 46:03 of the Laws of Malawi);

**"Confidential Information"** means all information provided under section 7 of the Mines Act;

**"Contract Area"** means that land area covered by the Tenement from time to time;

**"Control"** means:

- (a) 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
- (b) 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 fifty per cent (50%) 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 or more persons or bodies corporate are controlled by the same person or body corporate;

**"Convention"** has the meaning given to that term in clause 33.1;

**"Default Notice"** has the meaning given to that term in clause 30.3;

**"Dispute"** means any dispute, disagreement, controversy or claim arising out of or relating to this Agreement, or the interpretation or performance of provisions of this Agreement or the breach, termination or validity of this Agreement or the claim by a Party that it is experiencing Hardship but does not include a matter which by operation of this Agreement is referred to an Independent Expert;

**"Distributable Profits"** means accumulated after tax profits and reserves of the Company, available for distribution as dividends in accordance with section 74 of the Companies Act, as shown in the financial statements of the Company from time to time;

**"Economic Equilibrium"** means the fiscal regime in Malawi, including the duties, imposts, royalties and taxes applicable to both the Business and the Company as at the Agreement Date or as provided for in this Agreement;

**"Employment and Safety Laws"** has the meaning given to that term in clause 19.1;

**"Employment and Safety Plan"** means the final plan which the Company is complying with in accordance with clause 19.3;

**"Enabling Legislation"** means all the relevant acts of Parliament including the following legislation:

- (a) the Mines Act;
- (b) the Exchange Control Act (Cap. 45:01 of the Laws of Malawi);
- (c) the Companies Act;
- (d) the Land Legislation;
- (e) the Taxation Act (Cap. 41:01 of the Laws of Malawi);
- (f) the Customs and Excise Act (Cap. 42:01 of the Laws of Malawi);
- (g) the Investment Promotions Act (Cap. 39:05 of the Laws of Malawi);
- (h) the Environmental Laws;
- (i) the Occupational Safety, Welfare and Health Act (Cap. 55:07 of the Laws of Malawi);
- (j) the Employment Act (Cap. 55:02 of the Laws of Malawi);
- (k) the Water Resources Act (Cap. 72:03 of the Laws of Malawi); and
- (l) the Water Works Act (Cap. 72:01 of Laws of Malawi);

**"Environment"** shall have the meaning set out in the Environmental Laws or any statutory amendment or re-enactment of it;

**"Environmental Laws"** means the Environment Management Act (1996) (Cap. 60:02 of the Laws of Malawi) and any other written law or regulations in force from time to time in Malawi (including the common law) which promotes sustainable management and use of the environment and natural resources or prevention of harm to the environment or to human health and/or the provision of remedies for harm or damage to the environment or to human health. Such laws include but are not limited to the Mines Act, the Forestry Act (Cap.63:01 of the Laws of Malawi), the Water Resources Act, the Fisheries Conservation and Management Act (Cap.66:05 of the Laws of Malawi), the National Parks and Wildlife Act (Cap.66:07 of the Laws of Malawi) and the Land Legislation;

**"Environmental Management Plan"** means the final plan approved by the Government in accordance with clause 18;

**"ESCOM"** means Electricity Supply Company of Malawi Limited;

**"Expropriation"** means either:

- (a) the seizure, nationalisation, expropriation or compulsory acquisition by the Government or Governmental Agency of the:
  - (i) capital in the Company; or
  - (ii) the assets of the Company which leads to the effective loss of control over the Project; or
  - (iii) the receipt of a binding order from a Governmental Agency requiring the Company to sell or divest itself of all or a material part of the Project,

or within 30 days of a request from the Company to remove any insurgent group or local group, the failure of the Government to use reasonable endeavours to remove any insurgent group or local group that may have seized the assets of the Company resulting in the Company effectively losing control of the Project; or

- (b) change in the Economic Equilibrium which has a Material Adverse Effect on the Company or Business and the Government failing to either:
  - (i) act in the manner contemplated in clause 23.2; or
  - (ii) pay the compensation contemplated in clause 23.3 in a timely manner;

**"Force Majeure"** means an event which is beyond the reasonable control of a Party and includes act of war (whether declared or undeclared), invasion, armed conflict, act of foreign enemy, act of terrorism, martial law, military or usurped power, insurrection, revolution, civil disturbances, blockades, riot, embargoes, strikes, lock-outs and other labour conflicts (except where such strikes, lock-outs and other labour conflicts are within the power of the Party invoking clause 38), sabotage, criminal damage, land disputes, epidemics, plague, earthquakes, subsidence, heave, landslip, collapse, rock falls, storms, cyclones, floods, explosions, fires, lightning or other adverse weather conditions, radioactive or chemical contamination or ionising radiation or confiscation or any other action by a Government Agency or an agency of any foreign government but does not include:

- (a) any event which is caused by the negligence of intentional action of a Party or such Party's sub-contractor or agents or employees;
- (b) any event which a diligent Party could reasonably have expected to:
  - (i) take into account at the time of this Agreement; or

- (ii) avoid or overcome in the carrying out of its obligation under this Agreement; or
- (c) insufficiency of funds or failure to make payment required under this Agreement;

**"Government"** means the Government of Malawi and where the context requires, Governmental Agency;

**"Governmental Agency"** means a government or a governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity of the Government;

**"Hardship"** means the occurrence of events that fundamentally alter the financial equilibrium of the Agreement either because the cost of a Party's performance has increased or because the value of the performance a Party receives has diminished, and:

- (a) the events occur or become known to the disadvantaged Party after the Agreement Date;
- (b) the events could not reasonably have been taken into account by the disadvantaged Party at the Agreement Date;
- (c) the events are beyond the control of the disadvantaged Party; and
- (d) the risk of the events was not assumed by the disadvantaged Party,

but nothing is intended to result in a change in the sale price of yellowcake being an event which may give rise to a Hardship;

**"IAEA"** means the International Atomic Energy Agency;

**"Independent Expert"** means such independent person, as is agreed between the Parties or failing agreement within 20 Business Days as is appointed at the request of any Party by the President for the time being of the Institute of Mining and Metallurgy in the United Kingdom who shall ensure that the appointed Independent Expert is sufficiently qualified and experienced to apply the necessary skill required to make the decision and/or determination for which that Independent Expert is being engaged under this Agreement;

**"Interest"** has the meaning given to that term in clause 34.1(c);

**"Investment Commitment"** means the aggregate of capital expenditure by the Company and Affiliates on the Approved Programme of Operations and other Scheduled Programmes;

**"Kayelekera Community"** means the community identified by the census undertaken as part of the environmental impact statement which the Company has submitted to the Government;

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

**"Land Legislation"** means the Land Act (Cap. 58:01 of the Laws of Malawi), Land Acquisition (Amendment) Act (Cap 58.04 of the Laws of Malawi), and the Registered Land Act (Cap. 58:01 of the Laws of Malawi) as from time to time amended and in effect;

**"Life of Mine"** means the life of the proposed Mining operation on the Tenement as proposed in the Bankable Feasibility Study or until Normal Operations cease, whichever is the longer;

**"Local Business Development Programme"** means the programme for local business development which is to be developed in accordance with clause 5;

**"Material Adverse Effect"** means a material adverse change to:

- (a) a Party's ability to comply with its obligations under this Agreement;
- (b) the value of a Party's property the subject of this Agreement;
- (c) the rights of a Party under this Agreement; or
- (d) the Business or financial conditions of the Company;

**"Mines Act"** means Malawi Mines and Minerals Act (1981) (Cap. 61:01 of the Laws of Malawi);

**"Mine Product"** means the yellowcake and any Additional Mineral produced by Normal Operations;

**"Mineral"** means uranium oxide located in the Contract Area;

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

**"Ministry"** means the Ministry responsible for mines from time to time;

**"Mining"** has the meaning given to the term "mine" in the Mines Act and, for the purpose of this Agreement, includes all treatment, ancillary and consequential operations associated with such operations;

**"Mining Area"** means that part of the Contract Area on which Mining operations are or are intended to be conducted;

**"Mining Water Requirements"** has the meaning given to that term in clause 9.1(a);

**"Normal Operations"** means the commercial operation of the Project carried on in accordance with the Approved Programme of Operations and all other Mining or Mining related activities of the Company or Affiliates of the

Company in Malawi carried on in accordance with Malawi law, including all activities and operations ancillary to Normal Operations including:

- (a) exploration for and development of a mineral resource;
- (b) Mining and mineral processing;
- (c) operation of Mining fleets (either for the Company or its Affiliates);
- (d) management of Mining, mineral processing and mineral exploration activities;
- (e) toll treatment of ores and concentrates; and
- (f) any other activity reasonably associated with Mining, mineral processing and mineral exploration;

**"Notice"** means any written communication, consent, demand, approval or other communication required or permitted to be given under clause 42;

**"Notice of Dispute"** has the meaning given to that term in clause 31.1;

**"Parties"** means the parties who are for the time being original parties to this Agreement or parties added or substituted pursuant to clause 28 and **"Party"** means any one of them;

**"proceeds of production"** means the gross revenues received from the sale at arms-length of Mine Product mined or otherwise recovered, including concentrates derived therefrom, from any mine or mines on the Mining Area and if not at Arms' Length Terms, the gross revenues which would have been received had the sale been at Arms' Length Terms;

**"Production Commencement Date"** means the date on which the Company first commenced commercial Mining operations on the Mining Area;

**"Project"** means the preparation of the Bankable Feasibility Study and any Mining operations (including any expansion of such operations) of the Company on the Tenement, which operations comprise what is known as the Kayelekera Project;

**"Project Lenders"** mean third party international project financiers which lend money to the Company or an Affiliate for the sole purpose of the Company developing the Project and where such lending is secured against the Project and this does not include loans from Paladin or any of its Affiliates;

**"Public Land"** means any land as defined by the Land Act (Cap 58:01 of the Laws of Malawi);

**"Purchase Price"** has the meaning given to that term in clause 34.1(c);

**"Quarter"**; means:

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

**"Reserve Bank"** means the Reserve Bank of Malawi or any successor;

**"Royalty"** has the meaning given to that term in clause 22.1;

**"Scheduled Programmes"** means the Approved Programme of Operations, the Environmental Management Plan, the Training and HRM Programme, the Local Business Development Programme, the Employment and Safety Plan and the Social Responsibility Plan;

**"Shareholders Agreement"** means an agreement to be entered into between Paladin, Affiliates of Paladin and the Government as shareholder and proposed shareholder respectively in the Company, and the Company;

**"Social Responsibility Plan"** means a plan for capital expenditure on the social infrastructure described in clause 20.2;

**"Speculative Currency Transaction"** means a transaction involving the purchase or sale of Malawian 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 inflows or outflows;

**"Stability Period"** means the period commencing on the Production Commencement Date and ending on the 10th anniversary of the Production Commencement Date;

**"Taxes"** means has the same meaning as used in the Taxation Act (Cap 41:01 of the Laws of Malawi);

**"Tenement"** means:

- (a) exclusive prospecting licence 070;
- (b) any mining tenement which may be in force or issued in lieu of or in relation to the same or part of the ground as the tenement referred to in paragraph (a) of this definition; and
- (c) includes all rights to mine and other privileges appurtenant to the tenement and all ore and mineral-bearing material, sand, slimes, tailings and residues of whatsoever nature located on and under the Tenement;

**"Term Contract"** is an agreement to sell Mine Product in which the volume and delivery periods are fixed in advance but the actual delivery price is calculated at the time of each delivery by reference to a price formula specified

in the contract. Price formulae typically comprise a combination of published market price indices and sometimes include an escalating base or floor price component;

**"Termination Date"** has the meaning given to that term in clause 30.4;

**"Termination Notice"** has the meaning given to that term in clause 30.4;

**"Thin Capitalisation Agreement"** means the agreed debt equity ratio for the Company that is referred to in clause 21.5;

**"Training and HRM Programme"** means the employment and training programme for those citizens of Malawi who are to work at the Project, which programme is to be submitted by the Company in accordance with section 37(3)(k) of the Mines Act and approved by the Minister and such modified, or alternative plan as is approved from time to time by the Minister;

**"Treaty"** means the Treaty on the Non-Proliferation of Nuclear Weapons;

**"Tribunal"** has the meaning given to that term in clause 33.1;

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

**"UNCITRAL"** means United Nations Committee on International Trade Laws; and

**"yellowcake"** means a concentrate of uranium ore which is ready to be dispatched for sale.

1.2 In this Agreement, unless the context otherwise requires:

- (a) monetary references are references to United States dollars unless otherwise specifically expressed;
- (b) the headings do not affect the interpretation or construction;
- (c) references to an Act includes the amendments to the Act for the time being in force and also to any Act passed in substitution for the Act and any regulations for the time being in force under the Act;
- (d) words importing the singular include the plural and vice versa;
- (e) words importing any gender include the other gender;
- (f) references to a person include a partnership, firm or corporation and any instrumentality of the Government or any political sub-division of it;
- (g) the recitals form part of this Agreement; and
- (h) the meaning of general words is not limited by specific examples introduced by including or similar expressions.



- 1.3 Without derogating from the effect and operation of clauses 23, 34 and 40 if there is any inconsistency between the terms of this Agreement and an Act then this Agreement or the relevant provision of it shall be read down to the extent of the inconsistency to ensure that this Agreement is not otherwise rendered void or unenforceable.
- 1.4 Notwithstanding any other provision of this Agreement, until by or under an Act provision is made with respect to the matters contained in the codes described in this clause the Company shall observe those codes and any amendments thereof or any codes substituted therefore:
- (a) "Occupational Radiation Protection in the Mining and Processing of Raw Materials" IAEA Safety Guide No. RS-G-1.6 published by the International Atomic Energy Agency Vienna 2004;
  - (b) "Regulations for the Safe Transport of Radioactive Material", IAEA Safety Guide No TS-R-1 published by the International Atomic Energy Agency Vienna 2005;
  - (c) "Management of Radioactive Waste from the Mining and Milling of Ores", IAEA Safety Guide WS-G-1.2 published by the International Atomic Energy Agency Vienna 2002;
  - (d) the Malawi Bureau of Standards on transportation of hazardous materials and the Health Act, provided these standards do not compromise the IAEA Safety Guide WS-G-1.2; and
  - (e) the Code of Practice on Radiation Protection in the Mining of Radioactive Ores which was drawn up by the Commonwealth in accordance with the recommendations of the International Commission on Radiological Protection.
- 1.5 Malawi is a signatory to the Treaty and the Government covenants with the Company that it will:
- (a) do all necessary to expeditiously conclude all appropriate safeguard systems and regulations to enable Malawi to meet the requirements which are required to ensure the Mine Product can be transported internationally and if possible, designated as yellowcake for peaceful purposes;
  - (b) do all appropriate to ensure it has in place the appropriate administrative procedures to satisfy the Government obligations under the Treaty;
  - (c) promptly enter into whatever agreements and pass whatever laws are necessary to give effect to any international treaty or protocol which has or may have impact on the mining and export of yellowcake and to ensure Malawi as a party to the Treaty moves from a country which has a "small quantities protocol" agreement with the IAEA to a country

which fully satisfies the IAEA requirements for a country producing and exporting yellowcake; and

- (d) consult with its neighbouring countries through which the Mine Product shall pass in order to ensure the Mine Product can be transported to the purchasers of the Mine Product.

