

REPUBLIC OF LIBERIA)  
MONTSERRADO COUNTY)

*CAC  
23/10/08  
P*

**MINERAL DEVELOPMENT AGREEMENT**

**BETWEEN**

**THE REPUBLIC OF LIBERIA**

**AND**

**KPO RESOURCES INCORPORATED**

## TABLE OF CONTENTS

SECTION I: DEFINITIONS	2
1.1 "Affiliate"	2
1.2 "Agreement"	2
1.3 "Associates"	2
1.4 "Centre"	2
1.5 "Class A Mining License"	2
1.6 "Contract Area"	2
1.7 "Contract Year"	2
1.8 "Convention"	2
1.9 "Development"	2
1.10 "Dollar" and "US\$"	3
1.11 "Effective Date"	3
1.12 "Exploration"	3
1.13 "Exploration Area"	3
1.14 "Exploration License"	3
1.16 "Feasibility Report"	3
1.17 "Financial Year"	3
1.18 "Foreign Currency"	3
1.19 "Infrastructure"	3
1.20 "International Standards"	4
1.21 "Law"	4
1.22 "Mineral"	4
1.23 "Minister"	4
1.24 "Notice"	4
1.25 "Operations"	4
1.26 "Operator"	5
1.27 "Party"	5
1.28 "Person"	5
1.29 "Prevailing Market Rate of Exchange"	5
1.30 "Production"	5
1.31 "Production Area"	5
1.33 "Taxes and Duties"	5
1.34 <u>Included Words</u>	5
1.35 <u>Headings</u>	5
1.36 <u>References</u>	6
1.37 <u>Severability</u>	6
SECTION 2: EFFECTIVE DATE	6
SECTION 3: TERM OF THE AGREEMENT	6
3.1 <u>Original Term</u>	6
3.2 <u>Extended Term</u>	6

SECTION 4: EXPLORATION LICENSE AND AREA	7
4.1 <u>Exploration License</u>	7
4.2 <u>Exploration Area</u>	8
4.3 <u>Surrender of Exploration Area</u>	8
4.4 <u>Retention of Exploration Area</u>	8
4.5 <u>Surrender Right</u>	8
4.6 <u>Credit for Production Areas</u>	8
4.7 <u>Minimum Size</u>	9
4.8 <u>Right to Purchase Samples</u>	9
4.9 <u>Pilot Mining Operations</u>	9
4.10 <u>Right to Additional Areas</u>	9
SECTION 5: EXPLORATION WORK PROGRAMS	10
5.1 <u>Commencement</u>	10
5.2 <u>Minimum Expenditure</u>	10
5.3 <u>Operation Reports, Records and Inspection</u>	11
SECTION 6: CLASS A MINING LICENSE AND AREA	12
6.1 <u>Class A Mining License</u>	12
6.2 <u>Production Areas</u>	12
6.3 <u>Government Mineral Appraisal Office</u>	13
6.4 <u>Pre-feasibility and Feasibility Report</u>	13
6.5 <u>Term of the Class A Mining License</u>	14
6.6 <u>Surrender of Production Areas</u>	14
6.7 <u>Reports to the Central Bank of Liberia</u>	14
6.8 <u>Class B and C Mining Licenses</u>	14
SECTION 7: CONFIDENTIALITY	14
7.1 <u>Confidential Information</u>	14
7.2 <u>Public Information</u>	14
SECTION 8: PRODUCTION WORK PROGRAMS	14
SECTION 9: CONDUCT OF OPERATIONS	15
SECTION 10: LAND AND FACILITIES	15
10.1 <u>Public Land</u>	15
10.2 <u>Private Land</u>	15
10.3 <u>Limitation on Exploration and Production</u>	16
10.4 <u>Facilities</u>	16
10.5 <u>Communications Facilities, Systems and Frequencies</u>	17

SECTION 11: HEALTH AND SAFETY .....	17
11.1 <u>Health and Safety</u> .....	17
11.2 <u>Security Force</u> .....	18
SECTION 12: HEALTH CARE AND EDUCATION .....	18
12.1 <u>Health Care</u> .....	18
12.2 <u>Education</u> .....	18
SECTION 13: EMPLOYMENT, SECONDMENT AND TRAINING .....	19
13.1 <u>Employment</u> .....	19
13.2 <u>Secondment</u> .....	19
13.3 <u>Training of Liberians</u> .....	19
SECTION 14: USE OF LIBERIAN SERVICES AND MATERIALS .....	19
SECTION 15: COMMUNITY RESOURCES .....	20
SECTION 16: ENVIRONMENTAL PROTECTION AND MANAGEMENT .....	20
16.1 <u>Environmental Impact Statement</u> .....	20
16.2 <u>Damage and Restoration</u> .....	20
16.3 <u>Plans</u> .....	20
SECTION 17: TECHNICAL COMMITTEE .....	21
17.1 <u>Formation</u> .....	21
17.2 <u>Costs</u> .....	21
17.3 <u>Functions</u> .....	21
SECTION 18: UNDERTAKINGS OF THE GOVERNMENT .....	21
18.1 <u>Access to Information</u> .....	21
18.2 <u>Provision of Documents</u> .....	21
18.3 <u>Use of Aircraft</u> .....	22
18.4 <u>Use of Airports and Ports</u> .....	22
18.5 <u>Electricity Generation and Transmission</u> .....	22
18.6 <u>Issuance of Necessary Authorization</u> .....	22
18.7 <u>Protection Against Nationalization or Expropriation</u> .....	22
18.8 <u>Peaceful Enjoyment</u> .....	23
18.9 <u>Non-Derogation</u> .....	23
18.10 <u>Most Favorable Treatment</u> .....	23
SECTION 19: INDEMNIFICATION .....	23
19.1 <u>Indemnification for Breach of Agreement</u> .....	23
19.2 <u>Operator's Indemnification of the Government</u> .....	23
19.3 <u>Government's Indemnification of the Operator</u> .....	24

SECTION 20: INCOME TAXATION	24
20.1 <u>Rate and Basis</u>	24
20.2 <u>Carry Forward Permitted</u>	25
20.3 <u>Additional Deductions</u>	25
20.4 <u>Computation of Taxable Income in Dollars</u>	25
SECTION 21: ROYALTIES	26
21.1 <u>Royalty Rate</u>	26
21.2 <u>Royalty Basis</u>	26
21.3 <u>Payment</u>	26
SECTION 22: SURFACE RENTAL	26
22.1 <u>Contract Area</u>	26
22.2 <u>Payment</u>	26
SECTION 23: OTHER PAYMENTS TO THE GOVERNMENT	27
23.1 <u>Import Duties and Excise Taxes</u>	27
23.2 <u>Other Payments</u>	27
23.3 <u>Exemption From Other Taxes and Duties</u>	27
23.4 <u>Non-Application of Section 23.3</u>	28
SECTION 24: FINANCIAL REPORTING AND CURRENCY	28
24.1 <u>Accounting</u>	28
24.2 <u>Exchange Control</u>	29
24.3 <u>Currency of Payment</u>	29
24.4 <u>Right to Remit and Receive Payments</u>	29
24.5 <u>Audit</u>	29
SECTION 25: INCIDENTAL RIGHTS	30
25.1 <u>Use of Resources</u>	30
25.2 <u>Imports</u>	30
25.3 <u>Taxes on Resale</u>	31
SECTION 26: ASSIGNMENT AND ENCUMBRANCE	31
26.1 <u>Right of Assignment</u>	31
26.2 <u>Right to Encumber</u>	31
26.3 <u>Notice of Assignment or Encumbrance</u>	31
SECTION 27: TERMINATION	31
27.1 <u>Termination by the Operator</u>	31
27.2 <u>Termination by the Government</u>	31
27.3 <u>Opportunity to Cure</u>	32




27.4	<u>Disputes Regarding Events of Default</u>	32
27.5	<u>Winding-up Commission</u>	32
SECTION 28: DISPOSITION OF ASSETS		33
28.1	<u>Immovable Assets</u>	33
28.2	<u>Movable Assets</u>	33
28.3	<u>Removal of Movable Assets</u>	34
SECTION 29: ARBITRATION		34
29.1	<u>Submission to Arbitration</u>	34
29.2	<u>Nationality for Purposes of Arbitration</u>	34
29.3	<u>Arbitrators</u>	35
29.4	<u>Referee</u>	35
29.5	<u>Venue</u>	35
29.6	<u>Award</u>	35
29.7	<u>Waiver of Sovereign Immunity</u>	36
29.8	<u>Reservation of Rights</u>	36
29.9	<u>Nature of Award</u>	36
29.10	<u>Successors</u>	36
SECTION 30: NOTICES		36
30.1	<u>Written Communication</u>	36
30.2	<u>Delivery</u>	37
30.3	<u>Address</u>	37
30.4	<u>Copies of Communications</u>	37
30.5	<u>Change of Address</u>	37
SECTION 31: FORCE MAJEURE		38
31.1	<u>Application</u>	38
31.2	<u>Definition</u>	38
31.3	<u>No Required Settlement</u>	38
SECTION 32: LIBERIAN PARTICIPATION IN OWNERSHIP		38
32.1	<u>Government Ownership of Equity</u>	38
32.2	<u>Liberian Participation in Equity</u>	39
SECTION 33: GOVERNING LAW		39
SECTION 34: ENTIRE AGREEMENT - MODIFICATIONS		39
34.1	<u>Entire Agreement</u>	39
34.2	<u>Amendment</u>	39
SECTION 35: PERIODIC REVIEW		39

35.1	<u>Modification and Review</u>	39
35.2	<u>Good Faith</u>	39
SECTION 36: NON-WAIVER OF RIGHTS		40
SECTION 37: SUCCESSION		40
SECTION 38: SURVIVAL PROVISION		40



**This Mineral Development Agreement** is entered into, by and between the **REPUBLIC OF LIBERIA**, through its Government represented by the Minister of Lands, Mines & Energy, the Minister of Finance, and the Chairman, National Investment Commission (hereinafter referred to as "Government")

**AND**

**KPO RESOURCES INC**, a corporation organized and existing under the laws of Liberia, represented by its Co-chairman (hereinafter referred to as the "Operator") hereby,

**WITNESSETH:**

**WHEREAS**, title to Minerals within the territory of the Republic of Liberia is vested in the Republic of Liberia (the "Republic") and all rights related to the exploration for and exploitation of such minerals pertain exclusively to the Republic; and

**WHEREAS**, the Ministry of Lands, Mines & Energy through the Minister of Lands, Mines & Energy is by Law charged with the responsibility of administering the mineral laws of the Republic and in that process to ensure the efficient development of the mining industry; and

**WHEREAS**, Government is determined to accelerate the development of the mining industry of Liberia, and therefore desires to promote the exploration for and development and production of minerals in the Republic for the economic and social benefit of Liberia and recognizes that a large capital expenditure is necessary to ensure that such minerals are economically and efficiently developed; and

**WHEREAS**, Government agrees to grant the Operator the right and privilege to engage in Exploration for and Development and Production of Minerals in the Contract Area in consideration of the undertaking by the Operator to engage in such Exploration, Development and Production pursuant to the terms of this Agreement; to pay Taxes and Duties as prescribed in this Agreement; and to perform and observe the other terms and conditions of this Agreement; and

**WHEREAS**, the Operator has the financial ability, technical competence and professional skills necessary to carry out a program for the Exploration, Development and Production of such Minerals; and

**WHEREAS**, in recognition of the fact that the Operator is an affiliate of Mano River Resources Inc., a company which pioneered modern exploration in Liberia





for both gold and diamonds and has invested substantial amounts since 1997, has applied for certain special conditions, and

**WHEREAS**, in accordance with Law, the Government has the power and authority to enter into this Agreement, to grant the Operator a mining concession as hereinafter described, and to permit the Operator to conduct the Operations contemplated by this Agreement.

**NOW, THEREFORE**, the Parties agree as follows:

## **SECTION I: DEFINITIONS**

1.1 "Affiliate" means a Person that controls, is controlled by or is under common control with the Operator. For purposes of this section, control means the possession, directly or indirectly, by one Person of more than fifty percent (50%) of the equity of or voting power in another Person.