## **PART B**

### **OPERATIONAL AND EMPLOYMENT MATTERS**

#### **2. DEVELOPMENT AND OPERATION**

- 2.1 The Company shall, subject to the terms of the Mines Act, the Tenement and this Agreement implement the Approved Programme of Operations in accordance with the timetable contained in the Approved Programme of Operations and in accordance with Best Mining, Ore Processing and Environmental Practices.
- 2.2 Without prejudice to the obligations contained in clause 2.1, but subject to clauses 2.3 and 14, the Company shall expend the Investment Commitment substantially in the manner, on the terms and in the amounts set out in the Scheduled Programmes.
- 2.3 The Company's obligation to expend the Investment Commitment in accordance with clause 2.2 shall be suspended where an event of Force Majeure has been declared and for so long as such event of Force Majeure is continuing.
- 2.4 Subject to the provisions of this Agreement, the Government acknowledges it will in good faith and in a timely manner give due consideration to the programmes, which when approved become the Scheduled Programmes when submitted in accordance with section 37 of the Mines Act or otherwise and further acknowledges, without limitation, that compliance with the Scheduled Programmes will be deemed to constitute compliance with sections 44(1)(a), (b) and (c) of the Mines Act and any other applicable Act.
- 2.5
- (a) The Government confirms that practices undertaken in accordance with the Approved Programme of Operations are prima facie deemed not to constitute "wasteful mining practices" for the purposes of section 45(1) of the Mines Act and any other applicable Act.
- (b) Nothing contained in clause 2.5(a) shall prevent or restrict or otherwise limit the Government from taking all actions within its power to protect public health safety and the Environment.
- 2.6 Subject to the Company lodging an application for a mining licence in accordance with section 37(1) of the Mines Act which application will include a copy of the Bankable Feasibility Study, the Government will consider the application in good faith and in a timely manner. In granting the mining licence the Government must ensure that for the purposes of section 86(2)(a) of the Mines Act, the terms of the mining license include the Royalty referred to in item 2 of attachment "B".

2.7

- (a) On the grant of the mining licence referred to in clause 2.6 and subject to the satisfaction or waiver of the condition precedent referred to in clause 21.7 the Government shall be entitled to fifteen (15) percent of the issued capital of the Company. The shares issued to the Government are to be of a class which is the same in all respects as the shareholding which Paladin and Paladin's Affiliate hold in the Company from time to time, save that the shares which Paladin and its Affiliates hold are to require them to provide all equity contributions to the Company to enable the Company to fund the Project through the use of a combination of debt and equity and having regard to the Thin Capitalisation Agreement.
- (b) During the term of this Agreement and in order to ensure the Company complies with the Thin Capitalisation Agreement, Paladin and/or its Affiliated Parties will subscribe for additional shares in the Company and when this occurs the Company will at no additional costs to the Government, issue additional shares to the Government (being shares of the same class as then held by the Government) in order to ensure the Government maintains fifteen (15) percent of the issued capital of the Company
- (c) The terms and conditions pursuant to which the Government, Paladin and Paladin's Affiliated Parties are to hold their shareholding in the Company are to be the subject of the Shareholders Agreement.

2.8 Any disagreement in relation to the manner, terms, timing or amount of expenditure of the Investment Commitment, may be referred by either Party to the Independent Expert.

2.9 Where the Company:

- (a) discovers an Additional Mineral and irrespective of whether or not clause 2.9(b) applies, the Company shall inform the Government of such discovery, which constitutes a mineral deposit of possible commercial value, within 30 days of the discovery; and
- (b) in the course of searching for or mining the Mineral, to which this Agreement and the Tenement relates, discovers any Additional Mineral the Minister will in good faith consider any application made by the Company in accordance with section 67 of the Mines Act.

2.10

- (a) The Parties acknowledge that during the currency of this Agreement the Company may carry out additional exploration outside the Contract Area and during the period when exploration is being undertaken outside the Contract Area, the Company shall comply with both the

Mines Act and the conditions of grant of the relevant mining tenement, but nothing in this Agreement will apply to that mining tenement.

- (b) Notwithstanding clause 2.10(a), if the Company discovers any uranium oxide outside the Contract Area or containing the uranium oxide it may, at the discretion of the Company but in compliance with the Laws of Malawi, be treated at the plant located on the Contract Area.

2.11 If during the course of the exploration referred to in clause 2.10(a), the Company makes a discovery of uranium oxide and:

- (a) submits a notice of that discovery to the Minister in accordance with section 35(c) of the Mines Act; and
- (b) makes application for a mining licence in accordance with section 37 of the Mines Act,

then immediately on the grant of that mining licence, such mining licence shall be subject to the Mines Act and the Parties will consider in good faith whether and on what basis the mining licence may become subject to this Agreement and unless the Parties so agree, this Agreement shall not apply to that mining licence.

2.12 The Government acknowledges that the Company may when Mining for the Mineral, extract Additional Minerals to the extent they are part of the Mine Product and where it does so it may sell the Additional Minerals, subject to the payment of a royalty calculated in accordance with clause 22.3

2.13 In addition to the Government's rights under the Mines Act, the Government may carry out inspections of the Company's activities on the Contract Area in order to ensure the Company is discharging its obligations under this Agreement, provided that:

- (a) the Government gives notice to the Company of its intention to conduct such an inspection; and
- (b) the representatives of the Government who are to carry out such inspections strictly observe the lawful directions of the Company's mine manager or authorised representative.

### **3. DUTY FREE STATUS, IMPORT AND EXPORT**

3.1 Subject to clauses 4 and 21, the Company may import and export materials, consumables to be used in the Mining and processing of ore, equipment and services to be used in implementing the Scheduled Programmes, subject to the issuance of any requisite licences by the Government, which the Government shall do in a timely manner and provided that the Government has not notified the Company that the import and export of such materials and equipment would give rise to the matters specified in clauses 3.2(b)(i) or 3.2(b)(ii). When importing materials, consumables to be used in the Mining and processing of

ore, equipment and services to be used in the implementing of the Scheduled Programmes the Company is not required to undertake any pre-shipment inspection as otherwise required by Interek and to the extent required, the Government will provide to the Company a certificate of exemption from such a requirement.

3.2 The Company may market or cause an Affiliate Party to market and the Company may export all Mine Product and subject to clause 3.4, shall have sole control and management of sale of such Mine Product, including by Term Contract, and shall assume all risks therefore, provided that:

- (a) the Company sells its products on Arms' Length Terms; and
- (b) the Government has not notified the Company that the export of the Mine Product would:
  - (i) breach an obligation of the Government arising under international law (including mandatory sanctions imposed by the United Nations); or
  - (ii) result in dealing or contracting with nationals of a state with which the Government is in a state of declared war,

3.3 and the Company has obtained whatever licences or consents are required in accordance with clause 27. The Company shall advise the Government of each material agreement concerning sales or processing of Mine Product, marketing, patent licensing, engineering, construction or management services which is entered into with an Affiliate. Such agreements shall be on Arms' Length Terms. Copies of such agreements shall be copied to the Government. If, in the opinion of the Government, which opinion the Government shall form in good faith, any such agreement is not on Arms' Length Terms, the Government may, within thirty (30) days of receipt of such agreement, give notice to the Company of the terms which the Government considers to be Arms' Length Terms. If the Company disagrees with the terms so considered by the Government, it may refer the dispute to the Independent Expert for a determination in accordance with clause 35 as to what are Arms' Length Terms. Upon receipt of the Independent Expert's determination, the Company shall renegotiate the agreement, if necessary, to embody those terms decided by the Independent Expert to be Arms' Length Terms or terminate the agreement.

3.4 The Government acknowledges that Arm's Length Terms may not comprise a sale of the Mine Product at the highest price obtainable on the date of the Company entering into a sales contract as it may be that the Company either determines, or is otherwise required to sell the Mine Product through a series of spot sales and Term Contracts.

3.5 It shall be a condition of each contract for the sale of Mine Product that such contract is subject to the approval of the Commissioner and the Company shall

submit each such contract to the Commissioner for such approval. The Commissioner has thirty (30) days from his receipt of such a contract to either:

- (a) approve the contract; or
- (b) in good faith disapprove the contract, which notice of disapproval shall be accompanied by reasons for such a determination.

3.6 If the Commissioner either:

- (a) disapproves of the contract as contemplated by clause 3.5(b) then where the Company considers the Commissioner has not acted in good faith or otherwise disagrees with the reasons for the Commissioner's determination then the matter may be referred to the Independent Expert in accordance with clause 35, for determination; or
- (b) fails to make a timely determination as required by clause 3.5 then he shall be deemed to have approved the contract in accordance with clause 3.5(a).

3.7 The Company shall keep all Mine Product under adequate security on its premises in Malawi, when being transported, and at points of export. Accurate weights and numbers of drums in which the Mine Product is packed shall be recorded and copies supplied to the Commissioner at the time of consignment or as otherwise agreed. The Company shall submit a procedure to the Government for safeguarding the Mine Product for approval and the Government agrees to facilitate the implementation of that procedure.

3.8 The Government will, in addition to discharging its obligation under clause 1.5(d), use its best endeavours to assist the Company to export Mine Product from Malawi through Government negotiated transport corridors across either Mozambique and/or Tanzania to a port in any of those countries and this includes whenever necessary assisting the Company to obtain export licences from the country from which Mine Product is to be shipped.

#### **4. PROCUREMENT**

4.1 On an annual basis, the Company shall invite the registration of legitimate established businesses in Malawi by reasonably effective means which would ensure adequate dissemination of the registration opportunity and which would include advertising in the local press or on the Company's website (particularly in the vicinity of the Contract Area and with particular emphasis on businesses directly or indirectly majority owned by Malawi citizens) which are capable of supplying materials, consumables used in the Mining and processing of ore, equipment and services to the Company. To the extent the Company enters into a supply contract having a term of greater than 12 months then for the term of such contract the Company does not have to comply with this clause for the services the subject of that contract.

4.2 Where materials, equipment and services required for the implementation of the Scheduled Programmes are manufactured or substantially assembled (or in the case of services, are procurable) within Malawi from business(es) pre-qualified pursuant to clause 4.1, such businesses shall have the opportunity to tender and if a tender submission from such businesses:

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

then the Company shall give preference to such businesses in its award of such tender.

4.3 The supply of materials, equipment and services may be tendered for and procured internationally without restrictions, provided that where such materials, consumables used in the Mining and processing of ore, equipment and services are procurable within Malawi from businesses registered pursuant to clause 4.1, such businesses shall have the opportunity to tender and, if a tender submission from such business meets the specifications of the invitation to tender, such businesses shall be given preference over any tender submitted by an international supplier.

4.4 In assessing the tenders from local contractors and suppliers, the Company shall consider among other things, the extra costs it would incur if it were to grant the contract to a foreign supplier or contractor. These extra costs shall include wharfage costs, shipping costs, stevedoring costs, customs clearance costs, customs duties, and demurrage charges.

## 5. LOCAL BUSINESS DEVELOPMENT

5.1 The Company shall:

- (a) develop a programme for the establishment or expansion, as the case may be, of Malawian businesses which may be capable of providing goods and services to the Business ("**Local Business Development Programme**") and this programme is to be part of the Bankable Feasibility Study, but nothing in this clause requires the Company to propose the establishment or expansion of a business which will be uncompetitive with another non-Malawian supplier;
- (b) comply with the Local Business Development Programme, so as to encourage and assist the establishment of businesses within Malawi (particularly in the district of Karonga and with a particular emphasis on businesses directly or indirectly majority owned by Malawi citizens)



to supply materials, equipment and services to the Company, provided that the Company shall not be obliged to train, supply, manage or supervise or grant or lend money to any person or organisation;

- (c) 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;
- (d) at all times designate a nominee to be the responsible person to:
  - (i) assist Malawi citizens who wish to or have set up businesses to service the Company and the Project;
  - (ii) implement the Local Business Development Programme;
  - (iii) liaise with the appropriate officials from the Government; and
  - (iv) provide advice and assistance in the development and implementation of long term business enterprises which can continue after the Approved Programme of Operations is completed; and
- (e) inform the Government annually on the implementation and results of the Local Business Development Programme.

## **6. ROADS**

### **6.1**

- (a) The Government shall at its sole cost upgrade the unsealed road from Karonga townsite to the Mwesia River and then from the North Rukuru River to the turnoff to the Contract Area from the Karonga/Chitipa Road, as shown on the plan attached and marked "A" to the standard, but for sealing, of a Class 1 Malawian road and such road works are to commence from the point closest to Karonga. The Government is to use its reasonable endeavours to complete the unsealed upgrade within 18 months of the Agreement Date and thereafter the sealing of the upgraded road as soon as funding and scheduling permit.
- (b) The Company may negotiate with the Government's construction contractor for the purpose of determining the construction priorities associated with the works referred to in clause 6.1(a) and if the Company requires that any part of such works needs to be to a higher standard than contemplated in clause 6.1(a) then the Government acknowledges that the Company can negotiate a separate contract with the Government's contractor to carry out such work at no extra cost to the Government.

- 6.2 The Government shall gazette a road from the turnoff to the Contract Area from the Karonga/Chitipa Road to at least the Contract Area, the standard of

which road is to be first agreed between the Government and the Company. The Company is to construct the road to the standard of what is gazetted and is to thereafter maintain that road for the term of this Agreement.

- 6.3 The Government shall endeavour to maintain or cause to be maintained those public roads under the control of the National Roads Authority or the Karonga Town Assembly or their respective successors which may be used by the Company for the purposes of its Business and in the case of the road referred to in clause 6.1, to a standard but for sealing, of a Class 1 Malawian road.
- 6.4 The Government will support initiatives to improve supporting infrastructure and essential services.
- 6.5 In the event that for, or in connection with, the Business the Company or any person engaged by the Company uses or wishes to use a public road (whether referred to in clause 6.3 or otherwise) which is inadequate for the purpose, or any use by the Company or any person engaged by the Company of any public road results in excessive damage to or deterioration of it (other than fair wear and tear) the Company shall pay to the Government, National Roads Authority or Karonga Town Assembly (as the case may require) the whole or an equitable part of the total cost of any required upgrading or making good the damage or deterioration as may be reasonably required by the National Roads Authority having regard to the use of such public road by others.
- 6.6 The Company shall:
- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in its Business activities and the standard for such construction and maintenance shall be equivalent to that applying to similar sized roads in Malawi;
  - (b) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles other than those engaged upon the Company's activities and its invitees and licensees from using the private roads; and
  - (c) at any place where any private roads are constructed by the Company so as to cross any railways or public roads provide at its cost such reasonable protection and signposting as may be required by the National Roads Authority or the Karonga Town Assembly as the case may be.
- 6.7 If the public roads are not maintained to the standard required by the Company then the Government authorises the Company, at the Company's expense, to undertake or to engage contractors to undertake maintenance work on the public roads which are of concern to the Company.
- 6.8 Where a road constructed by the Company within the Contract Area for its own use is subsequently required for public use, the Government may, after consultation with the Company and so long as resumption shall not unduly

prejudice or interfere with the Business, resume and gazette such road as a public road.

- 6.9 In the event that the Company is unable to procure wayleaves or other rights over land required for the purposes of constructing and maintaining roads on reasonable terms, the Government shall assist the Company to such extent as may be reasonably necessary to enable it to procure the said wayleaves or other rights over land.

## **7. AERODROME**

- 7.1 The Company shall confer with the Minister responsible for transport and public works and the Department of Civil Aviation about:
- (a) any upgrading of existing aerodrome facilities and services in the Karonga district that the Company considers it requires as a result of the Business and the Government will do all that is necessary to assist the Company to obtain the facilities and services it requires; and
  - (b) the establishment of an unsealed airstrip on the Contract Area and the Government will do all that is necessary to enable the Company to construct and operate an air service to and from the Karonga air field including the granting of any authorisation or provision of any consent pursuant to the Aviation Act (Cap. 70:01 of the Laws of Malawi).

## **8. ELECTRICITY**

- 8.1 For the purposes of facilitating integration of electricity generation and transmission facilities in the area of the Mining Area, the Company may either:
- (a) purchase up to 12 megawatts of electricity from ESCOM for the payment by the Company of an equitable contribution (having regard to the amount of electricity required by the Company and whether such supply needs to be continuous) towards the augmentation of the facilities at Karonga or to enable it to continuously supply such electricity to the Company. Electricity supplied to the Company pursuant to this clause shall be at rates and on terms and conditions to be agreed between ESCOM and the Company; and/or
  - (b) generate its own power from a facility constructed by or on behalf of the Company on the Mining Area.
- 8.2 In the event of the Company determining it does not wish to procure all or any of its electricity from ESCOM in accordance with clause 8.1(a) the Company may:
- (a) in accordance with its Approved Programme of Operations, install and operate without cost to ESCOM, at an appropriate location equipment of sufficient capacity to generate electricity for its activities at the Mining Area; and

(b) transmit power within the Mining Area,

as contemplated in clause 8.1(b). In the event the Company requires any licence under the Electricity Act (Cap. 73:01 of the Laws of Malawi) from the Malawi Energy Regulatory Authority for the purposes of giving effect to any of the matters referred to in this clause 8.2 then the Government is to provide the Company with whatever assistance it can in order to procure from ESCOM a grant of any such licence.

8.3 In the event that the Company is unable to procure wayleaves or other rights over land required for the purposes of transmitting electricity on reasonable terms the Government shall assist the Company to such extent as may be reasonably necessary to enable it to procure the said wayleaves or other rights over land.

8.4 In exercising any power which is held either directly or indirectly over ESCOM, the Government will facilitate to the extent which is consistent with the relationship between the Government and ESCOM that ESCOM meets its obligations as detailed in the power supply agreement to be entered into between ESCOM and the Company.

## 9. WATER

9.1

(a) The Government and the Company shall agree upon the amounts (and qualities) of the Company's annual and maximum daily water requirements for use in the Mining operations (which amounts or such other amounts as shall from time to time be agreed between the Parties to be reasonable called the "**Mining Water Requirements**").

(b) To the fullest extent reasonably practicable, the Company shall use water obtained from dewatering on the Tenement for its purposes under this Agreement.

(c) Nothing in this Agreement shall be construed to exempt the Company from any liability to the Government or to third parties arising out of or caused by extraction of, water from the Tenement by dewatering or any discharge or escape from the Tenement of water obtained by dewatering.

9.2 Subject to clause 9.3, the Company is at its cost and in collaboration with the Government entitled to take water from any of the North Rukuru, Sere or Muswanga Rivers in order to meet its requirements, provided that the Company shall employ and retain experienced hydrological consultants to provide advice on the sustainability of taking such water. The Company shall furnish to the Minister details of the results of its investigations and copies of the reports of such consultants as they become available.

- 9.3 If the investigations referred to in clause 9.2 prove to the satisfaction of the Minister acting reasonably that water can continue to be drawn on by the Company without seriously affecting either the sustainability or quality of water in that water source or either the availability (to the extent utilised by local villagers) or quality of water in the adjacent areas the Government shall, subject to the Company making application to the Ministry of Irrigation and Water Development, consider the grant to the Company of the necessary licence by the Minister responsible for the administration of the Water Resources Act (Cap. 72:03 of the Laws of Malawi) to develop and draw from that source at the Company's cost but at a prescribed fee, the Mining Water Requirements. The licence, if granted, is to be on such terms and conditions as are necessary to ensure good water resource management as the Government may from time to time require and during the continuance of this Agreement grant renewals of any such licence, provided however, that should that source in the opinion of the Government prove hydrologically inadequate to meet the Mining Water Requirements, the Government may on at least 6 months prior notice to the Company (or on at least 48 hours notice if in the opinion of the Government an emergency situation exists) limit the amount of water which may be taken from that source at any one time or from time to time to the maximum which that source is hydrologically capable of meeting as aforesaid. The Government agrees to act in good faith and to observe the principles of natural justice when exercising the discretion referred to in this clause 9.3.
- 9.4 In the event of water supplies from available sources proving insufficient to meet the Mining Water Requirements the Company shall, notwithstanding the provisions of clause 9.3, collaborate with the Government in an investigation of ground water, surface water, water catchments and storage dams.
- 9.5 The Company shall at its cost or with finance arranged by it construct to standards and in accordance with designs approved by the Government and operate and maintain in accordance with the relevant approved proposals all necessary dams, bores, valves, distribution pipelines, reticulation, meters, tanks, equipment and appurtenances necessary to draw, transport, use, reticulate and dispose of water obtained by the Company pursuant to this clause.
- 9.6 The Government shall ensure that in granting rights to minerals, petroleum or other substances over the area of any water sources from which the Company is drawing water from time to time conditions are imposed on the third party to whom such rights are being granted in order to minimise any material prejudice or interference with the Business or the Company's access to the water source.
- 9.7 The Company acknowledges that if the Northern Region Water Board takes over responsibility for the supply of water to the Kayelekera village it will pass over to the Northern Region Water Board the facilities which the Company may have installed in order to facilitate the supply of water to the Kayelekera village. Nothing in this clause requires the Company to pass over any facilities which are used to supply water to the Mining operations.

## **10. LANDS**

- 10.1 In accordance with the Approved Programme of Operations the Government shall grant to the Company, or arrange to have the appropriate authority or other interested instrumentality of the Government grant, for such periods and on such terms and conditions including rentals and renewal rights as shall be reasonable having regard to the requirements of the Company and as are consistent with the terms of this Agreement and approved proposals, leases and where applicable licences, easements, wayleaves and rights of way for all or any of the purposes of the Business including any of the following namely – accommodation areas, rail spur lines, railway lines, conveyors, private roads, tailings areas, water pipelines, pumping installations and reservoirs, power transmission lines, radio and communication sites, plant site areas and borrow pits for stone sand clay and gravel.
- 10.2 The Government shall use its express powers under the Land Act (Cap 58:01 of the Laws of Malawi) to grant wayleaves or rights of way or to dispose of or lease customary land to the Company, provided that the Company can demonstrate to the Government acting reasonably, that such actions are essential for the development and operation of the Project.

## **11. RAILWAYS AND SHIPPING**

- 11.1 Subject to the Company complying with the laws relating to the handling of the Mine Product the Government shall do all within its power to enable the Company to use if it considers appropriate all existing rail and port facilities in Malawi for the transport of the Mine Product, plant, equipment and consumables, it being acknowledged by the Company that the Government has granted concessions to private organisations to run both the railways and ports in Malawi and access to such facilities will require the Company to reach agreement with the concession holder of such facilities.
- 11.2 The Government shall, if it has any residual power to do so given its grant of concessions to private organisations to run both the railway and ports in Malawi if called upon by the Company to do so, set aside or cause the concession holder to set aside a separate secure area at the rail head and port on which the Company can store its Mine Product before shipment.

## **12. TRAINING AND HUMAN RESOURCES MANAGEMENT**

### **12.1**

- (a) The Company shall employ and train Malawi citizens in and for the operations, development and extraction of yellowcake in accordance with the Mines Act and any instrument appended to the Tenement and such instrument is to contain requirements which are reasonable in all the circumstances. The Commissioner shall promptly grant permission to the Company to employ non-Malawi citizens in any post only if:

- (i) the skills and experience required in respect of the holder of that post are not obtainable from the employment of a Malawi citizen from the Malawi labour market; or
  - (ii) notwithstanding such skills and experience being available from a Malawi citizen within the Malawi labour market, where the Company determines that such candidate is not a fit and proper person to be employed by the Company and there are no other suitable candidates from within the Malawi labour market.
- (b) For the purposes of the training referred to in clause 12.1(a), the Company shall establish training programmes prior to the Production Commencement Date and shall implement such programmes on an as needs basis after that date.
  - (c) Where in the reasonable opinion of the Commissioner for Labour, which opinion the Commissioner for Labour shall detail in writing to the Company, the Company has, in breach of its undertaking continued to employ a non-Malawi citizen in any post where a suitably skilled and experienced Malawi citizen is available to fulfil that role, he may call upon the Company to show cause why the employment of such a non-Malawi citizen in a particular post should not be discontinued at the first available opportunity under that person's contract of employment and that such person be replaced by a suitably skilled and experienced Malawi citizen. Without limitation to rights of the Company to show cause, it shall be conclusive evidence of the Company not having to employ a particular Malawi citizen if the Company can demonstrate that the candidate is not a fit and proper person.
  - (d) In addition to the obligations of the Company to train Malawi citizens as described in clause 12.1(a), the Company may in its sole discretion but as part of any such training, second some of its Malawi employees to operations of the Company or its Affiliates in other countries.

12.2 The Government undertakes to:

- (a) promptly grant the necessary entry visas, work permits and similar authorisations to expatriate personnel who are bona fide employees of the Company, its consultants, contractors and sub-contractors;
- (b) allow expatriate personnel to remit from Malawi in each year of their employment two thirds of their net salary and upon termination of their contracts in Malawi, the balance of their savings together with any bonus or gratuity payment or other sums paid to them from any provident or similar fund on termination of their employment; and
- (c) allow such expatriate personnel to import into Malawi, within six months of arrival to take up employment in Malawi, their personal and household effects, free of any import duty and other related taxes and

charges freely to export the same upon termination of their employment in Malawi,

provided that, upon written application by such expatriate personnel, the Commissioner General of Malawi Revenue Authority may allow the applicant to either import the aforementioned items beyond the specified period of six months or to import and at the end of their employment in Malawi, export a motor vehicle for private usage, duty free.

### **13. INSURANCE**

13.1 The Company shall ensure those aspects of its operations that are normally and commercially insurable (and where such insurance is customarily obtained in the mining industry) are insured in accordance with the Laws of Malawi and Best Mining, Ore Processing and Environmental Practices and occupational health and safety practices.

13.2 The Company shall forward copies of insurance policies to the Government as and when they are renewed. The Company shall take out whatever insurance is required by the Laws of Malawi with a Malawi insurance company otherwise the Company is free to take out insurance coverage where it is most commercially appropriate to do so and with insurers in whatever jurisdiction they are located and the Government undertakes to permit the Company to secure such insurance.

### **14. SUSPENSION AND CURTAILMENT OF PRODUCTION**

14.1 Subject to the succeeding provisions of this clause 14, the Parties acknowledge that the Company's right to suspend and curtail production is governed by section 46 of the Mines Act and that, in the event of any such suspension or curtailment, the Minister may exercise powers under section 44(2) of the Mines Act.

14.2 The Government agrees that:

- (a) the Commissioner's approval shall be given in accordance with section 47(a) of the Mines Act upon compliance by the Company with this clause; and
- (b) in such event, any direction capable of being given pursuant to section 47(b) of the Mines 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 the Government.



- 14.3 If the Company gives notice to the Government in accordance with section 46 of the Mines Act the Government will cause the Commissioner to consider such action in good faith.
- 14.4 Where the Company makes an application to suspend or curtail production based on Government action, the Commissioner shall consider in good faith whether the action of either the legislative or executive arms of Government has resulted in or caused a Material Adverse Effect on either the Economic Equilibrium or operational conditions as they existed at the Agreement Date.
- 14.5 Where pursuant to section 47 of the Mines Act the Commissioner approves the Company suspending or curtailing production in respect of any part of its operation, the Company shall maintain, subject to fair wear and tear, the assets comprising the relevant plant so as to prevent significant deterioration until Normal Operations are resumed.
- 14.6 In assessing whether production should be curtailed or suspended because of Government action having a Material Adverse Effect on either the Economic Equilibrium or operational conditions as they affected the Company on the Agreement Date or whether such production should be recommenced due to the reversing of such acts of Government, the Commissioner or the Arbitrator (as the case may be) shall have regard to the impact of such actions on the costs and expenses of the Mining operation or the Company's ability to undertake the Approved Programme of Operations.

## **15. SURFACE RIGHTS AND INFRASTRUCTURE**

- 15.1 The Company shall allow the public and the Government to use, free of charge, any roads within the Contract Area constructed and/or maintained by the Company which by custom and practice have been freely available for public use, provided, however, that such use shall not unduly degrade security of mine facilities or equipment or prejudice or interfere with the Company's operations under this Agreement, and provided further that the Company may restrict access or limit the use of such roads in the interest of public health and safety.
- 15.2 The Company may in its sole discretion allow or consider allowing the general public to have access over the Contract Area, provided that such access neither degrades the security of mine facilities or equipment, nor unduly prejudices or interferes with the Company's operations and in exercising his powers under section 104 of the Mines Act the Minister shall have regard to the rights of the Company under this clause 15.
- 15.3 The Company may allow the Government to place, for a reasonable charge and at its own expense, telephone wires on the poles of the lines of the Company, provided that such installation is carried out with prior notice to the Company, and in cooperation with the Company and does not unduly interfere with the Company's efficient use of such poles and lines.
- 15.4 The Government shall facilitate the granting of a licence to the Company by the Malawi Communications Regulatory Authority to establish and operate

satellite and other wireless communications both within Malawi and internationally.

## **16. RECORDS AND OPERATIONS REPORTS**

- 16.1 The Company shall keep the Government through the Ministry, advised concerning the Company's operations through submission of annual reports, the first report to be submitted three (3) months after the first financial year end of the Company following the Production Commencement Date, as to the progress and results of the Company's Mining and processing operations including any prospecting and appraisal activities (such reports to contain any information relating to the progress of operations as the Ministry may from time to time reasonably require).
- 16.2 The Company shall provide quarterly reports to the Minister, the first report to be submitted within one (1) month after the first of 31 March, 30 June, 30 September or 31 December from the Production Commencement Date and thereafter on a quarterly basis. The quarterly reports shall contain information relating to:
- (a) quantities of ore mined and average head grades;
  - (b) the quantities of Mine Product won from the Contract Area and the prices obtained on sales of the Mine Product;
  - (c) quantities of waste mined;
  - (d) operating costs; and
  - (e) 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 Management Plan.
- 16.3 The Company shall provide monthly reports as required by the Mines Act.
- 16.4 All information furnished to the Government pursuant to clauses 16.2 and 16.3 shall be in the English language and any reference to currency shall be in K or US\$ but in the case of the currency being US\$ the report shall contain a statement of the US\$/K exchange rate at the end of the relevant period.
- 16.5 The Company shall file with the Ministry annual reports summarising any geological and metallurgical investigations and such other material data as may be obtained from any of its activities.
- 16.6 The Company shall maintain all original records and reports relating to its activities and operations from the Production Commencement Date including all documents relating to financial and commercial transactions with independent parties and Affiliates in its principal office in Malawi. These records and reports shall be open to inspection by the Government through an

authorised representative during normal working hours. Such reports and records shall be maintained in the English language and all financial data shall be recorded in K or US\$.

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

16.8 The Government shall in relation to any Confidential Information:

- (a) use such Confidential Information only for the purpose for which it was supplied to the Government and not for any other purpose in accordance with the laws of Malawi;
- (b) treat and safeguard as strictly private and confidential all Confidential Information including without limitation, the Confidential Information supplied to the Government as a shareholder in the Company being used by the Government solely in that capacity; and
- (c) ensure proper and secure storage of all Confidential Information.

16.9

- (a) Compliance by the Company in all material respects with the provisions of this clause 16 shall be deemed to constitute compliance with the provisions of the Mines Act relating to matters provided for in this clause 16.
- (b) For the avoidance of doubt and subject to the Mines Act nothing contained in this Agreement other than as provided for in clause 16.8(b) shall preclude the Government from using any such information as supplied by the Company under clause 16.2 of this Agreement for purposes of preparing the Government statistics and data or from publishing the same in statistical format.