1.2 "Agreement" means this Agreement granting a mining right to the Operator and any amendments to it made pursuant to its terms as well as all exhibits and appendices to it.

1.3 "Associates" means the Affiliates, shareholders, financiers and contractors (including suppliers of goods and services) of the Operator and the directors, officers, agents and employees of the Operator and of any of the foregoing.

1.4 "Centre" means The International Centre for Settlement of Investment Disputes established under the auspices of the International Bank for Reconstruction and Development.

1.5 "Class A Mining License" has the meaning given in Section 6.1.

1.6 "Contract Area" means the Exploration Area and all Production Areas.

1.7 "Contract Year" means a period of twelve (12) consecutive months according to the Gregorian calendar starting on the Effective Date of this Agreement or on any anniversary of said Effective Date.

1.8 "Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened to signature at Washington, D.C., United States of America, on March 18, 1965.

1.9 "Development" means all preparation for the removal and recovery



ATC

of Minerals, including the construction or installation of a mill or any other improvements to be used for the mining, handling, milling, beneficiation or other processing of Minerals.

1.10 "Dollar" and/or "US\$" mean the lawful currency of the United States of America.

1.11 "Effective Date" means the date described in Section 2.

1.12 "Exploration" means activities directed toward ascertaining the existence, location, quantity, quality or commercial value of deposits of Minerals

1.13 "Exploration Area" means the area mentioned in and subject to Section 4.2.

1.14 "Exploration License" has the meaning given in Section 4.1.

1.15 "Extended Term" has the meaning given in Section 3.2.

1.16 "Feasibility Report" has the meaning given in Section 6.4.

1.17 "Financial Year" means January 1 through December 31, or such other period as the Parties may agree.

1.18 "Foreign Currency" means Dollars and any other currency except currency that is legal tender in the Republic.

"Government" means the Republic of Liberia, its government, and all political subdivisions, branches, divisions, instrumentalities, authorities and agencies thereof.

1.19 "Infrastructure" means the following:

a. Immovable transportation and communication facilities (including roads, bridges, railroads, airports, landing strips and landing pads for aircraft, hangars and other airport facilities, garages, channels, tramways, pipelines and radio, telephone, telegraph, telecommunications, and electronic or other forms of communications facilities);

b. Immovable port facilities (including docks, harbors, piers, jetties, breakwaters, terminal facilities and warehouses, and loading and unloading facilities);

c. Immovable power, water and sewerage facilities (including



electrical generating plants and transmission lines, dams, water drains, water supply systems and systems for disposing of tailings, plant waste and sewage);

d. Immovable public welfare facilities (including schools, hospitals and public halls);

e. Miscellaneous immovable facilities used primarily in connection with the operation of any of the foregoing (including offices, machine shops, foundries, repair shops and warehouses);

f. Other immovable facilities used primarily in connection with or as an incident to Operations; and

g. Movable facilities and equipment used as an integral part of the immovable facilities described in paragraphs a through f above.

For purposes of this Agreement, immovable items include all tangible items that are securely affixed and attached to the land or to buildings or other structures on the land. All other items shall be movable items.

1.20 "International Standards" means generally accepted world mining industry standards and procedures, due allowance being made for any special circumstances.

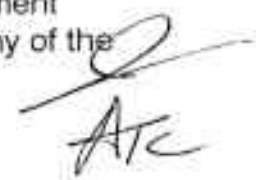
1.21 "Law" means any constitution, law, statute, decree, rule, regulation, judicial act or decision, judgment, order, proclamation, directive, executive order or sovereign act of the Government that affects or purports to affect the Operator or is generally applicable in the Republic.

1.22 "Mineral" means a naturally occurring, non-living substance having a definite chemical composition and physical characteristics and having economic value, but excluding oil, gas, coal and geothermal resources.

1.23 "Minister" means the Minister of Lands, Mines & Energy of the Republic and his or her successors.

1.24 "Notice" means notice given pursuant to Section 30.

1.25 "Operations" means all activities and transactions conducted by or on behalf of the Operator with respect to, under or incidental to this Agreement including Exploration, Development and Production and the financing of any of the foregoing.



1.26 "Operator" means Kpo Resources Inc. and any other Person to which, pursuant to Section 26.1, it may assign all or any part of its interest under this Agreement.

1.27 "Party" means either the Government or the Operator and, in the plural forms, both the Government and the Operator (and any permitted assignee of the Operator).

1.28 "Person" means any individual, partnership, limited liability company, joint venture, association, corporation, trust, estate, unincorporated or other entity, government or state and any branch, division, political subdivision, instrumentality, authority or agency of any government or state.

1.29 "Prevailing Market Rate of Exchange" means the predominant rate, expressed in Dollars, at which willing sellers and willing buyers, acting at arm's length and in the ordinary course of business, purchase or sell, or agree to purchase or sell, currency of another nation.

1.30 "Production" means the commercial exploitation of Minerals found in the Contract Area and all other activities incidental thereto including the design, construction, installation, fabrication, operation, maintenance and repair of Infrastructure, facilities and equipment and the mining, excavation, extraction, recovery, handling, beneficiation, processing, milling, stockpiling, transportation, export and sale of Minerals.

1.31 "Production Area" means an area selected as such by the Operator pursuant to Section 6.2.

1.33 "Taxes and Duties" mean any and all direct and indirect income, profit, gains, capital gains, corporation, net worth, sales, transaction, payroll, import, export, customs, consul, inspection, value added, consumption, supply, use, turnover, severance, stumpage, cash flow, rental, land rental, surface rental, property, stamp and other taxes, duties, fees, levies, excises, rates, charges, imposts, surcharges, royalties and other Government imposed revenue payments of whatever nature and however called and whether similar or dissimilar to the foregoing.

1.34 Included Words. This Agreement shall be read with such changes in gender or number as the context shall require.

1.35 Headings. The headings to the clauses and sections of this Agreement are inserted for convenience only and shall not affect the construction hereof.



1.36 References. Unless otherwise stated, a reference herein to a numbered or lettered section or appendix refers to the section or appendix bearing that number or letter in this Agreement. A reference to "this Agreement," "hereof," "hereunder," "herein," or words of similar meaning, means this Agreement, including the appendices hereto, together with any amendments thereof. The words "and" and "or" will include the conjunctive and disjunctive, as the context may require or permit. The word "include" (and any variation) is used in an illustrative sense rather than in a limiting sense.

1.37 Severability. If any provision of this Agreement is or shall become illegal, invalid or unenforceable, in whole or in part, the remaining provisions shall nevertheless be and remain valid and subsisting and the said remaining provisions shall be construed as if this Agreement had been executed without the illegal, invalid or unenforceable portion.

## **SECTION 2: EFFECTIVE DATE**

This Agreement shall become effective and be binding on the Parties when executed by them and approved by the President of the Republic. The Government will accordingly provide timely Notice to the Operator of such extension and approval.

## **SECTION 3: TERM OF THE AGREEMENT**

3.1 **Original Term**. The original term of this Agreement shall commence on the Effective Date and, subject to Section 3.2 below, shall end on the twenty-fifth (25th) anniversary of the Effective Date, unless sooner terminated in accordance with the other provisions of this Agreement.

### **3.2 Extended Term**

a. Notwithstanding the provisions of Section 3.1 above, the Operator shall have the right to extend the term of this Agreement for additional terms not exceeding twenty-five (25) years each (the "Extended Terms") upon providing the Government with Notice, at least one year prior to the termination of the original term or any extended term, of its intention to seek such extension and, within ninety (90) days after such Notice, by providing the Government with a Feasibility Report which shall set forth the type and quantity of Minerals that are estimated to exist in the Contract Area, or any part thereof, and describe in reasonable detail a proposed plan for the efficient and economic Production of such Minerals (in accordance with International Standards and the provisions of this Agreement), including a detailed description of the proposed mining and processing methods, the design, cost and construction schedules for the proposed facilities and equipment, the financing arrangements contemplated, and the

Operator's best estimate in good faith of the date upon which Production of such Minerals will cease (the "Extended Date"), but not later than 25 years after the end of the Original Term or any prior Extended Term.

b. The Government shall grant its approval for the Extended Term through the Extended Date if the Feasibility Report, or the Feasibility Report as amended by the Operator, reasonably complies with International Standards and the provisions of this Agreement. The Government shall, in the event of any delay in or denial of approval of a Feasibility Report, promptly give to the Operator full details, in writing, of its reasons for withholding or delaying approval. Without prejudice to the generality of Section 3, if, in the Operator's opinion, any such approval has been wrongfully withheld or unreasonably delayed, it may invoke the provisions of Section 29.

c. With respect to any such Extended Term, the fiscal terms and conditions of this Agreement shall be amended in such manner as the Parties may agree as fair and reasonable taking into account fiscal terms generally applicable at the end of any immediately preceding term to large scale mining entities worldwide in respect of operations of the nature envisaged in the Extended Term (due allowance being made for any special circumstances).

#### **SECTION 4: EXPLORATION LICENSE AND AREA**

##### **4.1 Exploration License.**

a. By this Agreement and subject to its terms, the Government hereby grants to the Operator the exclusive right and license (the "Exploration License") to conduct exploration for minerals on all public and (subject to Section 10.2) private land in the Contract Area and to conduct pilot mining operations pursuant to Section 4.9 and

b. Unless the Minister and the Operator otherwise agree:

(1) that the initial term of the Exploration License shall be three (3) years commencing on the Effective Date, and

(2) that the Exploration License shall be extended for one (1) additional term of two (2) years. The extension shall commence on the expiration of the initial term upon the Operator's written application to the Minister at least ninety (90) days prior to expiration of the initial term (or such lesser period of time as the Government agrees) provided that the Operator fulfills the work and expenditure obligations set forth in Section 5.2 for the then current term and unless the Government otherwise agrees to grant the extension.

c. The Exploration License shall automatically terminate on the expiration of its term and the Exploration Area shall thereupon be surrendered, unless renewed in accordance with Section 4.1(b)(2) above.

**4.2 Exploration Area.** The original Exploration Area is as shown on the map attached as Appendix "A", the coordinates of which are specified in Appendix "B".

**4.3 Surrender of Exploration Area.** Unless the Minister and the Operator otherwise agree and subject to the Operator receiving full credit towards the surrender requirement for all areas declared to be Production Areas pursuant to Section 4.6 below:

a. that at, or before the end of the initial term of the Exploration License, the Operator may select the entire Exploration Area or any portion thereof as a proposed Production Area;

b. that in the event the Operator decides to apply for an extension of the Exploration License, the operator shall be obliged to surrender a minimum of fifty percent (50%) of the original Exploration Area at the end of the Initial Term of the Exploration License.

c. that at or before the end of the extension period, the operator shall declare the entire remaining area or any portion thereof as a proposed production area. In the event the operator declares only a portion of the Exploration Area as Production Areas, the remaining portion of the Exploration Area must be surrendered to Government and the Exploration License shall then cease to exist.

**4.4 Retention of Exploration Area.** The Operator may retain all or any part of the Exploration Area by declaring the area it wishes to retain a Production Area, whether or not Minerals which the Operator wishes to produce have been found in that area. The Operator shall make such declaration by written Notice to the Government not more than sixty (60) days (or such additional days as the Government may allow) after the expiration of the initial or any Extended Term of the Exploration License.

**4.5 Surrender Right.** The Operator shall have the right, upon giving the Government sixty (60) days prior written Notice (or such lesser period of time as the Government allows), at any time to surrender all or any part of the Exploration Area, and all such voluntary surrenders shall be credited towards the mandatory surrenders specified in Section 4.3 above.

**4.6 Credit for Production Areas.** All Production Areas declared



pursuant to Sections 4.4 and 6.2 shall be fully credited towards and therefore reduce the size of the mandatory surrenders specified in Section 4.3 above.

**4.7 Minimum Size.** Unless the Minister and the Operator otherwise agree, or until such time as the remaining Exploration Area is ten percent or less of the original Exploration Area, each separate part of the Exploration Area surrendered shall be not less than ten percent (10 %) of the original Exploration Area as provided in Sec 4.3(b) and (c) herein.