16.10 Any information supplied by the Company shall (except with the consent in writing of the Company which shall not be unreasonably withheld) be treated by all persons in the service of the Government as confidential, but the Government shall nevertheless other than as provided for in clause 16.8(b) be entitled at any time to make use of any information received from the Company for the purpose of preparing and publishing aggregated returns and general reports on the extent of prospecting or ore Mining operations in Malawi and for the purpose of any arbitration or litigation between the Government and the Company. In addition, the Government may other than as provided for in clause 16.8(b) prepare and publish aggregated returns and general reports which do not disclose Confidential Information specific to the Company on the extent of prospecting or ore Mining operations in Malawi.

16.11 Any information supplied by the Government to the Company which is Confidential Information (except with the consent in writing of the

Government) shall be treated by the Company and all persons in the employment or who are consulting to the Company as confidential.

- 16.12 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.

## PART C

### UNDERTAKINGS NECESSARY

#### 17. FOREIGN EXCHANGE

- 17.1 The Parties acknowledge that under legislation and practice currently in force in Malawi, the Company is free to remit foreign currency accruing to or earned by it outside Malawi into Malawi.
- 17.2 Subject to the Company making the appropriate applications including registration with the Reserve Bank of Malawi of its investment in Malawi, be it cash or equipment and providing to the Government a copy of the facility agreement between the Company's international project financier as lender and the Company as borrower, the Government will:
- (a) in accordance with its exchange control regulations permit the Company to:
    - (i) remit foreign currency out of Malawi;
    - (ii) maintain a foreign currency account outside of Malawi, provided that such permission shall be for a period of 7 years after the establishment of such account or for so long as the Company has borrowed money from the Project Lenders, whatever is the earlier;
    - (iii) maintain a foreign currency account within Malawi into which foreign currency not required to meet the Company's obligations to the Project Lenders are transferred; and
    - (iv) retain reasonable amounts of foreign currency from the sale of Mine Product, in its foreign currency account outside Malawi as required by the Company to meet its loan obligations including the payment of interest, principal and the establishment and maintenance reserves as required by the Project Lenders. All foreign currency which is held to the credit of the Company and which is not required to meet its loan obligations shall be repatriated to Malawi as required by law. All other external payments by the Company shall, subject to clause 17.9, be made from the foreign currency account maintained within Malawi; and
  - (b) enter into a tripartite agreement between the Company, the Government and the Project Lenders in order to give effect to the arrangements referred to in this clause 17.2.
- 17.3 In the event foreign exchange controls are amended or re-introduced where they do not currently apply in Malawi within the Stability Period and to the

extent those controls may vest discretion in relation to the imposition of such controls in the Reserve Bank of Malawi, the Government will in good faith urge the Reserve Bank of Malawi to exercise its discretion such that the Company shall, notwithstanding such amendment or reintroduction as the case may be (and without requiring further approvals from the Government or any entity of the Government) have the right to:

- (a) retain a foreign currency account outside Malawi for a period of 7 years after its establishment, or for so long as the Company has borrowed money from the Project Lenders, whatever is the earlier, in an account established for that purpose and maintain in such account amounts arising from all verifiable sources associated with sale proceeds of the Mine Product and foreign loan proceeds. Such proceeds shall be used for purposes of servicing foreign loans and establishing and maintaining foreign currency reserve accounts as required by the Project Lenders. All foreign loans procured by the Company shall be registered by the Reserve Bank of Malawi through authorised dealer banks in Malawi prior to the loans being effective;
- (b) retain a foreign currency account within Malawi which has been established, for the Project, and maintain in such account amounts arising from all verifiable sources associated with the Business, including the following:
  - (i) that portion of the sale proceeds which are not permitted to be held in the account referred to in clause 17.3(a);
  - (ii) payments made by insurers or re-insurers not resident in Malawi under contracts of insurance in the Company's favour;
  - (iii) profits;
  - (iv) proceeds of any disposal of capital assets;
  - (v) foreign loan proceeds and intercompany loans;
  - (vi) proceeds of the issue of share capital (payable by non-residents of Malawi); and
  - (vii) proceeds of swaps and hedges (payable by non-residents of Malawi); and
- (c) subject to the prevailing Exchange Control Regulations and clauses 17.5 and 17.9, freely use the foreign currency accounts maintained by the Company in Malawi to:
  - (i) service payments of principal and interest, service charges and other fees and expenses in respect of any loans arranged with non Malawi entities other than for those entities being repaid from the account referred to in clause 17.3(a);

- (ii) make payments due to suppliers not resident in Malawi for the supply of goods and services to the Company;
- (iii) remit profits (in currency or otherwise) and repatriate capital (in cash or assets) outside Malawi (which right shall be extended to the Company's shareholders in respect of the proceeds of the disposal or liquidation of all part of their investment/shares in the Company);
- (iv) pay expatriate employees whose contracts of employment specify that a portion of their salary be paid in a currency other than Kwacha, that portion of their salary which it is permissible under the laws of Malawi to be paid in a currency other than Kwacha;
- (v) effect such other payments in foreign currency to persons not resident in Malawi for foreign exchange purposes as may be necessary or desirable in the ordinary course of the Business;
- (vi) effect any other payments as may be required from time to time in the ordinary course of business; and
- (vii) payments of swaps and hedges (payable to non-residents of Malawi).

17.4 The Company shall submit to the Reserve Bank of Malawi:

- (a) within fifteen (15) days of the end of each calendar month:
  - (i) a statement of foreign currency amounts repatriated to Malawi within the previous month from accounts maintained overseas by the Company; and
  - (ii) a statement of the balance of the Company's foreign currency accounts at the end of the previous month both in and outside Malawi;
- (b) audited financial statements within five (5) months following the year to which audited financial statements relate which comply with Malawian law and regulations; and
- (c) any other information or reports as may be requested under regulation 6 of the Exchange Control Regulations made under section 3 of the Exchange Control Act (Cap 45:01 of the Laws of Malawi).

17.5 In the absence of exchange controls in Malawi, the Company shall have the same rights to buy and sell currencies from authorised dealers as other commercial concerns in Malawi and enter into swaps and hedging agreements (which agreements will include arrangements for taking out forward cover against local or other currency fluctuations or other fluctuations in outflows or inflows incurred as part of the management operations and solely for the

purposes of the Company covering such fluctuations as they may affect the Company and its operations but shall not include Speculative Currency Transactions). In the event exchange controls were to be reimposed (and without prejudice to the Company's rights under clause 17.3) 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 Malawi. The Company shall be entitled to buy and sell foreign exchange for its own use 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.

- 17.6 The Company shall remit to Malawi and convert them into K for credit to a bank account in the name of the Company such portion of foreign currency earnings arising from the sale of Mine Product as required by the Reserve Bank of Malawi to pay all such commitments as the Company may have incurred in K (including obligations to pay dividends to any local shareholders payable in local currency, taxes and royalties) which cannot be met by its K balances from time to time. The Company shall use its reasonable endeavours to notify the Reserve Bank of Malawi through the Company's local bankers of transfers of substantial amounts which are not in accordance with the normal pattern of transfers.
- 17.7 The Company shall not engage in or use any provisions of this clause 17 or any authority or approval given by the Reserve Bank of Malawi to engage in Speculative Currency Transactions. For the avoidance of doubt, this clause shall not prohibit or prevent normal risk management operations discussed in clause 17.5. If the Company is in breach of this clause it shall pay to the Government 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 the Government in establishing that the transaction was a Speculative Currency Transaction.
- 17.8 Where any right or assurance given to the Company under this clause 17 requires the Reserve Bank of Malawi to approve any act, matter or thing or to grant authority under applicable law and regulations for its exercise or performance, and the Company has supplied any necessary information to the Reserve Bank of Malawi and otherwise met the conditions of this clause 17, the Government will in good faith urge the Reserve Bank of Malawi to grant such approval or authority.
- 17.9 The Company and the Government through the Reserve Bank of Malawi are to establish a procedure by which the Company can, where required, make payments from its foreign exchange accounts established inside of Malawi for either:
- (a) the importation of equipment, spare parts, materials and services in advance of the Company's receipt of such equipment, spare parts, materials and services and either without having to first obtain the approval of the Reserve Bank of Malawi for such payments and to subsequently be able to seek the approval of the Reserve Bank of



Malawi for such payment or otherwise some other streamlined procedure for making such payments; or

- (b) the importation of equipment, spare parts, materials and services having a value not exceeding US\$1,500,000 in cases of emergency without the Company's authorised dealer bank in Malawi having to seek the prior approval of the Reserve Bank of Malawi. If the Company needs to spend in excess of US\$1,500,000 in the event of an emergency then subject to such expenditure being approved by the Government's nominee on the board of the Company, which approval must not be unreasonably withheld, then the Company's authorised dealer bank must make the payment without having to seek the prior approval of the Reserve Bank of Malawi.

17.10 In circumstances where the Company instructs its authorised dealer bank in Malawi to make a payment in accordance with clause 17.9(b) then the Company through that authorised dealer bank must justify to the Reserve Bank of Malawi, acting reasonably, that the expenditure was emergency expenditure. If the Government forms the view that the Company has on no less than two occasions made payments in accordance with clause 17.9(b) in circumstances which are not as a consequence of an emergency and after referring the matter to the Independent Expert in accordance with clause 35, for determination, the Independent Expert finds in favour of the Government then the Company shall cease to enjoy the benefit of clause 17.9(b).

17.11 For the purposes of giving effect to clause 17.9, the Government, the Company and the authorised dealer bank in Malawi will enter into a tripartite agreement to give effect to the agreed procedures.

17.12 The Company shall, upon application in writing to the Reserve Bank of Malawi through the Company's local bankers, be entitled to export capital goods originally purchased and brought into Malawi by the Company with external funds, provided, however that the Government shall first be given the option to purchase the said capital goods.

17.13 The Company shall keep records and accounts of all transactions which have involved the right of set off and such records and accounts shall be available to the Government.

17.14 The Company agrees to establish separate bank accounts being K and foreign currency accounts within Malawi for Mining operations and any exploration operations which the Company intends to undertake from time to time.

## **18. ENVIRONMENTAL MATTERS**

18.1 Subject to the provisions of this clause 18, the Company shall comply with:

- (a) the Environmental Laws enacted or promulgated within Malawi from time to time which are of general application including, section 24 of the Environmental Management Act;

- (b) the Environmental Management Plan applicable from time to time; and
- (c) reporting requirements on the implementation of the Environmental Management Plan and any other environmental problems arising as a result of the activities of the Company as provided in the Environmental Management Plan.

18.2 Subject to compliance by the Company with the Environmental Management Plan applicable from time to time and save as provided in clause 18.5, the Government will take action in enforcing any applicable Environmental Laws with the intent of:

- (a) securing the Company's earlier compliance with Environmental Laws and those envisaged by the timetable and conditions set out in the Environmental Management Plan as applicable from time to time;
- (b) imposing fines or penalties upon the Company payable under Environmental Laws (or enacting new fines and penalties under those Environmental Laws) which are payable in respect of the Company's non-compliance with such Environmental Laws and where the Environmental Management Plan applicable from time to time provides for the remedy of the same in accordance with a specified timetable, if any, and the Company is substantially in compliance with that timetable; and
- (c) imposing fines or penalties in respect of the Company's breach of existing Environmental Laws.

18.3 Any dispute regarding non-compliance with the Environmental Management Plan and any other related Environmental Laws may be referred by either Party to the Independent Expert for determination in accordance with clause 35.

18.4 The Minister responsible for environmental affairs on behalf of the Government may propose an amendment to the Environmental Management Plan applicable from time to time if:

- (a) at any time the conduct of Normal Operations in accordance with such Environmental Management 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 such Environmental Management Plan and is or may become irreversible or only become reversible or only be reversed after the end of the Life of Mine; or
- (b) the environmental impact of Normal Operations shall prove substantially more adverse than anticipated in such Environmental Management Plan; or
- (c) technology or procedures, or improvements of them shall have been available and economic subsequent to the adoption by the Company of such Environmental Management Plan and, if applied to the operation

of the Project, could materially mitigate the environmental impact of Normal Operations.

- 18.5 In the event of a variation to the Environmental Management Plan proposed by the Minister on behalf of the Government under the circumstances set forth in clause 18.4, the Company undertakes to consider the proposed variation in good faith and, unless by notice of objection served on the Minister the Company objects to the proposed variation, the proposed variation shall be deemed to have been agreed to by the Parties. Any notice of objection by the Company shall include a written statement of the reasons why the Company considers the proposed variation to be unreasonable and shall set out amongst other things its analysis of the variation and the environmental impact that would be effected by such change.
- 18.6 Following receipt of a notice of objection under clause 18.5, the Minister shall, as soon as possible, inform the Company by notice in writing whether or not the Minister's proposal for a variation of the then applicable Environmental Management Plan is or is not withdrawn. In the event that the Minister's proposal for a variation is not withdrawn it will be deemed to have been agreed unless the Company elects to submit the question of whether the Government's proposal for a variation is unreasonable to the Independent Expert for determination. Should the Company make that election, the opinion of the Independent Expert will be binding on the Parties with effect that if the Independent Expert determines that the Government's proposal for a variation is:
- (a) reasonable, the proposal for a variation will be deemed to have been agreed; or
  - (b) unreasonable, the proposal will be deemed to have been withdrawn.
- 18.7 Where a variation to an Environmental Management Plan proposed by the Minister has been agreed by the Company or is deemed to have been agreed to by the Company pursuant to this clause 18, the then applicable Environmental Management Plan shall be amended accordingly.
- 18.8 The Company:
- (a) may, in consultation with the Minister, amend the Environmental Management Plan from time to time; or
  - (b) shall amend the Environmental Management Plan where either the IAEA standards for management of the environment as it is affected by Mining operations are changed, or
  - (c) shall amend the Environmental Management Plan where either of the Environmental Laws are changed,

provided that following such amendment the Environmental Management Plan conforms to specifications and practices established by Malawian and IAEA standards for the management of the Environment as it is affected by Mining

operations, so as to reflect changes in operations and other circumstances considered to be appropriate by the Company and shall deliver a copy of such amended plan or obligations to the Minister whereupon it shall become part of the Scheduled Programmes. If, however, the Government considers that any such amendment would constitute a Material Adverse Effect, the provisions of clause 40 shall apply.

- 18.9 Notwithstanding the provisions of this clause 18, the Company shall, at the invitation of the Minister, 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 to the Environmental Laws.
- 18.10 The Company shall, to the extent that it fails to meet the environmental management and monitoring standards set for the Project and the Tenement pursuant to the applicable Environmental Laws and relevant IAEA codes and Malawi national environmental standards, at its own expense promptly clear any area of any such excess contamination and compensate, according to the applicable laws of Malawi, those adversely affected.
- 18.11 The Government shall undertake regular monitoring of the Project during its implementation phase to:
- (a) determine effectiveness of mitigation measures proposed in the Environmental Management Plan;
  - (b) determine changes, if any, in the environmental conditions that the Government recommends be made to the Project, which changes are to be with respect to potential additional mitigation measures but such changes are not to depart materially from the conditions applied to the mining licence at the time of grant. These changes are to be based on a baseline survey conducted by the Government at no cost to the Company before the Production Commencement Date but any failure of the Government to conduct or complete the baseline study shall not delay the Production Commencement Date; and
  - (c) assess compliance with the Environmental Management Plan, IAEA codes and the Environmental Laws and the relevant Malawian environmental standards pertaining to uranium mining.
- 18.12 On the Government recommending any changes in accordance with clause 18.11(b), the recommendations will be placed before the committee to be established pursuant to clause 41.1 and it is only on the decision of that committee, but subject to the rights of the Company in clause 18.13 to contest the materiality of changes, that the Company is obliged to make the changes to the Project.
- 18.13 If the Company considers that any of the changes proposed by the Government pursuant to clause 18.11 depart materially from the conditions applied to the mining licence at the time of grant then the Company may refer the issue to the

Independent Expert to be determined in accordance with clause 35. If the Independent Expert agrees with the Company then to the extent of that agreement the proposed changes shall not apply.

18.14

- (a) The Company shall maintain an environmental performance bond, equivalent from time to time to the specified amount in the Bankable Feasibility Study for undertaking rehabilitation of the Mining Area. The environmental performance bond is to be in the form of an irrevocable letter of credit, with a commercial bank in Malawi and is to be in favour of the Director of Environmental Affairs. The environmental performance bond shall:
  - (i) cater for costs of rehabilitation in areas where the Company or its activities shall show signs of default during and after the mine life. Such activities shall include but no limited to failure in performance of tailings storage facilities, contamination of water resources and the environment and their clean up, sensitisation of the general public on the potential dangers associated with radioactive substances and procedures to prevent the general public from the negative effects of radioactive substances and revegetation; and
  - (ii) be increased or decreased as the case may be every 2 years over the Life of Mine, in order to ensure the size of the environmental performance bond is equivalent to the rehabilitation costs projected in the Bankable Feasibility Study for the relevant 2 year period.
- (b) The environmental performance bond shall further be used for covering payments for any breaches by the Company of its duty to either prevent pollution which might give rise to circumstances provided for under clause 18.14(a) or to undertake rehabilitation work.

18.15 The environmental performance bond shall be released:

- (a) progressively, in the circumstances contemplated in clause 18.13; and
- (b) at the end of the term of this Agreement provided that the Company has met the requirements of the mine closure plan which the Company will have to submit to the Commissioner and which the Commissioner will have to approve either before or at the time of the Company making an application to surrender the Tenement pursuant to section 55 of the Mines Act.

18.16 The Company shall assist the Government (in a manner and to an extent yet to be agreed) with:

- (a) the provision of an office and the purchase of equipment for monitoring of the Environmental Management Plan;

- (b) educating Malawi citizens on the nuclear industry generally, and the Mining of ore, the production of yellowcake and the Business specifically; and
- (c) capacity building in environmental management and monitoring of effects on both human health and the environment arising from uranium mining.

18.17 Where the Government is of the view that the Company is in breach of its obligations under this clause 18 and as such the Government wishes to access all or part of the environmental performance bond to make good the breach, then before accessing that bond the Government shall give thirty (30) days prior notice of the breach to the Company along with reasonable details of the breach. Thereafter, where the Company has either failed to remedy the breach or undertake material efforts to do so or has sought a determination of the Independent Expert in accordance with clause 35 and the Independent Expert has found that the Company is in breach of its obligations then the Government may access the environmental performance bond in order to remedy the breach.

## **19. EMPLOYMENT, OCCUPATIONAL, SAFETY AND HEALTH MATTERS**

- 19.1 The Company shall conduct its Business in compliance with the Occupational Safety Welfare and Health Act (Cap. 55:07 of the Laws of Malawi), the Workers Compensation Act (Act No.74 of 2000 of the Laws of Malawi) and all applicable regulations ("**Employment and Safety Laws**").
- 19.2 Nothing in clause 19.8 shall be deemed to limit the right of the Government to take such other actions within its power, such as those rights under the Mining (Safety) Regulations of the Mines Act, to protect the employee health and safety.
- 19.3 Subject to the provisions of clause 19.6, the Company shall comply with the Employment and Safety Plan applicable from time to time, which plan will take into account the provisions of the International Labour Organization Convention No 155: Occupational Safety and Health, 1981.
- 19.4 Subject to compliance by the Company with the Employment and Safety Plan applicable from time to time the Government confirms that it will not for the Stability Period, take any action (and will procure no action is taken by any Government Agency over which it has operational control acting on its behalf) under, or in enforcing, any applicable Employment and Safety Laws with the intent of discriminating against the Company or the Project.
- 19.5 The Minister on behalf of the Government may propose an amendment to the Employment and Safety Plan applicable from time to time if:
  - (a) at any time the conduct of Normal Operations in accordance with such Employment and Safety Plan for whatever reason poses a material danger to employee health and safety; or

- (b) technology or procedures, or improvements of them shall have been available and economic subsequent to the adoption by the Company of such Employment and Safety Plan and, if applied to the operation of the Project, could materially mitigate any impact of Normal Operations on employee health and safety.
- 19.6 In the event of a variation of the Employment and Safety Plan proposed by the Minister on behalf of the Government under the circumstances set forth in clause 19.5, the Company undertakes to consider the proposed variation in good faith and, unless by notice of objection served on the Minister 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 unreasonable setting out amongst other things:
  - (a) its analysis of the impact of the change on the employment and safety levels; and
  - (b) its appraisal of the economic and other effects of the change proposed by the Government.
- 19.7 Following receipt of a notice of objection under clause 19.6, the Minister shall, as soon as possible, inform the Company by notice in writing whether or not the Minister's proposal for a variation of the then applicable Employment and Safety Plan is or is not withdrawn. In the event that the Minister's proposal for a variation is not withdrawn it will be deemed to have been agreed unless the Company elects to submit the question of whether the Government's proposal for a variation is unreasonable to the Independent Expert for determination. Should the Company make that election, the opinion of the Independent Expert will be binding on the Parties with effect that if the Independent Expert determines that the Government's proposal for a variation is reasonable, the proposal for a variation is either:
  - (a) reasonable, the proposal for a variation will be deemed to have been agreed; or
  - (b) unreasonable, the proposal will be deemed to have been withdrawn.
- 19.8 Where a variation to an Employment and Safety Plan proposed by the Minister has been agreed by the Company or is deemed to have been agreed by them pursuant to this clause 19.8, the then applicable Employment and Safety Plan shall be amended accordingly.
- 19.9 The Company shall amend the Employment and Safety Management Plan from time to time to ensure it conforms to:
  - (a) the Employment and Safety Laws; and
  - (b) the specifications and practices established by Malawi for the management of employment and safety standards in Mining operations,

so as to reflect changes in operations and other circumstances considered to be appropriate by the Company,

and shall deliver a copy of such amended plan or obligations to the Minister whereupon it shall become part of the Scheduled Programmes.

- 19.10 Notwithstanding the provisions of clause 19.8, the Company shall, at the invitation of the Minister, participate either individually or on an industry-wide basis, in discussions relating to the impact and effectiveness of the Employment and Safety Laws or on any prospective changes to the Employment and Safety Laws.
- 19.11 The Company shall, to the extent that it fails to meet the employment and safety standards set for the Project pursuant to the Mining Act and any other applicable Laws of Malawi, at its own expense promptly compensate, according to the applicable Laws of Malawi, those employees adversely affected.
- 19.12 The Company shall be responsible for and pay compensation as a result of any ill health effects to the citizens of Malawi which arise as a consequence of the Mining operations, where it can be proven that those ill health effects were caused by the Mining operations.

## **20. SOCIAL RESPONSIBILITY**

- 20.1 In addition to constructing, upgrading and maintaining the facilities and infrastructure as shall be necessary to undertake the Approved Programme of Operations or otherwise complying with the provisions of this Agreement, the Company shall:
- (a) pay for two (2) qualified Malawi doctors to come to Australia and be trained in the health effects of radiation, provided such doctors agree to return to Malawi and service the communities at Karonga and Kayelekera although nothing obliges the Company to be responsible for those doctors remaining at Karonga, Kayelekera or otherwise in Malawi;
  - (b) construct at Kayelekera a primary school, housing for 4 teachers, an office for teachers working at the primary and secondary schools and a clinic to a typical standard for such facilities in Malawi using local labour to the extent practical; and
  - (c) use its best endeavours to carry out the activities set out in attachment C.
- 20.2 The Company shall expend and/or cause third party governments or agencies to spend the sum of US\$10million on the construction and fit out of:
- (a) education facilities which are likely to include a boarding secondary school with teachers housing; and



- (b) if after the construction of the facilities referred to in clause 20.2(a) there is any portion of the US\$10 million which has not been expended, medical facilities,

within the northern region of Malawi ("**Social Responsibility Plan**"), it being the intention of the Company that the facilities be proximate to or be able to benefit the Kayelekera Community, and be of a standard consistent with similar recently constructed facilities in Malawi.

- 20.3 The Company is not required to commence construction under the Social Responsibility Plan until the third anniversary of the Production Commencement Date and if, subject to clause 2.3, by the fifth anniversary of the Production Commencement Date the Company has not expended or caused to be expended the sum of US\$10 million in the manner contemplated in clause 20.2 then the difference between what has been expended and US\$10 million shall be placed into a joint bank account at an authorised dealer bank in Malawi and shall be drawn down by the Company and the Government to complete the said works.
- 20.4 The Company may commence incurring expenditure in satisfaction of its obligations under clause 20.2 prior to the third anniversary of the Production Commencement Date in order to ensure the appropriate planning and management of the proposed works is complete in time for the commencement of the physical construction.
- 20.5 In contracting for, managing and paying for the Social Responsibility Plan the Company shall provide to the Government regular reports on work done, and moneys expended and the Government shall have the right to inspect all contracts and accounting records relating to the Social Responsibility Plan.
- 20.6 Prior to the commencement of the Social Responsibility Plan the Company shall seek the assistance of the committee referred to in clause 41.1 regarding the type, location, size and the standard of the facilities to be constructed as part of the Social Responsibility Plan and this committee shall make recommendations to the Government which, having regard to the intent of clause 20.2, will determine the type, location, size and standard of the proposed facilities, provided that where such determination results in total costs of the facilities exceeding US\$10 million the Company does not have any obligation to fund or find the funds for that portion of the costs which exceed US\$10 million.

## **PART D**

### **GENERAL STABILITY, TAXATION, ROYALTIES AND CONSENTS**

#### **21. FISCAL REGIME**

- 21.1 In accordance with the provisions of the Taxation Act (Cap. 41:01 of the Laws of Malawi) and all other applicable legislation the Company is to be subject to the fiscal regime detailed in item 1 of attachment "B". The Government shall do all necessary and perform all acts in a timely manner to ensure the Company is able to enjoy this fiscal regime and without limitation, the Government shall either amend its existing legislation or alternatively, exercise whatever discretions that are available to it and publish all notices in order to ensure, subject to clause 21.3, the fiscal regime is valid and enforceable for the Stability Period.
- 21.2 The Parties acknowledge that at the Agreement Date the Company is not able to specify in detail the materials, equipment and consumables to be used in equipping and operating the Business but that it shall do so progressively and the Parties shall determine how best to ensure that the benefit of the fiscal regime referred to in item 1 of attachment "B" are able to be enjoyed by the Company in these circumstances. Without limitation to this clause the Government will cause the Malawi Revenue Authority to provide a duty exemption in writing and for that duty exemption to be provided to the Malawi Investment Authority.
- 21.3 If during the Stability Period there is a Change in Law and this has the consequence, but for this Agreement, of creating a more favourable fiscal regime for the Company than that detailed in item 1 of attachment "B" then the Parties shall amend this Agreement such that the Company can enjoy the fiscal benefits of any such Change in Law.
- 21.4 The Parties agree that it is in their best interests to have the Taxation Act (Cap. 41:01 of the Laws of Malawi) amended to acknowledge that the Government can enter into agreements such as this Agreement for the purposes of providing the fiscal regime and stability as contemplated in this Agreement and the Government shall use its best endeavours to have a law enacted to give effect to this intention. The Government also acknowledges and will not prevent or attempt to hinder the right of the Company to take whatever action it is lawfully capable of taking with a view to have the amount paid by the Company pursuant to the Social Responsibility Plan being treated by the Malawi Revenue Authority as tax deductible against the income of the Company.
- 21.5 For the purposes of the Company being able to fund the Project and enjoy the fiscal regime set out in this Agreement the Company agrees that other than for the money provided by the Project Lenders, all other funding provided to the Company for the purposes of the Project will be provided in the following form:

- (a) 20% by way of equity subscribed in the Company by Paladin or an Affiliate; and
- (b) 80% by way of debt provided to the Company by Paladin and/or an Affiliate of Paladin or such other parties that are prepared to lend money to the Company on Arms' Length Terms,

**("Thin Capitalisation Agreement").**

21.6 Nothing in this Agreement is intended to prevent the Government from negotiating and entering into agreements with other countries for the purposes of enabling the Government to transfer to or obtain from those other countries information on or affecting any individual taxpayer in Malawi, including without limitation, the Company.

21.7

The Government:

- (a) is, as a condition precedent to the issue of shares to it as contemplated in clause 2.7(a), to do what is required to ensure the fiscal regime referred to in paragraphs (b) and (e) of item 1 of attachment "B" is valid and enforceable;
- (b) in order to satisfy the condition precedent referred to in clause 21.7(a), the Government is to ensure:
  - (i) that a validly constituted board of the Malawi Revenue Authority passes a resolution, in the form substantially similar to that detailed in item 3 of attachment "B" making a recommendation in accordance with section 16(1) of the Malawi Revenue Authority Act, to the Minister of Finance:
    - A. containing the criteria or factors for the grant of any exemption, mitigation, deferment or remission of any revenue, and the procedures to be followed for that purpose; and
    - B. that the Minister of Finance shall by Order publish in the Government Gazette such criteria or factors and procedures; and
  - (ii) that the Minister of Finance will then exercise his powers under section 16(2) of the Malawi Revenue Authority Act in such a manner as to ensure the fiscal regime referred to in paragraphs (b) and (e) of item 1 of attachment "B" is valid and enforceable and by Order published in the Government Gazette exempt that revenue from the taxes referred to in paragraph (b) and (e) of item 1 of attachment "B".

21.8 Where the Parties determine in good faith that the mechanism in clause 21.7(b) is no longer appropriate or achievable, then the Government will adopt such

other mechanisms as may be recommended by the Parties to achieve a valid and enforceable fiscal regime, as contemplated in paragraphs (b) and (e) of item 1 of attachment "B".

- 21.9 Paladin may waive the condition precedent referred to in clause 21.7 in which circumstance the provisions of clause 23 which create the requirement for an Economic Equilibrium, apply.

## **22. ROYALTY REGIME**

- 22.1 The Company is to pay a gross royalty to the Government, the amount of such royalty being referred to in item 2 of attachment "B" and this gross royalty is to be calculated by reference to the gross value (as that term is defined in the Mines and Minerals (Royalty) Regulations Act) (and computed at the rate of exchange prevailing on the date of receipt by the Company of the purchase price in respect of the Mine Product sold) of Mine Product ("**Royalty**"). The Government will ensure that in accordance with regulation 3(i) of the Mines and Minerals (Royalty) Regulations the Commissioner will only demand the payment of the Royalty on receipt of the return referred to in clause 22.4 and the Company shall pay that Royalty the subject of the Commissioner's demand in the manner contemplated by clause 22.4.
- 22.2 The Government will ensure that the Commissioner will, for the purposes of determining the gross value of yellowcake as contemplated in the Mines Act, allow the following deductions calculated on Arms' Length Terms:
- (a) during the period the Company is obliged to pay a Royalty of 1.5%, any additional costs or expenses incurred by the Company as a consequence of a country, other than Malawi and through which the yellowcake is to pass for the purposes of export, imposing such costs or expenses on the transport and export of that yellowcake; and
  - (b) during the period the Company is obliged to pay a Royalty of 3% the costs or expenses:
    - (i) directly related discounts, commissions and marketing costs;
    - (ii) of ocean freight;
    - (iii) of marine insurance;
    - (iv) costs of compliance with international safeguard requirements;
    - (v) of port and handling charges at port of discharge;
    - (vi) of delivery (including warehousing costs) from port of discharge to the purchaser;
    - (vii) of weighing, sampling, assaying, inspection and representation costs incurred on discharge or delivery;

- (viii) of shipping agency charges;
- (ix) of import taxes payable in the country of the port of discharge;
- (x) of demurrage incurred after loading and at port of discharge; and
- (xi) of any transport costs or expenses imposed on the Company by a country through which the yellowcake is exported.