**4.8 Right to Purchase Samples.** In connection with Exploration, the Operator may, with the consent of the Minister (which consent will not be unreasonably withheld), purchase, in sample quantities for analysis, Minerals recovered from the Contract Area by other Persons and shall have the right to sell such Minerals when no longer required for analysis. Upon any such sale by the Operator, the Operator shall pay royalty on the value of such samples sold as provided in Section 21, less any royalty or like payment paid or payable to the Government by the vendor in connection with the sale of the samples to the Operator.

**4.9 Pilot Mining Operations.** While the Exploration License remains in effect, the Operator shall have the further right to conduct pilot mining operations in the Exploration Area. The provisions of Sections 20, 21, 22 and 23 shall apply, as appropriate, to the pilot mining operations and any income derived therefrom.

**4.10 Right to Additional Areas.**

a. The Operator shall have the right to add to the Contract Area as additional Exploration Areas (the "Additional Areas") any unencumbered areas requested by the Operator that have a geological relationship to adjoining Production Areas or into which extend geological trends from the Contract Area or from the geographic boundaries of any Mineral body discovered in the Contract Area.

b. On and from the date of such election or request by the Operator pursuant to Sections 4.10(a) above, the Additional Areas shall become part of the Contract Area, and the obligations of the Operator under Section 22 shall be increased *pro rata temporis*. Furthermore, the obligation of the Operator under Section 5.2 shall also be increased *pro rata temporis* beginning in the Contract Year of such election, provided that the Operator shall not be required to fulfil such increased obligation until the following Contract Year, and provided further that the Operator shall be deemed to have fulfilled its obligation under Section 5.2 in any Contract Year in which it has expended at least an aggregate amount equivalent to US\$1.40 per acre on any Exploration pursuant to Section 5.2.

c. With respect to each separate area within the Additional



Areas which may be added to the Contract Area pursuant to this Section 4.10, the initial term of the Exploration License granted for such area shall commence on the date that such area becomes a part of the Contract Area and shall in all other respects be governed by the terms of this Section 4.

**4.11 Dealership License.** By this Agreement, and subject to the payment of such fees as may be required by Law, the Operator is hereby granted the right but not the obligation to acquire a dealership license to purchase Minerals within the Contract Area, the Additional Areas and other areas adjacent to those areas directly from third party miners for export, sale or other lawful purposes. The dealership license hereby granted the Operator shall also entitle the Operator to purchase Minerals outside the Contract Area, the Additional Areas and areas adjacent to those areas pursuant to Law.

## SECTION 5: EXPLORATION WORK PROGRAMS

**5.1 Commencement.** The Operator shall commence Exploration as soon as is reasonably practicable. Furthermore, pursuant to Section 4.1(b)(1), the initial term of the Exploration License shall be three (3) years, and may be extended for one additional two (2) year term pursuant to Section 4.1(b)(2). The Operator shall carry out Exploration pursuant to a Proposed Exploration Program, which shall be submitted to the Minister not later than ninety (90) days after the Effective Date. Thereafter, the Operator shall revise the Proposed Exploration Program not later than sixty (60) days after the end of each Contract Year to the extent necessary to take into account changes in the Proposed Exploration Program that the Operator deems appropriate in light of the prior year's Exploration activity and results.

### 5.2 Minimum Expenditure.

a. Unless the Minister and the Operator otherwise agree, and subject to Section 4.10 above, in each Contract Year of the initial term of the Exploration License, the Operator shall incur in connection with Exploration in the Exploration Area costs and expenses of at least One Dollar and Forty United States Cents (US\$1.40) per acre. The obligation for each Contract Year shall be calculated at the beginning of the Contract Year concerned on the basis of the size of the Exploration Area at the beginning of such Contract Year and, unless the Minister and the Operator otherwise agree, a surrender of all or any part of the Exploration Area, or the declaration of Production Areas, during that Contract Year will not relieve the Operator of its obligation in respect of that Contract Year.

b. Costs and expenses incurred by the Operator on Exploration in the Exploration Area prior to the Effective Date shall be credited toward fulfillment of its obligation under Section 5.2(a) above.

c. (1) If, with respect to any Contract Year, the Operator exceeds its obligation of One Dollar and Forty United States Cents (US\$1.40) per acre under Section 5.2(a) above, such excess (including any unused credit from any previous year) shall be credited toward fulfillment of its obligation for the next succeeding Contract Year or Contract Years.

(2) If, with respect to any Contract Year and subject to Section 5.2(c)(1) above, the Operator does not fulfil its obligation of One Dollar and Forty United States Cents per acre under Section 5.2(a) above, the Operator shall, in the next succeeding Contract Year, and in addition to the obligation applicable to such succeeding Contract Year, incur costs and expenses in an amount equal to the shortfall, and the Operator shall not be in breach of this Agreement unless and until it fails to do so. The Operator shall not, however, be entitled to the benefit of this Section 5.2(c)(2) with respect to such next succeeding Contract Year.

d. In any extension of the initial term of the Exploration License, the Operator shall conduct Exploration, and incur costs and expenses in connection therewith in accordance with Section 5.2(a).

### **5.3 Operation Reports, Records and Inspection**

The Operator shall maintain at its principal office in Liberia, or at such other offices as the Government may approve:

(a) Copies of all maps, geological, mining or other earth science reports and mineral analysis (together with all field data which support such reports or data), production records, marketing reports and other data obtained or compiled by the Operator as a result of exploration and/or mining operations and activities. All information, data and material specified in this paragraph shall be in a form suitable for reproduction, use or processing as the case may be. The Operator shall have the right to temporarily remove such samples and other data from such location and (on prior notice to the Government) from Liberia for the purpose of study and evaluation.

(b) The Operator shall keep the Government fully informed of all Operations and activities, wherever conducted, and of its plans in respect thereof. The Government shall have the right to monitor Exploration and Mining Operations and activities from time to time and a reasonable number of Government personnel may, upon prior Notice to the Operator, at reasonable time and subject to compliance with the Operator's security requirements, attend and inspect Exploration and Mining Operations and activities conducted in Liberia.

(c) Within thirty (30) days after the end of each calendar quarter, the Operations shall provide the Government with a report on all Exploration and Mining Operations.



and activities for that calendar quarter, including financial reports and Minerals recovered and sold. Within ninety (90) days after the end of each financial year, the Operator shall furnish the Government with a report on all Exploration and Mining Operations and activities for that Financial Year, including financial reports and minerals recovered and sold.

## **SECTION 6: CLASS A MINING LICENSE AND AREA**

**6.1 Class A Mining License.** Upon receipt of Notice from the Operator, during or at the end of the Exploration Period, of a discovery of exploitable deposits, the Minister shall grant a Class A Mining License for the proposed Production Area applied for subject to the following terms and conditions:

- a. that the Operator shall have successfully completed a proposed exploration program and submitted to the Minister a detailed map and descriptive statements on the boundaries and size of the deposits from which minerals are to be extracted pursuant to Section 6.2 (b) below.
- b. that the Operator shall have completed a Pre- feasibility report pursuant to section 6.4 below.
- c. that the Minister shall have approved the Pre-feasibility/ Feasibility report, and
- d. that the Minister shall have been satisfied that the Operator possesses the appropriate technical skill and experience and the financial resources to carry out mining operations in keeping with the requirements of a Class A Mining License.

### **6.2 Production Areas.**

a. Each Production Area shall consist of such part of the Contract Area as, in the light of International Standards, and subject to Section 4.4, is reasonable, taking into account the extent and nature of the Minerals found and the requirements for efficient and economic Production of such Minerals and the conduct of other Operations.

b. Subject to Sections 4.4 and 6.4, the Operator, in order to select a Production Area, shall submit to the Government a detailed map and descriptive statement based on actual surveys which shall set forth the boundaries of the Production Area which shall be identified by metes and bounds, and the boundaries and size of the Mineral deposit or deposits which the Operator intends to produce. The maps shall be of such scale and contain such detail, including geographical and topographical information, as may reasonably be necessary to identify accurately the Production Area and the boundaries of the Mineral deposits.

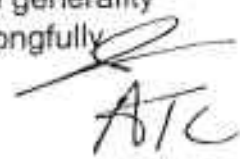
c. Upon selection as such, a Production Area shall cease to form part of the Exploration Area.

**6.3 Government Mineral Appraisal Office.** In the Production Area, a Government Mineral appraisal office shall be established to facilitate the valuation of Mineral commodities produced and/or intended for export.

#### **6.4 Pre-Feasibility Report and Feasibility Report**

a. Within ninety (90) days after the submission of the map and descriptive statement mentioned in Section 6.2(b) above and before commencing Production in connection with a Production Area, the Operator shall submit a Pre-feasibility Report to the Government. The Pre-feasibility Report shall describe, in reasonable detail, a proposed plan for the efficient and economic Production (in accordance with International Standards and the provisions of this Agreement) of the Mineral deposits found, including a detailed description of the proposed mining and processing methods, the design, costs and construction schedules for the proposed facilities and equipment and the marketing arrangements contemplated. The Government shall not withhold or unreasonably delay its approval of the Pre-feasibility Report and shall grant its approval if the Pre-feasibility Report, or any amendment made to it by the Operator, reasonably complies with International Standards and the provisions of this Agreement. The Government shall, in the event of any delay in or denial of approval of a Pre-feasibility Report, promptly give to the Operator full details, in writing, of its reasons for withholding or delaying approval. Without prejudice to the generality of Section 6.4, if, in the Operator's opinion, any such approval has been wrongfully withheld or unreasonably delayed, it may invoke the provisions of Section 29.

b. Within sixteen (16) months after the submission of the Pre-feasibility Report mentioned in Section 6.4 (a) above and before commencing Production in connection with a Production Area, the Operator shall submit a Feasibility Report to the Government. The Feasibility Report shall describe, in more detail, a proposed plan for the efficient and economic Production (in accordance with International Standards and the provisions of this Agreement) of the Mineral deposits found, including a more detailed and precise description of the proposed mining and processing methods, the design, costs and construction schedules for the proposed facilities and equipment and the marketing arrangements contemplated. The Government shall not withhold or unreasonably delay its approval of the Feasibility Report and shall grant its approval if the Feasibility Report, or any amendment made to it by the Operator, reasonably complies with International Standards and the provisions of this Agreement. The Government shall, in the event of any delay in or denial of approval of the Feasibility Report, promptly give to the Operator full details, in writing, of its reasons for withholding or delaying approval. Without prejudice to the generality of Section 6.4, if, in the Operator's opinion, any such approval has been wrongfully



ATC



withheld or unreasonably delayed, it may invoke the provisions of Section 29.

**6.5 Term of the Class A Mining License.** Subject to Section 6.6 below, the Class A Mining License for a Production Area selected by the Operator shall remain valid and effective for the unexpired portion of the term of this Agreement and any extensions thereof.

**6.6 Surrender of Production Area.** The Operator shall have the right, upon giving the Minister sixty (60) days prior written Notice (or such lesser period of time as the Minister allows), at any time to surrender all or any part of a Production Area. Upon cessation of Production (as defined in Section 27.2(c)) in connection with all of a Production Area, the Production Area shall be surrendered. Upon surrender of all or part of a Production Area, the Class A Mining License shall terminate in respect of the area surrendered.

**6.7 Reports to the Central Bank of Liberia.** The Operator shall report all sales of Minerals made pursuant to Section 6.1, or otherwise under this Agreement, to the Central Bank of Liberia, or any successor institution, in such detail and manner as may be required by Law.

**6.8 Class B and C Mining Licenses.** The Government undertakes not to grant any Class B Mining Licenses within the Exploration Area and furthermore warrants that any and all mining operations taking place within the exploration area under Class C type licenses will not be allowed to interfere with or hinder the exploration and/or mining activities of the Operator.

## **SECTION 7: CONFIDENTIALITY**

**7.1 Confidential information.** All information exchanged between the Parties in the context of this Agreement shall be considered and treated as confidential information, subject to Section 7.2 below. The Parties agree not to divulge such information to any other Person without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

**7.2 Public Information.** The obligation of confidentiality set forth in Section 7.1 above shall not apply either to information exchanged between the Parties which is in the public domain or to information exchanged by the Parties which the Operator is required to reveal to any other Person by Law.

## **SECTION 8: PRODUCTION WORK PROGRAMS**

Subject to Sections 5 and 6, the Operator shall use commercially reasonable efforts to commence and continue construction, acquisition and installation



of facilities and equipment, and otherwise to produce Minerals, substantially in accordance with the Feasibility Report unless such Production becomes uneconomic, in which event the provisions of Section 31 shall apply.

## **SECTION 9: CONDUCT OF OPERATIONS**

The Operator shall have the right to conduct Operations by itself or through agents and contractors using facilities, equipment, materials and methods, in a proper and workmanlike manner, with due diligence, efficiency and economy and in accordance with International Standards and the terms of this Agreement.

## **SECTION 10: LAND AND FACILITIES**

### **10.1 Public Land.**

a. The Operator shall have the right to enter upon and utilize all public land within the Contract Area for purposes of and incidental to Operations, without cost except as provided for by Section 22.1 below.

b. To the extent that it does not involve an unreasonable interference with the rights of other Persons, the Government shall grant the Operator the right to enter upon, utilize and possess, without cost, any public land not within the Exploration Area or a Production Area and which is reasonably required by the Operator for purposes of and incidental to Operations including areas required for plant and equipment, Infrastructure and other facilities and equipment. Possession of such land shall be returned to the Government following termination of this Agreement, if not earlier returned, and such land shall be deemed part of the Contract Area during any such period of occupancy and use by the Operator.

### **10.2 Private Land.**

a. The Operator shall endeavor, by direct agreement with the owner, to enter upon and utilize private land within the Contract Area required for or incidental to Operations.

b. If the Operator and the owner of private land in the Contract Area which the Operator reasonably requires for Operations cannot agree, the Government shall, at the request of the Operator, intervene to assist in the conclusion of such agreement, failing which the Government shall, at the request of the Operator, acquire such land and all improvements thereon in the public interest. The Operator shall reimburse the Government for all reasonable costs paid in connection with such expropriation, including just compensation paid to the prior owner, provided, however, that the amount reimbursed by the Operator to the Government with respect to compensation paid by the Government to the owner shall not exceed the reasonable

value of the owner's interest in such land (and any improvements thereon) determined, without regard to the value of any Minerals which may be contained therein, by means of an appraisal conducted by a qualified Person mutually agreed to by the Parties. Title to the property thus acquired shall vest in the Government, and the Government shall grant the Operator the right to enter upon, utilize and possess such land which shall be deemed part of the Contract Area.

c. If the Operator reasonably requires private land outside the Contract Area for Operations, the Operator will endeavor to enter upon and utilize such land by direct agreement with the owner, and such land shall be deemed part of the Contract Area during any period of occupancy and use by the Operator.

d. For the purposes of the foregoing:

(1) private land shall mean any land (including any creeks, streams, rivers or bodies of waters contained thereon, and their residue) owned by a Person other than the Government; and

(2) public land shall mean all land other than private land.

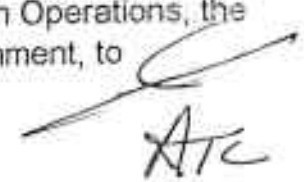
**10.3 Limitation on Exploration and Production.** Nothing contained in this Section 10 shall be construed to permit the Operator to explore for Minerals, or to produce Minerals found, in any land which is not within the Exploration Area or a Production Area.

#### **10.4 Facilities.**

a. The Operator shall have the right to acquire, construct, install and operate plant and equipment, Infrastructure and other facilities and equipment reasonably required for Operations.

b. The Operator shall have the right to use public Infrastructure, whether owned, operated or provided by the Government or by any other Person under license or authority of the Government, to the extent adequate (taking into account the public use thereof) to meet the Operator's needs with respect to Operations. The Government shall ensure that all charges for, and other terms and conditions of, the use by the Operator of public Infrastructure are fair and reasonable, taking into account the cost of providing such Infrastructure, and are not more onerous than those that are generally applicable to others using similar public Infrastructure in a similar manner.

c. To the extent reasonable in connection with Operations, the Operator shall have the right, subject to prior consultation with Government, to



integrate any item of its own Infrastructure with similar items of public Infrastructure.

d. To the extent that the Operator's Infrastructure is not utilized by the Operator to its full capacity, the Government shall have the right to use it on reasonable Notice to the Operator, provided that such use does not impair the efficient and economic conduct of Operations. The Government shall pay reasonable compensation to the Operator (other than in the case of roads and highways unless the use causes material damage thereto) within sixty (60) days after invoice from the Operator in connection with such use.

e. The Government reserves the right, on reasonable Notice to and after consultation with the Operator, to construct roads, highways, railroads, telegraph and telephone lines and other lines of communication within the Contract Area. In the event of such construction, the Government shall, within sixty (60) days after invoice from the Operator, compensate the Operator for all damage thereby caused the Operator and its property and hereby indemnifies and saves harmless the Operator from all claims by third parties arising therefrom. Under no circumstances will the Government engage in such construction if the effect of so doing would be to disrupt or interrupt the conduct of Operations.

#### 10.5 Communications Facilities, Systems and Frequencies

a. The Operator shall have the right, as licensee or assignee, to operate for its own use and that of any Affiliate, such communications systems as it deems necessary for internal communications and communications with its Affiliates, including radio, telecommunications, satellite networks, cellular systems, microwave devices and other communications devices and systems, and to receive from the Government such rights, licenses, registrations, permits and other authorizations as may be required by Law in connection with the possession, use, importation or purchase of the foregoing.

b. The Government agrees that it will make available, for use by the Operator, an adequate number of broadcast and communications frequencies for both domestic and international use, and shall grant to the Operator such rights, licenses, registrations, permits and other authorizations as may be required in order to comply with any Law regarding the possession, use, importation or purchase of related equipment or of any telecommunications devices or other communications equipment or devices. The Operator and the Government shall consult together from time to time as to the specific frequencies to be assigned consistent with international regulations.

### SECTION 11: HEALTH AND SAFETY

11.1 **Health and Safety.** In connection with Operations, the Operator shall install, maintain and use such modern health and safety devices and equipment



and shall practice such modern health and safety procedures and precautions (including regular safety training instruction for its employees) as are in accordance with International Standards. The Operator shall notify the Government immediately of any death of or serious injury to any employees of the Operator that occurred as a result of Operations. For the purposes of this Section 11.1, a serious injury shall mean an injury, confirmed by medical reports, which is likely to cause the injured Person to lose six (6) or more working days. The Operator shall comply with such reasonable written instructions as may, from time to time, be given by the Government under Law with respect to preventing the spread of contagious, life-threatening diseases and other public health hazards.

**11.2 Security Force.** The Operator shall have the right in keeping with the provisions of the Laws of Liberia, to directly or under contract with other Persons, establish and maintain its own security force for the purpose of maintaining Law, order and security, with power both of detention (any detained person to be handed over to the appropriate Government authorities as soon as practicable), and of search of and exclusion from the Production Area and such other areas as may be properly restricted for economic, operational or security reasons, always being subject to Law. This Section shall not affect or alter the Government's obligations under Sections 18.8 and 18.9.

## **SECTION 12: HEALTH CARE AND EDUCATION**

**12.1 Health Care.** The Operator shall furnish free medical treatment, care and attention at reasonable standards in Liberia to all employees and Government officials working in connection with the Operator's operations, and their spouses and minor children, and, where reasonably required by the circumstances, shall establish, staff and maintain dispensaries, clinics or hospitals. Without limiting the generality of the foregoing, whenever the Operator employs 100 or more persons at any permanent work site within the Production Area, it shall maintain there a dispensary or hospital headed by a resident medical doctor. The Operator shall keep records and notify the Government immediately of any death of or serious injury to any person connected with Operations. For the purposes of this provision, a "serious" injury shall mean an injury which is likely to cause the injured person to lose 6 (six) or more working days.

### **12.2 Education.**

a. On and from the commencement of Production, the Operator shall provide, in the Republic, free primary and secondary education (in conformity with provisions of the Education Laws of Liberia and generally applicable standards on education in Liberia) for the children of the Operator's own employees.

b. If the Operator conducts substantial Production in an area in which facilities reasonably adequate for such education do not exist, it shall pay the costs of such education in existing facilities or, at its option, provide facilities reasonably adequate for such purpose.

## SECTION 13: EMPLOYMENT, SECONDMENT AND TRAINING

13.1 **Employment.** The Operator shall not import unskilled labor into the Republic. The Operator shall employ (and shall give preference to the employment of) qualified Liberian citizens for skilled technical, administrative and managerial positions. The Operator shall, however, have the right at all times to choose its senior management freely and without restriction. Subject to the foregoing, the Operator shall be entitled to employ expatriates in accordance with the Labour Practices Law of Liberia for the efficient conduct of Operations in the Republic, and the Government shall issue such permits as may be required by Law to allow such expatriates freely to enter into, work and reside in the Republic in connection with Operations, and to depart from the Republic.

### 13.2 **Secondment.**

a. In order to effect the policy of technology transfer, at all times during Operations, the Ministry shall second at least two (2) professionals (geologists/mining engineers) to participate in the technical aspects of the Operations.

b. The Operator shall provide said professionals daily allowances at a rate to be mutually agreed between the Parties.

13.3 **Training of Liberians.** The Operator shall, among other measures, provide on a continuing basis for the training of suitable Liberian citizens, in order to qualify them for skilled, technical, administrative and managerial positions, by means of: (a) establishing and operating vocational and advanced training centers in Liberia; (b) furnishing on-the-job counterpart training, not only in Liberia, but to the extent reasonably feasible in the offices of the Operator or its agents outside Liberia, in order that such Liberians may receive training in the overseas aspects of the Operator's shipping, marketing and accounting functions; and (c) providing scholarships for qualified Liberian citizens to pursue advanced studies abroad. Detailed plans and programs for such training, including time tables and schedules, shall be formulated (and revised when necessary) in consultation with, and shall be subject to the approval of, the Government. Such consultation shall commence as soon as practicable in light of the progress of Operations, and in any event promptly after request by Government.

## SECTION 14: USE OF LIBERIAN SERVICES AND MATERIALS

The Operator shall, when purchasing goods and services required with respect to Operations, give preference to Liberian goods and services that are equal in quality, terms, delivery, service, quantity and price to, or better than, goods and services obtainable outside the Republic. Subject to the foregoing, the Operator may freely contract with such Persons as it desires. Nothing in this Section 14 shall require the Operator to act upon other than commercial considerations.

## SECTION 15: COMMUNITY RESOURCES

It is the objective of the Parties that Operations hereunder shall be carried out in a manner which is consistent with the continuing economic and social viability, both during the term of this Agreement and thereafter, of centers of population which have formed and which may form as a result of such Operations. Upon request of the Government at any time, the Operator shall consult with the Government to mutually establish plans and programs for the implementation of this objective, and thereafter the Operator shall in good faith cooperate with the Government with regard to its efforts concerning the realization of such plans and programs. Nothing herein shall require the Operator to make any expenditure or incur any costs beyond what it would have made or incurred in the ordinary course of its business.

## SECTION 16: ENVIRONMENTAL PROTECTION AND MANAGEMENT

**16.1 Environmental Impact Statement.** The Parties recognize that Operations may result in some pollution, contamination or other environmental damage to land, water and the atmosphere within the Contract Area and elsewhere. Accordingly, the Operator shall submit to the Minister before the commencement of Exploration and Production, an Environmental Impact Statement ("EIS"). The EIS shall show the adverse effects Operations will have on the environment and review plans to mitigate such effects.