22.3 The Company shall pay to the Government in respect of all Additional Minerals produced from the Tenement and sold by it, a gross royalty at the rate from time to time prescribed under or pursuant to the provisions of the Mines Act.

22.4 The Company shall during the continuance of this Agreement within 14 days after the end of each Quarter (referred to as "**the due date**") furnish to the Minister a return showing the quantity of all minerals on which the Royalty is payable and sold during the Quarter immediately preceding the due date of the return and shall not later than two (2) months after such due date pay to the Minister the amount of the Royalty payable in accordance with this Agreement calculated on the basis of the invoices or provisional invoices (as the case may be) rendered by the Company to the purchaser (which invoices the Company shall render without delay and simultaneously shall furnish copies of them to the Minister) and shall from time to time when the gross value realised in respect of the sale has been ascertained in the next following appropriate return and payment, make (in the return and by cash) all such necessary adjustments and give to the Minister full details of the calculations.

22.5

- (a) The Company shall permit the Minister or his nominee at all reasonable times to inspect the books of account and records of the Company relative to the Company operations under this Agreement and to any sale of yellowcake and any Additional Mineral, including sales contracts, and to take copies or extracts of them.
- (b) For the purpose of determining the gross value payable in respect of any sale of Mine Product under this Agreement, the Company shall take reasonable steps (either by the certificate of a competent independent party acceptable to the Minister or otherwise to the Minister's satisfaction) to satisfy the Government as to the correctness of all relevant weights, assays and analyses and shall give due regard to any objection or representation made by the Minister or his nominee as to any particular weight assay or analysis that may affect the amount of Royalty payable under this Agreement.
- (c) The information obtained by the Minister or his nominee as a result of any such inspection shall be used only for the purposes of verifying the amount of the Royalty payable by the Company and for no other

purpose and shall not be disclosed by the Government, the Minister or his nominee to any other party for any other purpose.

- (d) For all accounting not provided in this Agreement, all debits and credits to the Account shall be computed in accordance with the generally accepted accounting practices and principles recognised by the International Financial Reporting Standards.

- 22.6 The provisions of this clause 22 of this Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Company.
- 22.7 In the event that any person acquired after the Agreement Date an interest in the Tenement, then such person shall bear its proportionate share of the obligations to pay the Royalty in the proportion that each such party's interest bears to the sum of the interests, and the rights, duties, obligations of the party and the Company shall be several and not joint and none of them shall be obligated to discharge any duty or obligations of any other of them under this Agreement.
- 22.8 The Government shall perform or cause to be performed all acts and things required to ensure that the arrangements for payment of the Royalty as set out in item 2 of attachment "B" shall be valid and enforceable.

### **23. STABILITY**

- 23.1 The Government agrees that throughout the Stability Period, it will, in good faith and wherever possible, seek to ensure that any enactment, domestic or international agreement or treaty, any legislation or regulation or policy, as interpreted by a court or other authority, does not impair, conflict or interfere with Commercial Operations or adversely affect the value of the Commercial Operations or any returns or receipts from Commercial Operations to the Company or its shareholders.
- 23.2 If because of a Change in Law other than as a consequence of any Change in Law necessary to give effect to the codes referred to in clause 1.4, or there is a failure by Government to take the actions referred to in clause 21.7 in order to establish the fiscal regime proposed in paragraphs (b) and (e) of item 1 of attachment "B" or Government subsequently takes any action which results in an adverse impact on that fiscal regime the Economic Equilibrium is disrupted or negatively affected, the Government shall, in good faith, use its Best Endeavours to take all actions available to it to restore the Economic Equilibrium.
- 23.3 If the Government is unable to establish or restore the Economic Equilibrium within five (5) months of the date of the issue by the Company of a notice of a Change in Law or a notice detailing the Government's failure to act and such notice claims a negative effect on either the Business or the Company or its shareholders, the Government shall indemnify or pay monetary compensation for any loss or damage which is caused or arises from any failure, whether due to action or inaction, to establish or to maintain the Economic Equilibrium and

the level of compensation shall be what is required to place the Company, its shareholders or the Business in the position it or they would have been in had the Economic Equilibrium been established or maintained as the case may be.

- 23.4 Upon expiry of the Stability Period, the Government shall, in any event, ensure that no law, statute, regulation or enactment is passed or made which would discriminate against the Company or Affiliates of the Company in respect of any such matters as are referred to in clauses 21 and 22 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 to those conducted by the Company in Malawi and will ensure that all employees (regardless of their country of citizenship) of the Company or of Affiliates of the Company are dealt with in a uniform way (including with respect to taxation matters) provided that the Government will be at liberty to pass or make any such law, structure, regulation or enactment to enable the performance or amendment of a development agreement entered into by it and another mining company or joint venture prior to the expiry of such period.
- 23.5 The Government undertakes for the Stability Period to do all things in its power to prevent any local or other authority of Government from interfering with or imposing levies on ore movements. Without limitation to this clause the Government agrees to lease to the Company that part of the area of land the subject of the Tenement which is customary land and such lease is to be for the term of the Tenement.
- 23.6 The Government will use all reasonable endeavours to negotiate, settle and execute and investment promotion and protection agreement with the government of the Commonwealth of Australia.

## **24. DISTURBANCE AND RESETTLEMENT**

- 24.1 Subject to the performance by the Company of its obligations under this Agreement, the Government shall not during the currency of this Agreement without consent of the Company resume nor suffer nor permit to be resumed by any Governmental Agency any of the works, installations, plant, equipment or other property for the time being belonging to the Company and the subject of or used for the purpose of this Agreement or any of the works on the lands the subject of any lease or licence granted to the Company in terms of this Agreement or any works, installations, plant, equipment or other property on such lands and belonging to a contractor to the Company and being used in the Business and without such consent (which shall not be unreasonably withheld) the Government shall not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the Government as aforesaid any road, right-of-way, water right or wayleave of any nature or kind whatsoever over or in respect of any such lands which may unduly prejudice or interfere with the Business.
- 24.2 The Government shall at the request of the Company permanently remove any person occupying any unauthorised structure in the Mining Area or any such

unauthorised structure, the contents of that structure any materials or fixtures in the area of the structure from the Mining Area and the Company is not required to provide any indemnity to the Government with respect to the removal of such person or structure.

- 24.3 If in the course of establishing the Project or whenever in the course of Normal Operations any disturbance of a third party results in damage to any crops, trees, buildings, stock or works thereon then the Company shall be liable to that party in accordance with section 105 of the Mines Act. If the disturbance or damage is caused to land the subject to the Land Act (Cap. 58:01 of the Laws of Malawi), and this results in the Government being liable in accordance with section 28(a) of the Land Act (Cap. 58:01 of the Laws of Malawi), to pay to such person fair and reasonable compensation for such disturbance or damage according to their respective rights or interests, if any, in the property concerned, and the Company shall indemnify the Government against any such compensation provided it is determined in accordance with the applicable law.
- 24.4 In the event the proposed disturbance referred to in clause 24.3 requires the resettlement of any owner or occupier to some alternative location, then the Company shall meet the reasonable costs of resettlement and any associated compensation. The Parties agree that the reasonable costs are intended to be limited to the costs which are, in accordance with the then relevant Government policy, determined by the relevant District Commissioner.
- 24.5 Where the disturbance caused by the Company is to any village infrastructure and the Government is required to replace such infrastructure then the Company shall indemnify the Government against the cost to the Government of having to replace that infrastructure.
- 24.6 Each Party shall render whatever assistance it is able to, to give effect to this clause and to enable the other to obtain a determination of compensation and, if required, the resettlement of any affected owners or occupiers in a timely manner.

## **25. ZONING**

The Government shall ensure after consultation with the Karonga District Assembly that the Tenement and any lands the subject of any lease, licence or easement granted to the Company under the applicable laws shall to the extent required, be and remain zoned for use or otherwise protected during the currency of the licence, easement, wayleave or lease so that the Business, when conducted in accordance with the applicable law, may be undertaken and carried out on such land without any interference or interruption by the Government or by a Governmental Agency on the ground that such activities are contrary to any zoning by-law regulation or order.

## **26. NO DISCRIMINATION**

Except as provided in this Agreement the Government shall not:



- (a) during the Stability Period impose, nor shall it permit or authorise any Governmental Agency to impose discriminatory taxes, rates or charges or undertake any discriminatory act of any nature whatsoever on or in respect of the titles, property or other assets, products, materials or services used or produced by or through the activities of the Company in the conduct of its Business nor shall the Government take or permit to be taken by any such Governmental Agency any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement; or
- (b) after the Stability Period undertake any of the actions referred to in clause 26(a) where to do so would discriminate between the Company and any other party mining any of the minerals which are part of Mine Production in Malawi. For the purposes of this clause the Company will not be deemed to be discriminated against where at the end of the Stability Period another party who may have entered into an agreement with the Government with respect to its mining project enjoys rights which are different to those being then enjoyed by the Company.

## **27. EXPORT AND IMPORT LICENCES, CONSENTS AND APPROVALS**

- 27.1 The Company shall from time to time make application to the Government or to a Governmental Agency concerned for the grant to it of any licence or consent under the Laws of Malawi necessary to enable or permit the Company to perform any of its obligations under this Agreement and to export Mine Product or to import into Malawi geological samples or products arising from the testing of geological samples where the Company previously exported such geological samples from Malawi.
- 27.2 Subject to any such application as referred to in this clause being in the required form and the Company not being in breach of this Agreement, the Government or instrumentality concerned for the grant to the Company of any licence or consent mentioned in this clause 27 shall act in good faith and in a timely manner with respect to the application for such a licence or consent by the Company.
- 27.3 The Parties acknowledge that this Agreement does not deal with every consent or approval which shall be required to establish the Project and undertake the Business. The Government agrees with the Company that to the extent any such consent or approval is required then the Government shall consider any application for such consent or approval in good faith and in a timely manner.

## PART E

### GENERAL PROVISIONS

#### 28. ASSIGNMENT

- 28.1 The Company may, with the consent of the Minister in accordance with section 60 of the Mines Act, assign the whole or part only of its rights and obligations under this Agreement and its interest in the Tenement and the Government covenants that the consent of the Minister to such an assignment will not be withheld in the circumstances set out in clauses 28.5 and 28.8. No assignment of an interest in a Tenement may be made without the assignment to such person of a comparable interest in this Agreement and vice versa.
- 28.2 If the Company assigns its entire interest in the Tenement and its rights and obligations under this Agreement in accordance with clause 28.1 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 the Government against the Company.
- 28.3 Where an assignment takes effect pursuant to clause 28.1, the Company shall enter into an agreement with the assignee pursuant to which the assignee agrees with the Company and undertakes to the Government that it will:
- (a) become a Party to this Agreement; and
  - (b) assume, observe and comply with all obligations of the Company under this Agreement.
- 28.4 If the Company assigns only part of its interest in the Tenement and the rights and obligations attaching to it 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 the Government against the Company.
- 28.5 Notwithstanding the foregoing provisions of this clause 28, the Company may mortgage and charge by way of fixed or floating charge the whole or any part of its undertaking and assets whether located within Malawi or elsewhere including the Tenement, any Mine Product and uncalled capital (and premiums) to secure the repayment of principal, and payment of interest and other fees, costs and expenses relating to all loans made to the Company in respect of the Contract Area or an Affiliate to finance or refinance Mining operations by the Company or an Affiliate or to guarantee the performance of an Affiliate whether in Malawi or elsewhere. The Government covenants that the Minister will consider in good faith and in a timely manner the request for

him to consent to such mortgages and charges provided that such mortgages and charges are notified to the Minister upon their grant (and in any event, within sixty (60) days of their grant).

28.6 Subject to clause 28.5:

- (a) 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 the Government at least thirty (30) days' notice of its intention to exercise any rights of sale and fourteen (14) days' notice of its intention to exercise all other rights; and
- (b) the Government may exercise all of its rights under the Mines Act in the event of a default by the Company provided that it gives at least fourteen (14) days' notice of its intention to do so to the mortgagee or chargee,

and for the purposes of this clause 28.6 the Parties will enter into whatever documents are necessary with the mortgagee or chargee to give effect to the intention of this clause.

28.7 The rights of any mortgagee or chargee under a mortgage or charge given by the Company pursuant to clause 28.5 with respect to the rights of the Company pursuant to this Agreement, shall be subject to and limited by the rights of the Company under this Agreement and to the Government's right to terminate those rights under clause 30.2.

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

- (a) an assignment under section 60 of the Mines Act or a change of control under section 70 of the Mines Act; or
- (b) an assignment pursuant to clause 28.1,

the Government will procure that the Minister will consider in good faith and in a timely manner the request for him to consent where, in the case of an assignment, the proposed assignee is reputable and bona fide and has demonstrated financial capacity and technical ability to meet the obligations under this Agreement. In the event that the Company considers that a proposed assignee has demonstrated such capacity as referred to in clause 28.8 and the Minister has refused or failed to provide the consent referred to in clause 28.8, it may refer the issue to the Independent Expert to be determined in accordance with clause 35. If the Independent Expert determines that the proposed assignee has demonstrated the requisite levels of capacity and ability or financial standing (as the case may be) the consents referred to in clauses 28.8(a) or 28.8(b) (as the case may be) shall be deemed given and, if not, the Minister's determination shall stand.

## 29. EXTENSIONS TO TIME

29.1 Notwithstanding any provision of this Agreement, the Parties by agreement between the persons responsible for giving Notices under clause 42, 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.

29.2 If the Company is prevented or hindered either by:

- (a) Force Majeure; or
- (b) a reference to an Arbitrator; or
- (c) non-availability of suitable shipping or transport facilities or corridors, electrical power, gas, water or other utilities other than due to the negligence or default of the Company, restrictions imposed by the Government or other authorities of any country which has jurisdiction either over the Company or its operations or the transport of the Mine Product (provided that the Government will not be entitled to claim a Force Majeure event as a result of restrictions imposed by the Government or Governmental Agencies) or destruction of, damage to or unavailability of materials, equipment or supplies, the result of any client of the Company failing to take delivery of the Mine Product,

from undertaking all or any of its obligations under this Agreement or exercising any right granted, the period of time allowed for the performance of that obligation or exercise of that right and all periods of time after then 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 it is determined by arbitration.

29.3

- (a) Where any period is, or is deemed to be, extended or any later date substituted for an earlier date under this clause, that extended or substituted period or date shall be deemed to constitute the period or date referred to in this Agreement (notwithstanding that at the time of such extension or substitution such period may have expired or such date may have passed).
- (b) Notwithstanding the foregoing, the provisions of clauses 29 and 33 shall not in any way be construed so as to, or be deemed to, extend the term of the Stability Period or any other time periods set out in clause 18, or in the Environmental Management Plan.

29.4 Subject to the terms of the Agreement, this Agreement shall remain in force for a minimum period equal to the term of the Tenement and for such further period as the Tenement may be renewed from time to time.

### 30. TERMINATION

30.1 This Agreement shall automatically terminate in the event the Company surrenders the Tenement in accordance with section 55 of the Mines Act and in exercising its powers under the Mines Act, when considering an application to surrender the Tenement, the Commissioner shall act in good faith and in a timely manner and shall otherwise observe the principles of natural justice. The Agreement remains in force where the Company surrenders a portion of the area the subject of the Tenement.

30.2 The Government may terminate this Agreement by notice to the Company if:

- (a) the Tenement has expired by effluxion of time and has not been renewed or is not the subject of an application for renewal; or
- (b) subject to clause 14, all of the land the subject of the Tenement is abandoned or at the end of the term of the Tenement where the Minister gives notice under section 51(4) of the Mines Act that he does not intend to renew the Tenement.