**16.2 Damage and Restoration.** Consistent with operational and economic requirements, the Operator shall take reasonable preventive, corrective and restorative measures to limit pollution or contamination of, or damage to, streams, water bodies, dry land surfaces and the atmosphere as a result of Operations. Subject to the foregoing, at the conclusion of Operations in a part of the Contract Area, the Operator shall undertake commercially reasonable efforts, in keeping with what is economically and technically feasible in the circumstances, to restore the terrain to a state in which it is usable for economically and socially desirable purposes. Illustratively, the Operator shall level the surface wherever reasonable and, if leveling is not reasonable, shall contour, grade and terrace all exposed artificial gradients and declivities which have been created as a result of Operations; shall reopen natural water courses (or, where such have been obliterated, shall open new substitute surface water courses to the end that the area shall continue to be drained by natural runoff with a minimum of erosion); and, at its option, shall engage in reforestation activities in areas where Operations have required the large-scale felling of trees.

**16.3 Plans.** From time to time, the Operator shall submit to the Government detailed plans consistent with the foregoing for the protection, correction and restoration of the water, land and the atmosphere. If the Operator fails to comply with any such plan (as the same may be amended by the Operator from time to time) the Government may, on reasonable Notice to and after consultation with the Operator

and at the Operator's expense, implement the plan as amended.

## **SECTION 17: TECHNICAL COMMITTEE**

**17.1 Formation.** Upon the commencement of Production pursuant to Section 6, a Technical Committee comprising not more than five (5) members appointed by the Government and not more than five (5) members appointed by the Operator shall be formed to review current and planned Operations, and to report jointly thereon to the Government and the Operator. The Technical Committee shall meet twice in every calendar year or otherwise, as the members shall agree. No meeting of the Technical Committee shall be held unless at least three (3) members appointed by each of the Government and the Operator are present. The Operator shall appoint the first Chairman of the Technical Committee (and any successor if he or she does not complete the initial term) who shall hold office until the second anniversary of the Effective Date. Thereafter, the Government and the Operator shall have alternating rights to appoint the Chairman of the Technical Committee, who shall hold office until the next succeeding anniversary of the Effective Date.

**17.2 Costs.** All costs of meetings of the Technical Committee (including reasonable expenses incurred by the members and as approved both by the Government and by the Operator) shall be borne by Operator. Members of the Technical Committee shall be entitled to sitting fees (payable by the Operator) in an amount to be approved by the Government and Operator for attendance in person at all meetings of the Committee.

**17.3 Functions.** The Technical Committee shall have no managerial responsibility or role, nor shall it be empowered to take any action on behalf of, or with respect to, the rights of any Party. The Technical Committee shall determine the content of its report by a consensus of all of its members present. If the members of the Technical Committee cannot reach a consensus on any issue, majority and minority reports shall be submitted to the Parties.

## **SECTION 18: UNDERTAKINGS OF THE GOVERNMENT**

**18.1 Access to Information.** The Government undertakes and affirms that the Operator, at no extra cost, shall be entitled to use and to have access to all geological or other information relating to the Contract Area that is owned by the Government or may be in or subject to the Government's control. The Government agrees to provide such information upon the Operator's request within a reasonable time. For purposes of this Agreement, basic costs shall mean the cost of reproduction and any additional unrecovered cost actually incurred by the Government in obtaining such information but not to exceed rates charged other Persons.

**18.2 Provision of Documents.** Subject to Section 13.1 and except to the extent any such Person may be disqualified by Law, the Government shall promptly

furnish to each employee of the Operator and of its Associates who is not a citizen of the Republic, and to the spouse and minor children of each such employee, all documents and visas necessary to enable such Person to enter and to leave, or travel within, the territory of the Republic.

**18.3 Use of Aircraft.** The Government undertakes and affirms that the Operator and its Associates shall be entitled to use, in accordance with Law, an aircraft, whether owned or rented, for journeys within the Republic and into and out of its territory. Moreover, the Operator and its Associates shall have aircraft landing and parking rights in all airports, airfields and landing strips within the Republic, except for those used exclusively as military bases, and shall pay the lowest applicable fees and tariffs for such use.

**18.4 Use of Airports and Ports.** The Government shall permit the Operator and its Associates to obtain access to and use all airport and port installations in the Republic, except those reserved for military and national security related activities, at the lowest prices paid by any other Person, for all aircraft and ships whose presence in Liberian territorial airspace or waters is required by the Operator and its Associates in connection with Operations. These aircraft and ships shall have the right to enter and to leave the territorial airspace and waters of the Republic, without restriction, in accordance with Law.

**18.5 Electricity Generation and Transmission.** The Government undertakes and affirms that the Operator and its Associates shall be entitled, at their own cost but free of any further Taxes or Duties or other payments to any Person and/or Government for or in connection with the exercise of such entitlement, to generate, transmit and use electricity, and use and provide water, in accordance with Law regulating such use, as may be required for Operations. In the event that the Operator and its Associates purchase electric power or water from the Government for any purpose associated with Operations, they shall be charged at the lowest rates applicable in the Republic to industrial users.

**18.6 Issuance of Necessary Authorization.** The Government undertakes and affirms that it shall issue all licenses, permits, mining titles, easements and other authorizations, including but not limited to the rights and titles referred to in Sections 4 and 6 above, which are or may be necessary for the Operator to conduct Operations.

**18.7 Protection Against Nationalization or Expropriation.** The Government undertakes and affirms that it shall not nationalize or expropriate:

- a. any Infrastructure or other property, movable or immovable, of the Operator or its Associates to the extent connected with or affecting Operations;
- b. Minerals in any form resulting from Operations;

c. any equity, shares or ownership interests of whatever nature held in or issued by the Operator;

d. any Infrastructure put in place or used by the Operator in connection with Operations; and

e. any capital invested by the Operator or its Affiliates in the Republic.

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

**18.9 Non-Derogation.** The Government undertakes and affirms that at no time shall the rights (and the full and peaceful enjoyment thereof) granted by it under this Agreement be derogated from or otherwise prejudiced by any Law or by the action or inaction of the Government, the Minister or any other official of the Government, or any other Person whose actions or inactions are subject to the control of the Government.

**18.10 Most Favorable Treatment.** In the event that the Government grants to any other Person terms or conditions that are more favorable than those provided in this Agreement with respect to operations, exploration or production of the same Minerals, or in the event that the Government enacts any Law or adopts any practice or policy that permits more favorable treatment of any other Person than that accorded to the Operator by this Agreement with respect to exploration and production of Minerals being explored for, developed or produced by the Operator, then the Government shall grant the same more favorable treatment to the Operator, with effect from the date of its application to such other Person or of its entry into force, as the case may be.

## SECTION 19: INDEMNIFICATION

**19.1 Indemnification for Breach of Agreement.** Any breach by either Party to this Agreement of any obligation provided for in this Agreement, shall entitle the Party aggrieved by the breach to be indemnified by the defaulting Party in an amount equal to the damage suffered by the aggrieved Party.

**19.2 Operator's Indemnification of the Government.** The Operator shall at all times indemnify and hold harmless the Government and its officers and agents from all claims and liabilities for death or injury to Persons or damage to property from any cause whatsoever arising out of Operations or as a result of the Operator's failure to comply with any Law to which it is subject.

19.3 **Government's Indemnification of the Operator.** The Government shall indemnify and hold harmless the Operator from all costs, expenses, losses and damages suffered by it (whether arising by operation of Law or contract voluntarily made, or otherwise reasonably assumed by it) as a result of any failure of the Government to honor any provision or undertaking expressed in this Agreement.

## SECTION 20: INCOME TAXATION

20.1 **Rate and Basis.** The Operator shall be liable to taxation under provisions of the ACT ADOPTING A NEW MINERALS AND MINING LAW and the Revenues and Finance Laws of Liberia on its net taxable income, which shall include capital gain, as follow:

a. the aggregate rate of tax applicable to the net taxable income of the Operator shall not exceed thirty percent (30%).

b. The Operator's net taxable income shall mean its gross income from Production and other Operations, as well as its gross income from the sale or distribution of any asset to, or for the benefit of, any Person, to the extent of the excess of the fair market value of such asset over its adjusted basis, and any other income from business activity or investment, including currency gains when realized less the deductions set forth in Section 20.1(c) below;

c. in computing the Operator's net taxable income, the following shall be allowed as deductions from its gross income:

(i) in the year incurred, all expenditures on Operations, other than the capital cost of items of plant, equipment and Infrastructure and other than any payment made to an expatriate employee by the Operator as reimbursement for Taxes and Duties paid by such employee to the Government, or otherwise as specifically provided below;

(ii) commencing in the year construction, acquisition or installation is completed, an allowance for depreciation of the items of plant, equipment and Infrastructure referenced in this Section 20.1(c), to be computed on a straight line basis in accordance with the rates specified in Appendix E (and if, in respect of an asset, no rate is specified, over three (3) years in the case of movable assets and five (5) years in the case of immovable assets);

(iii) in the year sold, the difference between the adjusted basis and the selling price of any asset to the extent the latter is less than the former or, if any asset is declared to be scrap or obsolete or if construction, acquisition or installation of any asset is abandoned prior to completion, the adjusted basis of the asset in the year the asset is declared scrap or obsolete by the Operator or in which construction, acquisition or installation of the asset is abandoned;

(iv) in the year incurred, all interest and other financing charges on any proved indebtedness of the Operator incurred in connection with Operations;

(v) in the year paid or incurred, whichever is earlier, any and all payments of Taxes and Duties other than those paid pursuant to this Section 20.1;

(vi) in each year, all actual bad debts in excess of any reserve against bad debts existing in such year and allowed as a deduction against gross income;

(vii) in each year, currency exchange losses and accounting translation losses when realized;

(viii) any prior year losses, to the extent not used to offset taxable income in a previous year, but not to exceed five years except as provided by Law;

(ix) All costs incurred prior to the Effective Date with respect to this Agreement and the Contract Area and paid for by the Operator, subject to the review of such costs for accuracy by the Minister of Finance and the Minister of Lands, Mines & Energy, which shall be capitalized and amortized over five (5) Contract Years from the Effective Date; and

(x) All charitable contributions made in the Republic for educational, religious or medical purposes or for other social services approved by Government to the extent that, with respect to any tax year, such charitable contributions do not exceed twenty percent (20%) of the Operator's gross income as defined in Section 20.1(b).

**20.2 Carry Forward Permitted.** To the extent that, for any reason, any deduction is not claimed in a year in which it is claimable, it may be carried forward pursuant to the Revenue and Finance Law of Liberia or for such other period as may be provided by any amendment of such Law.

**20.3 Additional Deductions.** There shall be allowed as a deduction in the current taxable year adjustments for any items charged to reserves, prior year charges, and exceptional and extraordinary items in keeping with the Revenue and Finance Law of Liberia.

**20.4 Computation of Taxable Income in Dollars.** Except as otherwise provided in this Agreement, the net taxable income of the Operator shall be determined in Dollars in accordance with generally accepted accounting principles.



## SECTION 21: ROYALTIES

21.1 **Royalty Rate.** The Operator shall pay to the Government in Dollars a royalty at the percentage rate specified below on the proceeds paid to the Operator from the sale of Minerals recovered from a Production Area and sold by the Operator:

- a. gold and diamonds, three percent (3%)
- b. all other minerals to be agreed but not to exceed five percent (5%).

21.2 **Royalty Basis.** Royalty shall be determined on a Net Smelter Return basis for gold and Gross Revenue basis for diamonds.

21.3 **Payment.** Royalty shall be paid forty-five (45) days after the day on which the Minerals sold are shipped to the purchaser or, if a spot sale, twenty (20) days after payment by the purchaser.

## SECTION 22: SURFACE RENTAL

22.1 **Contract Area.** The Operator shall pay to the Government, during each calendar year, a surface rental equal to Eight United States Cents per acre for land in the Exploration Area and Eighty United States Cents per acre for land in a Production Area. However, the amount of surface rental for the calendar year 2001 shall be prorated for the number of calendar months in 2001 during which this Agreement is in effect (beginning with the calendar month in which the Effective Date occurs), and the obligation to pay surface rentals with respect to any land leased to the Operator pursuant to Section 10.2(b) shall accrue beginning on January 1st of the year following the year in which the land was either leased to the Operator or acquired by the Government, whichever is later. Surface rentals under this Section shall not be payable with respect to private land in the Contract Area, or land in the Contract Area dedicated to use as schools, hospitals, clinics and roads or for other public or charitable purposes during the period of such dedication. The Operator shall receive a credit against surface rentals to the extent of any payments it has made to reimburse the State pursuant to Section 10.2(b).

22.2 **Payment.** All such surface rentals shall be payable annually to the Government in advance on or before January 15 of the year of period for which payment is being made, according to the classification of land as Exploration Area or Production Area as of January 1 of such year, provided that surface rentals for the calendar year 2001 shall be payable within 30 days after the Effective Date according to the classification of land as Exploration Area or Production Area on the Effective Date. With respect to land which is thereafter declared to be a Production Area, the

Operator shall pay to the Government, on January 15 of the following year, such additional amount (if any) as is necessary to cause the effective rate of surface rental for such land for the year in which it is declared to be a Production Area (the "Declaration Year") to be per acre, prorated for the number of calendar months in the year during which such land is declared to be a Production Area (beginning with the month in which such land is declared to be a Production Area).

## **SECTION 23: OTHER PAYMENTS TO THE GOVERNMENT**

**23.1 Import Duties and Excise Taxes.** Pursuant to provisions of the Investment Incentive Code of Liberia, the Operator shall pay no Taxes and Duties with respect to the import, use or purchase of goods, equipment, vehicles and supplies (including medical training and educational supplies and housing and office materials, furniture and supplies), and any other items required for and used in Exploration, Development and Production. The Operator shall, with regard to items not used in Exploration, Development and Production or otherwise exempt pursuant to this Section 23, pay import duties and excise taxes under Law but, without prejudice to Section 18.10, at rates no higher than those payable by any other producer of Minerals in the Republic.

### **23.2 Other Payments.**

a. In respect of Operations and activities the Operator shall pay to the Government:

(i) import duty and excise tax, pursuant to the Revenue and Finance Laws, on gasoline;

(ii) ten percent (10%) of the import duty and excise tax under Laws, on consumables (other than fuels and oils);

(iii) the inspection fee (to a maximum of one and one-half percent (1 ½%) of the import invoice) payable under Law in respect of the inspection of all imports (other than fuels and oils); and

(iv) Customs Users' fee of two and one-half percent (2.5%) of the value of imports.

b. On the Effective Date of this Agreement pursuant to Section 2, the Operator shall pay to the Government for the Mineral Development Fund, Fifty Thousand Dollars (US\$50,000).

**23.3 Exemption From Other Taxes and Duties.** The Taxes and Duties and other amounts specifically provided in this Agreement to be paid to the Government are in lieu of all other Taxes and Duties and other amounts (except for ordinary taxes, fees and revenue charges of general application that are minor in

nature and amount and that are not imposed upon or derived from Operations, such as, for example, business and auto registration and driver's license fees) which, directly or indirectly, at any time, under any sovereign revenue or other Law or otherwise, would be levied upon or payable to the Government by the Operator or its Associates with respect to any activity or transaction engaged in by any of them, or any items or materials possessed, owned, transported, imported, exported, processed, refined or otherwise dealt with by any of them. The above shall apply, without limitation as to the generality of the foregoing, to any Taxes and Duties that might be paid to the Government by any of the foregoing Persons resulting from the subscription of equity or loan capital to or by any of them; the payment or receipt of interest and dividends by any of them; the import, export, acquisition, supply, sale, disposition or other dealing with property and any payment, receipt, income, profit or gain made, received, earned or realized by any of them as a result thereof. The above shall further apply, but not be limited, to any payments made to non-residents, including payments for goods and services, and payments of interest, dividends and other fixed and determinable income.

**23.4 Non-Application of Section 23.3.** The provisions of Section 23.3 shall not apply, however, to the Associates of the Operator with respect to the following:

- a. their Taxes and Duties measured by reference to their net income, profit and gain under Law unless any such Person was resident in the Republic for less than one hundred eighty-three (183) days in the tax year;
- b. subject to Section 23.4(a) above, their Taxes and Duties measured by reference to their net income, profit and gain under Law, and earned by them in the Republic except that no Taxes and Duties shall be payable with respect to any payments made to any of them by the Operator as reimbursement for Taxes and Duties; or
- c. the import into (and subsequent re-export from) the Republic of personal and household goods and effects except as to one motor vehicle per family and as to their first move to the Republic to establish residency

## **SECTION 24: FINANCIAL REPORTING AND CURRENCY**

**24.1 Accounting.** All of the Operator's accounting under this Agreement shall be in Dollars and all amounts paid or received, and obligations incurred or transactions carried out, in currency that is legal tender in the Republic or in any Foreign Currency other than Dollars shall be converted to Dollars in accordance with and pursuant to generally accepted accounting principles in the United States (except to the extent inconsistent with the terms of this Agreement) based upon the Prevailing Market Rate of Exchange of Dollars and any such currency at the date of the applicable transaction.



ATC

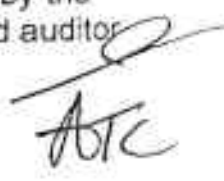
**24.2 Exchange Control.** The Operator shall at all times have the right, without restriction, directly or indirectly, of the Government, to obtain, hold, deal with and disburse funds in such manner, currencies and places as it chooses. Without prejudice to the generality of the foregoing, the Operator shall have the unrestricted and unencumbered right to sell and receive payment for Minerals in any currency, including the currency in which the Minerals are sold, and all proceeds therefrom may be deposited in bank accounts outside of the Republic and held there or remitted therefrom to anywhere in the world, in any currency. Notwithstanding the foregoing, the Operator shall maintain at least one bank account with a bank or financial institution in the Republic. The Operator shall also have the right to acquire from, and sell to, any Person currency that is legal tender in the Republic at the Prevailing Market Rate of Exchange. Additionally, any and all transactions between the Government and the Operator dealing with or referring to currency that is legal tender in the Republic will be converted to Dollars at the Prevailing Market Rate of Exchange on the date of such transaction. Currency gains or losses for purposes of Section 20 shall be determined by reference to the Prevailing Market Rate of Exchange.

**24.3 Currency of Payment.** Payment of the Operator's direct obligations to the Government for Taxes and Duties payable under Sections 20, 21, 22 and 23 of this Agreement shall be in Dollars, unless the Parties otherwise agree. Any obligation originally stated in currency that is legal tender in the Republic, or in any currency other than Dollars, will be converted to Dollars at the Prevailing Market Rate of Exchange on the date such obligation is paid, or shall fall due, whichever is earlier. However, the Operator shall make payments of sums it collects on behalf of the Government, including, but not limited to, taxes withheld from the salaries or wages of the employees of the Operator, and any other sums payable to other Persons from which a portion is required by Law to be withheld or retained by the Operator on behalf of the Government, in the currency in which such salaries or wages or such other sums are paid. The Operator shall have the right to make all other payments whether to the Government or to other Persons in currency that is legal tender in the Republic.

**24.4 Right to Remit and Receive Payments.** The Operator shall have the right to remit and receive in Dollars all payments of dividends, interest, principal and other properly payable items arising from, as a result of, or related to Operations, and to do so free of Taxes and Duties on such remittances or receipts, and without penalties, any required total or partial surrender, exchange or confiscation of such Dollars, or other direct or indirect restrictions on such remittances or receipts.

**24.5 Audit.**

a. The Operator shall cause its books of account to be audited within three (3) months, or such longer period of time as the Minister may approve, after the close of each Financial Year by an independent auditor selected by the Operator, and a copy of the annual financial statement duly certified by said auditor shall be furnished to the Government within twenty (20) days after its receipt by the Operator. The Government shall have the right freely to discuss with the said auditor



the results of the audit and certification, and the Operator shall take all reasonable measures to ensure that said auditor shall cooperate fully in such discussions. The foregoing shall not in any way imply acceptance of any such audit or certification by the Government or preclude the Government from auditing such books of account as provided under Law, provided that the Government shall provide the Operator with a copy of any such audit within forty five (45) days of receipt. However, once either the Government or the Operator has audited any book of accounts, the financial statement thus audited shall be considered acceptable and the audit results binding and conclusive as to its findings, unless a Party shall have indicated to the contrary within three (3) years after its receipt of a copy of the audited financial statement.

b. If the Operator has, pursuant to this Agreement, underpaid its liability for Taxes and Duties, the Government may, subject to the Revenue and Finance Law, assess interest and penalties but not to exceed the London Interbank Offering Rate (LIBOR) existing at the time of such assessment, plus one (1) percentage point, multiplied by the amount underpaid. If LIBOR should cease to be reported, then the rate to be applied shall be another agreed substitute rate. If the Operator has overpaid its liability for Taxes and Duties then, at its option, it may elect either to be reimbursed by the Government or to apply such overpayment against future Taxes and Duties.

c. In case a review of records or books outside of the Republic is required, the Operator will cooperate to provide the Government with copies of the information, books and records needed to complete the audit. If the Government nonetheless deems it necessary for any part of such audit to be performed outside of the Republic, the cost of associated travel will be borne by the Government.

## SECTION 25: INCIDENTAL RIGHTS

25.1 **Use of Resources.** Except as otherwise provided in Section 10, the Operator shall have the right to remove, extract and use water, gravel, sand, clay stone and timber (except for protected species, insofar as they do not interfere with or hinder Operations) provided however that the Operator shall not deprive any Person of a constant and reasonable supply of usable water from a previously utilized traditional source without replacing it, nor shall the Operator, without the Minister's consent, interfere with any water rights enjoyed by any user under any agreement with the Government made prior to the date of execution of this Agreement.

25.2 **Imports.** The Operator shall be entitled to import and use in respect of Operations, and subsequently export, any and all machinery, equipment, consumable items, fuels, explosives and any other thing whatsoever reasonably required with respect to Operations and in accordance with the terms of this Agreement, provided, however, that the Operator shall not re-export fuels and explosives surplus to requirements if such surplus can be sold at competitive international prices within the Republic. The Operator shall at all time comply with Law regarding the safe use, sale, disposal and security of explosives.

25.3 **Taxes on Resale.** The Operator may sell, in the Republic, all imported items that are no longer needed for Operations. However, if such imports were exempted from Taxes and Duties, the Operator shall fulfill all formalities required in connection with the payment by the purchaser of all Taxes and Duties imposed on such sales by Law.

## **SECTION 26: ASSIGNMENT AND ENCUMBRANCE**

26.1 **Right of Assignment.** The Operator shall have the right to assign or otherwise dispose of all or part of its interest under this Agreement with the prior written consent of the Government (which consent shall not be unreasonably withheld); provided, however, that such consent shall not be required in the case of an assignment or other disposition to an Affiliate in which latter event the Operator shall not be relieved of its obligations under this Agreement other than to the extent fulfilled by the Affiliate.

26.2 **Right to Encumber.** The Operator shall have the right to mortgage, charge or otherwise encumber all or part of its interest under this Agreement for the purpose of raising, from one or more Affiliates or third parties, financing for its obligations under this Agreement, but any power of sale arising under any such mortgage, charge or other encumbrance shall only be exercised with the prior written consent of the Minister, which consent shall not be unreasonably withheld.

26.3 **Notice of Assignment or Encumbrance.** The Operator shall promptly give Notice to the Minister of any assignment, mortgage, charge or other disposition or encumbrance pursuant to this Section 26.

## **SECTION 27: TERMINATION**

27.1 **Termination by the Operator.** Notwithstanding any other provisions of this Agreement, the Operator shall have the right to terminate this Agreement at any time, either in its entirety or as to any part of the Contract Area, thirty (30) days after giving Notice to the Government if such Notice to the Government is given within five (5) years of the Effective Date, or one hundred eighty (180) days after giving Notice to the Government if such Notice is given more than five (5) years after the Effective Date. The Operator may also terminate this Agreement pursuant to Section 31.1.