30.3 In addition to a default, breach or failure as contemplated and dealt with in clause 18.17, if:

- (a) any Party is in default of the performance of its obligations set forth in this Agreement or the Mines Act; or
- (b) any Party fails to treat as binding and comply with any determination by the Independent Expert or award made in any Arbitration; or
- (c) in the case of the Company, it is in breach of any material provision of any Enabling Legislation,

then where the default is of the sort contemplated in section 57(1) of the Mines Act, the provisions of section 57 apply otherwise where the Party has not remedied such default or failure within thirty (30) days of receiving a notice from the other Party to do so, the other Party may give notice of such default or failure ("**Default Notice**") to the defaulting Party which shall specify the alleged default, failure or breach. If the Company receives a Default Notice, the Government shall at the same time give a copy of the Default Notice to each Project Lender, where the name and address of that Project Lender has previously been notified to the Government, 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 28.5. If the Company disputes the subject matter of the Default Notice it may refer the issue to Arbitration. On giving a Default Notice to the Company, the Government agrees to copy to each Project

Lender, mortgagee or chargee all relevant correspondence it sends to the Company during the period the Company remains in default or breach.

- 30.4 If within a period of thirty (30) days following a Default Notice either:
- (a) the default, failure or breach specified in the Default Notice has not been remedied (or active steps have not been commenced and continued to remedy the default, failure or breach if it is not capable of speedy remedy); or
  - (b) compensation is not paid in respect of the default, failure or breach (in the case of a default, failure or breach not capable of being remedied but where payment of compensation would be adequate recompense to the Government),

then, subject to clause 30.5, the non-defaulting Party may by notice ("**Termination Notice**") to the defaulting Party (which shall be copied to each Project Lender, mortgagee or chargee who was given a copy of the Default Notice) bring about the termination of this Agreement ("**Termination Date**").

- 30.5 A Party shall not serve a Termination Notice while the Arbitration 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. On the Arbitrator finding in favour of a Party, or within the period fixed by the Arbitrator the default, failure or breach is substantially remedied or the compensation is paid, the other Party shall not serve a Termination Notice and any Termination Notice already served shall be deemed withdrawn.

- 30.6 If the Company or the Government contest:
- (a) the grounds for the issue of the Default Notice; or
  - (b) whether the default, failure or breach has been remedied; or
  - (c) the adequacy of any compensation paid pursuant to clause 30.4(b),

the matter shall be submitted for Arbitration. If the Arbitrator finds in the case of clause 30.6(a) that adequate grounds exist for the issue of the Default Notice or in the case of clause 30.6(b) that the default, failure or breach has not been remedied, then the provisions of clause 30.4 apply from the date of that finding. If the Arbitrator finds in the case of clause 30.6(c) in favour of the non-defaulting Party, he shall fix the amount of compensation payable and the period for its payment.

- 30.7 If this Agreement is terminated by the Government pursuant to clauses 30.2 to 30.4 and subject to clause 33.12:
- (a) the Company will surrender to the Government the Tenement 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 remaining assets of the Company for the purposes of clause 30.7(d);

- (b) each Party shall forthwith pay to the other Party all monies that may be owing to the other Party under this Agreement;
- (c) the Government shall have the option to purchase (subject to any encumbrances on it), exercisable by notice to the Company within thirty (30) days following termination of this Agreement; and
- (d) the Company shall have the right where the Government does not exercise its option referred to in clause 30.7(c) to acquire all or any of the Assets, within the one (1) year period following the thirty (30) day notice period referred to in clause 30.7(c):
  - (i) to assign or otherwise dispose of all or any portion of the remaining Assets not acquired by the Government under clause 30.7(c) to any person; or
  - (ii) to remove and recover from the Mining Area and export from Malawi any of the remaining Assets from the Mining Area.

30.8 If this Agreement is terminated by the Company pursuant to clause 30.1 the Company shall have the right, within the one (1) year period following the notice of termination referred to in clause 30.1:

- (a) to assign or otherwise dispose of all or any portion of the Assets to any person; or
- (b) to remove and recover from the Mining Area and export from Malawi any of the Assets from the Mining Area should the Government not within thirty (30) days following termination of this Agreement give notice to the Company that it wishes to purchase (subject to encumbrances on it) all or any portion of the Assets at a price equivalent to the fair market value of the Assets, which fair market value shall be determined and paid in US dollars and shall be determined by agreement between the Government and the Company but failing such agreement by a mediator or Arbitrator in accordance with clauses 32 and 33.

30.9 Where this Agreement is terminated for any reason the Company shall leave the Mining Area in a safe and stable condition as required by the Mines Act 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 mine, any tailings disposal site, or other Project facilities beyond the requirements of the Environmental Management Plan applicable from time to time.

30.10 Upon the expiry of the one (1) year period referred to in clause 30.7(d), all Assets which remain on the Mining Area shall become the property of the

Government without any cost to the Government or any liability for the Government to pay compensation therefore.

30.11 Clauses 30.7, 30.10, 31, 32, 33, 34, 37 and 38 shall continue in force notwithstanding the termination of the rest of this Agreement and termination under this Agreement shall not otherwise in any way affect a Party's accrued rights and obligations at the date of termination.

## **31. DISPUTES**

31.1 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.

31.2 If the subject of a Notice of Dispute is a matter arising from events contemplated in clause 40.1 then the subject matter of that Notice of Dispute does not constitute an event of Force Majeure.

## **32. AMICABLE SETTLEMENT OF DISPUTES (NEGOTIATION AND MEDIATION)**

32.1 The Parties shall in good faith and using their Best Endeavours take all steps as may be necessary or desirable to settle any Dispute through negotiations and other constructive discussions. The Parties shall not in any event be required to continue with such negotiations for a period in excess of 10 Business Days from the date of service of the Notice of Dispute.

32.2 Upon the expiry of 15 Business Days from the date of service of the Notice of Dispute, or on earlier agreement, either Party may require that the Dispute be attempted to be resolved through mediation. In such a case, the Parties shall agree to appoint a mediator, and attend the mediation. The Parties shall agree on the appointment of a mediator, and the terms of such appointment, but in the absence of an agreement, the mediator shall be a person nominated by the Secretary-General of the Centre in accordance with the conciliation rules of UNCITRAL in existence on the Agreement Date. Such mediation, unless the Parties otherwise agree, shall take place in Washington D.C. As far as practicable the Government and the Company shall continue to implement this Agreement during the period while the Arbitration is pending and during the Arbitration. Any mediation shall be held within 20 Business Days of the appointment or nomination as the case may be of the mediator in Washington D.C.

32.3 This clause 32 and any steps which take place pursuant to this clause 32 shall be without prejudice to any right or remedy which any Party may ultimately have, should the matter in dispute fail to be resolved by the taking of such steps.

32.4 The provisions of clauses 33 and 34 shall not apply to any Dispute until a period of 20 Business Days, or any longer period agreed between the Parties, has elapsed following service of a Notice of Dispute.



### 33. ARBITRATION

- 33.1 Subject to clauses 31 and 32, the Government and the Company consent to submit to the International Centre for Settlement of Investment Disputes (the "**Centre**") 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**"). Arbitration proceedings shall be held in Washington D.C. if the arbitral tribunal ("**Tribunal**") after consultation with the Secretary-General of the Centre agrees. The language of the Arbitration is to be English and to the extent the Convention does not detail a matter of procedural law the law of Malawi shall apply.
- 33.2 Where the Company obtains an award from the Centre, the Government agrees not to appeal or otherwise challenge the decision based on a claim that such a decision cannot bind Malawi or Malawi cannot otherwise be made the subject of such a decision as to do so would be against or otherwise challenge the sovereignty of Malawi.
- 33.3 If a Party refers to Arbitration a Dispute as contemplated in clause 40.2(b) then the Arbitrator is empowered by this Agreement when making an award to amend the Agreement to ensure that as best as the Arbitrator is able the Economic Equilibrium that was intended at the Agreement Date, is achieved.
- 33.4 It is agreed that, although the Company is a national of Malawi, it is controlled by an entity incorporated and resident in the Commonwealth of Australia and the Company shall be treated as a national of the Commonwealth of Australia for the purposes of the Convention.
- 33.5 Any Tribunal constituted pursuant to this Agreement shall consist of a total number of three Arbitrators, one appointed by each Party, and an Arbitrator, who shall be President of the Tribunal, appointed by agreement of the Parties or, failing such agreement by the secretary-general of the Centre.
- 33.6 The Tribunal shall decide on the basis of the law of Malawi, the provisions of this Agreement, as well as rules of international law, as may be applicable.
- 33.7 Any Arbitration proceeding pursuant to this Agreement shall be conducted in accordance with the arbitration rules of the Centre in effect on the date on which the proceeding is instituted.
- 33.8 An award in any Arbitration proceedings held pursuant to the Convention shall be binding on the Parties and judgment thereon may be entered in any court having jurisdiction for the purpose.
- 33.9 The Government irrevocably waives any claim to immunity:
- (a) in respect of proceedings to enforce any such award including immunity from service of process and from the jurisdiction of the Court; and
  - (b) in respect of execution of any such award against the property of the Government outside Malawi.

33.10 The waiver of immunities referred to in this Agreement 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 the Government or a waiver with respect to proceedings unrelated to this Agreement. The Government has not waived such immunity in respect of property which is:

- (a) located in Malawi;
- (b) used by a diplomatic or consular mission of the Government (except as may be necessary to effect service of process); and
- (c) property of a military character and under the control of a military authority or defence agency.

33.11 Unless otherwise agreed or provided, the cost of any Arbitration procedure will be borne:

- (a) equally by the two Parties to the Dispute where it has been referred jointly by them, or otherwise; or
- (b) by the unsuccessful Party.

33.12 Where a Dispute has been referred to the Centre for arbitration then the Parties to the extent practicable may otherwise exercise their rights and perform their obligations under this Agreement. Neither Party shall be entitled to exercise any rights of election arising in consequence of any alleged default by the other arising out of the subject matter of the Dispute until the Dispute has been resolved by the decision of the Arbitrators.

## 34. EXPROPRIATION

### 34.1

- (a) The Company may advise the Government if it considers an event of Expropriation has occurred. If the Company and the Government cannot agree on whether or not Expropriation has occurred either Party may refer the issue to the Arbitrator for final determination in accordance with clause 33.
- (b) If Expropriation has occurred then for the purposes of international law the Parties acknowledge that this is illegal.
- (c) If it has been agreed or if the Arbitrator has determined that Expropriation has occurred, the Parties will seek to agree the amount to be paid by the Government to the Company in US dollars ("**Purchase Price**") for the interest held by the Company under this Agreement ("**the Interest**") and where agreement cannot be reached within ten (10) days, or such longer period as may be agreed, either Party may request the Arbitrator to determine the Purchase Price. The Purchase Price is to be determined:

- (i) assuming a willing seller and a willing buyer and taking account of the effect of the Expropriation;
  - (ii) on the full and fair value of the Interest; and
  - (iii) as at the first day of the month following the nomination of the Arbitrator and the Arbitrator is to complete its valuation within sixty (60) days after the date of its nomination and to deliver a copy of its valuation to the Parties.
- (d) After Expropriation the Government shall purchase the whole but not part of the Interest from the Company.
- (e) Payment of the Purchase Price shall, unless a court of competent jurisdiction otherwise orders, be made by the Government first discharging any statutory charges and liens on the Interest of the Company and then paying or crediting the balance in the following priority:
- (i) first, on behalf of the Company, all legal costs, taxes, duties of other imposts or any increases thereof which are or will be incurred as a result of the transfer of the Interest of the Company to the Government;
  - (ii) second, in discharge of any encumbrance that is registered over the Interest; and
  - (iii) third, to the Company.
- (f) The Government shall pay the Purchase Price within an agreed period but no later than six (6) months after the Purchase Price is agreed or determined as the case may be and in so making those payments the Government shall ensure payment in accordance with the priorities referred to in clause 34.1(e), if amounts are not otherwise paid directly by the Company.
- (g) The completion of any purchase under this clause shall take place on a date, not later than an agreed period but not later than six (6) months after the date the Purchase Price is agreed or determined and at a place in Malawi, selected by the Company. At that settlement the Interest of the Company shall be transferred to the Government free and clear of all encumbrances which may have been given by the Company.
- (h) If as a result of Expropriation, the Interest of the Company is transferred to or assumed by a Government Agency then the Government Agency shall, for the purposes of this clause, be treated as if it is the Government and the provisions of this clause shall be applied to it (with all necessary changes).

34.2 If the event of Expropriation relates to the capital of the Company then the rights of the Company under this clause may be pursued by the shareholders of

the Company and the Government shall ensure the shareholders can obtain the benefit of this clause as if they were parties to this Agreement.

### **35. EXPERT DETERMINATION**

35.1 If the need arises for an Independent Expert to make a determination pursuant to any express provision of this Agreement then:

- (a) the Parties shall ensure that the Independent Expert is appointed on each occasion as soon as is reasonably practicable;
- (b) the Independent Expert shall have access to all information relating to the Project and the subject matter of the request for a determination and each Party shall provide every reasonable assistance at its own cost to ensure that the Independent Expert is fully informed (as required by the Independent Expert) of the subject matter of the determination;
- (c) the Independent Expert may travel to and view the Project;
- (d) each Party may (expeditiously) make written submissions to the Independent Expert with respect to the matter and shall promptly copy all submissions to the other Party;
- (e) all costs of the Independent Expert's determination shall be borne as determined by the Independent Expert;
- (f) the Independent Expert may seek the opinion of:
  - (i) a chartered accountant from one of the international accounting firms practising in Malawi in respect of financial matters; and
  - (ii) a legal practitioner admitted to practice in Malawi and practising in the area of commercial law for at least 10 years, in respect of legal matters,

and shall be entitled but not obliged to rely upon any such opinion or opinions in making his determination;

- (g) the Parties shall indemnify the Independent Expert from and against any payment, expense, loss or damage incurred by the Independent Expert as a result of any act or omission by the Independent Expert in the course of performance, or attempted performance of his appointment, howsoever arising;
- (h) the Independent Expert shall be requested to deliver his determination in writing to all Parties within 45 days of the date of his acceptance of appointment;
- (i) the Independent Expert shall not be obliged to have regard to any particular information or evidence in reaching his determination and

may in his discretion procure and consider such information and evidence and in such form as he sees fit;

- (j) each Party shall comply promptly with any request of the Independent Expert for information in such form as the Independent Expert requires;
- (k) subject to this clause 35 the Independent Expert may in his complete discretion decide upon the procedure he will adopt in reaching his determination and each Party shall comply with any requirement of the Independent Expert in connection with such procedures; and
- (l) the Independent Expert shall be acting as an expert, not an arbitrator, and his decision shall be final and binding on the Parties except in the case of manifest error.

### **36. PERFORMANCE TO CONTINUE**

36.1 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 for resolution under clauses 32 or 33. Neither Party shall be entitled to exercise any rights of 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 in accordance with clauses 32 or 33.

### **37. APPLICABLE LAW**

37.1 This Agreement shall be governed by the laws of Malawi and any reference in this Agreement to any such laws shall be deemed to be to those in force from time to time, including the rules of international law and for the avoidance of doubt to the extent the Company has any dispute disagreement controversy or claim with a party in Malawi other than the Government then that matter shall be subject to the jurisdiction of the courts of Malawi.

### **38. FORCE MAJEURE**

38.1 Any failure on the part of a Party 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 to this Agreement any claim for damages insofar as such arises from Force Majeure, if the first-mentioned Party:

- (a) has taken all appropriate precautions, due care and reasonable alternative measures with the objective of avoiding such failure and of carrying out its obligations under this Agreement; and
- (b) has given notice to the other Party of:

- (i) the occurrence of Force Majeure on becoming aware of such an event; and
- (ii) the event of Force Majeure having or having the potential to have a Material Adverse Effect on the Party affected by the Force Majeure.