27.2 **Termination by the Government.** Subject to the provisions of Section 29, the Government shall have the right to terminate this Agreement if any of the following events (hereinafter called "Events of Default") shall occur and be continuing:

a. where the Operator shall fail to comply with its material obligations under this Agreement and such failure shall have a materially adverse



effect on the Government,

b. where the Operator shall (i) voluntarily make an assignment of all or substantially all of its assets for the benefit of creditors other than an assignment made to secure indebtedness incurred in the ordinary course of business, (ii) file a petition or application to any tribunal for the appointment of a trustee or receiver for all or any substantial part of the Operator's assets, (iii) commence any proceedings for its bankruptcy, reorganization, arrangement or insolvency under the laws of any jurisdiction, whether now or hereafter in effect, or if any such petition or application is filed, or any such proceedings are commenced against it, indicate its approval thereof, consent thereto or acquiescence therein, or (iv) if any order is entered appointing any such trustee or receiver, or adjudicating the Operator bankrupt or insolvent, or approving the petition in any such proceedings, permit such order to remain in effect for more than ninety (90) days;

c. where the Operator shall fail to carry out Exploration as required by Section 5.1, cease Exploration for a period of twelve (12) consecutive months or cease Production with respect to all Production Areas for a period of twenty four (24) consecutive months unless such failure or cessation is consented to by the Government or is caused by force majeure.

**27.3 Opportunity to Cure.** In the case of an alleged Event of Default described in Section 27.2, the Government, before taking any further action, shall provide Notice to the Operator of the alleged occurrence of such Event of Default and of the Government's views in that regard and shall offer the Operator a fair opportunity to consult with the Government to resolve the matter. If, after a reasonable period of time of consultation, the Government is of the reasonable opinion that the matter cannot be resolved by further consultation, the Government may then send to the Operator Notice of the Government's intention to terminate this Agreement. If the Event of Default is not cured within sixty (60) days after said Notice, or within such longer period as may be necessary to allow a reasonable period of time to effect such cure, then this Agreement shall be terminated.

**27.4 Disputes Regarding Events of Default.** Notwithstanding the provisions of Sections 27.2 and 27.3, if the Operator disputes whether there has been an Event of Default described in Section 27.2 and, within sixty (60) days after receipt by the Operator of the Government's Notice of its intention to terminate, refers such dispute to arbitration in accordance with Section 29, then termination of this Agreement shall not take effect until the finality of, and in accordance with, an arbitration award upholding the Government's right to terminate.

**27.5 Winding-up Commission.**

a. that at the time of Notice of any termination of this Agreement, and pursuant to its terms, the Parties shall set up a winding-up commission (hereinafter



referred to as the "Commission") which shall consist of the Technical Committee and two (2) additional members, one each to be appointed by the Government and the Operator. The chairman of the Commission shall be appointed by the Government from among the members of the Commission. Each member of the Commission, including the chairman, shall have only one (1) vote.

b. that the chairman of the Commission shall issue a Notice and agenda for the first meeting of the Commission, which shall be held no later than three (3) weeks after the establishment of the Commission. Thereafter, the Commission shall hold periodic meetings at least once a calendar month.

c. that the Operator shall present to the Commission a detailed report on the status of the operations of the Operator under this Agreement so that the Commission will be able to make recommendations to the Government on steps which the Government might take under the circumstances with a view to preserving the viability of the enterprise, employment in the area and the centers of population.

d. that at the request of the Government, the Commission shall establish plans for the full or partial cessation of operations including the disposition of assets and their demolition or removal according to Section 28.

e. that at the request of either Party, any meeting of the Commission shall be held outside the Republic, and the requesting Party shall be responsible for the travel cost of the participants.

f. that the Operator may elect not to participate on the Commission, in which event its obligations under this Section 27 shall be limited to providing the information required in Section 27.5(c) above.

## **SECTION 28: DISPOSITION OF ASSETS**

**28.1 Immovable Assets.** Upon termination of this Agreement, except for termination resulting from a breach of this Agreement by the Government, or termination pursuant to Section 31.1, all permanent immovable assets of the Operator in the Contract Area that are not otherwise the property of the Government shall become the property of the Government without charge. In the event of a breach by either Party, the value of the non-movable assets shall be taken into account in any award of damages under Section 29.6.

**28.2 Movable Assets.** At any time after termination of this Agreement and with respect to each movable asset of the Operator in the Republic, which the Operator desires to sell (other than to an Affiliate at fair market price), the Government shall have the first option to purchase such asset at the fair market price thereof, such price to be paid in Dollars. If the Government does not exercise such option within one hundred twenty (120) days after being informed by the Operator that it desires to sell such asset, then the Operator may sell such asset to any other Person, including the



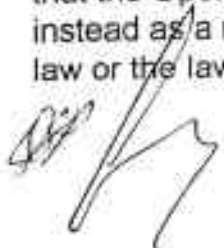
Government, for such price as it may be able to obtain therefor, or remove such asset from the Republic without Taxes and Duties or other liability to the Government. The proceeds of any such sale shall accrue to the Operator. If the Government purchases any such asset, it shall pay the purchase price within sixty (60) days after such price has been agreed upon or determined, unless the Parties otherwise agree.

**28.3 Removal of Movable Assets.** The Government, by Notice to the Operator within a reasonable period but not to exceed one (1) year after termination of this Agreement, except for termination resulting from a breach by the Government, may require reasonable disposal or removal, in accordance with Law, of any or all assets, including unusable assets, remaining within the Contract Area after total disposition of assets in accordance with this Section 28, and if the Operator does not reasonably dispose of or remove such asset or assets within a reasonable period after said Notice, the Government may effect such reasonable disposal or removal at the expense of the Operator, but the Operator shall be entitled to any income realized from the salvage value of such assets.

## **SECTION 29: ARBITRATION**

**29.1 Submission to Arbitration.** Any dispute between the Government and the Operator arising out of, in relation to or in connection with this Agreement or its formation, or the validity, interpretation, performance, termination, enforceability or breach of this Agreement (including any dispute concerning whether the Government or the Operator has violated or is in breach of this Agreement or of any Law affecting the rights, obligations or duties of any Party under this Agreement), for which resolution by submission to an expert is not specifically provided elsewhere in this Agreement shall be exclusively and finally settled by binding arbitration pursuant to the Convention in accordance with the rules of the Centre in effect on the Effective Date except to the extent in conflict with this Section 29 which shall prevail in that event. The Parties agree that this Agreement and the Operator's Operations pursuant thereto constitute an "investment" by reason of the expenditure of a considerable amount of money in the Republic and that for purposes of Article 25(1) of the Convention, any dispute subject to this Section 29 is a legal dispute arising directly out of an investment. Either of the Parties to such dispute may institute arbitration proceedings by giving Notice to the other Party and Notice to the Secretary-General of the Centre including in each a statement of the issues in dispute.

**29.2 Nationality for Purposes of Arbitration.** The Operator is incorporated in Liberia and notwithstanding the incorporation in the Republic of any of the Operator's successors or assignees, or of any of its other Affiliates, all such entities shall be treated for purposes of arbitration under this Section 29 as nationals of the United States of America for purposes of the Convention and of this Agreement, except that the Operator and any other such entity may, alternatively, elect to be treated instead as a national of any other state of which, under the Convention, international law or the law of such state, it is a national.



**29.3 Arbitrators.** Any arbitral tribunal constituted pursuant to this Agreement shall consist of one (1) arbitrator to be appointed by the Government, one (1) arbitrator to be appointed by Operator and one (1) arbitrator, who shall be the president of the tribunal and shall be a citizen neither of the Republic nor of a national of the United States of America (or of any other state of which a Party is a national under Section 29.2), to be appointed by the Secretary-General of the Centre. No such arbitrator shall have an interest in the matters in dispute, nor of the Parties thereof.

**29.4 Referee.** At the request of a Party, any matter otherwise subject to arbitration under this Agreement shall instead be referred for resolution to a single referee to be appointed by the Secretary-General of the Centre, or of any successor entity as provided for by Section 29.10 below, except for any dispute arising out of or related to Sections 3, 4, 5, 6, 20, 21, 23, 24, 27, 29, 31 and 33 and Sections 18.7, 18.8 and 18.9 of this Agreement, which must be referred to arbitrators appointed pursuant to Section 29.3 above unless the Parties jointly agree that any such dispute is not material, in which event it may be referred to the referee for decision at the option of either party. The decision of the referee shall be rendered pursuant to Section 29.6 of this Agreement (except as regards the requirement for a decision by majority vote) and shall be final and binding unless appealed by any Party to arbitrators appointed as provided in this Section 29.3, who shall examine the referee's decision only as to manifest error of law, findings of fact that are not supported by any credible evidence, and abuse of authority, misconduct or other unauthorized act by the referee.

**29.5 Venue.** Arbitration proceedings conducted pursuant to this Agreement shall be held in Washington, D.C or such other place as the Parties may agree and shall be conducted in the English language. The costs of the proceedings shall be assessed and borne in such manner as the arbitral tribunal shall decide. Any procedural issues that cannot be determined under the arbitral rules of the Centre shall be determined pursuant to applicable law as set forth in Section 33 below.

**29.6 Award.** The arbitrators shall, by majority vote, render a written decision stating the reasons for their award within three (3) months after any hearing conducted has been concluded. Any monetary award shall be assessed and payable in Dollars (determined at the Prevailing Market Rate of Exchange as of the date of the award if the award involved an obligation expressed in any currency other than Dollars) through a bank designated by the recipient, and in the case of an award to the Operator, shall be exempt from any Taxes and Duties imposed upon Government. Each Party shall bear its own costs and attorney fees. Neither Party shall have any liability for either consequential damages (except for purposes of set off) or exemplary or punitive damages, but interest at a rate not to exceed the London Interbank Offering Rate (LIBOR) existing at the time of such award, plus one (1) percentage point, multiplied by the amount of the award, shall be assessed from the date of any monetary award until its satisfaction. If LIBOR should cease to be reported, then the rate to be applied shall be another substitute rate agreed to by a majority of the arbitrators. In any case, the liability of the Operator shall be limited to the net book value of its investment in the Republic at the time of the award. If the decision of the arbitral



tribunal is adverse to the Operator, then the arbitral tribunal may, in its discretion, specify a reasonable period of grace to cure any defect or default on the part of the Operator, provided that such period of grace shall not exceed one hundred eighty (180) days for the making of any payment required by such award.

**29.7 Waiver of Sovereign Immunity.** The Government hereby irrevocably waives all claims of immunity from the Arbitrators' jurisdiction, and from the enforcement of any arbitral award rendered by a tribunal constituted pursuant to this Agreement including immunity from service of process and immunity from the jurisdiction of any court situated in any state, country or nation.

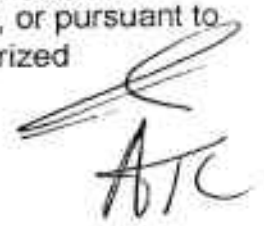
**29.8 Reservation of Rights.** The right to refer a claim or dispute to arbitration hereunder shall not be affected by the fact that a claimant or respondent has received full or partial compensation from another Person for a loss or injury that is the object of the claim or dispute, and any such other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

**29.9 Nature of Award.** The Parties agree that the arbitral award of any arbitral tribunal constituted pursuant to this Agreement may contain such orders (including orders for specific performance, other equitable relief or monetary damages) in respect of or affecting any of the Parties (and any loss or damage suffered by any of them) as such arbitral tribunal determines to be appropriate in the circumstances. The Parties, subject to their respective obligations contained elsewhere in this Agreement, shall take all such actions as are necessary to give full and complete effect to the award which, in accordance with its terms, shall be binding upon and enforceable against them.

**29.10 Successors.** The consent to the jurisdiction of the Centre as set forth in this Section 29 shall equally bind any successor of or successors-in-interest to either Party to this Agreement. Should the Centre be replaced by, or its functions be substantially conferred upon or be transferred to, any new international body of a similar type and competence, the Parties shall have the right to submit any dispute to such body for settlement by arbitration in accordance with the foregoing provisions of this Section 29.

### **SECTION 30: NOTICES**

**30.1 Written Communication.** All orders, approvals, declarations and Notices of any kind between the Parties which are required, expressly authorized or provided for under this Agreement (hereinafter each referred to as a "Communication") shall be in writing and delivered by hand, by telefax, by postage prepaid registered mail, by any other means of communication agreed upon by the Parties, or pursuant to Section 30.4. The Communication shall also be signed by a duly authorized representative of the Party dispatching the Communication.



**30.2 Delivery.** A delivery of a Communication to a Party shall be deemed to have occurred in any of the following circumstances:

- a. when an official of the Government, in the case of the Government, or a director of the Operator, in the case of the Operator, has signed a return receipt of registered mail;
- b. when a telefax confirmation of receipt has been electronically issued to the sender by a receiving telefax device at a telefax number authorized hereby indicating receipt of a Communication sent via telefax;
- c. when verification of receipt of the Communication has been obtained in any manner specifically agreed to in writing by the Parties; or
- e. when a Party has directly or indirectly acknowledged receipt of the Communication in writing.

**30.3 Address.** All Communications from the Government to the Operator shall be addressed as follows:

Kpo Resources Inc  
Mano House  
Mamba Point, Monrovia

**30.4 Copies of Communication**

All Communications from Operator to Government shall be addressed to the Minister of Lands, Mines & Energy, Ministry of Lands, Mines & Energy, Monrovia, Liberia, with copies to:

The Minister of Finance Ministry of Finance Monrovia, Liberia	The Chairman, National Investment Commission National Investment Commission Monrovia, Liberia
---	---

**30.5 Change of Address.** Either Party may, upon prior Notice to the other Party, at any time change the designation of the Person named to receive Communications from the other Party, the address or telefax number of the office in the Republic, or elsewhere authorized to receive such Communications or the address or addresses or telefax number or numbers of the offices to which copies of Communications from one party to the other are to be delivered.



## SECTION 31: FORCE MAJEURE

31.1 **Application.** In the event of either Party being rendered unable, in whole or in part, by force majeure to carry out any obligation under this Agreement, other than an obligation to make payments of money that accrued prior to the commencement of force majeure, such Person shall give Notice and the particulars of such force majeure in writing to the other Party as soon as practicable after the occurrence of the cause relied on, and the obligation of the Party giving such Notice, insofar as it is affected by such force majeure, shall be suspended during the continuance of any such inability. However, any such inability shall, as far as practicable, be remedied with all reasonable dispatch. All time periods specified in this Agreement for the performance of obligations or the enjoyment of rights that are affected by force majeure, except in connection with an obligation to make payments of money that accrued prior to the commencement of force majeure, but including the term of this Agreement, shall be extended by the period of time the inability caused by such force majeure exists. Sixty (60) days after giving Notice to the Government, the Operator shall have the right to terminate this Agreement without further obligations or cost (except for any obligations and cost that accrued prior to the commencement of force majeure) if a condition of force majeure has existed for a period of one (1) year or more which renders Production impracticable or unprofitable, or prevents Production, the export or sale of Minerals, or the Operator's exercise of a substantial part of its rights under this Agreement.

31.2 **Definition.** The term "force majeure" as used in this Agreement shall mean acts of God, accidents, wars, acts of war, invasions, acts of public enemies, hostilities (whether war is declared or not), restrictions on trade or other activities imposed by any sovereign, embargoes, blockades, revolutions, riots, civil commotions, sabotage, strikes and/or other industrial, labor or employer-employee disputes (if not cured for a period for a period of more than two (2) months) fires, explosions, earthquakes or any other natural disasters, expropriation of facilities or goods, epidemics, and any similar cause, provided any such cause was not within the reasonable control of the Party claiming suspension and could not have been avoided or overcome by such Party through the exercise of due diligence.

31.3 **No Required Settlement.** Nothing in Sections 31.1 or 31.2 above shall, in and of itself, be construed to require the Operator to settle any strike, lockout or other labor or industrial dispute except as may be required by Law.

## SECTION 32: LIBERIAN PARTICIPATION IN OWNERSHIP

32.1 **Government Ownership of Equity.** Government shall receive, free of charge, an equity interest in the Operator's Operations equal to ten percent

(10%) of its authorized, issued and outstanding share capital existing at any time and from time to time, without dilution. Dividends to shareholders will be payable only once all the project capital investment and any related project loan interest have been fully recovered.

**32.2 Liberian Participation in Equity.** Not later than one hundred eighty (180) days after the expiration of the final term of the Exploration License, the Operator shall notify the Minister that a number of shares of its stock equivalent to ten percent (10%) of any offering of the stock of the Operator made to any other Person on or subsequent to the expiration of the final term of the Exploration License, is available for purchase by Government or Liberian citizens at fair market value and upon reasonable terms. This offer shall remain open for one hundred twenty (120) days.

### **SECTION 33: GOVERNING LAW**

This Agreement and the rights, obligations and duties of the Parties hereunder shall be construed and interpreted in accordance with Law and by such rules and principles of generally accepted international law as may be applicable, particularly with regard to an investment by nationals of one country in another country. Notwithstanding the foregoing, in the event of a conflict between this Agreement or the rights, obligations and duties of a Party under this Agreement, and any other Law, including administrative rules and procedures and matters relating to procedure, and applicable international law, then this Agreement shall govern the rights, obligations and duties of the Parties.

### **SECTION 34: ENTIRE AGREEMENT - MODIFICATIONS**

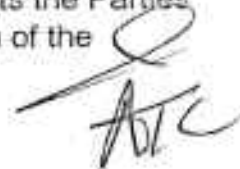
**34.1 Entire Agreement.** This Agreement, including the Appendices attached hereto, represents the entire agreement between the Parties and supersedes all previous oral and written negotiations and agreements.

**34.2 Amendment.** Any modification or amendment of any terms of this Agreement shall be by the mutual written agreement of the Parties.

### **SECTION 35: PERIODIC REVIEW**

**35.1 Modification and Review.** The Parties agree that the Agreement shall be subject to periodic review once every five years after the commencement of Production for the purpose of good faith discussions to effect such modifications to the Agreement as may be necessary or desirable in the light of any substantial changes in circumstances which may have occurred during the previous five years.

**35.2 Good Faith.** It is understood that this clause subjects the Parties to a simple obligation to consider in good faith the proposed modification of the



Agreement, subject to Section 34.2. This Agreement shall remain unaltered and in force during any such period of consideration.

**SECTION 36: NON-WAIVER OF RIGHTS**

The non-exercise or partial exercise by one or the other of the Parties of any of its rights under the terms of this Agreement shall not in any case constitute a waiver of that right.

**SECTION 37: SUCCESSION**

The terms and conditions of this Agreement shall inure to the benefit of and be binding in addition to the Parties themselves upon the successors, beneficiaries and assignees of the Parties including, without limitation, all future manifestations or forms of public power exercising sovereign authority over all or part of the present territory of the Republic.

**SECTION 38: SURVIVAL PROVISION**

Notwithstanding termination of this Agreement by either Party or for any reason, including a termination due to a finding that this Agreement or a portion thereof is void, invalid, or unenforceable, Sections 1, 28, 29, 30, 33 and 38 shall survive such termination and shall remain effective as to any matters which are the subject of this Agreement or which arise out of, in relation to or in connection with this Agreement. Moreover, any such termination shall be without prejudice to rights, duties and obligations that have accrued prior to termination and, notwithstanding such termination, such provisions of this Agreement as are reasonably necessary for the full enjoyment and enforcement of such rights, duties and obligations shall survive such termination for the period necessary.



IN WITNESS WHEREOF, the Parties have signed this Agreement, through their respective duly authorized representatives, on the day, month and year indicated below.

Signed in 5 originals on the 28<sup>th</sup> day of November, 2001.

IN PRESENCE OF:

FOR THE GOVERNMENT OF THE  
REPUBLIC OF LIBERIA:

Albert Chie

[Signature]

MINISTER OF LANDS, MINES & ENERGY



Osula K. Marshall

[Signature]

MINISTER OF FINANCE

[Signature]

[Signature]  
CHAIRMAN, NATIONAL INVESTMENT  
COMMISSION



FOR KPO RESOURCES INC.

L. L. Dwight

[Signature]

CO-CHAIRMAN

ATTESTED:

[Signature]

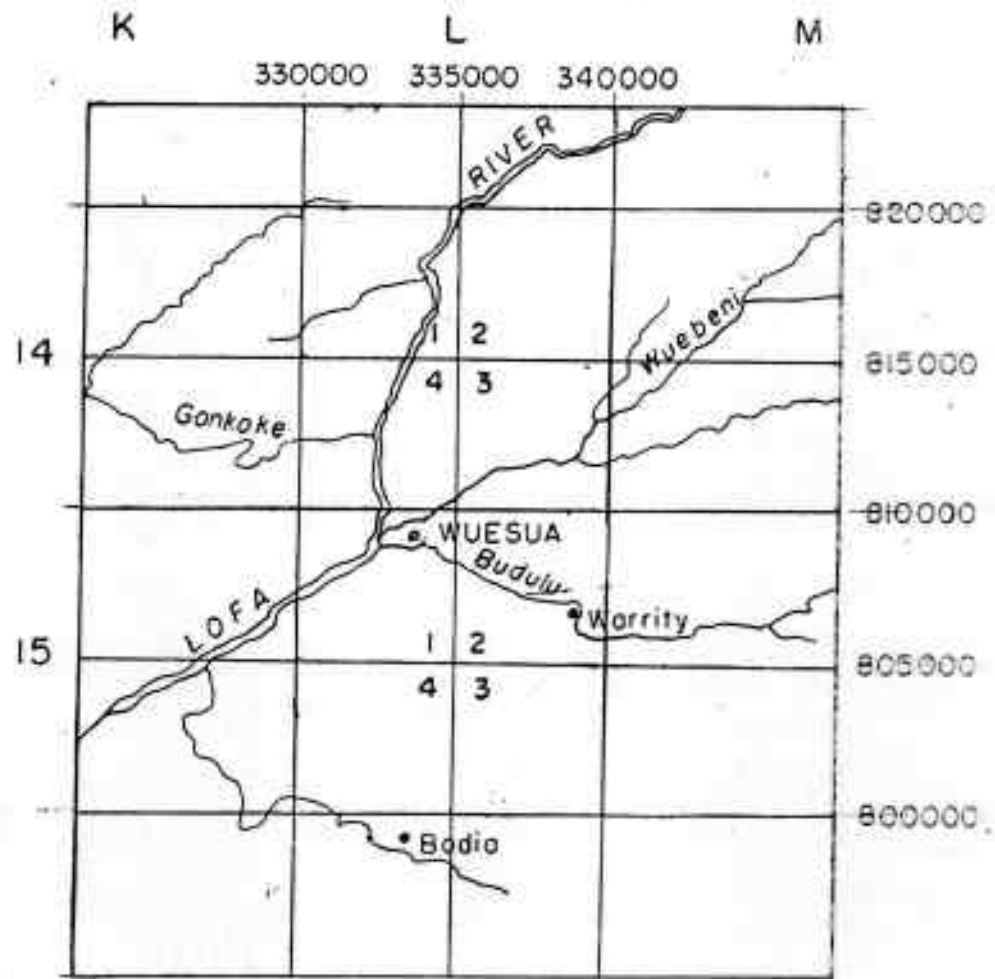
MINISTER OF JUSTICE, R.L.

APPROVED:

[Signature]  
PRESIDENT OF THE REPUBLIC OF LIBERIA



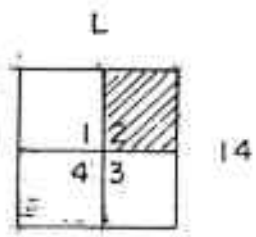
MINERAL DEVELOPMENT AREA OF KPO RESOURCES INC.  
GBAPOLU COUNTY, LIBERIA



November, 2001

- LEGEND
- Town
  - Road
  - ~ River, Creek
  - Block Limit

APPENDIX: \_\_\_\_\_



Example: BLOCK L 14-2 (25.0 sq. km.)

APPENDIX B

UTM COORDINATES OF THE MINERAL EXPLORATION AREA  
OF KPO RESOURCES INCORPORATED

<u>Station</u>	<u>Easting</u>	<u>Northing</u>
1	330000	820000
2	340000	820000
3	340000	800000
4	330000	800000
1	330000	820000

Area contains 8 (eight) blocks at 25 sq km per block or 200 sq km

ATC  
23/10/12  
p