The first-mentioned Party shall take all reasonable measures to overcome the Force Majeure and to fulfil 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.

38.2 If a Party should dispute:

- (a) whether or not an event constituting Force Majeure has occurred; or
- (b) whether or not a Party is in breach of its obligations to avoid an event of Force Majeure,

it shall be entitled to refer the matter to the Independent Expert in accordance with clause 35.

#### **39. INDEMNITY BY THE COMPANY**

39.1 Except as otherwise provided in this Agreement, the Company shall indemnify and hold harmless the Government against all claims made by or on behalf of any third party in respect of injury, loss or damage resulting from work carried out or goods or services supplied by the Company pursuant to this Agreement.

39.2 In the absence of negligence of the Company, its servants or agents, the Company shall not be liable to indemnify and hold harmless the Government pursuant to clause 39.1 except where injury, loss or damage was caused to a third party by work carried out or goods or services supplied by the Company of a kind or in circumstances in respect of which the law of Malawi imposes liability for injury, loss or damage without proof of negligence.

#### **40. VARIATION/AMENDMENTS**

40.1 In entering into this Agreement the Parties recognise that the determination of the amount of the Royalty and the structuring of the flow of foreign exchange and the setting of the fiscal regime affecting the Company's Mining operations referred to in clauses 17, 21 and 22 have been set by the Government in the full knowledge of the potential impact of a rise or fall in the pricing of yellowcake.

40.2 If required by one Party then the Parties are to hold discussions in good faith on whether this Agreement should be reviewed either:

- (a) to take into account:

- (i) new advances in the scientific and technological fields relative to Mineral exploration and mining and processing; or
- (ii) other than as a consequence of any Change in Law, new financial circumstances which would in any material respect adversely affect the viability of the Project,

it being the intention of the Parties to ensure that to the extent circumstances permit each will be in a similar financial position by operation of this Agreement as was envisaged at the Agreement Date; or

(b) to accommodate:

- (i) matters for which it was impractical to make provisions on the Agreement Date; and
- (ii) Hardship which is experienced during the course of the performance of this Agreement,

it being the intention of the Parties that this Agreement operate between them with fairness and without prejudice to the interest of the other and operate in a manner to achieve the Economic Equilibrium,

and where it is shown that the Agreement should be amended to either take account of the matters referred to in clause 40.2(b) then the Parties will use their Best Endeavours to agree on the appropriate amendments to this Agreement. If the Parties cannot reach an agreement with respect to any matter referred to in clause 40.2(b) then the Dispute may be referred to Arbitration.

40.3 This Agreement shall not be set aside, amended or modified except by a written agreement between the Parties to this Agreement although the Parties acknowledge that the Approved Programme of Operations will be waived where there has been or there is anticipated to be a change which has or will have a Material Adverse Effect on a Party. Any change to the Approved Programme of Operations will be to attempt to place the Parties in a similar position (circumstances permitting) to that they expected to be in as at the Agreement Date.

#### **41. LIAISON COMMITTEE**

41.1 The Minister shall establish a committee which shall consist of the:

- (a) the Permanent or Principal Secretaries or their representatives from the Ministries responsible for Energy, Mines and Natural Resources, Labour and Vocational Training, Industry Trade and Private Sector Development, Finance, Justice and Home Affairs and also a representative of the President and Cabinet, Karonga District Commissioner's office and Karonga District Assembly respectively; and

- (b) two representatives of the Company.
- 41.2 The committee referred to in clause 41.1 shall, whenever it deems appropriate invite representatives from such other Ministries or affected parties to attend any of its meetings.
- 41.3 The Company can invite specialist consultants, whenever it deems appropriate, to attend any of the meetings of the committee referred to in clause 41.1.
- 41.4 The chairperson of the committee shall be the representative from the Ministry of Energy, Mines and Natural Resources.
- 41.5 The committee shall operate during the term of this Agreement and the Company shall furnish the committee with quarterly reports outlining:
- (a) its activities;
  - (b) the problems encountered;
  - (c) its plans;
  - (d) the number of Malawians employed;
  - (e) a list of successful tenderers which shall include the items supplied, residence of tenderers and the reasons for awarding the tender; and
  - (f) a list of unsuccessful Malawian or foreign based tenderers which shall include reasons for not awarding the tender.
- 41.6 The committee shall monitor the Company's activities and adherence to the Approved Programme of Operations and any other issues related to it.
- 41.7 The committee referred to in clause 41.1 shall:
- (a) formulate their own rules of procedure;
  - (b) not make decisions and recommendations that are binding on the Company;
  - (c) monitor the implementation of their respective plans where such have been approved and accepted by the Government; and
  - (d) ensure that the institutions nominating members will be responsible for the costs and expenses incurred by the members in the execution of their duties.



## 42. NOTICES

42.1 Any notice, consent, demand, approval, request or other communication (a "Notice") required or permitted to be given shall be in writing and shall be deemed to have been given if:

- (a) in the case of a Notice given by the Government, such Notice is signed on behalf of the Government by either the Minister or Permanent or Principal Secretary to the Ministry as their respective responsibilities require; or
- (b) in the case of a Notice to be given by the Company, such Notice is signed by a director or by the Secretary of the Company.

42.2 Each such Notice shall, as elected by the Party giving such notice, be personally delivered or transmitted by facsimile to the other Party as follows:

### **A Notice to the Government**

If by facsimile – (265) 1788 689

If by post – Principal Secretary

Minister of Energy, Mines and Natural Resources

Private Bag 350,

Lilongwe 3

Malawi

If by hand Principal Secretary

Minister of Energy, Mines and Natural Resources

Capital Hill, Lilongwe

Malawi

### **A Notice to the Company and or Paladin**

If by facsimile – (61) 89381 4978

If by post – Company Secretary

Private Bag 32

Lilongwe

Malawi

If by hand:                   Mama Kadzamma Estate  
  15/4B Lilongwe  
  Malawi

Copy to:                       Grand Central  
  Level 1,  
  26 Railway Road  
  Subiaco  
  Western Australia 6008

42.3 Except as otherwise specified in this Agreement, all Notices and other communications 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 receipt if sent by facsimile; and
- (c) ten (10) days after the date of posting if sent by air mail or courier services.

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

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

**43. WAIVER**

43.1 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 of this Agreement or the right of any Party to enforce each and every part of the provision in respect of any subsequent default or breach.

**44. SEVERABILITY**

44.1 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, unenforceable or contrary to any provision of an Act then that provision will be of no force or effect and the remainder of this Agreement shall remain binding upon and enforceable by the Parties. Nothing in this

Agreement shall preclude one Party from requesting the other Party to renegotiate any provision in this Agreement.

**45. FURTHER ACTS**

45.1 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.

**46. REPRESENTATIONS AND WARRANTIES**

46.1 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 to this Agreement 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 denied and negated.

**EXECUTED** as an agreement by the Parties

**SIGNED** by **THE MINISTER FOR ENERGY, MINES AND NATURAL RESOURCES** for and on behalf of **THE GOVERNMENT OF THE REPUBLIC OF MALAWI**

RTIhump

Witness

BAZUKI MILMHANGO

Name:

P/BALF 333 LL

Address:

MINISTER ST JUSTICE

Occupation:

**EXECUTED by PALADIN (AFRICA)  
LIMITED by its duly appointed attorney  
MICHAEL GERRARD BLAKISTON**  
in the presence of:



[Handwritten Signature]  
Witness

KEITH HANNON

Name:

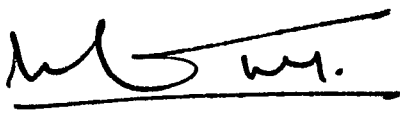
ZUMBA ST, LILONGWE

Address:

ECONOMIST

Occupation:

**SIGNED by the THE MINISTER )  
FOR FINANCE for and on behalf )  
of THE GOVERNMENT OF )  
THE REPUBLIC OF MALAWI )**  
in the presence of: )



[Handwritten Signature]  
Witness

BAZUKA MIL MUYANKO

Name:

PIBAZI 333 LL

Address:

MINISTER ST JOSITE

Occupation:

**EXECUTED by PALADIN ENERGY  
MINERALS NL by its duly appointed  
Attorney MICHAEL GERRARD BLAKISTON**  
In the presence of:



Witness  
[Handwritten Signature]

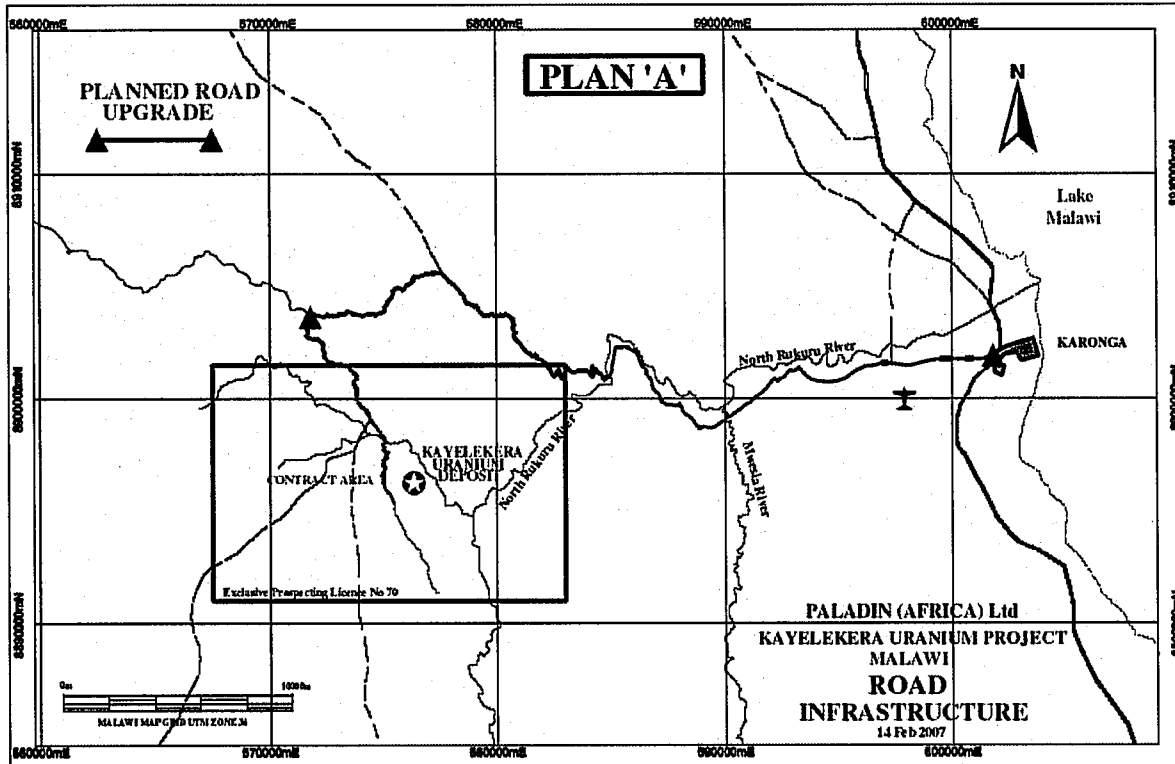
Name:  
KEITH HANNON

Address:  
ZUMBA ST, LILONGWE

Occupation:  
ECONOMIST

# ATTACHMENT "A"

## PLAN



## **ATTACHMENT "B"**

### **Item 1      Fiscal Regime**

The Company will be subject to the fiscal regime in existence in Malawi as at the Agreement Date save as follows:

- (a) the Taxation Act (Cap. 41:01 of the Laws of Malawi) imposes a corporate tax rate of 30% on the net profit of mining companies. In calculating the net profit the Company is to be allowed to:
  - (i) immediately depreciate the full amount of all capital expenditure it incurs on the Business; and
  - (ii) write off against any of its profits all exploration costs incurred by the Company (both prior to and after the Agreement Date) on any mining or exploration tenement( issued pursuant to the Mines Act)in which the Company may hold either a direct or indirect interest, together with all losses which the Company may have accrued while operating in Malawi;
- (b) the Taxation Act (Cap 41:01 of the Laws of Malawi) imposes a resources rent tax of 10% shall be levied on profits after tax if the Company's rate of return exceeds 20% per annum; but in the case of the Company, the resources rent tax is not to be payable by the Company for the Life of Mine;
- (c) for the Stability Period the Company is exempted from paying Tax (being both import duty and import value added tax) on the costs, insurance and the freight value of all equipment, consumables used in the Mining and processing of ore, materials, fuels and lubricants which are acquired for and utilised in the Business but does not include equipment, consumables or materials imported by any person working for the Company;
- (d) for the Stability Period the Company is exempted from any thin capitalisation rules that may be introduced by the Government after the Agreement Date; and
- (e) the consideration for the issue of fifteen (15) percent equity in the Company to the Government is the advance payment by the Company of:
  - (i) two and a half (2½) percent of the corporate tax rate referred to above; and
  - (ii) the rent resource tax referred to in (b) above,

the net impact of which is that the Company is only required to pay a twenty seven and a half (27½) percent corporate tax rate on the profits of the Company, whatever they may be.

**Item 2 - Royalty**

The Company will pay the Royalty as follows:

Years post commencement of sale of yellowcake	Royalty Rate
1 to 3	1.5 %
4 and onwards	3 %

**Item 3**

**MINISTER'S ORDER**

**SECTION 16 (2) OF THE MALAWI REVENUE AUTHORITY ACT**

**THAT** pursuant to the Order published in the Gazette dated [.....], and in consideration of an arrangement between the Government, Paladin (Africa) Limited and its shareholders for the equity of Paladin (Africa) Limited for the Government of a comparable value to the revenue being foregone, the Minister of Finance has to that extent exempted the revenue of Paladin (Africa) Limited from tax to the extent contained in the Development Agreement between the Government, Paladin (Africa) Limited and Paladin Energy Minerals NL.

**DRAFT RESOLUTION ON GRANT OF REMISSION OF TAX**

The Board of Directors of the Malawi Revenue Authority have resolved to recommend to the Minister of Finance that there be granted an exemption, mitigation, deferment or remission of any revenue where:

- (a) there is and in consideration of an arrangement between the Government and shareholders of an entity, for equity of an entity; and
- (b) the equity of the entity is of comparable or more value to tax revenue liability of the entity.

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**CHAIRMAN**

## **ATTACHMENT "C"**

### **MEDICAL AND SOCIAL SERVICES**

#### **Medical Services**

1. The Company will conduct regular HIV/AIDS awareness campaigns in order to sensitise employees, their dependents and members of the Kayelekera Community as to the dangers of AIDS and assist with the implementation of preventative measures.
2. The Company's approach to medical services would entail the compliance with Malawian regulations regarding supply of a community clinic. However, the Company wishes to be a mine developer and operator and does not see itself as a provider of medical facilities or services to the broader community beyond the employees and dependents and members of the Kayelekera Community but will endeavour to fulfil the above obligations, nor does it see itself as having to provide staff to the clinic to be constructed as contemplated in clause 20.1(b).

#### **Social Services**

1. The Company recognises the absence of good standards of hygiene and regular water access and will endeavour to support projects within the Kayelekera Community that improve the quality of life and local economy of the Kayelekera Community through construction of wells and sinking of boreholes.
2. The Company recognises that the Kayelekera Community requires assistance in developing improved agricultural production practices.
3. The Company recognises that social amenities have to be made available if highly skilled employees are to be retained within the Company and to benefit the Kayelekera Community. The Company shall evaluate on a case-by-case basis the need to support the various social structures.